ALBANY, NEW YORK

January 23, 1996

3:00 p.m.

REGULAR SESSION

LT. GOVERNOR BETSY McCAUGHEY ROSS, President

STEPHEN F. SLOAN, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will come to order.

Would you please rise and repeat with me the Pledge of Allegiance.

(Whereupon, the Senate and those present joined in the Pledge of Allegiance to the Flag.)

May we bow our heads in a moment of silence.

(Whereupon, there was a moment of silence.)

The reading of the Journal, please.

THE SECRETARY: In Senate, Monday, January 22. The Senate met pursuant to adjournment. Senator Kuhl in the chair upon designation of the Temporary President. The Journal of Friday, January 19, was read and approved. On motion, Senate adjourned.

THE PRESIDENT: Without objection, the Journal stands approved as read.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Sears from the Committee on Consumer Protection reports the following bills:

Senate Print

193B, by Senator Gold, an act to amend the General Business Law, in relation to requiring child safety devices;

1665A, by Senator Sears, an act to amend the General Business Law, in relation to the award of costs;

2674, by Senator Farley, an act to amend the Personal Property Law and the General Business Law, in relation to the taking of a purchase money security interest;

3790, by Senator Sears, an act to amend the General Business Law, in relation to penalties for violation thereof;

3839A, by Senator Sears, an act to amend the General Business Law, in relation

to false price comparisons;

5753, by Senator Velella, an act to amend Chapter 694 of the Laws of 1995, amending the General Business Law.

Senator Seward from Committee on Energy and Telecommunications reports:

Senate Print

1626, by Senator Seward, an act to amend the Public Service Law, in relation to telephone blocking services;

2014, by Senator Seward, an act to amend the Public Service Law, in relation to restricting access;

3422, by Senator Seward, an act to amend Public Service Law, in relation to extending the period of time;

3432A, by Senator Seward, an act to amend the Public Service Law, in relation to increasing the statutory ceiling.

Senator Cook from the Committee on Education reports:

Senate Print

568, by Senator Farley, an act to

amend the Education Law, in relation to efficiency study grants;

1303, by Senator Cook, an act to amend the Education Law, in relation to defining nonresidents;

4864A, by Senator Cook, an act to amend the Public Officers Law, in relation to the defense and indemnification of members;

5435B, by Senator Cook, an act to amend the Education Law and the Local Finance Law;

5616, by Senator Saland, an act in relation to providing additional state aid.

Senator Levy from the Committee on Transportation reports:

Senate Print

1290, by Senator Farley, an act to amend the Public Authorities Law, in relation to annual commuter car pool permits;

3240, by Senator Maltese, an act to amend the Vehicle and Traffic Law, in relation to increasing the penalty for obstructing access;

4337, by Senator Levy, an act to amend the Transportation Law, in relation to the creation of regional citizens advisory councils;

4435B, by Senator Maziarz, an act to amend the Vehicle and Traffic Law, in relation to fees received by county clerks;

5765, by Senator LaValle, an act to amend the Highway Law, in relation to the Long Island Suburban Highway Improvement Program.

Senator Volker from the Committee on Codes reports the following bills:

Senate Print

197, by Senator Volker, an act to amend the Penal Law, in relation to resisting arrest;

388, by Senator Levy, an act to amend the Criminal Procedure Law, in relation to providing that commission of the traffic infraction "driving while ability impaired" while under the influence of a probation or conditional discharge;

503, by Senator Present, an act

to amend the Penal Law, in relation to unlawful possession of weapons;

561, by Senator Cook, an act to amend the Criminal Procedure Law, in relation to denial of recognizance or bail;

587, by Senator Volker, an act to amend the Penal Law, in relation to theft of telecommunication services;

637A, by Senator DiCarlo, an act to amend the Penal Law, in relation to unlawful possession of a box cutter;

667, by Senator Padavan, an act to amend the Penal Law, in relation to making citizenship document fraud a Class E felony;

670, by Senator Padavan, an act to amend the Penal Law, in relation to making unlawful immigration a Class C felony;

692A, by Senator Saland, an act to amend the Penal Law, in relation to minimum period of imprisonment;

1088A, by Senator Spano, an act to amend the Penal Law, in relation to the crime of criminal employment;

