ALBANY, NEW YORK

March 2, 1998

3:03 p.m.

REGULAR SESSION

LT. GOVERNOR BETSY McCAUGHEY ROSS, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S.

THE PRESIDENT: The Senate will come to order. Would you please all rise and join with me in the Pledge of Allegiance.

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

The invocation today will be given by Pastor Iris Tucker from the Flatbush Church of the Redeemer, in Brooklyn.

Welcome, Pastor Tucker.

PASTOR IRIS TUCKER: Almighty wise God, we come before You this afternoon invoking Your power and Spirit and Your peace. We come asking You to fill these Senators with wisdom, patience and the understandings of the constituents that they serve, so that they might look at issues of social justice and keep them ever so mindful in Your heart and in Your head. God, we come asking You this in the name and the power and the presence of Jesus Christ. Amen.

THE PRESIDENT: Amen.

Senator Bruno? The reading of the Journal, please.

THE SECRETARY: In Senate,

Friday, February 27th. The Senate met pursuant to adjournment. The Journal of Thursday, February 26th, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Marcellino.

SENATOR MARCELLINO: Thank you, Madam President. We have a few motions here.

On behalf of Senator Saland, Madam President, on page number 16, I offer the following amendments to Calendar Number 264, Senate Print Number 680-A, and ask that said bill retain its place on the Third Reading Calendar.

THE PRESIDENT: Amendments received.

SENATOR MARCELLINO: Thank you, Madam President.

On the -- on page number 14, on behalf of Senator LaValle, I offer the following amendments to Calendar Number 247, Senate Print Number 2597, and ask that said bill retain its place on the Third Reading Calendar.

THE PRESIDENT: Amendments received.

SENATOR MARCELLINO: Thank you, Madam President.

On behalf of Senator Leibell, on page number 14, I offer the following amendments to Calendar Number 242, Senate Print Number 3930, and ask that said bill retain its place on the Third Reading Calendar.

THE PRESIDENT: Amendments received.

SENATOR MARCELLINO: Thank you, Madam President.

On behalf of Senator Meier, on

page number 16, I offer the following amendments to Calendar Number 265, Senate Print Number 2588, and ask that said bill retain its place on the Third Reading Calendar.

THE PRESIDENT: Amendments received.

SENATOR MARCELLINO: Thank you, Madam President.

On behalf of Senator Larkin, on page number 16, I offer the following amendments to Calendar Number 271, Senate Print Number 2012, and ask that the bill retain its place on the Third Reading Calendar.

THE PRESIDENT: Amendments are received.

SENATOR MARCELLINO: Madam President, I move the following bills be discharged from their respective committees and be recommitted with instructions to strike the enacting clause, and that would be Senate Numbers 1713, 1716, 1852, 3760-A, 4267, 4984, 4985, 4987, 4988, 4990, 5123, that's on behalf of Senator Maziarz, and on behalf of Senator

Kuhl, same request, 4334.

THE PRESIDENT: So ordered.

SENATOR MARCELLINO: Thank you, Madam President.

The Secretary will read one substitution.

THE SECRETARY: Senator DeFrancisco moves to discharge from the Committee on Commerce, Economic Development and Small Business Assembly Print 1216-B and substitute it for the identical Senate bill 4349-A.

THE PRESIDENT: Substitution ordered.

Senator Bruno.

SENATOR BRUNO: Madam President, may we at this time stand at ease in the chamber. I think we have some important work to do, if you will all sort of face that way. O.K.

THE PRESIDENT: Stand at ease.

(The Senate stood at ease from 3:09 to 3:15 p.m.)

THE PRESIDENT: Senator Bruno.

SENATOR BRUNO: Madam

President, while we are being organized, I would recommend that we go to the non-controversial calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 81, by Senator Maltese, Senate Print 2469-A, an act to amend the Social Services Law.

THE PRESIDENT: Read the last section, please.

SENATOR DOLLINGER: Lay it aside.

THE PRESIDENT: Lay it aside.

THE SECRETARY: Calendar Number 101, by Senator Volker, Senate Print Number 5007, an act to amend the Criminal Procedure Law.

SENATOR DOLLINGER: Lay it aside, please.

THE PRESIDENT: Lay it aside.

THE SECRETARY: Calendar Number 107, by Senator Leibell, Senate Print Number 3646, an act to amend the Public Authorities Law.

SENATOR DOLLINGER: Lay it

aside, please.

THE PRESIDENT: Lay it aside.

THE SECRETARY: Calendar Number 127, by Senator Present, Senate Print 532, an act to amend the General Municipal Law.

SENATOR DOLLINGER: Lay that aside.

THE PRESIDENT: Lay it aside.

THE SECRETARY: Calendar Number 151, by Senator Velella, Senate Print 355-A, an act to amend the General City Law.

SENATOR BRUNO: Lay it aside for the day.

THE PRESIDENT: Lay it aside.

SENATOR GOLD: Lay it aside for the day?

THE PRESIDENT: Yes.

SENATOR GOLD: That's for the day.

THE PRESIDENT: Yes.

THE SECRETARY: Calendar Number 161, by Senator Hannon, Senate Print 1499, an act to amend the Public Health Law.

SENATOR DOLLINGER: Lay that aside.

THE PRESIDENT: Lay it aside, please.

THE SECRETARY: Calendar Number 187, by Senator Johnson, Senate Print Number 4834-D, an act to amend the -

SENATOR BRUNO: Lay it aside for the day.

THE PRESIDENT: Lay it aside for the day, please.

THE SECRETARY: Calendar Number 209, by Senator Stafford, Senate Print 150, an act to amend the Environmental Conservation Law.

SENATOR DOLLINGER: Lay it aside, please.

THE PRESIDENT: Lay it aside, please.

THE SECRETARY: Calendar Number 210, by Senator Stafford, Senate Print 389, an act to amend the Environmental Conservation Law.

SENATOR DOLLINGER: Lay it aside.

THE PRESIDENT: Lay it aside, please.

THE SECRETARY: Calendar Number 219, by Senator Wright, Senate Print Number 3890, an act to amend the County Law.

SENATOR DOLLINGER: Lay it aside.

THE PRESIDENT: Lay it aside, please.

THE SECRETARY: Calendar Number 220, by Senator Cook, Senate Print Number 4647, an act to amend the Town Law.

SENATOR DOLLINGER: Lay that one aside too, please.

THE PRESIDENT: Lay it aside, please.

THE SECRETARY: Calendar Number 231, by Senator Kuhl, Senate Print Number 1977, an act to amend the Penal Law.

SENATOR DOLLINGER: Lay that aside.

THE PRESIDENT: Lay it aside, please.

THE SECRETARY: Calendar Number 274, by Senator Cook, Senate Print 2729.

SENATOR COOK: Lay it aside for the day.

THE PRESIDENT: Lay it aside for the day, please.

THE SECRETARY: Calendar Number 276, by Senator Larkin, Senate Print 5390, an act to amend the General Municipal Law.

SENATOR DOLLINGER: Lay it aside.

THE PRESIDENT: Lay it aside.

THE SECRETARY: Calendar Number 278, by Senator Rath, Senate Print 6250, an act in regard to filing applications.

SENATOR DOLLINGER: Lay it aside.

THE PRESIDENT: Lay it aside, please.

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

Senator Bruno, we have a motion at the desk.

SENATOR BRUNO: Take it up, please.

THE PRESIDENT: We'll return to motions and resolutions. The Secretary will read. Oh, Senator Marcellino.

SENATOR MARCELLINO: Thank you, Madam President.

I appreciate the motion. On page -- on behalf of Senator Libous, on page number 21, I offer the following amendments to Calendar Number 1, Senate Print Number 1122, and ask that said bill retain its place on the Third Reading Calendar.

THE PRESIDENT: So ordered.

Senator Bruno.

SENATOR BRUNO: Madam President, it appears that we are progressing slowly. I would like to at this time take up Calendar Number 278 until we are ready and then we will take a short recess, but if we can start the deliberation and the debate on Calendar 278.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 278, by Senator Rath, Senate Print 6250, an act to extend the period for filing applications for real property disability exemption.

SENATOR DOLLINGER:

Explanation.

THE PRESIDENT: Senator Dollinger has requested an explanation.

Senator Rath.

SENATOR RATH: Thank you, Madam Chairman.

Senator Dollinger, my colleagues, this is a remedy to a problem that has -

SENATOR LIBOUS: Mike's not on. Got the wrong desk.

SENATOR RATH: In July 1997 legislation was enacted authorizing tax units to provide, by local law, disability real property tax exemption. The law took effect in January 1998. Applications for disability exemption could not be accepted until after - accepted, pardon me, until the taxing units opted in and could not be accepted beyond the taxing units' taxable status date.

A problem surfaced in that at least one taxing unit did not opt in until after the taxable status date, thus precluding multiple disabled persons from benefiting from the 1998-99 exemption. The purpose of this

bill is to remedy that problem whereby, because of early taxable status dates there was insufficient time in which to receive applications for the 1998-99 disability exemption.

Accordingly, this legislation authorizing -- authorizes taxing units who had opted in and who had taxable status dates prior to March 1st, 1998 to opt to extend the date for filing applications for the exemption to March 15, 1998. Eligibility, however, would be based on the taxable status date.

Corresponding with this piece of legislation that many of us have been talking about in relation to the STAR program the above was brought to our attention and when that particular piece surfaced, it was appropriate that the other part come along with it, and this provides this corresponding exemption made to extend the timetable for the appeals process.

The assessing unit would establish a date by which the assessing of tax on the application, a date on which the board of assessment would review and convene for

hearing complaints on denial of these applications and a date by which the board of assessment review is required to act. If the assessment roll is completed and filed prior to the date of the assessment review, the taxing units may enter such exemption on the final 1998 assessment roll until May 15, 1998.

SENATOR DOLLINGER: Madam President, may I ask a question?

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: A question of the sponsor.

THE PRESIDENT: Senator Rath.

SENATOR RATH: Surely.

SENATOR DOLLINGER: Does this bill deal with the particular problem created in the city of Rochester and Monroe County with respect to the tax -- the tax status date that occurred for the disability exemption in the city of Rochester?

SENATOR RATH: Yes, Senator, it does and it was brought to our attention that there was a circumstance wherein the taxing

jurisdiction had not opted in and because of that, we sent them a message. This bill will provide for that. I believe the deadline date is the 15th of March for that, so it's timely that we do this very quickly.

The other -- the other piece was part of the examination of the kinds of things we were into, not only we are but again with the assessment unit; so yes, Rochester is taken care of.

SENATOR DOLLINGER: Through you, Madam President, if the sponsor would continue to yield.

THE PRESIDENT: Senator Rath, would you continue to yield?

SENATOR RATH: Sure.

SENATOR DOLLINGER: Who brought it to your attention, Senator Rath?

SENATOR RATH: There were several people brought it to our attention, Senator Dollinger being one of them, and to move back a little bit from this juncture where we are today, when it was brought to our attention, it was quickly recognized that it not only covered Rochester but it also covered

the rest of the state, and the bill and the situation that was brought to our attention covered the Monroe County area that you represent, and we thought it was important that the residents have the exemption.

