ALBANY, NEW YORK

January 22, 1996

3:01 p.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.

Will all the members and staff 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.)

We're very pleased to have with us today the Honorable Monsignor Michael J. Cantley, of St. Anastasia's Roman Catholic Church of Douglaston, New York. Father Cantley.

REVEREND MICHAEL J. CANTLEY: Members of the Senate, I'm very pleased to be with you today and thank you very much for the invitation to offer this opening prayer for your session.

Almighty and eternal God, You have revealed Your mind and nature, history, in the prophets You have sent into the world. The prophet is one who speaks in Your name and for

You, one who orders society to the accomplish ment of Your will. In that sense, prophetism continues throughout history.

They were prophets who forged the founding documents of our nation and state, and they are prophets today who sit in the assemblies of government to apply constitutional guarantees, to enact laws to create a climate of justice, peace and respect for our life, offering protection for the weak and opportunity to serve to the strong.

Gathered here in this Senate are women and men elected by their peers and burdened with the awesome responsibilities to temper justice with mercy, peace with strength and to assure that the most fundamental value be that without which neither justice nor peace of meaning is protected from the moment of its existence 'til You and no other call it home. Assist this Senate with your gift of wisdom that its deliberations and all of its members may see through the bars of conflicting opinions to the common good that all just law is intended to

serve.

Give them the gift of knowledge and the urgency to seek truth and righteousness that may lie hidden in particular agendas. May ultimate value never be sacrificed to paliate short-term but popular goals. Infuse them with counsel and understanding that will reach beyond party and local constituency to serve the legitimate needs and desires of every citizen, balancing particular concerns and the welfare of the whole state.

Accord to them the gift of strength. Allow principle to be the constant prism through which they view the issues they deliberate within this chamber. We pray that every and each member of this Senate will deserve the title "honorable" that precedes his/her name. Let personal integrity which will respect honest opinion and selfless service, self-sacrificing love for all whom they represent, be evident in every moment they serve in their representative office.

May their families who have

generously supported their aspirations to public life be proud of the positions they take and the service they render. We pray, finally, that the citizenry of this state will respect the service these women and men give and appreciate the sacrifice the position imposes on them.

Accord them support, trust, the benefit of doubt and unwavering courtesy. The prophets who sit in this Senate are fallible. May they, we, and all of us together work humbly in the common cause that the political process may actualize the potential of all citizens of good will, offering each the opportunity to be all she/he can be. Amen.

ACTING PRESIDENT KUHL: Reading of the Journal.

THE SECRETARY: In Senate, Friday, January 19th. The Senate met pursuant to adjournment, Senator Bruno in the Chair. The Journal of Thursday, January 18th, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT KUHL: Hearing no objections, the Journal stands approved as

read.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Secretary will read.

THE SECRETARY: Senator Marchi, from the Committee on Corporations, Authorities and Commissions, offers up the following bills directly for third reading:

Senate Print 1720, by Senator LaValle, an act to amend the Public Authorities Law, in relation to the financing and construction of certain facilities;

Senate Print 2198-B, by Senator Marchi, an act to amend the Not-for-Profit Corporation Law, in relation to not-for-profit corporations formed to construct, develop, plan, site, lease, operate or own municipal facilities;

Senate Print 3367, by Senator Marchi, an act to repeal Section 630 of the Business Corporation Law, relating to the

liability of shareholders;

Senate Print 3431, by Senator Marchi, an act to amend the Public Authorities Law, in relation to the construction and financing of facilities for certain public libraries;

Senate Print 5183, by Senator Marchi, an act to amend Chapter 590 of the Laws of 1993, amending the Public Authorities Law;

All bills directly for third reading.

ACTING PRESIDENT KUHL: Without objection, all bills are ordered directly to third reading.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions. The Chair recognizes Senator Marcellino.

SENATOR MARCELLINO: Mr. President, I move that the following bills be discharged from their respective committees and be recommitted with instructions to strike the

enacting clause: Bill Senate Numbers 899-A, 901-A, 902-A, 1281, 3395, 3410, 4459, 4885, 4889, 4890, 5101-A, 5276-A, and 5447.

ACTING PRESIDENT KUHL: Without objection, so ordered.

Senator Marcellino.

SENATOR MARCELLINO: Mr. President, on page number 12, I offer the following amendments to Calendar Number 81, Senate Print Number 2010, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: Amendments are received and adopted. Bill will retain its place on the Third Reading Calendar.

Senator Marcellino.

SENATOR MARCELLINO: Mr. President, I move the following bill be discharged from its respective committee and be recommitted with instructions to strike the enacting clause, and that is Bill 4530.

ACTING PRESIDENT KUHL: The enacting clause will be stricken.

Senator Present.

SENATOR PRESENT: Mr. President, on behalf of Senator Stafford, on page 11, I offer the following amendments to Calendar Number 79, Senate Print 624, and ask that it retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: Amendments are received and adopted. Bill will retain its place on the Third Reading Calendar.

SENATOR PRESENT: Mr. President, on page 11, I offer the following amendments to Calendar 78, Senate Print 621, and ask that it retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: Amendments to that bill will be received and adopted. Bill will retain its place on the Third Reading Calendar.

Senator Present.

SENATOR PRESENT: Mr. President, on page 9, I offer the following amendments to Calendar 61, Senate Print 1261-B, and ask that it retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL:

Amendments to that bill are received and adopted. The bill will retain its place on the Third Reading Calendar.

Senator Present.

SENATOR PRESENT: Mr. President, on behalf of Senator Levy, on page 7, I offer the following amendments to Calendar Number 39, Senate Bill Number 319, and ask that the bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: Amendments to that bill are received and adopted. Bill will retain its place on the Third Reading Calendar.

I understand we have a substitution at the desk. Senator Bruno, is it O.K. if we have that read at this time?

SENATOR BRUNO: Substitution, Mr. President.

ACTING PRESIDENT KUHL: Secretary will read the substitution.

THE SECRETARY: Senator Volker moves to discharge from the Committee on Investigations, Taxation and Government

Operations Assembly Print 8222 and substitute it for the identical Calendar Number 36.

ACTING PRESIDENT KUHL: Without objection, substitution is ordered.

The Chair recognizes Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time ask for an immediate meeting of the Finance Committee in Room 332.

ACTING PRESIDENT KUHL: For those members who are in the reception of my voice, there will be an immediate meeting of the Finance Committee in the Majority Conference Room, Room 332. Immediate meeting of the Senate Finance Committee in Room 332.

Senator Bruno, that brings us to the calendar if you're ready for that, sir.

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

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

THE SECRETARY: Calendar Number

13, by Senator Kuhl, Senate Print 514-A, an act to amend the Agriculture and Markets Law, in relation to the duties of the Commissioner of Agriculture and Markets.

SENATOR ONORATO: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 35, by Senator Saland, Senate Print 4009-B, an act to amend the Tax Law, the Labor Law, the General Municipal Law, the State Finance Law, the Executive Law, relating to the rate of interest to be paid by certain corporations.

SENATOR PATERSON: Lay the bill aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 51, by Senator Trunzo, Senate Bill 3653-A, Retirement and Social Security Law, in relation to permitting pensioners who enter into a marriage.

ACTING PRESIDENT KUHL: 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 44.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 52, by Senator Trunzo, Senate Print 5779.

ACTING PRESIDENT KUHL: Lay the bill aside.

SENATOR TRUNZO: Lay aside for the day.

ACTING PRESIDENT KUHL: Lay the bill aside for the day at the request of the sponsor.

THE SECRETARY: Calendar Number 53, by Senator Skelos, Senate Print 1741, an act to amend the Social Service Law, in relation to access to certain conviction records.

ACTING PRESIDENT KUHL: 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 44.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 67, by Senator Skelos, Senate Print 394, an act to amend the Vehicle and Traffic Law, in relation to increasing the period of time during which driver's licenses are suspended for repeat DWI offenses.

ACTING PRESIDENT KUHL: 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 44.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 69, by Senator Velella, Senate Print Number 1745, an act to amend the Vehicle and Traffic Law, and the Criminal Procedure Law, in relation to authorizing the discovery of blood samples.

ACTING PRESIDENT KUHL: Secretary will read the last section.

THE SECRETARY: Section 5. 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 45.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 80, by Senator Saland, Senate Print Number 688, an act to amend the County Law, in relation to enhanced telephone system surcharge.

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.)

THE SECRETARY: Ayes 45.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 82, by Senator Tully, Senate Print Number 4514, an act to amend Chapter 972 of the Laws of 1962, relating to the Shelter Rock Public Library.

ACTING PRESIDENT KUHL: 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 45.

ACTING PRESIDENT KUHL: The bill

is passed.