1113, by Senator Volker, an act to amend the Penal Law, in relation to the crime of false impersonation;

1967, by Senator DeFrancisco, an act to amend the Criminal Procedure Law, in relation to the collection of court imposed financial obligations;

2228A, by Senator Volker, an act to amend the Civil Practice Law and Rules, in relation to admissibility into evidence;

3769, by Senator Volker, an act to amend the Criminal Procedure Law, in relation to prohibiting a request;

3818, by Senator Volker, an act to amend the Criminal Procedure Law and others, in relation to the authorized destruction of dangerous drugs;

4521A, by Senator Maltese, an act to amend the Penal Law, in relation to increasing the penalty for serious assaults;

5499, by Senator Volker, an act to amend the Criminal Procedure Law -- an act to enact the Criminal Procedure Law Reform Act of

1995.

Senator DiCarlo from the Committee on Aging reports the following bills:

Senate Print

25B, by Senator Levy, an act to amend the Real Property Tax Law, in relation to granting a graduated real property school tax;

1847, by Senator Johnson, an act to amend the Real Property Tax Law;

3314, by Senator Trunzo, an act to amend the Real Property Tax Law, in relation to exemption from real property taxation;

3871, by Senator Leibell, an act to amend the Real Property Tax Law, in relation to partial real property tax exemptions;

5134, by Senator Marcellino, an act in relation to granting a retroactive senior citizen tax.

All bills ordered directly for third reading.

ACTING PRESIDENT RATH: Without objection, all bills directly to third reading.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Marcellino.

SENATOR MARCELLINO: Yes. Madam President. On behalf of Senator Stafford, please place a sponsor star on Calendar Number 79.

SENATOR RATH: The bill is starred.

SENATOR MARCELLINO: And, Madam President, on behalf of Senator Larkin, on page number 10, I am offering the following amendments to Calendar Number 84, Senate Print Number 5803, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT RATH: Thank you. Amendments are received.

Senator Bruno.

SENATOR BRUNO: Madam President. May we, at this time, adopt the Resolution Calendar.

ACTING PRESIDENT RATH: All in

favor of adopting the Resolution Calendar, signify by saying aye.

(Response of "Aye.")

Opposed, nay.

(There was no response.)

The Resolution Calendar is adopted.

Senator Bruno, are you ready for the calendar?

SENATOR BRUNO: Madam President. Can we at this time take up the noncontroversial calendar.

ACTING PRESIDENT RATH: Secretary will read.

THE SECRETARY: Calendar Number 4, by the Assembly Committee on Rules, Assembly Print 8229C, an act to amend the Banking Law, in relation to interstate branching.

SENATOR FARLEY: Lay it aside.

ACTING PRESIDENT RATH: Lay the bill aside.

THE SECRETARY: Calendar Number 36, by the Assembly Committee on Rules, Assembly

Print 8422.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT RATH: Lay the bill aside.

THE SECRETARY: Calendar Number 37, by Senator Holland, Senate Print 34, an act to relocate the Spring Valley Toll Plaza.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT RATH: Lay the bill aside.

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

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT RATH: Lay the bill aside.

THE SECRETARY: Calendar Number 54, by Senator Saland, Senate Print 2108, an act to amend the Family Court Act, in relation to judicial notification of child care agencies.

ACTING PRESIDENT RATH: Lay the bill aside.

SENATOR PATERSON: No.

ACTING PRESIDENT RATH: No. Did

you say, "Lay the bill aside"? No.

All right. Fine. Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 90th day.

ACTING PRESIDENT RATH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT RATH: The bill is passed.

THE SECRETARY: Calendar Number 55, by Senator Saland, Senate Print 2594, an act to amend the Social Services Law, in relation to child abuse and maltreatment hearings.

ACTING PRESIDENT RATH: Read the last section.

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

ACTING PRESIDENT RATH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT RATH: The bill is passed.

THE SECRETARY: Calendar Number 62, by Senator Velella, Senate Print 3459B, an act to amend the Insurance Law, in relation to the definition of surety insurance.

ACTING PRESIDENT RATH: Read the last section.

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

ACTING PRESIDENT RATH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT RATH: The bill is passed.

