ALBANY, NEW YORK

June 10, 1997

10:05 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, Monday, June 9th. The Senate met pursuant to adjournment. The Journal of Saturday, June 7th, 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 Marcellino.

SENATOR MARCELLINO: Thank you, Madam President.

On page number 46, I offer the following amendments to Calendar Number 125, Senate Print Number 931, and ask that said bill retain its place on the Third Reading Calendar.

THE PRESIDENT: The amendment is received.

SENATOR MARCELLINO: Also, Madam President, can we remove the star from that bill at the request of the sponsor.

THE PRESIDENT: The star is removed.

SENATOR MARCELLINO: Madam President, on page number 44, I offer the following amendments to Calendar Number 1154, Senate Print Number 5254, and ask that said bill retain its place on the Third Reading Calendar.

THE PRESIDENT: The amendments are received.

SENATOR MARCELLINO: Thank you.

THE PRESIDENT: Senator Skelos,

we have some substitutions.

SENATOR SKELOS: Please make the substitutions.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: On page 14, Senator Spano moves to discharge from the Committee on Rules Assembly Print 2122-A and substitute it for the identical Senate bill, Third Reading 450.

On page 16, Senator Goodman moves to discharge from the Committee on Rules Assembly Print Number 6658-A and substitute it for the identical Senate bill, Third Reading 517.

On page 21, Senator Wright moves to discharge from the Committee on Rules Assembly Print 6510-A and substitute it for the identical Senate bill, Third Reading 637.

On page 31, by Senator Lack moves to discharge from the Committee on Rules Assembly Bill 1074-C and substitute it for the identical Senate bill, Third Reading 867.

On page 44, Senator Hannon moves to discharge from the Committee on Rules

Assembly Bill 7878 and substitute it for the identical Senate bill, Third Reading 1151.

ACTING PRESIDENT KUHL: The substitutions are ordered.

Senator Skelos.

SENATOR SKELOS: Mr. President, I ask at this time that we adopt the Resolution Calendar.

SENATOR DOLLINGER: Mr. President.

SENATOR SKELOS: And if we could temporarily lay aside Resolution 1636.

ACTING PRESIDENT KUHL: The motion is to adopt the Resolution Calendar excepting Resolution Number 1636. All those in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The Resolution Calendar is adopted.

Senator Skelos.

SENATOR SKELOS: At this time if we could take up the non-controversial calendar.

ACTING PRESIDENT KUHL: The

Secretary will read the non-controversial calendar.

THE SECRETARY: Calendar Number 174, by Senator Maltese, Senate Print 1219-A, an act to amend the Election Law, in relation to party recommendations.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 679, by Senator Holland, Senate Print 4120-A, an act to amend the Social Services Law, in relation to county responsibility for medical assistance payments.

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 37.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number

841, by Senator Holland, Senate Print 4483-A, an act to amend Chapter 942 of the Laws of 1983 and Chapter 541 of the Laws of 1984, relating to foster family care.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 37.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 948, by Senator Saland, Senate Print 5176, an act to amend the Social Services Law, in relation to the capacity of foster family boarding homes.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 951, by Senator Saland, Senate Print 5223, an act to amend the Family Court Act, in relation

to court reviews.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 37.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1019, by Senator Maziarz, Senate Print 5231, an act to amend the Highway Law, Environmental Conservation Law, in relation to the filing of certificates.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 37.

ACTING PRESIDENT KUHL: The bill

is passed.

THE SECRETARY: Calendar Number 1024, by Senator Kuhl, Senate Print 4182-A, an act to amend the Agriculture and Markets Law, in relation to improving the agricultural districts program.

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

THE SECRETARY: Section 13. This act shall take effect on the 90th day.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 37.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1037, by Senator Maltese, Senate Print 5060, an act to amend the Election Law, in relation to merging election districts.

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

THE SECRETARY: Section 2. This act shall take effect on the 1st day of August.

SENATOR PATERSON: Lay it aside.

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

THE SECRETARY: Calendar Number 1038, by the Assembly Committee on Rules, Assembly Print 7683, an act to amend the Election Law, in relation to registration days.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 38.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1050, by Senator Marchi, Senate Print 4085, an act to repeal Section 630 of the Business Corporation Law.

SENATOR SKELOS: Lay it aside for the day at the request of the sponsor.

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

sponsor.

THE SECRETARY: Calendar Number 1053, by Senator LaValle, Senate Print 4335, an act to amend the Education Law, in relation to indemnification of City University Community College employees.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 38.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1132, by Senator Trunzo, Senate Print 1488, an act to amend the Public Health Law, in relation to public notification of health hazards.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1133, by Senator Farley, Senate Print 1681-A, an

act to amend the Vehicle and Traffic Law, in relation to authorizing out of state recreational vehicle dealers.

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 39.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1134, by Senator Kuhl, Senate Print 1828, an act to amend the Judiciary Law, in relation to increasing the number of County Court judges in the county of Ontario.

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

THE SECRETARY: Calendar Number 1135, by Senator Kuhl, Senate Print 2244, an act to amend the Environmental Conservation Law and the Town Law, in relation to rights to practice Forestry Act.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1136, by Senator Lachman, Senate Print 2621, an act to amend the Vehicle and Traffic Law, in relation to the possession of an open container in a motor vehicle.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 39.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1137, by Senator Stavisky, Senate Print 2906, an act to amend the Penal Law, in relation to increasing penalties for criminal solicitation.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 39.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1138, by Senator Bruno, Senate Print 3113, an act in relation to authorizing Tier I status for Mary Ann Martin in the New York State and local Employees Retirement System.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: There is a home rule message at the desk. The Secretary will lay the bill aside at the request of the Acting Minority Leader.

THE SECRETARY: Calendar Number 1139, by Senator Kuhl, Senate Print 3211, an act to amend the Correction Law, in relation to the confinement of persons in the Chemung County Jail.

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 40.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1140, by Senator Saland, Senate Print 3414-A, an act to amend the Judiciary Law and the Uniform City Court Act, in relation to creating a new quarter-time judge.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 41.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1141, by Senator Marchi, Senate Print 3472, an act to amend the Social Services Law, in relation to the investigation of Workfare participants.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1142, by Senator Skelos, Senate Print 3654, an act to amend the Retirement and Social Security Law, in relation to retirement of supervising fire inspectors.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 42.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number

1143, by Senator Nozzolio, Senate Print 3924, an act to amend the Penal Law, in relation to allowing an 11-year-old person to take a hunting safety course.

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 42.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1145, by Senator Rath, Senate Print 440...

ACTING PRESIDENT KUHL: Can we get a little order in the chamber, please. It's getting pretty noisy. It's getting difficult to hear the Secretary read the bills. The conversations, can you please take them out of the chamber. The staff, take their places.

Senator Paterson, why do you rise?

SENATOR PATERSON: Mr. President,

are we on Calendar Number 1145?

ACTING PRESIDENT KUHL: 1145 was just read.

SENATOR PATERSON: May we please lay that aside.

ACTING PRESIDENT KUHL: The Secretary will read -- excuse me -- lay Calendar Number 1145 aside at the request of the Acting Minority Leader.

THE SECRETARY: Calendar Number 1146, by Senator LaValle, Senate Print 4424, an act legalizing, validating, ratifying and confirming certain acts.

ACTING PRESIDENT KUHL: There is a local fiscal impact note at the desk. 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 42.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number

1147, by Senator Nozzolio, Senate Print 4697-A, an act to amend the Vehicle and Traffic Law, in relation to authorizing a residential parking system in the city of Auburn.

ACTING PRESIDENT KUHL: There is a home rule message at the desk. 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 43.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1148, by Senator Kuhl, Senate Print 4885, an act to permit the reopening of the optional 20-year retirement plan to Dennis Solo.

ACTING PRESIDENT KUHL: There is a home rule message at the desk. 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 43.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1149, by Senator Nozzolio, Senate Print 4917, an act to amend the Civil Practice Law and Rules and the Court of Claims Act.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1150, by Senator Volker, Senate Print 5015, an act to amend the Executive Law, in relation to the community service block grant program.

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 43.

ACTING PRESIDENT KUHL: The bill

is passed.

THE SECRETARY: Calendar Number 1151, substituted earlier today, by the Assembly Committee on Rules, Assembly Print 7878, an act to amend Chapter 602 of the Laws of 1982 amending the Social Services Law.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 44.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1152, by Senator LaValle, Senate Print 5139, an act to amend the Public Authorities Law, in relation to clinical practice by faculty members of the State University of New York.

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 1153, by Senator Tully, Senate Print 5199, an act to amend the Penal Law and the Criminal Procedure Law, in relation to the collection of fines.

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

Senator Leichter, did you wish that bill laid aside?

SENATOR VOLKER: Yeah, lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

THE SECRETARY: Calendar Number 1155, by Senator Stafford, Senate Print 5349, an act to amend the Lien Law, in relation to the duration of mechanics' liens.

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 45.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1156, by Senator Marcellino, Senate Print 5369, an act to amend Chapter 600 of the Laws of 1993, amending the Environmental Conservation Law relating to the management of bear.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 45.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1157, by Senator Libous, Senate Print 5379, an

act to amend the Tax Law, in relation to extending the authorization of the county of Tioga.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Record the negatives. Announce the results.

THE SECRETARY: Ayes 44, nays 2, Senators Dollinger and Gentile recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1158, by Senator Skelos, Senate Print 5394, an act to amend the Estates, Powers and Trusts Law, in relation to converting uniform gifts to minors.

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 46.

ACTING PRESIDENT KUHL: The bill is passed.

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

SENATOR SKELOS: Mr. President, I believe the Minority has consented to removing the lay aside on Calendar Number 948 by Senator Saland, if we could have the last section read.

ACTING PRESIDENT KUHL: The Secretary will read the title to Calendar Number 948.

THE SECRETARY: Calendar Number 948, by Senator Saland, Senate Print 5176, an act to amend the Social Services Law, in relation to the capacity of foster family boarding homes.

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 47.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

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

ACTING PRESIDENT KUHL: The Secretary will read the controversial calendar, beginning with Calendar Number 174, by Senator Maltese, on page 6.

Senator Skelos.

SENATOR SKELOS: There will be an immediate meeting of the Rules Committee in the Majority Conference Room.