SENATOR DOLLINGER: Again, through you, Madam President, do you know whether the city of Rochester or Monroe County support the portion of this bill that deals specifically with Rochester and Monroe County?

THE PRESIDENT: Senator Rath.

SENATOR DOLLINGER: Any evidence from them that they support this bill?

SENATOR RATH: I do. There was a resolution by the County Legislature, I believe it was. I had called for the bill - for the folder to come over inasmuch as we are a little bit out of order in the timing of this, but I believe it was the Monroe County Legislature that I looked at.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Through you, Madam President.

SENATOR RATH: Sure.

SENATOR DOLLINGER: Isn't it the case that the county of Monroe did approve a resolution for another bill that's sitting in the Local Government Committee that specifically addresses the situation for Monroe County?

SENATOR RATH: I'm sorry, I didn't understand your question.

SENATOR DOLLINGER: Again through you, Madam President, there was a memorandum of approval by the Monroe County Legislature signed by, I believe, 26 of the 29 members, but I think that related to another bill and not to this specific bill; is that not correct?

SENATOR RATH: That's not my understanding. My understanding was that that resolution from the Monroe County Legislature was in regards to this bill.

SENATOR DOLLINGER: My understanding is, again through you, Madam President, that that relates to 6030 and not to this bill, which is 6250. I just ask you if you could produce that document for me. I

feel perhaps it would enable me to better vote on this, but my understanding is that there's no evidence from Monroe County in support of this bill, and I'd ask through you, Madam President, is there any indication from the city of Rochester that they support this bill, 6250?

THE PRESIDENT: Senator Rath.

SENATOR RATH: Madam President, this bill is a different bill number because what we're talking about was a stand alone bill only dealing with the exemption for the disabled. This is a bill that has several facets to it. I think that's the difference in the number.

SENATOR DOLLINGER: Again through you, Madam President.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: I understand that this has different aspects to it. It has a statewide ramification in addition to the local ramification for the county of Monroe and the city of Rochester. My question is, through you, Madam President,

do you have any indication from the city of Rochester that this is the bill that they want passed in order to solve the problem of disability tax exemptions on the tax eligible status date for people in the city of Rochester?

THE PRESIDENT: Senator Rath.

SENATOR RATH: The piece that came through from the County Legislature was clear about the intent. I have no concern that this bill is in any way, shape or form not addressing the intent of the Monroe County Legislature.

SENATOR DOLLINGER: Again through you, Madam President.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Do you have any indication that the city of Rochester, which is where the people who have disability, who applied for the tax exemption, where they are and how they would be affected? Do you have any indication from the city of Rochester -- of which I represent 75 percent, Senator Alesi represents the other 25 percent -- that

they support this bill as a solution to their problem?

THE PRESIDENT: Senator Rath.

SENATOR RATH: The bill was presented approximately a week ago and I know how diligently the Rochester representative works with their constituency. If they had a problem with this bill, I'm sure they would have gotten hold of me immediately if they have a problem, but if you have a problem, I suggest you vote no.

SENATOR DOLLINGER: Well, again, through you, Madam President.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: We have no indication as you sit here today that the city of Rochester supports this bill; is that correct?

SENATOR RATH: The bill has provisions that they did support in another bill. It basically -- they are basically the same provisions and, if you are interested in hearing the assessing units which had the taxing status date before March 1st, they're

Syracuse, Buffalo, New York City, Rochester, Yonkers, Auburn, Watertown, Amsterdam, Oswego, Hornell, Bronxville, Lackawanna, Niagara Falls, White Plains and Nassau County.

SENATOR DOLLINGER: Again through you, Madam President.

THE PRESIDENT: Senator Dollinger.

A little order in the chamber, please.

Senator Dollinger.

SENATOR DOLLINGER: Again through you, Madam President, my under standing that the reference in the sponsor's memo specifically occurred in the city of Rochester; is that correct?

THE PRESIDENT: Senator Rath.

SENATOR RATH: The -- pardon me again. Say that again, Senator.

SENATOR DOLLINGER: The sponsor's memo for the passage of this bill which was drafted, I assume by you since you're the author of this bill, Senator, specifically refers to the problem in Monroe County and the city of Rochester; isn't that

correct?

THE PRESIDENT: Senator Rath.

SENATOR RATH: Rochester is the only jurisdiction that has raised the issue at this point, and we wanted to make it very clear to the Rochester representatives that we were certainly looking out for their best interests.

SENATOR DOLLINGER: O.K.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Again through you, Madam President, if you're looking out for the city of Rochester's best interests, why doesn't the city of Rochester have a memorandum in support of this bill in their file or some evidence from the city of Rochester that this solves the problem that they saw?

THE PRESIDENT: Senator Rath.

SENATOR RATH: Senator, you represent the city of Rochester, I assume, which is what your great interest is, you're not just a Monroe County legislator. I would assume, as I said, if you have a problem with

this bill we would need to see a memorandum on that.

SENATOR DOLLINGER: Senator - through you, Madam President.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: This isn't the question I asked, Senator. The question I asked is, do you have any written evidence that this is the bill that the city says solves the problem, this bill 6250, not 6030 A, drafted by some other Senator in this house, but does your bill 6250 -- is that what they want to solve their problem?

THE PRESIDENT: Senator Rath.

SENATOR RATH: We have -- I have been advised by counsel that we have talked with the representatives of the city of Rochester, and this bill is fine with them as we move forward. I understand it's been introduced in the Assembly, and there is no problem with this bill.

SENATOR DOLLINGER: Again through you, Madam President.

THE PRESIDENT: Senator

Dollinger.

SENATOR DOLLINGER: If I could, I'm just trying to find out, Senator, this is an issue that I actually have been involved in. I know Senator Alesi there and I'm trying to simply find out, I know there was a prior bill drafted by someone in this house, sent to the Monroe County Legislature, was endorsed by the Monroe County Legislature. I know that there was this -- another bill sent to the City Council which we got a memorandum approved by a letter signed by the mayor, the president of the City Council saying that that bill solved the problem.

My question is, if that other bill solved the problem, I'd like to know that this bill also solves the problem. Do you have any written evidence from either one of those governmental entities that I represent, that this bill solves the problem?

THE PRESIDENT: Senator Rath.

SENATOR RATH: If you will wait just one minute. I may have it in my folder which is under the desk because I assumed we were going to do photographs first.

SENATOR DOLLINGER: My pleasure.

SENATOR RATH: Through you, Madam President.

THE PRESIDENT: Senator Rath.

SENATOR RATH: The letterhead that I thought I had carried into the chamber with me, unfortunately, is not here. It's my recollection that it was the Monroe County Legislature, and I'm advised by counsel that there is no negative -- there has been no negative memorandums or comments that have come from the city of Rochester and representative Gantt introduced this same legislation, so I'm very comfortable with it.

SENATOR DOLLINGER: Again through you.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Just so I understand it there's no written approval of either the city of Rochester or the county of Monroe for this bill?

THE PRESIDENT: Senator Rath.

SENATOR RATH: It is not in my

possession in the chamber right now, but I would assume you received the same thing I received.

SENATOR DOLLINGER: I don't know -- I don't know what you've received, Senator. I'm trying to figure out. I received some things. You obviously must have received something different. I'm trying to find out what the difference is in what I received in support of another bill and what you received in support of this bill.

Madam President, I'd simply ask that the bill be laid aside until perhaps later in the session today. Maybe we can work out what it is that the city of Rochester has given you, the county of Monroe has given you, that they have not given me in support of bill 6250.

THE PRESIDENT: Senator Rath.

SENATOR DOLLINGER: I'm simply asking that it be laid aside temporarily until that information is provided, since I represent Monroe County and most of the city of Rochester. I'd like to see that information.

SENATOR RATH: Through you, Madam President.

The bill that you presented, Senator Dollinger, was a bill that was at local option. This is -- this bill is making it mandatory, so I don't -- as I grasp that by this bill we were making it a better bill and also the February 5th date was erroneous because it had gone past as we were attempting to include a number of things in the bill that were very, very necessary, not only for your jurisdiction and Monroe County's concerns but for all across the state.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Madam President, I would simply ask that the bill be laid aside for -

THE PRESIDENT: Go ahead, sorry.

SENATOR DOLLINGER: Simply ask the sponsor to lay the bill aside temporarily and allow me to get information that apparently the sponsor has that I don't have with respect to the approval of this bill

either by the city of Rochester or the county of Monroe. Is that unreasonable, Madam President?

THE PRESIDENT: Senator Rath.

SENATOR RATH: Senator Dollinger, my clear recollection -- and I looked at it within the last few hours; I'm sorry, I don't have it with me -- this bill is fine with the city of Rochester.

Thank you.

SENATOR DOLLINGER: Will the sponsor just continue to yield?

THE PRESIDENT: Senator Rath, will you continue to yield?

SENATOR RATH: One more question.

SENATOR DOLLINGER: The taxable status date in your bill, the March 15th date that apparently is selected in this bill, do you have any specific approval from the county of Monroe or the city of Rochester with respect to the practical nature of that specific date in the bill, whether that date is acceptable or given the late date that we're acting on, that April 1st would be a

better date?

THE PRESIDENT: Senator Rath.

SENATOR RATH: The March 15th date was discussed with the city of Rochester officials earlier today by Majority Counsel and advised that March 15th was fine.

SENATOR DOLLINGER: But you have nothing in writing to that effect.

SENATOR RATH: I have nothing in writing.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: On the bill, Madam President.

THE PRESIDENT: Proceed.

SENATOR DOLLINGER: I believe it's somewhat unfortunate that we're in this position today talking about a bill that should do something for Monroe County, may do something for Monroe County, may do something for the people of the city of Rochester, 75 percent of whom I represent those people in the city of Rochester who would benefit from this bill, and yet there was another bill introduced at an earlier time, much earlier

time, more than a month ago which the issue was raised, put on the table.

I came to Senator Rath, other people in this chamber, said, Let's pass this bill, let's do it. Let's do it so we have a March 1st deadline. Let's get it done in February, so that we give the disabled people in the city of Rochester lots of time. There are about 880 of them who would benefit. There were loopholes in the law that we had to correct, something we had to fill.

I worked with it, sent a copy to Senator Alesi, who represents the city with me, sent a copy to Senator Rath. I worked hard to put the bill together. I sent the bill to the County Legislature. I sent it to the city of Rochester. The County Legislature said it's a great idea, we want to see the city people benefit from the disability exemption. We approve your bill, Senator Dollinger. 26, I believe, of the 29 members signed the bill, a letter in support of that bill. That's the letter that Senator Rath is referring to.

Sure enough, then the city of Rochester weighs it; my bill is circulated to

the city of Rochester. The mayor and the president of the City Council sign a letter that says, the Dollinger bill, we can go with that; that's fine. I tried to get the members of this house to put that bill through, to prevent -- to protect the citizens of my district.

Then what happens? All of a sudden this new bill appears. This new bill appears. I'm willing -- my bill doesn't have to pass but you would think that someone who represents 75 percent of the people who are affected, who did all the work, laid all the foundation, would, as a matter of courtesy - simple, simple courtesy -- be included on the bill, that simple courtesy would say include someone on the bill.