THE SECRETARY: Calendar Number 71, by Senator Stafford, Senate Print 623, an act to amend the Highway Law, in relation to abandonment of certain town highways.

ACTING PRESIDENT RATH: Lay the bill aside.

THE SECRETARY: Calendar Number 72, by Senator Skelos, Senate Print 1075, an act to amend the Vehicle and Traffic Law, in relation to the enforcement of handicapped parking regulations.

ACTING PRESIDENT RATH: Read the last section.

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

ACTING PRESIDENT RATH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT RATH: The bill is passed.

THE SECRETARY: Calendar Number 77, by Senator Marcellino, Senate Print 4952, an act to amend the Vehicle and Traffic Law, in relation to special number plates.

ACTING PRESIDENT RATH: Read the last section.

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

ACTING PRESIDENT RATH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT RATH: The bill is passed.

Senator Bruno, that completes the noncontroversial reading of the calendar.

SENATOR BRUNO: Madam President. Can we at this time take up the controversial calendar.

ACTING PRESIDENT RATH: Certainly.

The Secretary will read.

THE SECRETARY: Calendar Number 4, by the Assembly Committee on Rules, Assembly Print 8229C, an act to amend the Banking Law, in relation to interstate branching.

ACTING PRESIDENT RATH: Explanation. Senator Farley.

SENATOR BRUNO: Is there a message of necessity at the desk?

ACTING PRESIDENT RATH: Yes,

there is, Senator Bruno.

SENATOR BRUNO: Move that we accept the message.

ACTING PRESIDENT RATH: It's been moved that the message be adopted.

All in favor, signify by saying aye.

(Response of "Aye.")

Opposed.

(There was no response.)

The message is adopted.

Explanation has been requested.

SENATOR FARLEY: Thank you, Madam President. This is a very significant bill. It's a Governor's program bill, one that passed unanimously in the Assembly yesterday.

It's a bill that's been under negotiation for close to a year. It involves interstate branching and ATM safety or security, which is automatic teller machines.

In 1992, New York enacted an interstate branching law. This will amend that law to enable us to opt in to the federal law

which will insure the state-chartered banks will branch interstate. Within the past year, twenty states have opted in. There's going to be about forty, and probably all of them very shortly.

New York is still the financial center of the world. We regulate more banks than the rest of the nation, practically, combined. Our banks are the finest.

This interstate branching provision bill is unchanged from a bill that was passed unanimously by this house last year on June 29. Federal law will enable all national banks to branch in June 1997.

Opting in will insure that the state charter and the state system of bank regulation remains attractive and viable. It will also insure a level playing field and allow state-chartered banks to compete with the national banks. It will insure that all New York banks, state and national are able to compete with banks from other states.

Banks that are already beginning to restructure themselves to take advantage of

the cost efficiencies and benefits of interstate branching, they no longer have to wait to act; otherwise, we will be placing our state chartered banks at a competitive disadvantage. In order to maintain New York's position as the world's financial center, it is important that New York be one of the states to act quickly and decisively in updating its law to allow interstate branching.

As with most banks, there's no objection to this interstate branching except there's things that have been attached to it. The thing that has been attached to this particular bill and making it a comprehensive bill is the Attorney General's ATM safety bill. Incidently, Attorney General Vacco has worked very hard and made this possible to come forth, and this is the area that the general public is interested in because interstate branching is kind of arcane and difficult for them to understand, but they do understand the ATM security. Incidentally, the ATM security bill, there is no known opposition to it that I know

of. It's been accepted by the banking community statewide, and we've worked very hard to bring a consensus together on this, and I'll talk about this for a moment.

ATM security has been a major problem in some of your urban areas, particularly New York City. There is a significant ATM security law in effect in New York City. That bill will be grandfathered or grandmothered or grandparented, or whatever you want to call that, and will remain in effect. The only difference is some of the penalties will be increased.

What this does is require, throughout the state, surveillance cameras at sites, adequate lighting, locking entry doors, an exterior wall that provides an unobstructed view of the facility's interior and requirement for banks to provide written safety precautions to consumers.

This bill is based on and very similar to the ATM laws in effect in New York City and Westchester, Nassau, and Suffolk. The

lighting standards are also the same as the standards enacted by several other states. The state law will be more strict than most other state laws because it includes additional measures such as surveillance cameras and so forth.

