ALBANY, NEW YORK

March 27, 1996

3:03 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 everyone please rise and join me in the Pledge of Allegiance.

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

May we bow our heads in a moment of silence.

(A moment of silence was observed.)

Reading of the Journal, please.

THE SECRETARY: In Senate, Tuesday, March 26th. The Senate met pursuant to adjournment, the prayer by the Reverend Thomas Stiles, First Baptist Church of West Seneca. The Journal of Monday, March 25th, was read and approved. On motion, the 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.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Volker.

SENATOR VOLKER: Madam President, I wish to call up my bill, Calendar Number 212, Assembly Print Number 5707-B.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Assembly Bill 5707-B, by Member of the Assembly Hochberg, an act to amend the Criminal Procedure Law, in relation to a defendant's right.

SENATOR VOLKER: I now move to reconsider the vote by which this Assembly bill was substituted for my bill, Senate Print Number 5741, on February 7th, 1996.

THE PRESIDENT: Call the roll on reconsideration, please.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 39.

SENATOR VOLKER: I now move that the Assembly Bill Number 5707-B be recommitted to the Committee on Codes and my Senate bill be restored to the order of Third Reading Calendar.

THE PRESIDENT: The Assembly Bill is recommitted.

SENATOR VOLKER: Madam President, I now offer the following amendments.

THE PRESIDENT: The amendments are received.

Senator Bruno.

SENATOR BRUNO: Madam President, I believe there are two resolutions at the desk sponsored by Senator Roy Goodman. I would ask that the titles be read and move their immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Goodman, Legislative Resolution honoring Lionel Hampton upon the occasion of his 88th birthday.

Also, by Senator Goodman,

Legislative Resolution honoring the Mount Sinai Alumni Association on its Centennial Anniversary.

THE PRESIDENT: Senator Goodman.

SENATOR GOODMAN: Madam President, if I may, I would like to just say a brief word about the resolution -

THE PRESIDENT: Please do.

SENATOR GOODMAN: -- with respect to Lionel Hampton. Madam President, in the his tory of American culture, there are few people who stand taller than Lionel Hampton, a remark able jazz musician and composer who has been honored by presidents and by countless cultural leaders throughout the nation over many years.

Lionel Hampton, despite having suffered two recent strokes, is celebrating his 88th birthday and has just appeared in a recent concert in which his musical powers have clearly been undiminished. He is a remarkable asset to our country, and I recall very vividly my first visit to the White House, under the presidency of Ronald Reagan, occurred at the invitation of

Lionel Hampton who was being honored at that time by the President. A tent was set up on the west lawn of the White House and celebrities from all over the nation were gathered to honor this remarkable human being.

He is a warm-hearted, genial and delightful person. Through his initiatives, housing has been developed in his native Harlem for several under-privileged groups bearing the name of Lionel Hampton Houses and the name of his wife.

Madam President, there are few people in America of whom we could be proud than Lionel Hampton, and I'm delighted to be able to mark his 88th birthday at this time in this house.

Thank you.

THE PRESIDENT: Thank you, Senator Goodman.

The question is on the resolutions for Lionel Hampton and the Mount Sinai Alumni Association on its Centennial Anniversary. All those in favor signify by

saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The resolutions are adopted.

Senator Bruno, we have some substitutions.

SENATOR BRUNO: Can we make the substitutions.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Senator Maltese moves to discharge from the Committee on Elections, Assembly Bill 4512-A and substitute it for the identical Senate Bill 5280.

Senator Lack moves to discharge from the Committee on Judiciary, Assembly Bill 8911 and substitute it for the identical Senate Bill 6427.

Senator Lack moves to discharge from the Committee on Judiciary, Assembly Bill 5786 and substitute it for the identical Senate Bill 6551.

Senator Mendez moves to discharge from the Committee on Labor, Assembly Bill 6741-B and substitute it for the identical Senate Bill 4019-B.

THE PRESIDENT: The substitutions are ordered.

Senator Bruno, are you ready for the non-controversial calendar?

SENATOR BRUNO: Yes, Ms. President. Can we now take up the non controversial calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 282, by Senator Lack, Senate Print 3775-B, an act to amend the Family Court Act, in relation to authorizing the court to require persons failing to comply with an order of support.

THE PRESIDENT: 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 44.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 420, by Senator Marcellino, Senate Print 5772, an act to amend the General Business Law, in relation to the conversion of oil home heating systems.

THE PRESIDENT: Read the last section, please.

THE SECRETARY: Section 3. This act shall take effect January 1st, 1997.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 44.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 441, by Senator Volker, Senate Print 4633-A, an act to amend the Civil Practice Law and Rules, in relation to personal service by mail.

THE PRESIDENT: 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 44.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 447, by Senator Saland, Senate Print 5104-A, an act to amend the Environmental -

SENATOR BRUNO: Lay it aside.

THE PRESIDENT: Lay it aside, please.

THE SECRETARY: Calendar Number 454, by Senator Maltese, Senate Print 441-A, an act to amend the Vehicle and Traffic Law, in relation to authorizing distinctive license plates for veterans of the Korean War.

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 44.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 458, by Senator Hoblock, Senate Print 3493-A, an act to amend the Military Law, in relation to the deputy commander of the New York Army National Guard.

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 44.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 460, by Senator Marchi, Senate Print 5844, an act to amend the Highway Law, in relation to

designating a portion of the state highway system in the county of Richmond as the Korean War Veterans Memorial Highway -- Parkway.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 44.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 462, by Senator Maziarz, Senate Print 6067, an act to amend the Correction Law, in relation to the definition of county for purposes of local conditional release commissions.

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

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

ACTING PRESIDENT KUHL: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 44.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 466, by Senator Lack, Senate Print 1465-B, an act in relation to the real property tax assessed by the town of Smithtown.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 44.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 467, by Senator Volker, Senate Print 1893-A, an act to amend the County Law, in relation to the financial responsibility of the defendant for

cost of defense.

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 470, by Senator LaValle, Senate Print 3735, an act to amend the General Municipal Law, in relation to creating the town of Southampton Industrial Development Agency.

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

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

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

(The Secretary called the roll.)