THE SECRETARY: Calendar Number 83, 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 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.)

THE SECRETARY: Ayes 45.

ACTING PRESIDENT KUHL: The bill's passed.

THE SECRETARY: Calendar Number 84, by Senator Larkin, Senate Print Number 5803, an act to amend Chapter 708 of the Laws of 1992.

SENATOR SKELOS: Lay the bill aside.

SENATOR LARKIN: For the day.

ACTING PRESIDENT KUHL: Lay the bill aside for the day at the request of the sponsor.

Senator Skelos, that completes the non-controversial calendar, sir.

SENATOR SKELOS: Mr. President, at this time, if we could take up the controversial calendar.

ACTING PRESIDENT KUHL: Secretary will read the controversial calendar.

THE SECRETARY: Calendar Number 13, by Senator Kuhl, Senate Print Number 514-A, an act to amend the Agriculture and Markets Law, in relation to the duties of the Commissioner of Agriculture and Markets.

ACTING PRESIDENT MARCELLINO: Senator Kuhl, an explanation has been asked for.

SENATOR KUHL: Yes, Mr. President.

Yes, Mr. President. This is a bill that's not unfamiliar with this house. It's a bill that quite simply allows and

actually directs that the Commissioner of Agriculture and Markets undertake a complete review of all regulations that are currently in existence as they might relate to a detrimental impact regarding to the carrying on of an agricultural industry in the state of New York.

ACTING PRESIDENT MARCELLINO: Senator Paterson.

SENATOR PATERSON: Mr. President, if Senator Kuhl would yield for a question?

SENATOR KUHL: Be happy to yield, be happy to.

ACTING PRESIDENT MARCELLINO: Senator Kuhl yields.

SENATOR PATERSON: Senator Kuhl, I don't know anyone who plans to vote against this bill but after coming down, you shouldn't go back without a chance at least to express yourself on this bill; and so, therefore, what I'd like to ask, Mr. President, is in view of the changes that the Governor has made in the Department of Environmental Conservation, do you feel that this bill still has -- has merit since

this process is really being done anyway to actually codify this into law since Agriculture and Markets will now, the Commissioner will now make that review? Do you think that that will be done in a more fair way than you might have thought in the past?

SENATOR KUHL: Senator Paterson, I'm as pleased as anybody is, I think, in the agricultural industry that there is an internal review being conducted at the present time by the new Commissioner of Agriculture and Markets. I'm also ecstatic about the approach that is being taken by the new Commissioner of the Department of Environmental Conservation as to the regulations that have been promulgated within that department, particularly as they might relate to some instances that might be detrimental to agriculture, and when I decided to bring this bill forward, I had to ask myself the very question that you did, and that was, is it necessary to continue this on in regard - taking into regard what is actually going on with the administration, and my answer was, to

myself and to my staff people, because we talked about this in quite some detail, and that was yes, we think it is.

We think it's important for the state to establish a policy recognizing that, as Senator Pataki, taking him at his words, will only serve two terms in the mansion which will only take him through, I think, about 19... or excuse me, the year 2002, and that there might be somebody who might at that time enter the Governor's Mansion who might not be as cognizant of the importance of agriculture in the state as is currently recognized by the current Governor.

So we thought it was absolutely imperative that we establish a state outlook that regulations can, in fact, be tremendously detrimental to an industry and to actually probably eliminate them, and that it was important to bring this policy matter to this Legislature so that that could be established on a permanent basis. So while I'm encouraged about what is going on with the current administration, I'm not so sure that in the year

2002 or thereafter, that a subsequent adminis tration will look as fondly on agriculture as the current Governor does.

SENATOR PATERSON: Thank you very much, Senator.

Mr. President, that is a well reasoned answer, and also if Senator Kuhl is thinking about what's going to happen in 2003, I guess, based on what's happening here in 1996, he demonstrates seven years of foresight, and so I'm amply convinced and would like to assure Senator Kuhl that in the year 2003 that I would be as cognizant as the previous Governor was.

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

SENATOR LEICHTER: Mr. President, if Senator Kuhl would be so good as to yield.

ACTING PRESIDENT MARCELLINO: Senator Kuhl, would you be so good to yield to Senator Leichter?

SENATOR KUHL: Yes.

ACTING PRESIDENT MARCELLINO: Senator yields.

SENATOR LEICHTER: Senator Kuhl, I am sad to say I don't have the same perception and understanding as my colleague, Senator Paterson, has. As I understand it, you felt it was important to tell the Commissioner of Agri culture and the Pataki administration to make this review so that he takes such action in regard to what you consider or what he would consider onerous regulations affecting agricul ture and that these would be changed so that, in the year 2001 when Governor Pataki leaves office at the end of that year, assuming that he stands for reelection or the voters decide that he ought to be re-elected, that we would not have these onerous regulations on the books.

Did I correctly understand your reasoning?

SENATOR KUHL: Senator, I -- I don't really think it's necessary to tell the current Commissioner that he needs to review the regulations. In my discussions with him, speaking with Commissioner Davidson at our first Agriculture Committee meeting this year, we

talked about what the Department was doing relative to the elimination of regulations that might be disadvantageous and detrimental to the actual industry, and he related to the Committee and he related to me and in a number of other conversations, that they are undertaking internally a review of all those regulations and they are, in fact, eliminating some of them.

Let me give you a for instance, O.K.?

Up until -- I'm not sure what the status of it is right now, but -- because I know it's undergoing change, and it's in the process of being eliminated. But let's take it back to last year. Last year in the early part of the year, it was necessary for every small farm winery in the state of New York to not only be licensed by the State Liquor Authority but also to be licensed -- I should say to file a certificate and get a permit from the Department of Agriculture and Markets.

One of the things that came to the forefront was that here we had a six-page

application that had to be submitted to the Department of Agriculture and Markets. There was a permit that was issued. It cost each winery, I believe it was $35, and there were roughly, and there are roughly a hundred small farm wineries, wineries totally in the state, little bit more than that, so what we saw was that there was revenue being generated anywhere from 3- to 4,000, and the internal review of this particular regulation and the cost of that not only to the individual farm winery who had to file that, but administratively to actually review the application, to file it, to actually issue the permit and send it out, it was costing the Department 5- to $6,000 to actually process it.

So we had a situation where there was a regulation that was yielding information that was already being submitted to the State Liquor Authority and there was a permit being processed for no reasonable reason that was costing the people time and money at the local level. That is, that whole possibility, that

whole situation is now being eliminated.

Now, that is just one instance of how the current Commissioner is undertaking a total review of what is out there dealing with the agriculture, the Department of Agriculture and Markets.

Now, there is another review but from a different aspect that's being taken on by other Commissioners. This particular bill directs that the Commissioner of Agriculture and Markets look at all the other reviews, all other regulations as they relate to other departments and are being promulgated, and that there be a review and, you know, and perhaps an elimination of those.

What I'm saying to you is, and what I said to Senator Paterson was or is that I know that this is ongoing right now, and I have every faith in this administration that they will make the burden that is currently being borne by our farmers considerably less so that their chance of profitability and success is going to be greater, but I'm not sure that

that's going to continue ad infinitum into the future, and why I think it's important for us to establish that policy now and to create the system so that it will go forward.

As you know, and to some degree I think some people find this objectionable, I don't particularly, but the Governor has by executive order set up a new system by which new rules and regulations are promulgated and there's a criteria that they have for that. What this does, I think, is to set up a system that will ensure ad infinitum, those years after, long after you and I have since left this chamber and can't be the watchdogs in the positive aspects of this industry, that we'll have a system in place that we can assure our people out there that only those things that are necessary and right and that are positively aimed at the long-term adoption and development of their industry actually are occurring.

So I wouldn't say that this says to the Commissioner that you have to do this. This simply sets up a system that allows him to

do it. They're already doing it, but again, it ensures that we will into the future.

SENATOR LEICHTER: Mr. -- Madam President, I thank my good friend for his full some and germane answer, but Senator, if you'd be good enough to yield.

SENATOR KUHL: I continue to yield to the Senator.

SENATOR LEICHTER: Senator, in spite of your saying all this faith you have in Commissioner Davidson, and he was a -- a trusted colleague of yours, I believe.

SENATOR KUHL: And yours. He served in the Assembly for five years.

SENATOR LEICHTER: And absolutely mine. But I'm a little concerned about, you know, how trustworthy you are of him because you're the one who's putting forth a bill here which is requiring him to do things that I think he should do anyhow. Now, either you have faith in him or you don't have faith in him.

If he has, let me ask you this, Senator: Does the Commissioner now have the

power to do everything that's provided in this bill?

