ALBANY, NEW YORK

June 12, 1995

10:02 a.m.

REGULAR SESSION

SENATOR JOHN R. KUHL, JR., Acting President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

ACTING PRESIDENT KUHL: The Senate will come to order. Members, those who are here, please find their places. Ask you all to rise and join with me in saying the Pledge of Allegiance to the Flag.

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

In the absence of clergy, may we bow our heads in a moment of silence.

(A moment of silence was observed.)

Reading of the Journal.

THE SECRETARY: In Senate, Sunday -

SENATOR BRUNO: Excuse me. I wonder if we could have a roll call before we start the proceedings.

ACTING PRESIDENT KUHL: The Secretary will call the roll.

THE SECRETARY: Senator Abate.

(There was no response.)

Senator Babbush.

(There was no response.)

Senator Bruno.

SENATOR BRUNO: Here.

THE SECRETARY: Senator Connor.

SENATOR CONNOR: Here.

THE SECRETARY: Senator Cook.

SENATOR COOK: Here.

THE SECRETARY: Senator DeFrancisco.

SENATOR DeFRANCISCO: Here.

THE SECRETARY: Senator DiCarlo.

SENATOR DiCARLO: Here.

THE SECRETARY: Senator Dollinger.

SENATOR DOLLINGER: Here.

THE SECRETARY: Senator Espada.

(There was no response.)

Senator Farley.

SENATOR FARLEY: Here.

THE SECRETARY: Senator Galiber.

(There was no response.)

Senator Gold.

(There was no response.)

Senator Gonzalez.
(There was no response.)
Senator Goodman.
(There was no response.)
Senator Hannon.
SENATOR HANNON: Here.
THE SECRETARY: Senator Hoblock.
SENATOR HOBLOCK: Here.
THE SECRETARY: Senator Hoffmann.
(There was no response.)
Senator Holland.
SENATOR HOLLAND: Here.
THE SECRETARY: Senator Johnson.
SENATOR JOHNSON: Here.
THE SECRETARY: Senator Jones.
SENATOR JONES: Here.
THE SECRETARY: Senator Kruger.
(There was no response.)
Senator Kuhl.
SENATOR KUHL: Present.
THE SECRETARY: Senator Lack.
(There was no response.)
Senator Larkin.

SENATOR LARKIN: Here.
THE SECRETARY: Senator LaValle.
(There was no response.)
Senator Leibell.
SENATOR LEIBELL: Here.
THE SECRETARY: Senator Leichter.
(There was no response.)
Senator Levy.
(There was no response.)
Senator Libous.
SENATOR LIBOUS: Aye -- here.
THE SECRETARY: Senator Maltese.
SENATOR MALTESE: Present.
THE SECRETARY: Senator Marcellino.
SENATOR MARCELLINO: Here.
THE SECRETARY: Senator Marchi.
SENATOR MARCHI: Here.
THE SECRETARY: Senator Montgomery.
(There was no response.)
Senator Maziarz.
SENATOR MAZIARZ: Here.

THE SECRETARY: Senator Mendez.
(There was no response.)
Senator Montgomery.
(There was no response.)
Senator Nanula.
SENATOR NANULA: Here.
THE SECRETARY: Senator Nozzolio.
(There was no response.)
Senator Onorato.
SENATOR ONORATO: Here.
THE SECRETARY: Senator Oppenheimer.
(There was no response.)
Senator Padavan.
(There was no response.)
Senator Paterson.
SENATOR PATERSON: Here.
THE SECRETARY: Senator Present.
SENATOR PRESENT: Here.
THE SECRETARY: Senator Rath.
(Affirmative indication.)
Senator Saland.
(There was no response.)

Senator Santiago.
(There was no response.)
Senator Sears.
SENATOR SEARS: Aye.
THE SECRETARY: Senator Seward.
(There was no response.)
Senator Skelos.
SENATOR SKELOS: Here.
THE SECRETARY: Senator Smith.
SENATOR SMITH: Present.
THE SECRETARY: Senator Solomon.
(There was no response.)
Senator Spano.
(There was no response.)
Senator Stachowski.
SENATOR STACHOWSKI: Here.
THE SECRETARY: Senator Stafford.
SENATOR STAFFORD: Present.
THE SECRETARY: Senator Stavisky.
(There was no response.)
Senator Trunzo.
SENATOR TRUNZO: Here.
THE SECRETARY: Senator Tully.

(There was no response.)

Senator Velella.

SENATOR VELELLA: Present.

THE SECRETARY: Senator Volker.

SENATOR VOLKER: Present.

THE SECRETARY: Senator Waldon.

(There was no response.)

Senator Wright.

SENATOR WRIGHT: Present.

ACTING PRESIDENT KUHL: Senator Bruno, a quorum is present.

SENATOR BRUNO: Mr. President, would you at this time proceed with the reading of the Journal.

ACTING PRESIDENT KUHL: The Secretary will read the Journal.

THE SECRETARY: In Senate, Sunday, June 11. The Senate met pursuant to adjournment, Senator Farley in the Chair upon designation of the Temporary President. The Journal of Saturday, June 10th, was read and approved. On motion, the Senate adjourned.

ACTING PRESIDENT KUHL: Hearing

no 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.

The Chair recognizes Senator Farley.

SENATOR FARLEY: Thank you, Mr. President.

On behalf of Senator Levy, please remove the star -- let me start it again. On page 43, I offer the following amendments to Calendar Number 414, Senate Print 4050 and please remove the star from that bill also.

ACTING PRESIDENT KUHL: The star on Calendar Number 414 will be removed at the request of the sponsor. The amendments are received and adopted.

SENATOR FARLEY: On behalf of Senator Spano, Mr. President, on page 26, I offer the following amendments to Calendar Number 861, Senate Print 3975-B, and I ask that that bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: The amendments to Calendar Number 861 are received and adopted. The bill will retain its place on the Third Reading Calendar.

Senator Farley.

SENATOR FARLEY: On behalf of Senator Volker, I wish to call up his Bill Number 1140 which has passed both houses and not delivered to the Governor.

ACTING PRESIDENT KUHL: The Secretary will read the title.

THE SECRETARY: Calendar Number 313, by Senator Volker, Senate Print 1140, an act to amend Chapter 198 of the Laws of 1978, relating to authorized projects.

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

bill was passed, and I ask the bill be restored to the order of third reading.

ACTING PRESIDENT KUHL: The Secretary will call the roll on consideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 35.

ACTING PRESIDENT KUHL: Senator Farley.

SENATOR FARLEY: I now move to recommit Senate Print Number 1140, Calendar 313 on the order of third reading, that it be recommitted to the Health Committee with instructions to strike out the enacting clause.

ACTING PRESIDENT KUHL: The Senate bill will be recommitted and the enacting clause will be stricken.

Senator Farley.

SENATOR FARLEY: Thank you, Mr. President.

On behalf of a number of Senators here, Senator Velella -- I'm going to offer amendments to withdraw all of these bills.

By Senator Velella, on page 17, Calendar 222, Senate Print 2764-B;

Senator Farley, on page 11, 416, Senate Print 15-A;

Senator Levy, page 12, Calendar 462, Senate Print 4168;

Senator Lack, page 13, Calendar 507, Senate Print 3775;

Also, Senator Lack on page 22, Calendar 771, Senate Print 4427;

Senator Goodman, on page 25, Calendar 858, Senate Print 3466-A;

Also on behalf of Senator Goodman on page 27, Calendar 885, Senate Print 3455;

Senator Cook, page 37, Calendar 1173, Senate Print 5164;

On behalf of Senator Goodman, on page 39, Calendar 1221, Senate Print 4688-B;

Senator Larkin, on page 41, Calendar 215, Senate Print 2090-B.

Mr. President, I offer the amendments to those bills and I ask that they retain their place on the Third Reading

Calendar.

ACTING PRESIDENT KUHL: The amendment to Calendar Number -- the amendments to Calendar Number 222, 416, 462, 507, 771, 858, 885, 1173, 1221 and 215 are received and adopted and the bills will retain their place on the Third Reading Calendar.

Senator Larkin, why do you rise?

SENATOR LARKIN: Mr. President, would you remove a sponsor's star from Calendar 557, Senate Bill 3069; we've already done 215.

ACTING PRESIDENT KUHL: Sponsor's star on Calendar Number 557 will be removed at the request of the sponsor.

The Chair recognizes Senator Onorato.

SENATOR ONORATO: Mr. President, on behalf of Senator Solomon who just called me -- he's still stuck on the ramp of the Empire Plaza trying to get in here -- and he asked that on page 44, he offers the following amendments to Calendar Number 705, Print Number 4223, and remove the star and ask that bill replace -

retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: The star on Calendar Number 705 will be removed at the request of the sponsor. The amendments are received and adopted and the bill will retain its place on the Third Reading Calendar.

Senator Onorato.

SENATOR ONORATO: Mr. President, I also wish to call up my bill, Print Number 2854, recalled from the Assembly which is now at the desk.

ACTING PRESIDENT KUHL: The Secretary will read the title.

THE SECRETARY: Calendar Number 1189, by Senator Solomon, Senate Print 2854, an act to amend the Civil Practice Law and Rules, in relation to fees for referees.

ACTING PRESIDENT KUHL: Senator Onorato.

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

ACTING PRESIDENT KUHL: The

Secretary will call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 38.

ACTING PRESIDENT KUHL: Senator Onorato.

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

ACTING PRESIDENT KUHL: The amendments are received and adopted.

Senator Libous.

SENATOR LIBOUS: Yes, Mr. President.

Mr. President, on behalf of Senator Skelos, on page 21, I offer the following amendments to Calendar Number 751, Senate Print Number 1243-A, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: The amendments to Calendar Number 751 are received and adopted. The bill will retain its place on the Third Reading Calendar.

Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

On behalf of Senator Rath, I wish to call up her bill, Print Number 901, recalled from the Assembly which is now at the desk.

ACTING PRESIDENT KUHL: The Secretary will read the title.

THE SECRETARY: Calendar Number 160, by Senator Rath, Senate Print 901, an act to amend the State Administrative Procedure Act, in relation to advance notice of ruling making.

ACTING PRESIDENT KUHL: Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

I now move to reconsider the vote by which this bill was passed.

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

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 35.

ACTING PRESIDENT KUHL: The bill is before the house.

Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

I now offer up the following amendments.

ACTING PRESIDENT KUHL: The amendments are received and adopted.

Senator Libous.

SENATOR LIBOUS: Mr. President, on behalf of Senator Lack, I wish to call up his bill, Senate Print Number 2833-A, recalled from the Assembly which is now at the desk.

ACTING PRESIDENT KUHL: The Secretary will read the title.

THE SECRETARY: Calendar Number 387, by Senator Lack, Senate Print 2833-A, an act to amend Chapter 689 of the Laws of 1993, amending the Criminal Procedure Law.

ACTING PRESIDENT KUHL: Senator Libous.

SENATOR LIBOUS: Mr. President, I

now move to reconsider the vote by which this bill was passed.

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

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 35.

ACTING PRESIDENT KUHL: Senator Libous.

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

ACTING PRESIDENT KUHL: The amendments are received and adopted.

Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

On behalf of my colleague, Senator Sears, I wish to call up his bill, Senate Print Number 3331, recalled from the Assembly which is now at the desk.

ACTING PRESIDENT KUHL: The Secretary will read the title.

THE SECRETARY: Calendar Number

1027, by Senator Sears, Senate Print 3331, an act in relation to authorizing the town of Lee, county of Oneida, to lease certain park lands.

ACTING PRESIDENT KUHL: Senator Libous.

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

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

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 36.

ACTING PRESIDENT KUHL: The bill is before the house.

Senator Libous.

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

ACTING PRESIDENT KUHL: The amendments are received and adopted.

Senator Libous.

SENATOR LIBOUS: Mr. President, on behalf of Senator Cook, please place a

sponsor's star on Calendar Number 514 and also Calendar Number 809.

ACTING PRESIDENT KUHL: The stars are placed on Calendar Number 514 and 809 at the request of the sponsor.

Senator Dollinger.

SENATOR DOLLINGER: Mr. President, pursuant to Rule XI, I'm providing notice of my intention to move to alter the rules on June 13th, 1995, specifically Rule XI, to change the deadline from the second Tuesday in April to the fourth Tuesday in June for discharging a committee from consideration of a bill and require only one calendar legislative day's notice and upon adoption of said motion will move to discharge the Rules Committee from consideration of 5252 which would ban the possession of assault weapons.

ACTING PRESIDENT KUHL: I'll direct the Secretary to record the notice in the Journal.

Senator Bruno, we have one substitution at the desk, if you would like to

take that at this time.

SENATOR BRUNO: Make the substitution, Mr. President.

ACTING PRESIDENT KUHL: The Secretary will read the substitution.

THE SECRETARY: On page 38, Senator Waldon moves to discharge from the Committee on Rules, Assembly Bill Number 2837 and substitute it for the identical Calendar Number 1215.

ACTING PRESIDENT KUHL: The substitution is ordered.

Senator Skelos, that brings us to the calendar. What's your pleasure?

SENATOR SKELOS: I would like to hand up the following resolution. I'd ask that the title be read and the resolution adopted.

THE SECRETARY: By Senator Bruno, concurrent resolution of the Senate and Assembly, authorizing the Senate and Assembly of New York State to purchase copies of the New York Red Book for 1995-96.

ACTING PRESIDENT KUHL: 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, if we could take up the non-controversial calendar.

ACTING PRESIDENT KUHL: The Secretary will read the non-controversial calendar.

THE SECRETARY: On page 4, Calendar Number 91, by Senator Holland, Senate Print 2046-B -

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 94, by Senator Johnson, Senate Print 571-A, an act to amend the Tax Law, in relation to procedures for written communications.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 3. This act shall take effect on the first day of the calendar.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 36.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 98, by Senator Goodman, Senate Print 1367-B, an act to amend the Arts and Cultural Affairs Law, in relation to autographed sports collectibles.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 37.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 186, by Senator Marchi, Senate Print 2037, an act to amend the -

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 341, by Senator LaValle, Senate Print -

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 373, by Senator Cook, Senate Print 2902-A, an act to amend the Education Law, in relation to authorizing electronic funds transfer.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 4. This act shall take effect on the first day of July.

ACTING PRESIDENT KUHL: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 37.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 374, by Senator Farley, Senate Print 3058-A, an act to amend the Education Law, in relation to the funding of certain libraries.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 37.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 397, by Senator Lack, Senate Print 3632-A, an act to amend the Public Authorities Law, in relation to authorizing the Dormitory Authority

to construct and finance all necessary and related facilities.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 37.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 411, by Senator Levy, Senate Print 4036-A, an act to amend Chapter 56 of the Laws of 1993, amending the Highway Law.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 38.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 422, by Senator Cook, Senate Print 3913, an act to amend the Education Law, in relation to the transportation of pupils.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 2. This act shall take effect on the second day of July.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 38.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 441, by Senator Saland, Senate Print 3623-A, an act to amend the Insurance Law, in relation to permitting an employer or employer-sponsored irrevocable trust.

ACTING PRESIDENT KUHL: The

Secretary will read the last section.

THE SECRETARY: Section 5. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 38.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 449, by Senator DiCarlo, Senate Print 4014-A, an act to amend the Executive Law, in relation to the elderly pharmaceutical insurance coverage program.

ACTING PRESIDENT KUHL: The Secretary will read the last section to Calendar Number 449.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 38.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 490, by Senator Volker, Senate Print 2960-A, an act to amend the Public Authorities Law, in relation to creating the Livingston County Water and Sewer Authority.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 38.

ACTING PRESIDENT KUHL: The bill is passed.

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

ACTING PRESIDENT KUHL: The

Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 38.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 50... in relation to Calendar Number 502, ayes 37, nays 1, Senator Hannon recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 503, by Senator Hannon, Senate Print 3467-A, an act to amend the General Business Law, in relation to unauthorized or improper use of a debit card.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 7. This act shall take effect on the first day of January.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 38.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 564, by Senator Skelos, Senate Print 4182-A, an act to amend the Nassau County Civil Divisions Act, in relation to the volunteer and exempt Firemen's Benevolent Association.

ACTING PRESIDENT KUHL: The Secretary will read the last section to Calendar Number 564.

THE SECRETARY: Section 5. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 38.

ACTING PRESIDENT KUHL: We mistakenly read Calendar Number 564 out of order. We'll take up Calendar Number 558 next for the benefit of the members -- excuse me, 558. 564 passed.

THE SECRETARY: Calendar Number 558, by Senator Nozzolio, Senate Print 3202-A, an act to amend the Town Law, in relation to providing for the election of a third town justice.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 38.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 583, by Senator Levy, Senate Print 4146, an act to amend the Transportation Law, in relation to

requiring the Commissioner of Transportation to take an annual inventory.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

THE SECRETARY: Those recorded in the negative on Calendar 583 are Senators DeFrancisco, Farley, Present and Rath. Also, Senator Hoblock. Ayes 33, nays 5.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 642, by Senator Levy, Senate Print 4336, an act to amend the Transportation Law, in relation to nighttime construction projects.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 38.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 657, by Senator Hoblock, Senate Print 3109-A, an act to authorize the conveyance of certain state lands to Pinehaven Country Club, Incorporated.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 7. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 38.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number

703, by Senator Velella, Senate Print 4112-B, an act to amend the Insurance Law, in relation to investments.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 5. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

THE SECRETARY: Ayes 36, nays 2, Senators Maltese and Maziarz recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 727, by Member of the Assembly Gottfried, Assembly Print 6516, an act to amend the Public Health Law and the Insurance Law, in relation to physical therapy services referrals.

ACTING PRESIDENT KUHL: The

Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 38.

ACTING PRESIDENT KUHL: The bill is passed -- announce the results when tabulated on Calendar Number 727.

THE SECRETARY: On Calendar 727, ayes 37, nays 1, Senator DeFrancisco recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 733, by Senator Goodman, Senate Print 4017-B, an act to amend the Mental Hygiene Law, in relation to establishing performance standards for alcoholism, substance abuse and chemical dependence programs.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 38.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 740, by Senator Goodman, Senate Print 3424-B, an act to amend the Administrative Code of the city of New York, in relation to a credit against the unincorporated business income tax.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 17. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 38.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 869, by Senator Levy, Senate Print 4856-B, an act to amend the Vehicle and Traffic Law, in relation to increasing fines for violations of certain provisions.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 37.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 875, by Senator Levy, Senate Print 4985-A, an act to amend the Transportation Law, in relation to the investigation of accidents by the state Public Transportation Safety Board.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 38.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 989, by Senator Leibell, Senate Print 3786-A, an act to amend Chapter 514 of the Laws of 1983, amending the Private Housing Finance Law.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

THE SECRETARY: Ayes 38.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 990, by Senator Leibell, Senate Print -

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 994, by Senator Leibell -

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1041, by Senator Kuhl, Senate Print 3119-A, an act to amend the Environmental Conservation Law, in relation to the definition of angling.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 120th day.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 38.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1058, by Senator Libous, Senate Print 2779, an

act to amend the -

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: There's a home rule message at the desk. The bill will be laid aside.

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

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1197, by Senator Velella, Senate Print 3663-B, an act to amend -

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1199, by Senator Leibell, Senate Print 3853-A, an act to amend the Public Authorities Law, in relation to the powers of the New York -- state

of New York Mortgage Agency.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 38.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1213, by Senator Montgomery, Senate Print 595, an act authorizing the city of New York to reconvey its interest in certain real property acquired by in rem tax foreclosure in the borough of Brooklyn.

ACTING PRESIDENT KUHL: There's a home rule message at the desk. The Secretary will read the last section.

THE SECRETARY: Section 5. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 38.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1215, by Member of the Assembly Scarborough, substituted earlier today, Assembly Print 2837, an act authorizing the city of New York to reconvey its interest in certain real property acquired by in rem tax foreclosure in the borough of Queens.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 38.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number

1216, by Senator Farley, Senate Print 2992, an act to amend the Banking Law, in relation to permissible fees in connection with open ended loans.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 38.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1217, by Senator Paterson, Senate Print 3127, an act to amend the Penal Law, in relation to defining offenses against a family.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: We're on Calendar Number 1217 by Senator Gold?

ACTING PRESIDENT KUHL: That's what we're just inquiring about, Senator Skelos. The Secretary will read Calendar Number 1217, the title.

THE SECRETARY: Calendar Number 1217, by Senator Gold, Senate Print 3217, an act to amend the Penal Law, in relation to a metal knuckle knife.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 38.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1218, by Senator Maltese, Senate Print 3718-A, an act to amend the Administrative Code of the city of New York, in relation to the title and compensation of certain police.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 38.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1219, by Senator Hoblock, Senate Print 3891, an act to amend the Labor law, in relation to providing for eligibility of unemployment insurance benefits.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 38.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1220, by Senator Seward, Senate Print 4649, an act to amend the Alcoholic Beverage Control Law, in relation to authorizing liquor stores to operate on Christmas Eve and New Year's Eve.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

SENATOR SMITH: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

Senator Skelos, that completes the non-controversial calendar.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT KUHL: The Chair recognizes Senator DeFrancisco.

SENATOR DeFRANCISCO: Mr.

President, when 727 on the calendar was called, I mistakenly voted in the negative. I would request unanimous consent to be voted in the affirmative.

ACTING PRESIDENT KUHL: Without objection. Hearing no objection, Senator DeFrancisco will be recorded in the affirmative on Calendar Number 727.

Senator Skel... excuse me.

Senator Sears, why do you rise?

SENATOR SEARS: 503, I would like to be recorded in the negative, please.

ACTING PRESIDENT KUHL: Without objection. Hearing no objection, Senator Sears will be recorded in the negative on Calendar Number 503.

Senator Skelos.

SENATOR SKELOS: Mr. President, as we start the controversial calendar -- and I know there will be at least one supplemental calendar, I urge the members who have bills on the calendar to be debated to please be in the chambers so that we can move in an orderly

fashion.

ACTING PRESIDENT KUHL: The Secretary will read the controversial -- excuse me.

Senator Paterson, why do you rise?

SENATOR PATERSON: Mr. President, I just rose to tell you that I agree with the Acting Majority Leader. The quicker we get in here, the quicker we can debate these bills.

ACTING PRESIDENT KUHL: The Secretary will read the controversial calendar.

THE SECRETARY: Calendar Number 91, by Senator Holland, Senate Print 2046-B, an act to amend the Social Services Law and the Workers' Compensation Law, in relation to liens for public assistance.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Holland, an explanation has been asked for by both Senator Paterson and Senator Stachowski.

SENATOR HOLLAND: Mr. President, this bill provides that the Department of Social

Services may place a lien for the repayment of public assistance upon any lump sum benefit paid under the Workers' Compensation Law.

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: I apologize.

ACTING PRESIDENT KUHL: Senator Paterson, would you hesitate just a moment until we get some order in the chamber. It's Monday morning, a lot of noise. Ask the staff to take their places, the members to take their conversations out of the chamber.

Thank you, Senator Paterson.

SENATOR PATERSON: Mr. President, and thank you.

I couldn't hear Senator Holland's explanation. Would he mind repeating it?

SENATOR HOLLAND: I would be glad to.

This bill provides that the Department of Social Services may place a lien for the payment of public assistance upon any

lump sum benefit paid under the Workers' Compensation Law.

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Why was the - if Senator Holland would yield for a question.

ACTING PRESIDENT KUHL: Senator Holland, do you yield to Senator Paterson? The Senators yields.

SENATOR PATERSON: Why was Workers' Compensation excluded in the first place, Senator Holland?

SENATOR HOLLAND: We did a little research on that, Senator. We were not able to find a reason why it was not excluded in 1964, but it doesn't make any sense to me that some people have to repay loans and in this situation, they would be receiving benefits from two benefit agencies of the state of New York and when they receive their grant or their court settlement, they wouldn't have to repay the loan from DSS.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President -- Senator Holland, even as a prerequisite to the questions I want to ask, if what you're saying is true, why have we in this bill excluded EMS workers and firefighters?

SENATOR HOLLAND: Good question. It -- I really don't have an answer for that, Senator. Do you want to put them in?

SENATOR PATERSON: No, Mr. President. I want Senator Holland to know that I would figure that we would take them out. In other words, I would figure that workers would be treated the same.

SENATOR HOLLAND: That -- that makes a lot of sense to me, Senator. I would be glad to talk to you about that next year or later this week, if you would like.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, would Senator Holland tell me, are we going

to -

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

SENATOR HOLLAND: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR PATERSON: Do you want to pass the bill as it is right now and change it later; is that what you're saying?

SENATOR HOLLAND: Senator, I certainly want to pass the bill as it is right now. This bill has been on the floor for a number of years. I really think it is an unfair situation. Maybe it's not a perfect bill, but we pass a lot of bills that are not perfect and this will correct some inequities that have been going on for much too long in this state.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, just on the bill, just for that moment.

ACTING PRESIDENT KUHL: Senator Paterson on the bill.

SENATOR PATERSON: I understand what Senator Holland is saying, but I really think it would be better for the process if we addressed all the issues in this particular legislation at once.

Now, I'm opposed to this bill, Mr. President, and I'm going to go into why in a moment, but I really would implore Senator Holland that as we're already conceding that there are some inconsistencies or some idiosyncratic situations that would be treated as -- arising from the passage of this bill -- I understand that he's waited a long time, but I really think it would be better government for us not to concede that we often pass bills that are not perfect. I think that is the result of our work but it is not the intent. We would hope that we're always passing bills that are the best possible bill we can have, and I just urge the sponsor to lay the bill aside and either give us an explanation for why we should have the EMS and firefighters or to just remove them and go forward with the bill.

But now back to the actual piece of legislation, if Senator Holland would mind yielding for a couple of questions.

ACTING PRESIDENT KUHL: Senator Holland, do you yield to Senator Paterson? The Senator yields.

SENATOR PATERSON: Senator, for a long period of time, Section 33 of the Workers' Compensation Law and Section 104(b) of the Social Services Law seem to have allowed for this exclusion, and I think the reason they do it is because of the rates at which an individual who is injured can be paid. The Workers' Compensation Law really restricts the payment that an individual can receive. We're not talking about individuals who applied for some sort of social service benefit, Senator. We're talking about people who were working who either were injured accidentally on the job or contracted some job-related disease, and so I think that these individuals have already gone through an ordeal and Section 15 of the Workers' Compensation Law makes it very clear that they

never received the compensation that they would have accrued had they been working, so they're already at a financial disadvantage.

Now, we have one exception. We will go into Workers' Compensation payments where there is a mitigating circumstance where we are balancing the hardship of the worker with the difficulties that other family members have, Senator Holland, so we do have that exception so we don't have other family members living in poverty as a result of the job-related injury, but to the individual who is suffering, the Workers' Compensation Law makes it very clear that they're never in the position, even with Workers' Compensation, that they were in at the time of the accident or the ordeal has occurred, and so why we would want to take the meager funds that are available to them and pay back Social Services is something that, I think the Legislature addressed many years ago, and that is to not want to further restrict the individual who is already restricted by Workers' Compensation payments.

My question to you is why would you want to change that? That seems -- I mean, it seems to me that we're picking on people who really, but for the fact that they were working -- in other words, they weren't lazy. They didn't fail to go out and look for a job. They are individuals who are injured, individuals who are often suffering from a malady. Why would we want to take any further money out of their pockets?

SENATOR HOLLAND: See, I don't see it that way, Senator. I see it as the person being injured or needing assistance and DSS coming to their assistance for a period of time until the court finishes the claim. When the claim is adjudicated, then I believe the loan -- and I see it as a loan from DSS - should be repaid just as anybody else would have to do, have to repay a loan; just as anybody else who might have a problem for a period of time might have to take a loan.

SENATOR PATERSON: Mr. President -- but, Senator, you're aware that when people

go on to -

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

SENATOR HOLLAND: Yes, sir.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR PATERSON: Mr. President, thanks.

Senator Holland, when the person goes on Social Security, often they are paid Social Security Disability Insurance which, in a sense, tides the individual over until the Social Security Insurance is now -- now kicks in, but the Social Security Insurance often is retroactive to the point that they receive Social Security Disability Insurance and, although you might see that as a loan, generally what the Social Security Law feels is that that initial effort to assist the person is something that even with the -- the special benefit of SSDI, the federal law generally considers that the individual never really reaches a point of equity.

And so what I'm sort of saying to you, Senator, is based on logic, I think that you're correct in your assumption, but I think the point, if I could get you to realize it, that might make you reconsider this bill is the fact that you see, even with the slight funds that may be paid from Social Services, even when the Workers' Compensation kicks in, it's understood in the law -- it's actually written right into Section 15 -- that the person is never in the place that they would have been if they continued to be working.

Now, if the individual was, in a sense, receiving a benefit from our government just on -- based on need alone, then I think I would be more persuaded to vote for your bill, but these individuals, I must repeat, were injured on the job or suffered a job-related circumstance that caused them to contract some sort of disease.

So, in other words, if we're really talking about equity, Senator, they have really had bad luck. I mean, that's about the

only way to describe it, and to further complicate this situation by, in a sense, taking back the funds that they receive from Social Services, in my opinion, just is not fair to them, and I don't know -- or maybe you would like to tell me if you would yield for this question, how much money would you project we could save the state in a year; is it really worth it?

SENATOR HOLLAND: I do not have a specific amount, Senator, but I guess -- I have to repeat myself in answer to your question. I see it as double dipping. I see it as we are taking care of the people who are injured on the job or get a disease on the job or have a problem on the job, and if they get a claim which would pay back that loan while we were taking care of them, whether it's through compensation or DSS, I believe that should be repaid. I think a normal taxpayer who didn't have that benefit would have to repay any loan, would have to work over that period of time. I see this as receiving benefits from two

government benefit agencies and that when the claim is finalized, one of them should be repaid.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Yeah, Senator Holland, I don't -- Mr. President, I don't think that there is really much disagreement between either of us on what we're actually doing but, Senator Holland, what I would wish we would acknowledge is the fact that these individuals are taxpayers. They were taxpayers at the time that they accumulated the injury. What they may be is individuals who, in a sense, due to the injury, are in far greater straits than the individual who might have the personal finances to sustain themself until the Workmen's Compensation comes through.

And so all I'm saying to you, Senator Holland -- and, you know, I appreciate what you're trying to say, but all I'm asking you to consider is when you have a tort liability action and the defendant is found at

fault, the general -- generally held saw of legal compensation is that you take the victims as you find them. In other words, if you knock someone down the stairs and they get a bump on the head and they have to go and have X-rays, then you pay for X-rays. If you knock someone down the stairs and they had an unusually thin skull and they fracture their skull, even though most people might not have had that particular malady because you knocked them down the stairs, you now have to pay for everything.

I think that as a state, if we would consider this more as a tort action and take our victims as we find them, we would find that the individuals who happen to be, let's say lower income, they don't have as much savings as perhaps the individual who's suffering from the same injury but since we as a state, by the fact that we pay Workers' Compensation, deem ourselves to be responsible, what I'm contending is that I think that that difference, even though we're paying from both agencies and even though under the definition of what double

dipping would mean, I guess I'd have to go along with you, Senator Holland, but I'm saying in the greatest equity, in the greatest fairness, in the greatest consideration of what the victim has sustained, I think it would be more fair to put the victim in as best a position as we can even if each victim who suffers as a result of a job-related injury or disease that arose from a job-related situation, that that would be a better goal for government than to have a uniform standard where we are really, in a sense, shuffling the deck and rearranging funds that we have not demonstrated are going to be of any great savings to the state and at the same time, would have great value if they could be in the hands of the injured party.

SENATOR HOLLAND: Is that a question?

ACTING PRESIDENT KUHL: Senator -

SENATOR PATERSON: No, that was not a question. It was just -- on the bill, it is my point of view, but if you do have a

feeling about it, I would be delighted to hear it.

ACTING PRESIDENT KUHL: Senator Holland, would you like to respond?

SENATOR HOLLAND: No.

ACTING PRESIDENT KUHL: Senator Stachowski was rising.

Senator Stachowski.

SENATOR STACHOWSKI: If they're finished, I would like to speak on the bill.

ACTING PRESIDENT KUHL: Senator Stachowski on the bill.

SENATOR STACHOWSKI: On the bill.

I think that this bill is - although the sponsor means well in recouping money, he in essence is telling people that work in the state of New York that, if you have the misfortune of being hurt on the job and qualify for at least the procedure that will possibly enable you to get Workmen's Compensation benefits, then even though you paid taxes all your working life while you worked and even though you're a member of our society and a

regular taxpayer, as the term was used in the earlier part of this debate, that you shouldn't get public assistance if by no fault of your own because of this injury or illness you're forced on the public rolls -- which isn't always the most pleasant thing for a man or a woman who happens to be the bread earner of their family, worked all their life, has a great work ethic and now they're forced to take public assistance which in many people's cases is like the last resort; they don't even want to do it. They only do it when they're forced to do it and now even though you've paid into that system by paying taxes all your life, you're told that, if you use that system because through delays in the Workmen's Comp' system, you're not getting your benefits or you're not getting a speedy enough trial to get you benefits, then you're not entitled to get this and actually this is only a loan by the state of New York and you should pay this back even though all your life you worked, you paid taxes, you're a pillar of the community, but that's too bad. You had the

misfortune of getting sick or you had the misfortune of getting hurt and even though you'll probably never be the same because if you were going to be the same you wouldn't be getting the benefits or winning the court action, that that's the way it is.

This new state of New York government, the all friendly, open door state that we now have, is going to tell you that you have to pay back this public assistance that, although there's people that are on it and although we can afford to give companies massive loans because they put together sheets that say "We're going to create 'X' amount of jobs and we want like $20 million or we're going to leave the state", and we give them that loan and they never create the jobs and oftentimes they leave the state and they never have to pay back any thing, but that's all right, because that's for business and we are a business-friendly state, but you, the worker, you've worked hard. You got hurt. You're going to get a compensation benefit. You win your case. You're fortunate

enough that you're hurt bad enough that you win a case in court and you get a settlement so you should pay back that public assistance that you so richly deserved, but that's too bad. You should pay it back because you had no right getting that benefit from the state of New York.

I just think the logic of the bill is nuts. I think that, if people work and they find themselves in that predicament, that's a terrible situation. They don't like to use public assistance and I think that the average working person, it's the last thing they have in their mind. There's often people that do everything possible before they would even take this, and I just think the coldness of this bill is just unbelievable to me and unless somebody's missing the explanation, the explanation I heard was -- it doesn't justify this bill.

This is just a cold effort to have the working men and women of this state try to fill in the budget deficits that we're going to face in the future for whatever reason, and I

just -- I don't understand the logic. Maybe I'm missing something. Maybe I didn't read the bill correctly. Maybe the memos that were sent to us are wrong and maybe I just didn't hear the debate properly, but I think this is a terrible bill. This is a slap in the face to the working men and women of our state. This is a terrible message to tell people that have the misfortune of being hurt at work. I just believe it and I suggest that most people would vote no against this bill.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

Senator Dollinger -- Senator Holland, do you want to respond?

SENATOR HOLLAND: I do a little bit, yes.

ACTING PRESIDENT KUHL: Senator Holland first, Senator Dollinger next.

SENATOR HOLLAND: Both Senators said basically the same thing, that we don't care about people who pay taxes, and we're not helping people who pay taxes. We absolutely

are.

That's what DSS is there for. We don't mind helping those people. We encourage them to come when they need assistance, but they are at the end after the court case double dipping and they are hurting the workers of this state who are paying the taxes, who are trying to help people.

This is a double-dipping situation, Senator. I don't understand why you cannot see it. We are helping the people that need to be helped. After the court case is settled, we're asking them to pay back the loan. That's as simple as it is.

ACTING PRESIDENT KUHL: Senator Dollinger.

SENATOR DOLLINGER: Mr. President, would the sponsor yield to a couple of questions?

ACTING PRESIDENT KUHL: Senator Holland, do you yield to Senator Dollinger? The Senator yields.

SENATOR DOLLINGER: Senator, does

this bill apply to the medical benefit portion in addition to the wage portion of the Workers' Comp' award?

SENATOR HOLLAND: Yes.

SENATOR DOLLINGER: Does that mean -- through you, Mr. President, if the sponsor would continue to yield.

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

SENATOR HOLLAND: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR DOLLINGER: Does that mean that if you receive a wage supplement from the Department of Social Services and you are awarded eventually a compensation award for lost wages and for the medical costs, that you can assert the lien for wages paid through -- or through dis... benefits through DSS, you can assert that against both the lost wage component and the medical component?

SENATOR HOLLAND: DSS can only collect what Workers' Comp' was meant to cover

for the same services.

SENATOR DOLLINGER: Is that provided for in this bill? The reason why I ask, Senator, is my concern is this: If the lump sum payment under Workers' Comp' comes in two forms, it comes in a lost wage component for the time that you lost work depending on the extent of your disability and wage rate and then there's also a payment for medical expenses.

My question is does the Social Services lien that you want to attach here, which is largely in the form of income mainten ance, does that lien attach to both the lost wage portion and the medical portion; because if that's the case, then the Social Service Department is liening -- is giving a wage supplement but yet liening something necessary to pay for medical bills, putting the lien against the medical portion as well. That's my question.

SENATOR HOLLAND: If I can read the section of the bill here. "Services" - let's start at 3.

SENATOR DOLLINGER: Senator, if you could just -- through you, Mr. President. Could you just tell me which lines you're reading so I can read it with you?

SENATOR HOLLAND: I'm reading page 2, section -- lines 3 and 4.

SENATOR DOLLINGER: Okay.

SENATOR HOLLAND: Is -- " *** by a Social Services official with the board for reimbursement out of the proceeds of the award for that portion of the covered period for which the public assistance and care was paid."

SENATOR DOLLINGER: That's my concern, Senator, is whether the term "award" includes both the lost wage component of the award and the medical cost, because if you're liening the medical portion as well as the lost wage portion of that, you're actually telling the working person who's hurt that the money that they would get to pay for their medical expenses is going to be liened to cover the cost of their income maintenance that they've received from the Department of Social

Services. Is that the intent?

SENATOR HOLLAND: The intent is just to cover the medical portion.

SENATOR DOLLINGER: Just to cover the wage portion, correct?

SENATOR HOLLAND: I'm sorry, the wage portion.

SENATOR DOLLINGER: As I understand the bill, what you're saying is you're getting -- Workers' Comp' is in essence paying for a lost wage component and the Department of Social Services is also paying you a wage supplement, that those are, in essence, a form of double dipping. That's why my question about the bill is it wouldn't be double dipping if what you're -- the second portion of the award is the medical portion and yet the income maintenance from Social Services is liening the medical payments under the comp' award. That's why -- my question is, it appears as though it's broader than you intended if it applies to just the, quote, "award" because the award would include both medical expense and income and yet

what you want to do is put a lien for the Social Services which I agree with and voted for this bill in the past and will vote for it again if that's the intent.

SENATOR HOLLAND: The medical portion is paid to the vendor, so it's just the wages.

SENATOR DOLLINGER: There will be no reimbursement paid to the individual for medical expenses if they paid for them out of their pocket?

SENATOR HOLLAND: The Workers' Compensation award would pay for that.

SENATOR DOLLINGER: But there could be -- if the worker -- the claim is controverted which is what you addressed, because it's only in the case where there's a controverted claim that you will have the time delay that the person will have to go seek public service -- Social Services for, so it's a controverted claim.

In those instances there may be cases where, because of the nature of the

controversy, the Comp' Board hasn't authorized payment of the medical expense because the claim is controverted and the individual may have to pay for those expenses out of their pocket while waiting for the board to resolve whether or not it's a covered injury. So you end up with no income and no payment of the medical expenses. In those instances, the individual may have to pay for the medical expenses out of their own pocket if they don't have private insurance.

SENATOR HOLLAND: I don't know how to get this across. The intent of the bill is to pay back whatever they can with -- through the compensation claim.

SENATOR DOLLINGER: All right. Mr. President, through you. I just -

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

SENATOR HOLLAND: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR DOLLINGER: I voted for this bill in the past. I'll vote for it again

if this bill does that. That's my -- my question -

SENATOR HOLLAND: That's the intent.