ACTING PRESIDENT KUHL: Immediate meeting of the Rules Committee, immediate meeting of the Rules Committee in the Majority Conference Room, Room 332.

The Secretary will read.

THE SECRETARY: Calendar Number 174, by Senator Maltese, Senate Print 1219-A, an

act to amend the Election Law, in relation to party recommendations.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Maltese, if you'd wait for just a minute while the members of the Rules Committee depart the chamber, I think it will get quiet enough so that you will be able to give an explanation which has been requested on Calendar Number 174.

SENATOR MALTESE: Mr. President, the purpose of this bill is to provide that a party recommendation to fill a vacancy for the office of election commissioner be made by county committee or by a committee chosen by the county committee rules as indicated.

In addition, it provides that certificates of party recommendation to fill such vacancy shall be filed no later than 45 days after the creation of the vacancy. Previously there was no time limit.

Currently if a vacancy occurs in the office of election commissioner, the vacancy only may be filled by the full county committee. Especially in the city of New York and the larger counties, this becomes a very

cumbersome procedure with, in some cases, thousands of members and in most cases, in most counties, the meetings of the county committee are only held at most once or twice a year.

The bill in the Assembly had a variation. It's carried by -- Assemblyman "Denny" Farrell had a variation. They are amending their bill to conform with ours and that will be the final bill which is agreed on -- upon by both houses.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: Mr. President, again, we have an Election Law bill of such insignificance that no rater screen could possibly pick it up.

I mean, here we have an election system in this state which is an utter disgrace. It doesn't work. It doesn't function. It's an embarrassment and we come up with these bills - and I don't say critically of you, Senator Maltese, because I know there's greater forces at work here -- but a bill that charitably could be said is rearranging the deck chairs as the

Titanic is sinking.

We ought to get rid of the local boards of elections as they presently exist run by the two dominant parties. Elections are not something that ought to be left to the parties to run. Election is a key essential government function.

I put in a bill that would get rid of these politically-operated boards of elections and have us run elections as it's done in many states by a government agency.

We've had incidents in this state just in the last few years that are such an embarrassment. In Brooklyn at an election last year -- Senator Maltese, you'll remember -- the machines didn't come to half the districts. That had a real impact on the results of elections as we know in this house.

Many such other incidents. I can just say that if an election in a developing country was run the way some of our elections are run here in New York State, people would say there's an absence of democracy. They would want to send foreign monitors to see how the elections are run.

So, Senator Maltese, I think it's important that all of us, particularly you as the chair of this committee, take some initiative and some lead to seeing that the elections that we have in this state comport to what are the basic standards of fairness, of efficiency, of democracy. That just doesn't exist presently.

So this bill, Senator, sure I can support it but it's meaningless. Let's do something to have an election machinery that works. Let's do something to get rid of the abuses of campaign financing. I mean, nothing is more essential to our democracy than to have properly run and fairly run elections, and we just don't have this in the state.

You know, one of the reasons - or a lot of conjecture, why is it that Americans are more and more turned off with government, with politics? Why is there less and less participation in the -- in elections? Well, one reason is because they see a system that's so riddled with abuses that they're really turned off, and understandably. I think we've got an obligation to see that these matters are

addressed, and I think it's inexcusable.

It's really tragic that this group of people in this chamber, smart people - and all of you know what the problems are because we're all in the system. We've gone through it. We may have benefited at times. We may have been damaged at other times but in our heart we know it's wrong and we ought to do something about it and we ought to take the lead, and let me tell you, if we did, we would find that people would respond to the electoral system as they do not presently for very good reasons.

So, Senator Maltese, I can just urge you again and urge all of my colleagues on a non-partisan, bipartisan basis, whatever you want it, let's have fair, official elections in this state, something that we presently don't have.

SENATOR MALTESE: Mr. President.

ACTING PRESIDENT KUHL: Senator Maltese.

SENATOR MALTESE: Taking the due regard for my good colleague, Senator Leichter -- who I certainly respect and admire his point

of view at times, although I disagree a good part of the time -- I think he does not give due recognition to the fact that last year the - one of the most sweeping pieces of legislation in Election Law, certainly in my some 30 years of working in the Election Law both as an insurgent -- so-called insurgent and so-called organization person, not only passed but was signed into law with the full cooperation of both parties in both houses and the Governor, and it was at the instigation of the Governor incorporating many of the suggestions and recommendations made by the so-called "goo-goos" for many, many years and we are seeing the fruits of that in these very days as many party people throughout the city and state circulating petitions and the praise that has come forth from many of the organizations at the ease in comparison to prior years will be nothing compared to what will occur when the filings occur and things like cover sheets which were simply devices, I believe, to throw candidates off the ballot and, in many cases, deprive the voters of an adequate choice are able to be corrected. So I don't think that we should

despair like Cassandras at what hasn't been done but should rejoice in what has been done.

As far as these specific bills, today's bill, my next bill, the bill from yesterday, those bills have a new spirit of cooperation in both the Assembly and the Senate, the Democrat and Republican and, as I've indicated each time, they are usually at the request of the state board or the city board with the full cooperation of the councils and the chairmen of the committees.

So I think that we do have a responsibility to sharpen up the law, to make it more efficient and as for those portions of the law mainly relating, I believe, to campaign financing or campaign contributions and disclosures -- disclosure requirements -- which Senator Leichter, you know, very, very much would like to change -- I think those are targets for us to continue to work on and try to arrive at some amicable situation.

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

Senator Dollinger.

SENATOR DOLLINGER: Thank you,

Mr. President.

I have to follow my colleague from Manhattan, Senator Leichter, and I agree with Senator Maltese. What we did last year was a tremendous thing to do.

What, in my opinion, we did is we brought the election laws in New York State from about 1820 up to about 1962. That 140 years that we updated our laws was a marvelous thing to do. The only problem is it's 1997 and we're still 35 years behind the time, and I commend you, Senator Maltese, for the work in getting those arcane little picayune things that we used to throw people off the ballot just like they did in all those other countries at one time, didn't have free elections, just like in the Soviet Union where they used to get 99 percent of the vote and we used to always scoff and say those can't be fair elections and sure enough in New York State we elect 99 percent of the members of the state Legislature every single year and yet we think they're wonderfully fair.

I obviously missed my history lesson somewhere along the line but we did come 100 years. We updated our laws 100 years.

That's a 100-year step. It is properly commended. I new this took some political coalitions to get that done. It's a wonderful thing, but what Senator Leichter is talking about doing is bringing the law from 1962 to 1997, to update it to the realities of big money, hard currency that we talked about yesterday -- some of the issues we talked about yesterday, but I'd just caution everybody in this chamber, we cannot fall for the ruse of the magician who says, Look at this hand. Look at this hand. I'm changing the Election Law. I'm eliminating the technical rules that prevent people from getting on the ballots. We eliminated the Board of Estimate from the election laws yesterday. We're doing this which is also a good idea. Look at this. Look at this and in the meantime, at the other hand, we're picking their pocket and perpetrating the kind of election system that we have in this state which just, in my opinion, is simply not fair, not just and doesn't accord with a true vision of democracy.

Senator Maltese, I'm going to vote in favor of this bill. I commend you. I

encourage you. Believe me, when we show up with an Election Law that's dated 1997 and reflects 1997 reality, I will be the first to trumpet that success.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: If Senator Maltese will yield.

ACTING PRESIDENT KUHL: Senator Maltese, do you yield to a question? The Senator yields.

SENATOR LEICHTER: Senator, I was just going to make my initial statement and then be at peace, but some of the things you said and Senator Dollinger have really raised some questions in my mind.

One of the most outrageous aspects of the whole election and campaign financing system in the state is that it is almost impossible to get records to find out what has happened.

We have a state board of election which is totally non-functional and it was created to be non-functional. If you go in there -- and Senator Dollinger thought that in

some respects last year we brought the Election Law up to 1962, but if you go to the state board of election, it's still 1820. One of the steps that everybody said we have to take because it's so necessary and it makes such good common sense is the computerization of records.

Senator, where -- the session is drawing to a close -- let's hope at least it is but there's so much work to be done and one of them is this computerization of election -- of campaign finance records. Do you know where that bill is?

SENATOR MALTESE: Mr. President, there were at the time of the drastic changes, exemplary changes that were put into effect last year competitive bills requiring certain limitations and certain limitations on committees and political parties and the -- this house had and still has a piece of legislation but it all depends in these circumstances. We are a legislative deliberative body and it all depends on whose ox is being gored and the piece of legislation that was backed by a majority of the Republicans in this house, they had certain limitations and certain disclosure requirements

placed on unions and placed on situations where the disclosure requirements or contribution limitations would be somewhat equivalent on business groups as they would be on union PACs, and so we had a situation where there was disagreement between the two houses and those bills are still -- are still in -- I believe in committee, although I can check, but I think, in fact, we did pass one of those bills in this house, the bill backed by our Majority Leader, Senator Bruno, and myself, but I think that in talking about the computerization of the board, I think that is something that will occur if not this session, certainly in the near future. It is occurring in many counties across the state. It is occurring as funds are appropriated. I believe that there are discussions going on at this time between the Executive and the Legislative Branch as far as some funding to be put aside for computerization, but I know certainly in the city of New York and in upstate counties, as was indicated at a recent meeting of election commissioners, that they are, in effect, computerizing almost all election records. As for computer records, that

discussion is still going on. Whether or not it will be done in this session, I don't know.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: If Senator Maltese would continue to yield.

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

Senator Maltese?

SENATOR LEICHTER: Senator, isn't it a fact that, if you want to deal with the computerization of records, you have a bill that provides for that computerization? In this house, the Majority attached, as you just said, limitation on what unions can contribute. Maybe that should be done or maybe it shouldn't be done, but it certainly shouldn't be part of this bill.

Isn't it -- Senator Maltese, I'm going to be very blunt. Isn't it true that that was attached by the Majority to defeat computer ization? You didn't want computerization. So you attached a provision that you knew the Assembly would never accept and, in this way,

you defeated computerization and we have the mess that we presently have in the state board of election? Isn't that true?

SENATOR MALTESE: Senator, I'm shocked that even such an allegation could be made. The so-called "poison pill" approach to government is one that I think is equally deplored by both sides of the aisle.