Any objections to the bill that were there last year have been removed. That was in the area of limited liability and so forth. As I said, 75 percent of all the money that is dispensed in the United States is dispensed through ATMs. Some day you are going to see banking done very much electronically and by computers.

With that, I offer the bill and be happy to answer any questions if there are any.

ACTING PRESIDENT RATH: Is there any further discussion?

Senator Dollinger.

SENATOR DOLLINGER: Will the sponsor yield to just a couple quick questions?

SENATOR FARLEY: Sure.

ACTING PRESIDENT RATH: Senator Farley will yield.

SENATOR DOLLINGER: First of all, since you finished on the point of the ATM safety, just one question about that.

Is there anything in the bill that requires a bank that maintains an ATM to disclose to its customers whether there have been crimes at a particular ATM?

I only raise that question because I was involved in a lawsuit relating to some crime at an ATM, and one of the questions which was asked in the context of that lawsuit was whether the bank had an obligation to its customers who were visiting that branch of the bank to put some kind of notice that says there's been robberies at that ATM on prior occasions.

Is there anything in this bill that requires some notice to the consumer, to the customer about criminal activity at the ATM?

SENATOR FARLEY: No, there isn't,

Senator. There is no requirement on that point of view. Most of the crimes that are committed at ATMs, unfortunately, is somebody that is robbed after they have gotten money, sometimes away from the site.

Incidentally, a question was asked -- I'm not going to anticipate your next question -- kind of quietly by my neighbor here to my left, as to whether this applies to supermarkets, malls and indoor ATMs? It does not. They are exempted from that because there's adequate lighting and so forth.

But, no, there's nothing that says that the ATMs have to provide consumers with crimes that have been committed at a particular ATM.

SENATOR DOLLINGER: I guess I'm not prepared to offer an amendment or anything, but I think that is something we should look at, perhaps, as this whole concept of ATM safety matures. I found out, in the case that I was working on, the Appellate Division in the Fourth Department held that there was no liability on

the part of the bank because they had no duty to maintain the ATM facility in such a way as to provide greater safety for the customer.

And I -- I think this bill moves in that direction to establish standards that a bank will have to operate under to provide greater protection to consumers. So I think it moves in the right direction. But we just may want to keep track of the fact that the bank would have to put out a mailing or in its usual statements to customers to say, "You bank at branch ABC. You should be aware that the ABC - people taking money out of the ABC teller have been robbed on a periodic basis," something like that to, again, give consumers greater notice if one of these ATMs becomes a hot spot for criminal activity.

SENATOR FARLEY: Let me give you something in this bill that might answer your question. I think it's something that's changed in this bill from the prior proposal. In the prior proposal, there was some objection to this by trial lawyers and a few others that limited

the liability of a bank that had serious problems with an ATM. That has been removed. So if there has been serious problems at an ATM, a bank could be liable.

SENATOR DOLLINGER: Just one other question, through you, Madam President.

ACTING PRESIDENT RATH: Will you yield, Senator Farley?

SENATOR FARLEY: I will.

ACTING PRESIDENT RATH: Senator.

SENATOR DOLLINGER: I've had conversations with the chairman of the Banking Committee before about my concern about home office protection, the notion in New York law that we provide some special protections for small town banks, small community-based banks that provide that important deposit base that local communities need.

I understand in the wave of interstate banking and other changes that this bill is perhaps necessary because of our federal counterparts and the changes that they have made. My question is, how does this bill affect

that notion of hometown or home office protection if it's still part of New York law?

SENATOR FARLEY: I concur in all of your feelings on that. I think hometown protection is important. It does nothing to diminish that or abate that. Let me just say something about the concern the little small bank will be eaten up. I don't see it as that, as chairman of Banking. The merger mania, if you will, that's going on in banking can make the small or "the hometown bank," quote - incidentally, I think Trustco has a copyright on that phrase -- the hometown bank can move better, closer to the community, and they have done very, very well and will do well and they have been doing well.