THE SECRETARY: Ayes 44, nays 1, Senator Leichter recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 473, by Senator Farley, Senate Print 5822, an

act to legalize, validate, ratify and confirm certain proceedings and actions taken by the town of Caroga.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 474, by Senator Stafford, Senate Print 5845, an act to amend the Town Law, in relation to a publicity fund in the town of Wilmington, Essex County.

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

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 477, by Senator Cook, Senate Print 5966, an act to legalize, validate, ratify and confirm the acts of village board trustees in the village of Catskill.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 48.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 523, by Senator Farley, Senate Print 1092, an act to amend the Real Property Tax Law and the Social Service Law, in relation to withholding social services rents.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 591, by Senator Nozzolio, Senate Print 6596, an act to amend Chapter 55 of the laws 1990...

SENATOR BRUNO: Lay it aside for one day.

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

Senator Bruno, that completes the reading of the non-controversial calendar.

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

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

THE SECRETARY: On page 26, Calendar Number 447, Senate Print 5104-A, by Senator Saland, an act to amend the Environmental Conservation Law, in relation to the composition of the Hudson River Greenway.

SENATOR PATERSON: Explanation, please.

SENATOR BRUNO: Lay the bill aside, please.

ACTING PRESIDENT KUHL: Lay the bill aside.

SENATOR BRUNO: Temporarily.

ACTING PRESIDENT KUHL: Temporarily.

THE SECRETARY: Calendar Number 467, by Senator Volker, Senate Print 1893-A, an act to amend the County Law, in relation to the financial responsibility of the defendant for cost of defense.

SENATOR PATERSON: Explanation, please.

ACTING PRESIDENT KUHL: Senator Volker, an explanation of Calendar Number 467

has been asked for by the Acting Minority Leader, Senator Paterson.

SENATOR VOLKER: Mr. President, this is part of the civil responsibility of the Codes Committee.

Several years ago, we passed legislation, I think it's 722 (d) of the County Law, that said that defendants who were represented by paid-for attorneys, that is attorneys who were assigned to them who were able to -- who were found to be able to contribute to their defense were enabled -- the county was enabled to collect the money for the attorneys.

One of the problems, however, was -- with that statute was the awkward way -

ACTING PRESIDENT KUHL: Senator Volker, excuse me just a minute. We have an awful lot of noise in the chamber. It's very difficult for the members to hear the explanation. If the members feel they have to have a conversation, please take it out of the chamber. I'll ask the staff members to find

their places.

Thank you, Senator Volker, for the interruption. I apologize.

SENATOR VOLKER: Essentially what this bill would do would be to provide a mechanism, a simpler mechanism to allow an attorney who represented a defendant in an assigned case to collect his fee if the person obviously is financially able to -- to afford to do that.

Presently, I gather what happens is, in many places -- I say "many places" because I assume from what I know where they do collect these, and particularly in places in upstate New York, the judges just order the defendants to go do it, but I presume in New York City and other places where the judges generally don't even try to collect fees, there has been more of a problem because the attorney then has to go back into court and go through the normal process to obtain the fees that he is due, even when, as I say, it's obvious that the person has the money -- now has the money to pay

for his defense.

What this bill does is really simplify the process so that you can use the same statute, which is under 722 (d), to -- to get enforcement, and you would do that in the same manner as other money judgments are obtained under CPLR 2222.

This does not change, as I understand it, something that we have already passed which says that if the person is able to pay for his defense, that he should do it -- he or she -- but what it does is give a better mechanism to be able to collect that judgment, that money, should it be found that there is a person who has the money to do it.

ACTING PRESIDENT KUHL: Senator Abate.

SENATOR ABATE: Yes, Mr. President. Would Senator Volker yield to -

SENATOR VOLKER: Certainly.

SENATOR ABATE: -- a number of questions.

ACTING PRESIDENT KUHL: The

Senator yields.

SENATOR ABATE: I appreciate the intent of the bill, but I do not understand its application.

SENATOR VOLKER: Right.

SENATOR ABATE: There are two issues: One is the existing law does not allow for summary judgment, and this puts, in effect, that if the court, after a fact finding procedure, finds the defendant is able to pay, there can be a judgment where a party can then move against that individual to collect the money, is that correct?

SENATOR VOLKER: That's correct.

SENATOR ABATE: Now, in the bill -- and I guess my concerns are I'm not sure how it will work -- they list the parties that could collect. One is a public defender.

SENATOR VOLKER: M-m h-m-m.

SENATOR ABATE: In the case of a public defender, you have a county attorney -

SENATOR VOLKER: Right.

SENATOR ABATE: -- who has the

apparatus to pursue the collection.

SENATOR VOLKER: Right.

SENATOR ABATE: But if you have a private legal aid bureau, or whereas in New York City, where a Legal Aid Society represents most of the indigent defendants in New York City, how would they do this? They are now representing the defendant -

SENATOR VOLKER: Right.

SENATOR ABATE: -- even post-conviction. One arm of the Legal Aid Society through the appeals bureau would have a continuing relationship with that defendant. How could they then collect that money? I mean, doesn't that put them in an adversarial position, and would they be able to keep the money?

SENATOR VOLKER: Senator, I think the problem here is we know what's happening in New York City. New York City doesn't want to collect the money, and they don't want to be bothered. The problem is the rest of the state, generally speaking, is -- is -- where they find

that there are defendants who can afford to pay for their defense, most of the rest of the state, in most cases, is attempting to collect this money. In New York City, the judges, frankly, don't want to be bothered.

What we're trying to do here is -- I think the answer here is I don't see why, under this bill, if the Legal Aid Society wants to do it, that they can go ahead and get the money, if it's available, and -- and use it. There's nothing that says here that this money has to go some place else that I'm aware of. I would presume that they would be able to do it.

They'll probably feel uncomfortable because the judges don't want to do it in New York City. I mean, I guess the answer is whether this bill, by the way, will force them to do it any more. Frankly, I think it's somewhat of an outrage that we have the biggest city in the state with the biggest crime problem, and we can't get the judiciary to act in a way that could restore some of the money that we pump into the court system, but be that

as it may, as far as I can see, yeah, they would be in a situation where, if they find -- if there is a finding that this person can afford his defense, then I would think they would be able to, as part of the -- as part of the action, they would be able to put in a -- try to collect, and they would collect it in the normal way that the county would do it to collect their money. I don't see why not.