SENATOR DOLLINGER: Right. That's the clear intent, but by defining "award" as including the medical portion and the lost wage portion, you may be inadvertently attaching payments to cover lost income for which they are actually paid to reimburse them for medical expenses and to that extent, the bill may go beyond what you intended to do and that's why I voted for this bill in the past. I agree with you that to repay that portion seems to me to be fair.

I appreciate Senator Stachowski's and Senator Paterson's comments, but I voted for this in the past and my understanding in the past was it would only affect the wage portion. As I read it today, in my due diligence this morning, I realize it's broader than what I think both you wanted to do and what I voted for in the past because it would include beyond

simply -- the award would include both lost wages and lost medical expenses and that's beyond the scope of what you wanted to do.

SENATOR HOLLAND: I don't believe it is, Senator but, if it is, I will certainly work with you and anyone else to correct that portion of it.

SENATOR DOLLINGER: Okay. Just one other question, Mr. President, to clarify one other term.

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

SENATOR HOLLAND: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR DOLLINGER: Does this apply to benefits that were received prior to the injury?

SENATOR HOLLAND: No, it does not.

SENATOR DOLLINGER: Only in the covered period, that is the period of time after the injury occurred, before the controverted

claim is resolved?

SENATOR HOLLAND: Correct.

SENATOR DOLLINGER: All right. Anything received -- it doesn't -- We're not going to go back and -

SENATOR HOLLAND: Absolutely not.

SENATOR DOLLINGER: Or after -- I mean after the controversy is resolved and the payments are made, the lien would only apply -

SENATOR HOLLAND: No, not designed before or after, no.

SENATOR DOLLINGER: Thank you, Mr. President.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: We would like a slow roll call on this bill.

ACTING PRESIDENT KUHL: All right. Read the last section.

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

ACTING PRESIDENT KUHL: There were five Senators who stood asking for a slow roll call, so the Secretary will call the slow roll call. The bells are ringing.

THE SECRETARY: Senator Abate.

SENATOR ABATE: No.

THE SECRETARY: Senator Babbush.

(There was no response.)

Senator Bruno.

(Affirmative indication.)

THE SECRETARY: Aye.

Senator Connor.

(Negative indication.)

THE SECRETARY: Negative.

Senator Cook.

SENATOR COOK: Yes.

THE SECRETARY: Senator DeFrancisco.

(There was no response.)

Senator DiCarlo.

SENATOR DiCARLO: Yes.

THE SECRETARY: Senator Dollinger.

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

ACTING PRESIDENT KUHL: Senator Dollinger to explain his vote.

SENATOR DOLLINGER: Mr. President, I'm concerned about the issue I raised with Senator Holland and it raises enough of a question in my mind. I agree with the intent of this bill. I believe as drafted it may go beyond what the Senator or the sponsor intend.

Therefore, Mr. President, because of that drafting problem, although I agree with the concept, I'm going to vote in the negative on this particular piece.

ACTING PRESIDENT KUHL: Senator Dollinger will be recorded in the negative.

THE SECRETARY: Senator Espada.

(There was no response.)

Senator Farley.

(There was no response.)

Senator Galiber.
(There was no response.)
Senator Gold.
(There was no response.)
Senator Gonzalez.
(There was no response.)
Senator Goodman.
(There was no response.)
Senator Hannon.
(There was no response.)
Senator Hoblock.
(There was no response.)
Senator Hoffmann.
(There was no response.)
Senator Holland.
SENATOR HOLLAND: Yes.
THE SECRETARY: Senator Johnson.
(There was no response.)
Senator Jones.
(There was no audible response.)
Senator Kruger.
(There was no response.)
Senator Kuhl.

SENATOR KUHL: Aye.
THE SECRETARY: Senator Lack.
(There was no response.)
Senator Larkin.
(There was no response.)
Senator LaValle.
SENATOR LAVALLE: Aye.
THE SECRETARY: Senator Leibell.
SENATOR LEIBELL: Aye.
THE SECRETARY: Senator Leichter.
(There was no response.)
Senator Levy.
(There was no response.)
Senator Libous.
SENATOR LIBOUS: Aye.
THE SECRETARY: Senator Maltese.
SENATOR MALTESE: Aye.
THE SECRETARY: Senator Marcellino.
SENATOR MARCELLINO: Aye.
THE SECRETARY: Senator Marchi.
SENATOR MARCHI: Aye.
THE SECRETARY: Senator

Markowitz.

(There was no response.)

Senator Maziarz.

SENATOR MAZIARZ: Yes.

THE SECRETARY: Senator Mendez.

(There was no response.)

Senator Montgomery.

(There was no response.)

Senator Nanula.

SENATOR NANULA: No.

THE SECRETARY: Senator Nozzolio.

SENATOR NOZZOLIO: Aye.

THE SECRETARY: Senator Onorato.

SENATOR ONORATO: No.

THE SECRETARY: Senator Oppenheimer.

SENATOR OPPENHEIMER: No.

THE SECRETARY: Senator Padavan.

(There was no response.)

Senator Paterson.

SENATOR PATERSON: No.

THE SECRETARY: Senator Present.

SENATOR PRESENT: Aye.

THE SECRETARY: Senator Rath.
SENATOR RATH: Here -- aye.
THE SECRETARY: Senator Saland.
SENATOR SALAND: Aye.
THE SECRETARY: Senator Santiago.
(There was no response.)
Senator Sears.
SENATOR SEARS: Aye.
THE SECRETARY: Senator Seward.
SENATOR SEWARD: Present and voting aye.
THE SECRETARY: Senator Skelos.
SENATOR SKELOS: Yes.
THE SECRETARY: Senator Smith.
SENATOR SMITH: No.
THE SECRETARY: Senator Solomon.
SENATOR SOLOMON: No.
THE SECRETARY: Senator Spano.
SENATOR SPANO: Aye.
THE SECRETARY: Senator Stachowski.
SENATOR STACHOWSKI: No.
THE SECRETARY: Senator Stafford.

SENATOR STAFFORD: Aye.
THE SECRETARY: Senator Stavisky.
(There was no response.)
Senator Trunzo.
SENATOR TRUNZO: Yes.
THE SECRETARY: Senator Tully.
(There was no response.)
Senator Velella.
SENATOR VELELLA: Yes.
THE SECRETARY: Senator Volker.
SENATOR VOLKER: Yes.
THE SECRETARY: Senator Waldon.
(Negative indication.)
Senator Wright.
SENATOR WRIGHT: Aye.
ACTING PRESIDENT KUHL: The Secretary will call the absentees.
THE SECRETARY: Senator Babbush.
(There was no response.)
Senator DeFrancisco.
SENATOR DeFRANCISCO: Yes.
THE SECRETARY: Senator Espada.
(There was no response.)

Senator Farley.
(There was no response.)
Senator Galiber, excused.
Senator Gold.
(There was no response.)
Senator Gonzalez.
(There was no response.)
Senator Goodman.
(There was no response.)
Senator Hannon.
SENATOR HANNON: Yes.
THE SECRETARY: Senator Hoblock.
(There was no response.)
Senator Hoffmann.
(There was no response.)
Senator Johnson.
SENATOR JOHNSON: Aye.
THE SECRETARY: Senator Kruger.
(There was no response.)
Senator Lack.
(There was no response.)
Senator Larkin.
SENATOR LARKIN: Aye.

THE SECRETARY: Senator Leichter.
SENATOR LEICHTER: No.
THE SECRETARY: Senator Levy.
SENATOR LEVY: Aye.
THE SECRETARY: Senator Markowitz.
(There was no response.)
Senator Mendez.
(There was no response.)
Senator Montgomery.
(There was no response.)
Senator Padavan.
(There was no response.)
Senator Santiago.
(There was no response.)
Senator Stavisky.
(There was no response.)
Senator Tully.
(There was no response.)
ACTING PRESIDENT KUHL: Announce the results.
THE SECRETARY: Ayes 31, nays 12. Senator Kruger.

SENATOR KRUGER: No.

ACTING PRESIDENT KUHL: Announce the results.

THE SECRETARY: Ayes 31, nays 13.

ACTING PRESIDENT KUHL: The bill is passed.

The Secretary will continue to call the controversial calendar.

THE SECRETARY: Calendar Number 186, by Senator Marchi, Senate Print 2037, an act to amend the Education Law, in relation to the establishment of a Staten Island Borough School District.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Marchi, an explanation of Calendar Number 186 has been asked for by the Acting Minority Leader, Senator Paterson.

SENATOR MARCHI: Mr. President, the -- the referendum which was held on Staten Island in response to legislation that we had passed earlier in two different sessions of the Legislature provided for something like this,

but this is not a literal implementation of that, because it must attend other developments.

However, it does implement the sense of the vote that was taken in Staten Island at that time, and that was to establish a separate independent board on Staten Island which would assume control on January 1, 1996 to operate the schools of the district for the school years beginning with the years '96 - 1996-97 and also providing for the election of members of the Staten Island Borough Board of Education which would be held in November 1997 general election and the members would take office in January 1998.

I have to point out that the number of students that -- this is rather a - sufficient numbers in that district. In the district itself there are over 40,000 students which makes it perhaps the largest school district in the city of New York.

It does provide the election - elective process for the members of the board provides for voting islandwide and every voter

would have three -- three ballots to cast.

In the legislation that had been approved for an independent Staten Island, I was successful in getting cumulative voting introduced, and I don't think there's another place in the state of New York that has that. This bill does not have it simply because the machines are not quite ready yet to implement the concept of cumulative voting.

I might add that I had some interesting correspondence with Lani Guinier on this subject and she thought it was a very good method of ending up with an election that ensures a proper representation to the elements that make up the school body.

We provide for a financial officer who would experience some pain if that trust were not honored and the process of identifying the financial officer, of course, would be -- would be one that would have to be sanctioned by the board and by the superintendent and confirmed by the commissioner of the Board of Education -- of the state

educational system.

We've gone to great lengths to provide a model, and it could well serve as a model for other school bills in other counties, providing for that degree of decentralization and experience which might be useful to the other counties.

So I feel, Mr. President, that in passing this legislation we offer the possibility of conducting an experiment, I believe, on prudent lines, judicious lines with a great deal -- with great evidence given the rather sane and comfortable functioning of that -- of the school system on Staten Island. It has the highest reading scores and in all the other indices, they are doing well.

It offers an opportunity, I think, to enhance the -- the strength of a community district -- and this is an experience that those of you around the state know it only too well because you have it. You live with it, but we don't live with it in the -- in the city of New York and we have been unable to implement

the original legislation that the commission had advanced to -- to several -- several years ago as the result of many added factors that sort of overheated the machine there and made it most difficult to submit that to the -- the judgment of the City as a whole.

So this bill really provides an experiment under ideal conditions. It does not propose to -- its funding would still be dependent on the state and the city of New York for its funding. It does not say that it ought to be on a quid pro quo basis or anything. It refers back to the methodology of making apportionments of public substance, allocations, appropriations in the same manner in which they have been making them right along with perhaps a slight overlay with whatever additional administrative costs might be involved.

I might point out with reference to any other county, we still might be conducted at a cost lesser than the other counties because our numbers already justify the creation of two districts instead of one and we would get more

money for that. The money that we would get in that case would be sufficient to take care of administrative expenses.

So it's -- it's an ideal circumstance and an opportunity to see how an independent district can function and perhaps serve as a useful model, varied if other circumstances are indicated in other boroughs of the city of New York, but an opportunity to see it function, I think, with -- with the better guarantees that we had when we engaged in the original decentralization process when a district was selected that really had enormous problems and should have been given greater assistance rather than being thrown out on their own to resolve their own problems.

So I hope that we give this opportunity to create a model which could inure to the benefit of the other four boroughs of the city of New York as they pick and choose or adopt elements that appeal to them for the experience of the city.

I don't want to get into the

question of Mr. Cortines. I think he's trying very hard. He's a very fine individual, but I'm just saying the system itself perhaps could prosper with a closer rapport between the -- the target population, the young children and the faculty and the school system itself and its governance and policy-making.

So I offer you this and I hope it has your approbation.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, I want to thank Senator Marchi for the explanation and, if he would yield, I have a couple of questions.

ACTING PRESIDENT KUHL: Senator Marchi, do you yield? The Senator yields.

SENATOR MARCHI: Certainly.

SENATOR PATERSON: Senator, if the school district in Staten Island were independent and if it were separated from the rest of the state, our research shows -- and you may or may not agree with this -- that actually

the district would probably be eligible for less funding than it receives now in comparison with how it interacts with the other four boroughs of the City, and so, if that's the case, then in many ways doesn't this bill accomplish the financial result of, in a sense, benefiting from the association with the other four boroughs but at the same time receiving the special benefit that arises from the decision-making capacity? So, in other words, is this bill really giving the Staten Island district the best of both worlds?

SENATOR MARCHI: No. I think that the -- the fiscal effect when I first entered into the question of secession was held by the ones who took charge and conducted the study in conjunction with the Senate Finance Committee at that time was Abraham Lackman and Mark Shaw, both very conscientious, exacting students and they didn't come out with an adverse picture. We probably would have less special students so that that lifts -- that lifts the average in some of the other counties.

On the other hand, we have an attendance -- you know, the argument goes on whether we should compensate on the basis of enrollment or attendance. We have a very high degree of attendance. Our attendance is no different from the attendance that you experience in the other sections of the state, and that's not the case in the city of New York, so that based on attendance alone we would do all right.

I don't think that what we found out on the bottom line is that it would be user neutral as far as dollars and cents. It would, though, however, give us a degree of flexibility in administering the public policy of the Island school system.

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: In Senator Marchi's continuing effort to educate me, I know that he will yield for one last question, but I would like you to check with him.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR PATERSON: Senator, my final question is that the State Temporary Commission on Education recommended that the school districts in New York City be decentralized but unified. Since the commission was in existence -- and I know you were very involved for a year and a half and spent $500,000 of taxpayer money -- do you think it's a good idea to stray that far from the commission's recommendation and take this sort of bifurcated approach?

SENATOR MARCHI: Well, we certainly were very hopeful on the commission that it be approved. Dean Byrne -- the dean of public administration at the New York University, along with key elements of the -- of that school, seconded our efforts and followed through and we had an excellent -- we had an excellent membership on that body, people like Saul Cohen now who is on the Board of Regents. I mean, we had very, very strong -- a very, very

strong membership on that body, but unhappily that -- when the question came up that we might go further -- oh, yes, Senator -- Senatrix, you were a very distinguished member.

When the time came to move, the whole system went off on rainbow curriculums and other -- I'm not saying good or bad about the subject, but totally displaced and preempted any consideration that we might have received, and, you know, we stood around spinning our thumbs and pleaded saying, "Please, let's get going. We have something worthwhile here", and the dynamics had changed so radically. I don't know. Perhaps it -- you know, today might be another time.

If we pass this bill, it might generate interest in doing precisely what you're suggesting now, so it might be an indirect way -- mine is a direct way of accomplishing something. In your case, I think, by supporting this, might also be calling attention to the fact that we still have a work product that, I think, is useful.

SENATOR PATERSON: Thank you, Senator.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 5. This act shall take effect January 1st.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated.

THE SECRETARY: Those recorded in the negative on Calendar 186 are Senators Abate, Connor and Paterson. Ayes 44, nays 3.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Marcellino.

SENATOR MARCELLINO: Mr. President, I believe it would be a good idea to return to resolutions -- motions and resolutions.

ACTING PRESIDENT KUHL: Before we do that, Senator Mendez, why do you rise?

SENATOR MENDEZ: Mr. President, I would like the record to show that in the roll call on Calendar 91, had I been -- had I been present in the chamber, I would have voted in the negative.

ACTING PRESIDENT KUHL: Senator Mendez, the record will reflect that had you been present when the roll call on Calendar Number 91 was taken that you would have voted in the negative. We will return to -

Senator Farley.

SENATOR FARLEY: I would like the record to show that I was downstairs with about 60 students in the well of -- when 91 was called and I would vote in the affirmative, Senator Mendez.

ACTING PRESIDENT KUHL: Senator Farley, the record will show that, in fact, you were downstairs in the Capitol present having been here earlier, and had you been present when the roll call was taken that you would have been recorded in the affirmative.

Senator Levy.

SENATOR LEVY: Yes, Mr. President. There's a privileged resolution at the desk. I ask that 1613 be called up, the title read and the resolution read in its entirety.

ACTING PRESIDENT KUHL: We will return to motions and resolutions and the Secretary will read Resolution Number 1613 -

THE SECRETARY: By Senator -

ACTING PRESIDENT KUHL: -- in its entirety.

THE SECRETARY: By Senator Levy, Legislative Resolution, honoring Emanuel Kafka upon the occasion of his retirement from the New York State United Teachers.

WHEREAS, Emanuel "Manny" Kafka retired from the New York State United Teachers on August 5, 1994 after having given more than 22 years of outstanding leadership to and on behalf of New York State United Teachers and New York State Education; and

WHEREAS, "Manny" Kafka has compiled an outstanding record of achievements

and accomplishments as assistant director of legislation for New York State United Teachers from 1972 to 1994 at both the state and federal levels of government; and

WHEREAS, Emanuel "Manny" Kafka has over the years selflessly devoted his leadership, time and energy to the important concerns, interests, goals and achievements of New York State United Teachers and all public school teachers across New York.

Emanuel "Manny" Kafka has earned the respect, gratitude and admiration of teachers, administrators and other educators across New York State through his hard and successful work for and on behalf of public school education.

Emanuel "Manny" Kafka in the truest sense and spirit of service to his fellow citizens selflessly devoted his time and energy to important educational, civic and community concerns and causes.

Emanuel "Manny" Kafka as a vital, vigorous and responsive leader has selflessly

devoted his time and energy to important educational, professional and other concerns and interests thereby leaving upon them his own indelible and lasting mark.

Emanuel "Manny" Kafka who graduated in 1949 from Brooklyn College began his distinguished and successful career as a teacher at Brandeis Elementary School in Woodmere, New York, thereafter moving on to teach at Elementary School 27 in the West Hempstead Union Free School District for more than 20 years before joining New York State United Teachers in 1972.

Emanuel "Manny" Kafka, an exemplary teacher, always enjoyed the highest esteem of his students, their parents, teachers, administrators and taxpayers of the West Hempstead Union Free School District.

Emanuel "Manny" Kafka has significantly contributed to improving and bettering the quality of life of the residents of North Bellmore, West Hempstead, Nassau County and New York State by always seeking to increase

community pride, respect and understanding through his professional leadership and community efforts.

Emanuel "Manny" Kafka has demonstrated a deep and continuing concern for others and in doing so, he has inspired others to do the same.

Emanuel "Manny" Kafka's record of achievements is an inspiration to all who have the privilege and honor of knowing him.

Emanuel "Manny" Kafka has many - has been recognized as a pillar within the home communities of North Bellmore, West Hempstead, Nassau County and New York State, always seeking to build the firmest foundations upon which North Bellmore, West Hempstead, Nassau County, New York State and our nation will continue to grow and prosper, now, therefore, be it

RESOLVED, that this legislative body pause in its deliberations to applaud, warmly congratulate, commend and salute Emanuel Kafka upon the occasion of his retirement from the New York State United Teachers after having

given more than 22 years of outstanding leader ship, selfless dedication and contributions to and on behalf of New York State United Teachers, and to further commend and salute him for his more than 21 years of extraordinarily successful leadership and selfless dedicated public service as an educator in the West Hempstead Union Free School District for the edification and emulation of all, and be it further

RESOLVED, that a copy of this resolution, suitably engrossed, be transmitted to Emanuel Kafka.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Levy on the resolution.

SENATOR LEVY: Thank you, very much, Mr. President.

When we learned that Manny was going to retire, it was a bittersweet occasion for all of his friends. It was sad because we who saw him on an everyday basis every day that the Legislature was in session wouldn't be seeing him on an everyday basis anymore, but as his friends, we were happy. We were pleased

and, in a sense, relieved for him and his family that he was going to have the opportunity to do and to pursue the many interests that he had postponed over the years and interests which he enjoyed.

I've known Manny, as so many in this chamber who have served for a long period of time, and those that have only known him for a short period of time, I have known him for 22 years and I have first-hand knowledge of his extraordinary knowledge. He, in his dealings as a governmental rep', he was always fair. He was always honest. He was always straight, and he was always helpful.

Teacher that he is and teacher that he was, Manny was zealously committed to ensuring that every child receive a quality education and have the opportunity therefor, and that New York State meet its responsibilities for funding that education. That was Manny's hallmark, his tradition, and his legacy.

Manny Kafka is the best and he deserves this -- he deserves the best and on the

occasion of this loving Manny, we wish you good health and enjoy and we are delighted that Sheila is with you today to join in these festivities.

ACTING PRESIDENT KUHL: The Chair recognizes Senator Skelos.

SENATOR SKELOS: Thank you, Mr. President.

When I arrived in the Senate in 1985, one of the first people that I was acquainted with was Manny Kafka who, as we all know, represented the teachers so ably.

We had some misunderstanding at the time over what occurred several months earlier, but certainly we developed a fine professional relationship, after about a month or so of conversations with Norman Levy, of course, teaching me a little bit about the Albany process; but I had a great relationship with Manny for so many years and certainly he has been a strong advocate for the teaching profession, but not only that, I always found him to be fair.

He understood our point of view. He respected our point of view. He never would mislead us as a lobbyist for the teachers' union and that's something we definitely respect as legislators.

So, Manny, we are going to miss you, but we wish you a long, healthy, happy retirement, but please come back and visit us.

ACTING PRESIDENT KUHL: Senator Cook.

SENATOR COOK: Mr. President, I'm not going to add a lot of words to what my colleagues have already said and what the resolution said, because I think they really did summarize Manny's accomplishments, but I would be remiss if I didn't say thank you, because certainly in the responsibilities that I took over not so many years ago, Manny was there as a teacher for me and has always been very helpful and I am very grateful for everything that you have done for me, and I certainly want to add my good wishes for many happy years.

ACTING PRESIDENT KUHL: Senator

LaValle.

SENATOR LAVALLE: Mr. President, I rise to also echo the compliments that - comments made by my colleagues, but I'm probably the only one here who knew Manny Kafka in our prior professional life.

I was a delegate to the New York State Teachers Association House of Delegates and knew Manny Kafka in his role as a person who was running for the president of that association from West Hempstead.

I was a little suspicious because having graduated from Hempstead High School at the time when West Hempstead split off, there was an intense rivalry between Hempstead and West Hempstead, so I always looked at someone from West Hempstead with a little bit of suspicion.

However, he rose far above any suspicion that I or anyone could have because he was a true leader that took the Teachers Association from a group that was fighting for legislation into a real professional operation.

I knew him both as the executive director of the Senate Education Committee and a member and he was not only true to his word and represented a point fairly and honestly, but I think one other point must be made. He was affable in dealing with us, and sometimes as we all know, we get a bit too serious, a bit too up-tight, and so when you deal with someone who is affable in representing a point of view, it's quite refreshing.

So I rise with the other colleagues to congratulate him for his dedication and many years representing the profession and making it really what it is today.

Good luck and congratulations, Manny Kafka.

ACTING PRESIDENT KUHL: Senator Tully.

SENATOR TULLY: Thank you very much, Mr. President.

The field of education is an extremely complex field and serving as a member

the Higher Education Committee, I sometimes have been baffled, but I have always been fortunate in that I could count on my constituent, Manny Kafka, as a friend. He has performed many mitzvahs in that area for me. He has made my life a lot easier and helped me to understand those complexities and I'm extremely grateful and I wish you and your family much health and happiness in your retirement.

ACTING PRESIDENT KUHL: Senator Farley.

SENATOR FARLEY: Thank you.

These two guys on my right and left are fighting over whose constituent you are, but I know one thing, I am a colleague of his. I think I'm the only one in this chamber that's a dues paying member of the same union that he represents, UUP, the United University Professions, which is part of -- I have known Manny for 20 years, and let me just say what a wonderful job he's done here, and I was talking to Manny and his lovely wife Sheila just prior to him coming here to the gallery and he's on

his way to Washington to solve all the health care problems now as a consultant, so your work is cut out for you, Manny, and we wish you -- I guess they got the wrong mike on -- I don't know if -- mine is not working. They shut me up, but let me just say, Manny, I wish you all the happiness and success in the world. You certainly deserve it.

I recall a number of years ago that he and my wife were at the Republican convention in New Orleans and they gave them some prime seats and the first day it was right in front of a blank wall and they were the only two seated there and I said, "Gee, I think we better move." I think they did get you a decent seat.

We Republicans do love you, Manny, we want you to know that, but again, I wish you well in all that you're doing and a long and a happy and successful retirement.

ACTING PRESIDENT KUHL: Senator Jones.

SENATOR JONES: Thank you, Mr.

President.

I probably had the opportunity to know Manny for the shortest amount of time of anybody here, but since I came directly from the classroom, it was fairly easy to find a new friend in Manny. He always had the answers, always offered wise counsel and he was an excellent person to deal with.

He had to overlook in the beginning the fact that I did have membership in a different organization, but -- but the fact that we both shared the love of the teaching profession was more than enough to make it an excellent relationship.

I wish you well, Manny. You will certainly be missed by NYSUT but good luck in your future endeavors.

ACTING PRESIDENT KUHL: Senator Oppenheimer.

SENATOR OPPENHEIMER: Well, I just want to attest to the good that he has done in imparting knowledge to all of us that we might not have otherwise had. He's been a

wonderful friend and advocate for children, for schools, for legislation that responded to the needs of the education system, and I think Senator Kenny said -- Senator LaValle said what I wanted to say, that it was just a pleasure to know him because he's just a very warm and out going and friendly human being and on top of all of these accolades that he's receiving for his knowledge, he's just a genuine and fine person and I wish you the best, Manny, and are you really going to Washington to tackle the health problems? I don't know how much fun that's going to be, but I certainly wish you well in whatever you do and wish you a lot of health and happiness in the coming years.

ACTING PRESIDENT KUHL: Senator Hannon.

SENATOR HANNON: Yes, Mr. President.

As both a wise counselor and sometimes constituent depending upon which lines Senator Skelos has drawn, Manny has been invaluable.

In this business here of us trying to represent individuals, we come to information in many different ways. When it's in the complicated arena of educating and financing that education, we oftentimes take a while to come to the sources of information we can rely on the most, and over the past decade, I think that I have relied on Manny in difficult times on statewide issues and very difficult times in local issues and questions of local governance, local representation and local finance.

As you move on to the arena of health -- and I have moved on to the arena of health -- I look forward to continuing an ongoing relationship and thank you for much of the wise counsel in the past.

Thank you.

ACTING PRESIDENT KUHL: Senator Stafford.

SENATOR STAFFORD: Thank you, Mr. President.

I, too, want to join in the

recognition of our friend, Manny. We go back before the time of recorded history, so we have seen a great deal.

I remember one time we were in a meeting together, things had to change, and this one person said, you know, there's an old proverb that if you -- sometimes if you don't change direction, you'll go where you're headed. Fortunately, we were together, made the right decisions.

Sometimes people say these various interest groups, but before I go any further, Mr. President, it took Manny to come in here and blow the cover of Ken Lavalle and Hugh Farley. I had no idea that they had been involved in these activities, but we sometimes question the various interests being represented here in government, and I use the word "interest" advisedly, but Manny has done it in a very pleasant way and a very kind way and a very effective way.

Like so many, we're always sorry to see a friend change directions, but that has

to be done at times and I'm sure that he will remain most successful and Albany has been better for "Manny" Kafka's activities.

ACTING PRESIDENT KUHL: 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 unanimously adopted.

We're very pleased to have Manny Kafka and his wife Sheila with us. Manny, congratulations.

(Applause.)

SENATOR LEVY: Mr. President, I would like to open up that resolution to all of the members of the Senate. We will -- we would put everybody on it.

ACTING PRESIDENT KUHL: Senator Marcellino, is it all right with you and the Minority Leader, Senator Paterson, if we put all of the members of the chamber on except for

those who wish not to go on the resolution?

SENATOR MARCELLINO: Mr. Chairman, I can't deny Senator Levy anything.

ACTING PRESIDENT KUHL: We will put -- Senator Paterson, is that all right with you?

SENATOR PATERSON: Mr. President, we would all like to.

ACTING PRESIDENT KUHL: I'll direct the Secretary to put all the members on the resolution as co-sponsors except for those, if there are any, who wish not to be on the resolution.

We'll return to the controversial -- Senator Larkin, why do you rise?

SENATOR LARKIN: Mr. President, I request unanimous consent to be recorded in the negative on Calendar 727, Assembly Bill 6516.

ACTING PRESIDENT KUHL: Without objection. Hearing no objection, Senator Larkin will be recorded in the negative on Calendar Number 727. We'll return -

Senator Espada.

SENATOR ESPADA: If I may, Mr. President, may I be recorded in the negative on Calendar Numbers 91 and 186, please.

ACTING PRESIDENT KUHL: Senator Espada, the record will reflect that had you been in the chamber when a roll call was called on Calendar Number 91 that you would have voted in the negative.

SENATOR ESPADA: Thank you so much.

ACTING PRESIDENT KUHL: Senator Espada, you want to be recorded in the negative on Calendar Number 186 also?

SENATOR ESPADA: Yes, sir.

ACTING PRESIDENT KUHL: Okay. Without objection and hearing no objection, Senator Espada will be recorded in the negative on Calendar Number 186. Now we'll return to the controversial calendar.

I'll ask the Secretary to read the title to Calendar Number 341 by Senator LaValle.

THE SECRETARY: Calendar Number

341, by Senator LaValle, Senate Print 3569-A, an act to establish the New York State Waste Reduction and Management Institute.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator LaValle, an explanation of Calendar Number 341 has been asked for by the Acting Minority Leader, Senator Paterson.

SENATOR LAVALLE: Mr. President, this legislation would create statutorily a New York State Waste Reduction and Management Institute at the Marine Science Research Center at SUNY-Stony Brook.

I say "statutorily" because this institute has existed for many, many years, has been supported in the budget by an appropriation each and every year that it has been doing business.

This legislation would place the Stony Brook Waste Management Institute on a similar footing with the Hazardous Waste Institute at the State University at Buffalo and also the Waste Management Institute at Cornell

and would give the state three distinct and separate waste management institutes focusing on different areas.

This waste management institute would have, as a primary focus, those method ologies to reduce the amount of waste that is put into the waste stream, whether we incinerate it, landfill it or other methodologies such as composting and recycling.

The idea for the statutory inclusion of the waste management institute came about after a study in 1991 by the New York State Legislative Commission on Science and Technology, the office of the vice-chairman, and at that time, I was the vice-chairman of the Commission of -- on Science and Technology.

The study that was done showed, as I have indicated, the creation statutorily of the Hazardous Waste Institute at University - State University at Buffalo and also the one at Cornell, and by creating the institute statutor ily, it gave it greater recognition, greater flow of money from outside sources as well as

certainly a commitment from the state to properly see that the activities of the institute were funded.

And so this is another example of how higher education becomes proactive in helping us solve some of the problems that we - that we have.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, I want to thank Senator LaValle for a thorough and also clairvoyant explanation because I wanted to ask a question about the funding source, Senator LaValle, and you actually already answered them, so the only question I will ask you, if you would yield -

ACTING PRESIDENT KUHL: Senator LaValle, do you yield? The Senator yields.

SENATOR PATERSON: -- is that the reports that come out of the commission, I understand, are going to be made available to the Chair, but the Minority does not seem through the legislation to have any access to

the reports. Is there a mechanism that you would be able to create that will allow us to find out about the work of the commission?

SENATOR LAVALLE: Senator Paterson, in the past, I have, as a matter of practice -- and if for some reason that practice fell short in the case of the report -- but I have handed up to the desk each of the reports that have come from my standing committee or from the vice-chairman's office of the Commission on Science and Technology, and in that way by handing up our reports to the desk, they then become part of the public record and allow each and every member and those outside of this chamber to share in the findings of our reports.

SENATOR PATERSON: Very well.

Thank you.

ACTING PRESIDENT KUHL: The Secretary will read the last section.

THE SECRETARY: Section 6. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT KUHL: The bill is passed.

SENATOR LEICHTER: Mr. President.

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

SENATOR LEICHTER: May I have unanimous consent to be recorded in the negative on Calendar 186, is it? Is that Senator Marchi's bill? It's crossed out on my calendar, so I'm having trouble reading it. Yes, 186.

ACTING PRESIDENT KUHL: Without objection. Hearing no objection, Senator Leichter will be recorded in the negative on Calendar Number 186.

Senator Tully, why do you rise?

SENATOR TULLY: Yes, Mr. President. I would like the calendar to reflect I was out of the chamber when Calendar 91 was called and had I been present in the chamber, I would have voted in the affirmative on that.

ACTING PRESIDENT KUHL: The record will reflect, Senator Tully, that you were out of the chamber when a roll call was called on Calendar Number 91 but had you been present, you would have voted in the affirmative.

Senator Wright.

SENATOR WRIGHT: Mr. President, I request unanimous consent to be recorded in the negative on Calendar Number 583, Senate 4146.

ACTING PRESIDENT KUHL: Without objection. Hearing no objection, Senator Wright will be recorded in the negative on Calendar Number 583.

The Secretary will continue to call the controversial calendar.

THE SECRETARY: On page 34, Calendar 990, by Senator Leibell, Senate Print 3801-A, an act to amend the Private Housing Finance Law, in relation to the powers of the New York State Housing Finance Agency.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator

Leibell, an explanation of Calendar Number 990 has been asked for by the Acting Minority Leader, Senator Paterson.

SENATOR LEIBELL: Yes, Mr. President.

Mr. President, this bill will increase the bonding authority for the New York State Housing Finance Agency. This will be an increase of $200 million and is needed for HFA to continue for the bonding of new projects.

Currently, bonding authorizations are going to be utilized by projects that HFA has already received applications for but are awaiting construction. Any new projects to come in would probably find HFA without the bonding authorization to fund those new projects.

HFA will hit its ceiling of bonding authorization shortly and needs this authorization in order to continue bonding.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, if Senator Leibell would yield.

ACTING PRESIDENT KUHL: Senator Leibell, do you yield? The Senator yields.

SENATOR PATERSON: Senator, I don't know that I quarrel with the specifics of what you're trying to accomplish, but I would just like to put on the record some of the general concerns.

This is something that Governor Cuomo was criticized for roundly for a number of years doing so. In fact, this whole process goes back to the period when Governor Rockefeller and Comptroller Arthur Levitt existed, and what it really is is financing without going through the budget process and financing without going through a public referendum.

Now, two years ago some citizens action groups went to court and there was a court ruling in April of 1993 that said that this is really wrong that we're actually doing this.

Over the past five years, I believe we have invested $7.8 billion in this

sort of back-door financing and I just want to know at this time of the fiscal deficit that the state is in, how we would want to add on any more of this financing in this -- from this type of source right after we just passed the New York State budget.

SENATOR LEIBELL: Senator, we had originally, I believe, a request for a much larger sum than this. We put the $200 million in there after negotiations with the Assembly. These funds will, as you know, be utilized fairly quickly and I certainly am not going to speculate on what Governor Cuomo would have suggested if he were still governor.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, I'm not going to speculate either on what anybody would have done, and I don't see this necessarily as a partisan issue.

What we're really just saying is that this is just something that -- for the issue at hand, Senator Leibell is probably

addressing a good issue, but it's just something that we recommend we take a new look at. We have a new governor. He has talked about public waste. In some respects, we have actually started to act on it. In some respects, we actually have not started to act on it. There is a Constitution that governs us on this particular issue. It's my opinion we've found a way around the Constitution. It doesn't really matter to me, Senator Leibell, whether it's the Assembly or the Senate, Republican or Democrat, whoever it is, it's something that we, I think, as a legislature, need to take a closer look at.

The goal that is trying to be achieved through this legislation can be achieved, but in a way that shows a greater concern and responsibility to the voters who elected us.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Senator Hannon to explain his vote.

SENATOR HANNON: Mr. President, I'm voting in favor of this, and I find the comments of the Minority totally puzzling. If there is any type of borrowing, it will be the borrowing on projects that are not well financed, that are fiscal dodges, that are excuses for finding real revenue or real cuts in expenditures.

This is in regard to housing in the state, in regard to the ownership of individual owners, and never during the entire course of Mario Cuomo and Hugh Carey's administration while these ceilings were being raised, do I ever find the type of comments that are now made on this floor, ever voiced or ever even offered.

So I think there is a need to really think through the types of borrowing that

you may have questions about and to understand that sometimes there's good borrowing and sometimes there's bad borrowing, and certainly there's causes of -- I think there's places to reform, but if you have any place to put it, it's not here.

Thank you.

ACTING PRESIDENT KUHL: Senator Hannon recorded in the affirmative.

Senator Paterson to explain his vote.

SENATOR PATERSON: Mr. President, I'd just like to explain that Senator Hannon might justifiably differ with me on the content of this particular legislation, but already conceded I thought this would cure really a - would inure to the benefit of New York City residents to have the legislation.

My general opposition is what I expressed on this floor two years ago which at the time Governor Cuomo was governor, and I just wanted to point out that I haven't changed my point of view on this subject at all.

ACTING PRESIDENT KUHL: How do you vote, Senator Paterson?

SENATOR PATERSON: Well, that's a point of view, Mr. President, I might change, but I vote in favor.

ACTING PRESIDENT KUHL: Senator Paterson will be recorded in the affirmative.

Announce the results.

THE SECRETARY: Ayes 50.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Solomon.

SENATOR SOLOMON: I would like unanimous consent to be recorded in the negative on Calendar Number 186.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Solomon will be recorded in the negative on Calendar Number 186.

Senator Maziarz, why do you rise?

SENATOR MAZIARZ: Mr. President, I would like unanimous consent to be recorded in

the negative on Calendar Number 583, please.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Maziarz will be recorded in the negative on Calendar Number 583.

Secretary will continue to read the controversial calendar.

THE SECRETARY: Calendar Number 994, by Senator Leibell, Senate Print 5019, an act to amend the Real Property Actions and Proceedings Law, in relation to landlord and tenant proceedings.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Leibell, an explanation of Calendar Number 994 has been asked for by Senator Paterson.

SENATOR LEIBELL: Yes, Mr. President. This is an act that will seek to amend the Real Property Actions and Proceedings Law. We have found that court delays have cost owners of rental property tens of millions of dollars in rents that are legitimately owed, plus millions more in legal fees, and also has

contributed to the clogging of an already congested court system.

The current system that we presently work under has unfortunately worked to exacerbate this condition. Senate 5019 proposes to require a tenant, upon a second adjournment by the tenant or the court, to deposit past due rent with the court as well as future rents as they become due until the court has decided the case. It's hoped that as a result of this legislation individuals will no longer clog the courts with unnecessary delays simply trying to beat the system, and also that owners who currently lose millions of dollars in legitimate rents will now have assurance that long delays will not result in the loss of significant rental income.

I might note also that we are greatly concerned with the viability of marginal buildings where the loss of even a portion of the associated rental stream can be significant. This will hopefully be improved -- will improve this to the benefit of its occupants as well as

to the owner.

I would also note that there will be an amendment to this legislation to provide that where rent is provided through a social agency that that part of the rent will not be payable into court.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, if Senator Leibell will be kind enough to yield?

SENATOR LEIBELL: Yes, Senator.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR PATERSON: Senator Leibell, in 1971 -- actually in 1970, the Legislature passed a bill that where there were emergency repairs that needed to be made that the funds had to be -- had to be delivered to the court in advance. In 1971, that case was found by our Supreme Court, the Court of Appeals actually, to be unconstitutional. In this legislation, aren't we doing the same thing? Aren't we asking the tenant to pay something in

advance of a court decision?

SENATOR LEIBELL: What we have found, Senator, is that many people are using this system, in effect, to beat the system. What they are doing is they are deliberately delaying the process and, in fact, at some point down the line there will be an adjudication, and then they will come back in and say, We are possibly unable to pay it because too much rent has accumulated or, in fact, that they will just leave the facility, the housing altogether, and landlords, maybe many of them marginal landlords, will be left with nothing.

That is an attempt to address that problem and to do it in such a way that will be fair, because at an early point in the proceeding rents will be payable into court, and the judge will then have sufficient assets available, if necessary, to pay the landlord the rent.

SENATOR PATERSON: Mr. President, through you to Senator Leibell.