Generally speaking, interstate branching might have been a slight concern to the small -- to the independent bankers. That's the ones we call the smaller ones Upstate and so forth. But they are in support of this bill and they don't have any quarrel with it -- I'm speaking of the interstate branching -- and,

also, the ATM security, which is not a great problem in Upstate New York and in the smaller communities. Most of them are doing all of these things right now voluntarily, and they are happy to have a standard.

SENATOR DOLLINGER: Okay. Again, Madam President, I concur with the chairman of the Banking Committee; that my concern has been since I have come to this chamber, because of my own past experience as a lawyer, to preserve small community banks, small community banks that may exist Upstate in small towns or may exist Downstate in small communities that make the investment, that achieve the goal of small town lending, lending from small banks. I continue to believe that, at least Upstate, that at the heart of our small town communities are those small town banks, and I just wanted to be assured that nothing in this bill would tamper with that notion, and I continue to believe and continue to be an advocate, while the bank merger mania goes on and big banks change their form and shape, that we make sure that small

town banks and small community banks have a place in this state. I think they'll be an important part of our future, and I'm pleased to see that this bill will not affect their status.

I will be voting in the affirmative.

SENATOR FARLEY: Thank you, Senator Dollinger, and let me say that that is something Senator Dollinger and I both agree upon.

ACTING PRESIDENT RATH: Thank you, Senator Farley, for that editorial comment.

Is there any further discussion?

Senator Leichter.

SENATOR LEICHTER: Yes, Madam President, just on the issue that Senator Dollinger raised and Senator Farley responded to about the effect on the small banks.

This bill is not going to have a good effect on small banks in this state. I'm supporting the bill because, frankly, we don't really have any choice. For all practical purposes, we now have really just a national

banking system, and we're very limited in what we can do here in New York State, but I think all of us have to be very much concerned about what is happening to the small bank or to the branches in neighborhoods. Those branches are closing. The small banks are closing.

These are really the banks that built up their communities. They were run by people from the community. The monies, the deposits in those banks came from the community and they lent in the community; and, undoubtedly, we are losing that capacity. I wish there was some way that we could control it, but no more than King Kanute could stop the tide could we stop that trend. We're dealing here, after all -- we're acting under the sword of federal legislation. If we don't do this, the interstate banking is going to go into effect anyhow, but I don't think that we should have any illusion.

I don't think anybody ought to get up and say this is a wonderful thing for the people of the State of New York. We're doing

this under duress, if you will, and if you take a look at what has occurred in banking, it's been terrible for most banking consumers. I don't blame Senator Farley for it, but I don't -- I mean I don't -- I don't see any benefit in saying when you are losing a football game 63 to nothing to get up and cheer and say, "Look how well we're doing."

You're doing terribly. We're all doing terribly. I issued a report on what I called "merger mania," which is a term that Senator Farley appropriately used, which showed that we've lost branches, we've lost jobs in New York State. The recent merger of Chemical and Chase is going to cost New York State 12,000 jobs. It's terrible. Nothing we can, frankly, or very little we can do about it. Citibank just announced they're closing more branches in New York. Fleet is in a merger with Westminster. They are going to close more branches. Upstate banks are going to be acquired. They're going to be run out of offices in Columbus, Ohio, or San Francisco, or

at least their policies will be set there.

But we've lost control of the banking system as we knew it, and which was, I think, very supportive of New York State's economy. People may say, "Well, look, we still have some of the biggest banks and they are located right in New York." But their vision, their interest is now to a large extent overseas, national, and so on.

I think one of the things that we ought to really try to direct more of our attention to, and I just met with the Superintendent of Banking on it, is to try to go back and develop the community banks, develop credit unions, develop lending institutions that will have some connections with their communities. In that respect, there may be some things that we can do, and I hope Senator Farley and the Banking Committee will play some role in that.

ACTING PRESIDENT RATH: Senator Farley.

SENATOR FARLEY: I'm grateful for

your vote on this bill. I am concerned when you're voting in favor of it because something must be wrong with it.

But let me just say this, Senator Leichter, you're wrong on this, for a very bright fellow that you are.

Let me just say something about the small independent banks that Senator Dollinger and I both were promoting. They are doing very well.

Just a few short years ago, while you served in this house and I was also here, you recall that New York City banks could not come Upstate. They came Upstate, and guess what? They didn't do well at all. They closed most of their offices, and most of them that live Upstate can remember. They did not do well up here. Those small little banks cleaned their clocks.