SENATOR KUHL: I'm not exactly sure it does, Senator, and I just can't. I'd have to -- it would take me some time to pull out the differences for you, but I think it sets forth a format with interaction with some of the other Commissioners that would give him some powers that he doesn't necessarily have.

SENATOR LEICHTER: Senator, if you'd -

SENATOR KUHL: Now, the other thing that I was going to mention to you is, you know, this is -- and you may not have been in your chair when we first brought this up and when Senator Paterson and I started on this discussion, but I indicated to him when I was asked to give a brief explanation of the bill, I indicated to him that this is not the first time that this bill is before this house. This is the first time that this bill has been before this house when Commissioner Davidson has been Commissioner. As you may remember, there were

some other Commissioners who, when we passed this bill, that were of the same political affiliation as you are that were appointed under a previous Governor. They did not care and did not participate into the undertaking of the same kind of review that this Commissioner is undertaking, so what I'm saying to you again and what I said to Senator Paterson, I'm delighted with what this current administration is doing relative to the review of regulations and in particular as they may be detrimental to the agricultural industry.

I've been trying for the nine - this is the tenth year that I've been chairman of the Senate Agriculture Committee, to get that review done and it was never done by the previous administration during the nine years that I was that chairman. So I am a little bit skeptical that, if we don't put something like this before and put it into statute, that should, during -- after the time that Governor Pataki decides to not run as he said he wouldn't after two terms, that there might be some other

Commissioner, be he Republican or be she Republican or Democrat, that might not have the same familiarity with the detrimental aspects of rules and regulations as they relate to the agricultural industry.

So I want to put something there that says this is something we should consider not just today or not -- maybe we should not consider just because it's being done today. I think it's important to us to establish long term state policy because that's what our job is, I believe, and we should do it as it relates to this industry.

SENATOR LEICHTER: Madam President, if Senator Kuhl would be good enough to continue to yield.

SENATOR KUHL: I continue to yield.

SENATOR LEICHTER: Senator, I'm getting more and more nervous about what I see, frankly, as seeming -- some seeming lack of trust that you have in this administration because, you know, while the words are very

good, the bill is something different and I can understand if you, coming from your political persuasion, didn't have faith in the Democratic administration.

Now you've got a Republican administration. You have got your good friend, you tell us, your good friend as Commissioner of Agriculture. The reason you seek to give is that you're really looking to the year 2003 but your bill requires that all of this be done and that a report should be forwarded to the Secretary of State by July 1st, 1998.

Is it that you think that Governor Pataki is not going to serve out his full first term?

SENATOR KUHL: No, actually, Senator, it's because I know that the Governor is doing such great and wonderful things that I think he ought to file this report to tell everybody what he's doing. That's why -- that's one of the reasons why we're passing this bill.

THE PRESIDENT: Senator Leichter.

SENATOR LEICHTER: If Senator Kuhl would be good enough to continue to yield.

SENATOR KUHL: I'd be happy to yield.

SENATOR LEICHTER: Yeah, and I take it your conclusion is that without your prodding the Commissioner and the administration saying, You better do this, that they're not going to do their job as you think it should be done.

THE PRESIDENT: Senator Kuhl.

SENATOR KUHL: Senator, I have seen and known, as you have, I have known for two years now Governor Pataki. I served with him when he was in the Assembly, and I've always noted that he probably -- he was probably one of those more conservative individuals who was not quick to pat himself on the back about all the good things that he's done, and I think it's just one of those things that, you know, this is positive information that the agriculture community ought to know about, you ought to know about, the people in this chamber ought to know

about, and it's one of those things that I'm sure if he sets the precedent the right way, that the successor administration will probably follow suit and they'll do the right thing too.

THE PRESIDENT: Senator Leichter.

SENATOR LEICHTER: Madam President, I thank my good friend for his persuasive answer, almost persuasive answer, but frankly I'm a little -- I'm a little surprised and maybe, and it certainly happens to me, maybe it's happening to Senator Kuhl, you just sort of go by reflection.

Well, you had this bill in for nine years and suddenly we have to remind him, Well, wait a second, these are your guys now running the show. Why do you have to tell them what they have to do? Aren't they doing their job?

I was against this bill in the past because I felt the Commissioner of Agriculture ought to know how to do his or her, or if it's a she, she ought to know how to do

the job. I had faith in the previous Commissioners. Some of them maybe didn't do everything we wanted. Well, if they didn't do the job, they shouldn't hold the job, but I don't think it's the role and function of this Legislature to nitpick Commissioners and tell them, Be at your desk at 9:00 a.m., issue this report, issue that report, and particularly - frankly, I didn't know Assemblyman Davidson very well, but I'm sure he was a competent person. I'm sure he's doing a good job. I trust him. I don't think that I, as a legislator or that we as a Legislature, have to tell him, Do this, do this, do that, and for that reason, I've got more faith obviously in this respect at least with Commissioner Davidson and this administration that I don't find it necessary for us to pass this bill.

So I'm going to vote in the negative, as I have in the past.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Madam President, will the sponsor yield to just a

couple of questions?

THE PRESIDENT: Senator Kuhl.

SENATOR KUHL: I'd be happy to yield to Senator Dollinger.

SENATOR DOLLINGER: Thank you, Senator.

I just want to follow up on one of the points that Senator Leichter made. Is it my understanding that the current Article 25-(aa) of the Agriculture and Markets Law requires all state agencies to review all their regulations to determine whether they serve the industry that you're talking about today, the very important agricultural industry in this state?

THE PRESIDENT: Senator Kuhl.

SENATOR KUHL: You're asking, Senator, if in fact current law requires a review of all rules and regulations as it relates to their impact on agriculture?

SENATOR DOLLINGER: Yes.

SENATOR KUHL: I don't believe that -- that's correct, Senator.

SENATOR DOLLINGER: Well, again through you, Madam President, if the Senator would continue to yield. The bill recites that Article 25(aa) of the Markets -- Agriculture and Markets Law provides that it shall be the policy of all state agencies to encourage the maintenance of viable farming in agricultural districts and to modify their administrative regulations and procedures to this end.

Isn't that exactly what this bill requires them to do? Aren't we telling them to do it twice?

SENATOR KUHL: I don't believe so, Senator.

SENATOR DOLLINGER: Well, perhaps for the record -

THE PRESIDENT: Senator Dollinger.

SENATOR KUHL: You're talking - are you're saying Article 25 requires that? Where are you reading from in the proposed bill that says they're required to review all proposed rules and regulations now? I don't see

that in the bill, and I'm not familiar with that aspect. If that were the case, I wouldn't be presenting the bill.

SENATOR DOLLINGR: Well, perhaps maybe I've got the wrong document in front of me. I'm looking at the actual bill itself, Number 13 on the calendar, lines 11 through 13, 15, doesn't it say Section 25 of the Agriculture and Markets Law provides it shall be the policy of all state agencies?

SENATOR KUHL: Right, the maintenance of viable farming. Doesn't say anything -- and this is just under a section which just talks about legislative finding which is the purview of the actual sections of the law that we're adding to the current existing statute, but what we're trying to do is establish that there is policy out there right now that says we're supposed to try to encourage agriculture in the state, but there's nothing in the statute that I'm aware of, Senator, that requires a total review of all rules and regulations as they relate to agriculture and

how they they may be related to some other agency that may promulgate them.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Through you, Madam President, if Senator Kuhl will continue to yield?

SENATOR KUHL: Be happy to yield.

SENATOR DOLLINGER: Article 25 (aa) says "***instructs agencies to modify their regulations and procedures to this end; that is, to the end of encouraging viable farming consistent with the protection of public health and safety." Isn't that the same kind of balancing that you want to require under this act? Aren't we asking them to do the same thing twice?

THE PRESIDENT: Senator Kuhl.

SENATOR KUHL: That's not true, Senator. If you look at the other areas of the statute, let me see if I can find the appropriate section for you. Yes, up on page 2, it's lines 7, 8 and 9, you'll see that the new

section that we add here relates to just more than public health and safety, O.K. We're now talking about rules and regulations that are being promulgated in departments like the Department of Environmental Conservation, Department of Health, Department of Labor and the Department of Transportation.

So we're not just talking about the areas of public health and safety, we're talking about the overview and the complete carrying on of the conduct of an agricultural employment situation in the state and how any regulations in those various departments may impact negatively.

Now, there again, you're - you're kind of inferring something that's there, but it's not there specifically and that's what this bill does specifically is add, to direct this Commissioner to review those regulations and to make a filing with the Secretary of State and to -- and then try to process through eliminating those regulations that may be detrimental to the industry.

That we have never done. That, and following up with our conversation with Senator Leichter, that is being done to some degree, but there is not a procedure that there's a filing with the Secretary of State and reviewing specifically each one of those departments.