Senator Leibell, I'm demurring to

your complaint. I'm saying you're right. That does happen, but what I'm saying is that this particular method of trying to ameliorate the problem seems to me by comparison to be something that will not be able to withstand judicial scrutiny.

SENATOR LEIBELL: You are making a constitutional argument.

SENATOR PATERSON: Right. I'm saying that I don't think that the legislation would hold up to a constitutional argument, even though I'm agreeing with you that it would probably repair the situation where individuals, when they have lost adjudication, have -- at that point owe so much money that they are not paying.

SENATOR LEIBELL: The Supreme Court has upheld the constitutionality of a positive rent statute which is actually more stringent than this proposed legislation. The court in rejecting the due process challenge to that law commented that, in quotes, "A requirement that the tenant pay or provide for

the payment of rent during the continuance of an action for nonpayment of rent is hardly irrational or oppressive."

Rather, the court had noted that if the tenant remained in possession of an apartment, a landlord might be deprived of due process of law.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Senator Leibell, to me, that is kind of a different statute -- correct me if I'm wrong -- because here we're not taking the money out of the tenant's hands in advance. In other words, that's how I would distinguish the case that you are bringing up from the case which I brought up which I thought was very similar to your bill.

SENATOR LEIBELL: Well, actually, I think this is probably on very strong constitutional ground. The rents we're talking about would only be those which would be due under the contract, the lease to begin with, and, if, in fact, there would be any defense to

that, having paid it into court, the court will be able to make the proper adjudication and, if necessary, determine that the rents are not payable.

SENATOR PATERSON: Through you, Mr. President. Senator Leibell, would you yield for -

ACTING PRESIDENT KUHL: Senator Leibell, do you yield?

SENATOR LEIBELL: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR PATERSON: Senator, I want to give you an example of how it might not be the case. How would we determine what the past rent due is?

SENATOR LEIBELL: The same way we would in any sort of proceeding. The court would be able to make a determination as to whether or not this rent was due; if there was some mitigating circumstances, why it would not be due.

SENATOR PATERSON: But then - Mr. President, through you.

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

SENATOR LEIBELL: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR PATERSON: We would have to make that determination right away, wouldn't we?

SENATOR LEIBELL: You would have at an appropriate time a hearing, but I would note the bill provides for this only upon the second adjournment, which has been requested by a tenant or by the court.

SENATOR PATERSON: Senator Leibell, if you would yield for another question?

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

SENATOR LEIBELL: Yes.

ACTING PRESIDENT KUHL: Senator

continues to yield.

SENATOR PATERSON: Suppose the landlord has added on late charges and other delinquent amounts, does the tenant have to pay them in advance even though that hasn't been litigated as yet?

SENATOR LEIBELL: If I understand your question, Senator, what this bill is talking about is the rent itself, not additional charges. This is talking about paying the rent into court.

SENATOR PATERSON: All right. That is certainly sufficient answer to that. Senator Leibell, suppose that the tenant is charging that the landlord has overcharged in the first place?

SENATOR LEIBELL: Well, prior to this legislation being activated, there would have been prior opportunities in court to have made that allegation.

Go back again, Senator. This only becomes -- this legislation only become active upon a second adjournment by the tenant

or the court.

SENATOR PATERSON: Mr. President. I was assuming that we would not have known that because of the adjournments that actually have existed.

But if Senator Leibell would continue to yield?

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

The Senator yields.

SENATOR PATERSON: Senator Leibell, once the two adjournments accrue and now these monies have to be paid in by the tenant, doesn't the situation reverse itself now? In other words, we have met the threshold for which the tenant is due to pay past rent and also future rent while the tenant is still staying on the premises. Doesn't that, maybe in some respects, become a constructive eviction? If you consider the fact that maybe the tenant is averring that there's been an overcharge in the first place, and now it's the landlord, not the tenant, that can delay the proceedings by

adjourning over and over, forcing the tenant to make these payments to the court.

Now, we have a situation arising from the tenant's delinquent payments to the court, but the charge that the tenant is making directly relates to how much money should be paid to the court in the first place. So I'm saying, are we now tipping the scales too much on the other side in an attempt to alleviate a situation that I will concede is addressed by your bill.

SENATOR LEIBELL: I don't see why we would be concerned with or worried about an overcharge because the lease is going to state what the rent is on the face of it, and that's what the court is going to be considering. The argument you are making, I don't see how that would come into play because it's going to be spelled out in the papers that will be before the court what the precise rent was.

SENATOR PATERSON: Yes, I understand that, Senator Leibell. But you would concede that the -- it would be very easy to

overcharge on the actual lease? I mean that could happen; is that not correct?

SENATOR LEIBELL: Overcharge in terms of -- I don't know if I understand exactly what you are saying, Senator. Are you talking about in terms of the value for the lease?

SENATOR PATERSON: Right, that that actually could be an overcharge.

SENATOR LEIBELL: Well, that certainly is something that the court would have an opportunity to take a look at and to consider.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Senator Leibell. My final question relates to the cost aspect. Your bill seems to indicate that there isn't any, but research seems to indicate it that it takes at least 68 minutes to process one of these types of situations. You don't think that there is a cost that's accrued from that?

SENATOR LEIBELL: No, actually,

Senator, I looked into that, and there's some estimates that this could cost in terms of actual lost rent $130 million a year in New York City and possibly $70 million in legal fees, and court costs bringing it up close to a $200 million figure.

In terms of cost to the court system itself, I think any time it might take to administer this in court will be more than made up for by the reduced amount of litigation that we hopefully will see in the court as a result of this bill.

SENATOR PATERSON: Thank you very much, Senator Leibell.

Mr. President, on the bill.

ACTING PRESIDENT KUHL: Senator Paterson, on the bill.

SENATOR PATERSON: I think the legal fees will go up as a result of this legislation, because as we learned from our discussion that we just held that there will be an additional number of hearings that will be generated by the determination that the court

will have to make as to what it is that the tenant will have to pay back prior to the actual litigation of the case.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT KUHL: Chair recognizes Senator Leichter.

SENATOR LEICHTER: Yes, Mr. President, if Senator Leibell will be so good as to yield?

ACTING PRESIDENT KUHL: Senator Leibell, do you yield to Senator Leichter?

SENATOR LEIBELL: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR LEICHTER: Senator, I have some difficulty accepting an answer that you gave to a question posed by Senator Paterson. Senator Paterson asked you the situation where the landlord has tacked on additional amounts as rent, attorney's fees or late fees, and so on.

Now, the uniform leases in New

York City always provide that these amounts are considered rent. Your bill states solely that upon -- refers only -- and I'm looking at line 20, on page 1, refers to "past rent".

The leases all provide that these additional amounts are considered rent. In view of that, isn't Senator -- wasn't Senator Paterson correct when he says that, if some tenant wants to challenge outrageously high late fees, attorneys' fees, and so on, that tenant would be required to deposit that money into court on the second adjournment?

SENATOR LEIBELL: This legislation, Senator, only applies to the actual rent, and this legislation would control any lease.

SENATOR LEICHTER: Mr. President, if Senator Leibell would be good enough to yield?

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

SENATOR LEICHTER: Can you tell me where -

ACTING PRESIDENT KUHL: Excuse me, Senator Leichter.

Senator Leibell, do you continue to yield?

SENATOR LEIBELL: Yes, sir.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR LEICHTER: Senator, where in your bill do you use the word "actual"? Don't you just use the word "rent"? Can you point out to me where it says "actual"?

SENATOR LEIBELL: Line 9 -- we don't use the word "actual," but line 9 is the language I would say addresses your concern, "that tenants post all sums of past rent in use."

SENATOR LEICHTER: Well, Senator Leibell, I want to point out to you that doesn't address my concern. It only heightens my concern, because it uses the word "rent" -

SENATOR LEIBELL: Well, Senator -

SENATOR LEICHTER: If I may just

finish my question?

SENATOR LEIBELL: Yes.

SENATOR LEICHTER: And the word "rent" is defined in the lease as, "All amounts due" which include attorneys' fees, late charges, and so on, and you will see that the uniform leases that landlords use probably not only in the city of New York but throughout the state, the Blumberg forms, and so on, all define rent. Rent is all the additional amounts due in addition to what you refer to as the actual amount, and having failed to state "actual" but having just used the word "rent," which is then defined in the lease, I think you are imposing on the tenant the obligation to put all that money in the court. The tenant may not have it.

You know, there's working people out there, and I know you appreciate it, because I know you have the concern. They don't have money left at the end of the month. They pay their rent. They pay for their food. They pay for their utilities. They pay for what they owe

on their car. Now the landlord comes and says, "Well, you were late last month, and I'm going to charge you an additional thousand dollars as rent." Your bill requires that tenant to put up that money. The tenant may not have it.

SENATOR LEIBELL: Senator, this bill which I'm sponsoring does not provide for anything other than rent, and I will tell you, Senator, that that is the legislative intent and I tell you, as the sponsor, that this will only apply to rent, and we do not define that for purposes of this bill as including anything but the actual rent that will be spelled out in a lease.

Certainly, if you have any concerns on that, I would be happy to consider a chapter amendment if you wish to put it in, but that's our legislative intent.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: If Senator Leibell will be good enough to yield?

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

Senator continues on yield.

SENATOR LEIBELL: Yes.

SENATOR LEICHTER: Senator, I appreciate that that is what you "intend," but I think the bill and, if it becomes law, the statute is governed by the actual words that you use and, if you have ever been in court as I have and argued about intent on legislation that I have voted on and before a judge, and they can barely, you know, cover the big smile or the laugh because they will say, "Well, if you intend it, you've got to put it into the statute," and I would really urge you -- don't ask me to put in a chapter to your bill. If you mean "actual," the basic rent -- and "basic" is the word that you ought to use -- then you ought to put in a chapter to carry out your intent because, I respectfully submit, that as your bill is drafted now it does not carry out that intent.

But if you will be good enough to

yield to another question?

ACTING PRESIDENT KUHL: Senator Leibell, do you yield?

SENATOR LEIBELL: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR LEICHTER: Senator, I see that your memo in support says there are no fiscal implications. Is that correct?

SENATOR LEIBELL: Yes.

SENATOR LEICHTER: Have you read the memorandum that was submitted by -- I believe it's Judge Silverman, Jackie Silverman, of the Civil Court? I think she's the -- she's the Administrative Judge, and she testified at a hearing in the City Council on your bill and on a resolution which supported your bill, or urged the adoption, and here's what she said. "In both" -- and I'm quoting her now, "In both the deposit situations outlined above, the court must spend a tremendous amount of time. Previously, with the use of the trust fund, there was a continuing bookkeeping. Currently,

in the event we make the deposits to the Department of Finance, there's substantial paperwork. In either case, the potential for error is very large especially in the numbers being considered. The following is an outline of the time needs," and then she goes on and she points out, and then she continues, and I'm quoting again, "Assuming that all persons who come to court make deposits as required by the proposal and that the deposits are sent to the Department of Finance, this will require citywide approximately 68 minutes times 199,800 deposits. This equals 13,000 -- I'm sorry - 13,586,400 minutes or 226,440 hours of work. Each clerk works approximately 257 hours a day, therefore, each clerk works approximately 1,750 hours per year. Dividing 226,440 hours by 1,750 and assuming that all of this person's time is devoted to this task, we will need citywide at least 130 clerks. Considering absenteeism, vacations, et cetera, we need a backup system of 10 percent, which requires an extra 13 clerks. This is a total of 143 clerks."

How, in view of that, can you say there's no fiscal implications?

SENATOR LEIBELL: Senator, listening to you recount those figures, it sounds like bureaucracy at its worst. I think that's the statement that was given to the City Council. It certainly would indicate that we need to take a look at some of the proceedings within that court.

But, beyond that, I go back to my original statement, and I think Senator Paterson acknowledged that we do have a problem in New York City and elsewhere, but especially in the City, with the nonpayment of rent and using the court system itself to take an advantage over landlords, whether they be large landlords or small landlords -- and many of them are small landlords -- and it results in a tremendous amount of lost income to the economy of the City.

What the judge did not factor in and what is most significant is the amount of the backlog in that court and the amount of the

caseload in that court that would not exist in the first place if this bill were to become law.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: Mr. President, if Senator Leibell will yield to one or two other questions?

ACTING PRESIDENT KUHL: Do you yield, Senator Leibell?

SENATOR LEIBELL: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR LEICHTER: Senator, I will address your answer when I comment on the bill.

But let me ask you -- in an answer, I believe, that you made to Senator Paterson, you referred to some Supreme Court decision which upheld the scheme that you are setting up under this bill. Was that a U.S. Supreme Court decision, and could you give me the name and the citation?

SENATOR LEIBELL: Lindsay versus Normet, N-o-r-m-e-t, 405 US 56, 1971.

SENATOR LEICHTER: Okay. Because I'm -

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

SENATOR LEIBELL: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR LEICHTER: I'm told that the decision by the United States in Bode versus Connecticut, which Judge Silverman in her testimony referred to as probably making this requirement that a tenant post the amount that's at issue before the matter is decided as being violative of due process and has been condemned by the U.S. Supreme Court. Lindsay versus Normet, which you refer to -- and, actually, as I take a look at Lindsay versus Normet, I believe that this was not an issue of rent deposit prior to the determination of the very issue which was involved in the case, and I

think that's the point that we're making here, that it's unheard of that in order to have your right litigated that you've got to put up the money in advance.

Mr. President, on the bill, please.

ACTING PRESIDENT KUHL: Senator Leichter, on the bill.

SENATOR LEICHTER: I see a number of problems with this bill. I think first of all, it's inherently unfair. It's unfair to single out tenants in the city of New York and to make them the only litigants in order for them to have their issues litigated that they have to go and deposit the amount at issue into court.

Now, Senator Leibell says it's only after a second adjournment. But, as we know, these are working people. Because of the nature of their job, they may not be able to respond to a case in the first time and I'm not even sure, and I have to look at the bill, whether the adjournment is actually at the

application of the tenant.

Secondly, I think this bill is unnecessary because there's now a power in the court, under Section 754 of the Civil Practice Law and Rules, to require under some circumstances that have to be established and where the court has discretion, that the tenant has to deposit that rent into court. So where it's needed, where there's some taking advantage of the landlord or the court by the tenant, the court has that power.

Thirdly, as I am advised and as I understand the law of equal protection and laws protecting litigants from being unfairly deprived of access to the court, I think the Supreme Court has made it fairly clear that laws like this which keep people from the courts, which single out particular litigants, tend to run afoul of the due process clause and, certainly, Judge Silverman, who is an extremely able jurist, feels that this law would be unconstitutional.

Finally, I just want to -- well,

not finally but next to final, I want to point out that this bill if it becomes law will require additional personnel. I mean to say under each and every circumstance when the Republicans come up with bills which require additional work, whether it's by the Judiciary or by the Executive branch, "Oh, they can do it; that's no problem; they've got all the personnel they need," I think that's unfair. I say with all due respect, Senator Leibell, and I certainly have respect for you and you have a reputation for fairness, I don't think in this instance you are being fair when you say, "Well, this is just an instance of bureaucracy." It's clear that if you're going to require millions of dollars deposited into court then it's going to require personnel who are going to have to do this and who are going to have to oversee it, and I can just tell you, having been frequently in the Housing Court, it's an extremely over worked court as it is, and those clerks work as hard as anybody that I know of in the judicial system.

Finally, I just want to address what I find very troublesome, and that is a pattern of bills that we see being put forward by the Republicans and I guess are reflective of the Republican far right wing which seeks to cut off people's access to courts. We've had a number of bills, bills limiting shareholders from going to court, bills limiting people who have been injured in going to courts. Now, here's a bill which would limit tenants and make it difficult for them to have their case tried in court.

I think one of the great things about this country is that we have a judicial system, that we want to give people maximum access to our courts so that disputes that they consider are valid are disposed of in courts, and to impose this barrier, to say, "You want your case tried in court? You dig into your pocket and put up the money, and if you don't have the money, your case will not be heard. You will, in effect, not have access to the court, and you will be required to pay the

amount that the landlord, in this case, demands, no matter how irrational, no matter how unfounded, no matter how unjust. Tenant, you want your case tried, you ante up the money in advance." I don't think that's the American way of doing things.

ACTING PRESIDENT KUHL: We will interrupt the debate just momentarily for an announcement.

Senator Larkin.

SENATOR LARKIN: Mr. President, there will be an immediate meeting of the Rules Committee in Room 332. Immediate meeting of the Rules Committee in Room 332.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: There will be an immediate meeting of the Rules Committee in the Senate Majority Conference Room, Room 332. Rules Committee, Majority Conference Room, Room 332.

Senator Johnson, why do you rise?

SENATOR JOHNSON: Mr. President,

I would like to ask Senator Leichter if he would respond to a question.

ACTING PRESIDENT KUHL: Senator Leichter, do you yield to Senator Johnson?

Senator Johnson, the Senator yields.

SENATOR JOHNSON: Senator Leichter, you mentioned that the Housing Court would have to get 143 more clerks.

SENATOR LEICHTER: Sorry, I can't hear you.

SENATOR JOHNSON: You mentioned that they would need 143 more clerks in the Housing Court if this procedure were to take place. Do you know what that would cost? How many dollars would that cost?

SENATOR LEICHTER: Yes. Judge Silverman estimated that the -- even -- her estimate was, "Okay, I need 143 clerks," but let's say that I get by with 50 because that's all that the court system will give me. The cost of that would be $1,980,000.

SENATOR JOHNSON: Senator, you

heard Senator Leibell mention that $130,000 in rents are not paid each year plus legal costs amounting to a couple of hundred million dollars. Now, do you think a million dollars spent to save 130 million or 200 million on behalf of the landlord who will now have that money available to maintain his property would be a good trade-off in terms of the housing stock of New York City?

SENATOR LEICHTER: Mr. President. There's two answers to the point that you make, Senator Johnson. First of all, it's apples and oranges. I mean you're not talking of hundreds of millions of dollars to government. This is an expenditure by the government.

The fact that landlords may get a certain amount which you claim and I dispute they are entitled to in the amounts that you have stated certainly doesn't make that equal. You still have to come up with the money for government, in this instance, the Judiciary. Secondly, the figures that you come up to, I

think, are grossly inflated, exaggerated, illusory. Could you show me where you come up with this hundreds of millions of dollars that landlords are being denied?

SENATOR JOHNSON: Well, I've accepted your figure at face value, and for the moment, let's say it's somewhere in the ball park. The money which the courts spend comes from businesses and individuals in this state, the tax revenues that they spend.

If a landlord -- and, cumulatively, landlords are losing $100 million or $200 million. That reduces the amount of revenues collected by government, income tax, real estate tax. It even leads to abandonment of properties, in many cases, because the money is not there to maintain those buildings. So it certainly seems -- and, additionally, the assessed valuations of these properties or the selling prices are based upon a rate of return. If a landlord can't collect 5 or 10 or 20 percent of his rent, that diminishes the value of his property. So, Senator, don't you believe

that there's a negative effect by us interfering in this process of people paying their contractual obligations?

SENATOR LEICHTER: Senator, there is a big difference between your figures and my figures. Your figures are taken out of the air. They are made up out of whole cloth unless you can cite to me somebody who's come up with these figures, and not only cite an authority for it but show to me with the detail that I showed to you, quoting the judge who is in part -- I'm sorry -- who is in charge of that part of the Civil Court. She's given you exactly, very detailed, the minutes it takes, the clerks it takes, how much they work, how much it costs. You come up, and you throw out some wild figure.

But, Senator, there's another answer, and the answer is that this money is not lost if the landlord -- if the landlord is entitled to the money, you've got a court. The court is going to say the landlord is entitled to this money. It's far different for the

tenant. The tenant -- if the tenant can't pay his way in the court, the tenant isn't in a position to put up the money, the tenant will never have an opportunity to have his or her case tried. If the tenant is given access to the court and the landlord is correct as you claim he is, the landlord will recover.

I understand in some instances tenants will leave without paying the rent. That's happened. There's deadbeats who are tenants, there's deadbeats who are landlords, there's deadbeats in our society, but not anywhere in the amounts that you have stated.

SENATOR JOHNSON: Senator.

ACTING PRESIDENT KUHL: Senator Johnson, are you asking Senator Leichter to yield again?

SENATOR JOHNSON: Yes, I'd like to ask him a question.

ACTING PRESIDENT KUHL: Senator Leichter, do you yield?

The Senator yields.

SENATOR JOHNSON: Senator

Leichter, do you think -- you -- you just acknowledged that you know some people skip out on their rent, and we know that that's the case. It's an open secret in New York City that the Housing Court is where the landlords take you, and that's where you can not pay rent for six or eight or whatever months by deferring the day of judgment until you finally skip out and don't pay.

I have not only anecdotal evidence but have read articles, and I'm surprised you don't know it being you are in the City.

But my question is, why would the tenant have any objection to deposit the rent with an impartial person, the judge, until it's adjudicated unless they intend to defraud the landlord? Why would they object to the judge holding their rent, and why would you defend their right not to put it up?

SENATOR LEICHTER: Senator - Senator, I think your question is very interesting, and I think it really shows, with

all due respect, how out of touch some of you are with working people. Why would the tenant object to paying the rent? Because the tenant doesn't have that money. There aren't that many people in our society, not tenants in the City of New York, who have hundreds of thousands of dollars and who can, "Oh, I've got to pay to have my case adjudicated? Fine. I will put up the money."

We're not talking about people who have Park Avenue co-ops and we're talking about their carrying charges or who have Fifth Avenue duplexes and are paying $5,000 or $10,000 a month. We're talking about working people, Senator, and at the end of the month, they probably have nothing left, and now what you are saying is that they've got to pay their money up in advance, and I say to you that that's wrong.

We're not talking a basic rent, because I think I pointed out very conclusively that this legislation is flawed because it includes additional amounts the landlord may falsely claim.

ACTING PRESIDENT KUHL: Senator Leichter -- Senator Johnson, are you asking Senator Leichter to yield?

SENATOR JOHNSON: Yes. Senator Leichter, I find your answer very intriguing. You said you don't think people should be able to live rent free. But you say they don't have the rent; therefore, they can't pay it.

Now, most of these cases when they go to Housing Court are already two to three months behind. How long shall a landlord wait for a person who can not pay their rent, who does not fulfill his contractual obligation, before he seeks to remove him and put a tenant in there who can pay the rent so that he can maintain his property, not only for the benefit of the landlord's enrichment but so everyone else can live in a reasonably maintained building?

If they can't pay the rent, Senator, for two or three months, they should not -- they should -- they have broken their lease, essentially. Why should the landlord be

held to provide housing for someone who does not choose or can't pay their rent? How can you defend that, Senator?

SENATOR LEICHTER: Senator, the point is -- first of all, tenants put up deposits. You don't get an apartment in New York without having one or two months' deposit.

Secondly, under the law of landlord and tenant, a landlord gets rights that no other litigant has which is, not only does he get a judgment for the rent that's owed but he also gets the apartment. He can evict the tenant. It happens in our system of law that you sue somebody and, by the time you recover, that person has put the property in his wife's name and sheltered his money in many different ways. In fact, you voted for legislation earlier this year which allows people to shelter their income so that a judgment creditor won't get it. I was the only one who voted against it. It was a bill by Senator Volker. That happens to be part of our economic system.

But landlords are protected in a

way that nobody else is because a landlord can get possession of the building, and the landlord also has a security deposit which he can apply, so we're not dealing with a situation where tenants are going to be able to live rent free for months and months and months and then the tenant is going to move out and leave the landlord with a big bill.

The fact is that you haven't or Senator Leibell has not come up with any figures. You've come up, as you so often do - I don't mean you personally -- but as we so often have, the Republican right, with your mythology. Give us facts. Give us figures, Senator. I gave you facts and figures. You give me facts and figures, not just a figure, an amount that you pull out of thin air.

SENATOR JOHNSON: Senator Leichter, would you stand for another question?

Mr. President?

ACTING PRESIDENT KUHL: Senator Leichter, do you yield?

Senator yields.

SENATOR JOHNSON: Senator Leichter, are you unaware that New York City is reputed to be the world's largest slumlord, and the way they got that property is because people did not pay sufficient rent for the maintenance of the property?

Otherwise, why would a landlord with all these protections which you say are out there, and all these privileges, why would he walk away from a property that he paid good money for? Because it's uneconomic, because the combination of rent control and Housing Court shenanigans preclude him from making a return on his investment, even maintaining it, and then the City takes it over and makes a bigger mess.

Now, why would a landlord abandon that if he's got all these rights and privileges and making all this money? Can you explain that?

SENATOR LEICHTER: Yes, Senator, there is a very simple explanation. If you know New York City and you know the situation that exists there, and I -- and I say -- again, you

represent, you know, areas in Long Island where you don't deal with these problems. I'm going to invite you to New York City as my guest and take you around and meet some tenants and give you an understanding of this, Senator, because, with all due respect, you're working sort of off an Adam Smith logic. Well, the landlords paid good money.

Do you know what happens? People buy buildings on speculation, Senator. They are trying to leverage a very, very small amount of equity. They then go and milk the buildings, not all landlords, not every case, but many of the buildings that have been abandoned, which the City then has to take over because the landlord doesn't pay the taxes; and after a while, the City has to take over the property in rem. By that time, the building is in such deteriorated state that the rent roll doesn't cover the repair and the maintenance and all the work that has to be done, and that's why the building eventually ends up being abandoned, because conditions are so terrible in there that

tenants just have to move out.

But a lot of that is due because landlords buy buildings -- do you know what they pay for it in some instances? $1,000, $2,000. They don't pay good money.

And, again, we're talking a small proportion of landlords but that exists, Senator, and that's why you have cases -- I can cite some to you where landlords end up in jail, end up in jail because they have milked their properties, and that's what happens in the abandonment of buildings.

SENATOR JOHNSON: Well, Senator, I think it's time for us to get rid of the far right Republican rhetoric which emanates on that side of the aisle and wake up and see what's really going on. Everyone knows what goes on in the Housing Court.

They know it's a scandal. They know that, when someone tries to collect the rent, you get adjournment after adjournment after adjournment until the landlord finally says, "Just get out and I won't even bother with

the rent," and they walk away without paying the rent. It's a scheme to defraud the landlords, and everyone in that building and everyone in that City loses by this, and I don't know why you don't recognize it, Senator.

If the government didn't interfere in the right of contract, you would have buildings well maintained, getting proper market rent which could maintain it. There would be growth. There would be increased tax revenues, and the city of New York has asked everyone in the state to help contribute to their rent control programs and the Housing Court program. Everyone is paying for the losses which you want to permit the tenant to continue.

And, Senator, I don't know if you can answer this or not, but you not only object to them posting the back due rent but you even object to them paying the rent to the judge during the pendency of this case so, ultimately, there's some money there to recover, because, in many cases, no money is recovered and the

tenants are out anyhow. Would you object to them posting the rent due while they have the three- or four- or five-month adjournment, or do you think they should live rent free all during that time?

SENATOR LEICHTER: Mr. President, answering Senator Johnson.

First of all, the court now has the power to do this, Senator Johnson. The court has the power to do this.

But, secondly, Senator, the whole issue is, was the rent due? I have handled situations on behalf of my constituents where the landlord will bring an action for rent due. Tenant comes to me and says, "Here. I got a receipt. I've got a receipt." So we go to court and we say, "There is a receipt." Landlord says, "Well, my agent didn't have the authority. He didn't have the right to issue that receipt. I never got the money."

Now, that's something that's got to be tried in court. It has to be disposed of. It's an issue of fact, and I must tell you,

in those cases, we prevailed. But if the tenant had had to put up the money in advance, having already paid the rent -- the tenant has paid the rent, but until that's resolved in court, the landlord maintains, "I'm entitled to it." What you are trying to do is, in effect, almost prejudge the case where the landlord by saying, "I'm entitled to the rent," can force the tenant to put up the money.

SENATOR JOHNSON: Mr. President, I would like to ask Senator Leichter if he would respond to another question -- in fact, answer the question that I have asked him.

You think -- I asked you, before, do you think someone should be able to live rent free in your building or anyone's building?

And, number two, do you have any objection to them paying the rent during the pendency of this trial for any new occupancy beyond the date?

And, number three, we know that the court has the power to do this now, to require it, but the court doesn't do it because

they are sort of complicitous with the tenants in this whole scenario, and it's -- it's an open secret. I just got two newspaper articles here, but I mean I'm surprised you haven't read it. It's your paper, the New York Times, and they tell about all the scandals and abuse in the New York City Housing Court, and yet you're totally oblivious of it, giving us this Marxist rhetoric about everybody is entitled to live somewhere at somebody's else's expense.

I mean, Senator, I just want to know why a tenant should not pay whatever the court agrees. If he's got a receipt he paid it, the court wouldn't ask. Why shouldn't he post the back rent? Why shouldn't he pay rent during the pendency so that this doesn't continue month after month living at the expense of the landlord and everyone else in that process?

SENATOR LEICHTER: Senator Johnson, you said something which is the key. You said "the court agrees." "The court agrees," which means that there has been a determination made, an adjudication of the

dispute. For instance, the case that I gave you which I tried in court on behalf of a constituent, where the landlord said, "I didn't get the rent; the receipt you have is invalid," and the matter was finally adjudicated by the court. So the whole issue is that you -- you say, "amounts that are due," but they are not due until the court determines that they are due.

Let me ask you a question, Senator Johnson. Will you yield?

SENATOR JOHNSON: Yes.

SENATOR LEICHTER: Have you ever been to Housing Court -

SENATOR JOHNSON: I have -

SENATOR LEICHTER: -- in the City of New York?

SENATOR JOHNSON: I have read about it. I have seen some scenarios. I have talked to a tenant who went through it. He told me what a great deal it was in New York City; that he lived eleven months after he put his security deposit up without paying a penny rent,

and he was going to do it in Suffolk County. He found out we have a different law in Suffolk County, and he only got away with three or four months, but it was a very interesting discussion I had with him.

So he told me it's all right. They give you the lawyers to represent you. They give you the whole thing, and you can just not pay. You can stretch it out almost as long as you want. He said eleven months. The average -- I read the statistics -- is only seven months.

But whatever it is, I think government should not interfere in the contractual arrangements between two parties. If you got a lease, and he's got to provide a place for you to live and you got to pay the rent, both parties should fulfill their obligations.

Now, most of these cases are not filed until two or three months' rent are gone by. I mean they've already gotten by with a substantial amount. I don't see why you should

possibly object to future rents being posted with the judge during the pendency of this claim so that the debt does not increase further beyond the ability of the tenant, ultimately, to ever pay that rent.

SENATOR LEICHTER: Mr. President, if Senator Johnson will continue to yield?

Senator, would you be in favor that where consumers are being sued, let's say, by an automobile company for not having paid on a lease of an automobile or having made payments on the purchase of an automobile or any other appliance, that the consumer before he or she can challenge the lawsuit have to put up their money in advance in court? Would you be in favor of this?

SENATOR JOHNSON: Senator, I'm not speculating about what I would do in that case. The simple fact is that New York City's housing stock is deteriorating, continuing to deteriorate. The reason is because of the governmental policies in New York City concerning rent control and Housing Court, and

these problems must be addressed if New York City is going to have an economic revival, resurgence, and we have an obligation to see that that happens, and this type of reform is vitally necessary to bring about that result.

SENATOR LEICHTER: Mr. President, just in conclusion, and I always enjoy a chance to have this sort of a dialogue with my good friend from Long Island; but, Senator, I'm doing to do something for you, if you are willing.

Rather than just relying on reading things -- and you and I know that there is no substitute for seeing a situation yourself -- I'm going to invite you to come down to the Housing Court in New York County or Kings County, somewhere else, and take a look. Meet some of the Housing Court judges, speak to the lawyers. Get firsthand experience, and I think that you will see that what is being proposed here by Senator Leibell is based in large measure on myth and is certainly unfair.

You are singling out tenants in the city of New York and imposing on them a

requirement that no other litigant has, which is, ante up the money in advance if you want your case tried in court.

SENATOR SOLOMON: Mr. President.

ACTING PRESIDENT KUHL: Chair recognizes Senator Solomon.

SENATOR SOLOMON: Thank you, Mr. President.

Mr. President, will Senator Leibell yield?

ACTING PRESIDENT KUHL: Senator Leibell, do you yield to Senator Solomon?

SENATOR LEIBELL: Yes.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR SOLOMON: Senator, I'm going to try and relate a number of cases that I've represented because I have practiced in Housing Court before; and, first of all, let me say something.

Many of the landlords that want this bill will tell you that they will never use it, because putting the money into Housing Court

is their worst fear because they will never get it out because of the clerk problem.

But just a couple of items. Senator, are you aware of how a large preponderance of the rent is paid currently by tenants to many of the landlords in Housing Court via money order -- not via Housing Court but rent payments done by money order.

SENATOR LEIBELL: In New York City?

SENATOR SOLOMON: Yes.

SENATOR LEIBELL: No, I'm not.

SENATOR SOLOMON: Senator, during your investigations in this, did you come across the point in situations -- we've had many situations. What happens in a situation as Senator Leichter outlined where the money order has been paid and given to the landlord and, for whatever reason, that landlord has not cashed that money order as of yet, and then commences an action against the tenant? That is a common procedure, by the way, in holdover actions.

SENATOR LEIBELL: Senator, let me

just draw your attention to line 22 of the bill, which I hope addresses your concern. "The court shall dismiss without prejudice the defenses and counterclaims -- I'm sorry. "...payment shows by a preponderance of the evidence that the amount required to be deposited has previously been paid to the petitioner." Do you see the section I'm referring to?

SENATOR SOLOMON: Line 25, "... presents payment and shows by a preponderance of the evidence..."

Well, Senator, let me ask you another question. Would presentment of a money order receipt by the tenant, a carbon copy, be considered preponderance of evidence in terms of your legislative intent?

SENATOR LEIBELL: It would always be up to the court, but I would say so.

SENATOR SOLOMON: Okay. Thank you. Senator, let me ask you another question.

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

SENATOR LEIBELL: Yes, Mr.

President.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR SOLOMON: Are you familiar with a holdover proceeding and how a holdover proceeding is commenced?

SENATOR LEIBELL: I have some knowledge of it, yes, not in depth.

SENATOR SOLOMON: Senator, does not a holdover proceeding usually commence in the fact that the tenant pays the rent to the landlord and the landlord is advised by counsel not to cash that check and/or money order?

SENATOR LEIBELL: Senator, maybe you can rephrase the question. I'm not sure how that relates to the bill.

SENATOR SOLOMON: Senator, in a holdover proceeding, under the laws of this state in order to commence that proceeding, the landlord is not to cash that check or advised not to cash that monthly check. So if the rent is paid January 1, Landlord Jones is told by his attorney you have gotten the rent on January 1

by the tenant, do not cash that check because then the tenant becomes a month-to-month tenant. So Landlord Jones has that check or that money order -- let's say a money order, in his hands and a holdover proceeding commences, and February comes -- and February comes, and the landlord commences the holdover proceeding 30 days afterwards, which would be in February, and the February rent is paid by money order to Landlord Jones, so he now has two months; and now Landlord Jones commences that holdover proceeding after the February rent is due. He's got two months' payment, and he commences a holdover proceeding against Tenant Smith. Tenant Smith asked for an adjournment. Landlord Jones is then going to say, "Put your money into escrow"; isn't that correct?

SENATOR LEIBELL: That's a separate action. Go back to what this bill is about. This is a summary proceeding.

SENATOR SOLOMON: All right. Then let me ask you another question.

ACTING PRESIDENT KUHL: Senator

Leibell, do you continue to yield?

SENATOR LEIBELL: Yes.

SENATOR SOLOMON: Will you yield?

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR SOLOMON: Senator, in an actual case, in a case such as this, if the respondent is represented by an attorney and that rent is held in an attorney's escrow account, can these provisions be waived?

SENATOR LEIBELL: No. It has to be paid into court.

SENATOR SOLOMON: It has to be paid into court?

SENATOR LEIBELL: That's -

SENATOR SOLOMON: Senator, this is an actual case where I represented the tenants. The good landlord believed that elevator service wasn't necessary, and I had a client whose son was disabled in a wheelchair. Does the court have the power to order monies to be expended for repairs and/or emergency repairs

out of the money that's been deposited in court?

SENATOR LEIBELL: Yes, they would.

SENATOR SOLOMON: Can you show me where that is in this bill?

ACTING PRESIDENT KUHL: Senator Solomon on the bill.

SENATOR SOLOMON: Uh, no.

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

SENATOR SOLOMON: Senator Leibell is going to respond.

SENATOR LEIBELL: That's already in statute, Senator.

SENATOR SOLOMON: Not under this bill.

SENATOR LEIBELL: It's already in statute in other legislation.

SENATOR SOLOMON: I think that if you look at where the money is supposed to go for, though, under this legislation, it can only go to the petitioner. That's why I'm raising

that point, Senator.

SENATOR LEIBELL: Senator, if you could draw your attention to lines 7 through 13 which addresses emergency repairs, and that's already existing law.

SENATOR SOLOMON: Okay, Senator, so under this legislation, just to make it perfectly clear, the court has the authority to say that the following rent money shall be used for emergency repairs?

SENATOR LEIBELL: That's existing law already, Senator.

SENATOR SOLOMON: And it would continue to exist here?

SENATOR LEIBELL: All that we're looking to do here is to make sure that that rent will be payable into court. That's what this bill before the house today attempts to address.

SENATOR SOLOMON: Senator, lines 28 to 33, it talks about future rents due on the due date; correct?

SENATOR LEIBELL: M-m h-m-m.

SENATOR SOLOMON: Line 30 actually. So if we're in court and there have been two adjournments -- we're in court February 15 and we come up to March 1 and there's a new rent due, the tenant has to deposit that rent due on March 1; correct?

SENATOR LEIBELL: Yes.

SENATOR SOLOMON: Senator, is there a grace period?

SENATOR LEIBELL: None.

SENATOR SOLOMON: So, Senator - if Senator Leibell will yield.

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

SENATOR LEIBELL: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR SOLOMON: Senator, as I understand, January 1 is a legal holiday and the court systems are closed in the State of New York. Is that correct?

SENATOR LEIBELL: On January 1?

SENATOR SOLOMON: Yes.

SENATOR LEIBELL: I believe that's correct.

SENATOR SOLOMON: So, Senator, if the rent is due on January 1st and it's not paid, what are the consequences, since there is no grace period?

SENATOR LEIBELL: I think you would refer to the General Construction Law which would control that occurrence.

SENATOR SOLOMON: Does Senator Leibell continue to yield?

ACTING PRESIDENT KUHL: Senator Leibell? Continues to yield.

SENATOR SOLOMON: Senator, have you examined the general lease forms issued in the City of New York? Is not there a grace period in that lease form or in the General Construction Law for payment of rent?

SENATOR LEIBELL: Not today, I haven't.

SENATOR SOLOMON: Well, last time you examined it, was there a grace period of any

sort?

SENATOR LEIBELL: This is a summary proceeding for payment of rent. We're not talking about grace periods.

SENATOR SOLOMON: So if Mrs. Jones is a senior citizen and she's hospitalized and she's in the hospital and the case was adjourned twice, Mrs. Jones would have to pay that rent, then, even though she might be in the hospital; correct?

SENATOR LEIBELL: It would go to an immediate hearing.

SENATOR SOLOMON: But the rent would be due; correct?

SENATOR LEIBELL: The rent would be due as it would normally.

SENATOR SOLOMON: By the immediate hearing, correct. There is no discretion in this bill for the court, is there, Senator?

SENATOR LEIBELL: The rent would be payable into court.

SENATOR SOLOMON: But there is no

court discretion on that?

SENATOR LEIBELL: (There was no response.)

SENATOR SOLOMON: Technically if something happened in the court building in and of itself there is no discretion for the court to say, "I'm going to say that all these rents are due two weeks from now." I'm trying to deal with the realities of implementing this legislation.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: If I could just interrupt for a moment and have the last section read for the purposes of Senator Trunzo voting.

ACTING PRESIDENT KUHL: Ask the Secretary to read the last section.

THE SECRETARY: Section 4. This act shall take effect on the 30th day.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

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

SENATOR TRUNZO: Yes.