And, quite frankly, when you are talking about merger mania, it does exist. There's a lot of mergers going on. This is an evolving system. This is an evolving -- you

can't stop that. You can't stand in the way of it. Like with the credit card industry, we tried to capture it. They all went to South Dakota or Delaware. They are not a captive audience any more.

It was interesting to hear Chairman Farrell talk about what happened with Citibank. They just packed it up and left. They will do that.

Today, we are still the financial center of the world. We've got to get with it. We're leaders in this area. The debacle that has happened in banking with the S&L scandal did not happen in this state. We've got the finest Banking Department, the best regulated banks and the finest banks in the nation, and I think we should keep them that way.

I think this is a good bill for the consumer. It's a good bill for the banks. It's something we have to do, and I think what you are talking about is something of twenty years ago. Times have changed.

I urge the support of this bill.

ACTING PRESIDENT RATH: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Madam President. I have just one word to add to Senator Farley's voice, and, again, perhaps we may both find it unusual to be agreeing so strongly on this, but my concern is not so much with the infrastructure of the banking industry in this state as the deposit base, because that's where the loans for -- and I know Senator Leichter has been a leader on the community reinvestment portion, certainly in the Chase and Chemical merger -- but I'm concerned about the hometown deposit base.

I believe that the notion that a deposit -- the money made by John Smith in Canandaigua, New York, or Irondequoit in Monroe County, that he has the notion that his deposits, his hard-earned money that he has saved, is going to be reinvested in his community and that the decision about where to invest that money is going to be made by somebody who lives down the street or lives in

his neighborhood, and that may be Pollyannaish, but I still believe that the critical ingredient is in the system of hometown banking.

I have a bill that I have carried -- I have talked to the chairman of the Banking Committee about it -- that would lower the capital requirements to creating new banks, because I think we could use more small town banks and not create such an enormous capital hurdle for them to get in the business of banking, and I think we would encourage more people to develop community-based lending, the kind of lending that helps our neighborhoods, the kind of lending that's needed in the City of New York, the kind of lending that's needed in my community in the city of Rochester.

We would encourage that kind of hometown lending by using hometown deposits to make that local economy tick. I know I've talked about it with the chairman of the Banking Committee. I know he supports that idea. He is absolutely right. Small town banks in New York State have done much better than their

counterparts that have invested in other places in the world and perhaps got stuck with huge deficits as a consequence.

So I think that the banking system as it goes through this final evolution, my concern is that we keep New York as a financial center with big banks. I think that that is important for our economy. I also think it's important to keep those small town banks healthy and encourage their growth and development so that the local deposits stay in the local communities and help everybody in this state get capital when they need it. That could be the solution.

We talk about creating jobs. We can have all the tax cuts in the world; but if you take your tax cut and put it in savings in your local bank, you want your local bank to use that savings to leverage loans that will drive the capital, the job growth and the next century.

So we can debate forever the changes that are going on at the federal level,

the international capital markets, the local capital markets. I think this is a good bill, and I think we've got to keep our eye on the primary target which is providing a structure on which our national banks can stay here and our local banks will continue to thrive.

ACTING PRESIDENT RATH: Read the last section.

THE SECRETARY: Section 22. This act shall take effect immediately.

ACTING PRESIDENT RATH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT RATH: The bill is passed.

THE SECRETARY: Calendar Number 36, by the Assembly Committee on Rules, Assembly Print 8422, an act to amend the Tax Law, in relation to the imposition of sales and use taxes by the County of Erie.

ACTING PRESIDENT RATH: Senator Volker.

SENATOR VOLKER: Where is Senator Stachowski? Can you wait just a minute, please.

ACTING PRESIDENT RATH: Senator Volker.

SENATOR VOLKER: Madam President, just briefly. Senator Stachowski wanted to have a comment on this bill.

This is the extender of the Erie County sales tax which both houses have passed for a number of years. As I said before, this bill does not enact the sales tax but merely at the request of the Erie County Legislature gives them the ability to make the decision, which they have already made, actually, and put it in their 1996 budget and allows them to put the entire amount of the additional one percent in the Erie County budget. Once this bill passes and is signed into law, then the legislature can formally pass a resolution incorporating the one percent extender for the next year. So that's what this is.