SENATOR LEICHTER: Senator, you're right. It's deplored but greatly practiced.

SENATOR MALTESE: Yes.

ACTING PRESIDENT KUHL: Senator Leichter, excuse me. Are you asking Senator Maltese to yield?

SENATOR LEICHTER: I'm making a comment. No. I thank my good friend and I just want to say, Senator, I agree with you that the "poison pill" is greatly deplored and very actively practiced.

So let me just make that one example and, again, I don't want to make this a partisan thing. As I said yesterday, I don't think there are any saints. I don't think my party is any more praiseworthy or is any more to

be blamed than the other party. I think that we've had this system in this state which started well over 100 years ago that elections was really a matter for the political parties to run, and if you get the Republicans and the Democrats, the two parties to watch each other, you're going to end up with a fair elections system.

Well, the fact is very often the Republicans and the Democrats have worked together to gang up against third-party, Senator Maltese, against independents and they certainly have not run the system in the public interest.

I've called the state board of elections the toothless pussy cat because it is such an embarrassment. Obvious, evident, clear, conceded, admitted violations of law. They do absolutely nothing.

Let me tell you -- and I spent some time this year looking through their records, and so on. They accepted for filing by the Suffolk Republican Party, they filed a campaign finance report where they left off the sums. They listed the names but they didn't put down how much they contributed. The state board

of elections accepted that. I think you could go in and file a dead rabbit and they would say, okay. They would stamp it, and so on. They would misfile it as they misfile just about everything else. It's awful. It is just awful. We just shouldn't allow this to happen.

Now, we may feel, well, you know, there isn't really that much public pressure on us to do anything about it, but I'll tell you what there is. There's growing public cynicism and we ought to be concerned about this, a cynicism about government, many reasons for it but one of them certainly is because people know that our elections are poorly run, unfairly run in many instances, that big money more and more dominates public discourse and public debate and we who work in this field and whether you're a Republican or Democrat -- I have been here many years. I know people work hard. I know people come here with good intentions. They come here conscientiously -- we do try to accomplish something, whether we agree on many issues or disagree on many issues, but all of that is for naught if the public sees an election system that is so flawed and so riddled with abuse as

ours is.

Let's do something about it.

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 49.

ACTING PRESIDENT KUHL: Record the negatives and announce the results.

THE SECRETARY: Ayes 48, nays 1, Senator Padavan recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

The Secretary will continue to read the controversial calendar.

THE SECRETARY: Calendar Number 1037, by Senator Maltese, Senate Print 5060, an act to amend the Election Law, in relation to merging election districts.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Maltese, an explanation has been requested of

Calendar Number 1037.

SENATOR MALTESE: Mr. President, this piece of legislation is at the request of the Election Commissioners Association and the New York State Board of Elections. It is carried in the Assembly by Assemblyman Canestrari and this again is a bill that is - has been agreed upon by the Assembly and the Senate.

It takes effect only outside the city of New York because the city of New York has previously -- has previously adopted the same system.

The purpose of the bill is to increase the total number of voters permitted to be consolidated for primary special elections. The new technology of digitized polling books allows for easy processing of an increased number of voters.

This bill will alleviate the increasing difficulties of finding inspectors to serve. It will enable those boards of elections to consolidate districts that are not very much used and thus be able to utilize less inspection -- inspectors at the polls.

It provides that it increases the minimum number of voters who may be consolidated from 100 to 500 and, as I say, it pertains only to counties outside the city of New York and we are advised that it will be significant savings to counties and local municipalities.

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

(There was no response.)

The Secretary will read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 1st day of August.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1132, by Senator Trunzo, Senate Print 1488, an act to amend the Public Health Law, in relation to public notification of health hazards.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 49.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1135, by Senator Kuhl, Senate Print 2244, an act to amend the Environmental Conservation Law and the Town Law, in relation to the right to practice Forestry Act.

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

THE SECRETARY: Calendar Number 1138, by Senator Bruno, Senate Print 3113, an act in relation to authorizing Tier I status for Mary Ann Martin in the New York State and local Employees Retirement System.

SENATOR SKELOS: Lay it aside temporarily.

ACTING PRESIDENT KUHL: Lay the bill aside temporarily.

THE SECRETARY: Calendar Number

1141, by Senator Marchi, Senate Print 3472, an act to amend the Social Services Law, in relation to the investigation of Workfare participants.

SENATOR PATERSON: Explanation, please.

ACTING PRESIDENT KUHL: Senator Marchi, an explanation of the bill has been requested.

SENATOR MARCHI: Thank you, Mr. President.

This amends the Social Services Law in relation to the investigation of welfare participants assigned to work in the care, custody and supervision of children.

This would require that prior to their getting a clearer bill that that person be competent to fulfill the assignment, that the person would be fingerprinted to determine his or her criminal history, that the person would be tested for use of a controlled substance, that the person would be free of communicable diseases.

I have had no objections to this and I believe the information came out just

yesterday or last night that the county of Albany had adopted identical requirements applicable to the county of Albany.

So it would seem to me that certainly we want to favor this to ensure the maximum level of protection to children, that we don't come up with some circumstances that might be deleterious when they're functioning as supervisors or monitoring -- carrying out their functions as a result of the requirements that have been placed in the law.

So I would hope that this or some variant of this is part of the law.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, on this legislation, the need to protect children, particularly situations where we are rendering care and supervision is most paramount and we know that based on a number of stories that we read about in the newspaper and situations that we've observed.

If Senator Marchi would yield for a question.

SENATOR MARCHI: Yes, Senator, I

yield.

ACTING PRESIDENT KUHL: Senator Marchi.

SENATOR PATERSON: Senator, the concern that some of us have about this legislation is that, in spite of the fact that the need to fingerprint and investigate individuals who are going to be participating in child care deserves to be stated and restated, the fact is that the Workfare system that puts the employee into this situation involves a lack of options. In other words, this would be an area in which an individual might be assigned and then at that point they would also be forced to be fingerprinted.

My question is, is the assignment to child care something that is automatic? In other words, is it something where the employee has any choice, because if the employee had an option to work somewhere else but prefers to choose the child care service, then at that point the fingerprinting, I think, would be most appropriate, but what I'm afraid of is forcing a person to work in a particular area and then forcing them to be fingerprinted and

investigated when, in fact, other than the fact that they may have been a client of social services, they didn't do anything to deserve being fingerprinted or investigated in the first place.

SENATOR MARCHI: We're talking about their eligibility for qualification. I would assume that there is an interest on the part of the applicant to put someone who might be unwilling to comply with the provisions but is available for other work. They may have other objections. Perhaps they feel -- they feel that they are not equipped to handle children and provide the necessary guidance, and I should think that the process should -- would naturally elicit that approach in designating someone to do this.

So that I think we're down to people who are not unwilling to embrace it. If they are unwilling, it's -- it's -- aside from the fact -- even if they wanted to be fingerprinted, I would imagine the pool would be those people that would -- you know, the only thing I worry about is that there may be circumstances going way back that would enable

them really to clear even some of the obstacles that are here, but I don't think we can overplay -- and that was probably what persuaded the county of Albany toward adopting this very same legislation -- the fear that we're dealing with children, young future adults, future men and women with some hazards that are unnecessary and the pool is large enough, really, to select those who are willing to go through the process.

The previous provision -- I was looking at the last provision but any person with a condition prior to the assignment to work involving -- and then that process takes place.

I really -- I really think that weighing all the factors -- and I can see circumstances that -- remote, but I believe that we're jeopardizing -- when it's administered on a large scale basis, we are jeopardizing introducing an element that's not very reassuring in the supervision of children. So I would -- and the fact that the county of Albany -- I don't think there's any particular persuasion politically that moved them in that direction except for the same concerns that move us.

So I would hope that, Mr. President, this bill prevails and that's about it, Senator.

SENATOR PATERSON: Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Senator Marchi.

Mr. President, on the bill. I want to thank Senator Marchi for clearing that up. It's certainly his intention to make sure that no one that doesn't care about kids is taking care of children.

My recommendation is that perhaps we take a strong look at perhaps amending this bill because I didn't see anything in the language that gives the worker the option as to whether or not they're going to work in the child care area and my concern, therefore, is even stronger for the children than it is for the worker that we not have people who may not like children or they may not have any understanding of how to supervise them, that they not be in that particular area and in New

York City, certainly -- there certainly has been a complaint that people are being assigned to areas where they have no experience and also that they have no interest and where it doesn't involve children, we might create that kind of a scenario but certainly when we're talking about caring for children, we would want to think about that, and so I would just suggest that perhaps Senator Marchi consider putting his stated concerns that we just heard into the legislation so that we create some option for the employee. Otherwise, when someone goes on Workfare, they get assigned into the child care field and then subjected to the type of investigation and fingerprinting that they may not have wanted to endure because they may not have wanted to go into that area and it just exposes, in some respects, some information about them that doesn't really mean that they can't work. It just means that they can't work in a certain area which they may not have wanted to do anyway.

So it's really just a thought that we would like to contribute to this whole process, a suggestion that perhaps we reconsider

this because we really come into some areas of constitutionality when there's coercion to work and then coercion for one to be subjected to the types of investigations and law enforcement procedures that, you know, would be more common to a person who had been arrested or in any way investigated for committing a crime.

In the area of children, let me just restate that it would probably be most important to clearly delineate that we want people who would think that this is something they could do and something they could do well.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: Would my friend, Senator Marchi, yield to a question?

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

SENATOR GOLD: Senator, we do not have a law, do we, that requires this kind of a check for anybody who works in this area, do we?

SENATOR MARCHI: No.

SENATOR GOLD: And, Senator, we -

SENATOR MARCHI: Not that I am aware of.

SENATOR GOLD: Yeah. And, Senator, if you'll yield to a question. We don't have any law that requires the criminal background check of people who are in Workfare generally, do we?

SENATOR MARCHI: No.

SENATOR GOLD: Senator, this is my problem with the bill and it's not that much different than Senator Paterson, but I want to -- I want to make sure about it.

