ALBANY, NEW YORK

May 21, 1997

10:00 a.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 join with 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.)

The reading of the Journal, please.

THE SECRETARY: In Senate, Tuesday, May 20th. The Senate met pursuant to adjournment. The Journal of Monday, May 19th, 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.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Skelos, we have a substitution at the desk.

SENATOR SKELOS: Please make the substitution, Madam President.

THE SECRETARY: Senator Hannon moves to discharge from the Committee on Rules Assembly Bill Number 7700 and substitute it for the identical Senate bill, Third Reading 778.

THE PRESIDENT: Substitution ordered.

SENATOR SKELOS: Non-controversial calendar, please.

THE PRESIDENT: Secretary will read.

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

ACTING PRESIDENT MAZIARZ: Secretary will read.

THE SECRETARY: Calendar Number 438, by Senator Skelos, Senate Print 341, an act to amend the Penal Law, in relation to the monetary standard.

ACTING PRESIDENT MAZIARZ: Lay the bill aside at the request of Senator Paterson.

THE SECRETARY: Calendar Number 660, by Senator Volker, Senate Print 3785, an act to amend the Criminal Procedure Law, in relation to motion to dismiss indictments.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT MAZIARZ: Lay the bill aside at the request of Senator Paterson.

THE SECRETARY: Calendar Number 675, by Senator Levy, Senate Print 4262, an act to amend the Highway Law, in relation to regulations regarding accessible pedestrian crosswalks.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT MAZIARZ: Lay the bill aside at the request of the Deputy Minority Leader.

THE SECRETARY: Calendar Number

703, by Senator Trunzo, Senate Print 4902, an act to amend the Education Law, in relation to compliance with the Internal Revenue Code.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 37.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 712, by Senator Maltese, Senate Print 1605, an act authorizing the city of New York to reconvey its interest in certain real property.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT MAZIARZ: There is a home rule message at the desk. The bill is laid aside at the request of the Deputy Minority Leader.

THE SECRETARY: Calendar Number

741, by Senator Stafford, Senate Print 1342-A, an act to amend the Family Court Act, in relation to providing for a Family Court judge in Clinton County.

SENATOR DOLLINGER: Lay it aside.

ACTING PRESIDENT MAZIARZ: Calendar Number 741 is laid aside at the request of Senator Dollinger.

THE SECRETARY: 749, by member of the Assembly Dinowitz, Assembly Print 6488, an act to amend the Surrogate Court Procedure Act.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT MAZIARZ: Read the -- Calendar Number 749 is laid aside at the request of the Deputy Minority Leader.

THE SECRETARY: Calendar Number 778, substituted earlier today, by the Assembly Committee on Rules, Assembly Print 7700, an act to amend the Public Health Law.

SENATOR PATERSON: Lay aside, please.

ACTING PRESIDENT MAZIARZ: Bill is laid aside at the request of the Deputy

Minority Leader.

THE SECRETARY: Calendar Number 787, by Senator Marcellino, Senate Print 4129, an act authorizing the Commissioner of General Services to transfer and convey certain state lands.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT MAZIARZ: Lay the bill aside at the request of the Deputy Minority Leader.

THE SECRETARY: Calendar Number 812, by Senator Alesi, Senate Print 4610, an act to amend the General Business Law, in relation to posting of notice.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT MAZIARZ: Lay the bill aside at the request of the Deputy Minority Leader.

THE SECRETARY: Calendar Number 817, by Senator Kuhl, Senate Print 3159, an act making -

SENATOR PATERSON: Lay aside.

THE SECRETARY: -- certain findings and determinations.

ACTING PRESIDENT MAZIARZ: Lay

the bill aside at the request of the Deputy Minority Leader.

SENATOR SKELOS: Lay it aside for the day.

ACTING PRESIDENT MAZIARZ: Bill is laid aside for the day. That's Number 817 is laid aside for the day.

THE SECRETARY: Calendar Number 829, by Senator Rath, Senate Print 4357, an act to amend the Real Property Tax Law and the Agriculture and Markets Law.

ACTING PRESIDENT MAZIARZ: Read the last section.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT MAZIARZ: Bill is laid aside at the request of -

SENATOR SKELOS: Lay aside for the day.

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

THE SECRETARY: Calendar Number 848, by Senator Rath, Senate Print 4852, an act to amend the State Administrative Procedure Act in relation to public hearings on proposed rules.

ACTING PRESIDENT MAZIARZ: Read the last section.

SENATOR PATERSON: Lay aside.

SENATOR SKELOS: For the day.

ACTING PRESIDENT MAZIARZ: Lay the bill aside at the -- lay the bill aside for the day.

THE SECRETARY: Calendar Number 882, by Senator Lack, Senate Print 3234, an act to amend the Tax Law, in relation to extending authority to the county of Suffolk.

ACTING PRESIDENT MAZIARZ: Read the last section.

SENATOR PATERSON: Lay aside, please.

ACTING PRESIDENT MAZIARZ: Lay the bill aside at the request of the Deputy Minority Leader.

THE SECRETARY: Calendar Number 889, by Senator Goodman, Senate Print 3682, an act to amend the Alcoholic Beverage Control Law.

SENATOR GOLD: Lay aside.

ACTING PRESIDENT MAZIARZ: Lay the bill aside at the request of Senator Gold.

THE SECRETARY: Calendar Number 890, by Senator Goodman, Senate Print 3756, an act to amend the Alcoholic Beverage Control Law, in relation to the hours when retail licensees are permitted to sell.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT MAZIARZ: Bill is laid aside at the request of the Deputy Minority Leader.

THE SECRETARY: Calendar Number 895, by Senator Volker, Senate Print 4216, an act to amend the Tax Law, in relation to extending the sales and use taxes by the county of Wyoming.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT MAZIARZ: Bill is laid aside at the request of the Deputy Minority Leader.

THE SECRETARY: Calendar Number 897, by Senator Stafford, Senate Print 4249, an act to amend the Tax Law, in relation to the distribution of additional recording tax.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT MAZIARZ: Bill is laid aside at the request of the Deputy

Minority Leader.

THE SECRETARY: Calendar Number 899, by the Senate Committee on Rules, Senate Print 4314-A, an act to amend the Tax Law, in relation to extending the authority of the county of Nassau.

ACTING PRESIDENT MAZIARZ: Read the last section.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT MAZIARZ: Bill is laid aside at the request of the Deputy Minority Leader.

THE SECRETARY: Calendar Number 903, by Senator Trunzo, Senate Print 4904-A, an act authorizing the Commissioner of the Office of General Services to enter into contracts.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT MAZIARZ: Lay the bill aside.

THE SECRETARY: Calendar Number 904, by Senator Stafford, Senate Print 4998-A, an act to amend the Tax Law, in relation to authorizing the county of Essex.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT MAZIARZ: Lay aside at the request of the Deputy Minority Leader.

THE SECRETARY: Calendar Number 914, by Senator Maziarz, Senate Print 2558, an act to amend the Correction Law, in relation to co-payment of fees.

ACTING PRESIDENT MAZIARZ: Read the last section.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT MAZIARZ: I'm sorry. Did you say lay it aside, Senator Paterson?

SENATOR PATERSON: I said lay it aside.

ACTING PRESIDENT MAZIARZ: I didn't hear you. Lay the bill aside at the request of the Deputy Minority Leader.

THE SECRETARY: Calendar Number 918, by Senator Skelos, Senate Print 3408-A.

SENATOR GOLD: Lay it aside, please.

THE SECRETARY: An act to amend the Executive Law and the Penal Law.

ACTING PRESIDENT MAZIARZ: Lay

the bill aside at the request of Senator Gold.

THE SECRETARY: Calendar Number 919, by Senator Skelos, Senate Print 3410-A, an act to amend the Correction Law and the County Law.

SENATOR PATERSON: Lay aside.

SENATOR SKELOS: Lay aside.

ACTING PRESIDENT MAZIARZ: Lay the bill aside at the request of the sponsor.

THE SECRETARY: Calendar Number 922, by Senator Nozzolio.

ACTING PRESIDENT MAZIARZ: Just a second. Senator Gold.

SENATOR GOLD: Yeah, point of order. I think Senator Paterson -

ACTING PRESIDENT MAZIARZ: Senator Gold, would you -

SENATOR GOLD: Yes, I'm sorry, Senator.

ACTING PRESIDENT MAZIARZ: Well, I can hear you better when you stand, Senator Gold.

SENATOR GOLD: Yes. I think Senator Paterson was about a half a second

before Senator Skelos on that lay aside.

ACTING PRESIDENT MAZIARZ: Well, I heard Senator Skelos first, Senator Gold.

SENATOR GOLD: Oh. Oh. I'm quite sure Senator Paterson doesn't mind.

THE SECRETARY: Calendar Number 922, by Senator Nozzolio, Senate Print 5184, an act to amend the Correction Law, in relation to temporary release of inmates.

ACTING PRESIDENT MAZIARZ: Read the last section.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT MAZIARZ: Lay the bill aside at the request of Senator Paterson. Thank you for speaking up a little bit, Senator Paterson.

THE SECRETARY: Calendar Number 979, by Senator Farley, Senate Print 2278, an act to amend the Vehicle and Traffic Law.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT MAZIARZ: Bill is laid aside at the request of the Deputy Minority Leader.

THE SECRETARY: Calendar Number

993, by Senator Levy, Senate Print 4308, an act to amend the Public Authorities Law, in relation to authorizing the Metropolitan Transportation Authority.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MAZIARZ: Lay the bill aside at the request of the Deputy Minority Leader.