No, doesn't exist here in the state Senate. Now we're going to pass a bill, we don't have any evidence it's supported by the county, don't have any evidence that this bill is supported by the city. And what rules, in my judgment? Nothing but cheap partisan politics. I think everybody ought to be ashamed.

THE PRESIDENT: Read the last section, please.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

THE PRESIDENT: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Madam President, can we at this time once again stand at ease. Thank you.

I would recommend that the members get in their regular seats, and you might want to then follow the direction of the photographer on the platform.

THE PRESIDENT: Would the members please clear their desks for the purpose of making a nice picture.

(The Senate stood at ease at 3:37 p.m.)

ACTING PRESIDENT KUHL: The Senate will come to order. Ask the members to

take their seats, please, the staff to take their places.

Senator Skelos.

SENATOR SKELOS: Mr. President, before we start and continue with the controversial calendar, there will be an immediate meeting of the Rules Committee in the Majority Conference Room.

ACTING PRESIDENT KUHL: There will be an immediate meeting of the Rules Committee, an immediate meeting of the Rules Committee in Room 332, the Majority Conference Room.

Senator Holland.

SENATOR HOLLAND: We will return to the controversial calendar, regular order, starting with Calendar Number 81, please, Mr. President.

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

THE SECRETARY: Calendar Number 81, by Senator Maltese, Senate Print 2469-A, an act to amend the Social Services Law.

SENATOR DOLLINGER:

Explanation, please.

ACTING PRESIDENT KUHL: Senator Maltese, an explanation of Calendar Number 81 has been requested by Senator Dollinger.

SENATOR MALTESE: Mr. President, this is an act to amend the Social Services Law in relation to access to criminal history records by the Department of Health.

This bill is introduced in the Assembly by Assemblyman Joseph Crowley. The bill permits the Department of Health to have access to the criminal history records of any persons seeking approval to become an operator, administrator or receiver of an adult care facility, any person seeking recertification as an operator, administrator or receiver. This occurs every four years. Any person at any time the Department deems it necessary to determine their criminal histories. All requests must be accompanied by the fingerprints of the subject of the request.

In addition, in order to make it all-inclusive as far as operators, administrators or receivers of adult care

facilities, in the event that they have a plea of guilty or they are found guilty by a jury or a court, the court must notify the Department of Health.

The bill in 1997 passed the Senate 62 to zero. In 1996 it passed the Senate 57 to zero. In prior years it also passed unanimously in this house.

The justification is that the Department of Health has the comprehensive responsibility for the development and administration of program, standard methods of operation and all other matters of state policy with respect to residential care programs for adults.

The press has documented and the courts have documented many instances of abuse in adult care facilities. When we entrust our seniors and the persons who have earned a right to be unmolested certainly or not disturbed in their declining years if they must reside in an adult care facility, there is an obligation on the part of the Legislature, it would seem to me, to protect those persons who, because of age or

infirmity, are unable to protect themselves. This, by enabling the Department of Health to inquire into the criminal histories, would seem to serve that purpose.

The obligation on the Department of Health in the granting or the retaining of these operators or administrators of these health care facilities is conditional upon the moral -- moral health, the moral character of these operators. Certainly they should not be in a position that the -- they would be guilty of a crime and in order to provide some latitude, it is the Department of Health that makes the judgment depending on what the crime and the circumstances of the crime that would be evidenced by the criminal history to make a determination as to whether the certificate of operation would be revoked or suspended.

SENATOR DOLLINGER: Through you, Mr. President, if the sponsor would yield to a couple of questions.

ACTING PRESIDENT KUHL: Senator Maltese, do you yield to a question from Senator Dollinger?

SENATOR MALTESE: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: First of all, Senator, in Section 3 of the bill, it refers to making fingerprints of any person who is subject to the request available. Could you tell me why you need the fingerprints of someone if you're going to get their criminal history anyway?

SENATOR MALTESE: Mr. President, because so many persons are -- have similar names, we -- it was felt that the best way to secure the criminal history, an accurate and complete criminal history, in whatever jurisdiction was to have the fingerprints that could be put through the computer systems to pick up any crime that there had previously been a conviction or plea of guilty.

SENATOR DOLLINGER: Again through you, Mr. President. Is there currently a provision in state law that requires the fingerprinting of someone who applies for this license? In other words,

Senator, I'm trying to find out, you ask for them from DCJS. Where do you get the comparisons so you can compare the fingerprints together, find out whether the person is who they claim to be? What's the - where do you get the comparison material?

SENATOR MALTESE: Well, Mr. President, a comparison with what?

SENATOR DOLLINGER: Well, again through you, Mr. President. As I understand this bills DCJS will, upon the Health Department's inquiry, furnish a set of fingerprints from someone who's been convicted of a bill. If you want to know whether a person who is applying for the license is the same person who's arrested, you have to get the fingerprints from the person who's applying for the license, don't you?

SENATOR MALTESE: Mr. President, I see the -- I see the purpose of the question but the fingerprints are accompanying the request -- the fingerprints are accompanying the request for the criminal history records to the Department of Criminal Justice. So they have these records. All

we're looking for is the criminal history.

SENATOR DOLLINGER: Again through you, Mr. President. Where is -

ACTING PRESIDENT KUHL: Senator Maltese -- excuse me, Senator Dollinger -- do you continue to yield?

SENATOR MALTESE: Yes, I do.

ACTING PRESIDENT KUHL: The Senator continues to yield, Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President.

Where is the authorization in current statute that someone who applies for an operator's license has to provide their fingerprints?

SENATOR MALTESE: Mr. President, I'm not aware there is one, but I plan to introduce legislation to that effect if there is not such a requirement.

SENATOR DOLLINGER: Again through you, Mr. President.

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

SENATOR MALTESE: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR DOLLINGER: So we really don't know whether this bill will be effective then until you introduce some other bill at a future time, is that correct?

SENATOR MALTESE: Mr. President, since the Department of Health has the jurisdiction and the authority to grant either the application or to continue the application, any -- and the judgment is theirs, it would seem certainly incumbent upon them that if a request was made for fingerprints and the subject refused to comply, that in itself would be sufficient grounds to not grant the certificate.

SENATOR DOLLINGER: Again through you, Mr. President, if Senator Maltese continues to yield.

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

SENATOR MALTESE: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR DOLLINGER: In Section

2 of the bill, Senator, it refers to the fact when an operator, administrator or receiver in an adult care facility is convicted of a crime while operating or administrating a facility, is it your intention that those crimes only relate to the operation of the facility, or would this include any crime, including driving while intoxicated?

SENATOR MALTESE: Mr. President, it is my intention that it be any crime, any misdemeanor or felony, any crime as defined by the Penal Law and then it would be up to the Department of Health to make the determination as to whether or not that crime would be sufficient grounds to either revoke an application or to discontinue the privilege of administering or operating the health care facility.

SENATOR DOLLINGER: Again through you, Mr. President, if Senator Maltese would continue to yield.

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

SENATOR DOLLINGER: Where in

this bill do you give the Health Department the discretion to deny them -- deny someone a license on the basis of a crime such as driving while intoxicated, that that finds them incapable of serving as an administrator or an operator of a nursing home?

SENATOR MALTESE: Mr. President, it is not within the four corners of this bill, but it is defined by statute as the -- as the privilege of the Health Department to grant or continue that application, and I believe it's covered under 461 of the Social Services Law and it specifically refers to, for instance, 461 (b) -- I bring your attention to 7 (a) -- "The Department shall suspend, limit, modify or revoke an operating certificate of a shelter for adults, residence for adults or such home upon determining that such action would be in the public interest." It would seem to me that in those cases that action would be certainly in the public interest and they speak -- they give the same rights to the receiver in bankruptcy and they refer to - 461 (a) refers to the responsibility for

inspection and supervision, gives that right to the Department of Health and in another section that I can't lay my hands on right now, but they indicate that the operator of a health care -- operator or administrator of a health care facility shall be of good moral character.

So it seems to give untrammeled authority to the Department of Health, as should be the case, to make a judgment as to whether the person or -- the person is a fit person to operate or administer such a facility.

SENATOR DOLLINGER: Again through you, Mr. President, if Senator Maltese will yield.

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

SENATOR MALTESE: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR DOLLINGER: How does your bill, Senator Maltese, deal with the problem of a corporate owner of one of these homes?

SENATOR MALTESE: Mr. President, according to the statutes, you cannot -- you must have a person to be -- oh, a person rather than a corporation.

Mr. President, I also found the section I was referring to before, 461 (b), Subsection 2 (a), "No adult care facility shall be operated unless and until the operator obtains the written approval of the Department. Such approval may be granted only to an operator who satisfactorily demonstrates that the operator is of good moral character, that the operator is financially responsible and that there is a public need for the facility.

SENATOR DOLLINGER: Again through you, Mr. President. With respect to that section of the statute that will be impacted by this bill, is it your intention to include the fact that if you're convicted of a crime, you are presumptively disqualified from doing that?

SENATOR MALTESE: Mr. President, no.

SENATOR DOLLINGER: With

respect to -- again through you, Mr. President.

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

SENATOR MALTESE: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR DOLLINGER: With respect to the ownership of a nursing home, what about the situations in which a general partnership owns a nursing home? Who would be responsible for having the certification or the fingerprints taken?

SENATOR MALTESE: Mr. President, it would seem that under the Social Services Law -- unless I'm mistaken -- that they indicate that such responsibility shall only reside in a natural person; in other words, the ultimate responsibility that the health care facility itself may be a corporation or a partnership, but if they are actually a -- an operator or an administrator of a nursing home, that would enter into the securing or retaining of the certificate.

ACTING PRESIDENT KUHL: Senator

Dollinger.

SENATOR DOLLINGER: Again through you, Mr. President, just one other question.

ACTING PRESIDENT KUHL: Senator Maltese, do you yield to one more question?

SENATOR MALTESE: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: This only applies to operators and administrators of nursing homes. What about the other personnel that are involved in nursing home administration, other people that are involved in direct care supervision, the director of nursing, the director of patient services, all of whom would have the same potential to create the kind of abusive damage to one of their residents that you're addressing this to? Doesn't this really address simply the figure head and not really get at the people who are supposed to be or are applying the direct care who have probably a greater opportunity for the kind of abusive conduct that this bill is designed to prevent?

SENATOR MALTESE: Mr. President, it would seem that many of us have legislation that would remedy the type of abuse that Senator Dollinger is speaking about, and I certainly would support or endorse such legislation, but this legislation would seek to remedy the type of abuse that is prevalent in some nursing -- some health care facilities that is -- starts at the top, the type of abuse that involves a lack of supervision, lack of care, lack of attention when a patient or a resident requests some type of assistance or needs some type of special treatment, in the interests of a false economy or outright greed, the operator or administrator shortcuts. This is the type of person that we do not wish to operate or administer a health care facility and this is the type of person we're seeking to stop from being granted or retaining a certificate.

SENATOR DOLLINGER: A final question through you, Mr. President. This will be my last one.

ACTING PRESIDENT KUHL: Senator Maltese, do you yield?