The bill starts out and says that a person must be competent to fulfill the assignment. Senator, I think that there's no argument with that. That's what this is all about, but what I'm concerned about, number one, anyone could go into this program and say, We want to get a criminal background check on Jones. Call him in and tell him that we're going to assign him into this particular program and he must submit. So I see that as a method of printing people, as Senator Paterson pointed

out, but since there's no choice, you could use this as a method to print people who otherwise you would have absolutely no right to print, but the thing which concerns me most, Senator Marchi -- and to some extent this is similar to some of the bills we've had where it's been argued on this floor in the HIV/AIDS area that by doing certain testing, it tells you nothing. I mean, supposing you had an individual who has never been in trouble with the law at all but who really sincerely hates children and, as a matter of fact, that individual might be a college graduate. Might be any one of a million things which on paper qualifies the person. Why do we want to have a situation where we have people, first of all, where we set up tests which may not tell us anything because you can have people who would -- with no criminal record who would be incompetent in the real world in handling children because they don't want to do it and not have this way out that Senator Paterson has been talking about. So that at least we have people in there who, by choice, are making the decision they may like to go into that field.

SENATOR MARCHI: In the -- in the

broadest possible setting that you said, that could be a case where -- but a certain presumption that they would be operating lawfully. Teachers and teachers' aides now have to go through that process if they're doing that but they're getting out of the picture and returning to people that -- competency certainly if they're alienated by the presence of children -- would not have to go through the rest of it.

I would suggest that we proceed with this because it is a matter of delicacy and I don't -- I believe that the Albany legislation is on all fours with the legislation that I introduced. It was introduced incidentally just shortly after we had started the ball rolling on this piece and -

SENATOR GOLD: I'm sorry.

SENATOR MARCHI: -- certainly if a variant comes up in conference and the Assembly goes along, I would be available to it, but at this point, just weighing the pros and cons, I have to defer and go on the side of the safety of the children that are affected and I just -- granted, you know, there's an exception to almost any rule that you can possibly

conjure, but I think the process as is is adequate. If we have something better to show, we'll attack it, but I -

SENATOR GOLD: Let me phrase one direct question, Senator.

SENATOR MARCHI: Yes.

SENATOR GOLD: If we're concerned about people who have custody and supervision of children, why don't we demand criminal investigations? Why do we assume that the only people who should have criminal investigations are people who are part of a Workfare program?

SENATOR MARCHI: Teachers and teachers' aides who are in charge have that requirement now. A background check has to be included. So I don't see that as a fatal block. We're extending it not on a very widespread basis but just on those circumstances and I wouldn't want it to -

SENATOR GOLD: Well, Senator, if you'll yield to -

SENATOR MARCHI: If children are involved -- and there may be circumstances in their -- in the points delineated in the bill that might constitute a risk or a hazard for

children, I think that's what probably persuaded the Albany County action.

SENATOR GOLD: Well, if the Senator will yield to a question.

SENATOR MARCHI: Yes.

ACTING PRESIDENT KUHL: Senator Marchi continues to yield?

SENATOR MARCHI: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR GOLD: Senator, I can respect Albany County and, you know, in this Legislature, Senator, we vote a couple thousand times a year and we don't agree on every issue. It doesn't mean we lose respect for one another. I don't happen to perhaps agree with Albany County. I don't see where the law is, but the point is this. My question is a simple one. This has drug testing. From my understanding, we don't drug test anybody else and what I'm concerned about is the concept of constantly setting up enemies.

Now, you are a fair person and you wouldn't do something to set up enemies but the fact is this bill does it. This bill tells

you that, if you have anyone who's not on Workfare, we can presume they have no criminal background and we can assume that they are not on drugs but, if they're on Workfare, this says they have to prove they are not on drugs and they're not criminals, and that, Senator Marchi, puts these people as different classes of citizens and the fact that they may need some kind of help doesn't make them a different class of citizen.

This is a state where, as of August 1996, we had over 1.1 million people unemployed. 520,000 of those people were not on welfare. About 616,000 are on welfare, which means when we tell our welfare population to go out and get a job, they're standing behind 520,000 of our citizens who can't find a job or on welfare. I think we got to stop setting up enemies.

These people are in a Workfare program. It doesn't make them criminals. It doesn't make them drug addicts. This law separates them and says that, if you're in that program and you want to work with children, you need that testing, whether you're competent or

not, and if you're not in that program, you don't have to have that testing and you may be less competent.

I don't argue with the concept of trying to make sure people are competent, and I don't argue with the concept to make sure people are safe, children particularly, but I don't see why, if we're concerned about the children, that the rule isn't aimed at the children in securing them rather than making a different kind of citizen out of somebody on Workfare.

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

Senator Marchi, on the bill.

SENATOR MARCHI: I wouldn't even mind respectfully to say that these same rules apply to us. We all have to submit, all of us, the whole chamber, I mean, but we are considering the welfare of the children and we just want a continuity under the present auspices or the past auspices moving into this Workfare that the same rigid test be applied and hopefully will inure to the benefit.

This is -- I'm not -- certainly I respect your judgment. I respect it as being -

you have a genuine concern for the children and you have this broad concept that you've described, and I respect you for that. I have no quarrel, but I feel that those of us who can vote for this will be opting for something that is needed if we're going to entrust thousands, tens of thousands of children to people who perhaps may present problems.

SENATOR LEICHTER: Mr. President.

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

SENATOR LEICHTER: If Senator Marchi would yield.

ACTING PRESIDENT KUHL: Senator Leichter. Senator Leichter, I'm not not recognizing you, but a colleague I have overseen here would like -- and is on the list prior to your being recognized.

So the Chair would recognize Senator Oppenheimer, who's been very patient in waiting for an opportunity to speak on the bill.

SENATOR OPPENHEIMER: What a gentleman. I mean, these other gentlemen have been hopping up and I have been very sedate back

here.

A couple of thoughts come to mind. First of all, the selectivity of drawing out certain groups that need fingerprinting and drug testing, I think is offensive as has been mentioned earlier. I have often thought because we seem to be drug testing or fingerprinting certain industries, certain groups, certain, you know, workers, that it seems to say something about these people, that we require fingerprinting and drug testing for this group.

It has occurred to me -- and I offer this as a suggestion -- that perhaps what we ought to be doing in our state is fingerprinting and footprinting all newborns because then we would not be saying this group of people is a lesser group or requires further criminal check or drug testing -- well, that's a separate issue, but the fingerprinting and footprinting done in -- at birth, I think is something that is a value to everyone. First of all, we are now doing it with our youngsters, small children, so that if they get lost, we are able to have some way to track them and find the children, but I do find it offensive that

particular groups are singled out and made to feel like they are lesser people or of lesser quality.

The other issue I would like to bring up along with this bill -- it's not a part of this bill -- is the concern within the child care field -- the concern within the child care field, that the people we are taking in Workfare and others are not receiving the kind of training that should be mandatory for anyone dealing with young children.

We now know after seeing the federal report which came out a month ago how vitally important it is to have maximum stimulation and caring for children up to the age of three and four. To assume that this is knowledge that is simply inborn is absurd.

The people within the field are very, very concerned that these child care workers that are coming on-stream are coming on without any background or any training and that this has to be made an integral part and certainly if Workfare is forcing people into the roles of child care providers, there couldn't be anything that is more worrisome because these

are not people who even start with a caring and a concern necessarily for children, but even with that caring and concern and love for small children, it is absolutely essential that we have some kind of training and oversight component in the care of our smallest.

Thanks.

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: If Senator Marchi would yield, please.

ACTING PRESIDENT KUHL: Senator Marchi, do you yield to a question from Senator Leichter? The Senator yields.

SENATOR LEICHTER: Senator, would you support a bill that anyone whose work involves the care, custody or supervision of a child be fingerprinted and drug tested?

SENATOR MARCHI: I would support a bill, Senator. I would go much further. I believe some sessions ago I even introduced a bill requiring every single person in the United States to be fingerprinted. You could be -- you could be on a highway and they strip you of your credentials and they don't know who you are and

they may administer assistance that would be detrimental to you but if we had swift methods of establishing identity -- I don't see anything demeaning. I mean, I was faced with finger printing. I'm certain you were too. There's no -- no sense of hostility in that -- in privileged circumstances of service, most of it of a public nature but not necessarily all of it, that are -- this identity is most important and if part of that is the associated problems that would be revelatory in any decent investigation, I think it's the -- I think it's a permissible limit that we can go to to protect children and that's first and foremost. I mean, we have no adequate substitute here that we're considering, and I hope that if the Assembly takes this up, as I have reason to believe that they may, that if something emerges, I - certainly perhaps a better variant that I have not -

SENATOR LEICHTER: Mr. President.

SENATOR MARCHI: -- state my ability will come up but I -- really, I think this is bedrock as far as the safety of the children who are entrusted to the care and

custody of these people.

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

ACTING PRESIDENT KUHL: Senator Marchi, do you continue to yield? The Senator continues to yield.

SENATOR LEICHTER: Senator, I'm not -- I'm just exploring ground that Senator Gold, I think rightfully, opened up. If, as I know it is, your concern is the care of children, certainly fingerprinting everybody in the United States has absolutely nothing to do with this. So that's a totally different issue.

SENATOR MARCHI: Then we wouldn't be having this discussion.

SENATOR LEICHTER: Excuse me. Let me just finish. Senator Oppenheimer's point, very well made, really doesn't deal with the issue that I think Senator Gold raised which concerns this bill, which is why do you take this one class? If your concern is children, why don't you say that everybody who has the care or custody or supervision of a child has to be drug tested as you provide in this bill people on welfare have to be? Can you answer

that to me?

SENATOR MARCHI: Unless you feel that if you call in a baby-sitter which is -- I have to go to grandchildren if I have to think of that, that you have the little girl next door that is a teenager and should be drug tested, if she comes in and baby-sits.

You know, we can -- the reductio ad absurdum are -- frequently are not impossible. They do happen, but I think this is an important first step, and I hope the Assembly addresses this issue and perhaps they may come up with a better variant. There's no pride of authorship here except that I feel that it does meet a need and I hope that most of you can support it without -- even though I respect your sensitivities as they have been formulated.

SENATOR LEICHTER: Mr. President, just -

ACTING PRESIDENT KUHL: Senator Leichter.

SENATOR LEICHTER: Just on the bill.

Senator Marchi, I know your concern for children and, in fact, your concern

for everybody and the very fair and very compassionate way that you approach it, but I really think in this instance, Senator, you're stigmatizing a group in really a highly offensive manner.