THE SECRETARY: Calendar Number 1001, by Senator Levy, Senate Print 4535, an act to amend the Vehicle and Traffic Law, in relation to the registration period of apportioned vehicle.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT MAZIARZ: Lay the bill aside at the request of the Deputy Minority Leader.

THE SECRETARY: Calendar Number 1043, by Senator Marchi, Senate Print 3584, an act to amend the Business Corporation Law.

ACTING PRESIDENT MAZIARZ: Read the last section.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT MAZIARZ: Lay

the bill aside at the request of the Deputy Minority Leader.

SENATOR GOLD: Mr. President, excuse me.

ACTING PRESIDENT MAZIARZ: Senator Gold.

SENATOR GOLD: Yes. Would Senator Marchi give me one day on this bill, please.

ACTING PRESIDENT MAZIARZ: I'm sorry, Senator Gold. I couldn't hear you.

SENATOR GOLD: We're on 1043, right? Yeah. If Senator Marchi is willing to give me one day on this. Could we lay it aside for the day, please.

SENATOR MARCHI: All right.

ACTING PRESIDENT MAZIARZ: Wait. Are we -- are we talking about Calendar Number 1043, Senator Gold?

SENATOR GOLD: Yes, sir, Mr. President.

SENATOR SKELOS: Lay it aside for the day.

ACTING PRESIDENT MAZIARZ: Bill has been laid aside for the day.

SENATOR GOLD: Thank you.

THE SECRETARY: Calendar Number 1044, by Senator Marchi, Senate Print 3597, an act to amend the Not-for-Profit Corporation Law.

SENATOR PATERSON: Lay aside, please.

ACTING PRESIDENT MAZIARZ: Bill is laid aside at the request of the Deputy Minority Leader.

THE SECRETARY: Calendar Number 1046, by Senator Wright, Senate Print 3723, an act to repeal Title 13-e of Article 8 of the Public Authorities Law.

ACTING PRESIDENT MAZIARZ: Read the last section.

SENATOR PATERSON: Lay aside.

ACTING PRESIDENT MAZIARZ: Lay the bill aside at the request of the Deputy Minority Leader.

Senator Paterson?

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT MAZIARZ: Yes, sir.

SENATOR PATERSON: Have I fouled out yet?

VOICES: Can't hear him.

ACTING PRESIDENT MAZIARZ: Sorry, Senator, I couldn't hear what you said.

SENATOR PATERSON: I'm fine; thank you.

ACTING PRESIDENT MAZIARZ: Secretary will read.

THE SECRETARY: Calendar Number 1047, by Senator Marchi, Senate Print 3797, an act to amend the Waterfront Commission Act -

SENATOR PATERSON: Lay aside.

THE SECRETARY: -- in relation to extending the term of a stevedore's license.

ACTING PRESIDENT MAZIARZ: Lay the bill aside at the request of the Deputy Minority Leader.

THE SECRETARY: Calendar Number 1048, by Senator Larkin, Senate Print 3840, an act to amend Chapter 698 of the Laws of 1991, amending the Public Authorities Law.

SENATOR PATERSON: Lay the bill aside, please.

ACTING PRESIDENT MAZIARZ: The bill is laid aside at the request of the Deputy Minority Leader.

THE SECRETARY: Calendar Number 1071, by the Assembly Committee on Rules, Assembly Print 7989, an act to amend Chapter 12 of the Laws of 1992.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 45.

ACTING PRESIDENT MAZIARZ: The bill is passed.

The bill is passed.

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 MAZIARZ: The Secretary will read, starting with Calendar Number 438.

THE SECRETARY: On page 15, Calendar Number 438, by Senator Skelos, Senate Print 341, an act to amend the Penal Law, in relation to the monetary standards.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MAZIARZ: Senator Skelos, an explanation has been requested by Senator Paterson of Calendar Number 438.

SENATOR SKELOS: Yes, Mr. President.

This bill, which passed the Senate last year, as my colleagues know, in 1990, the Penal Law was amended to provide that stealing religious property with a value of $100 or more would be a class E felony. Under present law, an individual must cause $250 worth of damage to religious property before or she could be charged with a class E felony.

This would basically conform

the criminal mischief statute to the larceny statute so that if an individual steals or damages religious property valued in excess of $100, he or she could be charged with a class E felony.

ACTING PRESIDENT MAZIARZ: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President. If Senator Skelos would yield for a question.

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

Senator Paterson.

SENATOR PATERSON: I'm corrected to Senator Skelos, by Senator Stachowski, is that your name? Thank you.

Senator, I am just a little skeptical about $150 damages.

SENATOR SKELOS: $100.

SENATOR PATERSON: $100 damages being the threshold to create a felony as opposed to just a misdemeanor.

In the past sometimes we've had the E felony-A misdemeanor split for purposes

of exacting punishment, but in this kind of situation do we want to be lowering the threshold to this extent? It's not -- you know, this is a one-to-four year possible sentence. It certainly is a crime. I'm just perhaps asking you for further clarification of why we would put this as a felony?

SENATOR SKELOS: What I'm saying is, there should be no real distinction between damage and stealing of religious property. If you steal it and it's $100 - yes, all we're doing is lowering the threshold as to damage.

SENATOR PATERSON: Mr. President. Senator Skelos, what you're saying is that as long as you damage religious property, you would consider that to be a felony?

SENATOR SKELOS: Right, yes.

SENATOR PATERSON: O.K.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 47.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 660, by Senator Volker, Senate Print 3785, an act to amend the Criminal Procedure Law, in relation to motions to dismiss indictments.

SENATOR GOLD: Explanation.

ACTING PRESIDENT MAZIARZ: Senator Volker, an explanation has been requested by Senator Gold of Calendar Number 660.

SENATOR VOLKER: Yeah. This is a piece of legislation that was presented by the Office of Court Administration that relates to the dismissal of indictments against a defendant where there has been a - some conflicting cases on the issue of whether and how an order is given to dismiss an indictment for the People's failure to accord the defendant an opportunity to appear before

the grand jury, and what this bill would do is follow the case called People vs. Garcia that says that it would provide that an order dismissing the indictment for the People's failure to accord defendants an opportunity to appear before a grand jury shall be conditioned upon the defendant exercising his or her right to testify before the grand jury to which the charges are to be submitted or re-submitted.

It would protect the rights - defendant's right to testify before the grand jury, but would avoid the burden of re-present- ing the case to the grand jury where the defendant had no intention of invoking the right in any case, and that basically is what this is about.

It follows, as I say, generally accepted case law, although there are three or four cases that I understand that go the other way.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT MAZIARZ: Senator Gold.

SENATOR GOLD: Yeah. Will my

distinguished colleague yield to a question?

ACTING PRESIDENT MAZIARZ: Senator Volker, will you yield to a question from Senator Gold?

SENATOR VOLKER: Certainly.

ACTING PRESIDENT MAZIARZ: Senator Gold.

SENATOR GOLD: Senator, there's no issue here as to the right of defendant to appear before a grand jury if the defendant wants to appear, that I understand. The question is obviously if a defendant writes to a district attorney that they want the opportunity, that again is not what you're dealing with, am I correct?

SENATOR VOLKER: Exactly.

SENATOR GOLD: This bill, as I understand it, deals with a situation of an affirmative obligation on the part of the district attorney to notify the defendant of that right.

SENATOR VOLKER: Right, right.

SENATOR GOLD: Now, is that a statutory -- Mr. President, if the gentleman will yield. Is that a statutory requirement

on the part of the district attorney?

SENATOR VOLKER: As I understand it, yes, it is.

SENATOR GOLD: And you say there is a problem in the courts. I want to understand this. There are four different - has it gone to the Court of Appeals yet?

SENATOR VOLKER: I believe that it has not. I think it's -- there's a series of cases on both sides, I think you're aware. This statute is based on the People vs. Garcia. You under... I know you understand. The thing about it is, the problem here is that what happens is most of the time where these cases are dismissed because of the failure to notify the defendant, they're just re-submitted to another grand jury and then the person is notified, and then there's a re-indictment. As you know, it can be done. If they get on, by the way, into the trial and the fellow is actually at trial then the whole thing can be thrown out because he would be subjected to jeopardy. This is assuming that this never gets to jeopardy. Most of the time apparently where this happens, they just

submit to another grand jury, and what this case is doing here, or this statute is doing, is kind of taking what is generally accepted now by the courts to be the way in which these are handled, but you are right, this is a notification or lack of notification, and then if the person obviously, if the person says, I waive it anyways, it doesn't matter. If he says nothing, which is normally the case and the case proceeds, the idea of this is that you can go to another grand jury if the person is then notified and set up a separate grand jury for -- as has been in the past.

SENATOR GOLD: Senator, I'm just trying to -

ACTING PRESIDENT MAZIARZ: Senator Gold.

SENATOR GOLD: Thank you, Mr. President. Senator, I'm just trying to understand. In other words, if the notice is not given and that a person's right to violate it, there could be another grand jury, but what I think you're getting at here, if I read it properly, is that if somebody makes a motion to dismiss based upon the failure to

receive the notice, you're allowing the district attorney to counter by saying, If I have a new grand jury, will you testify, and if you won't then that voids the dismissal.

ACTING PRESIDENT MAZIARZ: Senator Volker, Senator Gold is asking you to yield for a question.

SENATOR VOLKER: Understand, and I think, Senator, from what I can gather from what you said, you are correct.

SENATOR GOLD: Right, thank you.

SENATOR VOLKER: Thank you.

ACTING PRESIDENT MAZIARZ: Read the last section.