ACTING PRESIDENT KUHL: Senator Trunzo will be recorded in the affirmative. The roll call will be withdrawn.

Senator Solomon, you have the floor.

SENATOR SOLOMON: Thank you, Senator. I'm waiting for a response from Senator Leibell.

SENATOR LEIBELL: The court would have its normal discretion.

SENATOR SOLOMON: Senator, so if you could -- you state that the court would have some discretion to implement parts of this legislation, as a legislative intent?

SENATOR LEIBELL: That's correct.

SENATOR SOLOMON: Senator Leibell -- Mr. President, if Senator Leibell will continue to yield?

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

Senator yields.

SENATOR SOLOMON: Senator, what happens if there is a judgment and then there is a notice of appeal filed, which there is done in summary proceedings?

SENATOR LEIBELL: It would still be paid in court pending appeal.

SENATOR SOLOMON: Into which court, Senator?

SENATOR LEIBELL: Housing Court.

SENATOR SOLOMON: Senator, what happens if there is a judgment you pay for the tenant and then there is a notice of appeal filed?

SENATOR LEIBELL: They'd get their money back. If -

SENATOR SOLOMON: I understand in cases technically continuing. Is the tenant going to be required to pay that money into - is the tenant going to get the money back immediately or is it going to stay in court?

SENATOR LEIBELL: Do you mean after an appeal is decided?

SENATOR SOLOMON: No, an appeal is filed.

SENATOR LEIBELL: You are saying if the -

SENATOR SOLOMON: Excuse me. Mr. President, if I can rephrase the question?

SENATOR LEIBELL: Okay.

SENATOR SOLOMON: The landlord serves Tenant Smith five months back rent. The tenant interposes a defense of warranty of habitability. The elevator didn't work. Trial is held. The tenant prevails. The court gives a decision which in many cases happens in landlord-tenant court and says, "I find the elevator equals 50 percent of the rent paid." The tenant prevails, and an appeal is filed.

SENATOR LEIBELL: I have been advised the court would have to pay the money back to the tenant immediately.

SENATOR SOLOMON: Thank you.

Mr. President, will Senator Leibell continue to yield?

ACTING PRESIDENT KUHL: Senator

Leibell, do you continue to yield?

SENATOR LEIBELL: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR SOLOMON: Senator, there's one thing that concerns me. In fact, a constituent of mine who was a landlord contacted me two days ago on this type of matter. He is coming and taking over a building he purchased at auction, and there is an issue before DHCR on back rent, and that issue is being determined. What happens -- it's a rent overcharge.

What happens if there is an issue as of a rent overcharge that is being determined by DHCR, an administrative agency of the state, and the landlord sues for the -- sues for an amount? How is that -- how is that worked into this legislation?

SENATOR LEIBELL: This is a summary proceeding -

SENATOR SOLOMON: Right.

SENATOR LEIBELL: -- for

nonpayment.

SENATOR SOLOMON: Correct.

SENATOR LEIBELL: -- in which the tenant -- in this case, would be that the tenant has not paid for a substantial period of time.

SENATOR SOLOMON: But, Senator, let me again try and rephrase it and your counsel can maybe come up with the proper answer. Landlord Jones claims that $1,000 is due per month on the apartment. Tenant Smith had alleged two years ago that there is an overcharge in that calculation and $1,000 is, in fact, not the proper rent but $700 is the proper rent. That is being decided by DHCR, but Landlord Jones sues for $1,000.

What, in fact, is the rent to be deposited in court?

And the court is sitting there - and the court is in a situation saying, "I don't know what the proper rent is; maybe it's $700; maybe it's $1,000," and there are cases where there are substantial differences in the amount claimed by the landlord and the amount claimed

by the tenant which would be subject to rollback. I'm just trying to get to the situation.

SENATOR LEIBELL: The rent is going to be specified in the lease. That is the legal rent. See, distinguish here, Senator -

SENATOR SOLOMON: The legal rent is the rent in the lease?

SENATOR LEIBELL: That's correct.

SENATOR SOLOMON: Even if DHCR has already come out with an administrative ruling?

SENATOR LEIBELL: They are two separate -- these are two separate proceedings.

SENATOR SOLOMON: There may -- if Senator Leibell will yield?

Senator, what happens if there has been a DHCR determination and there is an administrative process at DHCR which has said that the rent in the lease as $1,000 is not the correct rent but the correct rent is $823.47?

SENATOR LEIBELL: Do you mean where DHCR has made a ruling?

SENATOR SOLOMON: Right.

SENATOR LEIBELL: Then they would raise that. Then the tenant would raise that in the summary proceeding.

SENATOR SOLOMON: But what is the amount to be paid into court?

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

SENATOR LEIBELL: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR LEIBELL: If there is a legitimate legal adjudication that the rent is different from the lease, then the difference would be what would be paid in under this summary proceeding.

SENATOR SOLOMON: The difference between what the landlord is alleging and what the DHCR has said is due?

SENATOR LEIBELL: That's correct.

SENATOR SOLOMON: So the tenant would be required to pay the amount that -- DHCR

said there was -- the rent is $825, and the landlord claims it was $1,000. The tenant would be required to pay in the difference?

SENATOR LEIBELL: If you have a finding -- if you had a finding, that's what the court would take notice of.

SENATOR SOLOMON: The DHCR finding.

SENATOR LEIBELL: That is correct.

SENATOR SOLOMON: All right, Senator. So I just want to -- I would like to clarify one last point -

ACTING PRESIDENT KUHL: Do you continue to yield, Senator Leibell?

SENATOR SOLOMON: -- if Senator Leibell will yield?

SENATOR LEIBELL: Yes.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR SOLOMON: This section of law is only to apply in summary nonpayment proceedings -- not holdover proceedings, not

tenant-initiated actions, only summary nonpayment proceedings?

SENATOR LEIBELL: That's correct.

SENATOR SOLOMON: Senator Leibell yield for one question?

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

SENATOR LEIBELL: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR SOLOMON: If the petitioner adjourns the case three times, what penalty, if any, does the petitioner have to pay?

SENATOR LEIBELL: There is none. But I will tell you, it's very unlikely when the person -- the landlord is not being paid rent, they have every impetus to go out there and get the rent in.

SENATOR SOLOMON: On the bill.

ACTING PRESIDENT KUHL: Senator Solomon, on the bill.

SENATOR SOLOMON: My good friend

Senator Leibell is carrying this legislation, and I have been in Housing Court as Senator Leichter said, and I would like to inform a number of my colleagues here that, in fact, in many instances, the petitioner adjourns the case, and if you saw the way Housing Court worked, you would know why the petitioner adjourned the case.

In many instances, the petitioner's attorney does not have the papers. In many instances, the petitioner's agent is not in court or the petitioner's agent is running around to four or five different parts in Housing Court, and it's not uncommon for them to adjourn those cases as a matter of course.

In addition, if you have been in Housing Court before and you have seen the way Housing Court works, there are many instances where there are, in fact, violations, rent impairing violations, which the laws say that the rent cannot be paid or collected or sued for by the landlord as long as those violations exist.

In effect, this bill really skirts that issue. It says you have to pay that rent into court. There is a whole list of "C" violations which are rent impairing violations, which are issues outside of the warranty of habitability which, under the laws of the city of New York, the rent is not to be paid to the landlord on those "C" violations, where they are to be repaired within 27 hours and, in fact, they are not repaired.

What this bill is doing -- and you are going to find out, by the way, in fact a large number of landlords are not going to use this bill because they know for a fact they'll never get their money out of court and, if you talk to attorneys that represent landlords, they're going to laugh at this. They're going to say they don't want to apply this in most cases because they can't get their money out of courts. In fact, they prefer that, if there is a rent action, that the attorney has the money in his escrow account or they prefer the fact that there are money orders made out to the

individual tenants which the attorney is holding.

This is a bill which is, in fact, going to cost the courts of the city of New York huge sums of money and, in reality, is not applicable to the situations and where you have due dates where there is no grace period, where you're saying apply the General Construction Law, you are going to find a general disaster is going to occur in that court system.

You have a piece of legislation that, as Senator Leichter appropriately said, we are going to have certain unscrupulous landlords and their attorneys attempting to use this leg islation to get tenants out. We have attorneys, we have landlords, who, in many cases where they are attempting to do illegal evictions, will hold those money orders and not cash those money orders. We have landlords, smaller landlords in many instances, who flagrantly violate the law and don't give receipts for the cash payments, because they are such law-abiding citizens that they don't want to report that cash as their

income.

And I think what you are doing is telling the judges in Housing Court and/or the Civil Court judges that hear these cases in many instances, "We don't trust your discretion. We don't trust your discretion to tell somebody whether or not to pay that rent into court."

And what you are going to find out is that, if this becomes law, you are going to have those small landlords who thought this was going to be their panacea coming back to you saying, "You know, Senator, we can't get our money out of court. We can't get that rent out of court. It's taken us six months." So you've got a piece of legislation which takes away discretion, a piece of legislation which is not going to help the process, and I think it's a piece of legislation that's not fair.

You can draw up a piece of legislation that has money deposited in court. You can allow the petitioner to show good cause why that should be deposited on the court and can have an immediate hearing to allow the judge

to make that decision or even allow the judge to make a decision to order that money to be held in an attorney's escrow account, which will expedite the situation and take it out of the process of the courts. But I think this piece of legislation, the way it's drafted, is going to cause major problems. Not only is it unfair to tenants but it's going to cause major problems for a lot of the people that have experience in this court system and are thinking it's a panacea and, in fact, are going find out in reality it's not.

And, yes, there are those stories, and I can tell you stories about the landlord who wouldn't provide elevator service or wouldn't hire an elevator service and the judge had to come into that building and actually saw that situation, and the action went on for a year and a half and there were structured rebates to the tenants, including the one -- this woman who had a son in a wheelchair, six flights of stairs, a landlord who refused to hire an attorney until she started going on

appeals. The landlord, while she was reading the financial pages of the New York Times in the judge's chamber, said she didn't understand the finances of her building.

There are horror stories on both sides. But the fact of the matter is if you have been into Housing Court on a regular basis and gone with some of the attorneys who practiced both on landlord and tenant side, you will see a situation that this bill is not going to solve. It's going to compound it, and the small landlords who think they are going to benefit from this are going to be the ones who find out that they can't get their money out of court, just as some of the larger landlords say, "No, no, no, don't take the tenant's money and put it into court. It's the worst thing that's going to happen to me."

And I really think this is a bill where it's been put forward, some people are carrying this bill, but, in fact, they really haven't gone in there and spent the week in that court and taken a look at how the process really

works in that court.

This is a court that's so strapped for funds, ladies and gentlemen, that at a point in time a number of years ago when we had Chief Judge Cooke, I pointed out to him that the way they called the calendar was an actual fire hazard, where both tenants and landlords were shepherded to one part of the building which had only one entrance and exit, the same way, and the calendar would be called once. If they answered the calendar and said they were there, they'd have to go to another part. If they went to the bathroom and the court officer said, "It's in Part 15 on the fourth floor, Room 327," they would miss it and be out. It's strapped for cash, that part of the court system, and this is not going to help it. It's going to cost more money and result in more turmoil and an unfair piece of legislation.

ACTING PRESIDENT KUHL: Chair recognizes Senator Abate.

SENATOR ABATE: Yes, Mr. President. Would Senator Leibell yield?

ACTING PRESIDENT KUHL: Senator Leibell, do you yield?

SENATOR LEIBELL: Yes.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR ABATE: Senator Leibell, I'm still trying to understand the rationale and need for this legislation, whether one is a pro tenant or pro-landlord advocate, neither groups or advocates condone abuses on either side.

SENATOR LEIBELL: Right.

SENATOR ABATE: But what I don't understand is why is there a need to amend and provide an automatic mandatory provision for the rent escrow deposits when the judge already has the discretion? And now this is the judge who has before them both litigants, has the opportunity to evaluate the facts before him or her. Why is there a need to take the discretion away from the judge in order to protect landlords?

SENATOR LEIBELL: Well, as a practical matter, Senator, my understanding is

that when given discretion the court almost never exercises it. It was felt that this would offer a procedure whereby we could attempt to bring some sense of fairness, and probably that's the key word here.

This is not a question of - certainly not for the sponsor -- of being pro landlord or pro-tenant. What we were trying to do here is to identify a problem, what is a very severe problem, and there could be some disagreement as to the magnitude of the problem, but most people, I think, would concede that there is a great deal of money that is lost to landlords because of some tenants, some -- a substantial number of tenants who use the court system in order to defeat the landlords and their right to having a rent.

Now, the comment was made by my friend Marty Solomon that this, in fact, would not be good for New York City. Well, in fact, I have here a memorandum in support from New York City, and the reasons for support -- there's one sentence that says, "For many owners,

particularly those operating on the margin, the inability to collect these rents can be the difference between economic survival and failure."

One of the things that's concerned me so greatly, and I hope to have an opportunity to even spend more time examining the problem after we recess, is the problem of housing in New York City, and it certainly is a very easy thing from a political point of view to say there are landlords out there and that's some sort of monster, and it's a horrible thing to be a landlord. But, in fact, they provide countless many thousands of units of housing for residents of New York City and in so many cases, we're not talking about some large, monolithic corporate landlord. We're talking about smaller landlords, people who their only source of income is the rent they generate off that building, in addition to which their capacity to maintain those buildings is severely impacted by those people who do -- for one reason or another, do not legitimately pay the rent that's

owed.

That's the purpose behind this bill.

SENATOR ABATE: I guess what I'm very concerned about, what we are saying as a legislature, that there are judges appointed or elected to the Housing Court and we do not trust them to do the right thing to ensure that landlords are not mistreated or tenants are not mistreated, and what we're, in fact, doing is stacking the deck that in all situations, even if it's not treating an individual case and an individual tenant fairly, we are saying, "Across the board in every case, we're mandating the escrow accounts of rent deposits." Isn't there something absolutely unfair about that concept?

SENATOR LEIBELL: Not when you consider -- if you go back to the language that I originally read, that this bill only becomes effective, this law, if it becomes law, upon a second adjournment. So you could have had -- in the first place, you could have had a period of -- a substantial period of months here where

there's been no payment of rent, and that is the problem that we're trying to address by this bill.

SENATOR ABATE: But I would go back to that second adjournment. We all could concede the first adjournment could occur because the attorney on either side wasn't prepared or the papers weren't there or the witnesses or the court may decide because of the lateness of the hour the case has to be adjourned, or the tenant comes into court and says, "I need a counsel. I barely speak English. I don't understand the law."

Having something as arbitrary kicking in the second adjournment when there may be legitimate reasons on the part of either the court to adjourn it or the tenant to adjourn it, we're saying automatically now these monies have to be placed in escrow. It seems to me that's very arbitrary, the second adjournment. Let me get back -- I'm sure you disagree.

Let me get back to the issue in fairness to landlords. It's my understanding

this legislation was either enacted or amended in 1983 to require the judge to put on the record why deposits for future rents are not ordered. It basically says to the judge, "Look, the Legislature is saying to you, Judge, we're looking out for the interest of landlords. You can not just arbitrarily without any reason not deposit these rents in escrows. We want you to take that as a precaution in order to protect landlords, to state it on the record."

It seems to me this Legislature has gone -- taken another step. Again, we don't want to see landlords with hardships. Certainly conditions for certain small landlords who have -- basically, live in small homes. They rent out two or three apartments within their dwellings. They are just surviving, too. Obviously, there are some cases of inequities, but I don't want to see a piece of legislation that tips the scales so far in favor of one group against another.

I guess what I'm suggesting - the law already requires or gives the right to a

landlord to appeal that decision if a judge does not order those rent deposits in escrows. Why now do we need additional protections beyond what is in law?

SENATOR LEIBELL: Senator, this is not a situation -- I don't want to mis characterize how you are stating it, but this is not a random event where a tenant does not pay rent. It is not an infrequent event. In fact, as Senator Johnson noted earlier, and I have noted previously, earlier in the discussion, there are literally tens of thousands of cases that are occurring every year, where tenants are failing to pay rent to the property owners. There is a failure for the landlord then to have many tens of millions of dollars in rent coming in. We are increasing dramatically the chance of an already marginal housing supply becoming a less acceptable housing supply, increasing the chance of abandonment.

This legislation is certainly not frivolous and was not brought here without a great deal of consideration as to how to try and

address this problem. The discretion you are talking about from the courts, the Housing Courts, we still have this problem here, and this is a problem that is not getting better. It is getting substantially worse; and in a different bill at a different time and possibly in a different forum, without question, you would probably be saying to me, "My colleague, what are we going to do to preserve the housing supply in New York City? It's deteriorating rapidly." That's why New York City gave us this memorandum, and that's why this bill is before the house today for consideration.

SENATOR ABATE: Would Senator Leibell continue to yield, Mr. President; would he continue to yield?

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

SENATOR LEIBELL: Yes, Mr. President.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR ABATE: I'm trying to

understand how this would occur, whether there be a hearing or whether there would be an automatic deposit.

I'm a tenant. It is now January, February. It's very cold. I've gone to my landlord along with other tenants asking the landlord to correct the heating system, and it's not done, so I, as a tenant, along with other tenants repair the system, and we're in court.

We haven't paid rent. We believe there should be rent abatement as a result of the monies that we put in to make these repairs. As a tenant, would I still be compelled to put future and past rent into escrow or would there be a hearing held first on my defense?

SENATOR LEIBELL: You would put your money into the court as this bill provides for, into the Housing Court. If, in fact, you had another proceeding which indicated that and there had been an adjudication that the rent should be mitigated, that would impact on this.

SENATOR ABATE: See, that is the very example upon which I think this legislation

is patently unfair to tenants, because in that situation, the landlord did not live up to their responsibilities. I as a tenant am forced to put money out for repairs so that that apartment could be habitable for me and my children or whoever else resides, yet then I'm forced to look elsewhere, to savings, to borrow monies, in order to remain in my apartment to put those monies in escrow, while I've put out of another pocket money for repairs.

That's a situation I go back to. We have to rely on the law of the land and our Judiciary to make sure they correct inequities. By making this mandatory across the board, we only produce a system that is unfair. It may be unfair to landlords or tenants, and I don't believe that's the proper way to go.

SENATOR LEIBELL: Senator, let me refer you to the bill again on page 2, line 9 through 13, which addresses the -- which is existing law, and it's not been changed.

SENATOR ABATE: But you would agree that the question I posed, if I as a

tenant put out of my own pocket some monies to make my apartment habitable, I would still in that instance have to put money into escrow while I litigate the second issue for rent abatement?

SENATOR LEIBELL: The court still has the authority to take notice over that.

SENATOR ABATE: But if you said the court did not have authority in the first instance, was not acting properly, why are they going to act properly in this instance?

SENATOR LEIBELL: As a practical -

SENATOR ABATE: You either believe in the court and the powers of the court and their ability to carry out their discretion in a fair and equitable manner or we, as legislators, why don't we go into every court in every county and make sure the Judiciary functions properly?

SENATOR LEIBELL: We do.

SENATOR ABATE: Aren't we over reaching?

SENATOR LEIBELL: I don't think so, otherwise I wouldn't be putting in the bill. In response to your question this afternoon, I still don't think we're in any way overreaching. But throughout the course of any session, we constantly come up with legislation aimed at improving the court system, making their lot easier as well as at the same time protecting parties that will appear before them, and I think that's what this attempts to accomplish. We may have a disagreement on what the end result will be but that certainly is our purpose.

SENATOR ABATE: On the bill, but very briefly.

ACTING PRESIDENT KUHL: Senator Abate on the bill.

SENATOR ABATE: I think my colleagues have said just about everything that I could say on this bill. I think if judges are not doing the right thing, I think there are other ways of making sure judges don't get reappointed or making sure they don't get

reelected in the first place, holding them to high standards so that a judge on the bench listens to the concerns of all parties, whether they be landlords and tenants and not have a predisposition.

That's what we should be doing through education, public opinion, the political process. I think it's wrong when we use our laws to tip the scales in the advantage of one group or another.

Housing Court is notorious for delays. This will add another layer of bureaucracy, hearings, further injustices. We need to do something meaningful to make Housing Court more efficient and effective to both landlords and tenants. I do not believe this legislation will move in that direction.

ACTING PRESIDENT FARLEY: Senator Larkin.

SENATOR LARKIN: Mr. President. Suspend the debate for now. We'd like to open the rolls for Senator Kuhl to vote.

ACTING PRESIDENT FARLEY: Senator

Kuhl? Secretary will call the roll for Senator Kuhl.

(The Secretary called the roll.)

ACTING PRESIDENT FARLEY: Senator Kuhl, how do you vote?

SENATOR KUHL: Aye.

ACTING PRESIDENT FARLEY: Close the roll.

Senator Hannon.

SENATOR HANNON: Mr. President, on the bill.

I found the course of this debate to be totally fascinating and, at best, misleading. I think that the objections to this meritorious bill are trying to focus on whether the -- the court system, the procedures in the court system, and any supposed or presumed defects in the procedures set forth in the bill.

I think, first of all, you have to look at the problem. Senator Leibell has referred to it, but I can't begin to address it more strongly, that what we're trying to address

is the quality of the housing stock in the city of New York, a housing stock that currently has to be viewed as under severe attack mainly for economic reasons.

Those economic reasons are that the state and the City government don't have the cash that they may have had during the '80s to keep it surviving, the challenges to maintain the quality of that stock are ever increasing. We have never resolved the question as to the ability of many of these units to maintain their service charges, the ability of many of these units and buildings to pay their taxes.

We know that the water charges are high and threatening the very viability of many of the buildings; and if the federal government has its way, those water charges to each of these buildings will increase.

We're faced with questions as to whether or not we will be able to afford any reduction or abatement in the lead quantities that are in some of the units in some of these buildings.

And what this bill attempts to address is the fact that many of the people who have lived in these units throughout the city have gamed the system, and they are gaming the system sometimes to the detriment of landlords but I would say, ultimately, to the detriment of their fellow tenants.

There are tens of thousands, almost 50,000, of these proceedings every year where people are skipping on their rents, and it does not happen to be for the concern of the landlord that I would support this bill. It is the concern of the system.

When we last tried to rectify the overwhelming problem of defaults, it was in the late '70s, and we said the landlords must be gaming the system, skipping out on the City in paying their taxes, so we reduced sharply the amount of time that you could get away with without paying your taxes before the City would step in. And what happened? The City was left with lots of property.

That property became the units

which then Mayor Koch rehabilitated and put back out in the hands of tenants. But we don't have the ability to take over the property again. The City doesn't have the ability because it's facing ever mounting deficits. Until we get ourselves out of this spiral, we're going to have to face the fact that HPD in the City is going to lose more and more money in terms of its budget.

So what are we to do? Are we to face the fact that we allow a few people to game the system and to destroy the whole system; or do we support Senator Leibell's bill, which is a reasonable obligation?

And do you know what? You would think from the arguments here today that this is some type of new imposition on the tenants, that this is some type of penalty on the tenants, that this is something that's coming out of the blue. Guess what? All it is is saying, "Pay what you agreed to pay." Nothing more. "And if you want to ask for an adjournment, you got it. But once you get past the second adjournment,

you have the obligation to pay what you agreed to pay."

Now, where is that money going to go? It's going to pay the water bill. It's going to pay the tax bill. It's going to pay the electric bill. It's going to pay steam heating if it's there. It's going to pay for any of the services. It's going to pay for the repairs. It's going to pay for the new boiler, that's all, before anybody gets to make a, quote, "profit" if anyone can ever make a profit these days out of the housing in New York City.

So who's getting hurt? It's the other people who are sharing that electricity, that water, that heat and, if it's not paid, they get hurt.

I can't see why the arguments would be made. All you are doing is protecting the people who are gaming the system. Each year, the amount of money that gets deprived from the housing system is over $100 million. We know that there are about 300,000 to 400,000 new cases of this type brought every year, and

maybe about 10 percent of them will involve the situation where the rent is skipped.

It's obvious from the comments of Senator Abate, citing the 1983 statute, that that suggested language hasn't worked upon this Housing Court. We need to be far more stringent. We need to be far more definite, and what we're doing is not giving advantage to one side or another.

What we're doing is -- I think is making sure a problem doesn't get worse. We're making sure that we, as a state, don't have to go in and bail out a system, and we're allowing the resources, perhaps, to be directed elsewhere to people who genuinely have housing problems - the homeless, the people who are maybe -- who have defects in terms of mental illness and we put back in the community the people who have lost their jobs. Remember, if you can't make your rent, you can apply to Social Services, and we will help you that way. So if you are truly needy, if you are truly poor, you can be assisted.

This statute says the people who are not truly needy can't game the system any more, and I fully support it.

Thank you.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the 30th day.

SENATOR PATERSON: Slow roll call.

ACTING PRESIDENT FARLEY: A slow roll call has been called for. Call the roll slowly. Ring the bell.

THE SECRETARY: Senator Abate.

SENATOR ABATE: No.

THE SECRETARY: Senator Babbush.

(There was no response.)

Senator Bruno.

(There was an affirmative indication.)

THE SECRETARY: Aye. Senator Connor.

SENATOR CONNOR: No.

THE SECRETARY: Senator Cook.
(There was no response.)
Senator DeFrancisco.
SENATOR DeFRANCISCO: Yes.
THE SECRETARY: Senator DiCarlo.
(There was no response.)
Senator Dollinger.
SENATOR DOLLINGER: No.
THE SECRETARY: Senator Espada.
SENATOR ESPADA: No.
THE SECRETARY: Senator Farley.
SENATOR FARLEY: Aye.
THE SECRETARY: Senator Galiber excused. Senator Gold.
SENATOR GOLD: No.
THE SECRETARY: Senator Gonzalez.
(There was no response.)
Senator Goodman.
SENATOR GOODMAN: No.
THE SECRETARY: Senator Hannon.
SENATOR HANNON: Yes.
THE SECRETARY: Senator Hoblock.

SENATOR HOBLOCK: Yes.
THE SECRETARY: Senator Hoffmann.
(There was no response.)
Senator Holland.
SENATOR HOLLAND: Yes.
THE SECRETARY: Senator Johnson.
SENATOR JOHNSON: Aye.
THE SECRETARY: Senator Jones.
SENATOR JOHNSON: Yes.
THE SECRETARY: Senator Kruger.
SENATOR KRUGER: No.
THE SECRETARY: Senator Kuhl voting in the affirmative earlier today.
Senator Lack.
(There was no response.)
Senator Larkin.
SENATOR LARKIN: Aye.
THE SECRETARY: Senator LaValle.
SENATOR LAVALLE: Aye.
THE SECRETARY: Senator Leibell.
SENATOR LEIBELL: Mr. President, to explain my vote.

ACTING PRESIDENT FARLEY: Senator Leibell to explain his vote.

SENATOR LEIBELL: We have had certainly a good extensive exchange on this legislation which is before the Senate today, and I am pleased that I have had an opportunity to discuss this with you and with my colleagues. I noted in my opening comments, and subsequently throughout the debate, the reason this is before the house is not to in any way pander to one group or the other. This is here today because it is believed -- and there is certainly a substantial body of evidence -- that there is a great problem that confronts New York City with respect to its housing supply and the failure of so many to pay the rents that are due on those units. That failure can impact heavily on the quality of housing that remains for everyone else.

I think the legislation that's been put forward attempts to address that problem. I believe that it is fair. I believe that if given the opportunity, it will go a long

way towards relieving the substantial log jam that we find in the Housing Court in New York City, and I certainly accept the offer that was proffered by my colleagues, and I can assure you that as chairman of Housing that I will be within the court system this summer and fall, to look at it, to hopefully work with the people who participate on a daily basis in that court system and to craft, in the future, legislation that will address some of the problems of that particular court.

I vote in the affirmative.

Thank you, Mr. President.

ACTING PRESIDENT FARLEY: Senator Leibell votes in the affirmative.

Continue the roll call.

THE SECRETARY: Senator Leichter.

SENATOR LEICHTER: No.

THE SECRETARY: Senator Levy.

SENATOR LEVY: Aye.

THE SECRETARY: Senator Leibell.

SENATOR LEIBELL: Aye.

THE SECRETARY: Senator Maltese.

(There was no response.)

Senator Marcellino.

SENATOR MARCELLINO: Aye.

THE SECRETARY: Senator Marchi.

SENATOR MARCHI: Aye.

THE SECRETARY: Senator Markowitz.

(There was no response.)

Senator Maziarz.

SENATOR MAZIARZ: Yes.

THE SECRETARY: Senator Mendez.

SENATOR MENDEZ: No.

THE SECRETARY: Senator Montgomery.

SENATOR MONTGOMERY: No.

THE SECRETARY: Senator Nanula.

SENATOR NANULA: No.

THE SECRETARY: Senator Nozzolio.

SENATOR NOZZOLIO: Aye.

THE SECRETARY: Senator Onorato.

SENATOR ONORATO: No.

THE SECRETARY: Senator

Oppenheimer.

(There was no response.)

Senator Padavan.

(There was no response.)

Senator Paterson.

SENATOR PATERSON: No.

THE SECRETARY: Senator Present.

SENATOR PRESENT: Aye.

THE SECRETARY: Senator Rath.

SENATOR RATH: Aye.

THE SECRETARY: Senator Saland.

SENATOR SALAND: Aye.

THE SECRETARY: Senator Santiago.

SENATOR SANTIAGO: No.

THE SECRETARY: Senator Sears.

SENATOR SEARS: Yes.

THE SECRETARY: Senator Seward.

SENATOR SEWARD: Yes.

THE SECRETARY: Senator Skelos.

SENATOR SKELOS: Yes.

THE SECRETARY: Senator Smith.

(There was no response.)

Senator Solomon.

SENATOR SOLOMON: No.

THE SECRETARY: Senator Spano.

(There was no response.)

Senator Stachowski.

SENATOR STACHOWSKI: No.

THE SECRETARY: Senator Stafford.

SENATOR STAFFORD: Aye.

THE SECRETARY: Senator Stavisky.

(There was no response.)

Senator Trunzo voting in the affirmative earlier today.

THE SECRETARY: Senator Tully.

SENATOR TULLY: Aye.

THE SECRETARY: Senator Velella.

SENATOR VELELLA: No.

THE SECRETARY: Senator Volker.

SENATOR VOLKER: Yes.

THE SECRETARY: Senator Waldon.

(There was no response.)

Senator Wright.

SENATOR WRIGHT: Aye.
ACTING PRESIDENT FARLEY: Absentees.
THE SECRETARY: Senator Babbush.
(There was no response.)
Senator Cook.
SENATOR COOK: Yes.
THE SECRETARY: Senator DiCarlo.
SENATOR DiCARLO: Aye.
THE SECRETARY: Senator Gonzalez.
SENATOR GONZALEZ: No.
THE SECRETARY: Senator Hoffmann.
(There was no response.)
Senator Lack.
SENATOR LACK: Aye.
THE SECRETARY: Senator Maltese.
SENATOR MALTESE: Aye.
THE SECRETARY: Senator Markowitz.
(There was no response.)
Senator Oppenheimer.

SENATOR OPPENHEIMER: No.
THE SECRETARY: Senator Padavan.
(There was no response.)
Senator Smith.
SENATOR SMITH: No.
THE SECRETARY: Senator Spano.
SENATOR SPANO: No.
THE SECRETARY: Senator Stavisky.
(There was no response.)
Senator Waldon.
(There was no response.)
ACTING PRESIDENT FARLEY: Results.
THE SECRETARY: Ayes 33. Nays 21.
ACTING PRESIDENT FARLEY: The bill is passed.
Regular order, Senator Skelos?
SENATOR SKELOS: Mr. President. At this time, if we could return to reports of standing committees. I believe there is a report of the Rules Committee.
And the reason why we're doing

this before finishing this calendar so members can be aware of what bills will be coming up on the supplemental calendar, urge their staff to bring the files over so that we can proceed expeditiously with the supplemental calendar.

So if we can have the reading of the Rules Committee.

ACTING PRESIDENT FARLEY: Secretary will read the report of the Rules Committee.

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

Senate Print 1397, by Senator Spano, an act to amend the State Finance Law, in relation to payment of emergency financial aid;

1981, by Senator Connor, an act authorizing the city of New York to reconvey its interest in certain real property;

1982, by Senator DiCarlo, an act to amend the Executive law, in relation to testing of certain applicants;

2138, by Senator Nozzolio, an act

to amend the Social Services Law and the Education Law, in relation to authorizing the fingerprinting of prospective employees;

2226, by Senator Velella, an act to amend the Insurance Law, in relation to minimum capital investments;

2400, by Senator Hoffmann, an act to amend the Judiciary Law, in relation to appointment of grand jury stenographers;

2654A, by Senator Goodman, an act to amend the Multiple Dwelling Law and the Administrative Code of the City of New York, in relation to size of cooking spaces;

2798, by Senator Velella, an act to amend the State Finance Law, the Tax Law and the Administrative Code of the City of New York;

3222A, by Senator Cook, an act to amend Chapter 565 of the Laws of 1990, amending the Executive Law;

3855, by Senator Libous, an act to amend the Mental Hygiene Law and the Executive Law, in relation to members of the Commission on Quality of Care;

3856, by Senator Libous, an act to amend the Mental Hygiene Law, in relation to receivership of residential facilities;

4008, by Senator Saland, an act to amend the General Business Law, in relation to making unlawfully installing two-way mirrors and other viewing devices a violation;

4417A, by Senator Velella, an act to amend the Insurance Law, in relation to a nonemployee chairman of a health service;

4450A, by Senator Velella, an act to amend the Insurance Law, in relation to permitting the use of separate account funds;

4903A, by Senator Sears, an act to amend the General Business Law, in relation to itinerant vendors;

5027A, by Senator Tully, an act to amend Chapter 237 of the Laws of 1993, amending the Environmental Conservation Law;

5141, by Senator Maltese, an act to amend the Administrative Code of the City of New York, in relation to providing tax credits;

5228A, by Senator Wright, an act

to amend Chapter 972 of the Laws of 1972, relating to creating a Temporary State Commission to study Tug Hill;

5276A, by Senator Rath, an act to amend the Executive Law and others, in relation to extending the Office of Business Permits and Regulatory Assistance;

5300, by Senator DiCarlo, an act to amend the Tax Law and the Administrative Code of the City of New York, in relation to repealing the sales and use taxes imposed by such city;

5331, by Senator Farley, an act to amend the Banking Law, in relation to the licensing of money transmitters;

5332, by Senator Farley, an act to amend the Banking Law, in relation to banking records; and

5385, by Senator Maltese, an act in relation to the election of delegates to a national party convention.

All bills ordered directly for third reading.

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

Senator Skelos.

SENATOR SKELOS: Move to accept the report of the Rules Committee.

ACTING PRESIDENT FARLEY: The motion has been made to accept the report of the Rules Committee.

All in favor, say aye.

(Response of "Aye.")

Those opposed, nay.

(There was no response.)

The Rules report is accepted. All bills reported directly to third reading.

SENATOR SKELOS: Will you please recognize Senator Connor, please.

ACTING PRESIDENT FARLEY: Senator Connor.

SENATOR CONNOR: Thank you, Mr. President.

On behalf of Senator Abate and myself, I would just like to ask all of my colleagues to note the presence of and welcome

to our chamber the representatives of the Chinese Language Journalist Association from New York City, who have joined us here today, and we encourage them to observe and report on our activities and perhaps go back to your publications of which there are a number in New York and encourage perhaps they send, in the future, correspondents to Albany on a regular basis to cover our proceedings, and the China Press is also represented here.

ACTING PRESIDENT FARLEY: The Senate is pleased to welcome you here to our chamber, the most beautiful room in America, according to the Smithsonian, and we're delighted to have you journalists here. Come back and see us again.

SENATOR WALDON: Mr. President.

ACTING PRESIDENT FARLEY: Senator Waldon.

SENATOR WALDON: Thank you, Mr. President. I was not here when calendar -- I believe it was 994 was voted upon. I respectfully request unanimous consent to be

recorded in the negative.

ACTING PRESIDENT FARLEY: Senator, the record will reflect that had you been here, you would have voted in the negative.

SENATOR WALDON: I appreciate that, Mr. President.

ACTING PRESIDENT FARLEY: Senator Markowitz.

SENATOR MARKOWITZ: Thank you, Mr. President.

I would like to first talk to our Chinese friends. Niho Ma.

I would like to be recorded in the negative on Calendar Number 91, 186, and if I could have voted during that slow roll call - and I know, Senator Leibell, I heard very briefly some of that stimulating debate -- on 994, I would have voted against that bill.

ACTING PRESIDENT FARLEY: Senator Markowitz, they were both slow roll calls, so you cannot be recorded on 91, but the record will reflect that had you been in the chamber you would have voted no. And 186, that's okay.

That was not a slow roll call, so we'll take care of that.

SENATOR SKELOS: Would you recognize Senator Onorato.

ACTING PRESIDENT FARLEY: Senator Onorato now. There are a lot of people standing here.

SENATOR SKELOS: Senator Onorato. Would you recognize Senator Onorato.

ACTING PRESIDENT FARLEY: Senator Onorato.

SENATOR ONORATO: I would like unanimous consent to be recorded in the negative on Calendar 186.

ACTING PRESIDENT FARLEY: Without objection.

Senator Santiago.

SENATOR SANTIAGO: Ask unanimous consent to be recorded in the negative on Calendar Number 186.

ACTING PRESIDENT FARLEY: Without objection, Calendar 186, Senator Santiago will be recorded in the negative.

SENATOR SANTIAGO: And also 180 had I been here I would have voted in the negative here.

ACTING PRESIDENT FARLEY: The record will so show.

Senator Montgomery.

SENATOR MONTGOMERY: Mr. President, I ask unanimous consent to be recorded in the negative on Calendar Number 186.

ACTING PRESIDENT FARLEY: 196?

SENATOR MONTGOMERY: 186. And had I been in the chamber when the vote was taken on Calendar 91, I would have voted no.

ACTING PRESIDENT FARLEY: The record will so reflect that you would have been in the negative on Calendar 91 and you will be recorded in the negative on 186.

Senator Saland.

SENATOR SALAND: Mr. President, if I could comment on Senator Markowitz' description of Senator Skelos' debate, I thought

it was not only scintillating but captivating for all of us. But I would like to to remove the stars on Calendar 954 and 959, both stars removed.

ACTING PRESIDENT FARLEY: Without objection, stars are removed also.

Senator Gold.

SENATOR GOLD: Mr. President, very good to see you.

ACTING PRESIDENT FARLEY: Nice to see you.

SENATOR GOLD: Could the record reflect that had I been in the chamber when Calendar Number 91 was called, in spite of my great respect for Senator Holland, I would have voted in the negative.

ACTING PRESIDENT FARLEY: The record will so reflect.

Senator Skelos.

SENATOR SKELOS: Yes. Is there any housekeeping?

ACTING PRESIDENT FARLEY: I think there -- Senator Libous has significant

housekeeping.

SENATOR LIBOUS: Thank you, Mr. President.

On behalf of Senator Velella, please place a sponsor's star on Calendar Number 1222.

ACTING PRESIDENT FARLEY: The bill is starred.

SENATOR LIBOUS: Mr. President, on behalf of Senator Cook, on page 7, I offer the following amendments to Calendar Number 247, Senate Print Number 2271A, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT FARLEY: Without objection.

SENATOR LIBOUS: On behalf of Senator Levy, Mr. President, I offer the following amendments to Calendar Number 876, Senate Print Number 4986A, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT FARLEY: Without

objection.

SENATOR LIBOUS: On behalf of Senator Marcellino, on page 33, I offer the following amendments to Calendar Number 957, Senate Print 4951A, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT FARLEY: Without objection.

SENATOR LIBOUS: On behalf of Senator Farley, on page 37, I offer the following amendments to Calendar Number 1141, Senate Print 5120, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT FARLEY: Without objection.

SENATOR LIBOUS: On behalf of Senate Tully, I offer the following amendments to Calendar Number 925, Senate Print 3263, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT FARLEY: Without objection again.

SENATOR LIBOUS: Thank you, Mr.

President.

On behalf of Senator LaValle, I wish to call up his bill, Senate Print Number 2736, recalled from the Assembly which is now at the desk.

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

THE SECRETARY: Calendar Number 765, Senate Print Number 2736, by Senator LaValle, in relation to information regarding the tests to determine the presence of Thelassemia Trait.