If you want to say that for the protection of children, I want anybody who works with children who has their care to be fingerprinted, check their records -- and we do that in some instances, by the way, as you know -- but I also want them checked, drug tested. You want to do it across the board. I may not agree with you, but at least you're not creating invidious distinctions, but if you say there are people on welfare and now they're going to -- as part of their Workfare, they're going to be asked to work with children and these people are more likely to be a threat to children, they're more likely to be drug addicted, I think you're stigmatizing this group and I think very, very unfairly -- and, frankly, I think you would be the last person in this house that would stigmatize any group, and I'm sure that your concern for children prompted you to put in this bill, but I think on examination, Senator, I

really think it is offensive.

We have people on welfare for all sorts of reasons, good people, honest people, fair people -- yes, there's some people on welfare that are drug addicted as there are people not on welfare who are drug addicted but to say that these people have to go through a scrutiny, a check that nobody else in our society goes through, that, I think, is really offensive. I don't think there's any data that would justify this, and I would strongly urge you to really look at this bill, withdraw it because I don't think anything as far as the protection of children justifies this sort of labeling a group, really branding them in a way that, as a group, you are suspect. We're going to fingerprint you. We're going to check your records. We're going to drug test you because you are people that we can't trust with children. I don't think there's a justification for that.

I'm sorry to say this, but I think it's a bill that's offensive.

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

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Record the negatives and announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1141 are Senators Gold, Leichter, Montgomery, Paterson, Rosado. Ayes 50, nays 5.

ACTING PRESIDENT KUHL: The bill is passed.

Secretary will continue to call the controversial calendar.

THE SECRETARY: Calendar Number 1145, by Senator Rath, Senate Print 4405, an act authorizing the implementation of a shared service pilot project.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Rath, an explanation has been requested by Senator Paterson.

SENATOR RATH: Mr. President, this bill puts in place a pilot project which,

to my mind, seeing as I'm the prime sponsor of the bill, obviously I think this is one of the answers that we are going to be able to provide to the property taxpayers of New York State.

The property tax issue has been a number one issue not only of the Governor's, the Senate's, the Assembly, there are very few that don't have that at the top of their priority list and what's happened in New York State is we have a myriad of small governments that are taxing and duplicating, taxing and duplicating and we found last year, as we started looking at governance projects among municipalities, that there were many, many areas where the municipalities could share services and save dollars.

It came to my attention, however, that many of the dollars that we spend, of course, are in the school districts and so the question then was can we get school districts and municipalities to share services, and so I instituted a pilot project in the 60th District which has been extraordinary successful, towns and school districts sharing. If you're interested in some of the examples as to how

much they saved the taxpayer, what the cost of the projects were -- and let me be clear that it is a pilot project in my district and the $20,000, which was the upper amount available to the municipalities and school districts that share it, the upper limit was $20,000. Those $20,000 were not to be used for program studies. They were to be used for implementation, moving forward in hard kinds of activities that both would have had to do, like synthetic natural gas station, rather than build two, build one, that kind of project.

So as we have been successful in the 60th District, I am hopeful that you all will agree with me that this project should move statewide on a pilot. We do have Assembly sponsors who are extremely enthusiastic about the bill, and I urge your support.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, I have a couple of questions, if Senator Rath would yield.

ACTING PRESIDENT KUHL: Senator Rath, do you yield to a question from Senator

Paterson?

SENATOR RATH: Surely.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR PATERSON: Senator, is the granting procedure extended to programs that are already in existence, or do they have to be new programs to fall under this designation?

SENATOR RATH: One of the questions that we were asked early on, as long as a school and a municipality -- and we limited it to towns because I go across counties in my district, so we didn't get to counties, but our opinion -- and we were moving, and I can't say it was informally because we worked with Senator Sheffer in the governance project at UB, estab lished a small council that made the decisions about who -- how the grants would flow and also provided the credibility on evaluating how many tax dollars were saved. We determined that, yes, they would be eligible as long as it was a school and a municipality.

SENATOR PATERSON: Thank you, Mr. President.

Thank Senator Rath.

My final question relates to the interaction between the municipalities and the school boards. I see that there has to be a consultation between the school board and the municipality. What if two separate municipalities were endeavoring to put forth a program or perhaps even two school districts, would they be eligible?

SENATOR RATH: What we found, Senator Paterson, was that as long as we kept the schools and the municipalities talking with each other -- and they could have two or three school districts in two or three towns. In fact, one came to us on the first round of grants and was ineligible because it wasn't broad based enough. It was -- two school districts wanted to put something together and they didn't have a town in it. So what happened is we moved forward -- or they moved forward, went back to the drawing board, brought in a town, a village and another school district because it was a large town of Amherst which encompasses several school districts and so what they did is they got the town of Amherst in it, several school districts and the village of

Williamsville, and so the answer to your question is yes.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, if Senator Rath would yield for one last question.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR PATERSON: In New York City, for instance, because it is a city, would this legislation allow New York City, for instance, to consult with a school district in Nassau County with the desire to put forth a program?

SENATOR RATH: Some of the details would be worked out by the council that would be established with the chairman of the Local Governments Committee in the Assembly or their designee and myself or my designee plus appropriate appointments from the Senate, the Assembly and the Governor to work out details like that, Senator. I see every possibility of where there's duplication and if there's duplication between the city of New York and

Nassau County, I would think that they could certainly talk with each other. There are no jurisdictional boundary lines that are talked about in the bill, and I think that the reason for a pilot project in the state would be to show forth creative and innovative solutions to what we now have as overlapping taxing jurisdictions which are causing property taxes in the state of New York, as you know, to remain high.

The goal of the bill is to stabilize or reduce property taxes and the steering committee or council, I guess we call it, that would be established would have as their prime responsibility to show us the savings and in that popular movie lately, I guess it was Jerry whatever, "Show me the money", that's what we want. We want to see the money that's saved for the property tax.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Senator Rath.

Mr. President, on the bill.

ACTING PRESIDENT KUHL: Senator

Paterson, on the bill.

SENATOR PATERSON: There is just the concern that I have that there doesn't appear to be any money in the budget for this, but the answers to my questions were quite satisfactory. The program seems to be fine. I just -- with this admonition. I hope that the budget will allow for the resources to fund it.

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 7. This act shall take effect immediately.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 1149, by Senator Nozzolio, Senate Print Number 4917, an act to amend the Civil Practice Law and Rules, in relation to prisoner litigation

reform.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT KUHL: Senator Nozzolio, an explanation has been requested of Calendar Number 1149, explanation requested by the Deputy Minority Leader, Senator Paterson.

SENATOR NOZZOLIO: Thank you, Mr. President.

This bill establishes a filing fee in the Court of Claims with provisions for partial payment for the indigent, in an effort to ensure equity for those who are filing civil litigation in our state courts for claims against the taxpayers.

This filing fee and requirement of exhaustion of administrative remedies are processes and procedures which every citizen in this state must proceed under when the measure -- when a measure is brought to civil litiga tion. We're asking for actually establishing the same type of process for prison inmates which would drastically reduce costs for those inmates for bringing their claim as opposed to private citizens who must pay a significantly higher fee. We're asking for a fee to be

established through this legislation.

ACTING PRESIDENT KUHL: Senator Waldon.

SENATOR WALDON: Thanks very much, Mr. President.

Would the gentleman yield to a question or two?

ACTING PRESIDENT KUHL: Would Senator Nozzolio yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator yields.

SENATOR WALDON: Senator Nozzolio, if I as a private citizen outside the prison, non-prisoner, desires to bring an action, is it your understanding that I would have to withstand the costs of that action?

SENATOR NOZZOLIO: Mr. President, if Senator Waldon wishes to sue the taxpayers of the state in the Court of Claims, Senator Waldon would have to pay a $175 filing fee as would every other citizen in this state. This bill requires a $50 filing fee for inmates. Again, Senator, non-prisoner litigants like yourself

would be paying $175. We're asking inmates who bring these suits to pay $50.

SENATOR WALDON: Mr. President, would the Senator continue to yield?

ACTING PRESIDENT KUHL: Senator Nozzolio continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR WALDON: Senator, I don't want to burden you with a lot of unnecessary rhetoric, but in order to make this point, I have to pursue this course of action. We've been down this road before, so pardon me if you will for traveling that same journey, but to make the points that I need to make regarding this proposal, I must do this.

Will you please tell us if you know what the normal amount of money earned on a daily basis is by those prisoners who have jobs?

SENATOR NOZZOLIO: Senator, you asking me the normal amount of average wage earned by a laborer in this state? Are you asking me another question?

SENATOR WALDON: By prisoners who have jobs, to your knowledge, what is the amount of money they normally earn on a daily basis?

SENATOR NOZZOLIO: Inmates who are working, Senator -- again, we talked about this just last week. Inmates who are working in this state, and all inmates are not required to work -- I'd like to have a bill that's before you that would require inmates to work -- but those inmates who do have initiative make up to $5 per day. Of course, that's above their - the other cost of meals, cost of housing, cost of cable television, and the like, that inmates get free benefits there, other things that inmates receive. Those who are working receive a wage of up to $5 per day.

SENATOR WALDON: Would the gentleman continue to yield, Mr. President?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR WALDON: Thank you, Mr. President. Thank you, Senator Nozzolio.

Senator, those who do not have

jobs, for example, some of the prisoners are ill and unable to work, some choose not to work. Do they have less rights under this nation's rule of law concept than those who have jobs, who are all -

SENATOR NOZZOLIO: Mr. President, those who choose not to work for whatever reason vote it away. That doesn't mean they don't have income from outside sources. Their family may have income. What this measure does is say that those inmates, like Chaka Zulu, who is in jail for murder and with weapons possession, who has filed 347 lawsuits so far -- name Chaka Zulu - or Douglas Lee, murder and attempted arson, who filed 216 lawsuits, Henry Latham, in for sexual abuse and attempted sodomy, 126 lawsuits, Kevin Alleyne for robbery, Anthony Gill for manslaughter and stolen property, Jory Lawrence for rape and sodomy, all those inmates who are now filing hundreds and hundreds of lawsuits, paying no fee whatsoever to access the court system, we're focusing on those inmates who are obviously abusing the system.

