ALBANY, NEW YORK

June 15, 1998

3:12 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 everyone please 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 Reverend Jim Burton, who is Pastor of Union Church of Bay Ridge in Brooklyn.

Reverend Burton.

REVEREND JIM BURTON: Thank you for the privilege of prayer, and I bring you greetings from the Reverend Dr. Douglas Olenberg, who was elected Moderator of the Presbyterian Church in the United States of America this week end.

Senators and all present, will you join with me. Let us pray.

We give You thanks, O Lord, for this wonderful country and for the Empire State in which we live. Because Your love and Your mercy is from everlasting to everlasting, guide Your Senators and Your state that they may love justice, guide mercy and walk humbly with You. As they direct us in their

decisions, grant that they may be followed by Your goodness and mercy, in all the dwelling places of their lives.

We ask and call on You, our Lord, the one God of us all. Amen.

THE PRESIDENT: Amen. Thank you.

The reading of the Journal, please.

THE SECRETARY: In Senate, Sunday, June 14th. The Senate met pursuant to adjournment, Senator Farley in the Chair upon designation of the Temporary President. The Journal of Saturday, June 13th, 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.

Amendments are offered to the following Third Reading Calendar bills:

Senator Cook's bill, on page 7, Calendar Number 274, Senate Print Number 2729;

Senator Wright's bill, on page number 12, Calendar Number 442, Senate Print Number 4224-A;

Senator Nozzolio's bill, on page number 19, Calendar Number 685, Senate Print Number 7113;

Senator Spano's bill, on page 24, Calendar Number 788, Senate Print Number 6796;

Senator Spano's bill again, on page number 24, Calendar Number 802, Senate Print Number 7096;

Senator Balboni's bill, on page number 25, Calendar Number 848, Senate Print Number 7150;

Senator Larkin's bill, on page

number 29, Calendar Number 924, Senate Print Number 7100-A;

Senator Hannon's bill, on page number 29, Calendar Number 926, Senate Print Number 7345;

Senator Velella's bill, on page number 31, Calendar Number 954, Senate Print Number 3632;

Senator Leibell's bill, on page number 37, Calendar Number 1131, Senate Print Number 6642;

Senator Lavalle's bill, on page number 39, Calendar Number 1167, Senate Print Number 7036; and, Madam President, I now move that these bills retain their place on the order of third reading.

THE PRESIDENT: Amendments received.

SENATOR MARCELLINO: Thank you.

Senator Paterson.

SENATOR PATERSON: Madam President, on page number 37, I offer the following amendments to Calendar Number 1122, by Senator Santiago, this is Senate Print

7449, and ask that it retain its place on third reading.

THE PRESIDENT: Amendments received.

Senator Spano.

SENATOR SPANO: Madam President, on behalf of Senator Rath, please place a sponsor's star on Calendar 1275.

And on page -

THE PRESIDENT: The bill will be starred.

SENATOR SPANO: Madam President, like to call up Calendar Number 268, Assembly Print 76.

THE PRESIDENT: Secretary will read.

THE SECRETARY: Calendar Number 268, by member of the Assembly Feldman, Assembly Print 76, an act to amend the Workers' Compensation Law.

SENATOR SPANO: Move to reconsider the vote by which the Assembly bill was substituted for Senator Farley's bill, Print Number 1689, on March 10th.

THE PRESIDENT: Call the roll

on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 37.

SENATOR SPANO: Now move that the Assembly bill 76 be recommitted to the Committee on Rules and the Senate bill be restored as to the Third Reading Calendar.

THE PRESIDENT: So ordered.

SENATOR SPANO: Offer the following amendments.

THE PRESIDENT: Amendments received.

SENATOR SPANO: Madam President, I wish to call up the following bills: Print Numbers 1189, 5918, 5123-C, 6479, 6481, 6343, 5181, 5488-A, 2464-B, 337-A, 6156.

THE PRESIDENT: Secretary will read.

THE SECRETARY: Calendar Number 90, by Senator Velella, Assembly Print 1189, an act to amend the Criminal Procedure Law;

Calendar Number 123, by Senator Holland, Senate Print 5918, an act to amend

the Vehicle and Traffic Law;

Calendar Number 347, by Senator Alesi, 5122-D, an act to amend the General Business Law and the Executive Law;

Calendar Number 487, by Senator Wright, Senate Print 6479, an act to amend the Tax Law;

Calendar Number 488, by Senator Wright, Senate Print 6481, an act to amend the Tax Law;

Calendar Number 523, by Senator Velella, Senate Print 6343, an act to amend the Insurance Law;

Calendar Number 678, by Senator Nozzolio, Senate Print 5181, an act to amend the Correction Law;

Calendar Number 930, by Senator Stafford, Senate Print 5488-A, an act to amend the State Finance Law;

Calendar Number 1276, by Senator LaValle, Senate Print 2464-B, an act to amend the General Obligations Law;

Calendar Number 137, by Senator Balboni, Senate Print 337-A, an act to amend the Penal Law;

Calendar Number 650, by Senator Volker, Senate Print 6156, an act to amend the Penal Law.

SENATOR SPANO: Madam President, I now move to reconsider the vote by which these bills passed this house.

THE PRESIDENT: Call the roll on reconsideration, please.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 46.

SENATOR SPANO: I now offer the following amendments.

THE PRESIDENT: Amendments received.

Senator Holland.

SENATOR HOLLAND: Amendments are offered to the following bills:

Senator Lavalle's bill, page 4, Calendar 67, Senate Print 5592;

Senator Maziarz' bill, page number 23, Calendar Number 763, Senate Print 3217;

Senator Velella Senator Velella's bill, page number 28, Calendar 904,

Senate Print 6519;

Senator DeFrancisco's bill, page 28, Calendar 909, Senate Print 6444-A;.

Senator Maziarz' bill, page number 29, Calendar Number 919, Senate Print Number 7367-A;

Senator Rath's bill, page number 30, Calendar Number 949, Senate Print Number 6914;

Senator Volker's bill, page number 33, Calendar Number 1025, Senate Print Number 6739-B;

Senator Maziarz' bill, page number 42, Calendar 1280, print Number 4492-A;

Senator Cook's bill, page number 18, Calendar 633, Senate Print Number 6276-A;

Senator Volker's bill, page 8, Calendar Number 281, Senate Print Number 365 D; and Senator Lavalle's bill, page number 39, Calendar 1166, Senate Print 6621.

THE PRESIDENT: Amendments received.

SENATOR HOLLAND: Madam President, I now move these bills retain their

place on the order of third reading.

THE PRESIDENT: Bills will retain their place.

Senator Skelos, may we read the substitutions?

SENATOR SKELOS: Yes, Madam President, please make the substitutions.

THE PRESIDENT: Secretary will read.

THE SECRETARY: On page 11, Senator Saland moves to discharge from the Committee on Rules Assembly bill Number 8836 A, and substitute it for the identical Third Reading Calendar 390.

On page 30, Senator Marcellino moves to discharge from the Committee on Finance Assembly Bill Number 9765-A, and substitute it for the identical Third Reading Calendar 935.

On page 37, Senator Leibell moves to discharge from the Committee on Rules Assembly Bill Number 10407-A, and substitute it for the identical Third Reading Calendar 1130.

On page 42, Senator Santiago

moves to discharge from the Committee on Rules Assembly Bill Number 5968-A and substitute it for the identical Third Reading Calendar 1279.

On page 43, Senator Trunzo moves to discharge from the Committee on Rules Assembly Bill Number 5116-A, and substitute it for the identical Third Reading Calendar 1316.

On page 43, Senator Maltese moves to discharge from the Committee on Rules Assembly Bill Number 892 and substitute it for the identical Third Reading Calendar 1318.

On page 43, Senator Stachowski moves to discharge from the Committee on Rules Assembly Bill Number 8309-A, and substitute it for the identical Third Reading Calendar 1323.

On page 44, Senator Holland moves to discharge from the Committee on Rules Assembly Bill Number 9125-B, and substitute it for the identical Third Reading Calendar 1325.

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

Assembly Bill Number 10379, and substitute it for the identical Third Reading Calendar 1332.

On page 45, Senator Spano moves to discharge from the Committee on Rules Assembly Bill Number 10755 and substitute it for the identical Third Reading Calendar 1342.

On page 46, Senator Johnson moves to discharge from the Committee on Rules Assembly Bill Number 8815-B, and substitute it for the identical Third Reading Calendar 1346.

On page 46, Senator Saland moves to discharge from the Committee on Rules Assembly Bill Number 10990, and substitute it for the identical Third Reading Calendar 1348.

And on page 46, Senator Velella moves to discharge from the Committee on Rules Assembly Bill Number 5750-B, and substitute it for the identical Third Reading Calendar 1350.

ACTING PRESIDENT MAZIARZ: Substitutions ordered.

Senator Skelos.