ACTING PRESIDENT FARLEY: Senator Libous.

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

ACTING PRESIDENT FARLEY: Call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT FARLEY: Bill is

before the house. Senator Libous.

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

ACTING PRESIDENT FARLEY: Amendments received. Bill will retain its place. Senator Libous.

SENATOR LIBOUS: On behalf of Senator Lack, I wish to call up his bill, Senate Print Number 1465A, recalled from the Assembly which is now at the desk.

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

THE SECRETARY: Calendar Number 543, by Senator Lack, Senate Print 1465A, an act in relation to the real property tax assessed by the town of Smithtown.

ACTING PRESIDENT FARLEY: Senator Libous.

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

ACTING PRESIDENT FARLEY: Call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT FARLEY: The bill is before the house. Senator Libous.

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

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

SENATOR LIBOUS: Mr. President, on behalf of Senator Volker, I wish to call up his bill, Print Number 2767, recalled from the Assembly which is now at the desk.

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

THE SECRETARY: Calendar Number 554, by Senator Volker, Senate Print 2767, an act to amend Chapter 207 of the Laws of 1994.

ACTING PRESIDENT FARLEY: Senator Libous.

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

bill was passed.

ACTING PRESIDENT FARLEY: Call the roll on reconsideration.

(The Secretary called the roll on reconsideration. )

THE SECRETARY: Ayes 56.

ACTING PRESIDENT FARLEY: Bill is before the house. Senator Libous.

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

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

SENATOR LIBOUS: Mr. President, on behalf of Senator Goodman, I wish to call up his bill, Print Number 3498, recalled from the Assembly which is now at the desk.

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

THE SECRETARY: Calendar Number 859, by Senator Goodman, Senate Print 3498, an act to amend the Transportation Law, in relation to estimates of transportation charges.

ACTING PRESIDENT FARLEY: Senator Libous.

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

ACTING PRESIDENT FARLEY: Call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT FARLEY: The bill is before the house. Senator Libous.

SENATOR LIBOUS: I offer up the following amendments.

ACTING PRESIDENT FARLEY: Amendments are received and the bill will retain its place. Senator Libous.

SENATOR LIBOUS: Mr. President, on behalf of Senator Saland, I wish to call up his bill, Print Number 3918, recalled from the Assembly which is now at the desk.

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

THE SECRETARY: Calendar number 607, by Senator Saland, Senate Print 3918, an act to amend the Public Housing Law, in relation to creating the town of Patterson Housing Authority.

ACTING PRESIDENT FARLEY: Senator Libous.

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

ACTING PRESIDENT FARLEY: Call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 56.

ACTING PRESIDENT FARLEY: The bill is before the house. Senator Libous.

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

ACTING PRESIDENT FARLEY: Amendments will be received; bill will retain its place. Senator Libous.

SENATOR LIBOUS: The last motion.

ACTING PRESIDENT FARLEY: On the last motion.

SENATOR LIBOUS: On the last motion, on behalf of Senator Levy, I wish to call up his bill, Senator Print Number 339, recalled from the Assembly which is now at the desk.

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

THE SECRETARY: Calendar number 566, by Senator Levy, Senate Print 339, an act to amend the Transportation Law, in relation to expanding the definition of "school".

ACTING PRESIDENT FARLEY: Senator Libous.

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

ACTING PRESIDENT FARLEY: Call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 56.

SENATOR LIBOUS: I offer up the following amendments.

ACTING PRESIDENT FARLEY: Amendments are received and Senator Levy's bill will retain its place on the Third Reading Calendar.

Thank you, Senator Libous. That was a fine job.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could continue regular order.

SENATOR SEWARD: Yes. Mr. President.

ACTING PRESIDENT FARLEY: Senator Seward.

SENATOR SEWARD: If I could ask unanimous consent to be recorded in the negative on Calendar Number 583 which passed earlier today.

ACTING PRESIDENT FARLEY: 583, without objection, you will be in the negative.

SENATOR SEWARD: Thank you.

Senator Skelos, regular order,

sir?

SENATOR SKELOS: Yes, regular order, please.

ACTING PRESIDENT FARLEY: Regular order.

THE SECRETARY: Calendar Number 1058, by Senator Libous, Senate Print 2959, an act to amend the General Municipal Law, in relation to establishing the town of Norwich Industrial Development Agency.

ACTING PRESIDENT FARLEY: There's a home rule message here at the desk. You can read the last section.

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

SENATOR PATERSON: Explanation.

ACTING PRESIDENT FARLEY: Senator Paterson, you want an explanation?

Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

What this does is renew basically what they already have in the city of Norwich.

Basically the establishment of -- they've already had the Norwich Industrial Development Agency and apparently under law, Mr. President, if you go for a period of time and do not bond, which they did not, you have to re-establish yourself, and this bill just re-establishes that agency.

ACTING PRESIDENT FARLEY: Senator Paterson.

SENATOR PATERSON: Mr. President, I'm just wondering if the sponsor would yield for a question.

ACTING PRESIDENT FARLEY: Would you yield, Senator Libous?

SENATOR LIBOUS: Yes, I would.

SENATOR PATERSON: Thank you. I just wonder, if the IDA has been so inactive up to this point, can you explain to us why we're going to reinstitute it at this time?

SENATOR LIBOUS: Mr. President, I can, and that would be a very good question. I would probably if I were on the other side of the aisle, Senator Paterson, ask the same

question.

Basically the city of Norwich and the surrounding area has come through some very difficult times in the past couple of years and prior to this they did not use the IDA for bonding for additional projects. Right now, we have several projects that are on the horizon in which we're going to be using the IDA for bonding, and we need to re-establish it.

SENATOR PATERSON: O.K. Thank you.

SENATOR STACHOWSKI: Mr. President.

ACTING PRESIDENT FARLEY: Senator Larkin? No, I'm sorry. Senator Stachowski.

SENATOR STACHOWSKI: If Senator Libous will continue to yield.

ACTING PRESIDENT FARLEY: I'm sure he will.

SENATOR LIBOUS: Yes, Mr. President.

SENATOR STACHOWSKI: Does the county that the town is in, do they have an IDA?

SENATOR LIBOUS: No, sir, I don't believe they do.

SENATOR STACHOWSKI: O.K. One more question. And this would be the only IDA in that whole area, that currently there isn't one?

SENATOR LIBOUS: For the -- for the town of Norwich, that's correct.

SENATOR STACHOWSKI: O.K. Thank you.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll. )

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

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1107, by Senator Tully, Senate Print 4673A.

SENATOR PATERSON: Explanation.

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

SENATOR TULLY: Thank you, Mr. President.

This legislation seeks to exempt certain bakeries from the state air emission regulations. This bill would exempt bakeries which derive 50 percent or more of their revenues from on-site retail sales or which use only batch ovens in their baking process.

A similar bill was introduced in March of this year by Assemblyman Brodsky, and the DEC objected to it because it did not contain a definition of batch ovens. Since that time, there has been three-way agreement on the bill. It is now supported by the DEC and the New York State Food Merchants Association.

ACTING PRESIDENT FARLEY: Senator Paterson.

SENATOR PATERSON: Mr. President, if Senator Tully would yield?

ACTING PRESIDENT FARLEY: Would

you yield, Senator Tully?

SENATOR TULLY: Yes, Mr. President.

SENATOR PATERSON: Senator Tully, this is really a different bill than we saw last year. By the agreement that's now reached, what we have is a situation that applies only to the smaller bakeries in the regulated community, and they would be perceived not to have any real environmental effect or that they would generate any pollution that would affect the atmosphere as opposed to perhaps what the concern may have been on the part of advocates for the environment last year, is that correct?

SENATOR TULLY: That's correct, Mr. President.

SENATOR PATERSON: Thank you, Mr. President.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call

the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 56.

ACTING PRESIDENT FARLEY: The bill is passed.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT FARLEY: Senator Skelos.

SENATOR SKELOS: On behalf of Senator Levy, I'd like to move to reconsider the vote by which Calendar Number 553, Senate 4146, passed the house.

ACTING PRESIDENT FARLEY: Secretary will call the roll on reconsideration of Senator Levy's bill.

THE SECRETARY: Calendar Number 553, by Senator Levy, Senate Print 4146, an act to amend the Transportation Law.

ACTING PRESIDENT FARLEY: Call the roll on reconsideration.

(The Secretary called the roll on reconsideration. )

THE SECRETARY: Ayes 56.

SENATOR SKELOS: Lay the bill aside for amendment.

ACTING PRESIDENT FARLEY: Lay the bill aside for an amendment.

SENATOR SKELOS: Continue with regular order.

ACTING PRESIDENT FARLEY: Regular order.

THE SECRETARY: Calendar 1197, by Senator Velella, Senate Print 3663B, an act to amend the Insurance Law, in relation to provisions regarding motor vehicle insurance rates.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT FARLEY: Explanation. Senator Velella.

SENATOR VELELLA: Yes, Senator. This would extend to motor vehicle insurance for individuals or non-commercial motor vehicle insurance a flex rating system that we now have in effect for commercial insurers. It allows companies to adopt a file and use a procedure which this Legislature had enacted during the

liability insurance crisis and which has worked to stabilize the rates in the commercial area and the liability area, and we believe and the Department believes that it would be a good addition to the Insurance Law of this state if we could have flex rating in the private automotive insurance business.

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT FARLEY: Senator Paterson.

SENATOR PATERSON: Well, Mr. President, the flex rating system would allow the insurance to increase, as I see it, Senator Velella, so my question to you -- if you would yield.

SENATOR VELELLA: Do I yield? Yes.

SENATOR PATERSON: -- is how does the consumer benefit by the adoption of a flex rating system?

SENATOR VELELLA: Well, what it will do is, it will make insurance more

available during crisis periods because it allows for the flexibility of market rates and it also requires that the companies and, Senator, I don't know the last time I looked at an insurance bill and I've been driving and owning a car for a number of years. I'm sure you have owned a car or had some insurance or know someone who does, but certainly I haven't seen any reductions in insurance premiums for car owners in a long, long time. I can't remember any, so they have been going up at about the rate of anywhere from three to eight percent per year depending on different variety of circumstances, so this will now allow rather than a -- rather than the system where we have -- where there is a pre-approval, this will be a file and use which works in the marketplace to reflect trends that change and fluctuate.

It will also allow the companies to reduce the amount of paperwork that they have to do in the system that they have now and allow the Insurance Department to reduce their man power on these pre-approval processes which

require a lot of time and will result in a savings for the state, a savings to the insurance companies. I doubt very seriously if the companies will pass that savings on to the consumer because you and I both know they promise they will; however, we hope that in monitoring it, they will at least reduce the increases that are inevitable to come down the road.

SENATOR PATERSON: Mr. President, this is kind of a strange circumstance because I feel that Senator Velella is actually making the argument that I wanted to make to him, and I guess -

SENATOR VELELLA: Well, then we agree, Senator. Let's sit down.

SENATOR PATERSON: Let's sit down and lay this bill aside.

ACTING PRESIDENT FARLEY: Senator Paterson.

SENATOR PATERSON: That's exactly what I'm asking, Senator. In other words, now that we've -- it would seem that cutting down on

the additional paperwork and allowing the insurance company to work outside the system would actually be of benefit to the consumer. What I'm afraid of, and maybe this is what I need for you to clean up for me and then maybe we can sit down, is why the insurance company now, without pre-approval can just pass the rate increases along through the flex system and not really have to waste any time, in a sense justifying the rate increase.

I don't -- I don't see how this is actually going to help. It will benefit the insurance company and it will clear up a lot of red tape, I would say, but inevitably, wouldn't this accomplish the goal of making the increases occur faster?

SENATOR VELELLA: Well, Senator, the best example I could give you trying to respond to that problem as you outline it is a problem that this Legislature had to face and probably will have to face again probably in the two-year future, is the problem we had with Empire Blue Cross/Blue Shield.

If you know -- if you remember the increases that they had been applying for were delayed and delayed by the Department and further delayed, and then this Legislature had to take a very firm step and pass some legislation which resulted in a piling up of all those increases hitting the consumer in one solid shot that really hurt a lot of people, but there was no alternative.

This flex rating system which the Legislature came up with, I don't know if you were here, but it was before I was here, I believe Senator Bruno was the chairman of the Insurance Committee, was a tool that was used to stabilize rates in the commercial area and in the commercial liability area, and it has worked very, very well.

These companies are accountable within a band for the maximum amount of increase that they can make which will be determined by the Superintendent, so in essence it's not just a free hand to say you can raise your premiums whatever you want. A band is established where,

if they wish to go beyond that band and increase the premiums, that they would be charging the public more than what the Superintendent says is fair and reasonable, based upon his analysis of the insurance market, then they would have to go into a prior approval system where the Superintendent would hold the formalized procedures and hold, I believe, a public hearing in most cases for the people to have this increase -- for the companies to have this increase if they violate that band.

That band at best would be somewhere between that two and eight percent that we talked about before.

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT FARLEY: Senator Paterson.

SENATOR PATERSON: Senator Velella, you're right on the Blue Cross/Blue Shield issue. That happened before I came here. I actually came here one Senator before you came here. I came directly before you,

which was three months before you and the -- but what I thought happened in that situation, Senator, is that we went from the situation where we had no prior approval to the flex system.

Here, as I see it, we're going in the reverse. We're going in a situation where we have a strict regulation and prior approval to the flex system which is a reduced sense, am I not correct, in that assumption?

SENATOR VELELLA: You're correct in that, and one of the -- one of the things that we're trying to address here is to allow the companies to reflect the market conditions, not to try to overly anticipate and go in for an increase to be approved for greater than - yeah, when you have somebody saying what you can give in terms of an increase, the tendency is to go in for the most you can get and that's what I believe some companies have been doing in order to insure themselves against the possibility of low-balling the estimate of what they would need to make their portfolio profitable.

With the flex rating system, they're given the opportunity to amend their rates, to go in and use them as need be and the competitive marketplace does put a barometer on it. You can't just go in and price yourself out of the market, so in most cases that fair competition out there, the price of a premium of an insurance policy will be also a monitoring factor in the marketplace.

SENATOR PATERSON: Thank you very much, Senator.

Mr. President, on the bill.

ACTING PRESIDENT FARLEY: On the bill, Senator Paterson.

SENATOR PATERSON: I think there is perhaps agreement. I think Senator Velella makes a lot of sense. I guess I would just say that there is between he and myself, an individual interpretation on what the insurance company's assessment will be, rather a test of faith in the actual insurance companies, but I appreciate the fact that he did understand that this system that we would be creating should

actually inure to the benefit of the consumer, but I don't think it will, and I'm happy to see that Senator Velella seems to recognize that as well.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 8. This act shall take effect June 30th.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 56.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1220, by Senator Seward, Senate Print 4649, an act to amend the Alcoholic Beverage Control Law, in relation to authorizing liquor stores to operate on Christmas Eve and New Year's Eve.

SENATOR PATERSON: Explanation.

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

SENATOR SEWARD: Yes, Mr. President.

This bill before us which is sponsored in the other house by member of the Assembly Eileen Dugan and amends the ABC Law to authorize liquor stores to conduct business on December 24th and December twenty... excuse me, December 31st, when those dates fall on a Sunday, and the bill specifically only authorizes the hours of between 12:00 and 6:00 p.m.

Now, currently the law prohibits such stores from operating on Sundays, and the calendar indicates that every seven years, of course, Christmas Eve and New Year's Eve fall on Sunday, including this year, 1995, and these days are traditionally the two busiest days for these retailers as customers shop for last minute Christmas gifts or stop by on their way to a family dinner.

This bill is not any sweeping change in the existing law. It involves six hours of operation of these stores every seven

years and seeks to do this for the convenience of the retailers and the customers alike.

ACTING PRESIDENT FARLEY: Senator Solomon.

SENATOR SOLOMON: Yes, Mr. President. Will Senator Seward yield?

ACTING PRESIDENT FARLEY: I think he will. Senator Seward?

SENATOR SEWARD: Yes.

SENATOR SOLOMON: I'm trying to phrase this as delicately as I can. Senator, in terms of Christmas Eve, why would there be an exception on Sunday in terms of Christmas Eve? Can you tell me why, what significance that has?

SENATOR SEWARD: I'm not sure I understand your question.

SENATOR SOLOMON: Well, Senator, you're -- let me ask you another question. Senator, why are liquor stores currently closed on Sunday?

SENATOR SEWARD: That was done long before I came on the scene, that they are a relic, I believe, of some of the "blue laws"

which, of course, were very prevalent in this state for many years. This -- this is covered specifically in the -- of course, in the ABC Law.

SENATOR SOLOMON: Senator Seward yield, please?

SENATOR SEWARD: Certainly.

ACTING PRESIDENT FARLEY: Senator Seward.

SENATOR SOLOMON: Senator, there's certain parts of my district in which liquor stores are closed every Saturday, and would you have an objection if those liquor stores that were closed on Saturday would be open on Sunday?

SENATOR SEWARD: This bill doesn't address that particular issue. I -- if you would care to introduce such a bill, I obviously would take a look at it. I haven't really thought about that. I'd want to take a look at the particular bill.

SENATOR SOLOMON: O.K.

SENATOR SEWARD: In any event, I

would just further point out, Senator, that this doesn't require a store to remain open or to close. It just, of course, authorizes, gives the opportunity for such a store to be open on those two days which roll around every seven years.

SENATOR SOLOMON: Senator yield?

ACTING PRESIDENT FARLEY: Senator Seward?

SENATOR SOLOMON: Senator, those will be Sundays, though, correct? Those are Sundays?

SENATOR SEWARD: That is correct.

SENATOR SOLOMON: On the bill, Mr. President.

ACTING PRESIDENT FARLEY: On the bill, Senator Solomon.

SENATOR SOLOMON: Senator, I would be inclined to vote for this bill but what concerns me is a problem that's been brought up in my Senate District for a number of years, particularly dealing with the Orthodox Jewish

community which observes Saturday as its day of rest, and what concerns me is that we have never been able to get our liquor stores to be allowed to be open on Sundays, even though they are closed on Saturdays, and that causes particular problems on certain holidays when days of observance fall as a result of the calendar where wine is required to be used in certain ceremonies in the Jewish holidays where, in fact, the stores would be closed on Saturday and as a result of the law that liquor stores are closed on Sunday and the holiday starts on Sunday night, that people are put at a distinct disadvantage as are the owners of the liquor stores, and what also concerns me is, in fact, that the "blue laws" originated out of - historically out of a religious aspect of this country as you were talking about Christmas, because in parts of my Senate District, December 25th is December 25th and there is no significance attached to that day, and in parts of my district January 1st is January 1st, and there is no significance attached to that day,

because both holidays have a religious connotation, and I respect that, and, in fact, this bill will aid those liquor stores in my Senate District that are indeed closed on Saturday and they will now be able to be open for two days on Sunday, but I believe it should be stated for the record here that there are no objections to liquor stores being opened on Sundays. In fact, I believe that's what this bill does, and I think this Legislature should be cognizant of the fact that a large growing part of our state, because the Orthodox commun ity is one of the fastest growing populations within the state of New York, does have a particular problem with the ABC Laws as they currently exist, because those laws discriminate against people that follow that faith and/or people that own liquor stores.

I'd have no problem requiring a liquor store to be closed either Saturday or Sunday or one day of the week, and I just hope the other members of this body realize that, in fact, this bill has religious connotations that

affect a large part of this state but does not affect another part of the community within this state which has a severe problem with them not being allowed to open on Sundays currently.

In fact, I'd like to suggest to you maybe we should amend this bill to allow liquor stores to be open on Sundays as long as they are closed on a Saturday in terms of religious observance.

Thank you.

ACTING PRESIDENT FARLEY: Senator Jones.

SENATOR JONES: On the bill. Usually most pieces of legislation that come before us, we have memos in support and memos in opposition. Well, I don't see any on this, so I'm going to take this one as just a "feel good" vote and that's how I'm going to vote.

Ladies and gentlemen, we spend millions of dollars every year on treating alcohol abuse. We spend another millions educating our youth on the dangers of alcohol, to say nothing of let's talk about the money we

spend in our courts on prosecuting DWIs or the horrors that are left in this country over people injured by drunken driving, and we stand here today worrying that people aren't going to be able to stock up enough alcohol to get through two holidays of the year, and heaven forbid they got to shop a day early.

I think it's the silliest thing that I've heard since I've been here. I feel very good about voting no.

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT FARLEY: Senator Paterson.

SENATOR PATERSON: Mr. President, would Senator Wright yield for a question?

ACTING PRESIDENT FARLEY: Senator Wright or Senator Seward?

SENATOR PATERSON: I'm sorry. Senator Seward.

ACTING PRESIDENT FARLEY: Senator Seward I thought. I'm sure he will.

SENATOR SEWARD: Yes, Mr.

President.

SENATOR PATERSON: My apologies, Senator Seward.

Many times in this Legislature I think many of the questions are a little technical and a little nebulous, and after this question, I'm hoping, Senator Seward, that you will nominate me for the all-time nebulous question award or at least the one for 1995.

Senator Seward, do you know the last time that this bill would have been applied when it -- if it had already been in existence?

SENATOR SEWARD: It would have been six years ago if my -

SENATOR PATERSON: So really this doesn't really happen every seven years; it actually happens every six years because of Leap Year.

SENATOR SEWARD: I stand corrected.

SENATOR PATERSON: In addition to that, Senator Seward, I want you to be relieved to know that the next time that the Sunday

before Christmas and the Sunday before New Year's will occur will be in the year 2000 because there are two Leap Years that will intervene between now and that time.

ACTING PRESIDENT FARLEY: Senator Seward.

SENATOR SEWARD: I -- on the question of Leap Years, I'll gladly defer to Senator Paterson.

SENATOR PATERSON: If Senator Seward is satisfied with my recitation of the calendar, I consider this to be the greatest waste of time that we have indulged ourselves in during this session but it only took one minute.

ACTING PRESIDENT FARLEY: Senator Dollinger.

SENATOR DOLLINGER: One question on the bill for Senator Seward, if he'd yield.

ACTING PRESIDENT FARLEY: I think he will.

SENATOR DOLLINGER: The Memorial Day holiday is always on a Monday, the Labor Day

Holiday is always on a Monday, the Columbus Day holiday is usually on a Monday, and the 4th of July is often a Monday. Do the retailers who have liquor stores show that they somehow lose sales because they're closed the day before these national holidays which have no religious significance?

SENATOR SEWARD: Well, Mr. President, I -- I have no indication in terms of the other holidays. These two particular holidays have been brought to my attention as ones that -- the day prior to them are the busiest days and so that's -- that's why this bill addresses those particular dates. If you -- if the retailers in your district or others feel that there are additional days, where there is a similar problem, then feel free to introduce a bill.

SENATOR DOLLINGER: I'm probably going to join my colleague, Senator Jones, in voting against this measure. I agree with her, I mean on our national holidays we seem to have plenty of alcohol in circulation even though

package stores, liquor stores, are closed the day before a national holiday.

I don't know why we have to make them more available on two religious holidays. I'm not so sure that we should be encouraging people to drink on religious holidays, but giving them a disincentive to drink on their national holidays. I don't understand how that works on a matter of state policy. I'll be voting in the negative. Let's keep the stores closed on Sunday.

ACTING PRESIDENT FARLEY: Senator Marchi.

SENATOR MARCHI: Mr. President, I think that we're really straining at gnats here. Both Christmas and New Year's are days of observance to tens of millions of people across the nation, and alcoholic beverages are not necessarily evil. I have to preface this with my profession of the fact that, even though I don't drink, I'm not a prohibitionist, and I don't -- I don't have too much sympathy for prohibitionism as such.

The founder of my religion, Mr. President, performed his first miracle at the marriage feast of Cana, so I don't know whether they dispensed Coca-Cola at the event or whether they dispensed wine. Historians would suggest that the miracle that occurred was the avail ability of wine for those special circumstances.

So I -- I think that the Senator's bill makes eminent sense. It's in tune with our mores and our practices, our familial support in millions and millions of homes. I see no -- nothing wrong. If there are circumstances, as one of the Senators pointed out, maybe Senator Solomon, perhaps that are analogous in their circumstances, I believe the same accommodation should be met, and I would have no problem co-sponsoring with someone for the periodic, not -- this is not a usual event. I mean it doesn't occur usually. It's just once in a while to further a practice that follows existing mores and usage.

Now, I certainly would be delighted to support anyone who has -- who has

analogous circumstances in other settings and other spiritual backgrounds for festive occasions and make the same arrangements.

It's a very fine bill. I -- he's got my complete support on this one.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll. )

ACTING PRESIDENT FARLEY: Senator Montgomery to explain her vote.

SENATOR MONTGOMERY: Yes, Mr. President, just briefly to explain my vote. This bill calls for the liquor stores to be open on Christmas Eve and that is a high holy day for Christians in this state, and I'm one, and I certainly don't know why we chose Christmas Eve as opposed to, as Senator Dollinger has raised, some of the other national holidays where festive celebration is more appropriate.

So I'm voting against this bill because I think symbolically we just should not be looking to encourage the consumption of liquor around a religious holiday. So I vote no.

ACTING PRESIDENT FARLEY: Results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1220 are Senators Dollinger, Jones, Kruger, Montgomery, Gold. Ayes 52, nays 5.

ACTING PRESIDENT FARLEY: The bill is passed.

Senator Nanula.

SENATOR NANULA: Mr. President, I would like to request unanimous consent to be recorded in the negative on Calendar Number 186.

ACTING PRESIDENT FARLEY: Without objection, you'll be in the negative.

SENATOR NANULA: Thank you.

ACTING PRESIDENT FARLEY: Senator Hoblock.

SENATOR HOBLOCK: Mr. President, earlier today I was not in the chamber when there was a slow roll call on Calendar Number 91, Senate Bill 2046B. I was at a meeting with the Commissioner of General Services, and had I been in the chamber during that slow roll call, I would have voted in the affirmative.

ACTING PRESIDENT FARLEY: All right. Before I do that, we were in the middle of a roll call. The bill was passed, and the vote was announced.

The record will so indicate your concern with being out of the chamber, Senator Hoblock.

Senator Skelos.

SENATOR SKELOS: Mr. President, I -- I couldn't hear, but was Calendar Number 1220 passed?

ACTING PRESIDENT FARLEY: Yes, it was.

SENATOR SKELOS: It was. Thank you.

ACTING PRESIDENT FARLEY: Senator

Maltese.

SENATOR MALTESE: Mr. President, I would ask unanimous consent to be recorded in the negative on Calendar Number 1220.

ACTING PRESIDENT FARLEY: 1220, without objection, you'll be in the negative.

Senator Maziarz.

SENATOR MAZIARZ: Yes, Mr. President, without objection, I would also like to be recorded in the negative on Calendar Number 1220.

ACTING PRESIDENT FARLEY: Without objection, you'll be in the negative on 1220.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time go to the Supplemental Calendar Number 1 take up the non-controversial calendar.

ACTING PRESIDENT FARLEY: Supplemental Calendar. Secretary will read.

THE SECRETARY: Calendar Number 1223, by Senator Spano, Senate Print 1397, an act to amend the State Finance Law, in relation

to payment of emergency financial aid.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 37.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar - Senator Connor moves to discharge from the Committee on Rules Assembly Bill Number 2827, and substitute it for the identical Calendar Number 1224.

ACTING PRESIDENT FARLEY: Substitution is ordered.

THE SECRETARY: Calendar number 1224, by member of the Assembly Ortiz, Assembly Print Number 2827, an act authorizing the city of New York to reconvey its interest in certain real property.

ACTING PRESIDENT FARLEY: There's a home rule message here at the desk. You can read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 57.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1225, by Senator DiCarlo, Senate Print Number 1982, an act to amend the Executive Law, in relation to testing of certain applicants for employment with the Division for Youth.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 57.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1226, by Senator Nozzolio, Senate Print Number 2138.

SENATOR NOZZOLIO: Lay aside, please.

ACTING PRESIDENT FARLEY: Lay it aside.

THE SECRETARY: Senator Velella moves to discharge from the Committee on Insurance Assembly Bill Number 3470, and substitute it for the identical Calendar Number 1227.

ACTING PRESIDENT FARLEY: Substitution is ordered. Read the last section.

THE SECRETARY: Calendar Number 1227, by member of the Assembly Pordum, Assembly Print Number 3470, an act to amend the Insurance Law, in relation to minimum capital investments of financial guarantee insurers.

ACTING PRESIDENT FARLEY: Call the roll. Oh, read the last section. I'm sorry.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 57.

ACTING PRESIDENT FARLEY: That bill is passed.

THE SECRETARY: Senator Hoffmann moves to discharge from the Committee on Rules Assembly Bill Number 3881, and substitute it for the identical Calendar Number 1228.

ACTING PRESIDENT FARLEY: Substitution is ordered. Read the last section.

THE SECRETARY: Calendar Number 1228, by member of the Assembly McGee, Assembly Print 3881, an act to amend the Judiciary Law, in relation to appointment of grand jury stenographers.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 57.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1229, by Senator Goodman, Senate Print 2654A, an act to amend the Multiple Dwelling Law and the Administrative Code of the city of New York, in relation to the size of cooking spaces.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 2. This act shall take effect January 1st.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 57.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1230, by Senator Velella, Senate Print 2798, an act to amend the State Finance Law, the Tax Law and the Administrative Code of the city of New York.

ACTING PRESIDENT FARLEY: There's a home rule message here at the desk.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT FARLEY: Laid aside.

THE SECRETARY: Calendar Number 1231, by Senator Cook, Senate Print Number 3222A, an act to amend Chapter 565 of the Laws of 1990, amending the Executive Law.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 57.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1232, by Senator Libous, Senate Print 3855, an act to amend the Mental Hygiene Law and the Executive Law, in relation to members of the Commission on Quality of Care.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 57.

ACTING PRESIDENT FARLEY: That bill is passed.

THE SECRETARY: Calendar Number 1233, by Senator Libous, Senate Print 3856, an act to amend the Mental Hygiene Law.

SENATOR BRUNO: Lay it aside for the day.

ACTING PRESIDENT FARLEY: Lay it aside for today.

THE SECRETARY: Senator Saland moves to discharge from the Committee on Rules Assembly Bill Number 888 and substitute it for the identical Calendar Number 1234.

ACTING PRESIDENT FARLEY: Substitution is ordered.

THE SECRETARY: Calendar Number 1234, by member of the Assembly Brodsky, Assembly Print Number 888, an act to amend the General Business Law, in relation to making unlawfully installing two-way mirrors or other viewing devices.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 57.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1235, by Senator Velella, Senate Print 4417A, an act to amend the Insurance Law, in relation to a non-employee chairman.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 57.

ACTING PRESIDENT FARLEY: That bill is passed.

THE SECRETARY: Calendar Number 1236, by Senator Velella, Senate Print 4450A, an act to amend the Insurance Law in relation to permitting the use of separate account funds.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 57.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1238, by Senator Sears, Senate Print 4903A, an act to amend the -

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT FARLEY: Laid aside.

THE SECRETARY: Calendar Number 1239, by Senator Tully, Senate Print 5027A, an act to amend Chapter 237 of the Laws of 1993.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT FARLEY: Laid aside.

THE SECRETARY: Calendar Number 1240, by Senator Maltese.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT FARLEY: Lay

that bill aside.

THE SECRETARY: Calendar Number 1241, by Senator Wright, Senate Print 5228A, an act to amend Chapter 972 of the Laws of 1972, relating to creating a temporary state commission.

ACTING PRESIDENT FARLEY: Read the last section.

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

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 57.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number 1242, by Senator Rath, Senate Print 5276A, an act to amend the Executive Law and others, in relation to extending the Office of Business Permits.

SENATOR PATERSON: Lay aside, please.

ACTING PRESIDENT FARLEY: Lay aside.

THE SECRETARY: Calendar Number 1243, by Senator DiCarlo, Senate Print 5300, an act to amend the Tax Law and the Administrative Code of the city of New York, in relation to repealing the sales and use taxes.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT FARLEY: Laid aside.

THE SECRETARY: Calendar Number 1244, by Senator Farley, Senate Print 5331, an act to amend the Banking Law.

SENATOR FARLEY: Lay that bill aside; it's high. So is the next one.

THE SECRETARY: 1245, by Senator Farley.

SENATOR FARLEY: It's high. Lay it aside.

THE SECRETARY: Calendar Number 1246, by Senator Maltese, Senate Print 5385.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT FARLEY: Lay

that bill aside.

Senator Bruno, that's the first time through.

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

ACTING PRESIDENT FARLEY: Controversial, Secretary will read.

THE SECRETARY: Calendar Number 1226, by Senator Nozzolio, Senate Print 2138, an act to amend the Social Services Law and the Education Law.

SENATOR PATERSON: Explanation, please.

ACTING PRESIDENT FARLEY: Explanation has been asked for. If we'll wait just a moment, we'll get an explanation.

SENATOR SKELOS: Mr. President. Lay the bill aside.

ACTING PRESIDENT FARLEY: Lay the bill aside; we'll come back to it.

Senator Velella's bill, if you'll read that, please.

THE SECRETARY: Calendar Number

1230, by Senator Velella, Senate Print 2798, an act to amend the State Finance Law, the Tax Law, and the Administrative Code of the city of New York.

ACTING PRESIDENT FARLEY: There's a home rule message here at the desk. You can read the last -

SENATOR PATERSON: Explanation.

ACTING PRESIDENT FARLEY: Explanation. Senator Velella.

SENATOR VELELLA: Yeah. This bill would allow a check-off for the purposes of funds to be appropriated through the parks purposes of the city of New York on -- for urban forestry. I'm looking for my folder, Senator.

ACTING PRESIDENT FARLEY: Senator Paterson.

SENATOR PATERSON: Excuse me, Mr. President. Would the sponsor -- I'm just not clear on -- this would establish a fund for urban forestry?

SENATOR VELELLA: Yes, a fund for parks, trees and urban forestry.

SENATOR PATERSON: If the sponsor would yield, I'm just trying to find out what this would actually be used for, Senator.

SENATOR VELELLA: Yeah. The monies will be made available to the Commission er of the Department of Parks and Recreation of the city of New York for the purposes of planting trees, developing vest-pocket park shrubberies, that type of thing, and people would have the opportunity to check off on their returns if they wish to contribute to that fund within the city of New York and there's a home rule message. It was requested by the City.

SENATOR PATERSON: Senator, would any of the funds go to general maintenance?

SENATOR VELELLA: Not to my knowledge.

SENATOR PATERSON: No, just for the planting of trees.

SENATOR VELELLA: No, just for that purpose.

SENATOR PATERSON: That's an excellent idea. Let's sit down, Senator.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 5. This act shall take effect immediately.

ACTING PRESIDENT FARLEY: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 57.

ACTING PRESIDENT FARLEY: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you call up Senator Nozzolio's bill, Calendar Number 1226.

ACTING PRESIDENT FARLEY: 1226, Senator Nozzolio's bill, the Secretary will read it.

THE SECRETARY: Calendar Number 1226, by Senator Nozzolio, Senate Print 2138, an act to amend the Social Services Law and the Education Law, in relation to authorizing the fingerprinting of prospective employees.

ACTING PRESIDENT FARLEY: Read -

SENATOR PATERSON: Explanation.

ACTING PRESIDENT FARLEY: Explanation. Senator Nozzolio.

SENATOR NOZZOLIO: Thank you, Mr. President.

My colleagues, the purpose of this bill is to provide school districts across New York State outside of New York City, that already has access to this information, to provide other school districts outside the City access to the state's central registry of child abuse treatment and the records of the F.B.I. for the purpose of screening certain types of employees such as substitute teachers, consultants, artists in residence and others of those who may be temporarily or permanently connected with the school district who have the most potential to be in regular involvement with the children of our state.

This bill provides the authority for the administrators who may be hiring teachers and other school personnel access to those records in order to ensure that the only

people who are hired for these positions are honorable and do not have a track record or, more importantly, a criminal record of dealing with children.

ACTING PRESIDENT FARLEY: Senator Paterson.

SENATOR PATERSON: Mr. President, I'm trying to determine whether or not this is an elective for the school district, if Senator Nozzolio would yield and be willing to answer that question.

SENATOR NOZZOLIO: I'd be happy to yield to Senator Paterson, Mr. President.

SENATOR PATERSON: That's my question, Senator, is this an elective to the school districts?

SENATOR NOZZOLIO: School districts, they have would have an option to, at their discretion, seek these records, yes.

SENATOR PATERSON: Thank you, Senator. They would. Would you, Senator, be willing to yield again?

SENATOR NOZZOLIO: Certainly.

SENATOR PATERSON: Thank you. Can you give us a delineation because I'm just not clear, based on what the bill says, as to which employees, are they temporary employees, temporary and some permanent employees or what are the criteria that would determine which employees would be fingerprinted and would be traced through the child abuse registry?

SENATOR NOZZOLIO: Yes. In response to that, Mr. President, Section 9 of the bill, page 2, line 54 beginning -- indicates that the board of education may, upon its discretion, require the screening of all personnel to be employed by the school district against those criminal records that DCJS may maintain, also the registry of child abuse, et cetera.

Those inquiries may be made on behalf of any personnel who are being sought for employment at the school district. I should hasten to add, this is the same type of access that the city of New York has had for at least 30 years. It's also the same type of access

that the Legislature has deemed appropriate for school bus drivers and that we're now saying that that access should be provided so those who are seeking other positions in school that deal with children, particularly in most cases deal more closely with children, have this type of access upon their application for employment.

SENATOR PATERSON: Thank you, Senator.

Mr. President, on the bill. I certainly hope that, in this legislation and even in what may already exist in some school districts in the state, that we are scrupulously careful that we not allow the information that is being sought to get into the wrong hands. Certainly for the benefit of children, it would be manifestly important that we have access to past wrongdoing on the part of employees who have records of child abuse who would be in the position to have contact with children.

At the same time, we would want individuals whose past performance might be requested as a matter of precaution not to have

their records exposed in other ways that might harm them as they seek employment in our school system.

ACTING PRESIDENT FARLEY: You can read -- Senator Montgomery, why do you rise?

SENATOR MONTGOMERY: I rise -- I would like to ask if the sponsor would yield.

ACTING PRESIDENT FARLEY: I'm sure he will. Senator Nozzolio, would you yield to a question from Senator Montgomery?

SENATOR NOZZOLIO: Yes, Mr. President.

SENATOR MONTGOMERY: Yes, Mr. President.

Senator Nozzolio, your bill requires that a second set of fingerprints be forwarded to the F.B.I., is that not correct?

SENATOR NOZZOLIO: A second set?

SENATOR MONTGOMERY: Of fingerprints be forwarded to the F.B.I.

SENATOR NOZZOLIO: Every set of fingerprints taken, right now there is no, Senator, fingerprinting requirement for those

school districts outside the city of New York. We're not saying that a second set be required for New York. We're saying the first set be required for those employees seeking employment in school districts outside the city of New York which already does it.

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

ACTING PRESIDENT FARLEY: I'm sure he will.

SENATOR NOZZOLIO: Yes, Mr. President.

SENATOR MONTGOMERY: On page 3, line 7 -- line 9, "the Division of Criminal Justice Services shall forward a set of such fingerprints to the Federal Bureau of Investigation." So does that mean that all personnel who are fingerprinted under your bill will have one set forwarded to DCJS and a second set forwarded to the F.B.I.?

SENATOR NOZZOLIO: Every set of fingerprints, once -- we're saying that this

bill requires fingerprinting of those personnel, at the discretion of school employee -- school employment, that when those fingerprints are taken pursuant to this chapter they then will be submitted to DCJS for screening, that that report is then sent to each school district upon the review of those fingerprints. Then the F.B.I. will then be asked to search their files to see if there is a greater -- in effect, a wider scrutiny to take place; so yes, Senator, we're calling in the Federal Bureau of Investigation to aid in the review where appropriate.

SENATOR MONTGOMERY: O.K. Senator Nozzolio, if you would continue to yield.

SENATOR NOZZOLIO: Surely, Senator.

SENATOR MONTGOMERY: The -- we know that the child abuse registry has a number of problems and very often people are in the registry without their knowledge. They are reported for various reasons and it does not require proof in order for you to appear -- for

your name to appear in the registry, so does your legislation protect people who may be in the registry even though they're not guilty or should, in fact, not have their names in such a registry? Is there any -- any safety valve for such a situation?