THE SECRETARY: Section 2. This act shall take effect in 90 days.

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number

675, by Senator Levy, Senate Print 4262, an act to amend the Highway Law, in relation to regulations regarding accessible pedestrian crossings.

SENATOR BRUNO: Lay it aside temporarily.

ACTING PRESIDENT MAZIARZ: Bill will be laid aside temporarily.

THE SECRETARY: Calendar Number 712, by Senator Maltese, Senate Print 1605, an act authorizing the city of New York to reconvey its interest in certain real property.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MAZIARZ: Senator Maltese, an explanation has been requested of Calendar 712, by Senator Paterson.

Senator Maltese.

SENATOR MALTESE: Mr. President, as the -- as my colleagues are aware, in certain cases the city of New York forecloses, and this particular property is located in Woodside, Queens, which is in my

Senate District at 67-14 52nd Road and it was acquired by the City by in rem tax foreclosure. The owner is a gentleman who is very active in the community, Wayne Johnson, and his piece of property is a single- family house. He has asked the assistance of his local public officials, Councilman McCaffery, Assemblyman Joe Crowley who is carrying it in the other house, and myself.

I have, in the original request, a long explanation of the fact that he is a lifelong Queens resident, that he was a very responsible businessman owning a body repair shop located within the Woodside community, that he had provided Thanksgiving dinners with all the trimmings to many people in the senior centers. His mother is suffering from a type of Alzheimer's, and had a major stroke. The -- he covered all her medical bills and, as a result lost -

ACTING PRESIDENT MAZIARZ: Excuse me, Senator Maltese. I think Senator Paterson may be satisfied with that explanation.

Senator Paterson. It should be

noted for the record that there is a home rule message at the desk.

Senator Paterson.

SENATOR PATERSON: Mr. President, Senator Maltese has moved me considerably by his explanation.

ACTING PRESIDENT MAZIARZ: I thought he may have.

SENATOR PATERSON: It wasn't as scintillating as the explanation of one of the pieces of legislation yesterday, but I'm profoundly depressed.

ACTING PRESIDENT MAZIARZ: Read the last section.

SENATOR PATERSON: Thank you.

SENATOR GOLD: Last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 741, by Senator Stafford, Senate Print 1342-A, an act to amend the Family Court Act, in relation to providing for a Family Court judge in Clinton County.

SENATOR BRUNO: Lay it aside for the day.

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

THE SECRETARY: Calendar Number 749, by member of the Assembly Dinowitz, Assembly Print 6488, an act to amend the Surrogate Court Procedure Act, in relation to the service of a citation.

SENATOR PATERSON: Explanation.

SENATOR BRUNO: Lay it aside temporarily.

ACTING PRESIDENT MAZIARZ: Lay the bill aside temporarily.

THE SECRETARY: Calendar Number 778, by the Assembly Committee on Rules, Assembly Print 7700, an act to amend the Public Health Law, in relation to notification of treatment.

SENATOR PATERSON:

Explanation.

SENATOR BRUNO: Lay it aside temporarily.

ACTING PRESIDENT MAZIARZ: Bill is laid aside temporarily.

THE SECRETARY: Calendar Number 787, by Senator Marcellino, Senate Print 4129, an act authorizing the Commissioner of General Services to transfer and convey certain state lands.

SENATOR PATERSON:

Explanation.

ACTING PRESIDENT MARCELLINO: Senator Marcellino, an explanation has been requested by the Deputy Minority Leader of Calendar Number 787.

SENATOR MARCELLINO: Mr. President, this bill authorizes the conveyance of state lands to Herbert and Elizabeth Fries in exchange for lands of equivalent or higher value to be utilized for fish hatchery purposes.

In exchange for the parcel of state land on which the Fries building

encroaches, the DEC will receive a slightly larger 603 square foot piece in exchange for a 410 square foot piece. Also much more, a more valuable parcel, $160 versus $140, which will allow the Constantia Fish Hatchery to more easily maintain a stone retaining wall along Scriba Creek in Oswego County.

ACTING PRESIDENT MAZIARZ: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

If Senator Marcellino would yield for a question.

ACTING PRESIDENT MAZIARZ: Senator Marcellino, would you yield for a question from Senator Paterson?

SENATOR MARCELLINO: Yes, I would be happy to yield to Senator Paterson.

ACTING PRESIDENT MAZIARZ: Senator Paterson.

SENATOR PATERSON: Senator, this is a piece of legislation that would most aptly be described in media and the literature and on television as a local bill and -- but because it deals with a problem that exists in

Oswego County, I was wondering how it came to your desk for sponsorship, how does the local community feel about it?

ACTING PRESIDENT MAZIARZ: Senator Marcellino.

SENATOR MARCELLINO: I think the local community is absolutely ecstatic to have me represent them on this particular piece of legislation. The Frieses are the aunt and uncle of a colleague of ours in the Senate, Senator Wright, and he does not deem it -- he deems it a possible conflict of interest for him to represent them in this situation, and I was asked to pick up the representation as chair of the EnCon Committee, since the DEC was involved.

ACTING PRESIDENT MAZIARZ: Senator Paterson.

SENATOR PATERSON: This exchange of land, is it upon your information and belief that there is an equal value, the switch that the state will get in return for what we're giving up?

SENATOR MARCELLINO: Yes, Senator Paterson. If you weren't paying

attention to my lengthy explanation, this value of land that the state is receiving is significantly larger and about $20 more valuable, $160 versus $140.

ACTING PRESIDENT MAZIARZ: Senator Paterson.

SENATOR PATERSON: $160 versus 140.

SENATOR MARCELLINO: That's right. The state property is worth $20 more than it's giving up, that which it's giving up.

SENATOR PATERSON: How much land, Mr. President, if I through you, could ask Senator Marcellino.

ACTING PRESIDENT MAZIARZ: Senator Marcellino, would you continue to yield for a question from Senator Paterson?

SENATOR MARCELLINO: I'd be happy to.

SENATOR PATERSON: How much land is being exchanged?

SENATOR MARCELLINO: The state is receiving 603 square feet of property. The Frieses are getting 410 square feet of

property. All this is -- all this is being done to allow the state maintenance crew to come on and maintain a retaining wall for the fish hatchery without having to trespass on the Fries property, so there was an exchange made. It's as simple as that.

ACTING PRESIDENT MAZIARZ: Senator Paterson.

SENATOR PATERSON: Thank you very much, Senator Marcellino.

ACTING PRESIDENT MAZIARZ: Read the last section.

THE SECRETARY: Section 2. Excuse me. Senator Wright? Senator Wright.

SENATOR WRIGHT: Mr. President, I would request unanimous consent to be excused from voting on this piece of legislation.

ACTING PRESIDENT MAZIARZ: Without objection. Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the

roll.)

THE SECRETARY: Ayes 50.

ACTING PRESIDENT MAZIARZ: The bill is passed.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT MAZIARZ: Senator Skelos.

SENATOR SKELOS: Would you please take up Senator Lack's bill, Calendar Number 749.

ACTING PRESIDENT MAZIARZ: Secretary will read.

THE SECRETARY: Calendar Number 749, by member of the Assembly Dinowitz, Assembly Print 6488, an act to amend the Surrogate Court Procedure Act.

ACTING PRESIDENT MAZIARZ: Read the last section.

SENATOR GOLD: Hold it.

ACTING PRESIDENT MAZIARZ: Read the last section. I'm sorry. Senator Gold.

SENATOR GOLD: Yeah. Will the distinguished chairman of Judiciary yield to one question?

ACTING PRESIDENT MAZIARZ:

Senator Lack, would you yield for a question from Senator Gold?

SENATOR LACK: Any time he calls me distinguished, I'm more than happy to yield.

ACTING PRESIDENT MAZIARZ: Senator Gold.

SENATOR GOLD: Yeah. Senator, just so I understand it, a normal Surrogate's Court procedure commences with some people receiving citations, some people receiving notice.

I just want to understand this one correctly. I assume that, in certain situations where people have perhaps gotten notice and assumed that there was no contest, you're suggesting that if, in fact, a contest develops, that at that point they receive some additional piece of paper so that they know that their rights may, in fact, be challenged?

SENATOR LACK: You're absolutely correct. Mr. President, Senator Gold is absolutely correct. Where there are objections, section -- current Section 1411 would be replaced to get by the in -- in

effect, the inconsistency you just suggested that people think it's all over, there's no particular problem and then all of a sudden there are objections filed. This would standardize the procedure by going ahead with a citation, something that has been done in some of the major counties, and the judiciary has suggested this; it's supported by the Surrogate's Court Judges Association to standardize it throughout the state with a new section 1411.

SENATOR GOLD: Would the gentleman yield for another question?

ACTING PRESIDENT MAZIARZ: Senator Lack, would you yield for another question from Senator Gold?

SENATOR LACK: Yes, I will.

SENATOR GOLD: Senator, my question is this -- I think it's a fine idea. My question is this though. Does the bill define at which point supposedly there's a contest? In other words in a Surrogate's Court proceeding it's possible on the return date of a citation not to contest but merely to ask for examination of witnesses,

subscribing witnesses and things along those lines. After the examination there may be a point where somebody decides to file an objection.

On the other hand, I'm curious as to whether your notice takes place after the objections are filed or whether or not that notice, that secondary notice, would come at a time when there are examinations being held of subscribing witnesses and other proceedings going on.

SENATOR LACK: It's the same - the latter part of what you said. When objections -- when somebody is advancing an objection to the will, if there are -- if there are no objections, then the -- there's no advantage to using this type of section, no reason for it.

SENATOR GOLD: Yeah. Mr. President, on the bill.