SENATOR ABATE: Mr. President, would Senator Volker yield to another question?

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

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR ABATE: But it's my understanding that the Legal Aid Society should not be assigned to a case if, in fact, the defendant has an ability to pay for his defense services.

SENATOR VOLKER: That's right.

SENATOR ABATE: So that should be

a decision that's made initially at the time of assignment.

SENATOR VOLKER: Right.

SENATOR ABATE: So that once the Legal Aid Society is assigned to the case, there is a statement -

SENATOR VOLKER: Right.

SENATOR ABATE: -- that 18-b - because there's no conflict, 18-b would not be assigned and the defendant would not be forced to get his or her own attorney.

SENATOR VOLKER: Right.

SENATOR ABATE: So I guess my concern is if, in fact, in the middle of a case -- because there's an appeal ongoing -- the judge decides there's some changed circumstances because Legal Aid shouldn't have been assigned to that case, does this law say that the Legal Aid Society has to use its resources to try to collect money from this defendant? Is this a "may" or a "must"?

SENATOR VOLKER: No. I don't see this -- as I understand it, this is enabling

legislation. This permits. This doesn't say that they have to.

Now, one of the -- by the way, you bring up a point. If the Legal Aid Society has a problem, they want more specific language, I suppose we could do that, but that isn't what really is the problem here. I know what the problem is. The courts in New York City are very uncomfortable with this sort of thing because, as a matter of policy, they just do not want to really enforce what -- what we have been telling them to do, but I think the answer is, no, no one is saying that this has to be done.

And, by the way, Senator, it's no different to the Legal Aid Society than any place else. Presumably when people are assigned, the assumption is that they are not able to get their own attorneys. What it - where this would come in and where it's found during the proceeding, or for some reason they should come into some money or whatever reason, they are able to pay. This doesn't mean you have to do some huge investigation to find out,

but if it is obvious for one reason or another, and if it comes about that, for instance -- let me give you a for instance of what sometimes happens.

You have a case in court -- and I've known this to happen -- where somebody is in for a grand larceny or something, and during the course of the case, the fellow gets his assigned attorney. During the course of the case, the evidence turns up the fact that the guy has considerable money, wherever he got it from -- it may be stolen, but wherever he got it from, he has considerable money in a bank account or whatever. Well, quite obviously, this fellow would have the money to finance his own attorney, but when he was initially -- the attorney was initially assigned, that wasn't known either to the attorney or to the county or anybody else. So this would be a case where, when a case is finally disposed of, that the judge then would be able to -- with the attorney's motion, to have the attorney reimburse himself or get himself reimbursed for

the normal costs of the case.

SENATOR ABATE: But -- would the Senator yield to another question?

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR ABATE: I understand if it's an 18-b case -

SENATOR VOLKER: M-m h-m-m.

SENATOR ABATE: -- which is a fee-generating case, they go back to the state, get reimbursed for their expenses. The Legal Aid Society, however, cannot take on fee generating cases. So I don't understand if they were to pursue a collection process, how they could ever retain that money, and that's why the bill is confusing. I have not had an opportunity to talk to the Legal Aid Society. I just saw the bill for the fist time a moment ago.

SENATOR VOLKER: I really have never heard. It is a practical matter. I'm afraid probably what will happen here is Legal

Aid probably won't pursue it.

SENATOR ABATE: I don't think they can collect the money legally.

SENATOR VOLKER: I'm not so sure about that. I'm not so sure they can. By the way, you make a good point. If the Legal Aid Society is really interested in that, I would be more than happy to -- to look into that. We're mainly concerned with -- and there are cases other than the Legal Aid Society, by the way - where people have been assigned and where there could be, as I say, some money returned or received or accepted, whatever, and the awkwardness of the law, personally, makes it very difficult to do, and -- but I certainly - I have no problem with looking into that issue. Frankly, that issue has never come up, that I'm aware of, but I will certainly look into it just to make sure.

My guess is that the Legal Aid Society probably really doesn't want to get into it, and there's nothing that actually says that they have to unless a judge, in effect, orders

them to, I suppose, which would be very unlikely since it almost never happens in New York City anyways.

SENATOR ABATE: Senator, I would appreciate if you could look, because I don't know what the Legal Aid Society's position is. One, could they even collect that? If they failed to collect, what would be the implications?

I would say that if the Legal Aid Society were here, they might say that most of the clients they do represent are indigent. To go after them and have a needless process, it goes back into some other coffers. Not only do you have conflict issues, but you have some other kinds of cumbersome financial issues, and I'm afraid that this will be seen from budgeters -- all due respect from people who have worked in Budget -- budgeters is, "Oh, now, this is an opportunity for people like the Legal Aid Society to collect revenue", but it's really a false revenue collection scheme and thereby will reduce state revenues for these organizations.

So I guess I -- I would like to see what would be the real implication of that law, the practical application of it.

SENATOR VOLKER: I understand. Let me just say that in looking, I doubt that this would have much of an impact at all on Legal Aid. Remember, we're amending the County Law here, and although the County Law, I guess could be -- it would be a stretch to apply it directly to -- to the New York City courts, I think, but you brought up a good point here, and that is that -- and although this could still apply to New York City indirectly, but you make a point that it's probably something we should look at, not from the standpoint necessarily of trying to collect money or anything like that. If we really wanted to collect money, by the way, you would try to make this mandatory, and I don't know how you would do that.

SENATOR ABATE: Right.

SENATOR VOLKER: And I wouldn't participate in that because I think that would be a big mistake, but I do think that we have to

find, wherever way we can, because there are just a lot of judges who don't want to take the time and get into this sort of thing when, in reality, in all honesty, there are some people with a lot of money that they find out during the proceedings, and it seems totally unjust that, not only does assigned attorneys and as you know, the counties, whatever, have to suffer the loss when there's somebody who can actually afford it, but we'll certainly look into that. In fact, I will -- we will even talk to the Legal Aid Society and let them research it for us, okay?

SENATOR ABATE: Okay. Thank you.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: Yes, Mr. President. If Senator Volker would yield.