SENATOR NOZZOLIO: Senator, when an applicant applies for a position, they are in sum putting their entire record up for scrutiny. What this bill is doing is trying to get to particular aspects of an individual's record. Now, if those aspects have a flag to them relative to the registry, that certainly raises a question that needs to be dealt with.

Does it preclude someone from employment? No. In fact, it doesn't. It sends a signal to the school district that there is a person with these fingerprints, with this background, this person has, in fact, been subjected to contact with the child abuse registry and, as such, that certainly in and of itself, doesn't preclude someone from continuing the employment process. It only sends a signal

to those employers that they should be cautious here that there may be some problem with the applicant and that their notice is the notice that we're trying to get to, to give employers better notice that there may be some problem here.

It doesn't certainly -- there are problems with all types of reporting whether it be credit bureau reporting or other reporting, but that has to be worked through, but it certainly sends up a red flag to an employer that they need to proceed with caution here on this prospective applicant, and that's the intent of the legislation clearly.

SENATOR MONTGOMERY: O.K. Thank you.

Mr. President, briefly on the bill.

I would just like to respond to my colleague that I think we should take precaution with this legislation because, as I read it with a non-legal eye, it occurs to me that any person, a young person who is

graduating from college and looking to be employed with the Board of Ed' in the city of New York or in any city in this state or in any district in this state, or even a person who wants to do some special project in a school district, an artist who wants to come into a classroom or come into a school district and work with young people, or a person who wants to do something who has spent their life in another field and they want to do something in a school district which we want to encourage -- police officers, firemen and women, people who have done work in other fields and have a tremendous contribution to make. However, if they're going to come and be involved with children in a school district we are now requiring them not only to be fingerprinted and go through the DCJS of the state, but those fingerprints will be forwarded to the F.B.I. so that every young person who comes into -- young or old or in between, who comes into a school district to work and to work as a professional, to make a contribution within their profession or to make

a contribution after they've spent a lifetime in another area, we're now saying to them that they must have their fingerprints registered with the F.B.I., and I think that is over -- that is over-stepping our need to ensure that people don't have criminal records.

I certainly would not like for my son's fingerprints to be forwarded to the F.B.I. just because he wanted to become a teacher with the Board of Ed' in the city of New York. So I view this as really over-stepping. I don't think it's necessary to do that, and I don't think that my colleagues in this room - certainly I hope not -- are looking to have people in the state of New York be subjected to that kind of strenuous personal inspection just because they want to work with children in a school district; and as far as the registry for child abuse is concerned, I would not oppose the bill only because of that, but I certainly want to caution you also that this is a very big problem. The registry for child abuse is a very imperfect system. People get their names in.

They're not aware of their names being in there and once you're in it, it's nearly impossible to get out of it, to remove your name, even though you may be found absolutely not guilty. So I think that these -- we should really proceed very cautiously on this -- this legislation.

I will be voting no, and I am an early childhood person. I care a lot about children. I understand the need to protect them from individuals who may have some aspect of their past that we would not want them to be near children, but I certainly don't think, by the same token, we need to go this far in ensuring their safety.

So, Mr. President, I will be voting no on this bill.

ACTING PRESIDENT FARLEY: You want to speak? Senator Dollinger.

SENATOR DOLLINGER: Mr. President, will the sponsor yield to just two quick questions, and they'll be short and quick?

ACTING PRESIDENT FARLEY:

Senator, will you yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT FARLEY: He will.

SENATOR DOLLINGER: First my understanding is this is not a mandate, this is a choice for local school districts to participate.

SENATOR NOZZOLIO: That's correct, Senator.

SENATOR DOLLINGER: Secondly, what is the effect of this choice on the collective bargaining responsibilities between a school district and its labor unions?

SENATOR NOZZOLIO: Mr. President, I believe that there's no effect. It's done as an option that local school personnel can engage in as a predicate to gaining employment with the district, and there's already precedent established for school bus drivers for the same type of review and, as I mentioned earlier, Senator, the city of New York already has this

type of access available.

SENATOR DOLLINGER: Just through you, Mr. President, one clarification question then so I can clarify that answer.

SENATOR NOZZOLIO: Yes, clarification.

SENATOR DOLLINGER: Is it in the city of New York's experience, is it a mandatory or a non-mandatory subject of bargaining with respect to the relationship between the teachers' union, for example, and the school district?

SENATOR NOZZOLIO: Senator, I'm not sure if it is even a subject of bargaining, may be a part of local statute, but I can't answer that question for you.

SENATOR DOLLINGER: O.K. Thank you, Mr. President.

ACTING PRESIDENT FARLEY: Read the last section.

THE SECRETARY: Section 8. This act shall take effect September 1st.

ACTING PRESIDENT FARLEY: Senator

-- call the roll.

(The Secretary called the roll. )

ACTING PRESIDENT FARLEY: Senator Nozzolio to explain his vote.

SENATOR NOZZOLIO: Thank you, Mr. President. I rise to explain my vote.

Mr. President, my colleagues, two years ago, a small community in my district was absolutely devastated by the disclosure and subsequent arrest of a sixth grade teacher, a coach, who was trafficking in child pornography. That teacher certainly breached a very significant trust he had with the community, and what made this tragedy even worse was the fact that this particular individual had a prior criminal record dealing in the same type of activity.

Mr. President, my colleagues, what we're trying to do here is ensure that those most important individuals we have in this state, and that's our children, have all the protections possible when they go to school. What we see across this state is a protection

that's being breached every day and we need to do more to ensure that those personnel who are entrusted with this important -- very important responsibility are the most trustworthy people we can absolutely find.

I believe school personnel should have the ability to seek these records of criminal conduct, of other prior history when a teacher applies or other school personnel applies for employment. We already provide this for school bus drivers. The city of New York provides it for other school personnel including teachers. We're asking that, in the rest of the state, this protection be afforded.

Thank you, Mr. President. I'm voting in the affirmative on this bill and urge my colleagues to do likewise.

ACTING PRESIDENT FARLEY: Results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1226 are Senators Montgomery and Paterson. Ayes 56, nays 2.

ACTING PRESIDENT FARLEY: The bill is passed.

THE SECRETARY: Calendar Number -

ACTING PRESIDENT FARLEY: Hold it up.

SENATOR HOLLAND: Mr. President.

ACTING PRESIDENT FARLEY: Senator Holland.

SENATOR HOLLAND: With unanimous consent, I'd like to be recorded in the negative on Calendar Number 1220.

ACTING PRESIDENT FARLEY: 1220?

SENATOR HOLLAND: Yes, sir.

ACTING PRESIDENT FARLEY: Without objection. Senator Bruno.

SENATOR BRUNO: Mr. President, I would like at this time to make an important announcement in that one of our most distinguished members was born on this day 59 years ago: Senator Holland, and we wish him a very happy birthday.

(Applause)

ACTING PRESIDENT FARLEY: Happy birthday, Senator Holland, on behalf of all of your colleagues and the world-at-large.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time return to motions and resolutions. I believe that there is a privileged resolution at the desk. I would ask that it be read in its entirety, and then we move its adoption.

ACTING PRESIDENT FARLEY: There's a privileged resolution at the desk by Senator Bruno. The Secretary will read it in its entirety.

THE SECRETARY: By Senator Bruno, Legislative Resolution memorializing the Honorable George E. Pataki, Governor of the state of New York, to proclaim the week of June 12 through 18, 1995 as New York City Fire fighters' week in the state of New York.

WHEREAS, this is a week to commend the contributions to the state of New York that the New York City firefighters provide

us by responding to our needs with extreme bravery at moments in our lives when we are faced with injury or possible death; and

WHEREAS, in commemorating June 12 through 18, 1995 as New York City Firefighters Week in the state of New York, this assembled body honors those who put their life on the line in the performance of their service to the community and recognize the performance of service by the New York City firefighters which enables us to live and work with the security that if endangered, they will be there to protect us; and

WHEREAS, these brave individuals often have a thankless job and people often do not recognize that such individuals risk their lives every day that they go to work; these individuals who choose such work should be commended and recognized for their efforts; and

WHEREAS while we show an appreciation for New York City firefighters, we should also take a moment to remember those firefighters who have lost their lives in

service to their communities and to remember their families and their sacrifice.

NOW, THEREFORE, BE IT RESOLVED that this legislative body pause in its deliberations to memorialize the Honorable George E. Pataki to proclaim the week of June 12 through 18, 1995 as New York City Firefighters Week in the state of New York; and

BE IT FURTHER RESOLVED that copies of this resolution, suitably engrossed, be transmitted to the Honorable George E. Pataki, Governor of the state of New York, and to the Uniformed Firefighters Association of New York City.

ACTING PRESIDENT FARLEY: Senator Bruno, on the resolution.

SENATOR BRUNO: Mr. President, it's really an honor on and a privilege for me to stand in recognition of the firefighters of New York City, many of whom are here in the chamber with us.

These people, every day of their lives, devote themselves to protecting the

property and lives of others. They put literally their lives on the line, and this resolution does set aside and asks the Governor to set aside June 12th in a very appropriate way and the resolution speaks for itself, but I wanted to just take a minute and add my voice in recognition and thank the gentlemen and lady that I see here in the chamber on behalf of all of your colleagues for the good things that you do for others who can't look after themselves in the way that you look after them, and we know that it takes a lot of time, a lot of training, a lot of effort to do the kinds of things that you do so well, and when you are willing to literally lay your lives on the line to protect others, that speaks for each and every one of you in the best words that anyone could express.

So, on behalf of my colleagues in the Senate, we thank you for the good work that you do and for joining us here this afternoon.

(Applause)

Mr. President, can we open up

this resolution to all of our colleagues in the chamber, and I would suggest that anyone that would not want to be on it please indicate so, but I would think that this would be a unanimous resolution.

ACTING PRESIDENT FARLEY: The resolution is opened and will be sponsored by every member of the Senate unless you object.

Senator Maltese, I think you wished to speak on this.

SENATOR MALTESE: Yes. I can add very little to the words of our distinguished Majority Leader. I think that many members of this house know that my family, in the early days of the 1900s, suffered a tragic loss on March 24th, 1911, where the Triangle Shirtwaist factory fire tragedy occurred, and 127 people perished in that fire. The firefighters of the City at that time had to face very poor equipment, ladders that did not reach the persons who were trapped in the burning building and who were forced to jump to their deaths.

The firefighters are aptly called

the bravest. The firefighters of the city of New York daily face occurrences that would frighten any of us. They face a battle that many men in the armed forces had to face in the past or face only from time to time. They face these every day and each morning when they leave their homes do not know that they will be able to return.

So, Mr. President, I proudly join in the co-sponsorship of this resolution to the brave men and women of the firefighters of the city of New York.

ACTING PRESIDENT FARLEY: Senator Montgomery, on the resolution.

SENATOR MONTGOMERY: Yes, Mr. President.

I would like to also thank the Majority Leader for opening up the resolution. I think it's important for us to, each one of us in this chamber, to say how much we appreciate the firemen and women who serve us in our districts, and let me just say that one special thank you to the fire department for how open it

is to young people, that I've never had a company refuse a group of young people, of students to come in, and the firemen and women take time and help them understand what the fire department does, what firemen and women do, what the ladders do, how they work and that sort of thing and, in addition to that, there is a wonderful group -- I don't know if it's here today in the chamber with us -- but there is a wonderful group that comes out into the community and does skits and they have songs and they have a whole presentation for very young children to help them understand how to protect themselves and how to keep from having - endangering their lives by -- by engaging in behaviors that would cause fires.

So I think this is really not only does the fire department protect us and save our lives, but it also is engaged in educating young people, and I want to say a special thank you for that. So I want to also be on the resolution. Thank you.

ACTING PRESIDENT FARLEY: Senator

DiCarlo, on the resolution.

SENATOR DiCARLO: Thank you, Mr. President.

It is indeed a pleasure to rise in support of this resolution. I'm very proud to be a co-sponsor, and I rise to thank the firefighters of New York City not on my behalf only but on behalf of my constituents in Brooklyn and Staten Island. We're proud of the work that you do and keep up the good work.

I'm very proud to co-sponsor this legislation. Thank you.

ACTING PRESIDENT FARLEY: Senator Connor, on the resolution.

SENATOR CONNOR: Thank you, Mr. President.

As the leader of the Democrats in this house, I did want to particularly speak to this resolution and, of course, as a citizen of New York City and a resident of Brooklyn, I feel a very personal debt of gratitude to New York City's firefighters.

I know all of my colleagues join

me in thanking them for their day in and day out efforts. Our constituents depend so very, very much on the extraordinary efforts and dedication of New York's bravest.

The firefighters are in all of our neighborhoods, you know. We see their efforts all of the time. The day in and day out dedication and courage which they display are indeed remarkable and a city such as New York City, such as a densely populated urban area simply couldn't exist, it couldn't function, its residents couldn't aspire to any degree of safety, were it not for the professionalism and dedication of New York City's firefighters.

Thank you, Mr. President.

ACTING PRESIDENT FARLEY: Senator Leibell, on the resolution.

SENATOR LEIBELL: Mr. President, if I could just echo the comments that have been made already by my colleagues to compliment the fine men and women who all 365 days and nights of the year risk their lives and their health and their entire existence so that our citizens

can be safe.

I'm pleased to have so many who live in my district who have chosen this calling. Many of them are my friends socially and friends of my family. I'm pleased that they could join with us here today. They perform one of the most hazardous and dangerous tasks that could be performed in our state today, and they do it with great pride.

Thank you, sir.

ACTING PRESIDENT FARLEY: On the resolution, all those in favor please say aye.

(Response of "Aye.")

Those opposed, nay.

(There was no response. )

The resolution is unanimously adopted.

(Applause)

I think it is evident from the applause and from the unanimous passage, the esteem with which the firefighters - professional firefighters are held by this chamber. We wish you well. Congratulations on

the fine job that you do. We're delighted to have you come visit us here today and come back and see us again.

Senator Bruno.

SENATOR BRUNO: Mr. President, there will be an immediate meeting of the Rules Committee in Room 332.

ACTING PRESIDENT FARLEY: There will be an immediate meeting of the Rules Committee in Room 332. Senator Hoffmann.

SENATOR HOFFMANN: Mr. President, I was out of the chamber at the time a vote was recorded on Calendar Number 91 and Calendar Number 994. Had I been present, I would have been recorded in the affirmative on both those items. Could the record so reflect?

ACTING PRESIDENT FARLEY: The record will so state.

Senator Nozzolio, could you spell me while I go to Rules.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time return to the controversial

calendar.

ACTING PRESIDENT FARLEY: Controversial calendar. Secretary will read.

THE SECRETARY: Calendar Number 1238, by Senator Sears, Senate Print 4903A, an act to amend the General Business Law, in relation to itinerant vendors.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT NOZZOLIO: Explanation is asked for. Senator Sears.

SENATOR SEARS: Thank you, Mr. President.

This bill adds a new section to the General Business Law to define the term "itinerant vendors" and prohibit the sale of drugs and food manufactured and packaged for children under age two by such persons.

Itinerant vendors are those vendors who sell their goods at a flea market type operation. Many of the drug store products sold by itinerant vendors, such as baby food and non-prescription drugs, are frequently stolen by professional shoplifters.

The handling and storage of this merchandise, once outside the controlled environment of a pharmacy, is highly suspect. As a result, the stability of the product can not be guaranteed. In addition, many of the products sold by itinerant vendors are non-prescription medication that may be subject to product recalls. These recalls will vary from serious mislabeling to serious life-threatening contamination.

Once this merchandise is outside the normal distribution channels, these product recalls become meaningless.

ACTING PRESIDENT NOZZOLIO: Senator Paterson.

SENATOR PATERSON: Mr. President, if the sponsor would yield?

SENATOR SEARS: Yes.

ACTING PRESIDENT NOZZOLIO: Sponsor yields.

SENATOR PATERSON: Senator, I gather you were trying to actually define what is meant by the itinerant vendor under the law

and I see that you've exempted farmers' markets and you have exempted certain itinerant vendors. You have not exempted flea markets, but that's, I guess, specifically what you were trying to do. Can you explain to us why that's the case?

SENATOR SEARS: Why we didn't include farmers' markets under the legislation?

SENATOR PATERSON: Well, we did. We exempted them, is that correct?

SENATOR SEARS: Oh, I see. I don't know whether we exempted farmers' markets or not.

SENATOR PATERSON: Well, under the bill, Senator, it says that farmers' markets are exempted and licensed peddlers are exempted and what I'm asking, is there a difference between them and the regular flea market? And I guess that would relate to why you chose to draft the legislation, and that is what I'm trying to determine.

SENATOR SEARS: Let me -- let me temporarily lay the bill aside until I can get you the answer to that question.

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

SENATOR SEARS: Yes, sir.

ACTING PRESIDENT NOZZOLIO: Bill is temporarily laid aside.

THE SECRETARY: Calendar Number 1239, by Senator Tully, Senate Print 5027A, an act to amend Chapter 2....

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

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

THE SECRETARY: Calendar Number 1240, by Senator Maltese, Senate Print 5141, an act to amend the Administrative Code of the city of New York.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT NOZZOLIO: Explanation is asked for. Senator Maltese.

SENATOR MALTESE: Mr. President, this bill is at the request of the city of New York. It creates a new subdivision to allow for a tax credit against New York City general cor

poration tax for the amount of sales and use taxes paid after January 1st, 1995 with respect to the services of installing, repairing, maintaining or servicing machinery, equipment, parts, tools and supplies used or consumed in production. The -- among the industries who will benefit is the film industry.

This was intended as an economic development initiative to provide relief to businesses that purchase or use services in connection with the production of tangible personal property. It would bring the city sales tax into conformity with the state sales tax with respect to such services and eliminate taxpayer confusion in this area of sales tax law.

ACTING PRESIDENT NOZZOLIO: A local fiscal impact not is at the desk.

Senator Paterson.

SENATOR PATERSON: Mr. President, for purposes of sales and use tax, if the sponsor would yield for a question.

ACTING PRESIDENT NOZZOLIO:

Sponsor yield?

SENATOR MALTESE: Yes.

ACTING PRESIDENT NOZZOLIO: Sponsor yields.

SENATOR PATERSON: Senator Maltese, you said that among the industries that would benefit from the legislation would be the film industry. What I'd like to know is what other industry other than the film industry would benefit.

SENATOR MALTESE: From my understanding, the reason I mentioned, Mr. President -- the reason I mentioned the film industry is that the film industry was active in soliciting with the city of New York and with state officials as well as myself, the passage of this, but my understanding is that it is not an -- within the confines of the law that they would not be the only industry, that any industry that would be able to fit within the definition would be able to -- whether they were incorporated or unincorporated, would still be able to avail themselves of this tax credit. It

would be any industry that -

SENATOR PATERSON: I understand. Mr. President.

SENATOR MALTESE: -- that is operating within the city of New York.

SENATOR PATERSON: If Senator Maltese would continue to yield.

SENATOR MALTESE: Yes.

ACTING PRESIDENT NOZZOLIO: Senator Maltese continues to yield.

SENATOR PATERSON: My question is, are you aware of any industry through your research, as the prerequisite to writing the legislation, are you aware of any other industry that would -- that would benefit from the legislation and, in addition to that, I'm just wondering what the cost to New York City would be to provide this tax credit?

SENATOR MALTESE: Mr. President, referring first to the subsequent question, the city of New York has indicated that they felt their costs would be negligible and, in addition, as is also evidenced by the fiscal

impact note, and also have indicated that they felt whatever costs would be far negated by the economic development aspects of it.

As far as other industries, it would seem to me that any industry that deals in services rather than tangible property as far as purchasing goes for use in their ultimate product, whether it is tangible or intangible, would be able to avail themselves of this benefit. So it would seem that if the bill is passed, it is presently also in the Assembly, we would hope that all businesses would also be able to avail themselves of this opportunity.

SENATOR PATERSON: Well, Mr. President, I guess you can have the Secretary read the last section.

ACTING PRESIDENT NOZZOLIO: Read the last section.

THE SECRETARY: Section 7. This act shall take effect immediately.

ACTING PRESIDENT NOZZOLIO: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 58.

ACTING PRESIDENT NOZZOLIO: The bill is passed.

THE SECRETARY: Calendar Number 1242, by Senator Rath, Senate Print 5276A, an act to amend the Executive Law and others, in relation to extending the Office of Business Permits.

ACTING PRESIDENT NOZZOLIO: Read the last section.

THE SECRETARY: Section 14. This act shall take effect immediately.

ACTING PRESIDENT NOZZOLIO: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 58.

ACTING PRESIDENT NOZZOLIO: The bill is passed.

THE SECRETARY: Calendar Number 1243, by Senator DiCarlo, Senate Print 5300, an act to amend the Tax Law and the Administrative Code of the city of New York, in relation to repealing the sales and use taxes.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT NOZZOLIO: A local fiscal impact note is at the desk.

Explanation is asked for.

Senator DiCarlo.

SENATOR DiCARLO: Mr. President, this bill would repeal the New York City sales tax imposed on interior design services. The tax is anti-competitive. It drives business out of New York, which is the only major city and the only city on the east coast which imposes such a tax.

ACTING PRESIDENT NOZZOLIO: Read the last section.

THE SECRETARY: Section 7. This act shall take effect December 1st.

ACTING PRESIDENT NOZZOLIO: Call the roll.

(The Secretary called the roll. )

THE SECRETARY: Ayes 58.

ACTING PRESIDENT NOZZOLIO: The bill is passed.

THE SECRETARY: Calendar Number

1246, by Senator Maltese, Senate Print 5385, an act in relation to the election of delegates to a national party convention.

SENATOR DOLLINGER: Explanation.

ACTING PRESIDENT NOZZOLIO: Explanation is asked for. Senator Maltese.

SENATOR MALTESE: Mr. President, as in past years, this bill is before the house and before both the Assembly and the Senate. It is an agreed-upon bill and as has been the norm in prior Presidential years, each of the two major political parties has made up their own rules and regulations in conformity with the rules and regulations of their respective state committees, and this bill is that product of many long hours and much work.

Basically it is in relation to the election of delegates to the Presidential nominating convention, and the Republican part first. The bill -- and, by the way, the bill is -- has incorporated within it very much of the wording and provisions of the prior bill, the 1991 Presidential delegate bill.

It -- it incorporates all changes that would provide election not only for the Presidential delegates and the Presidential candidates but also provides that any state, county committee members, district leaders, would be elected at the fall primary rather than the spring primary.

The purpose for this was to separate and keep apart the elections for the Presidential delegates and the Presidential candidates, so thus we have a calendar which would apply only to the Presidential delegates which would -- is set forth in the bill so that the last day to file the party call would be November 14th and if sets forth certain dates so that Presidential candidates can authorize their own delegates, and so that you do not have a situation where unauthorized delegates are competing against authorized delegates without the consent of the Presidential candidate.

In addition, if the Presidential candidate does not authorize a certain delegate, those delegates would have the option to then

run as uncommitted delegates, thus enabling persons' constituents in the district or party members to vote for delegates, as well as Presidential candidates.

The qualifications of the -- for the Republican plan and Democratic plan alike are for the delegates to reside within the district and be an enrolled party member of that party in order to run. The Republican plan basically is, and I'll read, Delegates will be continued to be elected at the primary for each Congressional District, and you would have thus three delegates, three alternates from each Congressional District, plus at-large delegates. The at-large delegates would not be -- would not be an excessive number but they would be selected at -- by the state committee at a state committee meeting for that purpose.

The Democratic plan is somewhat more complex, but there would be 159 pledged delegates to be elected from 31 Congressional Districts allocated by a formula based 50 percent on population and 50 percent on average

of Democratic votes for President in the last two elections. Each district would have not less than four, not more than six delegates and the rules would be the same as far as being residents of the district. The party also has indicated that they would permit optional allocations of delegate positions by gender.

The -- the rules for signature in the Democratic petition, they could appear, Presidential candidates could appear on the ballot by filing petitions with the signature requirements of one-third of that for other statewide petitions would be 5,000, and those 5,000 valid signatures would have no geographic requirement; thus, for instance, all of them could be gathered in one county if that were feasible.

The -- in addition, the Democratic rules provide that candidates for district delegates must file certificates of candidacy with their state committee not earlier than November 28th, thus resulting in the fact that, if a candidate does not -- I'm sorry, not

earlier than November 28th and not later than January 8th. Thus, if a candidate for delegate in the Democratic Presidential primary does not file by January 8th, even if a proper petition were filed, he would not be able to run for the office.

Again, the rules are the same. A Presidential candidate would have the right to veto a proposed delegate slate. Let's see, individual delegates.

Basically that's it, Mr. President. The signature, the rules for gathering signatures, would remain the same as for Congressional candidates. The requirement for Congressional candidates would be the same, 1250 in each Congressional District or 5 percent if the 5 percent of the enrolled members in that Congressional District were less than 1250.

ACTING PRESIDENT NOZZOLIO: Thanks you, Senator Maltese.

Senator Dollinger.

SENATOR DOLLINGER: Sponsor yield for a question?

SENATOR MALTESE: Yes.

ACTING PRESIDENT NOZZOLIO: Senator Maltese, will you yield? Senator yields.

SENATOR DOLLINGER: Senator, there's a prospect that in 1996 there may be other than major party candidates running for president. What and how -- what, if at all or how, if at all, does this bill affect the prospect of a third-party candidate who would be a member of a recognized, or who would be nominated by a recognized, quote, party here in New York State? There are now six recognized parties which met the 50,000-vote requirement under the last election.

My question is, how do they handle their nomination for President?

SENATOR MALTESE: Yes. Mr. President, this only affects the two major parties, the Republican and Democrat. It does not affect the remainder of the organized political parties within the state of New York. Their party rules would provide for their own

method of selection and, for instance, I'm most familiar with the Conservative Party rules. They would select their Presidential candidate by meetings of the state committee but, if the political parties, especially the newly organized ones with less members, would choose, for instance, to have it with whatever meeting they chose, whatever method they chose, they would then be free to meet and choose their Presidential candidates by that method. It would not even require the circulation of petitions for their Presidential candidates if they chose to do it by meetings of -- by giving that responsibility to pre-elected members, members, for instance, who might be previously elected to a county office or state office in that political party.

SENATOR DOLLINGER: Again through you, Mr. President.

ACTING PRESIDENT NOZZOLIO: Senator Dollinger.

SENATOR DOLLINGER: Just explain to me, Senator, how then a minor party, for

example, the Independent Party or Independence Party, whatever they're called, how could they conduct a primary for their nomination for President in this state, for example, if they decided to do it?

SENATOR MALTESE: Mr. President.

ACTING PRESIDENT NOZZOLIO: Senator Maltese.

SENATOR MALTESE: It would depend on their party rules. There are many instances where it is either extremely difficult or impos sible especially in so-called minor parties, for parties to conduct primaries. We have, for instance, rules relating to judicial conventions where party rules apply and make it almost impossible for so-called insurgents to secure party nominations.

They always have the option of pursuing an independent candidacy. In this case, especially for the minor parties, they would have to comply with party rules. That doesn't mean it's impossible. They would, for instance, in various of the so-called minor

parties, be able to solicit those minor parties for their Presidential endorsement and be able to be on the ballot simply because that - so-called minor party has already secured an official position on the ballot by securing the necessary 50,000 votes in the last gubernatorial election.

SENATOR DOLLINGER: Again through you, Mr. President.

ACTING PRESIDENT NOZZOLIO: Senator Dollinger.

SENATOR DOLLINGER: Let me focus on the Conservative Party, the one that you're most familiar with.

There is a prospect that there will be several Republican Presidential contenders who would, in eyeing New York State, think that they might be an appropriate candidate for the New York State Conservative Party to endorse for the office of President.

How, under the current rules, and again I'm assuming this is germane to this bill, how under the current rules would that candidate

trigger a primary? Is there a capability that they can under current rules and current?

SENATOR MALTESE: Mr. President. Mr. President.

ACTING PRESIDENT NOZZOLIO: Senator Maltese.

SENATOR MALTESE: Mr. President, I can't speak for the rules currently in effect because they can be amended from time to time and may very well be amended prior to the Presidential primary in 1996, but if they had been -- if there had been more than one candidate, as there has been in the past, the method would be to convince the present members of the state committee and the present members of the executive committee of the Conservative Party so that a Presidential candidate -- and I have no doubt there probably will be a - although I do not presume to speak for the Conservative Party, there probably will be a Presidential candidates' forum at which candidates would be interviewed, their views solicited, and then they would pursue the votes

of the individual state committeemen.

Of course, we have the Wilson-Pakula which is in existence in New York State and named after former Governor Wilson and State Senator Irwin Pakula, which would make it a prerequisite that a Presidential candidate just like any other candidate would have to, in addition, secure the authorization of the state executive committee in order to run as a Presidential candidate.

SENATOR DOLLINGER: Through you, Mr. President.

ACTING PRESIDENT NOZZOLIO: Senator Dollinger. Does Senator Maltese continue to yield?

SENATOR MALTESE: Yes.

SENATOR DOLLINGER: Yes, if you would.

Continue my education, if you would, for a moment, Senator. Why in the state of New York do we put the party rules for Presidential primaries into law for the two major parties and yet we don't require any legal

enactment into law for the same rules for the minor parties which may run from Conservative to Independent to Right to Life to I guess the Tax Cut Now is now a recognized party.

SENATOR MALTESE: Well, Mr. President -

SENATOR DOLLINGER: Why do we do one and not the other?

SENATOR MALTESE: Well, Mr. President, to my knowledge, and I've only been chairman of the Election Committee since January of this year, no other party has approached me or any other member and there is no present bill that has been submitted to me or, so far as I know, to the Senate to codify or legislate party rules. It seems to me that in this democratic process and in the state of New York, we are better served by, in certain instances, keeping our nose out of the business of some of these political parties who choose to run their own party affairs and, in the absence of complaints that these parties are undemocratic, with a small "d", I think we should continue that wise

course.

SENATOR DOLLINGER: Again through you, Mr. President, if the sponsor will continue to yield.

ACTING PRESIDENT NOZZOLIO: Does Senator Maltese continue to yield? Senator continues to yields.

Senator Dollinger.

SENATOR DOLLINGER: This bill, Senator, is a reflection of a general rule in New York that we like primaries, that we want the political parties to be involved, that we want to give people the opportunity to have their voice heard at the ballot box, at least as far as the nomination for President of the United States goes.

My question is, why doesn't that same logic drive our consideration of minor parties, and why don't they conform to the same general rules that are permitted here, which is circulate nominating petitions, have the ability to go to the ballot box? Why the difference in philosophy between the way we treat the major

parties and the minor parties?

SENATOR MALTESE: Mr. President, I thought for a moment my ears deceived me, that Senator Dollinger would look to encumber the process and make the democratic process more difficult for the minor parties.

I'm advised that the major -- two so-called major parties, they are, of course, national parties. That is the difference between them and the state parties that are presently organized under our legislation in New York State. Thus, in order to nominate a national candidate in the 50 states, there are certain rules and regulations promulgated by the national committees of those two parties in order to have some uniformity so that, for instance, Hawaii and Alaska don't come in with 500 delegates and perhaps New York and California come in with 125. So there are certain rules that are universal for all 50 states, and New York State thus is required by the national committees to codify certain - certain rules and regulations to be consistent

with those national rules.

The state parties and all the other state parties that we have in New York, Conservative, Liberal, Right to Life, and so on, are state parties only, and while they are somewhat identified and loosely connected with perhaps some national organizations, they are run totally within New York State with their offices and members elected by New York State voters who are -- who have chosen to identify with those political parties.

SENATOR DOLLINGER: Again through you, Mr. President.

ACTING PRESIDENT NOZZOLIO: Senator Dollinger.

SENATOR DOLLINGER: I apologize. I don't mean this to be redundant. I just want to make sure I've got a clear answer. What is the rationale for having the major parties do primaries at the ballot to nominate their candidate versus the small parties being able to do it by party rule in convention? What's the difference between those two?

SENATOR MALTESE: I think, Mr. President, if the minor parties chose to do it by primaries, they could do so and we would, I would at any rate, be responsive to their wishes and put in legislation, but I think especially considering the smaller number of enrollees, that we would have an obligation on the state level to -- to look to the fiscal impact of codifying and legislating where relatively few people are involved.

I don't think at this time that is a factor. Right now, we are simply responding to the obligation of legislating because that makes us consistent with the national rules and regulations, and the rationale as far as the smaller political parties are concerned, I hope is that wherever possible let's keep our noses out of their business.

SENATOR DOLLINGER: Just on the bill, Mr. President.

ACTING PRESIDENT NOZZOLIO: Senator Dollinger, on the bill.

SENATOR DOLLINGER: This is the first time I've had a chance to really think about the philosophy underlying this and, while I guess as a member of a major party, I'm cognizant of our obligations to protect major parties and to do what major parties want, I can't understand why we do it for major parties or set up a series of rules for major parties that we don't enforce for minor parties as well.

Minor parties in this state, as everybody in this room knows, has had a major impact on the future of this state. There's someone that lives working on the second floor who, at least to the best of my recount, wouldn't be here but for a minor party, and I think that in recognition of the rising status of minor parties, be they Independent or Tax Cut Now, or whatever they want to call themselves, I think we ought to set up a uniform series of rules and have everybody comply with those and get away from the notion that parties can function or mandate what government should do.

My understanding is it should go the other way around and, for that reason, Mr. President, although I ask -- I hope it's not interpreted as any comment on the contents of this bill or the work that the chairman has had with the major parties it seems to me philosophically I'm opposed to this bill.

ACTING PRESIDENT NOZZOLIO: Read the last section.

THE SECRETARY: Section 5. This act shall take effect immediately.

ACTING PRESIDENT NOZZOLIO: Senator Montgomery, why do you rise?

SENATOR MONTGOMERY: I -- just a brief clarification question for the sponsor?

ACTING PRESIDENT NOZZOLIO: Senator Maltese, do you yield? Senator yields.

SENATOR MALTESE: Yes.

SENATOR MONTGOMERY: Senator Maltese, this is an agreed upon legislation. If we vote on this today it goes, it's between the two houses?

SENATOR MALTESE: Yes Mr. -

yes.

SENATOR MONTGOMERY: O.K. Thank you.

SENATOR MALTESE: One -- oh, I'll explain my vote.

ACTING PRESIDENT NOZZOLIO: Read the last section.

THE SECRETARY: Section 5. This act shall take effect immediately.

ACTING PRESIDENT NOZZOLIO: Call the roll.

(The Secretary called the roll. )

ACTING PRESIDENT NOZZOLIO: Senator Maltese to explain his vote.

SENATOR MALTESE: Just very briefly and in partial response to Senator Dollinger, I think the difference is that on the national conventions, there is a national convention and that with the smaller state parties, their state convention amounts in their cases to a national convention because those delegates have no national convention to go to.

With respect vis-a-vis the

Conservative Party, for instance, in the ordinary sense since the early nominations of Presidential candidates in the Republican Party, they've chosen to go to the Republican nominating conventions because their candidates were the same, were one and the same.

I vote aye, Mr. Chairman -- Mr. President.

ACTING PRESIDENT NOZZOLIO: Senator Maltese votes aye. Announce the results.

THE SECRETARY: Ayes 57, nays one, Senator Dollinger recorded in the negative.

ACTING PRESIDENT NOZZOLIO: The bill is passed.

SENATOR VELELLA: At this time, Mr. President, I recognize Senator Mendez -- ask the Chair to recognize Senator Mendez.

ACTING PRESIDENT NOZZOLIO: Senator Mendez.

SENATOR MENDEZ: Thank you, Mr. President.

Mr. President, I have the honor of presenting to my colleagues here in the Senate today some Senators from -- from -- from Ascuncion, from Paraguay. They have been visiting with Christopher Zimmerman in a study group of the National State Legislature Conference, and so, visiting and sitting over there we have Dr. Diego Abente Brun, Dr. Armando Vicente Espinola, Senator Fernando Martinez. We have also the Director of the budget of Paraguay, Honorable Ruben Minarro, and Dr. Dionisio Borda, Director of the Economics Division of the government.

So that it is my privilege to introduce them. They have been visiting other state legislatures throughout the country, and we're very appreciative of the fact that they're here in New York in this great chamber of ours visiting and trading impressions with us.

ACTING PRESIDENT NOZZOLIO: Thank you, Senator Mendez.

On behalf of Senator Mendez, our Majority Leader, Senator Bruno, and all of the

Senate, we welcome these distinguished officials from Paraguay. Welcome to New York.

(Applause)

Senator Velella.

SENATOR VELELLA: Can we just see if there's any housekeeping?

ACTING PRESIDENT NOZZOLIO: Senator DiCarlo.

SENATOR DiCARLO: Mr. President, on behalf of Senator Goodman, I wish to call up his bill, Print Number 917, recalled from the Assembly which is now at the desk.

ACTING PRESIDENT NOZZOLIO: Secretary will read.

THE SECRETARY: Calendar Number 1051, by Senator Goodman, Senate Print 917, an act to amend the Civil Rights Law, in relation to prohibiting the non-consentual use of a person's voice.

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

ACTING PRESIDENT NOZZOLIO: Call

the roll on reconsideration.

(The Secretary called the roll on reconsideration. )

THE SECRETARY: Ayes 58.

ACTING PRESIDENT NOZZOLIO: Senator DiCarlo.

SENATOR DiCARLO: I offer up the following amendments.

ACTING PRESIDENT NOZZOLIO: Amendments received and adopted.

Senator DiCarlo.

SENATOR DiCARLO: Mr. President, on behalf of Senator Saland, I wish to call up bill Print Number 2113A, recalled from the Assembly which is now at the desk.

ACTING PRESIDENT NOZZOLIO: Secretary will read.

THE SECRETARY: Calendar Number 425, by Senator Saland, Senate Print 2113A, an act to amend the Family Court Act, in relation to authorizing the court to permit a petitioner.

SENATOR DiCARLO: Mr. President,

I now move to reconsider the vote by which this bill was passed.

ACTING PRESIDENT NOZZOLIO: Call the roll.

(The Secretary called the roll on reconsideration. )

THE SECRETARY: Ayes 58.

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

ACTING PRESIDENT NOZZOLIO: Amendments received and adopted.

Senator DiCarlo.

SENATOR DiCARLO: Mr. President, on page 38, I offer the following amendments to Calendar 1198, Senate Print 3817A, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT NOZZOLIO: Amendments received and adopted.

SENATOR DiCARLO: Mr. President, on behalf of Senator LaValle, on page 8, I offer the following amendments to Calendar 271, Senate Print 3292, and ask that said bill retain its

place on Third Reading Calendar.

ACTING PRESIDENT NOZZOLIO: Amendments received and adopted.

Senator Marcellino.

SENATOR MARCELLINO: Mr. President, on behalf of Senator Cook, on page number 13, I offer the following amendments to Calendar Number 511, Senate Print number 4246, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT NOZZOLIO: Amendments received and adopted.

SENATOR MARCELLINO: Mr. President, also on behalf of Senator Cook, on page number 13, I offer the following amendments to Calendar Number 512, Senate Print 4247, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT NOZZOLIO: Amendments received and adopted.

SENATOR MARCELLINO: Mr. President, also on behalf of Senator Cook, on page number 13, I offer the following amendments

to Calendar Number 513, Senate Print 4238, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT NOZZOLIO: Amendments received and adopted.

SENATOR MARCELLINO: Mr. President, on behalf of Senator Tully, on page number 36, I offer the following amendments to Calendar Number 1239, Senate Print number 5027 A, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT NOZZOLIO: Amendments received and adopted.

SENATOR MARCELLINO: Mr. President, I wish to call up Senator Kuhl's bill, Print Number 3667, recalled from the Assembly which is now at the desk.

ACTING PRESIDENT NOZZOLIO: Secretary will read.

THE SECRETARY: Calendar Number 335, by Senator Kuhl, Senate Print 3667, an act to amend the Agriculture and Markets Law.

SENATOR MARCELLINO: Mr.

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

ACTING PRESIDENT NOZZOLIO: Call the roll.

(The Secretary called the roll on reconsideration. )

THE SECRETARY: Ayes 58.