SENATOR MALTESE: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: Senator, in Section 2 of your bill, you require that local criminal courts, if they know that an administrator, operator, or receiver in an adult care facility is convicted of a crime, within ten days thereafter they have to notify the Department of Health in writing of such a conviction. Isn't that correct?

SENATOR MALTESE: Yes.

SENATOR DOLLINGER: What if the conviction is overturned on appeal?

ACTING PRESIDENT KUHL: Is that a second question, Senator Dollinger.

SENATOR DOLLINGER: That's correct.

ACTING PRESIDENT KUHL: Are you asking Senator Maltese to yield to a question beyond your last question?

SENATOR DOLLINGER: Thank you, Mr. President. Yes.

ACTING PRESIDENT KUHL: Senator Maltese, do you yield?

SENATOR MALTESE: I do, Mr. President.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR MALTESE: I would imagine that an operator or administrator of a health care facility who's had a conviction overturned would be very speedy about notifying the Department of Health if such a situation has taken place. It would also seem incumbent upon his attorney or someone acting in his interest to so notify the -- to so notify the Department of Health.

SENATOR DOLLINGER: Thank you, Mr. President. I thank Senator Maltese for the explanation of the bill.

I simply raise those issues because I think that this is a bill well intentioned, that if you look at it very carefully needs a provision that gives the ability of a convicted operator to go back and strike out a conviction that's overturned on appeal, as I once represented someone who was involved in a situation exactly like that, had their conviction overturned on appeal without

the ability to file a correction with the Department of Criminal Justice Services, get your fingerprints back, you may have someone who's unfortunately found in essence not guilty or should not have been tried in the first place, they end up with a permanent black mark against them, may end up with a proceeding before the Department of Health, may end up spending an awful lot of money for something they were never found guilty to have done.

I would also suggest that -- I voted for this bill in the past. I'm going to vote for it again. I think it's a good poster bill. I think it does some good things. My hope is that when it comes back maybe next year after we approve it for the sixth or seventh time in a row, that the bill will be refined to better reflect the intricacies of trying to apply this on a day-to-day basis.

When it gets there, I'll even vote for it more emphatically than I do today.

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 57.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could return to reports of standing committees, I believe there's a report of the Rules Committee at the desk. I ask that it be read at this time.

ACTING PRESIDENT KUHL: We'll return to the order of reports of standing committees. There is a report of the Rules Committee at the desk.

The Secretary will read.

THE SECRETARY: Senator Bruno, from the Committee on Rules, reports the following bill directly for third reading:

Senate Print 6302, an act to amend Chapter 115 of the Laws of 1995, by the Committee on Rules.

SENATOR SKELOS: Mr. President, move to accept the report of the Rules Committee.

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

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The report is accepted. The bill is reported directly to third reading.

Senator Skelos.

SENATOR SKELOS: At this time if we could take up Senate Bill Number 6302.

ACTING PRESIDENT KUHL: The Secretary will read.

THE SECRETARY: Calendar Number 315, by the Senate Committee on Rules, Senate Print 6302, an act to amend Chapter 115 of the Laws of 1995, amending the General Business Law, relating to hawkers and peddlers.

ACTING PRESIDENT KUHL: Senator Skelos.

SENATOR SKELOS: Mr. President,

is there a message of necessity at the desk?

ACTING PRESIDENT KUHL: There is.

SENATOR SKELOS: Move to accept.

ACTING PRESIDENT KUHL: The motion is to accept the message of necessity on Senate Bill 6302. All those in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The message is accepted.

The bill is advanced.

SENATOR SKELOS: Last section, please.

SENATOR DOLLINGER: Explanation.

ACTING PRESIDENT KUHL: Senator Skelos, an explanation has been requested by Senator Dollinger.

SENATOR SKELOS: A careful reading of this bill, Mr. President, extends the existing, what is called the Peddlers Law, from March 1st to April 1st.

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

SENATOR DOLLINGER: Just one question.

ACTING PRESIDENT KUHL: Senator Dollinger, on the bill.

SENATOR DOLLINGER: Could you just explain to me what the -- again through you, Mr. President, to Senator Skelos, could you just explain to me what the bill does, what the underlying bill does. I remember we did this peddler bill at some point earlier, Mr. President, but I'm not -

SENATOR SKELOS: 6302, as I explained and I think that is sufficient, extends the law until April 1st, 1998.

SENATOR DOLLINGER: Again through you, Mr. President. Which law are we talking about that we're extending?

ACTING PRESIDENT KUHL: Are you asking Senator Skelos to yield to a question?

SENATOR DOLLINGER: I would, Mr. President.

ACTING PRESIDENT KUHL: Pardon?

SENATOR DOLLINGER: I would, Mr. President.

ACTING PRESIDENT KUHL: Senator Skelos, do you yield?

SENATOR SKELOS: No, I don't yield.

ACTING PRESIDENT KUHL: The Senator refuses to yield.

Senator Dollinger.

SENATOR DOLLINGER: Mr. President, is there anybody on the Majority who could explain this bill and tell me what the bill is that we're extending so that at least I will know, so before I cast a bill that I guess it's not going to affect any of my people, but I would like to know what the bill is that we're extending? Again -

ACTING PRESIDENT KUHL: Senator Dollinger, which Senator are you asking to yield?

SENATOR DOLLINGER: I'll take all comers, open mike, Mr. President.

ACTING PRESIDENT KUHL: No Senator is appearing to yield at this time.

Senator Dollinger, the floor is

yours, if you wish.

SENATOR DOLLINGER: Thank you, Mr. President.

I find it amazing that we go through these exercises where we ask for a little bit of courtesy on the floor of the chamber and we don't get much and then all of a sudden we do a bill that's going to extend something. I guess someone somewhere has figured out that we're right at the deadline where we have to do something and, lo and behold, we're right at that deadline right now. Here comes a bill. I don't know what it does.

I guess my vote is taken for granted or maybe all 61 votes are taken for granted, but I find it a shame that when someone, whoever this guy is, Rules, who passes all these bills, when we ask questions about what the bills are and what they do, we don't get any answers, and I can't believe that -- I guess that's what democracy has come to. You ask questions. You don't get answers and you make votes in the dark. I guess there are 35 votes that are maybe cast with a little

bit of light, but it seems to me a silly way to do business.

I've said it before. I'll say it again. I'm going to say it time and time and time again today. I think it's my prerogative to do that and, frankly, when maybe at some day it changes, if it ever changes, I'll stop saying it.

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

Senator Leichter. Excuse me.

SENATOR LEICHTER: Mr. President, on the bill.

ACTING PRESIDENT KUHL: Senator Leichter, on the bill.

SENATOR LEICHTER: I think it's unfortunate that a perfectly valid and reasonable question is refused an answer.

Senator, we're now extending the date of a law. Senator Dollinger asked a perfectly reasonable question, what is the law that we're extending? I think he's entitled to an answer. I'm sure there's a number of you sitting on this floor who can't really remember exactly what the "peddlers law"

does. Frankly, even though it's in my city, I'm not 100 percent certain about every term and provision of that law, but I think a general description would be helpful, and I think there's a certain arrogance on the part of the Majority. I'm sorry to say this. We're putting bills out. We'll pass whatever we damn please and you're not even entitled to ask questions about it. Well, I guess we could always talk about the bill, and I guess what you're saying is you have a lot of time to spend on the floor and that's fine. I can think of a lot of things I can speculate about and talk about and maybe we should and maybe in the meantime somebody will want to look up that law and try to give Senator Dollinger an answer.

I mean, this whole process today started because one of our colleagues here was treated in a very petty, shameful manner. His bill was stolen. Somebody else took his bill, put their name on it and without even the courtesy of telling him and it's so petty. It's so petty.

Aren't we out to serve the

people of the state? Does anybody in Monroe County who's affected by the legislation that we debated earlier care whether the bill is passed under the same of Senator Rath or Senator Dollinger or Senator Smith or any name that you want? The whole point is to pass the law and it has no political implications because I assume that Senator Rath is extremely popular in her district and I don't know whether she needs this additional notch and this additional gubernatorial pen and my belief is that Senator Dollinger is very popular in his district. I think last time - I don't know whether he even had an opponent or whether he'll have an opponent this time, but certainly whether his name is on the bill or not is not going to change the political universe in this state.

So I think Senator Dollinger had a real grievance, but I think he also made a very good substantive point in debating Senator Rath as to the effective date of the bill and who it would affect, and so on, and things that could have been worked out if somebody just had the courtesy to speak to

him, and he's made it a point since then to get up and to debate bills, I guess partly to say, if you want to treat me this way, then I'm going to ask that you get up and defend your bills and actually it's been very useful because ordinarily Senator Maltese's bill just would have swept through and we would have the chance, I guess to vote on it again next year, the year after, and so on, but I think Senator Dollinger happened to make some very good points and since I had a lot of time, I read the bill over ten times, and I thought of something that could be done to improve that bill. So maybe there's something to be gained by this.

Now, we come to the next bill and it's a bill, the "peddlers law" which there was some furor about the few times that that bill has been taken up, and Senator Dollinger asked a perfectly legitimate question. What law are we extending, and it seems fair that before we extend the law, that we ought to know what law we're extending and the Majority says, "I'm not going to tell you."

Now, you might say in ordinary circumstances you had this bill on your desk for three days, you should have looked it up yourself, but this bill just came out of Rules. It was just printed. It's being passed under a message of necessity. So Senator Dollinger, nor for that matter other members, had any way of knowing that this bill was going to come before us and why is it wrong to know what bill is being passed or what law is being extended, and I think if that question had been answered and it could have been answered, I think fairly simply, we probably would have gone on and we would be on the next bill.

So it would seem to me that if we had a more collegial and a more rational and a more objective procedure here, and less partisan and less political, I would think, one, we would find that our work is going to get done in a more expeditious manner, and I think secondly we'll find out that we do a better job, that we provide better service to the people of the state of New York.

Now, if this proceeding was

being televised -- and usually the only time you see television cameras is when maybe some member of the Majority has a bill, but if we could have these proceedings televised as congressional proceedings are, I suspect we wouldn't have these sort of disruptions because I think people would be too embarrassed to do it. Would you want what happened today shown to the people of the state of New York? They would say, my God, what is this, a kindergarten class or is this the Legislature of what was once known as the Empire State? I don't think you would expect people in grade school to behave in this sort of a petty fashion.

Now, on this particular bill, as I remember, there was an issue about licenses for peddlers and since there's a provision of the law, if memory serves me, that veterans are entitled to, I won't use the word "peddle". There's something about the word "peddle" that is somewhat demeaning, although God knows many of our forebears who came to this country, they started as peddlers and did very well. I have an uncle or -

great, great uncle by marriage who started as a peddler in Texas and then ended up owning ten big department stores. So there's really nothing wrong with being a peddler, but I think nowadays you don't like to be called a peddler and I guess what the law provided is not that all veterans but disabled veterans, Senator Stachowski's particularly learned on matters affecting veterans and the bills pointed out -- so that disabled veterans were excluded.