ACTING PRESIDENT KUHL: Senator Volker, do you yield to Senator Leichter? The Senator yields.

SENATOR LEICHTER: Senator, I think you've left some inferences on the floor

that judges in New York City are unwilling to pursue this law, and so on, and I don't think that's fair. I don't think it's correct, and then later on in your discourse with Senator Abate, you said you're not even sure that the County Law applies to New York City.

SENATOR VOLKER: M-m h-m-m.

SENATOR LEICHTER: I'm not sure it does either. So it may well be that this law doesn't even apply to New York City.

SENATOR VOLKER: Senator, let me say, first of all, you may think my reference to New York City is unfair, but I don't agree with you at all. The rest of the state is dealing with the issue of finding money, and I'm talking specifically about this section that we're amending now. It is very clear that New York City, as well as the rest of the state, has been given the power to collect money from people who initially are thought to be indigent or, in fact, from people who have committed crimes and who have the money to pay for their defense.

The rest of the state, generally

speaking -- not entirely, but generally speaking -- has complied and has been collecting some of that money. New York City -- and then we have been told by some of the judges personally, they're really not interested in that, because they think most of the people are indigent. Most of the people don't have any money, and it's just not worth it for them to be bothered with that.

Well, you know -- so I'm not saying this -- I'm not critical of parts of the system, except to say that it's pretty clear this is going on, and I -- we know it. It's been -- it's been something that we have been asked, in fact, by some groups to make it mandatory, and we have been balking at doing that, but I'm not saying this without some, not only knowledge, but the facts of the case. So I know there is, you know, great sympathy for some of these things, but I think the difficulty is that the taxpayers, I think, are suffering in the meantime.

SENATOR LEICHTER: Mr. President,

if Senator Volker would continue to yield.

With all due respect, Senator Volker, I must say I could not understand your answer. Let me see if we can clarify this so that I can understand it.

One, does the County Law apply to the city of New York?

SENATOR VOLKER: Senator -

SENATOR LEICHTER: Yes or no?

SENATOR VOLKER: The answer is it could in certain cases, but I'm not sure it would in this case. What I'm trying to say to you, Senator, is she -- Senator Abate asked a question about enforcement, and I'm telling you that we will certainly be willing to clarify the issue of application to the Legal Aid Society - which, by the way, I doubt this would probably apply to them, but what I was saying to you is I do think, though, that this is to stimulate action on the situation where a defendant, in a case, turns out to have the money to pay for his defense.

SENATOR LEICHTER: Mr. President,

would Senator Volker continue to yield?

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR LEICHTER: Senator, could you tell us, do the judges in the city of New York presently have the authority to charge defendants who it is shown have the money -

SENATOR VOLKER: Yes.

SENATOR LEICHTER: -- and where the defense was conducted at the public expense, to have those defendants pay, and if they have that authority, would you tell us under what provision of the law, if you know.

SENATOR VOLKER: Senator, the provision of the law was passed some years ago. I don't have it. The whole state now has the authority, but the issue is that -- that it has not been -- it has not been used in New York City, to my knowledge, to any extent hardly at all, where it has been used in the rest of the state.

SENATOR LEICHTER: Mr. President,

if Senator Volker would continue to yield.

SENATOR VOLKER: Sure.

SENATOR LEICHTER: Are you then saying there is a provision in law, other than the County Law?

SENATOR VOLKER: Sure.

SENATOR LEICHTER: And you say there is such a provision -

SENATOR VOLKER: Right.

SENATOR LEICHTER: -- that applies in the city of New York. Now, you also say New York City judges have been unwilling to apply that provision of the law.

Senator, isn't it a fact that the judges do not, on their own motion, on their own instigation, bring a proceeding to make a defendant pay, that that has to be brought by a prosecutor; it has to be brought -- somebody has to bring the issue to the judge.

SENATOR VOLKER: No, that's not -- the way it -- the judge is -- actually the court can investigate. In fact, the court is aware -- in a number of cases, they are made

aware -- the court can actually order that the money be paid over. There's no process that's been set up in New York City where they do that, but it can be done. There's no question it can be done.

SENATOR LEICHTER: Excuse me. Senator Volker, I have difficulty understanding it. You're saying a judge, on his very own, can order an investigation if he has reason to believe or to think that a defendant who's being defended at the public expense has the assets?

SENATOR VOLKER: Absolutely.

SENATOR LEICHTER: Okay. Do you know any instance or any case in New York City where a judge, having that information, refused to do something?

SENATOR VOLKER: The problem is we don't have -- we have virtually no indication that there has been any attempt to collect any money. So, no, I don't really have any -- all I know is that the rest of the state, in cases - in defense cases, has been collecting some money and as far as I know, there hasn't been

virtually -- there hasn't been anything in New York that I'm aware of.

SENATOR LEICHTER: Senator Volker, would you be good enough to continue to yield?

SENATOR VOLKER: Sure.

SENATOR LEICHTER: Could you tell us how much has been collected in counties other than New York City, whether by a year or two years, five years?

SENATOR VOLKER: I can't. I'm not -- I just know that -- and I'm not trying to tell you that there s been a lot of money collected, but I am telling you that -- I can tell you that there has been money collected but, to my knowledge, virtually nothing has been collected in the City.

SENATOR LEICHTER: Okay. Mr. President, on the bill, please.

ACTING PRESIDENT KUHL: Senator Leichter, on the bill.

SENATOR LEICHTER: I have no problem with the bill, but I think -- Senator, I

think there was some gratuitous comments made about judges in New York City and in New York City generally which, frankly, I think were unfounded and uncalled for, and one, you say that judges in New York City have this power. It apparently is not under the County Law, but where there may be some instances where a judge having some suspicions or reason to suspect that a defendant may have some funds. Most of the time judges don't know this. Somebody's got to bring it to their attention. So it's up either to the prosecutor or Legal Aid or whoever is doing the defense, to call this to the judge's attention.

Thirdly, this probably arises in such a minutia of cases, and I can well understand both the prosecutor or defense counsel or the judge saying that the cost, on a cost-effective basis, to now hold a hearing - because, obviously, you can't just say, "You have money. You've got to pay." You've got to have a hearing. You've got to investigate. The person's got a right to be defended at their

hearing.