That, as far as I know, there is -- there are two processes going on right now with the current administration. One is that there's an internal review by each department of their own departmental regulations, and then there's an overview being done by Bob King as a person whom you know, from your area, the Director of the Bureau of Regulatory Affairs is his title, and that is being done but I think that to some degree that's being done as a result of some sort of an initiation by people from the outside, people like myself or somebody else who maybe find some -- some concern, and it's not just a total overview, reading statutes or regulations just for the sake of reading them, so what I'm saying and what this does is

it specifies particular areas that are done and that include other agencies and, as far as I know, that's not being done and that's where I indicated to Senator Leichter that I thought this was a little bit something different than is being done at the present time. It's something that needed to be dealt with on a long-term basis.

SENATOR DOLLINGER: Again through you, Madam President, if the sponsor will continue to yield.

THE PRESIDENT: Senator Dollinger.

SENATOR KUHL: Be happy to continue to yield.

SENATOR DOLLINGER: Are you implying, Senator, that the current standard under Article 25 (aa) is providing that viable farming is consistent with the requirement of public health and safety? Does this bill eliminate the requirement that it consider public health and safety in reviewing these regulations?

SENATOR KUHL: No, it ampli... it augments that, I should say, amplifies the approach that we're now looking at in other areas, Senator. We're not eliminating that public health and safety under the current legislation applies.

SENATOR DOLLINGER: All right. So what we're doing is requiring all state agencies to look at whether or not their regulations affect the viability of farming in the state, the importance of the agricultural industry?

SENATOR KUHL: No, no, not exactly. We're directing that the Commissioner of Agriculture do that as it relates to other agencies and their potential impact on his industry which he's charged to have this oversight over, and then he -- the process is to engage them if he finds a negative kind of implication, O.K.? That's when they get pulled in.

We're not directing each one of those departments to review for agricultural purposes, no.

SENATOR DOLLINGER: I'm -

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: On the bill.

I have voted for this in the past. I think I'll continue to vote for it although, frankly, it seems to me we're restating perhaps the same instructions we've previously given to the Commissioner, and to all state agencies to continue to protect our vital farming and agricultural industry and at the same time to promote public health and safety.

I also am concerned because I guess everybody, once you get into the regulatory reform movement, I guess everybody gets in the act, but it seems to me that poor Mr. King, who is from my district, who's the czar of regulatory reform, is cut out of this - this process, and I have a feeling that his position is going to end up redundant because all these commissioners are going to be doing all the regulatory work, and he'll have nothing to do, which means he might be one of those non

essential people that, in a good regulatory environment, we'd just stop paying him and say, We don't need it because the Commissioner can do it. I'd hate to think that someone from my district, from Monroe County, would end up unemployed as a consequence of this move, and I'm concerned about jobs and job employment and certainly, Mr. King who has been a forceful advocate for regulatory reform, why put him out of business? Why not let him do it? Instead, we're going to have the Commissioners do it.

I just see a certain redundancy here. I just hate to see someone lose their job, but I'll vote in favor of it.

THE PRESIDENT: If everyone who wished to be heard on this bill has been heard, would the Secretary please read the last section.

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

THE PRESIDENT: Call the roll, please.

(The Secretary called the roll.)

THE PRESIDENT: Senator Leichter is raising his hand for negative. Yes.

THE SECRETARY: Ayes 50, nays one, Senator Leichter recorded in the negative.

THE PRESIDENT: O.K. That's - the bill is passed.

Senator Farley.

SENATOR JOHNSON: Madam President. You want to introduce that?

SENATOR FARLEY: Can I do my motion?

SENATOR JOHNSON: Yeah. Madam President, we'll have one motion made and then we're going to return to reports of standing committees.

THE PRESIDENT: Senator Farley.

SENATOR FARLEY: Thank you, Madam President.

On page 4, I offer the following amendments to Calendar Number 4, Senate Print 5436, and I ask that this bill which is mine retain its place on the Third Reading Calendar.

THE PRESIDENT: Amendments

received.

Senator Johnson.

SENATOR JOHNSON: May we return to reports of standing committees. I believe there is a report of the Finance Committee at the desk.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, offers up the following bill directly for third reading:

Senate Print 5817, by Senator Trunzo, an act to amend the Civil Service Law, State Finance Law, in relation to compensation benefits and other terms and conditions of employment.

THE PRESIDENT: All bills, without objection -- all bills will go directly to third reading.

Secretary will read.

SENATOR JOHNSON: Madam President, may we now at this time take up Calendar Number 85.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Senator Trunzo moves to discharge from the Committee on Civil Service and Pensions Assembly Bill Number 8520 and substitute it for the identical Calendar Bill Number 85.

THE PRESIDENT: Substitution ordered.

THE SECRETARY: Calendar Number 85, by member of the Assembly Vitaliano, Assembly Print 8520, an act to amend the Civil Service Law and the State Finance Law, in relation to compensation, benefits and other terms and conditions of employment.

SENATOR JOHNSON: Is there a message of appropriation at the desk?

THE PRESIDENT: Yes, there is.

SENATOR JOHNSON: Madam President, I move to accept the message of appropriation.

THE PRESIDENT: All those in favor of accepting the message of appropriation

say aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The message is accepted. Read the last section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54.

THE PRESIDENT: The bill is passed.

Senator Leichter.

SENATOR LEICHTER: Yeah, can I just -- no, there was a reference, Madam President, I think you made to a message of appropriation. Was that a message of necessity?

THE PRESIDENT: Appropriation.

SENATOR LEICHTER: Is that the same thing? Has that changed its name?

THE PRESIDENT: No.

SENATOR LEICHTER: I mean, Madam

President, I just asked learned counsel who are here, I must say I've never heard message of appropriation and, as I look at the type it seems to be the old -- same old message of necessity. If we change -- if we changed the name, certainly it wasn't done by the Constitution which provides for this.

SENATOR STAFFORD: I think a very, very good question.

THE PRESIDENT: Senator Stafford.

SENATOR STAFFORD: My counsel has provided a very good explanation. I think that all of us can see where we are here.

The budget has not passed yet and, therefore, when you pass a bill that includes an appropriation, you have to have the message of appropriation.

THE PRESIDENT: Thank you, Senator Stafford.

SENATOR STAFFORD: Thank you.

THE PRESIDENT: Senator Johnson.

SENATOR JOHNSON: Read the last

section, please.

THE PRESIDENT: Oh, the bill is passed.

SENATOR JOHNSON: Senator -

THE PRESIDENT: Would you like to return to the controversial calendar?

SENATOR JOHNSON: Yes, Madam President. Please call up Calendar Number 35, Bill Number 4009-B.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 35, by Senator Saland, Senate Bill 4009-B, an act to amend the Tax Law, the Labor Law, the General Municipal Law, the State Finance Law, the Executive Law, relating to the rate of interest to be paid by certain public corporations.

SENATOR PATERSON: Explanation.

THE PRESIDENT: There is a local fiscal impact notice at the desk.

Senator Saland. Senator Saland.

SENATOR SALAND: Thank you, Madam

President.

Madam President, this is the Omnibus Mandate Relief Act. As the name would imply, it's an endeavor to do away with unfunded mandates, an endeavor to in effect give more than lip service to the term of local/state partnerships.

The bill deals not only with some 40 mandates currently on the books but attempts to deal prospectively with imposition of subsequent mandates.

There are six major components of this bill. It would reduce local fiscal burdens. It would permit localities greater flexibility, reduce the burden of state regulations, eliminate unnecessary state reporting and approval requirements, reform municipal liability and encourage fiscal consolidation and cooperation.

The sum total of the savings to local governments that are anticipated by enactment of this bill would be approximately $1.5 billion. Not only would that apply to

local municipalities. It would apply to local school districts as well.

Prospectively, what the bill does is, it says that if there is a proposal that is enacted at the state level, if that proposal would result in a cost of $10 million to any municipality -- $10,000, excuse me, to any municipality, 10,000 or more, the state must provide the funds. If it would result in the aggregate of an expenditure of $1 million or more being required by all the affected municipalities, municipalities of that same class or school districts, the state again must fund the cost.

We, in this house, have passed this measure or a similar measure previously. We have the overwhelming support of various municipal organizations, NYSAC, the New York State Association of Towns, the New York Conference of Mayors.

The bill certainly is timely and it's particularly timely in two respects: Number one, there have been occasions in which this

bill has come out late in the session and has met with criticism that, in fact, it's coming out too late to have any meaningful negotiations with the second floor and with the Assembly.

Suffice it to say that the Governor has emphasized on more than one occasion, Governor Pataki, the importance to him of mandate relief, and he also has matched his words with his deeds by passing the Executive Law 20 which provides for our regulatory reform intended to provide mandate relief.