Now, those who may have a legitimate civil grievance -- civil grievance -

I should underscore this measure does not apply to any type of litigation that results from an individual's incarceration or their conviction or their appeal for that conviction. We're talking only civil litigation here. When these inmates access the court, we're saying you need to pay a filing fee if you have the money, those who are determined to have a claim, ensuring that inmates -- and I think that this is the essence of your question, Senator -- ensuring that those who are -- those inmates who have a meritorious claim should not be denied the right to bring such action due to the lack of inability to pay a filing fee.

I think, Senator, may I interpret that as the essence of your question. Those inmates who have not the ability to pay, what would happen, that what we're saying is that those who do not have the money in their account, those that do not have those resources, that there will be efforts as outlined by this legislation to deal with indigence and there will be a system so that those would not be paying, those who do not have those funds and are determined indigent, do not have to pay the

fee.

SENATOR WALDON: Mr. President, would the gentleman continue to yield?

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

SENATOR NOZZOLIO: Yes.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR WALDON: As I understand what you said to this moment, Senator, then this applies to only those inmates who file most of the suits. Your interest and emphasis seems to be only on those who file multiple suits, so is this proposal only for those who file multiple suits?

SENATOR NOZZOLIO: No, Senator, this doesn't deal with -- certainly our concern is with the -- those who are abusing the court system in an obvious fashion, and I could detail for you those types of cases that are so egregious that they would make your hair stand on end. Matter of fact, one of the cases was for a bad haircut that an inmate decided the haircut that he received at the prison barber shop gave him a headache, so he decided to

access the courts at your expense and the expense of all the taxpayers of the state, access the court without a filing fee to screw the taxpayers because of his bad haircut.

Now, Senator, that's the type of litigation we're talking about here. That's the type of essence of decision to put up a filing fee because very clearly those inmates who are engaging in a hobby -- you can't play golf in prison. You can do a lot of other things, bowl, some prisons actually have bowling alleys. You can watch color cable TV. You can do a lot of things, but some of inmates decide that this is their sport, this is their recreation, and they're doing it at the taxpayers' expense.

We're trying to say to those recreational claimants, It's time to stop. Let's have a filing fee; let's put it on the books. Let's charge those inmates for this type of litigation and that's why we're before us today with this very sensible approach, Senator, to solving the problem.

ACTING PRESIDENT KUHL: Senator Waldon.

SENATOR WALDON: Senator continue

to yield?

ACTING PRESIDENT KUHL: Senator Nozzolio, do you continue to yield.

SENATOR NOZZOLIO: Yes, Mr. President. Senator continues to yield.

SENATOR WALDON: Senator Nozzolio, do you have any figures before us that you can show to those in the chamber of how many suits that are filed versus how many of those are adjudged frivolous of those that are filed?

SENATOR NOZZOLIO: Senator, the Attorney General has a report that he has issued that indicates approximately 95 percent of all inmate suits are eventually dismissed by the courts.

SENATOR WALDON: Would the gentleman continue to yield?

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

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR WALDON: In that number, was there a famous or infamous case of the

peanut butter case. Are you familiar with that case? Was it also in the report the beige versus the white towel, and was it also in that report the case of the salad bar claim; are you familiar with those?

SENATOR NOZZOLIO: Well, Senator, is that the case where the cop killer sued for 4 million dollars because the prisoner -- because the prison allegedly served soapy milk; is that the case you're talking about? Is that the -

SENATOR WALDON: I'm talking about -- (Unintelligible talking over exchange.)

ACTING PRESIDENT KUHL: Gentlemen! Gentlemen! Please, we can't hear the phone. Senator Waldon, if you would just give Senator Nozzolio an opportunity to respond I'd appreciate it, and then if you have another question you want to ask, that's fine.

SENATOR WALDON: I apologize.

ACTING PRESIDENT KUHL: O.K. Senator Nozzolio, would you finish with your answer?

SENATOR NOZZOLIO: Yes, Senator. I just got some advice from my counsel, and yes.

ACTING PRESIDENT KUHL: Senator Waldon, you asking him to continue to yield?

SENATOR NOZZOLIO: Yes.

SENATOR WALDON: Yes.

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

SENATOR NOZZOLIO: Yes.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR WALDON: Just for the record, I asked about the peanut butter case which was a case where someone ordered peanut butter. The wrong peanut butter was delivered. He asked that it be taken away and the right peanut butter be returned; the wrong peanut butter was taken away, the right peanut butter was not returned but because of his making an issue he never received the right peanut butter and I believe he was transferred that very same night. Somebody decided that, for the fact - the mere fact that he brought up the issue of having the wrong peanut butter delivered merited transfer.

In regard to the towels, it was a situation where a family had sent a gift to a

prisoner and the gift was confiscated, and he made an issue about the gift being confiscated and he -- and the result was that he was punished.

In regard to the salad bar claim it wasn't just the salad, it was the rodents and the infestation in the food from the rodents and the fact that the prisoner made an allegation about that, he ended up being punished.

Did these matters appear in the Attorney General's report?

SENATOR NOZZOLIO: Mr. President, in response to that, I think it was a question. Yes, Senator, the peanut butter case you referred to is in the Attorney General's report and the wrong peanut butter was either crunchy or smooth, I'm not sure which one, but the inmate decided he didn't like crunchy or smooth, I'm not familiar with all the facts, but it was either crunchy or smooth, Senator, and the inmate decided to sue because he was given the wrong peanut butter.

Senator, what we're talking about is the 300 suits out of 301 that are not meritorious, those, whether it's chunky or

smooth, whether it's a gift from home which in many cases can be drugs, they may receive contraband, such and the like, with those meritorious claims, Senator, the courts can make that determination.

What we're saying here simply is, in order for an inmate to access the courts, they should pay less than one-third of what every other citizen must pay in this state to get the same type of access to the same courts.

SENATOR WALDON: On the bill, Mr. President.

ACTING PRESIDENT KUHL: Senator Waldon, on the bill.

SENATOR WALDON: It may appear that this is an exercise in futility when I ask my colleagues questions about these very real issues, but I assure you I would not waste your time or the time of the people of the state of New York with frivolous activities. I believe this is the nature of law, that the rule of law is paramount, that if the President of the United States can be forced to respond to his behavior prior to his presidency, and he is the highest elected official in this nation, if he

is subject to the scrutiny of the law, so that there will be an equal and level playing field for all the citizens of this great nation, then those who are at the lowest rung of the socio economic ladder should also have a right when they have a proper grievance for it to be heard.

It wasn't about chunky peanut butter or smooth peanut butter. It was about whether or not someone who has a valid grievance has a right to be heard even in that enclosed, totally controlled environment that is a prison. Obviously this prisoner did not. He paid for, with the little money that he had, the peanut butter. He had his peanut butter taken away, and this may cause some of you to chuckle but, when you are doing hard time, peanut butter may make the difference. The peanut butter was confiscated. The right peanut butter was not returned and because he bitched, he was removed and transferred that night from the prison that he was in to another.

Is that fair? Is that the proper grievance procedure? Should someone have that kind of control over another one's life where

there is no opportunity to be heard? I think not.

I think for us to require that they pay the fee is ludicrous -- is ludicrous. If you want to require them to pay the fee, let's raise the salaries. If you want to require them to pay the fee let's ensure that they have a proper form and forum for their grievances. Fascism works in other places. It works very well. I don't believe we should permit Fascism to function that well in this nation, and whether or not we want to recognize it or not, we do have a police state that is so in control of our lives if we are not bordering on Fascism, we're certainly tinkering with it.

I would urge my colleagues to vote against this. I would urge my colleagues to recognize that this is a nation of law. I would urge my colleagues to recognize that the rule of law has always been paramount in America and that we should subscribe to those things which absolutely and unequivocally promote the rule of law in this nation.

This approach does not. It fails. It is flawed, and I would encourage

everyone to vote no on this despite the protestations of my colleague on the other side of the aisle.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President. I wonder if Senator Nozzolio will yield for a question?

ACTING PRESIDENT KUHL: Senator Nozzolio, do you yield for a question from Senator Montgomery?

SENATOR NOZZOLIO: Yes.

SENATOR MONTGOMERY: Thank you, Senator Nozzolio.

Senator Nozzolio, there is -- I have a memo in front of me from the Prisoners' Legal Services, and they discuss in one paragraph the problem with how the Attorney General actually counts the cases. It seems that prior to a case actually being processed, there is a notice of intent to sue the state, but there are a large majority of these notices that die at that level, that they really are not pursued any further, but nonetheless the

Attorney General counts those notices as if they were actual filings to go into a full-fledged lawsuit.

Is that what you're actually counting as -- as the large number of claims or lawsuits by inmates? Is that the number that we're using that you are perhaps using and that the Attorney General is using, all of the notices and, in addition, those -- the factual lawsuits themselves?

SENATOR NOZZOLIO: Mr. President, Senator, yes, that may be the methodology used for counting those. The course is the preparation to defend the cases depending on where it is in the litigation process, but certainly the Attorney General being put on notice for claim does require some preparation. What we're saying, though, is every one of those claims under this bill certainly could be brought. We're not trying to refuse anybody to bring their claim. What we're saying is that those claims should be brought at one-third the cost of what it would cost anyone else to bring a claim, and I should add to Senator Waldon's question, comments regarding the President of

the United States issue, I understand the litigants paid their filing fees, Senator.

What we're saying is that the inmates have the right to sue here. There only -- there is a cost process though, a cost factor when you access the court -- clerk time, filing costs. What we're saying simply is inmates should be paying part of that cost, not all of it, not anywhere near what the average citizen pays, just simply a fee.

SENATOR MONTGOMERY: Senator, it sounds like this probably is an inflation of the actual problem based on the way the Attorney General does the counting.

Now, the other issue that is raised which I would like to ask you if you're familiar with is the administrative process that DOCS has for settling disputes within -- within the system. Is it the case that this particular process is not effective, does not work, and, therefore, is not what the inmates view as a legitimate response to any of their -- their concerns and grievances?