So I question, one, whether this is really a very cost-effective method except in maybe very minor cases. When I say "minor cases", maybe one in 10,000, 100,000, maybe less than that. That's why I think it was very pertinent, Senator, to know from you how much money has been collected outside of New York City. I would suspect that it is fair -- a very, very, very small amount and that what we're talking about is not financially significant at all, either to the counties or to the state.

So I just regret the comments about New York City judges, someone implying that they're not doing the job that other judges are doing throughout the state. I don't think that's right. I don't think it's fair. I don't think you have any facts or any information that would show that. If you do, then that's certainly something to call to the Office of Court Administration, but I just think it's an unnecessary comment that was made in regard to

what is really just a technical bill. A judge, instead of putting an order, he'll put in a judgment, and that's fine, where the facts are justified, but I think that New York City judges, to my experience, work extremely hard. They are as competent, they obey the laws of the state of New York as much as judges in Erie County or anywhere else, and we shouldn't make these sort of comments.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on the bill?

(There was no response.)

Hearing none, the Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce the results when tabulated. Would those in the negative please raise their hands one more

time. Announce the results.

THE SECRETARY: Ayes 54.

ACTING PRESIDENT KUHL: The bill is passed.

The Secretary will continue to call the controversial calendar.

THE SECRETARY: Calendar Number 523, by Senator Farley, Senate Print 1092, an act to amend the Real Property Tax Law and the Social Services Law, in relation to withholding social services rents.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Farley, an explanation of Calendar Number 523 has been asked for by Senator Paterson.

SENATOR FARLEY: Senator Paterson. Senator, this is a bill that passed, I think -- let me see. I'll give you the vote on it last year.

SENATOR RATH: 54 to 5.

SENATOR FARLEY: 54 to 5. Thank you.

It permits the option -- option

of withholding social service rent payments to landlords who are delinquent in the payment of the real property taxes.

Now, currently under social services law, landlords who have welfare recipients as tenants receive the rental payments directly from the county or Department of Social Services. Problems have developed when some of these same landlords are delinquent in the payment of the real property taxes. Specifically, some counties are actually sending Department of Social Services checks to landlords when these individuals are failing to meet their obligations to pay their property taxes. This bill would correct this inequity.

ACTING PRESIDENT KUHL: Senator Paterson.

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

If Senator Farley would yield for a question.

SENATOR FARLEY: Certainly.

ACTING PRESIDENT KUHL: The

Senator yields.

SENATOR PATERSON: Senator, earlier Senator Abate said to Senator Volker, "I understand the intent, but I don't understand the application." I think that would connote my feelings about this particular bill. There certainly would be an interest in recovering back taxes from landlords who have been delinquent and certainly to punish them for not continuing to meet their obligations.

However, my chagrin about this particular bill is that we wind up punishing the tenants as well as the landlords and, although the tenants are clients of social services, other than any misfeasance on their part with respect to social services, I don't see any reason to unduly penalize them.

Would it not be correct that when landlords realize that the social services payment for rent will be withhold from them pending the payment of back taxes, that they would then exercise discretion in who they would choose in the tenancy, creating what would in a

sense be an economic veil, so that by not renting to any clients of social services, they could never be penalized for doing so?

SENATOR FARLEY: Okay. Let me speak to you a little bit more of the bill through which you may pick up the flavor and like it a little bit better. Incidentally, the city of New York is excluded from this legislation.

Number two, this bill would correct -- or create a new situation. Currently under the bill, the social services - Subdivision 2 of the Social Services Law gives public welfare officials the power to withhold rents to landlords if it is found that the living conditions of the dwellings are not in compliance with the building codes.

So, you know, to mention that when you say you're punishing the -- the tenant, they're not permitted to evict a tenant under this legislation whose rents are being held, and if the living conditions deteriorate, social services also have action against the landlord.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Does the legislation -- if the Senator would continue to yield.

SENATOR FARLEY: Yep.

SENATOR PATERSON: Does the legislation include any other criteria that would prevent the landlord from renewing the lease when this has actually occurred? In other words -

SENATOR FARLEY: I know what you're -- I know what you're saying, that they might not want to renew the lease. Incidentally, as I said, it doesn't apply to the city of New York, and the counties are very supportive of this. I don't see anything in the bill that talks about the lease. Nope. It just says that they will not be able to evict them and, of course, if they do anything to -- do anything to deteriorate the living conditions.

My dear friend and supporter, Senator Rath, when she was in the -- when she

was in the county government, was very strong in support of this bill, and I -- I would like to almost yield to her who knows more about it than I do, about the realities of this problem, particularly in upstate New York.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR FARLEY: I was going to yield my time.

SENATOR PATERSON: Mr. President, I yield to Senator Rath.

SENATOR RATH: Thank you, Senator Farley, Senator Paterson.

Mr. President.

ACTING PRESIDENT KUHL: Senator Rath.

SENATOR RATH: There's a saying in government/politics that what goes around comes around, and the first time I was listening to Senator Farley debate the bill on the floor, I thought, This sounds so familiar, and as I had looked at it earlier, I thought, I must read this more carefully, and as we've talked about

it since, it's something that we started in Erie County about 12 years ago called Project Intercept, and what we were doing was just exactly what Senator Farley picked up on on the state level, that we hoped in those days when I was a county legislator, would be picked up on the state level and, indeed, passed by both houses and signed by the Governor, because we had it up and running on a county level for about a month, and in that time, we collected between 4- and $500,000 of back taxes, which was very, very welcome money to a county, to any county who is -- all counties are always strapped for dollars, but particularly back taxes which is something that is owed, and we found we couldn't carry it on any further because there was not state law that made it possible for us to carry forward with Project Intercept, and so we alerted everyone we could in state government and hoped that someone would pick it up eventually, and I kind of almost forgot about it, until I found that Senator Farley was carrying my bill which I found my

first year here in the chambers.

There were some issues that we got into with the city of Buffalo, which were rather interesting that might be of some interest for a subsequent piece of legislation, and it had to do with the conditions of the housing, which we started to get into and started to address but, again, we found we couldn't carry it forward, but that was an ancillary concern.