ACTING PRESIDENT NOZZOLIO: Senator Marcellino.

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

ACTING PRESIDENT NOZZOLIO: Amendments received and adopted.

SENATOR MARCELLINO: Thank you, sir.

SENATOR WRIGHT: Mr. President.

ACTING PRESIDENT NOZZOLIO: Senator Wright.

SENATOR WRIGHT: Mr. President, I request unanimous consent to be recorded in the negative on Calendar Number 1219, Senate 3891.

SENATOR VELELLA: Mr. President,

could we return to the reports of standing committees?

ACTING PRESIDENT NOZZOLIO: Secretary will read it.

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

Senate Print 138A, by Senator Holland, an act to amend the Social Services Law and the Executive Law, in relation to providing an automobile as essential personal property;

637A, by Senator DiCarlo, an act to amend the Penal Law, in relation to unlawful possession of a box cutter;

991, by Senator Present, an act to amend the Insurance Law, in relation to coverage for mammography screening;

1281, by Senator Rath, an act to amend the State Finance Law, in relation to requiring a regulatory budget;

1468, by Senator Holland, an act to amend the Social Services Law, in relation to requiring an address;.

1619B, by Senator Goodman, an act to amend the Vehicle and Traffic Law, in relation to mandatory suspensions;

2278, by Senator Hoblock, an act to amend the Labor Law, in relation to excluding from an employer's experience rating charge;

2761A, by Senator Skelos, an act in relation to the duration of the eligible lists for police officer;

3078, by Senator Babbush, an act to amend the Vehicle and Traffic Law, in relation to changing the color of certain police vehicles offered for sale;

Senate Print 3586A, by Senator Goodman, an act to amend the Tax Law, in relation to the delivery of wage reporting information;

3692A, by Senator Velella, an act to amend the Insurance Law, in relation to requiring Certified Public Accountant reports of Article 34 corporations;

3950B, by Senator Tully, an act to amend the Public Health Law and the Executive

Law, in relation to residential hospices;

4455, by Senator Hoblock, an act to amend the Executive Law, in relation to display of the prisoner of war and missing in action flag and making an appropriation therefor;

4746A, by Senator Saland, an act in relation to authorizing the city of Beacon, county of Dutchess, to opt out of the provisions of Chapter 602;

4807A, by Senator Maziarz, an act to provide benefit options to surviving spouses of certain deceased members of the New York State Teachers' Retirement System;

5087A, by Senator Kuhl, an act to amend the Retirement and Social Security Law, in relation to authorizing the Keuka Lake Watershed Improvement Cooperative;

5174, by Senator Espada, an act authorizing the city of New York to reconvey its interest in certain real property required by in rem tax foreclosure;

5210, by Senator Mendez, an act

to authorize the Commissioner of General Services to sell certain state lands in the city of New York;

5293, by Senator Kuhl, an act to amend the Vehicle and Traffic Law, in relation to permitting the use of certain racks for carrying hay, straw or unthrashed grain;.

5372, by Senator LaValle, an act to amend Chapter 311 of the Laws of 1920, relating to the assessment and collection of taxes in Suffolk County;.

3873A, by Senator Marchi, an act to amend the Real Property Law, in relation to establishing a New York State real estate board;

4142, by Senator Kruger, an act to allow Jack Walfish, a retired member of the New York State Teachers Retirement System, to purchase military credit.

All bills ordered directly for third reading.

ACTING PRESIDENT NOZZOLIO: Senator Velella.

SENATOR VELELLA: Can we proceed

to calendar -- Supplemental Calendar 2, non controversial reading of the calendar.

ACTING PRESIDENT NOZZOLIO: Without objection, all bills reported to third reading.

There's a substitution at the desk.

SENATOR SKELOS: Please make the substitution.

THE SECRETARY: On page 5, Senator Lack moves to discharge from the Committee on Judiciary, Assembly Bill Number 3222-A and substitute it for the identical Calendar Number 110.

ACTING PRESIDENT NOZZOLIO: The substitution -

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT NOZZOLIO: Senator Skelos.

SENATOR SKELOS: If we at this time could take up Senate Supplemental Calendar Number 2, non-controversial.

ACTING PRESIDENT NOZZOLIO: The

clerk will read the non-controversial calendar.

THE SECRETARY: Calendar Number 1237, by Senator Holland, Senate Print 138-A, an act to amend the Social Services Law and the Executive Law, in relation to providing an automobile as essential personal property.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT NOZZOLIO: The bill is laid aside.

THE SECRETARY: Calendar Number 1247, by Senator DiCarlo, Senate Print 637-A, an act to amend the Penal Law, in relation to unlawful possession of a box cutter.

ACTING PRESIDENT NOZZOLIO: Last section.

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

ACTING PRESIDENT NOZZOLIO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT NOZZOLIO: The

bill is passed.

THE SECRETARY: Calendar Number 1248, by Senator Present, Senate Print 991, an act to amend the Insurance Law, in relation to coverage for mammography screening.

ACTING PRESIDENT NOZZOLIO: Last section.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT NOZZOLIO: Lay it aside.

THE SECRETARY: Calendar Number 1249, by Senator Rath, Senate Print 1281, an act to amend the State Finance Law, in relation to requiring a regulatory budget.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT NOZZOLIO: The bill is laid aside.

THE SECRETARY: Calendar Number 1250, by Senator Holland, Senate Print 1468, an act to amend the Social Services Law, in relation to requiring an address as a condition of receiving assistance.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT NOZZOLIO: The bill is laid aside.

THE SECRETARY: Calendar Number 1251, by Senator Goodman, Senate Print 1619-B, an act to amend the Vehicle and Traffic Law, in relation to mandatory suspensions.

ACTING PRESIDENT NOZZOLIO: Last section.

THE SECRETARY: Section 2. This act shall take effect 30 days.

ACTING PRESIDENT NOZZOLIO: Announce the results.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT NOZZOLIO: The bill is passed.

THE SECRETARY: Calendar Number 1252, by Senator Hoblock, Senate Print 2278, an act to amend the Labor Law, in relation to excluding from an employer's experience rating charge the voluntary separation from last employment.

ACTING PRESIDENT NOZZOLIO: Last

section.

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

ACTING PRESIDENT NOZZOLIO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT NOZZOLIO: The bill is passed.

THE SECRETARY: Calendar Number 1253, by Senator Skelos, Senate Print 2761-A, an act in relation to the duration of the eligible list for police officer in the county of Nassau.

ACTING PRESIDENT NOZZOLIO: Home rule message at the desk.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT NOZZOLIO: The bill is laid aside.

THE SECRETARY: Calendar Number 1254, by Senator Babbush, Senate Print 3078, an act to amend the Vehicle and Traffic Law, in relation to changing the color of certain police vehicles offered for resale.

ACTING PRESIDENT NOZZOLIO: Last section.

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

ACTING PRESIDENT NOZZOLIO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT NOZZOLIO: The bill is passed.

THE SECRETARY: Calendar Number 1255, by Senator Goodman, Senate Print 3586-A, an act to amend the Tax Law, in relation to the delivery of wage reporting information.

ACTING PRESIDENT NOZZOLIO: Last section.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT NOZZOLIO: The bill is laid aside.

THE SECRETARY: Calendar Number 1256, by Senator Velella, Senate Print 3692-A, an act to amend the Insurance Law, in relation to requiring the certified public accountant

reports.

ACTING PRESIDENT NOZZOLIO: The bill is high. Lay it aside.

THE SECRETARY: Senator Tully moves to discharge from the Committee on Rules, Assembly Bill Number 5864-B and substitute it for the identical Calendar Number 1257.

ACTING PRESIDENT NOZZOLIO: The substitution -

THE SECRETARY: Calendar Number 1257, by Member of the Assembly Luster, Assembly Print 5864-B, an act to amend the Public Health Law and the Executive Law, in relation to residential hospices.

ACTING PRESIDENT NOZZOLIO: Last section.

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

ACTING PRESIDENT NOZZOLIO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT NOZZOLIO: The

bill is passed.

THE SECRETARY: Calendar Number 1258, by Senator Hoblock, Senate Print 4455, an act to amend the Executive Law, in relation to display of the prisoner of war and missing in action flag and making an appropriation therefor.

ACTING PRESIDENT NOZZOLIO: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 120th day.

ACTING PRESIDENT NOZZOLIO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT NOZZOLIO: The bill is passed.

THE SECRETARY: Calendar Number 1259, by Senator Saland -

SENATOR SALAND: Lay it aside for the day.

ACTING PRESIDENT NOZZOLIO: The bill is laid aside for the day.

THE SECRETARY: Calendar Number 1260, by Senator Maziarz, Senate Print 4807-A -

ACTING PRESIDENT NOZZOLIO: The bill is laid aside.

THE SECRETARY: Calendar Number 1262, by Senator Kuhl, Senate Print 5087-A -

SENATOR SKELOS: Lay it aside for the day.

THE SECRETARY: -- an act to amend the Retirement and Social Security Law.

SENATOR SKELOS: Lay it aside for the day.

ACTING PRESIDENT NOZZOLIO: The bill is laid aside for the day.

THE SECRETARY: Calendar Number 1263, by Senator Espada, Senate Print 5174, an act authorizing the city of New York to reconvey its interest in certain real property.

ACTING PRESIDENT NOZZOLIO: There is no home rule message at the desk. Lay the bill aside.

THE SECRETARY: Calendar Number 1264, by Senator Mendez, Senate Print 5210, an

act to authorize the Commissioner of General Services to sell certain state lands in the city of New York.

ACTING PRESIDENT NOZZOLIO: Last section.

THE SECRETARY: Section 5. This act shall take effect immediately.

ACTING PRESIDENT NOZZOLIO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT NOZZOLIO: The bill is passed.

THE SECRETARY: Calendar Number 1265, by Senator Kuhl -

SENATOR SKELOS: Lay it aside for the day.

ACTING PRESIDENT NOZZOLIO: The bill is laid aside for the day.

THE SECRETARY: Calendar Number 1266, by Senator LaValle, Senate Print 5372, an act to amend Chapter 311 of the Laws of 1920, relating to the assessment and collection of

taxes in Suffolk County.

ACTING PRESIDENT NOZZOLIO: Last section.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT NOZZOLIO: The bill is laid aside by Senator Paterson.

THE SECRETARY: Calendar Number 1267, by Senator Marchi, Senate Print 3873-A, an act to amend the Real Property Law, in relation to establishing a New York State Real Estate Board.

ACTING PRESIDENT NOZZOLIO: The bill is high. Lay it aside.

THE SECRETARY: Calendar Number 1268, by Senator Kruger, an act to -- Senate Print 4142, an act to allow Jack Walfish, a retired member of the New York State Teachers Requirement System to purchase military credit for service as a Merchant Marine during World War II.

ACTING PRESIDENT NOZZOLIO: Last -- Senator Sears.

SENATOR SEARS: Wait until you're

done.

ACTING PRESIDENT NOZZOLIO: Last section.

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

ACTING PRESIDENT NOZZOLIO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT NOZZOLIO: The bill is passed.

Senator Sears.

SENATOR SEARS: Supplemental Calendar 1, page 3, Calendar Number 1238, would you star the bill.

ACTING PRESIDENT NOZZOLIO: Calendar Number 1238, the bill is starred.

Senator Skelos.

SENATOR SKELOS: Take up Supplemental Calendar Number 2, controversial.

ACTING PRESIDENT NOZZOLIO: The Secretary will read.

THE SECRETARY: Calendar Number

1237, by Senator Holland, Senate Print 138-A, an act to amend the Social Services Law and the Executive Law, in relation to providing an automobile as essential personal property.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT NOZZOLIO: Explanation is asked for.

Senator Holland.

SENATOR HOLLAND: This bill basically does two things: It passes on to the Commissioner of -- Commissioners of Social Services the right to set a reasonable value for an automobile that a client may have and secondly, it clarifies and expands the prosecutorial powers of the welfare inspector general.

ACTING PRESIDENT NOZZOLIO: Senator Paterson.

SENATOR PATERSON: While I understand, Mr. President, that it might seem absurd to have an automobile while being eligible for this type of assistance, but what confuses me as -- is what we would define as

"reasonable", and I was wondering if the sponsor would yield and provide us with an explanation.

ACTING PRESIDENT NOZZOLIO: Senator Holland, do you yield?

SENATOR HOLLAND: Yes.

ACTING PRESIDENT NOZZOLIO: The Senator yields.

SENATOR HOLLAND: I'll tell you, Senator, many times you'll -- many people have told you stories and told me stories about a client who comes into a welfare office or with food stamps and is driving a Rolls-Royce or new Cadillac, that type of thing. What happened many times was since there was no value put on their -- they could have a car of any value, they would dump some of their money that they may have into the car and then qualify for welfare and Medicaid.

This would send to the commissioners the authority to set a reasonable limit on a car. We want them to have a car. They need to have a car, but they shouldn't have

a car that cost 25- or $30,000. That's the point of the bill.

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

ACTING PRESIDENT NOZZOLIO: Senator Holland.

SENATOR HOLLAND: Yes.

ACTING PRESIDENT NOZZOLIO: Senator Holland continues to yield.

SENATOR PATERSON: Senator, actually, it sounds like a good idea and -

SENATOR HOLLAND: It's not everybody.

SENATOR PATERSON: Yeah, I see that. You had this bill before the house last year, Senator. One change that we did note was that previously there was a deputized attorney general who would supervise Medicaid fraud, I guess kind of a special prosecutor in a way and I was wondering why you removed that from the bill.

SENATOR HOLLAND: This is the welfare inspector general that we are trying to

put his authority into statute and it does a number of things. It provides that such authority shall be included but not limited to appear -- appearing before and presenting all matters to the grand jury and all other appropriate actions authorized in the Criminal Procedure Law, basically. It gives him authority in statute that he didn't have before.

SENATOR PATERSON: Why do we need him, Senator?

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

ACTING PRESIDENT NOZZOLIO: Senator Paterson.

SENATOR PATERSON: That's all right. Actually, I like this bill, Senator, and Happy Birthday, by the way.

ACTING PRESIDENT NOZZOLIO: Read the last section.

SENATOR LEICHTER: Mr. President.

SENATOR DOLLINGER: Mr. President.

ACTING PRESIDENT NOZZOLIO: Senator Leichter, why do you rise?

SENATOR LEICHTER: Certainly to wish Senator Holland a Happy Birthday but also to ask him a question.

ACTING PRESIDENT NOZZOLIO: Senator Holland, will you answer a question on your happy birthday?

SENATOR HOLLAND: Certainly try.

ACTING PRESIDENT NOZZOLIO: The Senator yields.

SENATOR LEICHTER: Senator, we were having some problem in the Rules Committee fully understanding the bill, but I think you made it clear. You're now giving enforcement powers to the welfare inspector general. What was confusing is that your memo, as I recollect -- and I don't seem to have it here -- talked about the deputy attorney general for Medicaid fraud.

SENATOR HOLLAND: Senator, that's wrong. That's wrong. It's the welfare inspector general.

SENATOR LEICHTER: Okay. Now I understand. But my question to you then is if we have the deputy attorney general for Medicaid fraud and he's charged with prosecuting these instances of fraud and that office is -- has existed for a number of years and I think it's done a good job, why now do we want to establish concurrent jurisdiction with the welfare inspector general?

SENATOR HOLLAND: Mr. Kuriansky's office basically does providers and the welfare inspector general's Office basically does clients. That's the difference.

SENATOR LEICHTER: Well, let me -- let me see if I understand that, if you would be so good as to continue to yield. Isn't it a fact that the deputy attorney general for Medicaid fraud has not only the authority but is charged to go not only after providers but also after recipients who commit fraud?

SENATOR HOLLAND: I suppose he could, Senator, under the law, but historically that has not been the case. He has basically

gone after providers.

SENATOR LEICHTER: Well, isn't it a fact that the reason he's gone after providers is that's where the big money is?

SENATOR HOLLAND: There's more money on that side, yes, sir, but there's fraud on both sides.

SENATOR LEICHTER: Well, if you -- if we want him to go after the fraud of individuals, the recipients, the beneficiaries, if you will, and he hasn't done so, why don't we just direct him to do so or give him the stamp that he needs to do so? I'm somewhat concerned any time when you have two law enforcement officials and they have concurrent jurisdiction.

SENATOR HOLLAND: I'm told that Kuriansky does not have a problem with this. Both offices work together, but they have separate responsibilities, basically, Senator. That wasn't happening. That's why we -- this bill has been in -- the welfare inspector general bill has -- I brought over from the

Assembly and it was not happening. The client fraud was not being prosecuted and that's why we implemented this about three years ago under Governor Cuomo.

SENATOR LEICHTER: Well, Senator, if, as you say, the office of the deputy attorney general doesn't have a problem with that and it seems to be efficient to proceed in this way, I'll accept your word. Certainly, I agree, instances of fraud should be -- should be prosecuted.

Let me just ask you in that connection because I seem to remember hearing district attorneys going after individuals who committed fraud. The attorney -- the various district attorneys do also now have the authority to prosecute fraud, do they not?

SENATOR HOLLAND: I missed some of it, Senator, but I think you're asking me if district attorneys prosecute fraud. Yes, they do, and some of the research has been done by the welfare inspector general and passed on to the district attorneys. We are concerned that

because the -- for a number of reasons, but one of the reasons we're concerned is because of the tremendous work load that some of the district attorneys' offices have had, they have not prosecuted some of these cases and we're passing it on to the welfare inspector general.

SENATOR LEICHTER: Does the welfare inspector general have the trained personnel to do these prosecutions?

SENATOR HOLLAND: Sometimes.

SENATOR LEICHTER: And sometimes not?

SENATOR HOLLAND: That's correct. Depending upon what we do with the budget, Senator.

SENATOR LEICHTER: And did the budget provide for those instances where he does not have the sufficient staff?

SENATOR HOLLAND: No, but now we can use -- if this bill passes both houses and the Governor signs it, we can use it to squeeze out a little more assistance on his behalf for his office.

SENATOR LEICHTER: So if I understand it, while we have at least two authorities now that can prosecute welfare fraud, and that's the deputy attorney general for Medicaid fraud and our district attorneys, you want to establish personnel to do it, instill another office all with the idea that you're going to save money?

SENATOR HOLLAND: No, sir. It is already established and they have turned over a number of cases that you have read about recently, fraud cases by clients in -- in the government, outside of the government. A lot of fraud was stolen from the -- your taxpayers, so they have been beneficial and saved us money.

SENATOR LEICHTER: Mr. President, just briefly on the bill.

Senator Holland, I'm going to support the bill because I agree, as you do, and as everybody here does, that people who commit fraud ought to be prosecuted. No question about it.

The only disagreement I have with

you is I think you see this enormous pot of money. You believe there's massive fraud here by the recipients. I believe that's not the case. In fact, as you conceded, most of the fraud, at least dollarwise is by the providers. I think that you will find that you may very well be spending more money on this than you will ever be recovering. Nevertheless, there's a benefit, I think, in the public knowing that we take fraud very seriously, and so I will support this bill.

ACTING PRESIDENT NOZZOLIO: Senator Dollinger.

SENATOR DOLLINGER: Will the sponsor yield to a couple of questions, Mr. President?

ACTING PRESIDENT NOZZOLIO: Will the sponsor yield? Senator Holland yields.

SENATOR DOLLINGER: First of all, as I understand this bill, it has two aspects to it; it has the automobile aspect and then it has a section that deals with the scope of investi gations, is that correct?

SENATOR HOLLAND: With the authority of the welfare inspector general, yes.

SENATOR DOLLINGER: Okay. With respect to the second part of that, it says that they can investigate criminal acts or alleged illegal acts or criminal acts, but there's nothing in there that requires the grand jury or allows the Deputy Attorney General to conduct just basically an inquiry to determine -

SENATOR HOLLAND: To what?

SENATOR DOLLINGER: An inquiry just to determine there are certain practices which may not be illegal but are nonetheless inefficient, costly, wasteful and don't serve the public interest. In constructing this bill, did you consider giving them that ability to make that kind of a report as well?

SENATOR HOLLAND: No, I'm sorry, we did not do that. It's a good idea, though.

SENATOR DOLLINGER: Well, I'd just point out that in other countries, for example, in Canada in the Province of Ontario, their grand jury as well as their inspector

general can conduct a detailed investigation that not only reviews punitively illegal acts but can also look at things that definitely need to be redressed, whether they're malfeasance, albeit not criminal but -- or inefficiency or waste or poor practices, pose suggested legislative changes. I think that's the kind of thing you ought to look at and try to tuck into this bill, sort of the broad inquiry so that we get that input back and it isn't simply one of those reports that says it wasn't very good practices but it didn't break the law and we put the -- it up on the shelf and we never see it again.

SENATOR HOLLAND: I think it sounds reasonable to me, but I think it is actually happening anyway. I know personally the welfare inspector general comes to me with recommendations for ways to improve the system where he sees fraud and abuse, where the potential for fraud and abuse is, and I think actually without putting it into law, everybody who is in that business should be responsible

for reviewing procedures suggesting what can be improved. I definitely think the Department of Social Services and the Commissioner should be, both Mr. Kuriansky's office and the welfare inspector general's office, I think without putting it into a law, should be responsible for that anyway and would do that reasonably.

SENATOR DOLLINGER: Let me ask you about the second part as well, again, if the sponsor would continue to yield.

ACTING PRESIDENT NOZZOLIO: The sponsor yields.

SENATOR DOLLINGER: The bill provides that the failure to comply with the subpoena, provide evidence, testimony, whatever, anyone who fails to do that shall be guilty of a misdemeanor.

SENATOR HOLLAND: Yes.

SENATOR DOLLINGER: That a sufficient penalty to actually get them to do what you want them them to do, especially if they're a material witness?

SENATOR HOLLAND: I can't answer

that question. It may not be -- what would you like me to put in there?

SENATOR DOLLINGER: Well, I'm not so sure. I'm trying to find out from the sponsor whether he's evaluated with the Attorney General or with the Deputy Attorney General whether the misdemeanor is only a year -- up to a year in prison. My guess is that that would probably be much less time. My question is, is it a sufficient deterrent?

SENATOR HOLLAND: I'm sorry.

SENATOR DOLLINGER: My other question is do you intend that that be an exclusive remedy?

SENATOR HOLLAND: No, I don't think that this is the end-all. I would think that my thought here was let's try a misdemeanor. If it doesn't work, we can raise it in the future. I would rather not if this functions well.

SENATOR DOLLINGER: But -- again through you, Mr. President, if the sponsor would continue to yield.

SENATOR HOLLAND: Yes, yes.

ACTING PRESIDENT NOZZOLIO: Does Senator Holland continue to yield? The Senator yields.

SENATOR DOLLINGER: By making a comment about exclusivity, under the CPLR -- the Criminal Procedure Law, if someone fails to testify under a grand jury, they actually could be in prison for contempt. Is your intent that that power of contempt be waived here and that the only penalty be that of a misdemeanor?

SENATOR HOLLAND: I imagine the CPLR would take precedence there, Senator.

SENATOR DOLLINGER: Okay. Mr. President, on the bill.

ACTING PRESIDENT NOZZOLIO: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I'm going to vote for this bill, but I think that the penalty may not be severe enough to accomplish the goal that the sponsor intends and that is the threat of a misdemeanor prosecution won't be enough of a deterrent to get them to fully comply with the

subpoena; and my other fear, quite frankly, is by putting in that as a excessive remedy, you may obviate the fact that, under the CPL and other procedures, we have the ability, if people don't testify in response to subpoenas, they can be held in contempt of court. They can be jailed until they agree to testify. Those are some pretty severe penalties but, nonetheless, they recognize that government needs informa tion, it has to get information and that people can't decline to provide it, but through their own choice without paying the heavy penalty.

So I don't think that you may get the benefit of this statute by putting in that misdemeanor provision. I don't think the penalty may be severe enough and, in addition, I would hate to have a court interpret that as an exclusive remedy and say to the prosecutor that you're foreclosed from those broader remedies available in the CPL.

I'll vote in favor of it, but I think it needs a little bit of work.

ACTING PRESIDENT NOZZOLIO: Last

section.

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

ACTING PRESIDENT NOZZOLIO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT NOZZOLIO: The bill is passed.

THE SECRETARY: Calendar Number 1248, by Senator Present, Senate Print 991, an act to amend the Insurance Law, in relation to coverage for mammography screening.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT NOZZOLIO: Explanation has been asked for.

Senator Present.

SENATOR PRESENT: Mr. President, I believe back in 1989, New York State passed a law to require mammography screening in New York State by all insurance carriers, health insurance carriers.

It was brought to my attention by

a female employee in my area that the health insurance provided by her employer did not cover that, so in checking I find that the law exempted certain policies under the New York State law. This is to correct those exemptions to provide that coverage for more needy female employees in New York State.

ACTING PRESIDENT NOZZOLIO: Senator Montgomery, why do you rise?

SENATOR MONTGOMERY: Yes. Mr. President, would the sponsor yield for a question?

ACTING PRESIDENT NOZZOLIO: Senator Present, do you yield for a question?

SENATOR PRESENT: Yes.

ACTING PRESIDENT NOZZOLIO: Senator Present yields.

SENATOR MONTGOMERY: Yes, Senator Present. I see that you -- your bill would require every health insurance policy -- I'm sorry, I don't have the bill in front of me right at this moment, but what -- how does that affect HMOs and managed care organizations -

any other other managed care organizations; are they included in this legislation?

SENATOR PRESENT: This just covers health insurance coverage.

SENATOR MONTGOMERY: Is there any reason why you did not extend to -- since we're moving most -- we're attempting in the state to move a large majority of the population into managed care organizations as our primary health care delivery system, would you be -- you know, would it be possible to include that? I mean, I think this is a good bill. I just think we need to -

SENATOR PRESENT: I think that they'll be covered too, ma'am. They'll be covered under this.

SENATOR MONTGOMERY: Excuse me?

SENATOR PRESENT: They will be covered.

SENATOR MONTGOMERY: They will be covered.

SENATOR PRESENT: And are covered now under -- with exceptions.

SENATOR MONTGOMERY: All right. My colleagues seem to say that it's already covered. So my question is answered in the affirmative.

SENATOR PRESENT: Right.

ACTING PRESIDENT NOZZOLIO: Thank you.

ACTING PRESIDENT NOZZOLIO: Senator Solomon.

SENATOR SOLOMON: Yes. Senator Present, will you yield, please?

ACTING PRESIDENT NOZZOLIO: Senator Present, do you yield?

SENATOR PRESENT: Yes.

ACTING PRESIDENT NOZZOLIO: The Senator yields.

SENATOR SOLOMON: Senator, as you eliminate Section 3221 which is the exception under the Insurance Law which says, "except this provision shall not apply to a policy which covered persons employed in more than one state or the benefit structure which was subject to collective bargaining affecting persons employed

in more than one state."

I think I've asked you this question for the past two years and this is the third year. I would like you to explain to me how this law, if it's passed by both houses and signed by the Governor, would be able to last even 24 hours under ERISA attack.

SENATOR PRESENT: I don't know as you have ever asked that question, and I don't know as I could have answered had you, so I won't attempt to answer it now.

SENATOR SOLOMON: Senator, the Employment Retirement Income and Security Act specifically prohibits -- which is federal law and preempts state law, exclusively prohibits New York State or any other state from placing a mandate on insurance policies for companies that are multi-state coverage. In other words, they are -- or self-insured, and that's what I'm trying to get at.

I agree with the intent of what you're doing but, in reality, it's passing a law that will be illegal and against federal law and

it will be struck down by the courts the day after it's signed.

SENATOR TULLY: Mr. President.

ACTING PRESIDENT NOZZOLIO: Senator Tully.

SENATOR TULLY: If I may, Senator Solomon, try to respond.

SENATOR SOLOMON: Sure.

SENATOR TULLY: Just in looking at the bill itself, it specifically says "except that this provision shall not apply to a policy which covers persons employed in more than one state or the benefit structure which was the subject of collective bargaining affecting persons employed in more than one state", so it specifically exempts the question that you've asked.

SENATOR SOLOMON: Mr. President.

ACTING PRESIDENT NOZZOLIO: Senator Solomon.

SENATOR SOLOMON: I'm reading the current law and the current law under Section 3221 of the Insurance Law mandates this

coverage. "Every insurer delivering a group or blanket policy or issuing a group or blanket policy for delivery in this state which provides for coverage, hospital, surgical, medical care shall provide for the following coverage for mammography screening, for occult breast cancer" and the exception in the law says "except that this provision shall not apply to a policy which covers persons employed in more than one state or the benefit structure of which was subject to the collective bargaining affecting persons employed in more than one state." That's the exception which currently exists.

We currently cover mammography exams, and what I'm saying is by striking this exception out, it's just going to result in a lawsuit and the courts are going to strike it. I agree with the intent, but we cannot mandate this coverage. It's outside of our purview.

ACTING PRESIDENT NOZZOLIO: Senator Tully.

SENATOR TULLY: Yes, Mr. President.

I think there may be some misinterpretation by Senator Solomon because I think what this is specifically saying is except -- this will not apply in those cases that you're concerned about. They're conforming to the law the way this bill is written.

SENATOR SOLOMON: But it's bracketed. That's the part that's coming out. It's bracketed in two places, Senator Tully, and if you'll take a look at the last set of brackets, the brackets take that part out, except that this provision shall not apply. That's where the bracket starts on line 7, page 1. After the word "cancelled", the brackets commence.

SENATOR TULLY: Yes, you're exactly correct, Senator Solomon. I stand corrected.

Thank you, Senator Solomon.

ACTING PRESIDENT NOZZOLIO: Senator Solomon.

SENATOR SOLOMON: On the bill.

ACTING PRESIDENT NOZZOLIO: On

the bill.

SENATOR SOLOMON: I voted against this bill last year. It's a bill that you have to vote -- it's a bill that's extremely worthy of consideration. Unfortunately, it's the same as if we were passing a law on defense policy. It's out of our purview to regulate self-insured companies which are the ones that basically deal with multi-state insurance policies. We cannot tell a -- General Electric, if it issues a policy -- and it's self-insured, that they must produce this coverage.

Senator, they should provide this coverage. An example of why they should provide this coverage, it's in their economic self interest. Coors Brewery, five years ago, did volun... offered mammography exams to every employer -- every employee and every dependent of an employee. They caught four early malignancies. It cost them $60,000 for the exams. Their savings, because they were self-insured, was $250,000, not counting the psychiatric savings on the families and the

trauma that was saved. It's in their economic self-interests, but legislatively we can't pass this law.

We can pass it. If it passes the Assembly and gets signed by the Governor, it's going to get struck down. I'm just trying to point that out. We're violating ERISA, which is the Employee Retirement Income and Security Act.

ACTING PRESIDENT NOZZOLIO: Senator Mendez, why do you rise?

SENATOR MENDEZ: Will Senator Solomon yield for a question?

SENATOR SOLOMON: Yes, Senator.

ACTING PRESIDENT NOZZOLIO: Senator Solomon yields.

SENATOR MENDEZ: Thank you.

Senator Solomon, how long has that federal statute been in place?

SENATOR SOLOMON: 21 years.

SENATOR MENDEZ: 21 years ago, don't you think, Senator Solomon, there are cases of breast cancer were not even reported anywhere, practically reported. The situation

has changed immediately.

So I suggest -- do you think that this is a bad suggestion -- I suggest that in the case in which this bill passes and it's taken to court, won't that bring greater awareness to all of those guys and dolls in Washington about the need to change that existing federal legislation that does not give an opportunity to women to have policies to those that do not have any monies to pay for it? Don't you think that would be faster for those guys and those in Washington to realize that they have to change that statute because 21 years ago the threat of breast cancer wasn't anywhere in the United States. Now it's very out in the open and there is great need for women to go for early detection so their lives will be saved. Don't you think that would help the courts?

SENATOR SOLOMON: Can I respond?

SENATOR MENDEZ: Yes.

ACTING PRESIDENT NOZZOLIO: Senator Solomon.

SENATOR SOLOMON: Senator, Congress in Washington has been aware of ERISA and the laws regarding impacts and mandates of ERISA. There's files on it. There have been Law Review articles on it. It's been litigated for years and years and years, not only involving New York State. We just had a case go to the United States Supreme Court which was decided favorably, so I don't think it would make the people in Washington any more aware of this because I can guarantee you that -- without even looking, I can guarantee you that these mandates have attempted to be passed by other states. It was a state mandate. This was mandated in New York State law, and it's been mandated in other state laws along with numerous other mandates, but the federal government, when ERISA was passed in 1974, one of the impacts of ERISA which dealt with retirement was on insurance and these specific mandate requirements. I'm not disagreeing with you. I'm agreeing with you.

What I'm saying now is passing this law and having it signed is futility in

terms of New York State because it's been done before, it's been struck down by the courts before, because the whole intent of the large self-insureds are to have a uniform policy that they can give you in New York, in California, in Iowa, in Alaska, et cetera. They don't want to have to have a policy that contains different coverages as mandated by New York, New Jersey, Pennsylvania, Iowa, Alaska, et cetera.

ACTING PRESIDENT NOZZOLIO: Senator Mendez.

SENATOR MENDEZ: Are you saying to me that the reason why -

ACTING PRESIDENT NOZZOLIO: Senator Mendez, do you ask Senator Solomon to continue to yield?

SENATOR MENDEZ: Thank you, Mr. -

ACTING PRESIDENT NOZZOLIO: Senator Solomon, do you yield? The Senator yields.

SENATOR MENDEZ: Thank you, Mr. President.

I am saying to -- are you saying to me that the reason why we have that -- that kind of mandate throughout the state is because it is very convenient for the insurance companies who have a standard policy everywhere in the -- within the United States?

SENATOR SOLOMON: Mr. President, may I yield?

Senator, these are not insurance company policies. In many instances, these are what we called self-insureds. They do not purchase insurance from the ABC insurance company.

SENATOR MENDEZ: Okay.

SENATOR SOLOMON: They provide their own insurance. They're self-insured. They take their own pool of money and they provide that. They give you a booklet which tells you your coverages, but they're not purchasing insurance.

SENATOR MENDEZ: Mr. President, will he yield for another question?

SENATOR SOLOMON: Yes, Mr.

President.

ACTING PRESIDENT NOZZOLIO: Senator Solomon, do you continue to yield?

SENATOR SOLOMON: Yes, Mr. President.

ACTING PRESIDENT NOZZOLIO: The Senator continues to yield.

Senator Mendez.

SENATOR MENDEZ: The Senator is an expert in insurance, I am not, so I would like to benefit from his knowledge.

SENATOR SOLOMON: It's very little knowledge.

SENATOR MENDEZ: So -- so the situation is that because of that mandate, then we cannot pass a law here in New York State that would benefit the women. Don't you think that there must be a way to change that mandate so that the women in the state of New York who do not have any economic means to go through the - any insurance, they could, in fact, go for such an examination that is so vital for their own physical well-being?

SENATOR SOLOMON: Senator, in regard -- let me go -- in response to your question, what I'm saying is New York State, just like any other state, cannot pass a law that impacts policies for those companies that are self-insured. We do pass laws saying that if you purchase a policy in New York State and you are a New York State company, you must have mammography. That's in the current law now, as I said.

What I also said is I agree with you in terms of mammography testing 100 percent, and the example I alluded to a few minutes ago regarding Coors Brewery showed that when these -- I can almost tell you now that most large companies do cover mammography exams because it's in their economic self-interest. The companies that we have problems with is where a 50-employee company will self-insure -- say "I'm self-insured. I'm protected under ERISA", and they will offer a policy that, in effect, has no insurance coverage and, yes, that policy will discriminate against women. It will discrimi

nate against children. It will discriminate against men because, in fact, that insurance policy is meant not to provide certain services and you can't even file a complaint with your state Insurance Department, but that is a problem we can't deal with.

That's a problem -- I have represented or helped craft some complaints to solve these problems against -- a woman that delivered twins and had an ERISA policy that, in fact, provided no coverage at all or they changed it after she gave birth saying you're not covered after she got cancer, and to show you the crimes committed under this, if you want to call it that, this same company called someone after they had a heart attack and they were in a hospital and said, "You know what? You're terminated because you didn't come in to work so you don't have your health insurance anymore." That, our Insurance Department couldn't deal with, but this has nothing to do with covering women. It's just the statute which is in front of us. If it was a statute to

provide -- mandate hairpieces because of cancer treatment on multi-state policies, I would say the same thing. It violates ERISA. That's all I'm saying.

I agree with you 100 percent. Any company that was self-insured, it's in their interests to do mammography exams because it saves them money, because it costs less money for early detection than it does to detect a cancer after it's progressed, so I'm agreeing with your position. I'm just telling you under the law, the net result is going to be the fact that it will be struck down immediately. That's the problem with this bill.

SENATOR MENDEZ: Thank you.

ACTING PRESIDENT NOZZOLIO: Senator Mendez.

SENATOR MENDEZ: On the bill.

ACTING PRESIDENT NOZZOLIO: On the bill.

SENATOR MENDEZ: Mr. President, I think that we should vote for this bill. It will make -- let these self-insured companies

fight it out again in the courts. This will bring greater awareness in Washington about the need to go over that existing statute that is already 21 years old and we must start looking at it to see how relevant it is to today's situation.

Thank you, Mr. President.

ACTING PRESIDENT NOZZOLIO: Thank you, Senator Mendez.

Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the first day of January.

ACTING PRESIDENT NOZZOLIO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT NOZZOLIO: The bill is passed.

SENATOR STAVISKY: Mr. President.

ACTING PRESIDENT NOZZOLIO: Senator Stavisky.

SENATOR STAVISKY: Mr. President,

without objection, I should like the record to reflect a no vote on Calendar 186, and if I had been in the chamber during the slow roll call, I would have voted in the negative on 91 and 994.

Thank you.

ACTING PRESIDENT NOZZOLIO: Without objection.

The clerk -

THE SECRETARY: Calendar Number 1249, by Senator Rath, Senate Print 1281, an act to amend the State Finance Law, in relation to requiring a regulatory budget.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT NOZZOLIO: Senator Leichter.

SENATOR LEICHTER: Yes. Would Senator Rath yield on this bill, please?

ACTING PRESIDENT NOZZOLIO: Senator Rath, do you yield? Senator Rath yields.

SENATOR LEICHTER: Senator, I want to ask just a couple of questions about this bill, but if you would find it easier to

first explain it in however way you want to, I'd certainly yield to that.

SENATOR RATH: Why don't you just go ahead with your question, Senator. I think it's fairly straightforward.

SENATOR LEICHTER: If I understand this bill, it requires that each agency identify in detail the amount of the appropriations the agency gets which are being spent on regulatory work; is that a correct statement?

SENATOR RATH: Yeah. Let me answer the "in detail" phrase. If you're -- if you're looking through this document and you see the words "in detail", you'd probably be as surprised as I was to see it because we had no intention of micro-managing anything.

If you go to the bill itself, the bill is fairly -- fairly open asking that the agencies that do a lot of regulation -- and we don't spell out which agencies, but we say the agencies that do regulation to give us some sort of a view as to how much money they spend

regulating, and I would say that it came to me -- probably just about the first thoughts that I had as I recognized the responsibility of a - a chairman of an Administration Regulation Review Commission, I found myself hearing that we almost had a Catch-22 here. Do we have more regulators writing more regulations or do we need -- do we need more regulators to write more regulations? And which came first, the chicken or the egg kind of theory.

So what we're attempting to get at here is a look at what an agency thinks it might cost them to regulate. It's the old performance budgeting kind of thing that we were all doing 15 years ago and which I don't know that we see people doing much anymore on a broad base, but this particular bill is looking for the agencies in good faith to come forward with this kind of information.

SENATOR LEICHTER: Thank you very much, Senator Rath.

If you would be so good as to continue to yield.

ACTING PRESIDENT NOZZOLIO: Senator Rath, do you continue to yield?

SENATOR RATH: Surely.

ACTING PRESIDENT NOZZOLIO: The Senator yields.

SENATOR LEICHTER: I'm glad you make it clear that you're not asking for details because I think those would be really very difficult to achieve, but what I'm concerned about and what I want to ask you is right now we have what we call a detailed executive budget, do we not?

SENATOR RATH: That's right.