SENATOR SKELOS: Mr. President, there is a privileged resolution at the desk by Senator DeFrancisco. May we please have the title read and move for its immediate adoption.

ACTING PRESIDENT MAZIARZ: Secretary will read.

THE SECRETARY: By Senator DeFrancisco, Legislative Resolution 4039, honoring Vera House, Incorporated of Syracuse, New York, an agency that works to end domestic violence, upon the occasion of the kick-off of its White Ribbon Campaign June 13 through 21, 1998.

ACTING PRESIDENT MAZIARZ: Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes. Each year during this week, I rise to support this resolution and to explain that this is a week long wearing of a white ribbon, a program that was started by Vera House, which deals with domestic violence in the county of Onondaga. It's a program where men wear white ribbons to show their solidarity against

domestic violence in our community.

I bring it to the Senate each year so that we can make this a statewide event, and I've delivered white ribbons to all of the offices in the -- of the Senators in this house. Apparently they haven't gotten their white ribbons yet, because I don't see many being worn here, but I'm sure that before the day is out everyone will have theirs on and wear it proudly during the week.

When you wear it, you always ask what it's about and at least it gives people the awareness that you are, in fact, supporting a very worthwhile campaign.

So I seek the unanimous support of this resolution, and hopefully all will wear their white ribbons this week.

ACTING PRESIDENT MAZIARZ: The question is on the resolution. All in favor signify by saying aye.

(Response of "Aye.")

Opposed nay.

(There was no response.)

The resolution is adopted.

Senator Skelos, we have two

additional motions by Senator Marcellino at this time.

Senator Marcellino.

SENATOR MARCELLINO: Actually, Mr. President, we have three.

Mr. President, on behalf of Senator Farley, on page number 28, I offer the following amendments to Calendar Number 906, Senate Print Number 7168, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT MAZIARZ: Amendments received. It will retain its place on Third Reading Calendar.

Senator Marcellino.

SENATOR MARCELLINO: Thank you, Mr. President.

On behalf of Senator Farley once again, on page 28, I offer the following amendments to Calendar Number 903, Senate Print Number 5716, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT MAZIARZ: Amendments received. If will retain its place

on the Third Reading Calendar.

Senator Marcellino.

SENATOR MARCELLINO: Mr. President, on behalf of Senator Kuhl, I wish to call up his bill, Print Number 6184, recalled from the Assembly which is now at the desk.

ACTING PRESIDENT MAZIARZ: Secretary will read.

THE SECRETARY: Calendar Number 1284, by Senator Kuhl, Senate Print 6184, an act to amend the Private Housing Finance Law.

SENATOR MARCELLINO: Mr. President, I now move to reconsider the vote by which the bill was passed.

ACTING PRESIDENT MAZIARZ: Call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 51.

SENATOR MARCELLINO: Mr. President, I now offer the following amendments.

ACTING PRESIDENT MAZIARZ: Amendments received.

SENATOR MARCELLINO: Thank you.

SENATOR SKELOS: Mr. President, I believe there's one more substitution to be made.

ACTING PRESIDENT MAZIARZ: Secretary will read.

THE SECRETARY: On page 13, Senator Kuhl moves to discharge from the Committee on Rules Assembly Bill Number 8437 and substitute it for the identical Third Reading Calendar 496.

ACTING PRESIDENT MAZIARZ: So ordered.

Senator Skelos.

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

ACTING PRESIDENT MAZIARZ: Secretary will read.

THE SECRETARY: Calendar Number 9, by Senator Rath, Senate Print 3636-A, an act to amend the General Municipal Law, in relation to alternative methods.

ACTING PRESIDENT MAZIARZ: Read

the last section.

THE SECRETARY: Section 3.

This act shall take effect on the 60th day.

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 40, by Senator Alesi, Senate Print 5942-D, an act to amend the General Business Law, in relation to requiring.

ACTING PRESIDENT MAZIARZ: Read the last section.

THE SECRETARY: Section 2.

This act shall take effect on the 90th day.

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 213, by Senator Kuhl, Senate Print 3157-B, an act to amend the Environmental Conservation Law, in relation to the use of pesticides.

SENATOR LEICHTER: Lay it aside.

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

THE SECRETARY: Calendar Number 423, by Senator Saland, Senate Print 5563-A, an act to authorize the Commissioner of General Services.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number

444, by Senator Wright, Senate Print 6460, an act to amend the Mental Hygiene Law, in relation to providing a uniform operating article.

ACTING PRESIDENT MAZIARZ: Read the last section.

THE SECRETARY: Section 8. This act shall take effect immediately.

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 449, by member of the Assembly Nolan, Assembly Print 10,042, an act to amend the Labor Law, in relation to payroll records.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

SENATOR STACHOWSKI: Lay the bill aside, please.

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

THE SECRETARY: 480, by Senator Leibell, Senate Print 6281-A, an act to amend the Real Property Tax Law in relation to exemption.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 496, substituted earlier today, by the Assembly Committee on Rules, Assembly Print 8437, an act to amend the Agriculture and Markets Law, in relation to agricultural assessment values.

SENATOR LEICHTER: Lay it

aside.

ACTING PRESIDENT MAZIARZ: Read the -

SENATOR LEICHTER: Lay it aside.

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

THE SECRETARY: Calendar Number 584, by Senator Maziarz, Senate Print 4496-B, an act to amend the Alcoholic Beverage Control Law, in relation to requiring.

ACTING PRESIDENT MAZIARZ: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the 30th day.

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 737, by Senator Wright, Senate Print 7318-A,

an act to amend the Alcoholic Beverage Control Law, the Vehicle and Traffic Law and the Public Health Law.

ACTING PRESIDENT MAZIARZ: Read the last section.

THE SECRETARY: Section 6. This act shall take effect September 1st.

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 760, by Senator Alesi, Senate Print 6133-B, an act to amend the General Business Law, in relation to prohibiting.

ACTING PRESIDENT MAZIARZ: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 120th day.

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the

roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 794, by Senator Spano.

SENATOR SKELOS: Lay aside for the day, please.

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

THE SECRETARY: Calendar Number 887, by Senator Meier, Senate Print 6927-B, an act to amend the Military Law, in relation to credit to members.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT MAZIARZ: The bill is passed.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT MAZIARZ: Senator Skelos.

SENATOR SKELOS: If I could interrupt, there will be an immediate meeting of the Rules Committee in the Majority Conference Room.

ACTING PRESIDENT MAZIARZ: There will be an immediate meeting of the Rules Committee in Room 332.

Secretary will read.

THE SECRETARY: Calendar Number 953, by Senator Balboni, Senate Print 7325-A, an act to amend the State Administrative Procedure Act, in relation to consensus.

ACTING PRESIDENT MAZIARZ: Read the last section.

THE SECRETARY: Section 8. This act shall take effect on the first day of October.

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 996, by Senator Saland, Senate Print 2726-B, an act to amend the Social Services Law and the Education Law, in relation to the protection.

SENATOR PATERSON: Lay aside.

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

THE SECRETARY: Calendar Number 1104, by Senator Johnson, Senate Print 6848-A, an act to amend the Vehicle and Traffic Law.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT MAZIARZ: The

bill is passed.

THE SECRETARY: Calendar Number 1263, by Senator Seward, Senate Print 7447, an act to amend the Public Service Law, in relation to unauthorized changes.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 1265, by Senator Skelos, Senate Print 7500-A, an act to establish the Bay Park Library Funding District.

ACTING PRESIDENT MAZIARZ: Read the last section.

THE SECRETARY: Section 12. This act shall take effect immediately.

ACTING PRESIDENT MAZIARZ: Call

the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 1273, by Senator Stachowski, Senate Print 1273, an act to amend the General Municipal Law, in relation to general requirements.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 1285, by Senator Rath, Senate Print 6509, an act to amend the Real Property Tax Law, in relation to definition.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT MAZIARZ: Senator Leichter.

SENATOR LEICHTER: Yes, did the clerk read 1275 or 1285?

ACTING PRESIDENT MAZIARZ: He read 1285. 1275 was starred earlier today by the sponsor, Senator.

SENATOR LEICHTER: O.K. Thank you.

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 1295, by Senator DeFrancisco, Senate Print 7097-A, an act to amend the General Municipal Law, in relation to raffles.

SENATOR DOLLINGER: Lay aside.

ACTING PRESIDENT MAZIARZ: Laid aside at the request of Senator Dollinger.

THE SECRETARY: Calendar Number 1297, by Senator Holland, Senate Print 7187, an act to amend the General Municipal Law, in relation to compensation.

ACTING PRESIDENT MAZIARZ: There is a home rule message at the desk. Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 1309, by Senator Balboni, Senate Print 7589-A,

an act to amend the Domestic Relations Law, the Family Court Act, the Criminal Procedure Law, the Penal Law and the Executive Law.