SENATOR NOZZOLIO: Senator, it's an excellent question, in my view, but I believe

that many inmates are circumventing that process for a variety of reasons. I can only speculate what those reasons are, but there is a lengthy process. What most inmates are saying now they're not even going to go through regardless of merit. I guess there's probably a suspicion that they are going through the same agency. However, if every citizen had to bring his case, the first thing the judge would say is has the litigant, the claimant, exhausted their administrative remedy, and what we're saying is that the inmate needs to exhaust his administrative remedies first before they bring a case, that I am holding the lengthy process and procedures that do exist, but inmates are not totally availing themselves of them. I think likely if some did, some would get relief; if more did, maybe they would get relief.

Senator, I also wanted to add just very quickly that those claims that are brought and are successful, the inmate's filing fee is returned, so that those, in a sense, are saying that if there is a valid claim here that makes sense, that the courts deem to be merit orious, we're saying for that inmate's claim

that's successful, their filing fee is returned.

ACTING PRESIDENT KUHL: Senator Montgomery.

SENATOR MONTGOMERY: Mr. President, just one last issue that I'd like to raise with Senator Nozzolio.

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

SENATOR NOZZOLIO: Yes.

ACTING PRESIDENT KUHL: Senator continues to yield.

SENATOR MONTGOMERY: Senator Nozzolio, there needs to be an agreement that there is a need for some streamlining and some improvement in the process, the internal process, and I'm just wondering if, since you are in this legislation sending the inmates back to that process and forcing them to -- to go through that before they are able to file a lawsuit, then it seems to me that we need to address that issue, the problem related to the administrative process internally first before you require people to try and address their

grievances through that.

SENATOR NOZZOLIO: Well, your comments make sense to me, and I certainly would encourage the process to be streamlined, if there are kinks in them to iron them out if we required inmates to use it. Right now it would be a waste of energy and time to perfect the process -- and no process can be perfect if it's human, but certainly I would fight hard to iron out wrinkles that exist in the process if there was a similar requirement that inmates use it, that if this bill passed I would be very -- if that comes passed and signed into law, I would very much work with you and every other Senator to ensure that process is perfected, but right now we're not requiring inmates to use the process. Most are circumventing it.

To focus on a process without the requirement that the inmates use it, I think, would be an exercise in wasted effort.

SENATOR MONTGOMERY: Thank you.

ACTING PRESIDENT KUHL: Senator Montgomery.

SENATOR MONTGOMERY: Briefly on the legislation, Mr. President.

ACTING PRESIDENT KUHL: Senator Montgomery, on the bill.

SENATOR MONTGOMERY: I believe that Senator Nozzolio is -- I appreciate what he's trying to do to save the state money by eliminating frivolous lawsuits by inmates, but I have two questions regarding that premise. One is that there is, in fact, this large number of frivolous lawsuits. Given the fact that, as he admits and as the -- the memo that I have indicates that the way that they're counted is not exactly forthcoming in terms of the -- the factual number that are filed and become active lawsuits.

The second concern that I have about this is that we're sort of jumping the gun, if you will, by forcing people to go through a process which we agree -- Senator Nozzolio agrees that is far from being adequate as a means of resolving grievances that inmates have internally. So it seems to me that it makes more sense, and it's a fairer process if we would address that internal mechanism first. I believe that we -- if you do that, you would see a reduction in the number of notices to the

Attorney General, and thereby accomplishing what you intend to do without penalizing or making it impossible for those inmates who do have legitimate grievances to be able to go into the court process, and certainly if you don't do it, if you do it this way I'm afraid that the only results will be that you'll have the same backlog at the level of the administrative process and we will not have accomplished much except a build-up of the kind of hostility and frustration that puts the system -- puts pressure on the system, i.e., creating an atmosphere of hate or possible acting out and endangering the correctional staff and what have you.

So I hope that my colleagues will look carefully at the memo that has been provided for us by Prisoners' Legal Services. I think it makes sense. They certainly are not opposed to having some means of addressing this issue that Senator Nozzolio has raised, but certainly not in the way that he's raised it because it's not going to be -- going to be productive in what you intend to accomplish.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Any other Senator wishing to speak on the bill? Hearing none, the Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Record the negatives and announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1149 Senators Connor, Gold, Leichter, Montgomery, Paterson, Smith and Waldon. Ayes 50, nays 7.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Smith, why do you rise?

SENATOR SMITH: Mr. President, I ask unanimous consent to be recorded in the negative on Calendar Number 1141.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator Smith will be recorded in the negative on Calendar Number 1141.

Secretary will continue to read the controversial calendar.

THE SECRETARY: Calendar Number 1153, by Senator Tully, Senate Print 5199, an act to amend the Penal Law and the Criminal Procedure Law, in relation to the collection of fines.

ACTING PRESIDENT KUHL: Secretary will read the last section.

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

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Holland.

SENATOR HOLLAND: Mr. President, can we return to Senator Bruno's bill, 1138. Senator Volker is going to answer any questions.

SENATOR DOLLINGER: Explanation on that bill.

ACTING PRESIDENT KUHL: All

right. Secretary will read Calendar Number 1138, by Senator Bruno.

THE SECRETARY: Calendar Number 1138, by Senator Bruno, Senate Print 3113, an act in relation to authorizing Tier I status for Mary Ann Martin in the New York State and the local employees' retirement system.

ACTING PRESIDENT KUHL: Senator Volker, Senator Dollinger has requested an explanation of the bill.

SENATOR VOLKER: Well, obviously I will not be able to do this nearly as capably as the Majority Leader, who is busy trying to straighten out New York City and rent stuff, so he's asked me to take a look at this.

Now, now! At any rate, as I understand this bill, it involves a person by the name of Mrs. Mary Ann Martin, who is with the Social Services Department in Rensselaer County, and the story is that Mrs. Martin was offered a maternity leave in 1971 for a period from 1971 to 1972. She -- her last pay date was actually '71.

In 1972, she officially resigned, then five years later, rejoined the system, I

believe in 1977. Now, when she applied to the retirement system, the retirement system said to her, We will calculate you as a Tier III rather than as a Tier I, because we consider your termination date to be 1971 rather than 1972. As a result, you'd be six years instead of five and, therefore, technically you are not available for Tier I.

What this bill would do, and it is a home rule request from the Rensselaer County Legislature, with both a resolution and a home rule message that requests that she be restored to the Tier I status. The bill would cost the county of Rensselaer $31,000, and the state of New York $19,000, and that is the proposal.

By the way, just so as to make it clear, she did, under the 19... was it '92, Trunzo Law, if I'm not mistaken, she made an application (unintelligible) to that administrative panel and the administrative panel made a ruling that, although they sympathized with her, so forth and so on, they ruled her as not available for Tier I because they said the policy of the retirement people is

that rather than the time that she finished her maternity leave, it would be the actual time that she was paid her last paycheck, and she said, If I had known that I could have worked three days in 1972 and then be eligible, but because of that ruling she was not eligible.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Senator Dollinger.

SENATOR GOLD: No.

ACTING PRESIDENT KUHL: Senator Dollinger has the floor. Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President.

I'm always reminded of that Mel Allen line about beware of the danger of pinch-hitters, so I appreciate Senator Volker standing up and taking questions on this.

Senator, you've answered part of the question. She did utilize the administrative procedure that we created?

SENATOR VOLKER: Yes, yes.

SENATOR DOLLINGER: And they ruled that she didn't have service in 1992 -- or in 1972, because even though she was on

maternity leave she wasn't paid for that maternity leave?

SENATOR VOLKER: That's right. In other words, her last actual pay date was in 1971. She took the maternity leave and then formally resigned during 1972, so that she came back within five years of that resignation date so she was O.K. there, but when the -- when the ruling came from the retirement bureau, it said even though you came back within five years of the time that you took your maternity leave - in other words, she terminated her maternity leave -- they considered it six years because they calculated back to the time that she actually got her last paycheck in 1971 and her argument was, Well, I took the maternity leave and it was my understanding that that tolled my time that I had as far as the five-year period for the break in my service, and, therefore, I should have been -- I should have been able to continue to get my Tier I status.

SENATOR DOLLINGER: M-m h-m-m. Mr. President, on the bill.

I -- I appreciate Senator Volker's lucid explanation. I -- I rise today

because I -- I'm concerned about, and I think as many of the bills that are reflected in this chamber are, about the issue of child birth as a discontinuance in service and the effect that that has on many women, literally thousands of women who left the system in a period of time when it was undergoing substantial changes because of the financial plight of this state in the mid-'70s who left to have children, lost their Tier I status, lost their Tier II status, ran into exactly the same problem that Mary Ann Martin ran into, which was left for a period of time for child birth reasons and maternity reasons to raise our children. We got what was either incomplete or inaccurate advice from the local employer who said, Don't worry, the day of your termination will be the last day of maternity leave. When you resign, then you resign and take your time off to raise your children. This has created a terrible problem for the administrative board that Senator Volker mentioned that Senator Trunzo's legislation, I believe in '93, gave us.

There are a number of bills that are before the house that have been in this

house. One is Senator Lack carries a bill which would require retroactive Tier I membership and better tier benefits to those who take maternity leave. Senator Farley carries a bill which is also introduced in the other house by Senator - or the Assembly Judiciary Chairman Assembly woman Weinstein, which would grant retroactive Tier I status to teachers, just teachers, but to all other employees in the state who left employment for child birth and later returned from maternity service.

I would like Senator Volker or Senator Bruno, or whoever would read this transcript, to take a message back to him to bring those bills forward. I know they're expensive, Senator, and I'm not going to deny that this would put a very significant expense on local communities, but if we believe that women who left for child bearing reasons at a time when the pension system went through dramatic changes, as Senator Volker I'm sure knows, in the period of 1970 through 1980 we went through two or three tiers and we changed the benefits and we did that for the financial health of this state, but what we did is we

punished women who took time off for child bearing during that period of time, and unfairly so, in my opinion.

I'm going to vote in favor of this bill, but I would just urge and I know, Senator Volker, you have great sympathy with us, I'm sure Senator Bruno does, that we look at a way to rectify this wrong and where we have inadvertently punished women for child bearing and this kind of relief, perhaps what we should do is give greater guidance to the administrative board that Senator Trunzo's legislation set up and give them greater guidance, give them greater leeway so we don't have to deal with these on an individual basis, give them the leeway to make the right decisions in behalf of women like Mary Ann Martin, and I would just add that I remain concerned about the notion that the only people who actually get here with a bill like this -- and I don't say this in any way of derogation of Mrs. Martin or Ms. Martin -- but those who have political favors who are able to go to their local communities, get the Rensselaer County Legislature, the Board of Supervisors, to back

this and then it shows up on our desk through the Majority Leader or some other Senator, and that kind of appearance of partiality I don't think bodes well for the whole system.