ACTING PRESIDENT RATH: Senator Stachowski.

SENATOR STACHOWSKI: If you want to call the roll, I just want to explain my vote and that's -

ACTING PRESIDENT RATH: Read the last section.

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

ACTING PRESIDENT RATH: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT RATH: Senator Stachowski to explain his vote.

SENATOR STACHOWSKI: Madam President, to explain my vote. I'd just like to point out that, obviously, as Senator Volker said, we don't pass the sales tax. But we're all, from Western New York, aware of the financial problems that the City of Buffalo had; and when Rochester was faced with a similar problem, the County of Monroe and the City of Rochester worked out an agreement to help Rochester through their financial woes.

So far, the City of Buffalo and

the County of Erie haven't been able to work out a similar agreement. We would hope that before we vote on this next year that the City of Buffalo and Erie County would continue to sit down together to continue to negotiate with each other and try to find a way that this ever growing one percent of the extra sales tax could somehow be used to help alleviate some of City of Buffalo's financial problems.

I would hope that the fact that the new majority leader of the county legislature is a city county legislator that he would help to move that process along and that the mayor and the county executive, if they can't work out a way to share this, that they could at least find a way to work out sharing other programs or other facilities that would take some of the burden off the City of Buffalo and the problems they are currently facing.

I vote aye.

ACTING PRESIDENT RATH: May we please have the vote announced.

THE SECRETARY: Ayes 55.

ACTING PRESIDENT RATH: The bill is passed.

Continue with the calendar, please.

THE SECRETARY: Calendar Number 37, by Senator Holland, Senate Print 34, an act to relocate the Spring Valley Toll Plaza of the New York State Thruway.

ACTING PRESIDENT RATH: Explanation has been requested.

SENATOR BRUNO: Lay it aside for the day.

ACTING PRESIDENT RATH: Lay this aside for the day.

THE SECRETARY: Calendar Number 52, by Senator Trunzo, Senate Print 5779, an act to amend the Civil Service Law, in relation to providing jurisdiction to the Public Employment Relations Board.

ACTING PRESIDENT RATH: Explanation has been requested.

Senator Trunzo.

SENATOR TRUNZO: Madam

President. What this bill really does is this legislation would give the Public Employee Relations Board jurisdiction over disputes which have reached impasse in the course of collective bargaining between the City of New York and the police and fire fighters, and, basically, that's what it does. In other words, if the negotiations in the City reach a point of complete impasse, then they can go to PERB to have a decision rendered by the people at PERB.

ACTING PRESIDENT RATH: Thank you, Senator Trunzo.

Anyone else wishing -

Senator Paterson.

SENATOR PATERSON: Madam President. New York City has issued a memo opposing this legislation; and in the memorandum, they contend that passage of this bill would disrupt the relationship that New York City has. It would disrupt the collective bargaining agreement that the City has and would diminish the City's control over its labor relations disputes.

So the question lies in whether or not, in 1977, when the language that formed the Public Employees Relations Board was actually written into law as to whether or not there is a mandate that the Public Employees Relations Board take into account the fiscal ability of the City and the means to actually pay the wage increases? If Senator Trunzo would yield for a question, I would like to try to establish whether or not it exists in law.

ACTING PRESIDENT RATH: Senator, would you yield for a question?

Senator Trunzo.

SENATOR TRUNZO: Yes, I will yield.

ACTING PRESIDENT RATH: Senator yields.

SENATOR PATERSON: That's the question.

SENATOR TRUNZO: What's the question?

SENATOR PATERSON: The question is, does it stand in the law as it was written

forming the language that created the Public Employee Relations Board that there is attention to the fiscal ability of the entity -- in this case, New York City -- and its means to pay the actual wage increases that are negotiated?

SENATOR TRUNZO: Section 209, Senator, indicates that ability to pay is part of the -- Section 209 of the Civil Service Law, and it's in there, and the arbitrators have to take that into consideration.

SENATOR PATERSON: Thank you very much, Senator. If you will continue to yield?

SENATOR TRUNZO: Yes.