I think what happens, Senator Dollinger, and Senator Goodman who's carried this bill and very ably so and got it through this Legislature a number of times, that in the city of New York, particularly on Fifth Avenue, people were taking advantage of the disability exemption and were peddling in great numbers on Fifth Avenue. Now, Fifth Avenue maybe shouldn't be deserving of any greater protection than any other street of the state of New York, but on the other hand, Fifth Avenue is sort of the mecca for tourists, for shoppers, and it was a problem in the city of New York and, I believe not

only the current City administration but if memory serves me, I think the previous City administration under Mayor Dinkins, and maybe it even goes back to the time of Mayor Koch and, again, Senator Goodman would probably know that, asked that we remove the exemption, and I believe that was done and that bill or that law then came up for renewal last year and some of the veteran organizations looking out for the interest of veterans were concerned that this was being used in such a manner that truly disabled veterans were being denied rights that we think that they ought to have, and again, if memory serves me, there was some discussion, although I don't believe it was in the bill, that an effort would be made for truly disabled veterans to be placed somewhere near Fifth Avenue, if not on the avenue itself, that the City would have the obligation of providing a specific zone where these disabled veterans could go and sell their wares, and that bill was passed last year. I didn't remember, frankly, that it only had a -- it was -- had a sunset date of March 1, 1998 and that law is now being

sunset, and I guess the aim and purpose of this bill is to extend it for 30 days while certain of the effects of the law and how the law has been implemented and worked out could be looked at and maybe there will be some modifying language. I guess the interests were trying to protect both those of the disabled veterans and certainly everybody in this house has their interests very much in mind. On the other hand, there's an effort and an intent to see that a major shopping thoroughfare in New York City is not clogged up with a lot of people selling their wares there, competing with stores, driving tourists away, and I think that is the issue.

So there's certainly nothing offensive to my mind about this particular bill. I think it makes a lot of sense and with a little courtesy and a little explanation, we might have been able to have disposed of this bill before now.

Thank you.

ACTING PRESIDENT KUHL: Senator Dollinger, on the bill.

SENATOR DOLLINGER: Thank you

very much, Mr. President.

Senator Leichter, I think that when I have questions about Rules Committee bills in the future, I think I'll just direct them to you. There were one too many "I think"s and "I suppose" and I understand in your answer for me to have -- give it the full weight of fact, but that was as good an explanation as I have heard on this bill, which I guess the only thing I have heard about it is that it changes the date from March to April, which is I guess all the bill does.

Mr. President, my only reason in rising today is that I have heard many people in this chamber say that we ought to run government more like a business. What I find so fascinating about this is that if this were a business under our Business Corporation Law, we have a provision that says that if you're a director of a corporation, you can go in and inspect the records and all the information in the corporation any time you want. You not only have the right to ask questions, you have an obligation to get

answers before you do something. Look it up in the Business Corporation Law, Section 700, "Obligations of Directors." You're required to do certain things.

Well, here we are the board of directors of New York State and, lo and behold, this place which is supposedly run like a business that our president, I think rightfully so, has brought many business practices to, in the course of his two-year tenure as the Senate leader, he heralds the fact that we're running it like a business, but yet we don't extend to the directors, the members of the board the statutory obligations that we would require of a director of a business corporation. So we have this little fiction. This little fiction is that we run this house like a business, that we require businesses, our corporations, to be run like businesses, but when you look at our own chamber, we can't even get answers to very legitimate questions, simple questions.

What does the bill do? Unanswered. Disappointing.

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: Announce the results when recorded.

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

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 101, by Senator Volker, Senate Print 5007, an act to amend the Criminal Procedure Law.

SENATOR DOLLINGER: Explanation.

SENATOR SKELOS: Lay it aside for the day.

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

The Secretary will continue to read the controversial calendar.

THE SECRETARY: Calendar Number

107, by Senator Leibell, Senate Print 3646, an act to amend the Public Authorities Law.

SENATOR DOLLINGER:

Explanation.

ACTING PRESIDENT KUHL: Senator Leibell, an explanation of Calendar Number 107 has been requested by Senator Dollinger.

SENATOR LEIBELL: Mr. President, this bill would specifically amend Section 2417 of the Public Authorities Law to add directors, officers and employees of SONYMA to the list of persons who are defended and indemnified by the state of New York.

As with all state defense and indemnification, such would apply only for actions made by such directors, officers and employees that are within the scope of their office, employment and authority.

Currently because directors, officers and employees of the state of New York Mortgage Agency are not provided with state defense and indemnification, the agency must incur private legal defense costs and maintain expensive professional liability insurance.

These costs, if this bill passes, could be redirected by providing more affordable housing and more financing for first-time home buyers, rather than being wasted on unnecessary legal fees and insurance premiums.

SENATOR DOLLINGER: Through you, Mr. President, if the sponsor would yield to a couple of questions.

ACTING PRESIDENT KUHL: Senator Leibell, do you yield to a question by Senator Dollinger?

SENATOR LEIBELL: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: Why at the formation of SONYMA where provisions that you seek to introduce, why were they not included in the original enabling legislation?

SENATOR LEIBELL: I don't know the answer to that and it was certainly before me, but I would comment, I think it's a historical curiosity that this and maybe others were not included whereas many are.

SENATOR DOLLINGER: Again

through you, Mr. President, if Senator Leibell would -

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

SENATOR LEIBELL: Yes, I do.

SENATOR DOLLINGER: He will?

SENATOR LEIBELL: Yes, yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: Isn't it a fact when SONYMA was created, it was going to be in essence the equivalent of a free-standing agency that would be out in the marketplace doing some things on its own, standing on its own legs and, therefore, it wasn't entitled to that indemnification and hold harmless protection that we only accord to people who are acting in a state capacity, in essence, acting like the king. This is really acting like a private enterprise, isn't this correct?

SENATOR LEIBELL: It is a subdivision of our state but SONYMA is a public authority.

SENATOR DOLLINGER: Again

through you, Mr. President.

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

SENATOR DOLLINGER: But SONYMA was involved -

ACTING PRESIDENT KUHL: Senator Dollinger, excuse me.

Senator Leibell, do you continue to yield?

SENATOR LEIBELL: Yes, I do.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR DOLLINGER: SONYMA was involved in a business -- in the mortgage business and, in essence, although it was chartered by the state of New York and formed as an authority by the state of New York, is really in a business of participating in the private marketplace, was it not?

SENATOR LEIBELL: There are many organizations that come within the state that deal in the private marketplace. There are many out there that function similarly to SONYMA would have these protections, but this agency just does not.

SENATOR DOLLINGER: Again through you, Mr. President.

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

SENATOR LEIBELL: Yes.

SENATOR DOLLINGER: I note in your memorandum in support, you indicate that UDC, MAC and the HFA have similar indemnification divisions. What other state agencies that are in the same general business activity as SONYMA do not have this hold harmless indemnification provision?

SENATOR LEIBELL: I'm not aware of any.

SENATOR DOLLINGER: So this - again through you, Mr. President, if Senator Leibell would continue to yield.

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

SENATOR LEIBELL: Yes, Mr. President.

ACTING PRESIDENT KUHL: I know it's all right with Senator Farley, but I wasn't sure about you.

SENATOR DOLLINGER: So it

appears as though this is the only state agency that doesn't have this protection; is that what I understand you to say?

SENATOR LEIBELL: Well, no. I was trying to answer your question and your question was what others do not, and I'm not aware of any others that do not.

SENATOR DOLLINGER: Again through you, Mr. President, if Senator Leibell would continue -

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

SENATOR LEIBELL: Yes, Mr. President.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR DOLLINGER: As I understand, this indemnification and hold harmless will be triggered upon a finding by a jury that they weren't acting in bad faith, is that correct?

SENATOR LEIBELL: Counsel is checking. It's a defense. So, in other words, when an action is commenced, the defense would begin.

SENATOR DOLLINGER: But the - again through you, Mr. President, if Senator Leibell would continue to yield.

SENATOR LEIBELL: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: That would be an affirmative defense of indemnification raised by SONYMA and its officers and directors because this would apply to them, isn't that correct? So it would be raised as an affirmative defense. It would be the obligation of them to prove that they were not acting in bad faith, is that correct?

SENATOR LEIBELL: No. If they are sued, they would -- under this, if they are sued, they would get a defense and be indemnified.

SENATOR DOLLINGER: Again through you, Mr. President, if Senator Leibell will continue to yield.

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

SENATOR DOLLINGER: I'm trying

to determine how the indemnification is triggered. An action is bought against an officer or director in their individual capacity.

SENATOR LEIBELL: Okay. There's no affirmative defense.

SENATOR DOLLINGER: Again through you, Mr. President. You've thrown me a curve ball. If it isn't an affirmative defense, what is it?

SENATOR LEIBELL: Senator, this is really straightforward. We are attempting to put SONYMA in the same position as many other authorities. Other similar public authorities which are currently afforded state defense and indemnification include the state Urban Development Corporation, the Project Finance Agency, Municipal Assistance Corporation, the Housing Finance Agency, the Facilities Development Corporation, the Long Island Power Authority, the State University Construction Fund, the Local Government Assistance Corporation and the State Energy Research & Development Authority.

SENATOR DOLLINGER: Again

through you, Mr. President, if Senator Leibell would continue -

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

SENATOR LEIBELL: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: I'm simply trying to determine how the indemnification is triggered. I read it to say that it says they shall be entitled to it. Is it presumed that they are indemnified to start and then if they aren't indemnified, who would have the burden of proof to show that they would not have acted in good faith for a purpose which is reasonably believed to be in the best interest of the agency or not to have reasonable cause to believe this conduct is lawful. When is that proof presented where it says, "for a judicial determination"?

SENATOR LEIBELL: Upon verdict they will get indemnification.

SENATOR DOLLINGER: Again through you, Mr. President.

ACTING PRESIDENT KUHL: Senator

Leibell, do you continue to yield?

SENATOR LEIBELL: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR DOLLINGER: Does that mean that the director and officer of SONYMA has to go through the entire trial not knowing whether they'll be indemnified by the state and whether their costs and expenses will be paid?

SENATOR LEIBELL: You're not going to know you're indemnified until you get a verdict.

SENATOR DOLLINGER: Again through you, Mr. President.

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

SENATOR LEIBELL: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR DOLLINGER: Is that the way we trigger indemnification for all the agency employees and directors for all those other agencies? They go to trial, hire a private counsel not knowing whether they'll be

entitled to indemnification; we force them to pay all the money themselves without our fronting the money?

SENATOR LEIBELL: You wouldn't be hiring private counsel here. The state would provide your defense. If there's a verdict against you, you would then be indemnified.

SENATOR DOLLINGER: But if the verdict -- again through you, Mr. President. I apologize.

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

SENATOR DOLLINGER: But if the -- you would be indemnified unless the verdict went against you, unless the word - you're entitled to indemnification, the state pays for the cost of defense, pays the cost of any judgment against you, that's indemnification and hold harmless. The only way that can be reviewed is by a judicial determination that you weren't acting with a reasonable belief that it was lawful.

SENATOR LEIBELL: Within the

scope of your employment.

SENATOR DOLLINGER: Okay. So you get the indemnification up front and it's only upon a later determination that you would be stripped of it if you were determined to be acting outside the scope of your employment.

SENATOR LEIBELL: That would be correct.