On another level, in addition to the actions by the Governor, certainly we're all well aware of the difficult fiscal times not only we are experiencing, but local government and county government is experiencing as well, and the provision of this type of relief certainly will be well received at every level of local government, whether it be urban, suburban or rural.

Madam President, thank you.

THE PRESIDENT: Thank you, Senator.

Senator Dollinger.

SENATOR DOLLINGER: Will Senator Saland yield to a question?

THE PRESIDENT: Senator Saland?

SENATOR SALAND: Yes, Madam President.

SENATOR DOLLINGER: Does this apply to -- Senator, does this bill apply to any state mandate, whether it comes from the Executive Department or from this Legislature?

SENATOR SALAND: This bill would apply to any proposal, regardless of whether it was statutory, or I believe regulatory, and I'd have to check the exact language that would require an imposition on any individual unit of a particular type of government, whether it's school district, the town, the village or, as I mentioned earlier in my earlier remarks, in the aggregate a million dollars or more.

SENATOR DOLLINGER: Again through you, Madam President, if Senator Saland would yield to another question?

SENATOR SALAND: Certainly.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Are you familiar with the Governor's proposed budget that he sent to this Legislature and what it does to disabled children in the pre-K phase and how it takes a program that is now a hundred percent funded by the state and, instead, transfers the cost of that funding to the local school districts and how it changes the standard for what constitutes a disabled child and, therefore, transfers the cost of those programs to local communities? Are you familiar with that?

SENATOR SALAND: I am familiar with that.

SENATOR DOLLINGER: O.K. If we vote for this bill, can I assume that everybody who votes for this bill will vote against any budget that has that kind of unfunded mandate in it which would saddle our school districts with increased costs? And that's one question. I guess my second question -

SENATOR SALAND: I would think

that that issue is far from resolved, and I would think had the other house been cooperative enough as we have labored in the vineyards with this bill for some two or three -- on two or three separate occasions, had they been willing to join us in this effort, we certainly would have rendered the question which you raise academic or moot. We are dealing within the framework that we currently have and certainly I would think if we could get this bill to the Governor's desk, I think that would certainly impart a message that he would welcome as much as he's already given certainly his efforts through his executive orders to try and curb unfunded mandates.

SENATOR DOLLINGER: Again through you, Madam President, if Senator Saland will yield to a question.

THE PRESIDENT: Senator Saland?

SENATOR SALAND: Yes, Madam President.

SENATOR DOLLINGER: I'm just intrigued by what you see as the Governor's

motivation. I mean he obviously sent us a budget which creates unfunded mandates for special education for disabled children, pre-K, and yet he issues executive orders saying we're not going to have unfunded mandates.

Perhaps you could enlighten me: What's the Governor's position on unfunded mandates since he has them in his budget but he issues executive orders and at least proclaims to be interested in ending unfunded mandates? Why would he put that in the budget?

SENATOR SALAND: I think the Governor certainly has been more than direct in his comments on unfunded mandates. I certainly think that the issue is far from a dead issue vis-a-vis the expenditure that you're talking about, and I suspect that the Governor, as this legislation progresses certainly will lend himself to supporting this legislation although in all candor, I haven't spoken with him about the particulars of this piece.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Madam President, on the bill.

I appreciate the sponsor's candor with respect to that program. It's certainly one that I'm going to be looking at very carefully in the context of the budget because I don't want to shift a cost that's been borne by the state and shift that to local communities and still require that that education occur, and I agree with Senator Saland, it probably is an issue that we need to discuss further.

I know there may be strong sentiments on the other side of the aisle against shifting those kinds of costs, but it strikes me as somewhat anomalous for a governor to proclaim Executive Law change or, excuse me, changes through executive orders to eliminate unfunded mandates and to talk a great game about unfunded mandates, but yet the budget that we see in front of us could transfer, based on my estimate, as much as a billion and a half dollars of additional cost to local communities which we're not going to have to pay for because

things that we've paid for in the past the Governor has said we're not going to pay for because we're going to take care of our budget problems and give all of the rest of the fund ing problems to local communities.

Now, I'm concerned because I hear the Governor on the second floor saying that this is something that they don't want to do, but yet when the budget hits our desks, and it's already hit our desks, there are enormous shifts of costs from state finance to local community finance and no relief from the mandates to do it and I just -- I hear one thing, and I see another and although I'm going to vote in favor of this bill -- I've voted for it in the past - I think if we could have a legitimate debate about what the state ought to pay for and what local communities ought to pay for and what's the best way to raise taxes to pay for it, the fairest and most equitable way to do it, we'd go a long way in this state to solving our long term fiscal problems.

So I've voted for this in the

past. I think it's something that has appeal out there, but I think the underlying issue of how we ought to pay for these things, how we ought to tax to pay for them, is one we ought to debate into the future so that we can have a legitimate debate about how we can raise those taxes and how to pay for tax programs that benefit everybody.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Thank you, Madam President. If Senator Saland would yield for a question.

THE PRESIDENT: Senator Saland?

SENATOR SALAND: Yes, Madam President.

SENATOR PATERSON: Thank you, Madam President.

Senator Saland, Senator Dollinger just raised an issue about the unfunded mandates and to follow up on that -- I'm not here -- to follow up on that, I'd like to ask you, Senator Saland, in Section 23 of the legislation, you

set forth that the Governor can, by executive order, exercising his emergency powers, in a sense exact an unfunded mandate, and I think you also have some language in there that allows for court order.

With respect to anything that is agreed upon in a legislative process such as the budget, have you not in this legislation given the Governor, the executive branch, a new authority that it did not have before based on your distinction of it and your acceptance of those mandates that are forced through executive order?

SENATOR SALAND: May I request of you that you point to the particular line or lines that -

SENATOR PATERSON: It's in Section 23.

SENATOR SALAND: I have section 23, but what lines?

SENATOR PATERSON: It says *** the Governor, exercising executive order through emergency powers.

SENATOR SALAND: You're talking over on page 10?

SENATOR PATERSON: Yes.

SENATOR SALAND: I don't think that there is any effort here to expand the ability of any executive to indiscriminately or capriciously impose additional mandates, and let me address your -- your question and hopefully simultaneously Senator Dollinger's concluding remarks.

I think it's unfair to portray Governor Pataki as somehow or other not being an advocate of mandate relief. I think any view of this particular budget that he's proposed, when one looks at what the Governor is proposing to do in areas of welfare reform, what the Governor is proposing to do in areas of Medicaid reform, he certainly is dealing with mandates and - mandates which impose heavy burdens on our local and county governments.

So I think it's certainly an unfair characterization to somehow or other come up with a number of some amount of dollars that

I believe Senator Dollinger had said something in the area of a billion and a half dollars. I don't think that that actually reflects what the Governor has managed to do and has accomplished here.

They're certainly -- we don't have the ability, and I think you and I could agree, to negate a requirement that's been imposed by court order and that is the first provision which is set forth within the exemptions.

Secondly, there's provision where in fact there is an emergency of some kind for the Governor to enact through his emergency powers. Now, those emergency powers may require local law enforcement, in the case of the flood perhaps, to close off state highways. That - those emergency powers can include any number of different types of things which would occur only under those situations that were very much out of the ordinary.

There are just not many situations in which the Governor or any -- any

executive resorts to the imposition of emergency powers.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Thank you very much, Madam President, and I want to thank Senator Saland for that answer.

It was hard to interpret from what Section 23 revealed and that's cleared up.

I would like to refer you to Section 4, Senator Saland, which exempts the OSHA requirements for volunteer firefighters, and I would like to really aver that there is certainly an understanding of why you might want to do that as a lot of the local governments can't afford the -- the effect of reaching the standard that OSHA calls for, but at the same time we do not think that it is in many respects at the risk of the volunteer firefighter who may not be prepared for the emergency, and then the individual who is in the position of being victimized not only by the fact that they're in a fire but by the fact that people who they

think are skilled and trained to help them actually don't have the skills, the training or often the equipment that they might need.

SENATOR SALAND: Well -

THE PRESIDENT: Senator Saland.

SENATOR SALAND: Thank you, Madam President.

Well, this particular section of the bill really responds to one of the priorities that many, if not most -- in fact, I would say most local volunteer fire companies would like to see enacted. Some number of years ago, the Department of Labor enacted or perhaps more appropriately, in effect, proclaimed that volunteer firefighters were municipal employees and, therefore, were required to be subject to OSHA.

Now, volunteer firefighters, for insurance purposes and really by reason of compliance with our state's particular requirements, do receive training. They are people who are at risk. They are people who understand risk. They are people who are

saying, We can't comply other than at great expense and extraordinary difficulty with these OSHA requirements, whether they're equipment requirements, whether they're such things as physicals or retaining records on-site.