ACTING PRESIDENT MAZIARZ: Read the last section.

THE SECRETARY: Section 18. This act shall take effect on the 90th day.

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 1314, by Senator Johnson, Senate Print 500-A, an act to amend the Real Property Tax Law, in relation to establishing.

SENATOR DOLLINGER: Lay aside.

ACTING PRESIDENT MAZIARZ: Lay Calendar 1314 aside at the request of Senator Dollinger.

THE SECRETARY: Calendar Number 1315, by Senator Rath, Senate Print 2034.

SENATOR OPPENHEIMER: Lay aside.

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

THE SECRETARY: Calendar Number 1319, by Senator Kuhl, Senate Print 4888, an act to amend the Vehicle and Traffic Law, in relation to including trucks.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 1321, by Senator DeFrancisco, Senate Print 5338, an act to amend the Public Health Law, in relation to pharmaceutical and optical services.

SENATOR DOLLINGER: Lay aside, please.

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

THE SECRETARY: Calendar Number 1322, by Senator Montgomery, Senate Print 5374-B, an act to amend the Penal Law, in relation to requiring.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 1323, substituted earlier today, by the Assembly Committee on Rules, Assembly Print 8309-A, an act to amend Chapter 276 of the Laws of 1993.

ACTING PRESIDENT MAZIARZ:

There is a home rule message at the desk.
Read the last section.
THE SECRETARY: Section 2.
This act shall take effect immediately.
ACTING PRESIDENT MAZIARZ: Call the roll.
(The Secretary called the roll.)
THE SECRETARY: Ayes 51.
ACTING PRESIDENT MAZIARZ: The bill is passed.
THE SECRETARY: Calendar Number 1325, by member of the Assembly Harenberg, Assembly Print 9125-B, substituted earlier today, an act to amend the Education Law, in relation to early intervention.
ACTING PRESIDENT MAZIARZ: Read the last section.
THE SECRETARY: Section 2.
This act shall take effect immediately.
ACTING PRESIDENT MAZIARZ: Call the roll.
(The Secretary called the roll.)
THE SECRETARY: Ayes 51.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 1326, by Senator DeFrancisco, Senate Print 6385-A, an act to amend the Vehicle and Traffic Law, in relation to the applicability.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 1327, by Senator Kuhl, Senate Print 6404, an act to amend the Retirement and Social Security Law, in relation to the partial direct deposit.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 1328, by Senator Rath, Senate Print 6495-A, an act to amend the Real Property Tax Law, in relation to state aid.

SENATOR DOLLINGER: Lay that aside, please.

ACTING PRESIDENT MAZIARZ: Lay 1328 aside at the request of Senator Dollinger.

THE SECRETARY: Calendar Number 1329, by Senator Kuhl, Senate Print 6664, an act to amend the Tax Law, in relation to increasing the rate of hotel and motel taxes.

ACTING PRESIDENT MAZIARZ: There is a local fiscal impact note at the desk. Read the last section.

THE SECRETARY: Section 2. This act shall take effect December 1.

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 50, nays 2, Senators Dollinger and Gentile recorded in the negative.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 1330, by Senator Kuhl, Senate Print 6767, an act to amend the Town Law, in relation to installment billing in the Keuka Park Water District.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 1331, by Senator Larkin, Senate Print 6874-A, an act to amend the Retirement and Social Security Law, in relation to eligibility.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 1332, substituted earlier today, by member of the Assembly Diaz, Assembly Print 10379, an act to amend Chapter 741 of the Laws of 1985.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 1333, by Senator Alesi, Senate Print 7035-A.

SENATOR HOLLAND: Lay aside for the day.

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

THE SECRETARY: Calendar 1334, by Senator Johnson, Senate Print 7101, an act to amend the Transportation Law, in relation to the regulation.

ACTING PRESIDENT MAZIARZ: Read the last section.

SENATOR LEICHTER: Lay that aside. Lay it aside.

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

THE SECRETARY: Calendar Number

1335, by Senator Leibell, Senate Print 7190-A, an act to amend the Executive Law, in relation to directing the Secretary of State.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 1336, by Senator Farley, Senate Print 7224-A, an act to adjust certain state aid payments.

ACTING PRESIDENT MAZIARZ: There is a local fiscal impact note at the desk. Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the

roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 1337, by Senator Marcellino, Senate Print 7297, an act to amend the Education Law, in relation to courses of study.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 1338, by Senator Johnson, Senate Print 7401, an act to amend the Vehicle and Traffic Law and the Transportation Law, in relation to sanctions.

ACTING PRESIDENT MAZIARZ: Read the last section.

THE SECRETARY: Section 3. This act shall take effect in 90 days.

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 1339, by Senator Johnson, Senate Print 7411, an act to amend the Vehicle and Traffic Law, in relation to mailing of suspensions.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT MAZIARZ: The

bill is passed.

THE SECRETARY: Calendar Number 1340, by Senator Nozzolio, Senate Print 7415, an act to amend the Tax Law, in relation to corporate acquisition.

SENATOR LEICHTER: Lay aside.

ACTING PRESIDENT MAZIARZ: Calendar 1340 is laid aside at the request of Senator Leichter.

THE SECRETARY: Calendar 1341, by Senator Leichter, Senate Print 7463-A, an act to authorize the city of New York to discontinue the use as park land.

ACTING PRESIDENT MAZIARZ: There is a home rule message at the desk. Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 1342, substituted earlier today, by the Assembly Committee on Rules, Assembly Print 10755, an act to amend the Local Finance Law, in relation to bonds and notes.

ACTING PRESIDENT MAZIARZ: There is a home rule message at the desk. Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

THE SECRETARY: Ayes 52.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 1343, by Senator Leibell, Senate Print 7482, an act to amend the Private Housing Finance Law, in relation to loans.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 1344, by Senator Fuschillo, Senate Print 7578, an act to amend the Vehicle and Traffic Law, in relation to requiring.

ACTING PRESIDENT MAZIARZ: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 180th day.

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 1343 -- excuse me, Calendar Number 1345.

SENATOR HOLLAND: Lay aside for the day, please.

ACTING PRESIDENT MAZIARZ: Bill

is laid aside for the day.

THE SECRETARY: Calendar Number 1346, substituted earlier today, by member of the Assembly DiNapoli, Assembly Print 8815-B, an act to amend the Vehicle and Traffic Law, in relation to the retail sale.

ACTING PRESIDENT MAZIARZ: Read the last section.

THE SECRETARY: Section 6. This act shall take effect on the 180th day.

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 51, nays one, Senator Meier recorded in the negative.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 1347, by Senator Padavan, Senate Print 7605, an act to amend the State Finance Law and others, in relation to the remittance.

ACTING PRESIDENT MAZIARZ: Read the last section.

THE SECRETARY: Section 8.

This act shall take effect immediately.

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 1348, substituted earlier today, by the Assembly Committee on Rules, Assembly Print 10990, an act to amend the Domestic Relations Law, in relation to venue.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number

1350, substituted earlier today, by member of the Assembly Nolan, Assembly Print 5750-B, an act to amend the Public Authorities Law, in relation to the composition.

ACTING PRESIDENT MAZIARZ: Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

THE SECRETARY: Ayes 52.

ACTING PRESIDENT MAZIARZ: The bill is passed.

THE SECRETARY: Calendar Number 1349, by Senator Stafford, Senate Print 7622, an act to amend Chapter 814 of the Laws of 1987.

SENATOR LEICHTER: Lay it aside.

ACTING PRESIDENT MAZIARZ: We're laying aside Calendar Number 1349 at the request of Senator Leichter.

THE SECRETARY: Calendar Number 1351, by Senator Meier, Senate Print 7635, an act to amend the Civil Rights Law, in relation

to the right of public petition and participation.

ACTING PRESIDENT MAZIARZ: Read the last section.

SENATOR PATERSON: Lay that aside.

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

THE SECRETARY: Calendar Number 1352, by Senator DeFrancisco, Senate Print 7650, an act to adjust certain state aid payments to the Syracuse City School District.

ACTING PRESIDENT MAZIARZ: There is a local fiscal impact note at the desk. Read the last section.

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

ACTING PRESIDENT MAZIARZ: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT MAZIARZ: The

bill is passed.

Senator Holland, that completes the non-controversial calendar.

SENATOR HOLLAND: Mr. President, can we move on to the controversial reading of the calendar, please.

ACTING PRESIDENT MAZIARZ: Secretary will read.

THE SECRETARY: Calendar Number 213, by Senator Kuhl, Senate Print 3157-B, an act to amend the Environmental Conservation Law, in relation to the use of pesticides.

SENATOR LEICHTER: Explanation.

SENATOR HOLLAND: Will you lay that aside for the day, please.

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

THE SECRETARY: Calendar Number 449, by member of the Assembly Nolan, Assembly Print 10042, an act to amend the Labor Law, in relation to payroll records.