The real concern here was the people who were not paying their taxes and who, by the way, did not want their names published, nor did not want TV cameras or newspapers calling to find out why they hadn't paid their back taxes, and frankly, there were some very outstanding citizens who owned a lot of property that they should have been paying taxes on long since who came forward and just wrote out a check so that they would not be embarrassed by the fact they had not paid their county taxes on these properties.

So for all the right reasons, I

think that this is something we should move forward with and hope that the Assembly will carry forward with it also because it's a way that we can get some dollars that should be in the hands of the counties, back into the hands of the counties without too much difficulty.

ACTING PRESIDENT KUHL: Excuse me, Senator Rath.

Senator Onorato, why do you rise?

SENATOR ONORATO: Yes. I would like, whichever person would like, Senator Rath or Senator Farley, to yield to a question on this.

SENATOR RATH: Senator Farley.

SENATOR ONORATO: Senator -

ACTING PRESIDENT KUHL: Senator Onorato, excuse me just a second. Senator Paterson did have the floor. I don't know if he just yielded the floor -- he asked Senator Farley a question to Senator Rath, in response to asking a question -- or answering the question or whether he yielded the floor

entirely. So let me ask -

SENATOR FARLEY: If he prefers to ask Senator Paterson a question -

ACTING PRESIDENT KUHL: Senator Farley, I'm not recognizing you, until I hear Senator Paterson tell me whether or not he has yielded the floor or not.

SENATOR PATERSON: Mr. President, I have been losing ground and floor ever since I came to this chamber. A few more steps back won't hurt. I yield everything to whoever would like to speak at this time.

ACTING PRESIDENT KUHL: I thought you were inspired two days ago when you won one, Senator Paterson, but in any case, Senator Onorato, Senator Rath yields.

SENATOR ONORATO: Thank you. Senator -

SENATOR FARLEY: Yes, I'm paying attention.

SENATOR ONORATO: -- my question is this: I don't have too much problem with the concept of the bill. My only concern is if the

dwelling is inhabited by several -- three or four people who are receiving social services and their rents are then diverted to the county for back taxes and there's no money left to pay for heating of the unit or to pay for the common ground electricity to keep a boiler running, how will those bills be paid at such a time if the landlord is not receiving this rent? Will the town take it upon themselves to divert some of that money to make sure that the domicile is to remain habitable for the tenants?

SENATOR FARLEY: Social Services already has -- has the power to -- to enforce the habitability of the property, and let me just say this: I think what you're saying is if the tenant does not have the money to pay the heat because they have taken the rent money -- I mean, were they using the rent money to pay the heat in your situation? I don't quite follow what you're saying.

SENATOR ONORATO: What I'm asking you is -- maybe for clarification -- if the landlord is providing all of these services all

along but is simply not paying his taxes, he's delinquent. Okay. Now the operation of the home is continuing. Now, you take the rent money away from them, who is going to pay for the fuel to keep the house warm -

SENATOR FARLEY: The landlord.

SENATOR ONORATO: -- and the electricity?

SENATOR FARLEY: The landlord is going to pay for it.

SENATOR ONORATO: How is he going to pay for it if he doesn't have the rent?

SENATOR FARLEY: That's his problem. That's his problem and duty as a landlord.

Let me just say this, Senator Onorato, on the bill, if I may. You know, my experience in local government, particularly landlords that have housing that is substandard, if you will, they are very, very hard to get their attention. They can totally ignore government, elected officials, anybody getting after them to be good citizens, but I'll tell

you what. When you withhold the rent from them, it really gets their attention, and then they start doing such things as paying their taxes and keeping their place in proper repair and a few other things.

SENATOR ONORATO: Wouldn't it perhaps be a little bit more equitable then, if you're going to withhold rent, withhold all rent, whether it's from a party receiving social services benefits or a regular tenant living in the building. Why do you make a distinction between someone receiving social services, and the person who's making the social services may be, in fact, paying the rent to the landlord. So where is the distinction?

SENATOR FARLEY: The distinction is this: The county is paying the rent to that landlord, in essence, through social services. The county is the one that is getting burned, if you will, by the landlord not paying the taxes. So the county consequently has -- is able to reach in and stop this rent from going to the landlord who's delinquent in his taxes. In the

situation where there is a non-social services person, we have no right to withhold their rent. The rent doesn't go through us, speaking from the county's point of view.

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

Excuse me. Senator Paterson.

SENATOR PATERSON: Mr. President, it would be all right if I come back.

If Senator Farley would please yield for a couple more questions.

ACTING PRESIDENT KUHL: Senator Farley, do you yield?

SENATOR FARLEY: Certainly.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR PATERSON: Senator, what about the cases where social services is leaving it up to the tenant to pay the rent, where there's monies provided and then the tenant pays from the resources that Social Security provides -- I mean, social services provides?

SENATOR FARLEY: Well, I'm not

just sure -- could social services -- could you answer that? We have a county executive here - or at least a member of the county government, I think that knows the answer to that better than I.

ACTING PRESIDENT KUHL: Senator Rath.

SENATOR RATH: My recollection is that these are vouchered payments that are - that are coming through the county system and are very easy to pick through and get those for the delinquent property owners. It's not - it's not the ones that are sent directly to the clients. It's the ones that are vouchered.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Senator, that's exactly what I want to know. Where the payment is not direct, where there is some sort of a voucher and the social service agency is leaving it up to the tenant to -

SENATOR RATH: This law, in my recollection of it -- and I have not -- I was

just about to start through the big book on it -- my recollection is that these are vouchered payments. These are vouchered rent payments that actually have to be picked up at one office of the county by the sheriff's department and carried over to the tax/finance office of the county. It's -- it was clear that we got into trouble with this in the county because of living standards actually, which is -- what I think was really what Senator Onorato's question was and why we couldn't work it through with the city of Buffalo as we proceeded into it, because we could not go into that level of discussion because these were vouchered. These were on the voucher system.

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

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR RATH: Sure.

SENATOR PATERSON: Senator Rath, then, therefore, it doesn't apply to those tenants who make the payments themselves who are

being provided the money from social services. It only applies to -

SENATOR RATH: I think Senator Farley is more familiar with the specifics of the way it was written at the state. Mine is a county recollection.