Now, there are a number of volunteer fire companies who, while they go ahead and have the required physicicals, don't have a full-time clerk or don't have somebody on-site who would retain these records and they're in violation by merely having them at a physician's office, and if my memory serves me correctly, when we debated this particular point it was either last year or the year before, Senator Cook pointed out to you because he has a bill which is a free-standing bill somewhat substantially like this bill, that he had run into a number of difficulties within his district within which he has a number of small volunteer fire companies.

The firefighters, volunteer firefighters, are not troubled in the main by this provision. In fact, they are the ones who

want it.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Thank you. Thank you, Madam President.

Section 5 of this legislation which calls for a relaxation of the standards of asbestos removal on state buildings to coordinate it with that of a number of other facilities, the issue here, Senator Saland, is that many of the old state facilities are actually the ones that have been shown by research to have high levels of asbestos so; to relax these standards and, in a sense, not keep the current standard that we have for asbestos removal, in my opinion, would jeopardize workers and jeopardize those members of the public that frequent those buildings quite often.

Would you explain for us why you have chosen to leave this section in the legislation after last year?

SENATOR SALAND: Well, number one, this particular section of the bill deals

only with the exterior of buildings. We're talking about roofs, and what we're saying within this bill, within this particular section of the bill, is that the current standards which are controlled by Department of Labor, are so difficult and so costly, costing local governments and school districts somewhere in the area of $175 million, and I'm told by representatives of roofing contractors that they think the figure is closer to $400 million, that what we could do is use the very same standard that the private sector uses, the same standard that they use when they do a major industrial job, the same standard that I believe is the prevalent standard in other states which is the OSHA standard, the same standards that we were talking about with regard to the fire section of the bill. Certainly OSHA is not renowned for being insensitive to regulatory enactments, regulatory enforcement, and the private sector certainly has not had any horror stories -- I'm not aware of any stories of illnesses occurring to people who are complying with the OSHA

requirements. I'm not aware of any tragedies of any kind.

We're talking about really major savings every level of government, every type of government, whether it's municipal, whether it's county, whether it's school district. This would be, I'm sure, thoroughly embraced inas much as the vast majority of that conserva tively $175 million is coming directly from real property taxes, certainly outside of the major urban areas that's the case.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: How are you holding up, Senator?

SENATOR SALAND: Very well. I recall last time you told me there would be about 250, so I'm assuming you're just warming up?

SENATOR PATERSON: Yes, we're just getting warmed up. You should feel like a contestant on a quiz show, and this preparation was not fixed in any way, and we move on to

Section 6.

This would allow for a variable interest rate to be set by the Commissioner of Taxation on awards that are won against a municipality. My first question is, how does the Commissioner arrive at what the interest rate will be and, if you want to go on from there, the second question would be why would we allow for really what would be such a subjective standard to be applied to a recovery that was already won in court, and wouldn't that, in a sense, constitutionally limit the recovery or, in a sense, even put somewhat of a cap on the recovery?

SENATOR SALAND: What this - currently, the interest rate in the state of New York on judgments is 9 percent. What this section does is, it proposes to create a floating rate, a variable rate, which I believe has a minimum of 6 percent, a maximum of 9 percent, and the bill language, I believe, refers to the current authority of the Commissioner to fix this rate. I think he does

it by publication through the State Register, and I'm not quite sure if I could even hazard a guess as to what that mechanism is, but it makes reference to the existing law. There is something on the books by which the Commissioner is governed.

I have not received any memos or any expressions of concern that somehow or other the Commissioner was delinquent in his responsibility in fixing that rate.

SENATOR PATERSON: Madam President, if Senator Saland would continue to yield.

Therefore -

ACTING PRESIDENT MARCELLINO: Senator Paterson, there's been a slight change.

SENATOR PATERSON: Sorry. You look just like her from here.

Senator Saland, therefore, you're not sure what the actual -- what the actual mechanism is that's used to make the determination?

SENATOR SALAND: What I'm telling

you, in all candor, is that we're merely hooking into what the existing mechanism is. I could not define that mechanism. There is an existing mechanism.

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

ACTING PRESIDENT MARCELLINO: Senator, will you continue to yield?

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT MARCELLINO: He yields, sir.

SENATOR PATERSON: What disturbs me then is, if a person wins a judgment at the rate of 9 percent at the time that the judgment is reached, how can the Commissioner, therefore, reduce the rate and, therefore, reduce the recovery? In other words, isn't that kind of post hoc, ergo propter hoc meaning after the fact, therefore, before the fact?

SENATOR SALAND: I would think that that would be a strained interpretation of the ability of the Commissioner. I don't think

we could, in an ex post facto fashion go back and reduce that interest. If the judgment had been docketed, then the determination of the amount of interest to be paid would, in fact, be whatever was the rate fixed at the time and, if it was 9 percent, it would be 9 percent notwithstanding the fact that it might be reduced later. If it was 8 percent, it would be 8 percent, and similarly if it was 6 percent and the rate was subsequently higher, the 6 percent rate would be the controlling rate. It would not apply to judgments, again, already docketed. The rate that prevailed at the time it was docketed would be the prevailing rate.

SENATOR PATERSON: That's very good, Senator. I now understand that.

My problem is that it doesn't say that in the bill. You're telling me that. Would it not be a little more foresighted to make that clear because that actually changes my feeling about the whole thing? If you want to adjust the rate variably over time, I understand that, but what it appears from the legislation

and maybe I'm just misreading it, is that it would allow for the Commissioner to adjust after the fact and it does not indicate that this is a standard that's being set, not something that would apply to any previous jurisdictional procedures that had actually taken place.

SENATOR SALAND: I'm a little reluctant to respond. I'm not quite sure if that was a question or a statement.

SENATOR PATERSON: Oh, it was a question. The question is, don't you think this needs to be made clearer by the writing of the bill more than as of the interpretation that you've given me which does make me understand what you're trying to do a lot better? What I'm saying is, I would never have come to that conclusion having just read this.

SENATOR SALAND: Well, Senator Paterson, what I will have my office do is take a look at the controlling language which is in the Tax Law and see if that sheds any light on our dilemma. I'm comfortable with this language and don't feel that it imposes any particularly

onerous burden and, in fact, I think what it does is, again says to local government that - well, county government or city government, that they're not going to pay artificially high interest rates at times when they truly would be in excess of markets rates or prevailing rates.

SENATOR PATERSON: Thank you very much, Senator. That would actually be very helpful. It could be just me. I'm having enough trouble trying to determine the gender of the presiding officer. It could just be me, but I'd like you to know that the Trial Lawyers Association pointed that out in its memorandum, they do not think it's set forth clearly. Maybe this is something that we can work on later.

I would like to move to Section 32.

SENATOR SALAND: Pheeew! I breathe a sigh of relief, Senator Paterson. I was concerned we were going to do this a section at a time. And this is not a challenge.

SENATOR PATERSON: We -- what I'm going to do to expedite the process, I'm going

to link Section 32 to Section 36 and 37, Section 32 relating to the imposition of payment for parole by those who are seeking it, and Section 36 and 37 has to do with medical services and the like that non-indigent inmates would be paying for. This is basically in the same spirit, and so I thought I would link it just to ask you the question again, how do we objectively determine who can and cannot pay for services when they are an inmate?

It's not as if, if you can't pay for services and you're an inmate, we're going to throw you out of the prison. It's more what I think you're trying to accomplish is that those individuals who can afford to pay for those services should be paying for them and the crime they've committed against society should not absolve them of that responsibility, but the situation at hand is that it's very hard to make that determination since we are actually holding the person because of the fact that they are accused or have committed a crime or they're now on parole, and we're asking them to pay for

services.

SENATOR SALAND: May -- again, may I ask if you could conclude that with a question. I may have missed it because I was trying to read the sections as you were talking.

SENATOR PATERSON: I'm very sorry. The question is what is determining the ability of an individual to pay for medical care or other services that they would require while incarcerated?

SENATOR SALAND: I believe those elements, the factors to be considered are enumerated as financial resources, assets and expenses, health, age, current child support and maintenance, court orders, outstanding court orders, fines or restitution, current income executions or income deduction orders and any other factor which the court shall expressly find to be just and proper.

SENATOR PATERSON: Well, Senator, for instance, if I could put this question on the table. You're not just saying that a person

can afford it. You're saying that if we determine that they're non-indigent and I'm saying that it's not a hard determination to make to tell a person that you shouldn't be indigent as opposed to telling them that they are indigent, and what I'm saying is, I don't understand how we make that determination or couldn't that be a standard that would apply to everybody who is incarcerated and needs medical care or other services?