SENATOR STACHOWSKI: Explanation.

ACTING PRESIDENT MAZIARZ:

Senator Spano, an explanation has been requested of Calendar Number 449.

SENATOR SPANO: Mr. President, this bill expands upon a bill that we passed in 1997 that requires the reporting of payroll transcripts on a 30-day basis. This one requires contractors and subcontractors on any public works projects to submit a summary transcript at the end of the construction period stating the hours, the days worked, the trade occupations, and the hourly wage rates and supplements that were paid to each worker on that project.

ACTING PRESIDENT MAZIARZ:

Senator Stachowski.

SENATOR STACHOWSKI: Mr. President, if Senator Spano would yield to a couple questions.

ACTING PRESIDENT MAZIARZ:

Senator Spano, would you yield for a question from Senator Stachowski?

SENATOR SPANO: Yes.

ACTING PRESIDENT MAZIARZ:

Senator Stachowski.

SENATOR STACHOWSKI: Senator, I really don't have trouble with this bill. I'm just wondering why are we doing it if we just put another bill out from Rules that's supposedly a compromise bill off of this bill, to eliminate the opposition from most of the people that were opposed to this bill, the smaller contractors?

SENATOR SPANO: Senator Stachowski, I'm not familiar -- what bill are you comparing?

SENATOR STACHOWSKI: You're not familiar with Senate 7744?

SENATOR SPANO: You talking about -- this is the -- this is Workers' Comp'. That was Workers' Comp'; this is prevailing wage.

SENATOR STACHOWSKI: Yeah, but this still is different. This hours worked bill, the maintaining the records, I thought that's why the hourly work bill sets what this one is.

ACTING PRESIDENT MAZIARZ: Senator Spano, do you yield for another question?

SENATOR SPANO: Sure.

ACTING PRESIDENT MAZIARZ: Senator Stachowski.

SENATOR SPANO: The bill that would be reported out of the Rules Committee is the bill that would place the salary cap that we'll talk about later, I'm sure in the day today. That -- this bill here is specifically trying to give the tools and the information available to prevent prevailing wage law violations, and it goes a bit further so that, in addition to the passage of what we have in 1997, the 30-day requirement gives a summary transcript at the end of the day.

SENATOR STACHOWSKI: O.K.

SENATOR SPANO: This is just - this is prevailing wage.

SENATOR STACHOWSKI: Last question. This one's merely to make sure that prevailing wages are kept and that records are kept, but this one wouldn't affect the Workers' Comp' bill, the other one does?

SENATOR SPANO: That's correct.

ACTING PRESIDENT MAZIARZ:

Senator Spano, you continue to yield?

SENATOR SPANO: Yes.

SENATOR STACHOWSKI: Sorry; that was another question off of that.

SENATOR SPANO: That's correct; that's the answer.

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

SENATOR DOLLINGER: Yes. Will the sponsor yield to one other question?

SENATOR SPANO: Yes.

ACTING PRESIDENT MAZIARZ: Senator Spano.

SENATOR DOLLINGER: Through you, Mr. President, what does the phrase "completion of the project" mean? Is that at the time of the submission of the certificate of substantial completion of the project? When is that point in the process?

SENATOR SPANO: Literally when the construction has been completed and all the final paperwork has been turned in for payment, and when they -- when that paperwork would be turned in, this summary transcript

would have to be a part of that document.

SENATOR DOLLINGER: O.K. Again through you, Mr. President. Senator spano -

ACTING PRESIDENT MAZIARZ: Senator Spano, you continue to yield?

SENATOR SPANO: Yes.

ACTING PRESIDENT MAZIARZ: Senator Dollinger.

SENATOR DOLLINGER: As I understand it, the purpose of this bill is to create a transcript so that someone at that point can verify that all the prevailing wages have been paid; is that correct?

SENATOR SPANO: The -- whatever department has jurisdiction would then have that opportunity, yes.

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

ACTING PRESIDENT MEIER: Senator Spano, do you continue to yield?

SENATOR SPANO: Yes.

ACTING PRESIDENT MEIER: Senator yields.

SENATOR DOLLINGER: My concern,

Senator, is that oftentimes when workers are involved on prevailing wage projects, one of the problems is that they don't find out what the prevailing wage was or that they should have been paid it until long after they've left the site. This, I assume, applies to a contractor or subcontractor may hire someone on a two-year project. They work for the first four months and then they leave or they're taken off the bench or put back on to another project if they're a union employee, and this says that it would -- they'd have to wait basically two years before you'd know that they had been paid the improper wages, is that correct, because they have to wait until the completion of the project?

I think it's a good idea. My question is, why wouldn't you do it more frequently than just at the end of the project?

SENATOR SPANO: We've got two -- the 1997 statute requires monthly reporting, Senator. This one requires a final summary transcript at the end of the -- the end of the day, at the end of the project.

Now, you mention on an annual basis -- every two years. Where -- where are you referring to that?

SENATOR DOLLINGER: Well, it - I'm on page 2 of the bill -- again through you, Mr. President. I'm on page 2 of the bill and it says that after completion of the project, the summary transcript specifying the hours, which is the amendment that you're making in that bill, and my question is, I understand that there's a 30-day reporting requirement, and there's an initial 30 days after the project starts where you have to make reports.

My question is, why do you do it at the end; why wouldn't you provide this detailed summary transcript on those 30 days or 60 days or 90-day intervals instead of waiting to the end of the project?

SENATOR SPANO: We do. We're not repealing -- Chapter 565 is not repealed in this statute.

SENATOR DOLLINGER: Again through you, Mr. President, then I don't understand what the point of the statute is.

If you got a 30-day -- if you're reporting every 30 days, why do you need to do the summary transcript at the end?

SENATOR SPANO: In addition to the every 30 -- every 30 days, what this will do will give the agencies that would be overseeing this specific project the tools that they need to make sure that there are no violations of prevailing wage during that course of the entire project, so in addition to the every 30 days statute that we have and getting that information that we have at the end of the course of the project, what we'll do, we'll be able to provide the additional assurances that the contractors and the subcontractors are obeying the prevailing wage laws, and also it will provide the -- in addition to the payroll transcripts, it will help the agencies and contractors identify the costs and the labor that are related to those projects themselves.

SENATOR DOLLINGER: O.K. One final question, Mr. President. I appreciate the explanation.

ACTING PRESIDENT MEIER:

Senator Spano, do you continue to yield?

SENATOR SPANO: Yes.

ACTING PRESIDENT MEIER: Senator yields.

SENATOR DOLLINGER: Will this data be subject to disclosure under the Freedom of Information Act to anyone who wants it?

SENATOR SPANO: Yes, this would be FOILable but without names and Social Security numbers.

SENATOR DOLLINGER: O.K. And again through you, Mr. President, I assume that that would be FOILable both by individuals, organizations such as organized labor or by another level of government, for example, what I understand will happen is this will be furnished to the Department of Labor, these -- this is our bill, this requires it to be furnished to the Department of Labor.

SENATOR SPANO: This will be furnished to the department of jurisdiction, not necessarily the Department of Labor and, yes, it would be FOILable by any individual or corporation.

SENATOR DOLLINGER: Explanation satisfactory, Mr. President.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 60th day.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 52.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 496, substituted earlier today, by the Assembly Committee on Rules, Assembly Print 8437, an act to amend the Agriculture and Markets Law.

SENATOR LEICHTER: Explanation.

SENATOR HOLLAND: Lay it aside for the day, please.

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

THE SECRETARY: Calendar Number

996, by Senator Saland, Senate Print 2726-B, an act to amend the Social Services Law and the Education Law, in relation to the protection.

SENATOR PATERSON: Can we have an explanation of this bill, please.

ACTING PRESIDENT MEIER: Senator Saland, an explanation has been requested.

SENATOR SALAND: Thank you, Mr. President.

Mr. President, this bill is a bill which tends to deal with the issue of abuse that occurs in a school setting, and what it endeavors to do is to create a mechanism which deals with employees of school systems, whether they be professional employees such as teachers or whether they be clerical and other employees, and it attempts to do this in a couple of ways.

In the first instance, it attempts to determine by way of the screening process whether anybody who makes application to become a school employee does, in fact, have a criminal record. Our experience, based

upon data available from other states, tells us that in New Jersey, for instance, out of some 340,000 applicants over a period of ten years from 1987 to 1997, in excess of 3,000 of those applicants were people had criminal records, some of them extremely serious crimes including homicides and sexual offenses.

New York City has a system. This system in the city of New York requires fingerprinting. They fingerprint all employees. They started back, I believe, in the late '30s or early '40s fingerprinting non-teaching employees, and some time in the '60s I believe began fingerprinting teachers as well. The last year for which I have seen data was the 1996 year, and out of approximately 25,000 screens, they had about 1200 of those employees who had criminal records, again serious crimes including assaults, abuses and homicides.