SENATOR PATERSON: The memorandum that the City has offered also is maintaining that because the collective bargaining agreements that the City now seeks takes four years and the Public Employees Relations Board might negotiate two-year contracts that this would create a bifurcated process; and in this process, it would allow for higher wage increases on the part of what would be the police and fire fighters who would be the

beneficiaries of legislation as it stands now; and that if that were to go into effect, you would have a situation with the other unions that would destabilize the dispute settlement relationship, and the other unions would then seek the same legislation.

Also, the City estimates -- I don't know whether this is true or whether this is hyperbole -- that it would cost the City over $200 million.

A voice in the wilderness told me it is hyperbole, but I would like to know what you feel the result of passing this legislation would be on bargaining disputes?

SENATOR TRUNZO: Well, on your point, first of all, Senator Paterson, are you referring to the first memo that the City wrote or the second memo that the City wrote? There were two different memos, and one sort of contradicts the other one.

But at any rate, the $200 million that you are talking about, from what we can gather by the various figures that we have been

able to determine, that if a one percent increase in negotiations were to happen, it would cost $11 million. To go up to $200 million, you are talking about a 20 percent increase which would not be probable of happening at all.

So the figure seems to be very well bloated by the mayor's people.

ACTING PRESIDENT RATH: Senator, have you completed your questions? Do you want Senator Trunzo to yield?

SENATOR PATERSON: If Senator Trunzo will yield for just one last question?

SENATOR TRUNZO: Yes.

ACTING PRESIDENT RATH: Senator, do you yield?

Senator Paterson.

SENATOR PATERSON: On the other subject about its destabilizing the relationship between the City and its other unions, do you think passage of this legislation will produce that effect?

SENATOR TRUNZO: I don't believe

so because this particular section of law has to do with every police and fire department in the State of New York; and every one, except the fire and police of the City of New York, are involved in Section 209 of the law; and, therefore, it's not probable. In fact, you might understand that up until the merger last year of the police departments, the New York City Transit Police were covered by Section 209, and also the United Teachers. That's also covered by PERB. Therefore, there's no reason why the police and firemen should not be included in this entire process.

ACTING PRESIDENT RATH: There being no other questions, read the last section.

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

ACTING PRESIDENT RATH: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT RATH: Negatives? Can you announce the vote, please. There are a couple of others.

THE SECRETARY: Ayes 51. Nays 4. Senators DiCarlo, Goodman, Leichter and Montgomery recorded in the negative.

ACTING PRESIDENT RATH: The bill is passed.

THE SECRETARY: Calendar Number 71, by Senator Stafford, Senate Print -

SENATOR OPPENHEIMER: Explanation.

ACTING PRESIDENT RATH: An explanation has been requested.

SENATOR BRUNO: Lay it aside for the day.

ACTING PRESIDENT RATH: Lay the bill aside for the day.

SENATOR BRUNO: Madam President. Can we at this time have the committee report from the EnCon Committee.

ACTING PRESIDENT RATH: The Secretary will read.

THE SECRETARY: Senator Marcellino from the Committee on Environmental Conservation reports:

Senate Print

418, by Senator Cook, an act to amend the Environmental Conservation Law, in relation to permitting certain directional signs;

614, by Senator Stafford, an act to amend the Environmental Conservation Law, in relation to nonhazardous municipal landfill closure;

620, by Senator Stafford, an act to amend the Environmental Conservation Law, in relation to permitting certain advertising in the Adirondack Park;

629A, by Senator Stafford, an act to amend the Environmental Conservation Law, in relation to nonhazardous municipal landfill closure projects; and

3501, by Senator Saland, an act to amend the Environmental Conservation Law, in relation to the definition of the term municipality.

All bills ordered directly for third reading.

ACTING PRESIDENT RATH: Without objection, all bills directly to third reading.

Senator Bruno.

SENATOR BRUNO: Madam President. Are there any other items at the desk that we should take up at this time?

ACTING PRESIDENT RATH: There are no other items, Senator Bruno.

SENATOR BRUNO: Then there being no further business to come before the Senate, I move that we stand adjourned until 11:00 a.m. tomorrow morning.

ACTING PRESIDENT RATH: Without objection, the Senate stands adjourned until Wednesday, January 24, at 11:00 a.m.

(Whereupon, at 3:45 p.m., Senate adjourned.)