ACTING PRESIDENT MAZIARZ: Senator Gold, on the bill.

SENATOR GOLD: Senator Lack, I think that you are unquestionably on the right track, and I would support the bill but I

would just like to throw out one other idea to you and you may want to discuss this with the Office of Court Administration.

There are often times when, on the return date of a citation, an objection is not filed, but things happen which indicate that the estate is being litigated in some way. People ask for examinations of witnesses. I forget the section, 4404 or whatever, and it may be that someone who has received a notice and not a citation might very well want to be involved at that stage if they knew about it, so it's just an idea.

I think you -- I'm going to support the bill. It's a great idea, but you might want to suggest to the Surrogates or the Office of Court Administration that this kind of thing happens a little earlier, that if it turns out there is anything of a contested nature going on, even though an objection hasn't been filed, that might be an appropriate time.

ACTING PRESIDENT MAZIARZ: Read the last section.

THE SECRETARY: Section 2.

This act shall take effect on the first day of January.

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 812, by Senator Alesi, Senate Print 4610, an act to amend the General Business Law, in relation to posting of notice.

ACTING PRESIDENT MAZIARZ: Senator Alesi, a request for an explanation from the Deputy Minority Leader has been requested on Calendar Number 812.

SENATOR ALESI: Thank you, Mr. President.

This bill would require that any entity that is authorized to immobilize an illegally parked vehicle would have to post the name and address and telephone number of that entity, so that the owner of the immobilized vehicle could contact that entity

if they so chose.

ACTING PRESIDENT MAZIARZ: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

If Senator Alesi would yield for a question.

ACTING PRESIDENT MAZIARZ: Senator Alesi, would you yield for a question from Senator Paterson?

SENATOR ALESI: Be happy to.

ACTING PRESIDENT MAZIARZ: Senator Paterson.

SENATOR PATERSON: Thank you, Senator.

Is there any prescription for the size of the sign or the indication, because this actually is a situation that has concerned a lot of motorists that there are often these places, usually commercial in nature, and they have a point. They did not design themselves to be parking lots and they probably at some point have a right to act on the number of cars that are parked there, but if the -- and this is really an excellent idea

and I'm just asking if the -- if there is a - a prescription in the legislation to make sure that there is due notice that's provided to the vehicle owner prior to the disabling of their vehicle?

SENATOR ALESI: Senator, there is -- Senator, I think you asked a couple of questions there, but to work backwards if there is notice to the owner of the vehicle, prior notice, is that what I thought I heard you say?

SENATOR PATERSON: Yeah, I was asking -

ACTING PRESIDENT MAZIARZ: Senator Paterson.

SENATOR PATERSON: -- the size of the sign. If you're going to immobilize someone's vehicle, you would hope that there would be notice giving behavior that you're going to do it.

SENATOR ALESI: Well Senator, in most cases, as far as I know, in my own experience, not that I've ever parked illegally at least to the best of my recollection, any kind of a sign that says "no

parking" or "tow away zone" or something like that is usually sufficient notice to someone who is parking in a no parking zone.

As far as your second question, if I may continue, the size of the notice, I assume would probably not be any larger than the size of the immobilizing device itself and probably could be substantially smaller than that, but there is nothing in the bill that addresses that and perhaps we could take a look at it.

ACTING PRESIDENT MAZIARZ: Senator Paterson.

SENATOR PATERSON: One final question, if Senator -

ACTING PRESIDENT MAZIARZ: Senator Alesi, would you continue to yield to one final question from Senator Paterson?

SENATOR ALESI: Yes.

ACTING PRESIDENT MAZIARZ: Senator Paterson.

SENATOR PATERSON: Simply, Senator, in the sign itself does the -- other than indicating that there's no parking, does it indicate that there will be an

immobilization of the vehicle if it is found to be illegally parked?

SENATOR ALESI: Senator, the bill does not address that probably because there is more than one method of dealing with an illegally parked car, as you know. It might just be ticketed. It might be towed away or it might be immobilized so there would be, at least as far as this bill is concerned, nothing that addresses the pre-warning except, as I mentioned earlier, the fact that in most cases areas where cars are not legally parked, are usually identified by some signage.

ACTING PRESIDENT MAZIARZ: Excuse me. Could we have a little quiet in the chamber, please. The stenographer is having a tough time hearing. Thank you.

Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 882, by Senator Lack, Senate Print 3234, an act to amend the Tax Law, in relation to extending the authority to the county of Suffolk.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MAZIARZ: Senator Lack, an explanation has been requested by Deputy Minority Leader Paterson of Calendar Number 882.

Senator Paterson.

SENATOR PATERSON: Just before Senator Lack begins, if he would yield, I'm interested as to why this was not requiring a home rule message, and I will assume that he considered that. I'd just like to know the reason why it doesn't require one.

ACTING PRESIDENT MAZIARZ: Senator Lack, first, would you yield for a question from Senator Paterson?

SENATOR LACK: Yes, I will.

And, Mr. President -

ACTING PRESIDENT MAZIARZ: Well, before you -- before you answer the question, Senator Lack, could we please have it quiet in the chamber so that Senator Paterson could hear the answer to his question. Thank you.

Senator Lack.

SENATOR LACK: I'm just waiting for Senator Paterson's attention.

ACTING PRESIDENT MAZIARZ: Oh.

SENATOR LACK: Senator Paterson.

ACTING PRESIDENT MAZIARZ: Senator Paterson? Senator Paterson, are you ready to receive the answer to your question now?

SENATOR PATERSON: Yes, Mr. President.

SENATOR LACK: Senator, Mr. President, the answer to Senator Paterson's question is one would normally think that an extension for a sales tax would require a home rule message. However, it was determined that with respect to this type of tax -- this is a

tax authorized by the state of New York as to the county's local share. In effect, it is a state sales tax, and it was determined many years ago by Senate Home Rule Counsel that, as a result, home rule messages were not required by the county of Suffolk.

As particular matters, all Suffolk County Legislatures have always, in effect, asked for the imposition of this tax and indeed, it is subject to their approval to continue it, but no home rule message has ever been required by Senate Home Rule Counsel and indeed the case is not so now.

ACTING PRESIDENT MAZIARZ: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President, but I can assume that the county is in favor of -- of this sales tax initiative?

ACTING PRESIDENT MAZIARZ: Senator Lack.

SENATOR LACK: Thank you, Mr. President.

The county does not have to impose this tax if they didn't want to,

Senator Paterson, and I can assure you since all five Senators whose districts are in Suffolk County are the sponsors of this measure, we would not do so unless we were - unless we were requested to do so by the county, and in effect this tax is in effect now and has been in effect for at least the last four or five years.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 53.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 889, by Senator Goodman, Senate Print 3682, an act to amend the Alcoholic Beverage Control Law, in relation to entering an unpaid civil penalty as a judgment.

SENATOR PATERSON: Explanation,

please.

SENATOR SKELOS: Lay the bill aside temporarily.

ACTING PRESIDENT MAZIARZ: Lay the bill aside temporarily.

THE SECRETARY: Calendar Number 890, by Senator Goodman, Senate Print 3756, an act to amend the Alcoholic Beverage Control Law, in relation to the hours when retail licensees are permitted to sell alcohol.

SENATOR SKELOS: Lay the bill aside temporarily.

ACTING PRESIDENT MAZIARZ: Lay the bill aside.

THE SECRETARY: Calendar Number 895, by Senator Volker, Senate Print 4216, an act to amend the Tax Law, in relation to extending the sales and use taxes by the county of Wyoming.

SENATOR PATERSON: Explanation, please.

ACTING PRESIDENT MAZIARZ: Senator Volker, an explanation has been requested by Senator Paterson of Calendar Number 895, Senate Bill 4216.

SENATOR VOLKER: Right.

Mr. President, this is an extender of the Wyoming County additional sales tax to 1999, I believe. As I think most people here realize, there is no necessity for a home rule message under our rules, but I have here in front of me a home rule request dated April 29, 1997 which, as a rule of thumb, I always request so that is already here, as has been so in the past.

ACTING PRESIDENT MAZIARZ: Thank you, Senator Volker. Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 897, by Senator Stafford, Senate Print 4249, an act to amend -

SENATOR GOODMAN: Mr. President.

ACTING PRESIDENT MAZIARZ: Excuse me. Senator Goodman.

SENATOR GOODMAN: Yes. I was detained a moment ago when you called up 889. May we call it back up, please?

ACTING PRESIDENT MAZIARZ: Calendar Number 889.

THE SECRETARY: Calendar Number 889, by Senator Goodman, Senate Print 3682, an act to amend the Alcoholic Beverage Control Law, in relation to entering an unpaid civil penalty as a judgment.

SENATOR GOLD: Explanation.

ACTING PRESIDENT MAZIARZ: Senator Goodman, an explanation has been requested of Calendar Number 889, by Senator Gold.

SENATOR GOODMAN: Mr. President, this bill would permit the State Liquor Authority to enter and docket as a judgment orders of the State Liquor Authority imposing a civil penalty when said orders are not paid within 60 days of a demand for

payment. The essence of this procedure relates to the fact that when -

SENATOR GOLD: I'm sorry.

ACTING PRESIDENT MAZIARZ: Excuse me. Could we have it quiet in the chamber, please.

Senator Goodman.

SENATOR GOODMAN: The members will wish to listen with rapt fascination to this explanation, so I will proceed.

The reason for trying to enter and docket this as a judgment is that, when a judgment as opposed to an order carries with it teeth in that a marshal can impose a -- can use the weight of the law with much greater severity in obtaining the necessary relief for the State Liquor Authority when payments are due it and, for that reason, we're using a procedure which is also used in other areas of the city government or the state government for this purpose.