That screening basically meant about four and a half to five percent of the sample was seeking positions with the New York City School District and at the same time had a serious criminal record.

We also attempt here to -- to provide for the ability to -- to determine whether or not an employee of the school has, in fact, been the subject of a report of abuse and neglect by permitting access to the central registry for those purposes.

We establish a reporting mechanism. The reporting mechanism is a mechanism which basically would render the so-called "silent resignation" a criminal offense and by "silent resignation", what I mean is those instances in which an incident of physical or sexual abuse occurs in school settings, an employee is permitted to resign for fear that either the school district does not want the notoriety surrounding it or just wants it to sort of go away. That school employee would then go to another district if, in fact, it's a teacher that nothing is noted anywhere that this event has, in fact, occurred and that person then re-offend in yet another community.

The reality is that there are probably somewhere in the area of some couple of million young people who go off to school

every day, and their parents assume that they're going to receive a quality education, in a safe and secure environment. The reality again is that the vast overwhelming majority of those children will receive what their parents expect. However, in numbers, however small they may be percentagewise, translate to far too many incidents and there have been incidents reported right here in this Capital District where one of the local school districts was required to spend some $2.3 million to settle a case involving allegations of abuse in a school setting, in this case sexual abuse.

The reporting system is intended to involve law enforcement, to get law enforcement involved at the earliest possible stage. The failure to report would be a misdemeanor. The idea is that law enforcement does far better than would internal school district employees investigation of alleged criminal activity. Teachers teach, administrators administer. They don't investigate crime scenes; they don't investigate allegations of crime,

certainly nowhere near as well as one would reasonably expect trained law enforcement personnel.

If, in fact, a teacher would be convicted of a child abuse crime under this bill, that teacher would lose his or her certificate and would be unable to then go to another district where they might engage in that very same misconduct again. That would be in lieu of a so-called Part 83 or Article 83 hearing which would otherwise be separately required.

The beneficiaries of this bill, I believe, are overwhelmingly the young people of all of our communities, the hard working honorable people who teach in our schools and who are otherwise employed in our school districts. The only losers under this system are people who happen to be predators, child sexual abusers or pedophiles.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President, and thank you, Senator Saland, for an excellent explanation, one that

probably is as founded in merit as the greater part of this bill we accept and certainly support. As Senator Saland said, there may not be a great number of these incidents percentagewise, but just what few there may be, their report and the types of situations that we read about and watch on television, as the accusations are made so alarm the general public, so alarm parents, and obviously children who can understand what these charges are, that there really must be greater protections, and as much as we don't like to subject employees, particularly those who have undergone a great deal of education to get to the position that they have, while we don't like to subject them to any type of further scrutiny and fingerprinting, we have to. That's just the reality of the world we're living in today.

My -- I have a question for Senator Saland, if he would yield.

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT MEIER: Senator Saland yields. Senator Paterson.

SENATOR PATERSON: It's coming in right now, Senator.

Yes. Senator, would you draw for us in a little more detail the distinction between what the penalties would be for a person who has been -- well, would you explain what the convicted person found out about later on, but what punishment that would incur, but I'm interested in what would be the procedure after it's clear that someone has been accused, because on the sexual abuse registry, just a credible evidence would be the threshold test for accusation, and if the accusation has been made and it's in the registry, meaning that it's deemed to be credible, what would happen at that point?

SENATOR SALAND: There is no penalty per se. The school district would be apprised of -- the standard for employment purposes, incidentally, is not fair, is not mere credible evidence but a fair preponderance of the evidence.

SENATOR PATERSON: Well, Senator, this is the one section of the bill that gives me some concern, and that is that a

preponderance of the evidence which is something that would apply more in a civil lawsuit, here is being applied toward -- to an individual such that constructively, if they were to lose their job or lose their license or some way be damaged, it would be tantamount to a criminal charge because the suffering of the loss of reputation could make it very difficult for a person, a teacher, to go some place else and find a job since the dismissal might not altogether be clear through a preponderance of the evidence and, therefore, if the Senator would continue to yield.

ACTING PRESIDENT MEIER:

Senator Saland, do you continue to yield?

SENATOR SALAND: Yes, yes, Mr. President.

ACTING PRESIDENT MEIER:

Senator yields for a question.

SENATOR PATERSON: Well, Senator, my question is, what is -- what is the solution in a situation like this because at the same time that we are trying to protect children, we don't want individuals who may be accused of -- to suffer as well as I'm sure

you would agree.

SENATOR SALAND: Well, the evidentiary standard, the preponderance of the evidence standard, is the same standard that's used in other administrative hearings and is the same standard that's currently applied to the Part 83 hearings where, if there's an allegation of some type of moral turpitude and there is a challenge to the continued practice of a teacher, under his or her license, you bring this Part 83 hearing, and it's the very same standard that would be used, again not mere credible but by a fair preponderance of the evidence.

SENATOR PATERSON: Mr. President, if the Senator would continue to yield.

ACTING PRESIDENT MEIER: Senator Saland, do you continue to yield?

SENATOR SALAND: Yes, Mr. President.

SENATOR PATERSON: Senator, are we arriv...

ACTING PRESIDENT MEIER: Senator yields. Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

Senator, are we arriving at this conclusion based on some due process or some kind of hearing that's being conducted, or are we arriving at it based on some determination that relates to the actual charges? In other words, does the person who is being accused have the right to confront their accuser?

SENATOR SALAND: Well, that person who is being so accused has the ability through a fair hearing to confront his or her accuser.

SENATOR PATERSON: Thank you very much, Senator Saland.

Mr. President, on the bill.

ACTING PRESIDENT MEIER: Senator Paterson, on the bill.

SENATOR PATERSON: It has even been at times determined by the Second Circuit of the Court of Appeals in the case of Velmonte vs. Bain, that in many cases, up to 75 percent of the reports that initially come to the sexual abuse registry are later found

to be unfounded. It's almost standard in divorce cases, and specifically those cases that apply to custody battles, and Senator Saland and I debated an issue involving changing the name of visitation to -- to parenting time, that there is such acrimony and animosity in these type of cases that at times even the attorneys have hinted or in some way so as not to implicate themselves, recommended that it won't help the other party to be accused, and the '800' number becomes a vehicle more for the buttressing of evidence rather than really bringing forth the types of sexual abuse cases that we as a society would like to ferret out, as was its purpose, and so, in discussing the issue with Senator Saland, I just want to make sure that we are scrupulously fair to the accused because we still have a presumption that the party is innocent. That does not mean that we necessarily have to rely on a great standard to take away their position as a teacher because we don't want to subject the children to someone who is even likely or somewhat likely to be a predator. At the same time, we

do want to preserve the rights of individuals such that they are not so labeled or in - their reputations tarnished to such an extent that the innuendo becomes the basis for loss of livelihood, and with the tremendous achievement that Senator Saland has demonstrated by putting together what seems to be some apt regulations coming at this time relating to employees in our school systems, I just think that we need a little more work on the registry for at least on what would constitute the grounds for bringing an action against an employee.

ACTING PRESIDENT MEIER: Read the last section.

SENATOR DOLLINGER: Mr. President, on the bill, just briefly.

ACTING PRESIDENT MEIER: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I'll be very brief, Mr. President.

I've voted for this bill in the past. I'm going to vote for it again, but, Senator Saland, this is always one of those bills that I jump up and I can only be

astounded by its appearance on the calendar with calendar numbers, make sure I got 'em right here because I think Senator Rath carried these bills, you carried them at at one time, Senator Saland, because we had a lengthy discussion about it.

But you know those bills, all those bad mandate bills, all those bills in which we're going to prohibit the state Legislature from passing mandates that require school districts to do things like spend their money in criminal checks and spend their money in reporting to the hot line, all of which are good things. This is a good mandate. This is one of those things that we should tell school districts what to do, but sure enough, I think Senator Rath even carries the Constitutional Amendment that says no mandates whatsoever, and yet here on this calendar passing a big huge mandate for local school districts. Nothing that local school districts couldn't do. Nothing that they shouldn't do, but yet it's just I guess I'm always astounded that we seem to say no mandates in one part of the calendar, and then appropriate and approve and

I vote for mandates on the other part.

This is a good mandate. This is something we ought to tell school districts to do. We ought to make it uniform. I'd simply ask, I guess, for a little tiny bit of consistency. Maybe the calendar should only have mandate bills on it and we save the no mandate bills for a later time in the session or maybe we just forget that idea that we're going to pass flat no-mandate bills in the future.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 12. This act shall take effect on the first day of January.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

SENATOR SALAND: Mr. President, may I explain my vote.

ACTING PRESIDENT MEIER: Senator Saland, for the purpose of explaining his vote.

SENATOR SALAND: Mr. President, I just wish to make it clear that this bill specifically in several places says that there shall be no mandates imposed upon school districts with respect to the cost of the fingerprinting that's the subject of this bill, and I encourage all of my colleagues to please support this bill.