SENATOR DOLLINGER: That's what I thought.

Again through you, Mr. President, one final question.

ACTING PRESIDENT KUHL: Senator Leibell, do you yield for one final question? The Senator yields.

SENATOR DOLLINGER: To whom will this indemnification apply? How far down the ladder, chain of authority at SONYMA, will be protected by this indemnification and hold harmless clause?

SENATOR LEIBELL: As in my opening statement, I said it would be directors, officers and employees acting within the scope of their employment.

SENATOR DOLLINGER: I'm

satisfied, Mr. President. Thank you, Senator Leibell.

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 57.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 127, by Senator Present, Senate Print 532, an act to amend the General Municipal Law.

SENATOR DOLLINGER: Explanation.

ACTING PRESIDENT KUHL: Senator Present, an explanation of Calendar Number 127 has been requested by Senator Dollinger.

SENATOR PRESENT: Mr. President, the purpose of this bill is to promote jobs, industry in this state by encouraging local municipalities to purchase

from New York State owned and operated companies.

Currently the General Municipal Law of the state requires counties and municipalities to award work or purchase contracts to the lowest bidder. This gives the counties no ability to give preference to New York State workers or out of -- if out-of state companies with out-of-state workers submit the lowest bid.

This legislation would allow counties and municipalities to award contracts to companies who work and employ persons in New York State as long as their bid comes within five percent of the lowest bid submitted for that contract.

SENATOR DOLLINGER: Mr. President, if the sponsor will yield to a couple of questions.

ACTING PRESIDENT KUHL: Senator Present, do you yield to a question from Senator Dollinger?

SENATOR PRESENT: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: Senator, do you have any opinion from the Attorney General that this bill is constitutional in view of the requirement, I believe in the state Constitution, that we award our bids to the lowest responsible bidder?

SENATOR PRESENT: No. I have no opinion from the Attorney General.

SENATOR DOLLINGER: The statute -- the proposed bill makes -

ACTING PRESIDENT KUHL: Senator Dollinger, you're asking Senator Present to yield again?

SENATOR DOLLINGER: I am, Mr. President.

ACTING PRESIDENT KUHL: Senator Present, do you yield to another question from Senator Dollinger?

SENATOR PRESENT: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: Thank you, Mr. President.

The proposed bill on page 2, line 4, refers to a finding by a local

governing body that such bidder shall manufacture, produce, fabricate, grow, or distribute materials called for in the contract and will employ the residents of the state in the performance of such contracts. Is it your intent to make that requirement a part of the bidding process, that every bidder would have to submit that information?

SENATOR PRESENT: Every New York State bidder.

SENATOR DOLLINGER: Through you, Mr. President.

ACTING PRESIDENT KUHL: Senator Present?

SENATOR PRESENT: Yes.

SENATOR DOLLINGER: Would Senator Present continue to yield?

SENATOR PRESENT: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: Even if there were an out-of-state bidder who was going to use New York labor and New York materials, that out-of-state bidder would have to provide the information requested, isn't

that correct?

SENATOR PRESENT: I think you're right.

SENATOR DOLLINGER: And through you, Mr. President, if Senator Present would continue to yield.

ACTING PRESIDENT KUHL: Senator Present, do you yield?

SENATOR PRESENT: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: Who on the local governing body is it your intention to make -- or enable to make this decision about content -- local content or statewide content of the materials?

SENATOR PRESENT: Who?

SENATOR DOLLINGER: Who?

SENATOR PRESENT: I believe it probably would be the committee that had the spec's for this bid drawn up and let and received, Transportation Committee, the Housing Committee, whatever.

SENATOR DOLLINGER: Okay. Again through you, Mr. President.

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

(Senator Present nods head.)

SENATOR DOLLINGER: Is there any process for a hearing or investigation as part of this bill? For example, if a contractor makes a representation that someone suggests may not be true, is there any opportunity for a hearing on the validity of the representations made by the contractor?

SENATOR PRESENT: No, there's no provision for appeal.

SENATOR DOLLINGER: Again through you, Mr. President, if Senator Present would continue to yield.

SENATOR PRESENT: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR DOLLINGER: Don't you think it would be appropriate to have some form of hearing to allow the local governing board to determine the accuracy of representations made by contractors with respect to local content?

SENATOR PRESENT: No, I don't

think that's necessary at this time.

SENATOR DOLLINGER: One final question for Senator Present, Mr. President.

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

SENATOR PRESENT: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR DOLLINGER: Do you have any guidelines, Senator, for how many employees would need to be -- of this state would need to be hired by this contractor in order to justify varying our public bidding laws? Is there any threshold number, 5, 10, 15 employees that would have to be hired in order to justify us doing something other than taking the lowest possible bid?

SENATOR PRESENT: No, sir.

SENATOR DOLLINGER: Okay. Thank you, Mr. President.

On the bill.

ACTING PRESIDENT KUHL: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I also appreciate Senator Present's courtesy extended

to me in answering my questions.

This bill which I think I voted for in the past -- my guess is I did -- again has a very good idea and that is, let's promote local content. Let's increase the use of New York State materials, New York State requirements, New York State employees in our construction contracts, in all of our contracts. Let's encourage people to buy New York State. I think it's a great idea, and I think that this bill, in part, contains that.

I think it's fatally flawed - may be fatally flawed for two reasons: One, I think it's a departure from our state constitutional requirement for accepting lowest possible bids; two, I think without a hearing process in it, without some way to verify the representations made by the local contractor. Quite frankly, I think the bill could use a little extra draftsmanship, a little refinement so we actually get something that really achieves the goal that Senator Present and I agree would be a good idea, which is to give local preferences to people who are using New York State labor.

I voted for it in the past. I'll vote for it again.

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 57.

ACTING PRESIDENT KUHL: The bill is passed.

THE SECRETARY: Calendar Number 161, by Senator Hannon, Senate Print 1499, an act to amend the Public Health law.

SENATOR DOLLINGER: Explanation.

SENATOR SKELOS: Lay it aside.

ACTING PRESIDENT KUHL: Lay the bill aside.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 209, by Senator Stafford, Senate Print 150, an

act to amend the Environmental Conservation Law.

SENATOR SKELOS: Lay it aside for the day.

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

THE SECRETARY: Calendar Number 210, by Senator Stafford, Senate Print 389, an act to amend the Environmental Conservation Law.

SENATOR DOLLINGER: Explanation.

SENATOR SKELOS: Lay the bill aside for the day.

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

THE SECRETARY: Calendar Number 219, by Senator Wright, Senate Print 3890, an act to amend the County Law.

SENATOR DOLLINGER: Explanation.

SENATOR SKELOS: Lay the bill aside for the day.

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

THE SECRETARY: Calendar Number 220, by Senator Cook, Senate Print 4647, an act to amend the Town Law.

SENATOR DOLLINGER: Explanation.

ACTING PRESIDENT KUHL: Senator Cook, an explanation of Calendar Number 220 has been requested by Senator Dollinger.

SENATOR COOK: Thank you, Mr. President.

The position of town counsel - constable is an old and revered title. It goes back, I guess probably to Colonial days and originally it was a position. In fact, I think at one point it may have even been an elected position, but in more recent times it's become an appointed position, but the interesting thing was that as towns got bigger and second class towns can have constables until they reach the population of 10,000, so that some towns have numerous constables but there has never been a provision for somebody to be the chief. So consequently every constable that a town employs in theory at least reports directly to the town board,

entire town board which, of course, makes it in modern times pretty impossible in a town that may have 9,000 population, may have eight or nine constables to be each of them reporting on an equal basis directly to the town board.

So what this bill does -- and quite honestly, most of the towns have sort of blinked at that and somebody has been, in effect, acting as the chief constable, but there is really no provision in law that provides for that and this bill simply is to make honest people out of those who have been doing the right thing all along, but there hasn't been any statutory authorization for it.

SENATOR DOLLINGER: Again through you, Mr. President, if Senator Cook would yield to a couple of questions.

ACTING PRESIDENT KUHL: Senator Cook, do you yield? The Senator yields.

SENATOR DOLLINGER: What are the duties of a chief constable?

SENATOR COOK: Well, the chief constable is basically in the same manner as

the chief of police to make the job assignments, preside over the general operation of the constable -- the constables of the town.

SENATOR DOLLINGER: Again through you, Mr. President, if Senator Cook will continue to yield.

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

SENATOR COOK: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

ACTING PRESIDENT KUHL: Senator Cook, are those duties spelled out in statute?

SENATOR COOK: No, they're not, Senator. The town board would have the authority. Since the town board appoints all of the constables in the town, the town board would be the one to create the chief constable. They are the ones who would also determine what the powers and authorities of the constable are.

SENATOR DOLLINGER: Again through you, Mr. President, if Senator Cook

will yield.

SENATOR COOK: Yes.

SENATOR DOLLINGER: Isn't it possible under the current Town Law for towns to create the position of chief constable, or for that matter, the principal constable or the lead constable or the boss constable or the number one constable versus the number two, number three and simply through the Town Law, in the exercising of its own discretion, without assistance from us, create a hierarchy of authority and reporting responsibilities in the towns?

SENATOR COOK: Well, Senator, as a practical matter, that's what they have been doing but it also as a legal matter, they technically have not had the legal authority to do it and that's all we're trying to take care of here.

SENATOR DOLLINGER: Again through you, Mr. President, if Senator will yield.

SENATOR COOK: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: What are the legal problems with doing it through the Town Law versus having a state enabling statute?

SENATOR COOK: The only problem, Senator, is that if at some point someone challenges the authority of the chief constable either operating under authority of the town board or if the town board actually creates this position, the courts, as you know, have more than once out... overruled something that localities have done simply on the basis that there exists no statutory authority to do it, and that's all we're really trying to remedy.

SENATOR DOLLINGER: Okay.

SENATOR LEICHTER: Excuse me, Mr. President.

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

SENATOR LEICHTER: Point of order. I don't believe that we have a quorum here. I see an absence of a quorum, Mr. President, and either we should adjourn or, if the President wishes to have a quorum call,

that's fine but there certainly aren't 31 members here at the present time.

ACTING PRESIDENT KUHL: Are you requesting a quorum call, Senator?

SENATOR LEICHTER: I'm asking a quorum call.

ACTING PRESIDENT KUHL: The Secretary will read.

THE SECRETARY: Senator Abate.

(There was no response.)

Senator Alesi.

(There was no response.)

Senator Balboni.

(There was no response.)

Senator Breslin.

(There was no response.)

Senator Bruno.

(Indication of present.)

Senator Connor.

(Indication of present.)

Senator Cook.

SENATOR COOK: Here.

THE SECRETARY: Senator DeFrancisco.

(There was no response.)

Senator Dollinger.
SENATOR DOLLINGER: Here, present.
THE SECRETARY: Senator Farley.
SENATOR FARLEY: Here.
THE SECRETARY: Senator Gentile.
SENATOR GENTILE: Here.
THE SECRETARY: Senator Gold.
(There was no response.)
Senator Gonzalez, excused.
Senator Goodman.
SENATOR GOODMAN: Here.
THE SECRETARY: Senator Hannon.
SENATOR HANNON: Here.
THE SECRETARY: Senator Hoffmann.
(There was no response.)
Senator Holland.
SENATOR HOLLAND: Here.
THE SECRETARY: Senator Johnson.
(There was no response.)
Senator Kruger.
SENATOR KRUGER: Here.