SENATOR GOLD: Yes. Would the Senator yield for a question?

SENATOR GOODMAN: Yes, I will.

ACTING PRESIDENT MAZIARZ:

Senator, would you yield to a question from Senator Gold?

Senator Gold.

SENATOR GOODMAN: Yes, I will.

SENATOR GOLD: Senator, your counsel had asked me yesterday my question and I gave it to him and he was kind enough to call my office today.

SENATOR GOODMAN: Fine.

SENATOR GOLD: But what I'm concerned about is any kind of precedent for this, and I understand that the response he got is that the Parking Violations Bureau -

SENATOR GOODMAN: That's correct.

SENATOR GOLD: -- does it, but, Senator, what I'm curious about and with the greatest respect to the Liquor Authority and its new chairman, who I happen to think is on the right track, we have a lot of departments that do fining of people by orders, and some of those are just as important, I would think, to the overall public good as someone who gets fined in a liquor proceeding, and are there any of those situations where they -- a fine

goes right to judgment? For example, Environmental Conservation is one example.

SENATOR GOODMAN: May I -

SENATOR GOLD: Do we have any state departments now where their orders or fines go right to judgment?

SENATOR GOODMAN: To my knowledge, there are not, but I'm not conversant with this; but I'd like to just make one point to you, Senator. In order to impose a civil penalty, the SLA first holds an evidentiary hearing before an Administrative Law Judge or a "no contest" plea is entered. In either of them, notice of the right to be heard and the right to cross-examine are all afforded the respondent in these cases, thus satisfying the due process procedure and permitting the decision of the Administrative Law Judge to be docketed as a judgment.

So what I'm trying to point out is this is not an arbitrary and capricious or I think an unduly heavy-handed procedure. It's one that permits the SLA to collect fines when in the present circumstances it becomes very difficult to do so. You levy a fine, the

fine isn't paid, and then if the SLA wishes to collect it without this procedure, it has to go through a lengthy court and other related matters which is a lot of bureaucratic red tape and an undue expense to the agency and the taxpayers.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT MAZIARZ: Senator -- I'm sorry.

SENATOR GOLD: Yeah, if the Senator will yield.

ACTING PRESIDENT MAZIARZ: Senator Gold. Senator Goodman, would you yield for one more question from Senator Gold?

SENATOR GOODMAN: Yes, I will.

ACTING PRESIDENT MAZIARZ: Senator Gold.

SENATOR GOLD: Senator, I under... you're right, of course, and that is that the fine is the result of a hearing or an uncontested agreement; but I would imagine, Senator, that that's the same thing that happens, for example, to polluters or other people in the environmental field, and I'm just -- I'm not picking on that area; it just

happens to come to mind, but it seems to me that the -- that there -- throughout the state departments, they have procedures for hearings and for fines, and they apparently don't have this right, and I'm just wondering why we happen to pick out one agency rather than look at this as a statewide problem throughout the agencies.

SENATOR GOODMAN: Well, my sense of this is that rather than condemn the agency or criticize it for being alert in the collection of the fines owed to it, that we should commend them and if this is not a practice that's more widely used, it seems to me it certainly ought to be.

SENATOR GOLD: Yes, on the bill, Mr. President.

ACTING PRESIDENT MAZIARZ: Senator Gold, on the bill.

SENATOR GOLD: Mr. President, let the record indicate that condemning the agency is Senator Goodman's word, not mine. I certainly did not suggest that the Liquor Authority was doing anything wrong by putting forth legislation. If just seems to me that

it is an extreme situation for -- for one agency, and I -- and I don't understand it. It doesn't offend me and, Senator Goodman, I'm not going to vote against it, but it would seem to me and I may be wrong, I'd like to think I was wrong, that if there were fines that were levied by the Department of Environmental Conservation against some serious industrial polluters and there was a bill on this floor to make those directly into judgments that the other side of this house would not pass that legislation. I'd like to think I'm wrong. I don't think I'm wrong. I'd like to think I was wrong, and I think that there are a number of circumstances as you go from agency to agency where they could use this kind of teeth in helping the public in a lot stronger way than starting with the Liquor Authority, and I'm not picking on them. I think that this is a power that makes sense and does save taxpayer money. I just think it's curious where the emphasis has been placed.

ACTING PRESIDENT MAZIARZ: Read the last section.

THE SECRETARY: Section 2. This act shall take effect in 90 days.

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT MAZIARZ: Senator Meier.

SENATOR DOLLINGER: Not on the bill.

THE SECRETARY: Excuse me. In relation to Calendar Number 889, Senator Meier recorded in the negative. Ayes 54, nays one.

ACTING PRESIDENT MAZIARZ: Senator Dollinger.

SENATOR DOLLINGER: Mr. President, may I have unanimous consent to be recorded in the negative on Calendar Number 882.

ACTING PRESIDENT MAZIARZ: Without objection.

SENATOR DOLLINGER: Thank you.

THE SECRETARY: Calendar Number 890, by Senator Goodman, Senate Print 3756, an

act to amend the Alcoholic Beverage Control Law, in relation to the hours when retail licensees are permitted to sell alcoholic beverages.

ACTING PRESIDENT MAZIARZ: Read the last section.

SENATOR STACHOWSKI: Explanation.

ACTING PRESIDENT MAZIARZ: An explanation -- Senator Goodman, an explanation has been requested of Calendar Number 890, by Senator Stachowski.

SENATOR GOODMAN: Yes, Mr. President. This is a bill which would ensure that all local restrictions on hours of sale of alcoholic beverages existing prior to April 1, 1995 would remain in effect.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 897, by Senator Stafford, Senate Print 4249, an act to amend the Tax Law, in relation to the distribution of the additional mortgage recording tax in Franklin County.

SENATOR PATERSON: Explanation.

SENATOR SKELOS: Lay it aside.

ACTING PRESIDENT MAZIARZ: There is a local fiscal impact notice at the desk. The bill is laid aside temporarily.

THE SECRETARY: Calendar Number 899, by the Committee on Rules, Senate Print 4314-A, an act to amend the Tax Law, in relation to extending the authority of the county of Nassau to impose additional sales and use taxes.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MAZIARZ: Senator Skelos, an explanation has been requested of Calendar Number 899.

SENATOR SKELOS: This would extend Nassau County's sales tax another two years, and would also permit the county through local laws, negotiations with the local villages, to allow them to share in a portion of the county sales tax revenues.

ACTING PRESIDENT MAZIARZ: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

I assumed that Senator Skelos was the sponsor of the legislation. If the Senator would yield for a question?

ACTING PRESIDENT MAZIARZ: Senator Skelos, would you yield for a question from Senator Paterson, please?

SENATOR SKELOS: Well, we never assume, but I am explaining the bill to the best of my ability.

SENATOR PATERSON: O.K. Well, Senator, what I'm trying to determine is if you're not the sponsor, it came from the Rules Committee, if the sales tax has to be extended again, there might be some responsibility that should be taken here and, therefore, I'm just

trying to determine why this bill doesn't have a sponsor. There isn't a sponsor anywhere, actually. It just came from the Rules Committee.

SENATOR SKELOS: Well, sometimes in life things miraculously come out of the Rules Committee.

ACTING PRESIDENT MAZIARZ: Senator Paterson.

SENATOR PATERSON: If the Senator would continue to yield.

SENATOR SKELOS: Yes.

ACTING PRESIDENT MAZIARZ: Senator Skelos, would you continue to yield to Senator Paterson?

SENATOR SKELOS: Yes.

ACTING PRESIDENT MAZIARZ: Senator Paterson.

SENATOR PATERSON: Well, it is curious, but what I'm trying to figure out is whether the local county wants this and without any clear definition of who initiates this.

SENATOR SKELOS: Yes. The county is supportive of this legislation.

SENATOR PATERSON: Then you have heard of the legislation?

SENATOR SKELOS: I have definitely heard of the legislation.

SENATOR PATERSON: O.K. If the Senator would continue to yield.

ACTING PRESIDENT MAZIARZ: Senator Skelos, do you continue to yield?

Senator Paterson.

SENATOR PATERSON: Is there a local fiscal impact? Not a local fiscal impact, but what I'm really asking is what is the need for the sales tax extension?

SENATOR SKELOS: The county needs the revenue.

VOICES: Can't hear again.

ACTING PRESIDENT MAZIARZ: Excuse me, Senator Paterson. Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President -

SENATOR GOLD: Mr. President.

ACTING PRESIDENT MAZIARZ: Senator Gold.

SENATOR GOLD: Would Senator

Paterson yield to a question?

ACTING PRESIDENT MAZIARZ: Senator Paterson, would you yield to a question from Senator Gold?

SENATOR PATERSON: With trepidation, yes.

SENATOR GOLD: I have two questions. The first question -

ACTING PRESIDENT MAZIARZ: Yes. Senator Gold.

SENATOR GOLD: The first question is have you heard from anyone in Nassau County or received any indication from people in Nassau County as to what their legislative priorities might be for this session?

ACTING PRESIDENT MAZIARZ: Senator Paterson.

SENATOR PATERSON: No, I have not.

SENATOR GOLD: Would you tell me if the answer was yes?

SENATOR PATERSON: No, no.

SENATOR GOLD: Will you yield for one more question?

ACTING PRESIDENT MAZIARZ: Senator Paterson, would you yield for one more question from Senator Gold?

SENATOR PATERSON: Without reservation.

ACTING PRESIDENT MAZIARZ: Senator Gold.