Thank you.

ACTING PRESIDENT MEIER: Senator Saland will be recorded in the affirmative. Record the negatives and announce the results.

I'm sorry. Senator Gold, to explain his vote.

SENATOR GOLD: Mr. President, I looked at this bill and saw the sponsorship, and right away my inclination was to vote for it because of my deep respect for the -- for Senator Saland, but then I did in shuffling through my papers find the constitutional amendment referred to by the gentleman from Rochester supported by Mary Lou Rath and I said to myself, I owe it to Senator Rath to oppose this bill, because just in case -- in

case in the wildest imagination her bill is not accepted and doesn't become law, I wanted her to know that the logic behind that bill has not escaped me.

So, in due deference to Senator Rath, I have to vote in the negative.

SENATOR DOLLINGER: Mr. President.

ACTING PRESIDENT MEIER: Senator Oppenheimer, to explain her vote.

SENATOR OPPENHEIMER: To explain my vote. I certainly don't want to contradict my good friends on this side of the aisle, but having just gone through the experience with my daughter who wants to be a New York City teacher and having just received her Master's at Banks Street, she had to, of course, go and get her fingers printed, so I can tell you that the cost of my daughter's fingerprinting was borne by my daughter and paid $86 for the privilege of getting fingerprinted. So I'm not sure this is an actual cost on the local district.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Mr. President, I'm going to vote yes, as I said earlier, and I appreciate Senator Saland's appropriation. We're not forcing them to pay it. No appropriation in the bill, no money for us to pay for it. When you're down in the local school district, they spell that only one way, m-a-n-d-a-t-e.

ACTING PRESIDENT MEIER: Senator Dollinger in the affirmative.

Senator Oppenheimer, we need to clarify; you're voting in the affirmative.

SENATOR OPPENHEIMER: (Affirmative indication.)

ACTING PRESIDENT MEIER: Any other Senator wishing to explain his or her vote? Record the negatives; announce the the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 996 are Senators Connor, Gold, Kruger, Leichter, Markowitz, Montgomery, Paterson, Sampson, Santiago and Waldon. Ayes 45, nays 10.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1295, by Senator DeFrancisco, Senate Print 7097-A, an act to amend the General Municipal Law, in relation to raffles.

SENATOR DOLLINGER: Explanation.

ACTING PRESIDENT MEIER: Senator DeFrancisco, an explanation has been requested of Calendar 1295 by Senator Dollinger.

SENATOR DeFRANCISCO: For many years, raffles done by charitable organizations were illegal, in fact, for all years until 1994 when we passed a bill legitimizing raffles. For the last three years we have been trying to correct the problem dealing with the paperwork that was imposed and the mandates that were imposed upon town clerks in receiving these applications and the like. There were so many small organizations that would have a small raffle or a 50/50 or something, raffle a bike off, that would have to file this four-page form, and it caused a lot of paperwork. So what we tried to do was to set a limit below

which only an affidavit would have to be signed that we did a raffle, but it's less than a certain amount of money.

We also had a complaint from people conducting raffles that if a raffle was conducted, for example, in one town and immediately across the county border a ticket was sold, that that would be illegal. So we tried to apply it to -- statewide in one of our attempted amendments. The Governor vetoed the bill when we did it -- the corrected bill when we did it before, I think it was last year.

This year we worked with the state Racing and Wagering Board and have a bill that we believe the administration is in agreement with, that the town clerks strongly are in favor of which would have a $30,000 number below which substantial filing requirements would not be necessary and only an affidavit from the organization at the beginning of the year, that we have raffles - we will have raffles less than a total of 30,000 and at the end of the year verifying that that's all that they had, less than

30,000.

This is the sum and substance of those negotiations not only with the Governor but with the Assembly, Assemblyman Joe Robach, and we are very confident this will pass both houses and the Governor will sign it.

SENATOR DOLLINGER: Just one question, Mr. President. I know we -

ACTING PRESIDENT MEIER: Senator DeFrancisco, do you yield to a question?

SENATOR DeFRANCISCO: Yes.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR DOLLINGER: I know you worked on a whole bunch of these bills. My question is there's a reference in the memo to the professional raffler. What is it about this bill that prevents that from happening, that is, someone going around peddling raffling services all over the place?

SENATOR DeFRANCISCO: Well, that's what the Governor's concern was because in prior bills there was no basic limit as to

where you could sell these particular tickets. Now it's limited to a county or a contiguous county and apparently that is satisfactory at this point.

SENATOR DOLLINGER: Thank you, Mr. President.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 8. This act shall take effect on the 120th day.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 54, nays 1, Senator LaValle recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1314, by Senator Johnson, Senate Print 500-A, an act to amend the Real Property Tax Law, in relation to establishing.

SENATOR DOLLINGER: Explanation, please.

ACTING PRESIDENT MEIER:

Senator Johnson, an explanation has been requested by Senator Dollinger of Calendar 1314.

SENATOR JOHNSON: Thank you, Mr. President.

There is a problem, I believe around this state and the fact that marinas have to be on the waterfront to serve the general public and their customers selling, repairing and providing dockage space, we find in too many cases marinas are being assessed at the highest and best use, which means the taxes on the property are intolerable. Many marinas are failing. Some more than 20 percent have failed in the past couple of years because they couldn't pay the freight, specifically taxes, and we think it's very important for the public to have access to the shoreline, a place to dock their boat, a place to come in and fuel up, and with the properties being sold to developers putting up condos, the only people who have access to that waterfront are those who might buy that condo or rent in that project and the general public is being told essentially there's no

place for your boat.

It's a very negative attitude for boat owners and it's negative for individuals who would like to go see a piece of waterfront with boats around it once in a while even if they can't buy one.

So I think it's important that we advise the assessors that they should consider taxing this property at its present use and present income economic value and not at the highest and best use.

That's all this bill says essentially that they should consider that in their assessing practices.

SENATOR DOLLINGER: Mr. President.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Will Senator Johnson yield just for a couple quick questions?

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

SENATOR JOHNSON: Yes.

ACTING PRESIDENT MEIER:

Senator Johnson yields.

SENATOR DOLLINGER: Senator, are all other properties located adjacent to waterways taxed at the highest and best use?

SENATOR JOHNSON: Are all others?

SENATOR DOLLINGER: Well, my house would be or a commercial piece of property would be taxed at its highest and best use under available zoning, isn't that correct?

SENATOR JOHNSON: Well, I would say that seems to be the general practice, though I don't believe it's the law at this point. It seems to be the general practice.

SENATOR DOLLINGER: My question is -- and I have quite a few marinas up on the southern shore of Lake Ontario, but my question is why would we treat marinas differently from homeowners or commercial properties that happen to abut waterways as well? What is it about marinas?

SENATOR JOHNSON: Because what they're telling -- what they're telling the marina operators by the practice of assessing

highest and best use is that if you can't make it, get out of here and we'll put some housing up which pays better but, I mean, the point is that's a negative policy, I think for the entire community not just for the individual who likes the boat business and can't make as much as he could if he piled up condos or apartment houses on that waterfront property.

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

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 2. This act shall take effect January 1.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 55.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1315, by Senator Rath, Senate Print 2034, concurrent resolution of the Senate and Assembly, proposing amendments to Article IX

of the Constitution.

SENATOR PATERSON: Explanation.

SENATOR OPPENHEIMER: Explanation.

ACTING PRESIDENT MEIER: Senator Rath, an explanation has been requested of Calendar Number 1315.

SENATOR RATH: Mr. President, I noted with some interest a few minutes ago that the "M" word was being spelled by, I believe Senator Dollinger, and I think any of us from local government know that the "M" word is the "mandate" word and the worst part of the "mandate" word is the unfunded mandate part of that word and this bill amends the Constitution to make compliance with unfunded mandates optional and it also establishes a council on local mandates to resolve complaints of unfunded mandates.

I don't think that I need to belabor the point that it's unfunded mandates that have caused the cost of the local governments to go up dramatically. I was interested in the debate that revolved around Senator Saland's bill. As he explained at the

end, if it's unfunded, it isn't going to happen, and I think that this bill will cover an awful lot of what those of us that come from local government have found to be the absolute bane of your existence when you're trying to make both ends meet.

ACTING PRESIDENT MEIER: Senator Oppenheimer.

SENATOR OPPENHEIMER: I'm going to be supporting this bill, but I want to do an exercise of on the one hand and on the other hand.

On the one hand, as a past mayor and an officer in the Conference of Mayors, I certainly understand the pain that we experience on unfunded mandates, and I see that this establishes a council on local mandates.

I think I would feel more comfortable if that council had a broader range of, you know -- over which they could control issues coming to them. It seems they can only resolve those which an aggrieved municipality says that this is an unfunded mandate.