SENATOR LEICHTER: And that sets forth the number of personnel and the commissioners and other than personal services. Doesn't that give us a fairly clear picture of where the personnel within the agency are?

SENATOR RATH: I would say, Senator, that through the years, different aspects of state finances have been focused on. There was -- there was a summary of financial plans showing each of the government fund types,

current and projected employment levels for each State Department, three-year financial projection. I think this is asking the agencies to take a look at things, maybe not the way they're looking right now, but shift it. Take a look at what it costs you to write regulations, and let's say an agency hadn't thought about that before, but they found themselves making personnel requests the following year for two more people to write regulations when we're, indeed, in an era where an attitude adjustment that we've all pretty much agreed is very important in New York State, whereby we attempt to not diminish regulations but regulate smarter and hopefully regulate a little less.

Let me point out a memorandum sent in by the Business Council which commented and I thought that their issue was well taken. They said, quote -- the Business Council. "It is clearly not the intent of the bill, although it may result in some agencies, that they would spend an -- inordinate amounts of time deciding which staff and other expenditures are

regulatory in nature. The Budget Division and the Office of Regulatory Reform may need to give agencies clearer guidelines to avoid such potential problems."

Even with these concerns, the Business Council believes this legislation provides a useful tool in the state's regulatory reform measures and earlier they said they recognized that it might be that there would be increased activity and increased spending by an agency when they found themselves reaching out to the community that is regulated and reaching out in order to regulate smarter. It might cost them more than it cost in the past, and so we're not necessarily looking at them saying, "We spent this much this year. We're going to spend less next year. We're going to spend less the next year." We're looking at them to regulate smarter.

SENATOR LEICHTER: If you would please continue to yield.

ACTING PRESIDENT NOZZOLIO: Senator Rath.

SENATOR RATH: Surely.

ACTING PRESIDENT NOZZOLIO: Senator Leichter.

SENATOR LEICHTER: Senator, I'm glad you read this critique by the Business Council because they expressed some of the concerns I had that this is very difficult to do, and you sort of, as I understand it, backed away a bit from requiring a detailed statement. In fact, if I recollect, I saw another bill of yours on this; am I correct? Was there another bill of yours -

SENATOR RATH: On the agenda today?

SENATOR LEICHTER: -- that dealt with the same subject matter?

SENATOR RATH: Senator, there are so many pieces that allude to various aspects of regulatory reform that, if there's a little overlap, you'll have to excuse us.

SENATOR LEICHTER: Well, let me just ask you if you would be so good -- if you would look at line 17, you say that "...

disbursements proposed to be made pursuant to this paragraph." What are you referring to when you say "disbursments to be made"? Does this particular bill call for any disbursments?

SENATOR RATH: You know, I asked the same question and I was advised by counsel that this is boilerplate language that shows up in these particular kinds of bills in order to implement them.

SENATOR LEICHTER: Well, I'm not sure I understand it, and while you and I, we do rely to a large extent on counsel, you know, I'm not -- I'm not sure that they always have the right answer. I'm not sure I understand it.

Now, where is this, if you will, identification of rulemaking, adjudicatory and licensing expenditures; where is that going to be shown? It says on line 19 that "... the separate and distinct parts prepared in accordance with this provision -- with the provisions of paragraph 5 of this subdivision." I don't have that before me, and I just wonder where that is or what it is.

SENATOR RATH: One second, Senator.

I think that in the over-arching look at this piece of legislation, it points out where the government regulations and mandates are falling and we've seen so much effort put in this year as in previous years to uncovering where some of these hidden costs are, and the points that you're pointing to below sections - lines 18, 19, 20, again, are implementing legislation for what -- above and I highlight lines 14 through 17 -- the beginning of 17 -- as the real intent of the legislation.

SENATOR LEICHTER: Senator, I appreciate what you're saying, but if we could just focus on the specific -- my specific question is you're trying to get the agencies to identify how much they're spending on certain rulemaking and adjudicatory functions. I just want to know where is that going to be stated? Is that going to be part of the budget bills? Where do we get this information? How do they disseminate it? To whom do they make it

available?

SENATOR RATH: Well, that's why we have left that unsaid, because I would imagine the agencies and the Governor, in his wisdom with, again, having a Director of Regulatory Reform, would work into some sort of directive that they would use for their agencies in order to be able to bring that information back. We have not intentionally tried to micro-manage because that's been a lot of the difficulties I think that we've seen government get into through the years. The micro-managing does not allow flexibility.

As one agency may do regulations, that would be very easily identified as these people are writing regulations. DEC has a whole department that writes regulations. Other agencies may only write a dozen regulations a year because they just simply aren't impacted heavily. So I think that should be under the - some of the direction of the administration.

SENATOR LEICHTER: If you would yield just for one final question, Senator

Rath.

SENATOR RATH: Sure.

SENATOR LEICHTER: In other words, the agency together with the Governor can decide whether they're going to put this in a budget bill, whether they're going to have it in their annual brochure or pamphlet, report that they put out, maybe in a letter to the chairs of the Finance Committees, maybe to you as chair of the regulatory -- many -

SENATOR RATH: Well, Senator, again I come back to some earlier comments that you and I exchanged this year regarding common sense as to where it's very important for us to see this, and I think that we have to believe that without micro-managing, that the intent is well intended and that we will see these -- I certainly don't expect they're going to appear in some brochure that's going to be mailed out to constituents that are asking questions of an agency. I expect that they will be returned to the Governor and returned to us if we were to ask for that information.

Remember, Senator, that there - at the beginning of this year, we had a gate, if you will, as to regulations that were -- that were going to be proposed and there were some 350 regulations sitting on our doorstep January 1st that did not go through because we had a regulatory -- what we knew about those 350 because we had a regulatory agenda bill that passed here last year and was signed by Governor Cuomo that identified 350 regulations out of, I believe it was just five agencies -- it was either four or five agencies and those sat because there was some effort being made to know what the agencies are doing.

Now, I believe that this is the same kind of legislation. It's well-intended legislation attempting to ask well-intended people to help us work through some very difficult circumstances in New York State.

SENATOR LEICHTER: Thank you very much, Senator Rath.

ACTING PRESIDENT NOZZOLIO: Senator Leichter on the bill.

SENATOR LEICHTER: On the bill. Let me just say I don't share Senator Rath's belief, you know, that government is going to work very well on good intentions and the good intention of the legislation, the good intention of the executive and the good intention of the agencies and we're going to get what she seeks, but that's really not my main objection to the bill.

I mean, even if the bill was drafted with some precision -- I don't mean to say this critically. I understand that you purposely didn't want to do this in some detail, but it seems to me, first of all, that the bill is drafted in such a way that I don't know what it accomplishes, but my other problem is that, it seems to me, Senator Rath, that you and Senator Wright, in your zeal to cut down on the administrative function and burdens on agencies, sometimes add to those functions and burdens; and now you're going to require every agency to try to figure out how much time a particular employee spends in a -- in adjudicatory and

rulemaking and licensing, and so on, a secretary may have to say, "Well, I take 15 phone calls a day and three are on this and four are on that."

I know you said that you're not trying to micro-manage, whatever that means, and I know that you said we're not requiring this in detail, but I don't know what you're requiring then, and if you are requiring this precise information, it just seems to be an enormous burden on the agencies.

I don't know whether you rise to ask me a question, in which case, I yield. If not, I'll -- or you just want to be heard on the bill -- let me just finish my comments on the bill.

I mean, in part -- Senator Rath, if I can put this in a broader context, what I hear from you and Senator Wright and some other people is you wish this were a less complex world, that we didn't have environmental problems and we didn't have some of the social needs and some of the social problems we have

and we didn't have the interaction between various forms of government and businesses and consumers, and so on. It happens to be a pretty complex world. It's not what it was in 1920 or 1820, and so on, and we have a need for more regulations than we have ever had before.

That's not to say that we shouldn't have a good process, that we shouldn't try to weed out unnecessary regulations, but I think that how you seem to proceed is on the basis that so many of these regulations are unnecessary. They're harmful. They can be gotten rid of and the agencies are creating regulatory work where none is needed, and if we just put a lot of pressure on them, then we're going to, in some ways, get these agencies no longer to interfere so much in the affairs of the people of the state of New York, and I submit to you that's really very illusory and that what you end up with is that you're going to end up with a state that functions far less well and you're going to end up with problems in the health of the people of the state of New

York as you've emasculated environmental regulations, and so on.

So I must say while this bill is written in sort of a benign way, in fact, so benign that I don't know what it does, but it - the underlying theory is regulations are bad. That's why I differ with you. Some regulations maybe we can do without but, unfortunately, in the world that we lead, you need to have government to be involved and try to create that level and fair playing field to protect people and you need regulations.

ACTING PRESIDENT NOZZOLIO: Read the last section.

THE SECRETARY: Section 2 -

SENATOR STACHOWSKI: Mr. President.

ACTING PRESIDENT NOZZOLIO: Senator Stachowski.

SENATOR STACHOWSKI: If Senator Rath would yield to just a question.

ACTING PRESIDENT NOZZOLIO: Senator Rath, will you yield for a question?

SENATOR RATH: Surely.

SENATOR STACHOWSKI: I listened to the exchange between you and Senator Leichter and I read the memo and read the bill, and I'm more confused than when I saw this in Rules for the first time, and basically I'm just going to ask you two questions, and the first being, this bill says that it's an act to amend the State Finance Law, in relation to requiring a regulatory budget. This document is going to be prepared in time for next year's budget process. Is this document going to go to the Legislature as part of the budget proposal or does it go to the executive department as part of the departmental budget for each agency?

SENATOR RATH: Let me check with my -- it is our intention that that would come to the Legislature so that we will be able to get a full view of what we are spending -- or let me just say not a full view, some sort of an initial view as to what we see that we're spending on regulation.

SENATOR STACHOWSKI: Mr.

President, if Senator Rath would yield.

ACTING PRESIDENT NOZZOLIO: Senator Rath, do you continue to yield?

SENATOR RATH: Surely.

ACTING PRESIDENT NOZZOLIO: The Senator yields.

SENATOR STACHOWSKI: The other question I had is the fiscal implication of the bill, it says "costs involved in regulatory budget preparation" which I would feel all of us know that, but what we expect to see in fiscal implication would be roughly what it's going to cost each of these departments to ascertain this -- this information, and that seems to be left out and there has to be some expense. Every department has "X" amount of jobs currently and the employees are requested to do "X" amount of things when they're preparing this year's budget.

Now, this year's budget has passed and along comes this bill which will now add additional responsibilities to practically everybody in the department if they have any way

to report it or if they report at all, and to what part of their job deals with the cost of regulations that they either have to put together or they are answering to.

So this is an added expense to the department and we're just trying -- I'm just trying to find out so I can understand whether it's doing a -- if this is, in fact, an expensive mandate on these departmental people -- because one of the questions asked to me when I was going back and forth with some of the appointees to the new Governor was that they would be able to carry out their jobs under the restricted budget that the Governor had presented at the time they were looking for appointment, but they would have a great difficult time doing that if they got a whole new series of jobs from the Legislature in different bills, and my question is how much is this going to cost because that is exactly what this bill does.

ACTING PRESIDENT NOZZOLIO:

Senator Rath.

SENATOR RATH: I think we all share your concerns, Senator Stachowski, and I believe that all of us are very comfortable when we have a job description and I'm sure in the various departments, the people who do the regulating and are expected to serve that function have their -- their job description indicates that part of their time is allocated to writing regulations, and I don't know, Senator Stachowski, if you have ever held a job that was an hourly kind of work that was a free lance kind of work. I did that at one time and found it very difficult at first to -- to chalk up anything more than an hour's work because I knew how much I earned by the hour. If I worked for three or four hours, I was comfortable in putting down the three or four hours and that was billable time.

Well, as I came to know attorneys and other people who have worked with billable time, I don't think it's a real problem. I think people see if they spent a period of time on something or made a couple phone calls, put a

couple checks in a column on a paper that's on your desk and once a month you take a half an hour and look at it and say, "Yeah, I spent 25 hours this month on working on regulations" and you walk away from it. The next month you did the same thing and eight or ten or twelve months later, however long we would be into this at this point, we would have some sort of a bird's eye view for each department as how much time they spent. That's basically what we're looking for.

SENATOR STACHOWSKI: Excuse me, Mr. President. I said it would only be two questions, but I really have to ask one more.

ACTING PRESIDENT NOZZOLIO: Will Senator Rath yield to one more question?

SENATOR RATH: Surely.

ACTING PRESIDENT NOZZOLIO: The Senator yields.

SENATOR STACHOWSKI: Senator, I can understand that there's free lance jobs and other jobs, and I'm not being specific in saying what people should be doing.

My problem is that when there's a fiscal implication on a bill and it says the cost of doing -- preparing this budget, that's not a fiscal implication. The implication is a number. How much does it cost; and if you want to say it has no fiscal impact, which is what you inferred when you said you can either free lance or you have an hourly wage type of job with a specific -- specific goal to accomplish, that's one thing, but if it's either no fiscal implication or there is a cost, and I'm just trying to find out if it's no fiscal implication, then that's what it should say or if there's a dollar amount involved in it, then that's what it should say, but to say that it's the cost involved in regulatory budget preparation, then I would imagine every bill we ever bring here, that, if we don't want to say the number, we'll say it's the cost to do the job that this bill calls for, and that would be the same as this fiscal implication on this bill and that's the problem I have.

I don't mean to be overbearing on

this particular issue, but I know that in other instances when somebody's asked for a fiscal implication, oftentimes their bill won't even be considered if it doesn't have a number attached. So if it's none, then let's not say none, and if it's some, let's get a number on it. Senator, if you could possibly give a number, I'd appreciate it.

SENATOR RATH: Senator, I would be glad to say that I don't see any costs at this point and that I would expect that the Division for Budget or the Office of Regulatory Reform may have to give the agencies some guidelines in these areas, but right now I don't see that there are going to be a lot of potential problems.

ACTING PRESIDENT NOZZOLIO: Read the last section.

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

ACTING PRESIDENT NOZZOLIO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes -- those recorded in the negative on Calendar 1249 are Senators Abate, Connor, Leichter, Onorato, Paterson and Stavisky. Also, Senator Montgomery. Ayes 52, nays 7.

ACTING PRESIDENT NOZZOLIO: The bill is passed.

THE SECRETARY: Calendar Number 1250, by Senator Holland, Senate Print -

SENATOR SKELOS: Lay it aside temporarily.

THE SECRETARY: Calendar Number 1253, by Senator Skelos, Senate Print 2761-A, an act in relation to the duration of the eligible list for police officer in the county of Nassau.

ACTING PRESIDENT NOZZOLIO: Home rule message at the desk.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT NOZZOLIO: Explanation is asked for.

Senator Skelos.

SENATOR SKELOS: Currently, there is no valid list which exists in the county of

Nassau so the villages can hire police officers.

What this legislation would do would extend a list that expired on May 4th, 1994 until May 4th, 1996 unless a new list is validated that police officers can be selected from for villages within the county of Nassau.

ACTING PRESIDENT NOZZOLIO: Senator Paterson.

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

ACTING PRESIDENT NOZZOLIO: Does Senator Skelos yield? The Senator yields.

SENATOR PATERSON: Senator, this list that we're working from right now is already a year old, and the whole purpose of civil service lists is for them to be up to date. What you seem to be asking us to do is to extend this list, so that at one point it might be three years old and we still don't have a replacement list.

So I can understand you extending the legislation, but why would you extend it two

years as opposed to one, because in that second year, I would hope that we would have a replacement list.

SENATOR SKELOS: I would certainly -- the legislation says that if a new list is established, then this one would expire.

SENATOR PATERSON: Thank you, Mr. President.

Again, through you, Mr. President. Senator Skelos, I understand that, but what that accomplishes is building into the legislation what would in a sense be protection that since there hasn't been any activity in the first place, let's just say that this legislation is not going to stimulate any activity at this point.

SENATOR SKELOS: The problem - the problem -- we're going to hopefully stimulate the county to establish this list. The problem right now is that villages who use the county list to select new recruits for their departments have not been able to do so because a new list has not been established, and when

I'm talking about villages in our county, we're talking about police forces with maybe 20 policemen and when they lose one or two, it's a real technical problem for them to continue to service the people within their community. It's not the county -- it's really to protect the villages.

SENATOR PATERSON: I understand.

Thank you, Senator Skelos. If you would yield for just one other question.

I understand the problem when we're losing officers. Can you explain to me the problem that is causing us to be unable to establish the list?

SENATOR SKELOS: No.

SENATOR PATERSON: Okay. Well, if the problem doesn't cure itself -- in other words, since we don't know what the problem is, it's very likely that we could be right back here in 1996 extending the list again, couldn't we?

SENATOR SKELOS: There's always a possibility, but not a probability.

SENATOR PATERSON: I understand. What I'm saying, Senator, is because that's the case, in this legislation, it seems to me that we are addressing an issue, but it's not even correlative. It's more ancillary to the actual issue that's creating the problem, and in addressing it through this form of legislation, what I think we are very likely to accomplish is a situation where we've got individuals who would like to become police officers who, but for the fact that they are not on a current list which was established somewhere in 1994, would be denied. What we're now also implementing is a list that, in many respects, has aged.

So I'm just suggesting to you that -- yeah, I can vote for this piece of legislation. I don't have a problem with it per se, but I think that this is an issue that needs to be looked into to figure out why we are forced as a Legislature to act on this particular -- in this situation.

SENATOR SKELOS: Thank you very much.

SENATOR PATERSON: You're welcome, Senator.

Mr. President, on the bill.

ACTING PRESIDENT NOZZOLIO: On the bill, Senator Paterson.

SENATOR PATERSON: As I said to Senator Skelos, there's really nothing wrong with this legislation, but there is something wrong somewhere that we are unable to determine either through the legislation or even the discussion, and what I would hope is that - that the sponsors would look into trying to determine why the list hasn't been established because, in many respects, it is prolonging an opportunity for some and denying employment for others.

ACTING PRESIDENT NOZZOLIO: Read the last section.

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

ACTING PRESIDENT NOZZOLIO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT NOZZOLIO: The bill is passed.

THE SECRETARY: Calendar Number 1255, by Senator Goodman, Senate Print 3586-A, an act to amend the Tax Law, in relation to the delivery of wage reporting information.

SENATOR STACHOWSKI: Explanation.

ACTING PRESIDENT NOZZOLIO: Explanation is asked for.

SENATOR GOODMAN: Who asked for the explanation, please?

ACTING PRESIDENT NOZZOLIO: Senator Stachowski.

Senator Goodman.

SENATOR GOODMAN: Senator Stachowski, this bill is a technical correction from the Department of Taxation and Finance to a bill that was passed last year and is now Chapter 630 of the Laws of 1994. Its purpose is to allow the expansion of the delivery of wage reporting information by the Department of

Taxation and Finance to the Department of Social Services for the evaluation of employment or training programs authorized pursuant to the Social Services Law.

ACTING PRESIDENT NOZZOLIO: Read the last section.

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

ACTING PRESIDENT NOZZOLIO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT NOZZOLIO: The bill is passed.

THE SECRETARY: Calendar Number 1260, by Senator Maziarz, Senate Print 4807-A, an act to provide benefit options to surviving spouses of certain deceased members of the New York State Teachers Retirement System.

SENATOR STACHOWSKI: Explanation.

ACTING PRESIDENT NOZZOLIO: Explanation asked for.

Senator Maziarz.

SENATOR MAZIARZ: Mr. President, who asked for the explanation?

ACTING PRESIDENT NOZZOLIO: Senator Stachowski.

SENATOR MAZIARZ: Thank you.

Senator, Terry Taylor was a great educator and was well respected by his colleagues in the Spencerport School System, as well as educators across New York State. His untimely death at the age of 47 in February of 1994 was especially disturbing because he did not satisfy the 30-day waiting period required to receive disability retirement benefits from the New York State Teachers Retirement System. As a result, the benefits his wife and two children received from the retirement system were considerably less than he would have had he lived for just another seven days.

ACTING PRESIDENT NOZZOLIO: Senator Stachowski.

SENATOR STACHOWSKI: Senator Maziarz, would you yield for a couple of questions?

ACTING PRESIDENT NOZZOLIO: Senator Maziarz, do you yield?

SENATOR MAZIARZ: Yes.

ACTING PRESIDENT NOZZOLIO: The Senator yields.

SENATOR STACHOWSKI: Senator, isn't it true that unfortunately people in the various retirement systems, whether Teachers' or the New York State retirement system, have the wrong benefits or miss a date and they die and they're either in the wrong system or they didn't fill out some papers or some papers weren't aged and this happens pretty regularly? What -- what makes this particular person any different than all those other people that unfortunately found themselves in the same position and didn't get the benefits that will be provided by this legislation?

SENATOR MAZIARZ: I don't think, Senator, it makes this person any different at all.

SENATOR STACHOWSKI: I'm sorry?

SENATOR MAZIARZ: I don't think

it makes this situation any different at all. I mean, if this happened to one of the other Senators' constituents and they wanted to bring up this bill, I would certainly support it. I don't think there's any large difference here at all.

SENATOR STACHOWSKI: Let me ask -- if the Senator would still yield.

ACTING PRESIDENT NOZZOLIO: Does the Senator continue to yield?

SENATOR MAZIARZ: Yes.

ACTING PRESIDENT NOZZOLIO: The Senator yields.

SENATOR STACHOWSKI: The cost of doing this bill, that will be incurred by the retirement system and not by the school district?

SENATOR MAZIARZ: Yes.

SENATOR STACHOWSKI: Thank you, Senator.

ACTING PRESIDENT NOZZOLIO: Last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT NOZZOLIO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT NOZZOLIO: The bill is passed.

THE SECRETARY: Calendar Number 1266, by Senator LaValle, Senate Print 5372, an act to amend Chapter 311 of the Laws of 1920, relating to the assessment and collection of taxes in Suffolk County.

SENATOR STACHOWSKI: Explanation.

ACTING PRESIDENT NOZZOLIO: Explanation asked for.

SENATOR SKELOS: Lay it aside for the day.

ACTING PRESIDENT NOZZOLIO: The bill is laid aside for the day.

SENATOR SKELOS: Mr. President, would you stand at ease for a minute.

ACTING PRESIDENT NOZZOLIO: The house will stand at ease.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT NOZZOLIO: Senator Gold.

SENATOR GOLD: Yeah, before we do that, I had to step out of the chamber when we considered Senator Rath's bill, I think it's 1249, and I ask unanimous consent to be recorded in the negative.

ACTING PRESIDENT NOZZOLIO: Without objection.

SENATOR SKELOS: Mr. President, is there housekeeping at the desk?

ACTING PRESIDENT NOZZOLIO: Housekeeping?

Senator Maziarz.

SENATOR MAZIARZ: Thank you, Mr. President.

On behalf of Senator Sears, on page 21, I offer the following amendments to Calendar Number 752, Senate Print 1536 and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT NOZZOLIO: The

amendments are received and adopted.

Senator Maziarz.

SENATOR MAZIARZ: Mr. President, on behalf of Senator Levy, on page number 15, I offer the following amendments to Calendar Number 583, Senate Print Number 4146, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT NOZZOLIO: The amendments are received and adopted.

Senator Maziarz.

SENATOR MAZIARZ: Mr. President, on behalf of Senator DiCarlo, on page number 26, I offer the following amendments to Calendar Number 864, Senate Print Number 4358 and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT NOZZOLIO: Amendments received and adopted.

Senator Maziarz.

SENATOR MAZIARZ: Mr. President, on behalf of Senator Saland, I ask that the sponsor's star be removed, on page 46 and I

offer the following amendments to Calendar Number 959, Senate Print Number 4988 and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT NOZZOLIO: The amendments are received.

Senator Skelos.

SENATOR SKELOS:

SENATOR SKELOS: Mr. President, could we call up Calendar Number 1250 by Senator Holland.

ACTING PRESIDENT NOZZOLIO: Calendar Number 1250, the clerk will read.

THE SECRETARY: Calendar Number 1250, by Senator Holland, Senate Print 1468, an act to amend the Social Services Law, in relation to requiring an address as a condition of receiving assistance.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT NOZZOLIO: Explanation asked for.

Senator Holland.

SENATOR HOLLAND: This basically

requires an address when somebody applies for assistance.

Presently, the section reads at the time he or she applies for public assistance and care, the applicant shall, as a condition of receiving such aid, present proof of his or her identity to the Social Services official as the department may require -- may by regulation require, and we are adding this, "and an address which shall be a residence, a public shelter or such site as the district commissioner shall deem appropriate for this subdivision" and this is required because many people were ripping off the system by getting post office boxes.

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT NOZZOLIO: Senator Paterson.

SENATOR PATERSON: We're down to about the last bill, Senator Holland. I really don't want to spoil your birthday, but I have a few questions.

ACTING PRESIDENT NOZZOLIO: Does Senator Holland yield?

SENATOR HOLLAND: Yes, sir.

ACTING PRESIDENT NOZZOLIO: The Senator yields.

SENATOR PATERSON: Good. Senator Holland, last week we passed a New York State budget that provided for fingerprinting enrollment that would prevent and detect what would be fraud on the part of welfare recipients. So with that legislation in place, do you think that this bill is necessary?

SENATOR HOLLAND: I believe if we have finger-imaging totally statewide -- first of all, if we get the waiver -- we need a waiver for the AFDC. If we receive the waiver and we implement it statewide, this would not be necessary, but right now it is necessary. We lost $1 million last year on people who are double dipping, living in New Jersey and other states and collecting from their state and also from the state of New York. So this is just an interim measure until we get the waiver and finger-imaging statewide.

SENATOR PATERSON: Well, Senator,

then we agree that if we get the fing... for statewide, you know, multiple enrollment fraud, the finger-imaging would probably cure that.

Now, let's go to the issue that you raised in your answer that -- of multi-state fraud. I think that's an issue where we weren't really investigating. Up until very recently when we started investigating, what we found was that the comparison of Social Security numbers is a protection along with the cross-listings that they can actually protect us from what would be multi-state fraud, so I'm contending that with the combination of these two avenues that we can take, that we should be able to alleviate the problem without necessarily having to enact this bill.

SENATOR HOLLAND: The checking of the computer list -- the cross-checking of the computer list which is being done with a number of states, including Washington -- sounding states, including Washington, D.C. and Puerto Rico, I believe.

The problem is, Senator, the only

ones we're catching are the ones that are not smart enough to change their name or change their Social Security number. We're only catching those who use the same name in the two or three states and the same Social Security number. If they are a little more intelligent and use a different name or a different Social Security number or ID, then we can't -- we have no chance of catching them at this -- and the post office box, we have no chance of catching them at this point.

SENATOR PATERSON: Senator, if you would continue to yield.

SENATOR HOLLAND: Yes, sir.

ACTING PRESIDENT NOZZOLIO: The Senator continues to yield.

SENATOR PATERSON: Can the same manipulative behavior be applied to giving false addresses?

SENATOR HOLLAND: Can the same manipulative behavior be -

SENATOR PATERSON: In other words, you were talking about people that give

the wrong Social Security number and that way they give the wrong name and that's the way they avoid the cross-listing. So I'm just following that out to the degree that applies to this bill in saying can they do the same thing with the addresses?

SENATOR HOLLAND: I brought that up because you brought that up, Senator, but, yes, you could use a different post office box and that's all that's required, the regulations today.

SENATOR PATERSON: But, Senator, can you also use a different street address?

SENATOR HOLLAND: Yes, you could and, hopefully, the commissioner or his or her representative will know or check if there is a house there and if you live there or it's not a vacant lot or -- et cetera.

SENATOR PATERSON: Senator, you just addressed the authority of the Commissioner. Now, for purposes of election law, for voting purposes around this country, we have found that places such as a park bench or a

shelter are valid. They are actually legal addresses for the purposes of voting. The question that I have for you arising out of that information is that the commissioner in your legislation seems to have the discretionary power to determine whether or not the address is apt. Do you think that's inherently illegal as the legislation is drafted to give the commissioner that authority to supersede what has actually been an interpretation that courts have made of our Constitution?

SENATOR HOLLAND: I think we may pay our commissioners and state managers a great deal of money in many events and that they should have the intelligence and responsibility to check whether the individual lives there or not, and I don't know if you're talking about the Election Law, whether that crosses this or not. I doubt it, Senator.

SENATOR PATERSON: Well, Senator, I think that there are a number of intelligent people -

SENATOR HOLLAND: I hope so.

SENATOR PATERSON: -- and a number of responsible people, and what I'm really asking you is often among people of that achievement there are -- there is a disagreement as to what is and what is not constitutional, and since we have this discretionary power vested in the commissioner, what I'm suggesting is that we're going to have an independent and in many ways, individual interpretation depending on where you are as to what a residence is, when, in fact, we have codified or at least interpreted that we know that that residence can be a shelter or a park bench. I'm just saying that what the legislation may produce as it's drafted is confusion among commissioners even if they are well paid and intelligent.

SENATOR HOLLAND: I don't think I agree with the park bench unless the commissioner or some individual went and approved that, Senator.

SENATOR PATERSON: Well, Senator, we're assuming that this is not a barrier

against homeless people receiving assistance, but let's take the individual who is not trying to, in any way be multi-enrolled in different places. Let's just take an individual who is following the rules. If they're staying at a shelter and then they change shelters, how do they address that in terms of their address that they are filing? In other words, now they have the wrong address and if the commissioner so deems, they will become ineligible.

In other words, we're talking about often an inertia, a transient group of people who, though there may be fraud committed among some, we would not interpret all of them or certainly the majority of them to be that way; the records have never shown that, but what we're creating is a -- an imposition relating to the actual reason that they are seeking Social Services assistance in the first place which is that they are indigent which goes with it a number of characteristics, and one of them being the failure often to establish a consistent residence.

SENATOR HOLLAND: I think you're assuming that we're trying to take these people out of the system and we're really not trying to do that. All we're trying to take out is the people who are trying to steal from the system, and if it is a park bench and the commissioner says, "Fine. I know you're there all the time. People tell me you're there all the time. We'll allow that for you", and he says that or she says that, that's a different story than just allowing a post office box with no investigation at all; to me, it is, anyway.

SENATOR PATERSON: Mr. President, to Senator Holland, I think sometimes this is the point that we have gotten into discussion before, Senator. I hope that you're not assuming that I am accusing you of having an intent because what I'm really discussing with you has nothing to do with intent. I would, therefore, be assured that we're not intending to exclude anyone from the system. What I'm saying is that it is a consequence of the rules that we would be promulgating through this

legislation that these individuals, many of whom are alcoholics, they have severe substance abuse problems, they are mentally ill and these individuals would be affected in such a way as if there was an attempt and -- but we're not saying that there is, Senator.

What we're saying is the results are what we are contesting and the results are that it's going to be very difficult for them to maintain a consistent address when they are shuttling from one shelter and another, when they're often sleeping in places that can't even be defined necessarily, but they are in need of Social Services and the fact that they have this problem does not relate to what may be a valid concern that you are addressing in this legislation which is to cut down on those who dishonestly commit a fraud against the system and need to be -- we need to have that problem curtailed.

But what I'm saying to you, Senator, is there are some people who are perfectly legitimate in their problem of

establishing an address and, in my opinion, they're being penalized when I have cited through you other ways, particularly the finger imaging -- and I won't be disingenuous about this. I disagreed with it, but we do have it now and the fact that we do, as far as I'm concerned, would ameliorate the problem best in this situation, because to go further and to establish the address as a necessary factor, in my opinion, would create a greater position - imposition to the many in an attempt to catch the few.

SENATOR HOLLAND: I think we agree. We're trying to take out the bad guys. That's exactly right. We're not trying to take out anybody else. That's exactly right. Finger imaging is the better solution; that's exactly right, but in the meantime, I think we should make every effort to take out the people who are stealing from the system and just giving a post office box, and I really can't say it any other way than that, Senator.

We're not trying to take out

people who should be taken care of, and the local commissioner is certainly more knowledgeable than you or I about the people on his roles and who needs assistance and who wanders around and doesn't continue an address, and he will know those people or his people will know those people and he can make arrangements for them, he or she.

SENATOR PATERSON: Thank you very much.

I'm going to finish right here, Senator.

Mr. President, on the bill.

ACTING PRESIDENT NOZZOLIO: On the bill, Senator Paterson.

SENATOR PATERSON: The finger imaging alternative is probably the most accurate, and I think that it will be very difficult for those who specialize in fraud to work around finger-imaging, which is why it would be the best solution, even though there are problems inherent with its adoption, but we have it and it's going to be the law and it's

something that we will accept and respond to.

But what I'm saying on this particular piece of legislation is that those who specialize in committing frauds, those who already use phony names and those who already use phony Social Security numbers moving down the line to now coming up with a fabricated address will really be an easy thing for them, for those who engage in it, but for the individuals who would have been best served by being able to use a shelter or a park bench, which is something that's legal, as their actual address, they would be harmed unconditionally by the passage of this legislation for the following two reasons:

One, because their transient behavior and life-style almost compels an automatic problem and then, secondly, we have the added issue of the fact that it is hard for them to refile and keep up with an agency on their own activities when, unfortunately, they have trouble doing that on their own.

And so this is really a

comparison. I think Senator Holland and I agree on what the objective is, but this is really a balancing of the values of trying to curtail and to detect welfare fraud and at the same time, trying to establish the opportunity for indigent individuals, many of them homeless, to receive that -- that kind of service.

It is my opinion that the finger imaging is one that is really a protection but that the address is really one that is actually going to cause more problems for the many in order to catch very few who even Senator Holland concedes would have to really not be thinking very much to go through the process of fabri cating their names and their Social Security numbers and not bothering to additionally use a false address.

ACTING PRESIDENT NOZZOLIO: Read the last section.

Senator Larkin.

SENATOR LARKIN: Mr. President, there will be an immediate meeting of Rules Committee in Room 332.

ACTING PRESIDENT NOZZOLIO: Immediate meeting of the Rules Committee in Room 332. Read the last section.

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

ACTING PRESIDENT NOZZOLIO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT NOZZOLIO: Results.

THE SECRETARY: Those recorded in the negative on Calendar 1250 are Senators Abate, Connor, Espada, Mendez, Montgomery, Paterson, Smith; also Senator Gold; also Senator Stavisky. Ayes 50, nays 9.

ACTING PRESIDENT NOZZOLIO: The bill is passed.

Senator Larkin.

SENATOR LARKIN: Mr. President, I believe we have a resolution at the desk by Senator Paterson. Please read it.

ACTING PRESIDENT NOZZOLIO: The Secretary -- the Secretary should read the

title.

THE SECRETARY: By Senator Paterson, Legislative Resolution commending Minnie L. Goka upon the occasion of her retirement after 32 distinguished years as a teacher, administrator, volunteer and church lay leader in New York City.

ACTING PRESIDENT NOZZOLIO: The question is on the resolution. All those in favor.

(Response of "Aye".)

All those opposed.

(There was no response.)

It appears the ayes have it.

The resolution is adopted.

Senator Larkin.

SENATOR LARKIN: Is there any more housekeeping?

ACTING PRESIDENT NOZZOLIO: No, Senator.

SENATOR LARKIN: Stand at ease awaiting a report from the Rules Committee, Mr. President.

ACTING PRESIDENT NOZZOLIO: The house shall stand at ease waiting for a report from the Rules Committee.

(Whereupon, the Senate stood at ease from 5:39 p.m. until 5:49 p.m.)

SENATOR SKELOS: Mr. President, 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 LARKIN: The clerk will read.

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

Senate Print 932, by Senator Holland, an act to amend the Mental Hygiene Law, in relation to the placement of state-owned community residences;

2044, by Senator Holland, an act to amend the Social Services Law, in relation to recovery of certain medical assistance expenses;

2586, by Senator Velella, an act

to amend Chapter 576 of the Laws of 1975;

3306, by Senator Santiago, an act authorizing the city of New York to reconvey its interest in certain real property;

3486-A, by Senator DiCarlo, an act to amend the Public Authorities Law, in relation to the powers of the Dormitory Authority;

3831, by Senator Kuhl, an act providing to Thomas A. Cassidy credit for past service time;

SENATOR SKELOS: Can we just wait a minute so Senator Waldon could record a vote and then we can continue.

ACTING PRESIDENT LARKIN: Senator Waldon, why do you rise?

SENATOR WALDON: I respectfully request unanimous consent to be recorded in the negative on Senate 1468.

ACTING PRESIDENT LARKIN: Without objection, so ordered.

SENATOR WALDON: Thank you very much. Thank you, Senator.

THE SECRETARY: Senate Print 3866, by Senator Hannon, an act to amend the Education Law, in relation to experimental alternative institutional support programs;

3868, by Senator Kuhl, an act to require the New York State and Local Employees Requirement System to accept requirement applications;

3869-A, by Senator Larkin, an act to amend the Agriculture and Markets Law, in relation to penalties for mistreated animals;

3910, by Senator Maltese, an act to amend the Tax Law, in relation to exempting certain parts, tools, supplies and services;

4389, by Senator Stachowski, an act authorizing the city of Buffalo to discontinue as parklands certain lands;

4568, by Senator Seward, an act to amend the Civil Service Law, in relation to granting residence of the city of Ithaca and the town of Ithaca a preference in appointment;

4630, by Senator Libous, an act to amend the Mental Hygiene Law, in relation to

limiting the use of state funds;

4738, by Senator Jones, an act to authorize the city of Rochester to discontinue the use of certain lands as parklands;

4822, by Senator Libous, an act to amend the Mental Hygiene Law, in relation to employees of the Mental Hygiene Legal Service;

4864, by Senator Cook, an act to amend the Education Law and the Public Officers Law, in relation to the defense and indemnification of a member;

4968, by Senator Velella, an act to amend the Mental Hygiene Law, in relation to service as president of boards of visitors;

5026-A, by Senator Hannon, an act to amend the Executive Law, in relation to enacting the Engineers and Architects Good Samaritan Act;

5106-A, by Senator Saland, an act to amend the Social Services Law and the Education Law, in relation to the protection of pupils;

5238, by Senator Hannon, an act

to amend the Public Health Law, in relation to the quality assurance of managed care plans;

5273, by Senator Maltese, an act to amend the Vehicle and Traffic Law, in relation to parking violations;

5282, by Senator Cook, an act to provide for retirement service credit in the New York state and local police and fire retirement system for Richard C. Paolino;

5359, by Senator Rath, an act to amend the Civil Practice Law and Rules and the Executive Law, in relation to extending the statute of limitations; and

3585, by Senator Gonzalez, an act authorizing the city of New York to reconvey its interest in certain real property.

All bills ordered directly for third reading.

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

ACTING PRESIDENT LARKIN: All those in favor of accepting the Rules Committee report signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The report is accepted.

Senator Rath, why do you rise?

SENATOR RATH: Mr. President, I'd like to offer the following amendments to Calendar Number 1276, Senate Print Number 3869-A, and ask that said bill retain its place on the Third Reading Calendar. It's on behalf of Senator Larkin.

Additionally, Mr. President, on behalf of Senator Nozzolio, I'd like to call up his bill, Print Number 580 recalled from the Assembly which is at the desk.

ACTING PRESIDENT LARKIN: The Secretary will read.

THE SECRETARY: Calendar Number 42, by Senator Nozzolio, Senate Print 580, an act to amend the Public Authorities Law, in relation to creating the Cayuga County Water and Sewer Authority.

SENATOR RATH: Mr. President, I

now move to reconsider the vote by which this bill was passed.

ACTING PRESIDENT LARKIN: Call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 59.

ACTING PRESIDENT LARKIN: Senator Rath.

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

ACTING PRESIDENT LARKIN: The amendments are received and adopted.

SENATOR SKELOS: Mr. President, is there any other housekeeping at the desk?

ACTING PRESIDENT LARKIN: There is no other housekeeping.

SENATOR SKELOS: Without objection, the Senate stands adjourned until Tuesday, June 13th, at 10:00 a.m. sharp.

ACTING PRESIDENT LARKIN: The Senate stands adjourned until Tuesday, June the 13th, at 10:00 a.m. At the request of the

Majority Leader, those of you in your offices, please understand he desires everybody to be in this chamber at 10:00 a.m., Tuesday, June the 13th.

(Whereupon, at 5:57 p.m., the Senate adjourned.)