SENATOR GOLD: O.K. The reason I ask is because I have heard from some people in Nassau County and they were not talking to me about their additional sales tax but every one of them said to me they want rent regulation continued. So I think it's interesting the only bill we got out of Rules Committee to help Nassau today is to tax its people, but the tenants in Nassau who need help in their rent regulations apparently aren't getting it today.

SENATOR PATERSON: Thank you, Senator Gold. That's -- that's enlightening and unfortunately, we weren't able to find out who is the sponsor of that bill, and so I think we should just make an appeal to the general public, if you have any information as to the sponsor of that bill, please call us at

our toll-free number.

THE SECRETARY: Section 3.

This act shall take effect immediately.

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 903, by Senator Trunzo, Senate Print 4904-A an act authorizing the Commissioner of the Office of General Services to enter into contracts.

ACTING PRESIDENT MAZIARZ: Secretary -

THE SECRETARY: Section 3.

This act shall take effect immediately.

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

SENATOR PATERSON: Party vote in the negative.

ACTING PRESIDENT MAZIARZ: Bill

is laid aside for the day.

SENATOR DOLLINGER: Mr. President.

ACTING PRESIDENT MAZIARZ: Senator Dollinger.

SENATOR DOLLINGER: These bills are timely, the debate goes on and then I miss my opportunity. Could I have unanimous consent to be recorded in the negative on Calendar Number 899 even though I was sitting here. It whizzed right by me.

ACTING PRESIDENT MAZIARZ: Without objection, so ordered.

THE SECRETARY: Calendar Number 904, by Senator Stafford, Senate Print 4998-A, an act to amend the Tax Law, in relation to authorizing the county of Essex.

SENATOR PATERSON: Explanation.

SENATOR SKELOS: Lay aside temporarily.

ACTING PRESIDENT MAZIARZ: Bill is laid aside temporarily.

THE SECRETARY: Calendar Number 914, by Senator Maziarz, Senate Print 2558, an

act to amend the Correction Law, in relation to co-payment of fees.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 918, by Senator Skelos, Senate Print 3408-A, an act to amend the Executive Law, and the Penal Law, in relation to payment of fee by persons sentenced to probation.

ACTING PRESIDENT DeFRANCISCO: Senator Skelos.

SENATOR SKELOS: Mr. President, this legislation provides that subject to a court order a non-indigent criminal sentenced to probation may be required to reimburse a county or city the actual costs of their

supervision during their probationary period if the county or city has enacted this provision.

ACTING PRESIDENT DeFRANCISCO: Read the last section.

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

ACTING PRESIDENT DeFRANCISCO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

SENATOR DeFRANCISCO: The bill is passed.

Would those who wish to vote in the negative please raise their hands again. Please announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 918 are Senators Leichter, Seabrook, Stavisky and Waldon. Ayes 51, nays 4.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT DeFRANCISCO:

Senator -- the bill is passed.

Senator Skelos.

SENATOR SKELOS: Yeah, on behalf of Senator Stafford, would you lay aside Calendar Number 897 for the day and also Calendar Number 904 for the day.

ACTING PRESIDENT DeFRANCISCO: Calendar Numbers 897 and 904 are laid aside for the day.

Secretary will read.

THE SECRETARY: Calendar Number 919, by Senator Skelos, Senate Print 3410-A, an act to amend the Correction Law and the County Law, in relation to maintenance of prisoners in county jail facilities.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT DeFRANCISCO: Senator Skelos.

SENATOR SKELOS: Once again, Mr. President, this bill amends the Correction Law and the County Law to provide that a prisoner who has been found non-indigent shall be required to reimburse a county or city jail for certain expenses incurred during his or

her term of imprisonment.

ACTING PRESIDENT DeFRANCISCO: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

If the Senator would yield for a question.

ACTING PRESIDENT DeFRANCISCO: Senator, will you yield for a question?

SENATOR SKELOS: Yes.

SENATOR PATERSON: How is a defendant found non-indigent and what is the basis for coming to that conclusion?

SENATOR SKELOS: The individual's financial resources would be considered, health, age and other relevant factors.

SENATOR PATERSON: If the Senator would yield for another question.

SENATOR SKELOS: Yes, Mr. President.

SENATOR PATERSON: Is Nassau County practicing this at this point and if it is what would the need of the legislation be?

SENATOR SKELOS: Nassau County

is practicing this right now. The concern is from other counties that -- whether they can or cannot do it. Nassau County feels they can. Other counties there may be a question. So we're clarifying it by state legislation saying you can.

ACTING PRESIDENT DeFRANCISCO: Senator Paterson.

SENATOR PATERSON: Mr. President, that might be very instructive if Senator Skelos would yield for another question.

SENATOR SKELOS: Absolutely.

SENATOR PATERSON: Well, Senator, if that be the case, what have the results been because my concern is by the time you finish examining somebody's financial records, I wonder if the cost of actually going through that procedure is even outweighed by the savings should the defendant be found to be non-indigent?

SENATOR SKELOS: I disagree with you on that.

SENATOR PATERSON: Well, actually, it's not a position I'm stating.

It's just a concern.

SENATOR SKELOS: Well, we appreciate your concern.

ACTING PRESIDENT DeFRANCISCO: Senator Paterson.

SENATOR PATERSON: Mr. President, what -- what I wanted to know was an answer to my question, which was how much has actually been saved or what have been the results of the use of this system in Nassau County?

ACTING PRESIDENT DeFRANCISCO: Senator Skelos.

SENATOR SKELOS: I'm not familiar with the results.

SENATOR PATERSON: O.K. Thanks very much, Mr. President.

ACTING PRESIDENT DeFRANCISCO: Read the last section.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT DeFRANCISCO: Senator Leichter.

SENATOR LEICHTER: Would the Senator yield, please?

ACTING PRESIDENT DeFRANCISCO: Senator, will you yield?

SENATOR LEICHTER: Senator, I see that you make this act effective immediately. Would that apply to inmates that are currently in jail?

SENATOR SKELOS: I don't believe so, Senator Leichter.

SENATOR LEICHTER: Well, the act says it shall take effect immediately. Could you refer me to anything in the -- in this bill which says that it does not apply to inmates that are currently in county facilities?

SENATOR SKELOS: Senator Leichter, I think you may be correct. I think it could apply to somebody who has been sentenced.

ACTING PRESIDENT DeFRANCISCO: Senator Leichter.

SENATOR LEICHTER: Well, Senator Skelos, doesn't that raise a constitutional problem? Isn't that an ex post facto law? I mean here somebody has committed, let's say for the sake of the argument, a

Class A misdemeanor. The Class A misdemeanor provides for what the penalty is, imprisonment, fine, and so on. Now, you're imposing an additional penalty.

SENATOR SKELOS: No, we're not. No, we're not. We're saying it's not a penalty. It's a cost of incarceration, and there would be a hearing by a judge to see if the person is indigent or non-indigent, so I don't believe that this is an additional penalty or additional fine. It's a way of the county getting back money that they're laying out for the expenses of that prisoner.

SENATOR LEICHTER: Well, Senator Skelos, if you would continue to yield because I think it's an important issue, because while you're right that it only seeks to reimburse the county for its expenses, nevertheless, it's an amount that now an inmate has to pay, whereas previously under the law that was not part of his punishment. Now, the punishment is for that Class A misdemeanor, and he gets a year in jail. He got a $1,000 fine and now suddenly after he's been sentenced, he's going to be sued for his

cost of incarceration.

SENATOR SKELOS: The person -

SENATOR LEICHTER: Again that certainly is a penalty -

ACTING PRESIDENT DeFRANCISCO: Senator Skelos.

SENATOR SKELOS: Mr. President, if I could respond to that.

If the person wasn't in jail and was a law-abiding citizen they'd be paying for their own living expenses anyway, so here we're saying if you're non-indigent - remember, that's the important word "non-indigent". A hearing is held by a judge to determine that you're non-indigent, then we should look at that as a normal living expense that all of us have to -- all of us law-abiding, tax-paying citizens have to abide by and pay.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT DeFRANCISCO: Senator Leichter.

SENATOR LEICHTER: If Senator Skelos continues to yield.

I must say I think that's a somewhat interesting interpretation of what are penalties under the Constitution. You and I have had occasions to debate the Constitution before. At least up to now a district court judge has agreed with me. I don't know why I had to get that in. That was unkind. Strike that. But seriously -

SENATOR SKELOS: That's one district court judge. There are, throughout the country, there are many district court judges that disagree with you.

SENATOR LEICHTER: Well, I don't know. I don't think any of them have passed yet on the particular bill that you and I -- is now law, the Megan Law that you and I are referring to. It's only been passed on by one judge and he found it unconstitutional on the same issue which is -

SENATOR SKELOS: He didn't find the bill unconstitutional.

SENATOR LEICHTER: He found that provision unconstitutional, and it's exactly the same argument that I'm making here that you're imposing an ex post facto penalty

and while you may say it's only the cost of reimbursement, it's still a penalty to somebody and it's clear to me that that's unconstitutional. I have -

SENATOR SKELOS: Senator Leichter, your interpretation is that if we have a prisoner who has violated the laws of this state, is in prison and he or she are getting their teeth capped, they're getting medical treatment, they're eating three squares a day, and they are non-indigent-non-indigent -- the taxpayers of this state should have to pay for that rather than being able to recoup a percentage of that and save the taxpayers money.

SENATOR LEICHTER: Senator, that's not -- that is not what I'm saying at all.

SENATOR SKELOS: You're saying that's not an additional penalty.