I think there are certain issues that can come up in the course of municipal life that might cause, if the council had such purview, to have them address other issues that might, for instance, be considered an unfunded mandate but actually have a greater benefit and should be not looked upon solely as an unfunded mandate and, of course, now I would like to turn to the "on the other hand" and on the other hand is environmental protection.

Would we have ever gone ahead with our recycling programs in local government which certainly costs more than $20,000 were this bill to pass and while I understand that certain things are exempted from this bill like complying with federal law and complying with our emergency executive orders, I think there just has to be more leeway. I would like to see more leeway in the bill because certainly the recycling programs in the long run have certainly paid for themselves. It saved us a lot of money of our waste going into -- into disposal sites and it really brought in a fair amount of

money to government, to municipal government, but -- and that's where we are now. This is a very successful local program that we have in our state, but how would we have started it if we had this restriction?

So while I'm voting for it, I understand the intent. I think it can run into some problems down the road and I would like to have some kind of authority that would permit -- that would permit individual laws as passed to be reviewed to see if it really is beneficial to the municipality.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Mr. President, I rise again because Senator Rath properly pointed out, I would assume that if someone was being consistent in voting for this constitutional amendment, someone would have voted against Senator Saland's bill, lots of mandates, telling school districts what to do, not giving them a nickel to pay for it, and frankly, Senator, I'm also going to look for support for two other bills on the calendar.

We've got a bill, 1345 from Senator Fuschillo, a new member of the Senate, a bill that will require school districts to review the qualifications of every applicant for the position of school bus attendant. That's 1345. No appropriation on that bill.

1344, another bill from our newest member, requires buses transporting children with disabilities to maintain pertinent information about the child, the child's disability, the child's parent or guardian and any other information deemed necessary by the local school board. Another mandate. Not a nickel paid for from this chamber to support that either.

As much as I oppose mandates - and I oppose them. How can anybody favor a mandate, yet today I'm going to vote for three of them. I voted for Senator Saland's. I'm going to vote for Senator Fuschillo's. I'm going to vote for the second one from Senator Fuschillo. I'm not so much concerned about the mandate debate. It's an important debate. What I'm looking for is c-o-n-s-i-s-t-e-n-c-y, consistency, so that

when we say we don't believe in mandates, we actually do something about it and we don't pass these bills without appropriations to pay for them.

It's great politics. It helps us in our newsletters, but the policy seems to me to lack that underlying substance that says, okay, we'll pay for all these things. We'll pay for Senator Saland's bill. We'll pay for both Senator Fuschillo's bills. We do 100 of these bills a year, but it seems to me the inconsistency is what we're all comfortable with. Maybe it has something to do with the politics of all of this.

I'll be voting in favor, Mr. President. I support -- I don't want to be in favor of mandates. I'm against mandates, but I'm also in favor of Senator Saland's bill, Senator Fuschillo's second bill. I support most of these things because I think it's a good thing that the state of New York, we, the people who sit in this chamber who represent the people of this state should have the authority and do have the authority to tell any other level of government what the public

interest in this state is. We do it all the time. I don't think it's a bad thing.

ACTING PRESIDENT MEIER: Senator Waldon.

SENATOR WALDON: Thank you, Mr. President.

Would the gentle lady yield to a question or two?

SENATOR RATH: Certainly.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR WALDON: Senator Rath, I noticed that there's no opportunity for those representing the Minority Conference in this chamber to appoint people to the council on local mandates, yet we represent, I don't know how many million people, 26 of us, represent, I would think times 315,000, an awful lot of people.

Was there consideration given to including members of the Democratic Conference in having a say as to who would be the governing bodies in regard to local mandates?

SENATOR RATH: No, there

wasn't, Senator.

SENATOR WALDON: I beg your pardon?

SENATOR RATH: There was not, Senator.

SENATOR WALDON: Thank you. Mr. President.

ACTING PRESIDENT MEIER: Senator Waldon.

SENATOR WALDON: Would the lady yield?

ACTING PRESIDENT MEIER: Senator Rath, do you continue to yield?

SENATOR RATH: Surely.

ACTING PRESIDENT MEIER: The Senator yields.

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

This $20,000 threshold seems to me to be an ominous potential for danger. If I understand it correctly -- and I'm asking you to edify me -- as long as the cost is less than $20,000, in an aggregate sense, it conforms to the proposal, is that correct?

SENATOR RATH: That's right.

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

ACTING PRESIDENT MEIER: Senator Rath, do you continue to yield for a question?

SENATOR RATH: Surely.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR WALDON: Thank you, Mr. President.

Senator, if the cost is less than $20,000 and if we say you must do this and the locality says, I don't want to, how will they force the state not to require that they do whatever the mandate is?

SENATOR RATH: Well, I think you know, Senator, that the council on local mandates to resolve complaints is one of the items that you mentioned a moment ago, and I would think that they would bring that concern to that council. However, your question raises something that Senator Dollinger brought up that I was about to speak to and then thought, well, maybe it didn't need to be addressed but now your questions raise this

even further, and there were huge increases in the dollars that went to schools this year, and I think some of the mandates that we're talking about are not only local governments, which, of course, is what my committee addresses day in and day out throughout the year but, of course, the ones that are applied to the schools and it's been brought to my attention over and over again that we are not as focused on something unless it comes under the microscope, if you will, and when we're talking about the kinds of issues that Senator Saland is talking about, the one that's coming up with Senator Fuschillo, I think that some of these things are being done anyway but they're not being focused on. They're being paid for. They're being done but they're not being focused on, and I think this bill will bring that into focus and if there's a question about the focus, it will come under this council in order to get the review.

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

ACTING PRESIDENT MEIER: Senator Rath, do you continue to yield?

SENATOR RATH: Surely.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR WALDON: Thank you very much, Senator.

There is a plethora of situations which occur at the local level. Local government is responsible for sanitation, law enforcement training, a whole host of issues. Couldn't we be tied up with litigation as a result of what you're proposing with this if there's a resistance from the local government not to comply with what the state says is, in fact, mandated?

SENATOR RATH: If local governments fail to comply now, the circumstance that you outlined, of course, would click into place, but I think, Senator, you're talking about something that is coming into a -- we have a microcosm here and we have a macro picture also and the macro is the governance -- the governance of the communities in the state of New York.

There's a bill that I propose -- it won't happen this year, but I'm hopeful

to be here next year so we can talk about the larger picture of governance because what's happened is that we have micromanaged so many times, so a council will advise us. We're talking about what's going to happen with the future of revenue sharing. That council -- we passed on that last year. That council is operating now. As you know, we've met three or four times this year to talk about the future of revenue sharing. Local governments are coming into a whole different place and time than they were when they first served this state of New York, and I think it serves us well as a state government to bring a review forward on a lot of levels.

Senator Oppenheimer's point about the environmental issues was another focus of the same question, where local governments fit into the larger picture of governance, regional governance, local government and all the myriad of governance and special districts that we have in this state.

SENATOR WALDON: Would the gentle lady from the area, I believe it's

Rochester, the great city and -

ACTING PRESIDENT MEIER:

Senator Rath, do you continue to yield?

SENATOR RATH: Yeah, but

Buffalo, please.

SENATOR WALDON: I apologize.

A bigger, not necessarily a better, but a

bigger city, the city of Buffalo. Would she

yield to perhaps two more questions?

ACTING PRESIDENT MEIER: The

Senator yields, Senator Waldon.

SENATOR WALDON: Thank you, Mr.

President.

Senator, I apologize for the

faux pas. I would not move you so. It was

just a slip.

Was there any study done in

regard to what the cost of implementing this

measure would be over the next several years?

SENATOR RATH: Senator, I will

answer your question, but first of all, let me

set the record straight just so all my friends

in Buffalo don't say when did Mary Lou get

elected in the city. I represent the

districts north of the city of Buffalo.

People like to locate me in Rochester, which is fine with my Rochester colleagues, I'm not -- fine with me. I don't know if it's fine with my Rochester colleagues, but my district is north and east of the city of Buffalo.

No, there has not been a study that has been done as to what kind of costs there would be to comply with this piece of legislation. It's an effort to help local governments see some way that they can get some redress for what they consider to have been inequities.

SENATOR WALDON: Last question, Senator.

ACTING PRESIDENT MEIER: Senator Rath, one last question. Do you yield?

SENATOR RATH: Surely.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR WALDON: Senator Rath, I asked you a question earlier in regard to the Minority Conference, was consideration given to giving them an opportunity, us an opportunity to participate in determining who

the people would be on the council on local mandates and you said there was not. This part of our legislative body known as the Senate represents millions and millions of people. Could you tell us if there is any rationale for the exclusion of the Democratic members in participating in that process?

SENATOR RATH: Senator, the responsibility of government lying with the Majority, I won't go -- I won't bore all of us with that. Let me ask you if you would like to send me a letter in relation to this, I would consider something next year that would add some people from the Minority.