SENATOR FARLEY: It's my understanding -- and this is not my area of expertise. It's my understanding that different counties have different ways of doing it. Some pay the tenant directly and some pay the landlord. This is an optional bill with counties. I would presume that counties that give the money to the tenant would not opt into this -- would not care to opt into this legislation, but a county that pays the landlord directly -- and it varies from county to county, I am told -- would be willing. This came from Fulton County. It was a request of one of my counties, and some counties are very interested in participating in this legislation.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, would the firm of Rath and Farley yield for one last question?

SENATOR FARLEY: One last question.

ACTING PRESIDENT KUHL: The firm yields.

SENATOR PATERSON: In the situation that existed in Erie County where $400,000 was recovered over a period of time and then it was advised that state legislation would have to occur for this process to continue further, do you have any record or any information that the withholding of the rent created a chilling effect such that clients of social services experienced discrimination as they sought housing in that area?

SENATOR RATH: Senator Padavan, inasmuch as we -

SENATOR PATERSON: I'm Senator Paterson.

SENATOR RATH: Paterson - inasmuch as we actually had this up and running

in Erie County, I can tell you that the people who were living in the housing that had not been -- the rent had not -- or the taxes had not been taken care of were delighted that we were getting the owners brought up and brought in so that they would pay their taxes, because then maybe they would feel responsible for some of the other things that were not correct in the housing and, no, there was no chilling effect on any of the social service clients who lived in the housing. They were, frankly, glad because they didn't like those landlords anyway, because these were landlords who were not paying their county property taxes for all that period of time. There were a lot of other things that weren't happening to their property and, again, this was where we got into it with the city of Buffalo because they immediately wanted to get some of the dollars withheld so that we could push on the standards level of the housing which, as I said, was an ancillary issue, and had we gotten through this much of it, then we could have gone to the next part of it and

worked it out with the comptroller in the city of Buffalo who was then a councilman. He's now the comptroller in the city of Buffalo, but you're right on the right track but, no, there was no chilling effect. People were delighted.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you very much, Mr. President, and thank the Senators for their kind answers to the questions, and let me make this very clear on the bill.

We are particularly delighted as well that this attempt is being made to force individuals who aren't paying their taxes to pay their taxes because, as Senator Rath points out, there probably is some association between their non-compliance with tax regulations and also their failure to provide very important services to their tenants, and this probably encourages greater responsibility.

I would just like to caution all the members here that I would assume that a landlord that has already become delinquent on

taxes is somewhat aware of those processes that would be used to, in effect, try to enforce the payment of such funds, and that by not renting to clients on social services, this avoids the problem entirely. As I said earlier, it sets up kind of an economic veil in which the local government, the county, cannot attack the landlord because the private tenants are not involved in the situation. Therefore, the regular tenant is favored over the social service tenant because the social service tenant has, with their renting, a kind of a device by which the government can move against the landlord for non-payment of taxes.

It's a good idea and it's a good system. I just want to make sure that individuals who the state has determined that we want to protect by providing them with these services are not discriminated against as they seek housing in these areas.

ACTING PRESIDENT KUHL: The Secretary will read the -

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: Would Senator Farley yield to just -

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

SENATOR FARLEY: Certainly.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR GOLD: Senator, maybe it's been said but I just want to clarify it for myself. Assuming the money is paid for the taxes, it doesn't come to the tenant, is there anything built into this which gives the tenant a defense in a non-payment action against the landlord; is that covered? I know last year there was a memo and we had that concern, and I voted against it last year. I'm not so sure I want to do that this year. I would like to be able to support it.

SENATOR FARLEY: I don't fully understand your question. Is there any defense -

SENATOR GOLD: In other words, does the -- the rent now comes to the tenant. The tenant pays the landlord. Under your bill -

SENATOR FARLEY: Wait a second. No, it's vouchered.

SENATOR GOLD: Under your bill - Senator -- Senator -- Senator, under your bill -- under your bill, the money is just never going to reach the landlord's hand, am I correct?

SENATOR FARLEY: Senator Gold, counties pay in different ways. Different counties choose different ways. Some pay the tenant directly. Some pay the landlord.

SENATOR GOLD: Senator, that's not my problem. What I'm trying to say to you is that what your bill will do is so the money will not go to the landlord, it goes to pay the taxes, am I correct?

SENATOR FARLEY: Yes.

SENATOR GOLD: That's the point of it.

SENATOR FARLEY: Yes.

SENATOR GOLD: Now, the landlord brings a non-payment action against the tenant. I just want to know whether you've made any provision that the tenant has a defense for non-payment. That is all I'm asking you. I'm not saying that your idea is a bad one. I'm just saying that there ought to be a defense for the tenant, and that was in last year's memo in opposition which I -- if it's covered, then I'm comfortable. I just want to -

SENATOR LEICHTER: Lines 15 and 16.

SENATOR GOLD: Your counsel is telling me it's lines 15 and 16.

SENATOR FARLEY: That's not in the bill -- wait a second.

SENATOR GOLD: All right. Your counsel, one of the brightest people I've met, Senator Leichter, points out on page 1, 15 and 16. You feel that covers it, Senator?

All right. I want to thank you and your counsel. I appreciate the answer.

SENATOR FARLEY: Thank you, Senator Leichter.

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

SENATOR FARLEY: I'm deeply in your debt.

SENATOR ABATE: Yes. Mr. President.

ACTING PRESIDENT KUHL: Why do you rise?

SENATOR ABATE: Would Senator Farley yield to a question?

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

SENATOR FARLEY: I certainly will.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR ABATE: Thank you, Senator.

I'm concerned about the interplay of this proposed legislation, and Section 143 (b) of the Spiegel Act -- Senator, are you aware

of that? I can tell you. Let me -- I just learned about the Spiegel Act. Apparently that gives the authority to local social services commissioners -- okay. I can just -- let me just tell you exactly what it says. It says it gives local social services commissioners the authority to withhold shelter payments that would normally go directly to the landlord. Instead of those shelter payments going to the landlord, they go to cure building and maintenance code violations. Its ability -- if there is a building that's not safe and the landlord has been cited for a number of, either fire violations, the social services commissioner can be directed -

SENATOR FARLEY: Is that the city of New York?