SENATOR SALAND: I think the court, in the first instance, would determine whether or not the person was possessed of sufficient assets so as to be the subject of this particular section. If, in fact, the determination of indigency was made, then this section would not apply.

SENATOR PATERSON: Well, you've got some ability to earn, "such means" language in here, and so it wouldn't necessarily be a standard determined by the person's current position. It sounds to me that it could be determinative of the conclusion that this

individual may not now, but can in the future, and therefore, theoretically would it not be correct to -- to ask the person to pay and to pay back after they have left the facility? And I'm just saying, I just think it opens the door in such a way that it's very hard to make that determination. That's my point, and -

SENATOR SALAND: Well, I think what we've endeavored to do with this language is to provide, in effect, general standards and certainly the -- the catch-all provision and any other factor is one that's sufficiently general to permit each case to turn on its own facts and circumstances.

We obviously don't have the ability to -- as legislators, to review each and every one of these types of applications and make the kinds of determinations that you would defer to a court on, and I'm comfortable with the language. It seems to me that it's well within the realm of what courts do and what courts should do.

SENATOR PATERSON: Thank you,

Senator Saland.

I want to move to Section 40 which relates to non-polluting landfills. In this particular section, though the non polluting landfill is called that because it has not met the threshold of what would be determined to be a polluter, the fact that it can remain may be, in a sense, the catalyst for an environmental standard that exceeds the pollution threshold in the future, and so what I would like to know is how do we make the determination that a non-polluting landfill today is not a hazard tomorrow if we're not going to pay any more attention to it, as Section 40 reveals in this legislation?

SENATOR SALAND: Well, among the requirements that are imposed by this section are that the site in which the -- the landfill site would be equipped with monitoring wells which are consistent with DEC regulations and demonstrate that the landfill is not releasing contaminants that exceed whatever would be permissible under the Department's guidelines,

that it has only received solid waste, that it no longer is receiving solid waste, that it is not listed on DEC's registry of inactive hazardous waste sites and has not received any financial assistance to close, if at any time the monitoring well indicates pollution levels that threaten the surrounding community -- the municipality -- and DEC, the Department of Environmental Conservation, shall establish a time frame within which that municipality would have to close its landfill.

SENATOR PATERSON: Senator, obviously, the landfill has been cited for clos ure and that's exactly the point that I'm making that it didn't really have the funds to close the facility, but it is considered to be non polluting, so what I'm saying is, at a point in the future, if the site becomes a hazard, how is DEC going to monitor this?

SENATOR SALAND: DEC would mon itor it in the very same fashion that it cur rently monitors. The well is being monitored. There -- by definition, it has to be monitored

and if, in fact there are environmental problems, there's a requirement that they be remedied, and I would assume that that would begin the process anew.

If, in fact, the condition is such that it required immediate remediation, then that particular municipality would, based upon a determination by the Department of Environmental Conservation -- Department of Environmental Conservation, would have to remediate.

If, in fact, in the opinion of DEC, who is in charge of enforcement, that particular landfill site did not constitute the kind of threat that required closure, there might be some type of mitigating action that the town could take or the village or the city.

This is a particularly onerous and burdensome requirement that has really caused many communities in this state, partic ularly smaller communities great financial dis tress, burdened their taxpayers immeasurably. We're not saying that there should not be

compliance. What we're saying is where, in fact, we have non-polluting landfill sites that are being monitored and there are no hazardous wastes at the site, then we're going to permit you, subject to continuing monitoring and the commitment that you're going to remedy or mitigate should, in fact, there be a problem, not to have to go through with the closure.

SENATOR PATERSON: Therefore, Senator, if you would yield for another question, there's no change in the monitoring procedure? In other words, after this determination is made, it will still be monitored the same way.

The only reason I ask this question is because what you've just said seems to make a lot of sense to me, but it almost seems to be contradicted in Section 85 of the legislation later on where you seem to be diminishing the responsibility of local governments.

SENATOR SALAND: Well, that's an entirely different question. 85 deals with a

different issue.

SENATOR PATERSON: O.K. Then leave that alone. My question is here that we can really expect that there's no change in what DEC's monitoring requirements are after they've declared the land to be a non-polluter.

SENATOR SALAND: There will be monitoring wells that are required on-site and as long -- monitoring of wells that are required on-site and as long as there is no polluting condition and the well is being monitored, they will, in effect, have the closure deferred. They will not have to close the site. It may well be at some point further down the road that those monitors will indicate the presence of a condition that requires, as I said earlier, either mitigation or remediation.

85, Senator Paterson, is an entirely different proposition.

SENATOR PATERSON: O.K. I understand that. I just thought that it was the spirit of it.

Senator Saland, you'll be happy

to know that I hold in my hand the envelope that holds the last question.

SENATOR SALAND: Thank you, sir.

SENATOR PATERSON: Section 130 of the legislation which allows for alternative procedures to be used in adopting state regu lations, here there is a great concern that there is a time period in which the local governments can come back and ask for clarifi cation. When the time period expires apparently from your legislation, the local government can adopt some of their own alternative procedures. If that's the case -

SENATOR SALAND: Senator Paterson, I'm sorry. Did you say 130 or 131? I'm just looking for the language as you're speaking?

SENATOR PATERSON: It starts at 130; I think it goes into 131.

SENATOR SALAND: Thank you.

SENATOR PATERSON: I'll check myself.

Senator Saland, the question I

asked you was about Section 131, but it starts at 130.

SENATOR SALAND: I see.

SENATOR PATERSON: Relating to the alternative procedures.

SENATOR JOHNSON: Senator Paterson, could I interrupt you for a moment?

ACTING PRESIDENT MARCELLINO: Senator Johnson.

SENATOR JOHNSON: Would you please read the last section so Senator Gold can vote?

ACTING PRESIDENT MARCELLINO: Read the last section.

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

SENATOR JOHNSON: Senator Gold, how do you vote?

SENATOR GOLD: No.

SENATOR JOHNSON: All right. Withdraw the roll call, proceed with the debate.

ACTING PRESIDENT MARCELLINO:

Senator Paterson, please.

SENATOR PATERSON: Senator Saland, Section 131 sets forth the logistics of how this would be arrived at. Section 130 just has the alternative procedures for implementing what would be a state mandate, and my question to you is, isn't this a way that the community can avoid the implementation by throwing up a lot of questions, hoping the state misses the response time and then implementing their own procedures that probably don't reach the spirit of what the legislation was intended for in the first place, or what the mandate calls for?

SENATOR SALAND: Well, Senator Paterson, I do not believe it to be so. You may recall in my opening remarks I said something to the effect that what we wanted to do is truly create a mechanism that -- that provided for a local/state partnership.

(The Minority Leader's phone rings.)

Bring home the milk and don't forget to get a dozen eggs.

SENATOR PATERSON: Thank you, Senator.

SENATOR SALAND: And what we've -- what we're -- what we're attempting to do here is basically provide -

(The Minority Leader's phone rings.)

That was a question analogous to "is the moon high".

Senator, the statement you made in the beginning, I think does reflect that the spirit of this legislation which I think is designed to save local governments a lot of money including a billion dollars, what I would suggest is that it touches on so many different issues that it makes it very difficult to address them singularly since they affect so many citizens in so many different ways. They affect workers; they affect agencies. They affect the relationship between state and local governments, in spite of the fact that there are really some rather innovative procedures here.

That's why I asked you about

Section 130 and Sections 130 and 131 rather, because of the importance that we feel to the information transferred through this entire legislation. There are local governments that often oppose state mandates and this, I think, gives them an option.

I want to thank you for being as willing to answer all these questions and as gracious as you always are and, on the bill, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Paterson, on the bill.

SENATOR PATERSON: For the reasons previously stated, we wanted to oppose the bill, but would want to encourage Senator Saland in the future that perhaps by bifurcating the process and splitting these legislations maybe even into the six areas that he defined in his preamble, it might make it a little easier for us to vote on it because many of the members here like some of the innovative changes and respect them, but there are some issues here relating to the asbestos removal, relating to

the -- relating to the Occupational Safety and Health Act as it applies to volunteer firefighters, what seems to be a sort of revolving tax rate for the recovery of judgments, and also with respect to the responsibility of those who are in the criminal justice system to pay for some of their incarceration.

For those and other reasons I'd like to oppose this legislation. Thank you.

ACTING PRESIDENT MARCELLINO: Senator Abate.

SENATOR ABATE: Yes. Would Senator Saland yield to a couple questions?

SENATOR SALAND: Certainly, Senator.

ACTING PRESIDENT MARCELLINO: Senator Saland, do you yield? He yields, Senator.