THE SECRETARY: Senator Kuhl.
SENATOR KUHL: Present.
THE SECRETARY: Senator Lachman.
(There was no response.)
Senator Lack.
(There was no response.)
Senator Larkin.
SENATOR LARKIN: Here.
THE SECRETARY: Senator LaValle.
SENATOR LAVALLE: Here.
THE SECRETARY: Senator Leibell.
SENATOR LEIBELL: Here.
THE SECRETARY: Senator Leichter.
SENATOR LEICHTER: Present.
THE SECRETARY: Senator Libous.
(There was no response.)
Senator Maltese.
(There was no response.)
Senator Marcellino.
SENATOR MARCELLINO: Present.
THE SECRETARY: Senator Marchi.

SENATOR MARCHI: Here.
THE SECRETARY: Senator Markowitz.
SENATOR MARKOWITZ: Here.
THE SECRETARY: Senator Maziarz.
SENATOR MAZIARZ: Here.
THE SECRETARY: Senator Meier.
SENATOR MEIER: Present.
THE SECRETARY: Senator Mendez.
(There was no response.)
Senator Montgomery.
SENATOR MONTGOMERY: Here.
THE SECRETARY: Senator Nanula.
SENATOR NANULA: Here.
THE SECRETARY: Senator Nozzolio.
SENATOR NOZZOLIO: Present.
THE SECRETARY: Senator Onorato.
SENATOR ONORATO: Mr. President, to explain my presence. I'm happy to be here, to be part of the quorum.
Thank you.
THE SECRETARY: Senator

Oppenheimer, excused.

Senator Padavan.

SENATOR PADAVAN: Here.

THE SECRETARY: Senator Paterson.

SENATOR PATERSON: Can I explain my presence?

ACTING PRESIDENT KUHL: There is a quorum present. We're on debate on Calendar Number 220 by Senator Cook.

The Secretary will read the last section.

SENATOR DOLLINGER: Mr. President. On the bill, Mr. President.

ACTING PRESIDENT KUHL: Senator Dollinger, on the bill.

SENATOR DOLLINGER: Mr. President, this is one of those bills that we've done, I'm sure before, we'll do again. I don't object to Senator Cook trying to remedy what appears to be a minor gap in the statute. It is a little teeny-weeny, itsy-bitsy issue, whether you can have a chief constable. I don't believe -- it's a kind of solution looking for a problem because even as

Senator Cook admitted, there's really no evident problem, no problems that have arose yet and yet what we're going to do is we're going to create another title in government. We're going to create another layer of government. We're going to decide here that this is the right thing for towns to do, to give towns the ability to do it. We're creating more government. Why we would be creating more government is beyond me.

I have heard all kinds of rhetoric in this house in the last five years about creating less government, doing less with government, using less of the heavy hand of government to accomplish these things and quite frankly, here we are creating more government.

Senator Cook, this may be a solution, but I don't think there's a problem to attach it to.

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 and announce the results.

THE SECRETARY: Ayes 56, nays 2, Senator Dollinger and Leichter recorded in the negative.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you please take up Senator Hannon's bill, Calendar Number 161.

ACTING PRESIDENT KUHL: The Secretary will read the title to Calendar Number 161.

THE SECRETARY: Calendar Number 161, by Senator Hannon, Senate Print 1499, an act to amend the Public Health Law.

SENATOR DOLLINGER: Explanation.

ACTING PRESIDENT KUHL: Senator Hannon, an explanation of Calendar Number 161 has been requested by Senator Dollinger.

SENATOR HANNON: Thank you, Mr. President.

This legislation would allow a city or a county government to seek indemnification from the insurance company which insures a prisoner when that prisoner has received covered medical services and the individual covered has been then contained in a city or county correctional facility.

SENATOR DOLLINGER: Through you, Mr. President. Will Senator Hannon yield to a couple of questions?

ACTING PRESIDENT KUHL: Senator Hannon, do you yield??

SENATOR HANNON: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: Pursuant to your bill, Senator Hannon, how does the county find out that the prisoner has health insurance?

SENATOR HANNON: Ask.

SENATOR DOLLINGER: Through you, Mr. President.

ACTING PRESIDENT KUHL: Senator

Hannon, will you yield to another question?

SENATOR DOLLINGER: Where is that authorized in the -

ACTING PRESIDENT KUHL: Excuse me, Senator Dollinger. I didn't hear Senator Hannon.

SENATOR HANNON: Yes.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: Where is that authorized in statute that you can inquire of a prisoner whether he's got health insurance?

SENATOR HANNON: As part of the intake process to have an individual become a resident of a correctional facility, one goes through a whole series of questions and that would be one of them.

SENATOR DOLLINGER: Through you, Mr. President. Is there any provision in here that says that the prisoner is compelled to grant -- to give that information? Through you, Mr. President. Is there anything that compels him to give that information?

SENATOR HANNON: Nope.

SENATOR DOLLINGER: Is there any -- through you, Mr. President.

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

SENATOR HANNON: Yes. Excuse me.

SENATOR DOLLINGER: Is there anything in your bill that gives the local community, the city or the county the ability to go out and independently investigate and find out those facts for themselves?

SENATOR HANNON: I would think they would have general power for somebody under the care to make a general inquiry if that was the case.

ACTING PRESIDENT KUHL: Senator Dollinger.

SENATOR DOLLINGER: Through you, Mr. President.

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

SENATOR HANNON: Yes, sir.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR DOLLINGER: Your bill makes reference, Senator, to any necessary forms on behalf of the person receiving medical services. What kind of forms are you talking about with respect to that, Senator?

SENATOR HANNON: Claim forms.

SENATOR DOLLINGER: They would file -- again through you, Mr. President.

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

SENATOR HANNON: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR DOLLINGER: The county would be able to file the claim form directly with the insurance carrier?

SENATOR HANNON: Yes.

SENATOR DOLLINGER: Through you, Mr. President. Does those claim forms require the signature of the prisoner?

SENATOR HANNON: No.

SENATOR DOLLINGER: Through you, Mr. President, just -

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

SENATOR HANNON: Yes.

ACTING PRESIDENT KUHL: -- two final questions. One is what's the dollar amount of anticipated reimbursement for these expenses?

SENATOR HANNON: It's not known since this is not something that would be asked of everybody but just people who have insurance and we haven't taken any surveys of that.

SENATOR DOLLINGER: Again through you, Mr. President. Do you know how many people in New York State would have been affected by this provision in the course of, let's say the last five years?

SENATOR HANNON: No, but from the number of people who had considerable assets and who were incarcerated and who were reported to have received medical services for which the county or city had to pay, I would say that it would be significant.

SENATOR DOLLINGER: Just a final question as a follow-up, Mr. President.

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

SENATOR HANNON: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR DOLLINGER: Could you define the term "significant" for me, Senator, so I can make some judgment about what we're talking about, hundreds of thousands, millions, ten thousands.

SENATOR HANNON: Senator, I wouldn't. However, I would point out that you have not only voted for this on the floor twice in the last two years but also you voted for it correspondingly when it came out of committee.

SENATOR DOLLINGER: Thank you, Mr. President.

Senator Hannon is absolutely correct. I voted for this bill in the past. Senator, I want to thank you for extending the courtesy of answering my questions on this bill. I know we've been through this before. There were other bills that were on the floor that we hadn't been through before, where I asked a couple of questions and couldn't get any answers. Nobody wanted to answer.

I think it's great that we have a chamber where the courtesy is extended even though we've done the bill two or three times before, someone will get up, answer a couple of reasonable questions and give some reasonable answers.

Frankly, I couldn't understand what happened about 45 minutes ago, but I appreciate it, Senator. I think you're right. I don't think this is a bad idea. I now fully understand it.

I'll vote yes like I did before.

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

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT KUHL: Senator Leichter, you wish to speak?

SENATOR LEICHTER: If Senator Hannon would yield.

ACTING PRESIDENT KUHL: Senator Hannon, do you yield to a question -

SENATOR LEICHTER: Senator Hannon -

ACTING PRESIDENT KUHL: Senator Leichter -- excuse me, Senator Leichter. I would like to find out if the Senator would yield.

SENATOR HANNON: Yes, Mr. President.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR LEICHTER: Senator, just one thing struck me as I looked at the bill and I don't believe that was -- this applies to counties and local governments, is that correct?

SENATOR HANNON: Counties and cities.

SENATOR LEICHTER: Counties and cities. How about the state? Do we presently have a provision which allows the state to get third-party reimbursement?

SENATOR HANNON: I'm not aware of that, and I don't think the situation necessarily arises because if you get incarcerated and you're in a state facility, you're there for more than a year. So this is not a situation where you're temporarily

incarcerated and in and out of the city or county jail. So that's -- you're more apt to have individual insurance coverage.

SENATOR LEICHTER: Mr. President, if Senator Hannon will be good enough to continue to yield.

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

SENATOR HANNON: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR LEICHTER: Senator, I understand your response, and I think it makes perfectly good sense what you're trying to do, but I think there is a gap. I can certainly envisage a situation where somebody is sentenced to jail, it may be for life, but maybe for that first year, if they still have some third-party insurance, why shouldn't the state get the benefit of it?

All I'm trying to do is take your good idea and have it apply also to those situations -

ACTING PRESIDENT KUHL: Senator Leichter, I don't mean to interrupt the

quality of debate or the quantity of the debate but it's a little difficult to hear when you turn with these new microphones. If you're going to turn, if you could stand a little closer toward Senator Onorato, I think the microphone will pick that up but it's cutting in and out, and I know that's difficult for the stenographer to pick that up.

SENATOR LEICHTER: Thank you, Mr. President.

And it's not that I don't like to be near Senator Onorato. It's just as a matter of courtesy one turns towards the Senator with whom one's having the debate or the discussion, but I understand our new 'phones don't seem to allow that. So excuse me, Senator Hannon, for having my back to you, but just to repeat very quickly briefly my question. It is, why don't we carry a good idea over to those instances where somebody who is incarcerated in a state facility may have insurance? It may be insurance that's going to last only for another year or even less amount of time, but it would just seem to

me to make sense to cover that eventuality.

SENATOR HANNON: Senator, since -- I won't reply since that's not a question.

SENATOR LEICHTER: I'm sorry. I didn't hear the -

SENATOR HANNON: It's not a question, so I don't need to reply.

SENATOR LEICHTER: Well, my question is wouldn't it make sense to have it apply also to the state? Couldn't you envisage one or two or maybe more situations where the state would be entitled to reimbursement?

SENATOR HANNON: It's possible.

SENATOR LEICHTER: And, therefore, don't you think it would make sense to have this bill also apply to the state?

SENATOR HANNON: I'm just trying to deal with one problem at a time. There's lots of problems with prisoner health care. This, I thought, was a fair thing so people who have individual wealth and individual coverage are not getting covered at

the sacrifice of others who don't have that wealth.

SENATOR LEICHTER: Mr. President, on the bill.