SENATOR ABATE: I think that's statewide. I believe it's statewide. I'm not familiar with this. This was brought to my attention.

So I guess the question is how would this work? There's only one pool of

money. We would now be competing against the social services commissioner's ability to take those -- and we're dealing with the same population. We're dealing with tenants on public assistance. My concern is would this legislation -- would this affect the ability of the social services commissioner to divert needed monies to make buildings habitable?

SENATOR FARLEY: Well, I don't think so because, to be honest with you, I'm not familiar with what your -- what is this called?

SENATOR ABATE: It is -

SENATOR FARLEY: It's kind of noisy in here. You're going to have to speak up. There's some sort of a demonstration going on.

SENATOR ABATE: Yes. It is Section 143 (b) of the Social Services Law and it's called the Spiegel Act, and what it is is just withholding shelter payments that would normally go to public assistance recipients, the very recipients that you discuss in your bill, and instead of it going to the landlord, it goes

to remedy defects in the building. So what we'll have here is -- if your legislation passes, this will be somewhat in conflict.

SENATOR FARLEY: I guess it is the same pool but, again, the city of New York is exempted under this bill of mine.

SENATOR ABATE: Right. But what impact would that have with tenants around the state? There certainly are landlords -

SENATOR FARLEY: I think it would be going right out of the same pool. Once the taxes are paid, I would presume that -- you know, Social Services works very close with the county. It's one of the -- it's probably the greatest expenditure that the county has, and they're very gravely concerned with non-payment of taxes, and once they get the tax money, I don't know which one would take priority, but that's up to the county government. I think that they would -- but I would presume that - your point is well taken -- it is coming out of the same pool of money.

SENATOR ABATE: Would you

consider -

SENATOR FARLEY: Which I think is worthwhile.

SENATOR ABATE: Would the Senator yield to another question?

SENATOR FARLEY: Certainly.

SENATOR ABATE: Would you consider looking into this issue because, if a building has some egregious building and fire code violation, shouldn't the first order of the day be to use those dollars to remedy -

SENATOR FARLEY: No question.

SENATOR ABATE: But the bill is silent on this issue, and perhaps you can look at if there are two needs, the county maybe should give preference, if it is a question of health and safety, to compliance with the Spiegel Act.

SENATOR FARLEY: Okay. Without this legislation, Social Services -- Social Services gives the public welfare officials the power to withhold rents to landlords that they found that the living conditions are not in

compliance with the code. They already have that. They don't have the power now to withhold the rent if the taxes are not paid.

SENATOR ABATE: Well, I think this is an issue. I think this is another withholding mechanism, and I think it's worthy of looking at how they interface with each other.

No further questions.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Senator Gold to explain his vote.

SENATOR GOLD: Yeah, just very briefly. Senator Farley -- Senator Farley, I want you to know that I am changing my vote this year. I voted no last year and I'm going to

vote for it, and I'm going to vote for it because you had the guts today to say something that I have been waiting to hear a Republican say in this house for 25 years, and that is that sometimes the only way you can get a landlord's attention is by withholding rent.

The Tenants Associations of the city of New York have been trying to convince your party of that for the 25 years I'm here. So, perhaps next time when we have these issues where we talk about the rights of tenants in the city of New York, I can quote the law according to Farley and we'll get your support.

I vote yes.

ACTING PRESIDENT KUHL: Announce the results.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT KUHL: Senator Leichter, to explain his vote.

SENATOR LEICHTER: Yes, Mr. President. I want to explain why I'm going to vote against this bill, and I understand there's some rationale for trying to get to the counties

money that is due in taxes, but I think you have two problems with the bill.

One is that you are impairing a tenant's defense or tenant's mechanism of trying to get a landlord to provide services by seeing that that rent money is paid directly to the county, because it -- maybe there's been a violation of the warranty of habitability and the tenant is actually entitled to get some of that rent money because the tenant has had to pay, for instance, for fuel to heat the building, but the real problem -- that's a technical objection, but the real problem is that a building of this sort, you probably have a landlord that's in difficulty. Either he's extremely callous or more likely he's in financial difficulty, and he's going to need that rent money to provide service.

Now, the money is going to the county. That's important to some extent, but it may well mean that he's not going to be able to pay for fuel, that you're then going to have tenants that have no services. The county is

then going to be burdened of taking over the services in the building, and so on. So that while there's a logical basis for this bill, I think, as a practical matter, it doesn't work.

I'm going to vote in the negative.

ACTING PRESIDENT KUHL: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 523 are Senators Abate, Connor, Lachman, Markowitz, Stavisky. Ayes 51 -- also, Senator Montgomery and Senator Paterson. Ayes 50, nays 7. Also, Senator Smith.

ACTING PRESIDENT KUHL: Announce the results.

THE SECRETARY: Ayes 49, nays 8.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Would you take up Calendar Number 447, by Senator Saland.

ACTING PRESIDENT KUHL: The

Secretary will read.

THE SECRETARY: Calendar Number 447, by Senator Saland, Senate Print 5104-A, an act to amend the Environmental Conservation Law, in relation to the composition of the Hudson River Valley Greenway.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos, that completes the controversial calendar.

SENATOR SKELOS: Is there any housekeeping at the desk?

On behalf of Senator Nozzolio, on page number 36, I offer the following amendments to Calendar Number 591, Senate Print Number 6596

and ask that it retain its place on the Third Reading Calendar.

ACTING PRESIDENT KUHL: The amendments to Calendar Number 591 are received and accepted. The bill will retain its place on the Third Reading Calendar.

Senator Bruno.

SENATOR BRUNO: Mr. President, there being no further business to come before the Senate, I move that we stand adjourned in the memory of Louis Pataki, the father of the Governor, George Pataki, of New York State, until tomorrow at 11:00 a.m.

Thank you.

ACTING PRESIDENT KUHL: Without objection, the Senate stands adjourned until tomorrow at 11:00 a.m. in the memory of the Governor's father, Louis Pataki.

(Whereupon, at 4:13 p.m., the Senate adjourned.)