SENATOR ABATE: Senator, I'm sure you're aware that this year probation -- aid to probation has received about a $13 million cut under the Governor's proposal, and I make the

assumption that this mandate relief for probation is done in order to save the localities and the probation departments some money. Would not that be a fair assumption?

SENATOR SALAND: I'm sorry. Would you repeat again?

SENATOR ABATE: Yes. Does the mandate relief as envisioned under Section 32 which would require convicted felons to reimburse the department for their probation supervision, it would be a fair assumption that this provision was put in place because there was some recognition this would save the localities some dollars and the probation department could, in fact, collect from the probationers; is that a fair assessment?

SENATOR SALAND: It's -- yeah, it's an effort where resources are available to permit the probation department, whether it be the county or the City, to access -- the ability to access those dollars.

SENATOR ABATE: O.K. Are you aware that many of the probation departments

around the state do not support this provision and, in fact, would like it to be optional, let it be an optional determination made by the locality? Are you aware of that?

SENATOR SALAND: I'm not aware of that, but I -- I would be hard-pressed to figure out why, where there are assets available, a probation department would not wish to access those dollars.

SENATOR ABATE: Is that a question being posed? Can I answer the question?

SENATOR SALAND: Oh, no, I just pose it rhetorically; that's all.

SENATOR ABATE: Well, it's my understanding, and maybe you can refute it, that there are some probation departments who have the majority of the people under their supervision who are indigent and earn, even though they know that it may be only a tiny percentage, I mean a very tiny percentage of the people under probation could they ever collect money from, they would have to put in place an

entire administrative apparatus to get that information in every pre-sentence investigation report. They'd have to collect information. They'd have to investigate those cases to give the court information to show whether someone is indigent or whether they're capable of paying. So there are many departments have reached the conclusion the cost of doing the analysis, doing the investigation, would exceed any possibility they would have of collecting any revenue from these probationers.

SENATOR SALAND: I know, I believe, in a former life, I won't say -- I believe in a former life you were an assistant district attorney?

SENATOR ABATE: Well, I was the Commissioner of Probation.

SENATOR SALAND: Oh, Commissioner of Probation.

SENATOR ABATE: But that could happen, and also I've heard from the Commissioner of Probation in New York City again that they don't support this, and I've spoken to

probation departments around the state. Some feel that they're only going to be able to collect these fees from a very small portion of that -- of the population they supervise and, therefore, they believe they're going to lose money again under this proposal.

SENATOR SALAND: It's -- I must tell you it's inconceivable to me that a probation department, in the course of doing its pre-sentence determination -- and you certainly would have more experience than I -- doesn't include factors such as health, age, outstanding child support maintenance orders, outstanding court ordered fines, financial resources. That -- I'm assuming that's pretty routine stuff, some of which has been pre-screened already because the defendant may well have made an application to be -- to be either serviced by assigned counsel or to be serviced by - represented by a public defender's office or its equivalent in the City -- I forget, Legal Services?

SENATOR ABATE: DJA, Division -

SENATOR SALAND: I don't think you're talking that large of a universe here, I really don't.

SENATOR ABATE: Well, my under standing is that those kinds of investigations in depth are not being done and so there would be a need to develop more resources in order to carry out this function, and the fear of many departments, particularly when now they're going to be operating with less revenue, that they will take needed critical resources away from supervision functions and they're now supervising tens of thousands of people on the streets and need more monitoring, more supervision.

It's a public safety issue, and my concern, and I ask you if you share my concern, if the Senator will yield to another question?

ACTING PRESIDENT MARCELLINO: Senator, do you continue to yield?

SENATOR ABATE: -- that these probation departments are undergoing enormous

stress. They're being asked to receive even less dollars from the state. The reimbursement will be going from 32 percent, I believe, to 25 percent. They'll be receiving less state dollars, to demand of them to take on an additional function that will not necessarily reap additional revenue, is that an appropriate mandate for us to pass in this Legislature?

SENATOR SALAND: Well, I'm assuming then -

SENATOR ABATE: If, in fact, this is the case.

SENATOR SALAND: I'm assuming then that, if that amount of money, the $13.4 million, is restored that you would support this provision and that the probation departments, the various and sundry probation departments to which you make reference, would also support this provision, so I -- I would think we could render that academic by merely being successful in our efforts to restore those dollars.

SENATOR ABATE: Well, I agree with you. I think there is a need to restore

that $13 million, but I also believe that we should be looking to the probation department to see if, in fact -- and I don't mean just New York City, I mean statewide -- to see if, in fact, this is mandate relief.

Many of the people under their supervision who are misdemeanants, particularly Nassau County and Suffolk County, they believe they can collect these revenues if it were misdemeanants, people who are charged with the traffic infractions. I don't know whether this will reap any positive impact on many of the departments.

Having no knowledge otherwise - on the bill. There are -

ACTING PRESIDENT MARCELLINO: Senator Abate, on the bill.

SENATOR ABATE: There are a number of provisions I could support and a number I can't. These are ones that I have not heard any information that it will help probation statewide. In fact, I believe it will hurt them. It's not a mandate relief and, for

this and other reasons, I can not support the bill.

Thank you.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 133. This act shall take effect immediately.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Leichter.

SENATOR LEICHTER: Mr. President, may I explain my vote, please.

ACTING PRESIDENT MARCELLINO: Senator Leichter to explain his vote.

SENATOR LEICHTER: Yeah, Mr. President. I was going to debate this bill but I think it was well covered by Senator Paterson, Senator Abate, Senator Dollinger and others.

Somehow, when I see this bill

being presented, Senator Saland, what comes to mind is some guy at a bar putting down his tenth shot of whiskey and saying, Nobody ought to drink. I don't mean that as a literal metaphor, but this Majority when -- since I've been here has imposed mandate after mandate after mandate.

I wonder how many mandates we're going to see this year. I know you're always imposing mandates on the city of New York and telling us how to run our police department, and so on. Then you come up with this bill, and "I am so pure, I'm never going to take another drink. I am against all mandates."

But this bill goes beyond -- I looked through it, and I find all of Senator Bruno's old bills for the last five years or ten years, like the landfill and the other bills. I mean this is sort of like "the Senator Joe Bruno grab bag."

But all kidding aside, I'm always suspicious and uneasy when we put up a bill which says, "I'm not going to do it any more."

I don't think we should do it if it's wrong. But I have enough faith in the membership here, and there may be times when we will impose a mandate. There certainly are too many mandates that we have imposed and maybe we ought to keep in mind that, when we impose a mandate, at the same time we ought to provide the money, but to have a blanket bill in this fashion besides all the other things you throw in, on prisoners, major change in the way we handle tort cases involving municipalities, the firefighters now denied OSHA protection, it's too much.

I mean I'd have sympathy with Senator Bruno for all these bills that haven't become law over the years. Maybe he can do them one at a time. He's got a friendly governor now, but to make this sort of a grab bag, I think, is a real mistake.

I vote in the negative.

ACTING PRESIDENT MARCELLINO: Announce the results, please.

THE SECRETARY: Those recorded in the negative on Calendar Number 35 are Senators

Abate, Connor, Gold, Kruger, Leichter, Markowitz, Montgomery, Nanula, Onorato, Paterson, Smith and Waldon. Ayes 42, nays 12.

ACTING PRESIDENT MARCELLINO: The bill is passed.

SENATOR JOHNSON: Mr. President, is there any housekeeping at the desk?

ACTING PRESIDENT MARCELLINO: There is a substitution at the desk, sir. Secretary will read.

THE SECRETARY: Senator Farley moves to discharge from the Committee on Banks Assembly Print 8229-C and substitute it for the identical Calendar Number 4.

ACTING PRESIDENT MARCELLINO: Substitution is ordered.

Senator Johnson.

SENATOR JOHNSON: Mr. President, may we stand in place for a moment. We may have to call up a previous bill for a vote.

ACTING PRESIDENT MARCELLINO: Senate will stand at ease for one minute.

SENATOR JOHNSON: Mr. President,

Senator Mendez has called down and indicated her interest in being here to cast a negative vote on this bill. I would say if she doesn't show up in a minute, Senator, then we will proceed with announcing the vote and she can take the floor tomorrow and inform everyone that, had she been here, she would have been in the negative on this bill.

(Short pause)

Mr. President, I'd say announce the results.

ACTING PRESIDENT MARCELLINO: We announced the results earlier. The bill passed.

SENATOR JOHNSON: O.K. Then, Mr. President, there being no further business, I move we adjourn to Tuesday, January 23rd at 3:00 p.m., sharp.

ACTING PRESIDENT MARCELLINO: Without objection, the Senate stands adjourned until Tuesday, January 23rd at 3:00 p.m.

(Whereupon at 4:40 p.m., the Senate adjourned.)