So I would encourage us to look at Senator Farley's bill, look at Senator Lack's bill, and bring this issue to the floor because I believe that, in the transition of pension systems in the 1970s and early 1980s, we inadvertently punished women for child bearing and that shouldn't have happened.

ACTING PRESIDENT KUHL: Secretary will read the last section.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: Senator Gold.

SENATOR GOLD: Thank you very much.

Mr. President, I was very delighted when this Legislature passed the Trunzo bill, and I think that Senator Leichter and I helped in our own small way with making it into law.

Now, we are being told that as part of the law there are people who don't like

the decision they get, and I -- I think we're getting into areas which have a certain danger. We obviously can't redo litigation between Jones and Smith, but the next thing we'll be hearing is there's a bill to award Hugh Farley $250,000 because he lost a case against the state in the Court of Claims, and he shouldn't have lost the case in the Court of Claims.

I just don't think of the Legislature that way. I really think it is a mistake to do it. Senator Dollinger pointed out that we're opening the door to political favoritism. We're opening the door to a disaster. If we believe that not only should the Trunzo law be the law but that there should be standards and we want them to be lenient or however you want to phrase it legally, we can do that, but I think the concept of taking a matter that was litigated and we set up the process of litigation, and undoing it because the litigant didn't like the result but knew Senator Bruno or Senator Tully or Senator Gold or Senator Paterson -- it doesn't matter -- if it were Senator Farley, I'd look at it differently, but I just think it's a terrible, terrible

precedent.

We open the door to huge criticism for all of us, and I think it's a mistake, and I'm going to vote no.

ACTING PRESIDENT KUHL: Senator Volker.

SENATOR VOLKER: Mr. President, let me just say that I -- it's not my bill, but I -- as somebody who had a number of these bills some years ago that related back to this situation we just talked about, the Trunzo situation, personally, I think we're always going to have these kind of situations because it's the problem with democracy versus a dictatorship or a Socialist state or whatever. In a democracy you're always going to have certain bills, and you can always argue that certain people are preferred and all that sort of thing, and in doing each bill, are you subject to criticism? Sure. That's what they pay us a huge salary for, quote/unquote -- and obviously I guess I say that tongue in cheek - but I guess what I mean is that although I understand what you're saying, Senator Gold, what I think you have to realize is that there

are certain situations that are called to our attention, that I guess it's believed need some attention and maybe it is on a preferred basis, but let me say to you, in response, Senator, to your question about several of those bills, and I think there might be a Volker bill that deals with teachers also -- in fact, I'm a co-sponsor on the one, Senator Farley's bill which deals with the whole system. The problem though, in all honesty, with the bill is it has been costed out at $400 million.

Now, as somebody has said here, I guess eventually we're going to do a budget and certainly this is an issue I think we could look at, but it is $400 million. The other bill for teachers is costed out at a minimum of about $9 million. That still is a substantial amount of money. I happen to agree with you, I think this is something that, in the change-over when we did the Trunzo bill and we did certain things as far as maternity leave that we probably, you know, we didn't think of, and there's a lot of things that have happened in this system as we made changes. We made changes a few years ago in retirement for school districts. The school

districts asked for it, and what we found out is we created some havoc in certain school districts because we made one school district that started out with a person who is part time ending up paying the whole bill for somebody way down the line who then made an appeal there. We didn't intend to do that, but that's the way the law was interpreted and, by the way, we've changed that. We have stopped that.

A lot of these things that I think some of the things that have happened is administrative decisions are made, then maybe it's the Legislature's business to step in and make some changes, and I agree with you it's argued, and my colleague, Senator LaValle says we are in a sense a court of last resort and it's true we should make some blanket decisions. In the meantime, the problem is because these are such huge amounts, to make a blanket decision we have to also look at it in terms of the budget.

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

SENATOR GOLD: Yeah, I'd just like to make remarks in response to Senator

Volker.

First of all, I understand it is not his bill and he's put himself into this pool. I think that it was unfair to bring Senator LaValle into the pool. He didn't ask to get into the pool. Senator Volker, there are - there are people who are in public service who we call judges, and their job is to listen to cases and decide as to the various rights of the people in those cases.

There are also situations where we have bills on this calendar where a municipality did something wrong and we can help them fix it and that's a public service. I think it is completely different where somebody has had their day in court and they ask us to undo it, and I can tell you, Senator, that if this bill was sponsored by a Republican in the other house or a Democrat in this house, there would be some counsel in the back room saying exactly what I'm saying on the floor: Do we want to undo the results of litigated matters? And I just think it's a bad policy and I'm going to sit down for my life.

ACTING PRESIDENT KUHL: Secretary

will read the last section.

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

ACTING PRESIDENT KUHL: There is a home rule message at the desk, by the way. Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Record the negatives and announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1138 are Senators Gold and Leichter. Ayes 56, nays 2.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Holland.

SENATOR HOLLAND: Mr. President, may we return to reports of standing committees. I believe there is a report of the Rules Committee at the desk.

ACTING PRESIDENT KUHL: There is. We will return to the standing -- order of reports of standing committees. I'll ask the Secretary to read the report of the Rules Committee.

THE SECRETARY: Senator Bruno,

from the Committee on Rules, offers up the following bills:

Senate Print 317, by Senator Skelos, an act to amend the Insurance Law;

547, by Senator Kuhl and Wright, an act to amend the Agriculture and Markets Law and the Economic Development Law;

1407, by Senator Spano, an act to amend the Civil Service Law;

1797, by Senator Larkin, an act to amend the Administrative Code of the city of New York;

2012, by Senator Larkin, an act to amend the Real Property Tax Law;

2585, by Senator Farley, an act to amend the Labor Law;

2732-A, by Senator Cook, an act to amend the Public Health Law;

2908, by Senator Stavisky, an act to amend the Penal Law;

3111, by Senator Waldon, an act to amend the Public Authorities Law;

3215, by Senator Leibell, an act authorizing the town of Southeast, Putnam County;

3269-A, by Senator Spano, an act to amend the Retirement and Social Security Law;

3286, by Senator LaValle, an act to amend the Civil Rights Law;

3291-B, by Senator Present, an act to amend the Education Law;

3349, by Senator Kuhl, an act to amend the Real Property Tax Law;

3355, by Senator Marchi, an act to amend the Not-for-Profit Corporation Law;

3385, by Senator Johnson, an act to amend the Tax Law;

3533, by Senator Volker, an act to amend the Civil Practice Law and Rules;

3552, by Senator Leibell, an act to legalize, validate, ratify;

3636, by Senator Rath, an act to amend the General Municipal Law;

3730, by Senator Volker, an act to amend the Civil Practice Law and Rules;

3769, by Senator Volker, an act to amend the Criminal Procedure Law;

3994, by Senator Stafford, an act to repeal paragraph (b) of subdivision 2;

4159-A, by Senator Trunzo, an act

to amend the Retirement and Social Security Law;

3530-A, by Senator Maltese, an act to amend the Highway Law;

4678, by Senator Goodman, an act to amend the General Municipal Law;

4690, by Senator Larkin, an act to reopen the special retirement plan;

4853-A, by Senator Rath, an act to amend the Labor Law and Executive Law;

5350, by Senator Present, an act to amend the Education Law;

2175, by Senator Oppenheimer, an act to amend the Town Law.

All bills directly to third reading.

ACTING PRESIDENT KUHL: Senator Holland.

SENATOR HOLLAND: Mr. President, I move we accept the report of the Rules Committee.

ACTING PRESIDENT KUHL: Motion is to accept the report of the Rules Committee. All in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The report is accepted.

Senator Holland.

SENATOR HOLLAND: Mr. President, can we return to motions and resolutions. I understand there are two privileged resolutions at the desk, one by Senator Maltese and one by Senator Seward. Could we have the titles read, please.

ACTING PRESIDENT KUHL: Secretary will read the title to the resolution offered by Senator Seward.

THE SECRETARY: By Senator Seward, Legislative Resolution, congratulating the Huntersland Volunteer Fire Department upon the occasion of its 50th Anniversary on June 13, 1997.

ACTING PRESIDENT KUHL: Question is on the resolution. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The resolution is adopted.

Secretary will read the title of

the privileged resolution by Senator Maltese.

THE SECRETARY: By Senator Maltese, Legislative Resolution, commending the Order Sons of Italy upon the occasion of its 92nd Anniversary celebration.

ACTING PRESIDENT KUHL: Question is on the resolution. All those in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The resolution is adopted.

Senator Holland.

SENATOR HOLLAND: Mr. President, is there housekeeping?

ACTING PRESIDENT KUHL: Yes. Senator Farley. Return to motions and resolutions. Senator Farley.

SENATOR FARLEY: Thank you, Mr. President. On behalf of Senator Lack, Mr. President, on page 25, I offer the following amendments to Calendar Number 759, Senate Print 5049, and I ask that bill retain its place.

ACTING PRESIDENT KUHL: Amendments to Calendar 759 are received and

adopted, and the bill will retain its place on the Third Reading Calendar.

Senator Farley.

SENATOR FARLEY: On behalf of Senator Marcellino, I wish to amend a bill that's been recalled from the Assembly and if you'd call up Print Number 2898 which was recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT KUHL: Secretary will read.

THE SECRETARY: By Senator Marcellino, Senate Print 2898, an act to amend the General Municipal Law.

SENATOR FARLEY: Good. I now move to reconsider the vote by which this passed.

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

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT KUHL: Senator Farley.

SENATOR FARLEY: I now offer the

following amendments.

ACTING PRESIDENT KUHL: Amendments are received and adopted.

Senator Holland.

SENATOR HOLLAND: Mr. President, there being no further business, I move we adjourn until Wednesday, June 11, at 10:00 a.m.

ACTING PRESIDENT KUHL: Without objection, Senate stands adjourned until tomorrow, June 11th, Wednesday morning, at 10:00 a.m., specifically 10:00 a.m.

(Whereupon at 12:20 p.m., the Senate adjourned.)