ACTING PRESIDENT DeFRANCISCO: Excuse me. Gentlemen, excuse me. Senator Leichter, I believe you have the floor.

SENATOR LEICHTER: Right. Senator Skelos, what I am saying is that

irrespective of this being as you allege and accepting this to be so, just reimbursement, nevertheless it is an additional penalty. Right now, under the law if you commit a misdemeanor, you're sentenced to county jail, you are not liable for your expenses. If you impose those expenses now on somebody, I don't think you can do it retroactively to people who are presently in jail. I think that's - I think that's evident. It has nothing to do with whether your bill has merit or not. I happen to think it may not have merit for other reasons, but granted, even if your bill was merited, was the most brilliant legislation that we've ever seen, you still are bound by the Constitution. Even an inmate, even an inmate, Senator Skelos, is entitled to constitutional protection. That's all I'm arguing with you and I would suggest that your bill, which I have no particular reason of wanting to sanitize, but would be much better off if it provided that it would be effective as -- by the way, almost all bills that relate to penalties and inmates or people who commit offenses that it will be

effective upon certain number of days or effective upon people who commit an offense subsequent to the date of the act.

But let me move on to something else, if you will continue to yield please. I -- and I confess that I've not had a chance to review your bill fully this year. I assume it's the same one that we've seen in the past.

SENATOR SKELOS: Same as last year, right.

SENATOR LEICHTER: Somewhat - I -- I didn't think about it once since last year, but all right. I confess that as a fault, but seriously, the bill provides that those who are charged with an offense, sent to jail, can't make bail or no bail, would also be subject to reimbursing the county, is that correct?

SENATOR SKELOS: Those that have been sentenced and imprisoned.

SENATOR LEICHTER: It applies only to those who have been sentenced and - so somebody who served a certain amount of time in jail and then is acquitted or let's

say for the sake of the argument dismissed the entire -- or is adjourned in contemplation of dismissal and he's released from jail, would that person have to reimburse the county?

SENATOR SKELOS: Sentenced and imprisoned.

SENATOR LEICHTER: Sentenced and imprisoned.

SENATOR SKELOS: And imprisoned.

SENATOR LEICHTER: And if he is sentenced and imprisoned, then it relates back to his previous time that he served prior to being sentenced, is that correct, or prior to being convicted?

SENATOR SKELOS: I guess it could.

SENATOR LEICHTER: O.K. Just - just briefly. Briefly, on the bill.

Mr. President, we -- we debated this bill. I just think it creates an administrative problem, I won't say a nightmare but certainly a problem, and I think the idea that you're going to collect a lot of money from inmates who have been in jail, to

my mind, really just doesn't make sense. I also am concerned as I pointed out. I think there's a constitutional flaw in the bill by seeking to apply it to people who are presently serving jail sentences. That clearly is an ex post facto provision and would make the bill unconstitutional, probably taints the whole bill, but certainly constitutional -- unconstitutional to that extent.

ACTING PRESIDENT DeFRANCISCO: Senator Lachman.

SENATOR LACHMAN: Would Senator Skelos yield for one question?

ACTING PRESIDENT DeFRANCISCO: Senator Skelos.

SENATOR LACHMAN: It's basically a rephrasing of a question that Senator Paterson asked you a few minutes ago, and I didn't completely comprehend the response. Have there been criteria that have been set up that will determine, quote, if they have the means, end of quote, to reimburse the cost?

SENATOR SKELOS: Mr. President,

we take into account financial resources, assets, expenses, health, age, current child support, maintenance court orders, it goes on and on and on.

SENATOR LACHMAN: So it's the individual judge who will set the criteria in the court?

SENATOR SKELOS: Right.

ACTING PRESIDENT DeFRANCISCO: Read the last section.

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

ACTING PRESIDENT DeFRANCISCO: Call the roll.

(The Secretary called the roll.)

SENATOR MONTGOMERY: I would like to explain my vote briefly.

ACTING PRESIDENT DeFRANCISCO: Yes, Senator.

SENATOR MONTGOMERY: I see from an article that was in the Nassau or in the Long Island issue of Newsday, I believe from April 4, where they talk about the Nassau-Suffolk, the Suffolk -- the Nassau

County policy where they are attempting to collect a projected 2 million, 2 to $3 million, I believe. They've only, in the first three months of the program, collected 16,000, and the maximum fee of $150 a day applies to people who earn 50,000 and have assets of more than 100,000.

Now, while we may be talking about people on the high end of the drug business, I don't know, that they have this kind of income, but I don't believe it's the average inmate that has income of 50,000 or assets of 100,000, and in fact they are certainly not going to be able to come up with the -- the requirement that is anticipated to be paid in order to satisfy this particular statute.

So I -- I believe it's, as has been stated, an additional penalty on people who have hopefully served their time and have to some extent been rehabilitated and are now out looking for a job for which they are probably going to be paid close to minimum wage based on the fact that they have a criminal record, if they can find a job. So

this does not seem to make any sense either fiscally or as it relates to serving penalty on inmates.

So I'm voting no on this legislation, Mr. President.

THE SECRETARY: Those recorded in the negative on Calendar Number 919, Senator Connor, Leichter, Markowitz, Montgomery, Paterson, Sampson, Santiago, Seabrook, Smith, Stavisky and Waldon. Ayes 46, nays 11.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Santiago, please.

SENATOR SANTIAGO: Mr. President, for the record, had I been in the chamber yesterday when the vote was taken on Calendar Number 606, I would have voted in the negative. Thank you.

ACTING PRESIDENT MARCELLINO: The record will so show.

Senator Waldon.

SENATOR WALDON: Mr. President, during the proceedings in regard to Calendar

Number 914, most regrettably I was engaged in business related to the Senate, not paying attention to the calendar. I respectfully ask unanimous consent to be recorded in the negative on Calendar 914.

ACTING PRESIDENT MARCELLINO: Without objection.

Senator Montgomery.

SENATOR MONTGOMERY: Mr. President, I was out of the chamber when the vote was taken on Calendar 919. I would like unanimous consent to be recorded in the negative on that bill.

THE SECRETARY: She just explained her vote.

ACTING PRESIDENT MARCELLINO: You just explained your vote on that particular one.

SENATOR MONTGOMERY: I mean Calendar 918, I'm sorry.

SENATOR SKELOS: No objection.

ACTING PRESIDENT MARCELLINO: No objection.

SENATOR MONTGOMERY: Thank you.

ACTING PRESIDENT MARCELLINO: Senator Seabrook.

SENATOR SEABROOK: Yes, Mr. President. Being out of the chamber myself, I'd like to be recorded in the negative on 914 as well, with unanimous consent.

ACTING PRESIDENT MARCELLINO: The record will so show.

Secretary will read.

THE SECRETARY: Calendar Number 922, by Senator Nozzolio, Senate Print 5184, an act to amend the Correction Law, in relation to the temporary release of inmates.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MARCELLINO: Senator Nozzolio, an explanation has been requested.

SENATOR NOZZOLIO: The Department of Correctional Services program bill before us amends the Correction Law to change the wording of the memorandum of agreement which all inmates sign so that the original intent of this Legislature is carried out to ensure that an inmate's continued

participation in the temporary release program is clearly understood to be a privilege and not a right.

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

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

ACTING PRESIDENT MARCELLINO: Senator Nozzolio, do you yield to Senator Paterson?

SENATOR NOZZOLIO: Yes.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR PATERSON: Senator, in order to be eligible for temporary release programs in the first place, is it not incumbent upon the department to make some determination that the -- that the prisoner is eligible, in other words it's not a right because it doesn't vest at a certain point. It's something that would occur after a period of time and after, assume -- we could assume a certain code of conduct or threshold of cooperation was established.

SENATOR NOZZOLIO: Correct, Mr. President.

SENATOR PATERSON: Therefore, and I don't know if there's anything really wrong with this legislation. I guess I -- my final question would just be to ask why it's necessary since we already have a standard that has to be achieved prior to allowing someone the opportunity to participate in a temporary release program?

SENATOR NOZZOLIO: Mr. President, this legislation clarifies to the inmate themselves that this is, in fact, a privilege and not a right to uncloud any perception that an inmate could have to the contrary.

This is a measure which clearly is four square within the legislative intent to make this a privilege and not a right, and by clarifying or elucidating, illuminating this element to an inmate clarifies confusion in the future that there are -- there should be no mistake by any inmate. They're given clear notice as a result of this legislation that it is a privilege which can be revoked.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 56, nays 1, Senator Sampson recorded in the negative.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Secretary will read.

THE SECRETARY: Calendar Number 979, by Senator Farley, Senate Print 2278, an act to amend the Vehicle and Traffic Law, in relation to fire police.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 993, by Senator Levy, Senate Print 4308, an act to amend the Public Authorities Law, in relation to authorizing the Metropolitan Transportation Authority.

ACTING PRESIDENT MARCELLINO: Read the last section.

Senator Paterson, did you speak? Lay it aside for the day.

THE SECRETARY: Calendar Number 1001, by Senator Levy, Senate Print 4535, an act to amend the Vehicle and Traffic Law, in relation to the registration period of apportioned vehicles.

SENATOR PATERSON: Explanation.

SENATOR SKELOS: Lay it aside for the day.

ACTING PRESIDENT MARCELLINO: Lay it aside for the day.

THE SECRETARY: Calendar Number 1044, by Senator Marchi, Senate Print 3597, an

act to amend the Not-for-Profit Corporation Law, in relation to the organization of university faculty.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 1046, by Senator Wright, Senate Print 3723, an act to repeal Title 13-e of Article 8 of the Public Authorities Law.