ACTING PRESIDENT KUHL: Senator Leichter, on the bill.

SENATOR LEICHTER: I'm sort of sorry about Senator Hannon's response because it would seem to me, Senator, that it's a natural logical progression from what you're trying to do to also include the state. I would say it's more than a progression. It would just seem that any level of government ought to have the benefits that you're providing for cities and counties in this particular bill. It's not a matter that we can only do one problem at a time. This is, first of all, part of the same problem which is to take advantage of third-party reimbursement for levels of government.

Secondly, it certainly fits into the context of this bill and it's a simple enough matter for you to amend the bill and say you're going to put in another bill. I mean, it's -- you seem somehow offended that

anybody would make the suggestion that anything you put out on the floor, Senator Hannon, is of such perfection that it's impossible for anybody, least of all somebody from the Minority, to presume to think that they could improve upon your handiwork.

Well, I think my suggestion and most of my suggestions, frankly, you might not want to take, but here's one that I think makes sense and you obviously -- or obviously you've conceded that there are instances, yes, where the state might benefit if it had the ability to draw down on some of these third-party insurance.

So I don't think an idea like mine has to be met with solemnness or as if it's an affront. I think that's what we're about here, trying to work together to improve the job product and help the people of the state of New York.

I'm going to vote for this bill, but I certainly hope, Senator Hannon, that you might consider having a bill that would also give this very same benefit to the state of New York.

SENATOR HANNON: Mr. President.

ACTING PRESIDENT KUHL: Senator Hannon.

SENATOR HANNON: I appreciate the word "perfection", but grudgingly, I must add -- and I don't want you to feel paranoid about this -- that the bill came about because we were trying to help the City health care system, the city of New York, and it came from an article when it was twigged that it said "As the City health care system braces for nearly $820 million in Medicaid cuts proposed by Lieutenant Governor Elizabeth McCaughey, City Hall points to a prison health care system whose costs are borne almost entirely by the City" and it pointed out that one of these rock stars had been in Bellevue and when Bellevue went to bill that rock star's health insurer, the health insurer didn't ignore it because they expected to be informed that the person was now a ward of the City. So to try to benefit that health care system, I thought this was an apt piece of legislation.

SENATOR DOLLINGER: Mr. President.

ACTING PRESIDENT KUHL: Senator Dollinger, on the bill.

SENATOR DOLLINGER: Mr. President, I appreciate the comments of the chairman of the Health Committee, and I think this bill would -- the spirit and intention of this bill is a good one, but let me just throw out one example that the chairman of the Health Committee might appreciate, which might go even a long way to making this bill work.

Most of those health insurers, if they're covered by HMOs, will not reimburse the services if they're not approved by the primary care physician. There's nothing in this bill that waives that requirement.

So we get the bill. We submit the bill to the HMO. We say, pay the HMO the cost of the medical services and the HMO says, We're not going to pay those costs. They weren't authorized beforehand by the primary health care provider. The prisoner didn't comply with the requirements of the HMO and, therefore, we're not going to pay the bill. We wouldn't pay it for the prisoner. We're not going to pay it for the city of New York.

A little bit more thinking on the bill might produce, I agree with Senator Leichter, a better idea and a way to maybe actually make the bill work.

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 58.

SENATOR GOLD: Mr. President.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Gold, why do you rise?

SENATOR GOLD: First to say hello to you. How are you doing?

Mr. President, I was out of the room on Calendar 151. I would be grateful if I could be voted in the negative.

ACTING PRESIDENT KUHL: That was laid aside for the day, Senator Gold. So that won't be necessary.

SENATOR GOLD: Could you make a note.

Thank you.

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

THE SECRETARY: Calendar Number 231, by Senator Kuhl, Senate Print 1977, an act to amend the Penal Law.

SENATOR LARKIN: Lay it aside for the day.

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

THE SECRETARY: Calendar Number 276, by Senator Larkin, Senate Print 5390, an act to amend the General Municipal Law.

ACTING PRESIDENT KUHL: The Secretary -

SENATOR DOLLINGER: Explanation.

ACTING PRESIDENT KUHL: Senator Larkin, an explanation of Calendar Number 276 has been requested by Senator Dollinger.

SENATOR LARKIN: Yes, Senator Dollinger. This bill was -- is a repeater of

1997 that was passed 60 to nothing.

This bill amends the General Municipal Law in relation to making technical amendments to authorizing nutrition programs to purchase goods, supplies and services.

When Chapter 731 of the Laws of 1992 was passed, everybody thought that it was totally inclusive but recently the comptroller has requested some certain changes. So due to the failure of Chapter 731 to encompass all of those aspects of it, one of the counties, Orange County in specific, was placed out of the program because what they did was not covered in competitive bids. They were buying it outright from hospitals for Meals on Wheels.

If this isn't passed this year, this correction which everybody agrees is essential to the Meals on Wheels program in Orange County, the county will be out of the program for three to four months when their current contract expires.

This bill puts in operation what we believe, what the Office of the Aging and what the comptroller believes was the

original intent of Chapter 731 of the Laws of 1992, which again I would repeat was passed 60 to nothing.

SENATOR DOLLINGER: Through you, Mr. President, if Senator Larkin would continue to yield.

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

SENATOR LARKIN: Yes, Mr. President.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: I believe I'm one of those 60 that voted for this bill last time and I don't know whether I asked any questions last time about it.

SENATOR LARKIN: You did not, sir.

SENATOR DOLLINGER: But you've always been very good in extending me the courtesy of answering questions when I ask them. So let me start with two quick ones.

Through you, Mr. President. What's the dollar value that's purchased through the nutrition programs, do you know?

SENATOR LARKIN: You know, Senator, if you look at your county is larger than mine, so the dollar value in your county would be larger than mine. Senator Wright's district would be smaller.

I think the key thing, Senator, you should -- I would like to remind you of is no matter how they do it, this comes into some federal money. It's going to be spent. It isn't a case of squandering any money. It's these people are doing it with the intent of a direct action.

SENATOR DOLLINGER: Through you, Mr. President. Let me make it very clear up front.

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

SENATOR DOLLINGER: Meals on Wheels -

ACTING PRESIDENT KUHL: Excuse me, Senator Dollinger.

Senator Larkin, do you continue to yield?

SENATOR LARKIN: Yes, Mr.

President.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR DOLLINGER: Through you, Mr. President. Let me make very clear at the start that the Meals on Wheels, the nutrition programs that you referenced, as far as I'm concerned, get every penny out of every cent of every dollar that they spend on food programs. I'm simply trying to find out how big is the dollar volume of products purchased through nutrition programs that receive state and federal local money that we're now going to waive the public bidding requirement?

SENATOR LARKIN: I think if you just take a look at what we're talking about here, let's take Meals on Wheels for the specific, in your county based on what they're purchasing, it could be voluminous. In my county it would be smaller. It all depends on the respective counties and the purchasing that they're going to make.

SENATOR DOLLINGER: Again through you, Mr. President.

ACTING PRESIDENT KUHL: Senator

Larkin, do you continue to yield?

(Senator Larkin nods head.)

SENATOR DOLLINGER: I believe, Senator Larkin, my own county, there are about 3700 Meals on Wheels delivered every day. I assume those meals cost a dollar, dollar and a half apiece. If that's the case, then there's $5,000 a day times seven days a week, that's $35,000 a week times 52 weeks. That's a million and a half dollars in my county alone that we're going to waive the public bidding requirements on.

I'm just asking, if this applies statewide, it could be 10-, 20-, 30-, 40-, 50-, 60-, 100 million if you include the city of New York.

SENATOR LARKIN: Senator, I think if you take it from this point here, we have a Meals on Wheels program in our county -- I would like to just read something for your information.

SENATOR DOLLINGER: Sure.

SENATOR LARKIN: In one of my counties that I represent, the nutrition program with nine dining sites, 60 home

delivery routes serves 490 frail homebound seniors a day. The annual total, 190,000 meals home delivered a year, 60,000 in their nine sites.

What we're trying to do now is make a cooperative effort so that they can collectively purchase this here. The cooperative effort that they have been striving for will reduce the outcosts to provide these meals, generate additional revenue and let us take care of some other people. It meets every requirement that there is with the federal government, the state, except that one glitch that there was a concern about the competitive bidding, period.

SENATOR DOLLINGER: Again through you, Mr. President, if Senator Larkin will -

ACTING PRESIDENT KUHL: Senator Larkin, do you yield?

SENATOR LARKIN: Yes, one more.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: I think - I understand your position, Senator. My concern is this program, obviously if it's generating 40,000 meals a year in your county, and I think more than a million meals in my county every single year, and obviously throughout the state many millions of meals, my question is, why shouldn't we require them to get the best possible price for what they buy, which is what the public bidding laws were designed to do?

SENATOR LARKIN: I think if you go back to the 1992 legislation, Chapter 731, it exempts them from the competitive bidding. We've already done that. What you're saying is you would like to repeal what we did in 1992. What we're saying is we're trying to correct a glitch in that piece of legislation. We're not trying to amend it. The legislation was very clear in 1992. It exempted them because they recognized how they could -- conglomerates could purchase this food.

SENATOR DOLLINGER: Okay. Again through you, Mr. President -- actually

just on the bill, Mr. President.

ACTING PRESIDENT KUHL: Senator Dollinger, on the bill.

SENATOR DOLLINGER: As I understand this bill -- and again, this is one of the things that I'm not quite sure is written in the text of the bill but, Senator, I appreciate your explanation and the courtesy you've shown to me in giving me that explanation, but I understand that this applies to cooperative purchasing agreements. This gives local communities the ability to bring all of the nutrition programs into a cooperative and buy from the cooperative rather than require each one to do it separately.

That's been educational for me. It makes me better understand the building -- the bill. It gives me a better understanding about why I should vote yes, and I will.

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 58.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Paterson, why do you rise?

SENATOR PATERSON: Mr. President, I wanted to explain my vote.

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

SENATOR PATERSON: I wanted to explain that I am going to vote for Senator Larkin's bill in spite of the fact that he has limited me to three questions and extended Senator Dollinger a fourth question, and the reasons for that are being investigated by my office right now but in the interim, I will vote for this bill.

ACTING PRESIDENT KUHL: Senator Paterson will be recorded in the affirmative.

Senator Larkin, we do have one substitution. Can I read that?

The Secretary will read the substitution.

THE SECRETARY: On page 20, Senator Marcellino moves to discharge from the Committee on Environmental Conservation Assembly Print number 1624 and substitute it for the identical Senate Print 6216.

ACTING PRESIDENT KUHL: The substitution is ordered.

SENATOR LARKIN: Mr. President, is there any other house... business up there?

ACTING PRESIDENT KUHL: There is no other housekeeping at the desk, Senator.

SENATOR LARKIN: If there's nothing, then I would move that we adjourn until Tuesday, March the 3rd, at 3:00 p.m.

ACTING PRESIDENT KUHL: Without objection, the Senate stands adjourned until tomorrow, Tuesday, October 3rd, at 3:00 p.m. -- excuse me -- March 3rd, at 3:00 p.m.

(Whereupon, at 5:15 p.m., the Senate adjourned.)