ACTING PRESIDENT MARCELLINO: Read the last -

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MARCELLINO: Gee whiz! Senator Wright, an explanation has been asked for.

SENATOR WRIGHT: Thank you, Mr. President.

The bill repeals Title 13-e of Article 8 of the Public Authorities Law. It has been introduced at the request of the St. Lawrence County government. They no longer believe that the Authority that was established in 1987 is needed for the county's operation. The county is assuming responsibility of all assets and liabilities and bonded indebtedness of the Authority during its existence.

SENATOR PATERSON: Explanation satisfactory.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 1047, by Senator Marchi, Senate Print 3797, an act to amend the Waterfront Commission Act, in relation to extending the term of a stevedore's license.

ACTING PRESIDENT MARCELLINO: Read the last section.

THE SECRETARY: Section 2. This act shall take effect upon the enactment into law by the state of New Jersey of legislation having an identical effect.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MARCELLINO: Excuse me, Senator Paterson. You want an explanation on this bill?

SENATOR PATERSON: Yes, I do.

ACTING PRESIDENT MARCELLINO: O.K. I guess we have to hold the roll. Senator Skelos is not quite sure.

SENATOR SKELOS: Complete the

roll call on 1047, please.

ACTING PRESIDENT MARCELLINO: Complete the roll call.

THE SECRETARY: Ayes 57.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 1048, by Senator Larkin, Senate Print 3840, an act to amend Chapter 698 of the Laws of 1991 amending the Public Authorities Law.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MARCELLINO: Senator Larkin.

SENATOR LARKIN: Mr. President, this bill would add McQuade Children's Services to the list of facilities eligible to receive Dormitory Authority capital financing as set forth in Chapter 698 of the Laws of 1991. Right now there are no funding for this program currently exists. However, we're asking that this be made available in the event the mechanisms change and that McQuade would be added to the list. Currently, we have a number of schools. There are the Astor

Learning Center, the Astor Home for Children, the Devereaux Foundation, the Gateway Youth and Family Service, Green Chimneys School for Little Folk, Harmony Heights, Harmony Heights Schools, Lake Grove, Lutheran Services of Upper New York, the Nassau Order for the Developmentally Disabled, Nassau Center for the Developmentally Disabled, Inc., Upstate Home for Children, Vanderheyden Home and Windham Lawn Home for Children, and all we're asking is that this McQuade, which takes care of a number of children, 90 percent of them coming out of the city of New York -- right now there are 40 residents in one program and 20 in another, and the facility is not adequate and the hope is that some day there will be some funding available as to let them be added into the existing pool.

ACTING PRESIDENT MARCELLINO: Senator Stavisky.

SENATOR STAVISKY: Mr. President, I do not, on principle, oppose what you are doing. I simply wish to say that Dormitory Authority funds should initially be available to the public school facilities.

I had occasion recently to ask that those facilities and that funding be available on a replacement of auditorium curtains in the public schools of New York City and I was told that there was no opportunity for that to be done by the chancellor of the New York City school system. I think that we sometimes over-extend the concept of Dormitory Authority funding and we should keep in mind that the primary use should be for public school facilities and to have that negative response coming from a chancellor of the New York City school system troubled me.

Parents have been paying for replacement of stage curtains at public schools. They've had to go through all kinds of private funding sources, including cake sales, in order to try to replace, and I believe that we ought to keep in mind the original purpose of the Dormitory Authority was not to add so many extraneous organizations to the list. We already perhaps have too many, but rather to keep in mind that the principal function of the Dormitory

Authority funds should be for public facilities and not all in the private sector.

Senator Larkin, I'm going to vote for your bill, but I want to point out that there's a very troubling double standard that has been applied here, and I think that double standard is wrong. You should not have the parents of public school pupils paying for the replacement of curtains that have been damaged through use, through neglect, through every conceivable concept, every conceivable manner of -- and then ask the parents of the school children who often do not have the funds, to pay for these curtains.

ACTING PRESIDENT MARCELLINO: Read the last section, please.

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

ACTING PRESIDENT MARCELLINO: Senator Paterson. Excuse me. Senator Paterson.

SENATOR PATERSON: If the Senator would yield for a question, actually, I had a question I wanted to ask.

ACTING PRESIDENT MARCELLINO:

Senator Larkin, will you yield?

SENATOR LARKIN: Yes.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR PATERSON: Senator Larkin, I'm not trying to promulgate quotas. However, I did notice that absent from the legislation was any significant language relating to the establishment of minority and women's business enterprises, and I wanted to know if in your negotiations with the other house to pass this legislation, whether or not you're going to obtain that notion.

SENATOR LARKIN: Well, I'll have to tell you, Senator Paterson, this was a request from the McQuade Children's Home which, as you know, takes a number of children from the city of New York. It's been funded a lot by private funds that we have secured for them but the number of children being referred to them, they thought that they would like to be included. There is no reason why somebody else couldn't come along and ask that they become a part of this litany of schools that are participating in it now.

ACTING PRESIDENT MARCELLINO:

Read the last section.

THE SECRETARY: Section 2.

This act shall take effect immediately.

ACTING PRESIDENT MARCELLINO:

Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT MARCELLINO:

The bill is passed.

Senator Montgomery, why do you rise?

SENATOR MONTGOMERY: Mr. President, I would like unanimous consent to be recorded in the negative on Calendar 914.

ACTING PRESIDENT MARCELLINO:

Without objection.

Senator Gentile.

SENATOR GENTILE: Yes, Mr. President. I would ask unanimous consent to be recorded in the negative on Calendars 882, 895 and 899.

ACTING PRESIDENT MARCELLINO:

The record will so show.

Secretary will read Calendar Number 675.

THE SECRETARY: Calendar Number 675, by Senator Levy, Senate Print 4262, an act to amend the Highway Law, in relation to regulations regarding accessible pedestrian crosswalks.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Will you read 778, please.

THE SECRETARY: Calendar Number 778, by the Assembly Committee on Rules, Assembly Print 7700, an act to amend the Public Health Law.

ACTING PRESIDENT MARCELLINO: Read the last section.

SENATOR PATERSON:

Explanation.

SENATOR SKELOS: Lay that aside.

ACTING PRESIDENT MARCELLINO: Lay the bill aside.

Senator Dollinger.

SENATOR DOLLINGER: Mr. President, may I just have unanimous consent to be recorded in the negative on Calendar Number 895. Thank you.

ACTING PRESIDENT MARCELLINO: Without objection.

Will you read Calendar Number 903, please.

THE SECRETARY: Calendar Number 903, by Senator Trunzo, Senate Print 4904-A, an act authorizing the Commissioner of General Services to enter into contract.

ACTING PRESIDENT MARCELLINO: Read the last section.

SENATOR PATERSON: Explanation, please.

ACTING PRESIDENT MARCELLINO: Senator Trunzo, an explanation has been asked

for.

SENATOR TRUNZO: Mr. President, what this bill does is authorizes the -- the Office of General Services to convey property in Central Islip to the Touro Law School so that they can build a new facility next to the court facility, the Cohallen court facility that's there now, the federal facility which is currently being built, and the New York Institute of Technology which has developed the Central Islip Hospital campus which has now been declared surplus over the years, and Touro who wants to put a building up in that particular area on this spot that has been declared surplus by the Office of General Services looking to get this property so that they can put a -- their college there at this time.

ACTING PRESIDENT MARCELLINO: Read the last section, please.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the

roll.)

THE SECRETARY: Ayes 57.

SENATOR PATERSON: Party vote in the negative.

SENATOR SKELOS: Lay aside.

ACTING PRESIDENT MARCELLINO: Lay the bill aside.

Senator Skelos.

SENATOR SKELOS: Is there any housekeeping at the desk?

ACTING PRESIDENT MARCELLINO: Yes, we have some, sir.

Senator Meier.

SENATOR MEIER: Mr. President, I wish to call up Calendar Number 753, Assembly Print Number 6489.

ACTING PRESIDENT MARCELLINO: The Secretary will read.

THE SECRETARY: Calendar Number 753, by member of the Assembly Pretlow, Assembly Print 6489, concurrent resolution of the Senate and Assembly.

SENATOR MEIER: Mr. President, I now move to reconsider the vote by which this Assembly bill was substituted for my

bill, Senate Print Number 4110, on May 7.

ACTING PRESIDENT MARCELLINO: Call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT MARCELLINO: Senator Meier.

SENATOR MEIER: Mr. President, I now move that Assembly Bill Number 6489 be committed to the Committee on Rules and my bill restored, or be restored to the order of Third Reading Calendar.

ACTING PRESIDENT MARCELLINO: The Assembly bill is committed and the Senate bill is restored.

SENATOR MEIER: O.K. Mr. President, I now offer the amendments which have been filed at the desk.

ACTING PRESIDENT MARCELLINO: Amendments are accepted.

Senator LaValle, why do you rise?

SENATOR LAVALLE: Mr. President, on page number 59, I offer the

following amendments to Calendar Number 1058, Senate Print Number 4777, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT MARCELLINO: Amendments are accepted. The bill will retain its place on the Third Reading Calendar.

Senator Skelos, that finishes all the housekeeping.

SENATOR SKELOS: There being no further business, I move we adjourn until Tuesday, May 27th, at 3:00 p.m., intervening days being legislative days.

ACTING PRESIDENT MARCELLINO: The fact there being no further business before this house, I move we adjourn. The Senate is adjourned until May 27th at 3:00 p.m., intervening days being legislative days.

(Whereupon at 11:46 a.m., the Senate adjourned.)