SENATOR WALDON: On the bill, Mr. President.

ACTING PRESIDENT MEIER: Senator Waldon, on the bill.

SENATOR WALDON: I must most respectfully disagree with the last statement that my dear colleague from the environs of Buffalo made that it is the responsibility of the Majority to governance. It is the responsibility of the Legislature, both Senate and Assembly, all of the people there

represented, representative of their respective communities and the Governor to govern the state and with that I close, I cannot support this bill for the reasons that came out in the dialogue with the Senator, and I would respectfully ask my colleagues to also consider the arguments against this proposal are valid and, therefore, we should not vote aye in favor of it.

ACTING PRESIDENT MEIER: Senator Leichter.

SENATOR LEICHTER: Yeah, Mr. President.

Senator Rath, would you yield for a question, please?

Senator, let me first say, I was out of the chamber when this debate started. So if this question has already been asked and answered, just tell me and I'll withdraw it, but what happens if a locality determines that an enactment of the Legislature or by some state agency imposes a mandate upon them and takes the position we will not carry out that mandate? It doesn't make a complaint to the council. Just says

under Senator Rath's constitutional amendment, this is illegal, not binding on us and we will not take any action on it. What happens?

SENATOR RATH: It's the same answer, Senator Leichter, as we mentioned before when the same issue was raised. If municipalities are not in compliance now, the same circumstance would take effect as this would be in -- if this law goes in.

SENATOR LEICHTER: Well, excuse me, if you would be so good as to continue to yield.

ACTING PRESIDENT MEIER: Senator Rath, do you continue to yield?

SENATOR RATH: Surely.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR LEICHTER: Senator, with all due respect, I have difficulty accepting that answer because then under my hypothesis, you now have a constitutional amendment. You have a constitutional amendment that says that no mandate may be imposed and if it's a mandate that -- as defined in your constitutional amendment, then

it's not binding. Now you have a totally different situation. If a locality says this is an unfunded mandate, the state can go to court. We can compel them. There's things that we can do, but that's not the case under -- once this amendment is in effect. So it's a totally different situation.

SENATOR RATH: Senator Leichter, I think all of the exceptions as they are outlined in the legislation address a large portion of what you're talking about.

What we're talking about as far as taking a municipality to court if they don't comply, I don't think that -- to my mind, that section does not change. Nothing changes in that regard when you look at the exceptions that are outlined as well as a council that would be constituted to take into consideration problems that might occur as this were going along.

SENATOR LEICHTER: Mr. President, if Senator Rath will be so good as to continue to yield.

SENATOR RATH: Surely.

ACTING PRESIDENT MEIER: The

Senator yields.

SENATOR LEICHTER: Senator, would you direct our attention to any provision in this constitutional amendment which says that a locality has to avail itself of this council? I don't see anything that says that they need compliance with it. As I read this, they have the right just to treat it as an unfunded mandate and not to proceed to carry out those provisions of legislation or of regulation.

SENATOR RATH: I would think, Senator, that the council would be a place of relief that localities would look to. Recalling the days of 15 -- 10, 15 years ago in the welfare -- what we considered in local government as unfunded mandates from the state of New York, we would have welcomed a forum, partisan or non-partisan, Senate and Assembly combined, anywhere where our issues could be picked up and heard by people who have responsibility for the vote.

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

ACTING PRESIDENT MEIER:

Senator, do you continue to yield? The Senator yields.

SENATOR LEICHTER: Senator, why didn't you provide in this constitutional amendment that any locality which considers an enactment to be an unfunded mandate has to file a complaint with this council? As this bill reads, it could just totally ignore what it considers to be an unfunded mandate.

SENATOR RATH: Well, I believe that the Attorney General, if they are not in compliance, would be able to take them to court and that's the way it is now.

So I think that the council that we're talking about would sort through on the practical level, which is what we're talking about, as a local -- as local governments find themselves the subject of unfunded mandates.

SENATOR LEICHTER: Senator, if you'll continue to yield. Isn't it true that if you look at your constitutional amendment, the council can only act to resolve a complaint by an aggrieved political

subdivision? So if a political subdivision says, this is an unfunded mandate, there's no requirement, as you admit, that it goes to the council. The council has no authority to act unless there's a complaint before it.

SENATOR RATH: Well -

SENATOR LEICHTER: What happens then?

SENATOR RATH: Well, Senator, right now the municipalities have a responsibility to those unfunded mandates and if there is a mechanism in place for a redress for them, they will at least have a mechanism, to reuse that word, to see if it is an unfunded mandate in a place that is a viable council that will have access to the government.

SENATOR LEICHTER: Mr. President, again, if Senator Rath is good enough to yield.

ACTING PRESIDENT MEIER: Senator Rath, do you continue to yield?

SENATOR RATH: Surely.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR LEICHTER: Senator, isn't there a big difference, but now there's no constitutional provision as to unfunded mandates. If a locality fails to comply with a requirement of law that's enacted by the Legislature and signed into law by the Governor or by a duly adopted regulation, it goes to court, the court can compel it to act in accordance with the law or the regulation. That would not be the case if your amendment were adopted. Isn't that so?

SENATOR RATH: No, I think it's just the reverse, Senator. Frankly, I think as a champion of local governments, which is what I feel one of my roles is in Albany as chairman of the Local Government Committee, that this gives the local governments a place to go if they are saying this is an unfunded mandate. It gives some definition to what you see as an unfunded mandate.

SENATOR LEICHTER: Well, Senator, just -- maybe this is repetitive and I'll make it the last question. If that's what you wanted to do, why didn't you put in your amendment that the locality, if it wishes

to challenge a mandate, if it says this is an unfunded mandate, that it has to go to this council? You don't require that.

SENATOR RATH: This is an optional piece -- unfunded making compliance with unfunded mandates optional.

SENATOR LEICHTER: Well, Mr. President, on the bill.

ACTING PRESIDENT MEIER: Senator Leichter, on the bill.

SENATOR LEICHTER: On the resolution. Let me just say first of all dealing maybe more with the contents of this particular provision just from whether it works or doesn't work, it just seems to me that if the intent of Senator Rath was to provide a mechanism to resolve issues as to whether something is an unfunded mandate or not and you set up a council, that at least the constitutional amendment ought to provide that the locality has to go to the -- to the council.

I could see a situation where a locality will say, well, I don't like what's going to happen in the council. Let's not go

to the council. Let's not do it and it then comes to the court in a totally different posture than it would if the locality had filed a complaint, the council had acted against or determined in opposition to the complaint of the locality because then it comes, as I read it, to the court in the posture of an Article 78 where you would have to prove that the decision of the council was arbitrary and capricious.

I don't want to spend too much time on that because I would be against - against your amendment even if it provided for that mechanism, if it actually compelled the locality to go to the council. I just want to point out that I think as you've written it, this is really not very workable.

But I want to address the broader issue, and that is that we're one state. We've all come together as a state, all of the municipalities. I think somebody once told me there's almost 1,000 local governments in the state of New York and we've all come together as localities and we're part of one state and we send our representatives

up here to Albany and sometimes they do things that the localities like and sometimes they do things that they don't like, but we're trying to legislate for one state and to say that you cannot impose unfunded mandates would so cripple the ability of state government to function on behalf of all the people of the state that you might just as well disband the Legislature, and we had an example of that just a few minutes before your bill came before us, Senator Rath, when there was a bill by Senator Saland that everybody pointed out was clearly an unfunded mandate. We have hundreds of unfunded mandates each year, most of which are proposed by the Majority and most of which carry out your vision of what should happen throughout the state of New York.

Now, state government does provide a great deal of money for localities. We divide it up in different ways. Some localities may benefit more than others but that's also part of the role that we have. That's part of being one state and if in point of fact you had a provision such as yours in the Constitution, we could not serve the

interests of the people of the state of New York. It would be a gross error, and I just say maybe repetitively, but it ought to be observed, all of the bills that you people have proposed with unfunded mandates.

Obviously, Senator Rath - because I know you to be a person of particular integrity and principle -- you wouldn't put forward bills with an un... that had an unfunded mandate or vote for bills that had an unfunded mandate if you didn't in part agree with me that we have a broader responsibility here which at times requires us to impose what you call unfunded mandates.

I'll be happy to yield.

ACTING PRESIDENT MEIER: Senator Rath.

SENATOR RATH: Senator Leichter, I couldn't agree with you more, that we have a broader responsibility, but I think when we examine that broader responsibility as a state, that competes not from one region of the state to another region of the state. We compete somewhat, of course, with our surrounding states, but as the economy has

become a global economy, I think we need the flexibility in order to be able to make and help the regions of New York State grow to their full potential and, frankly, some of the unfunded mandates that have been imposed on the localities through the years have made that very difficult.

This is a small step forward to provide a focus and a parameter for getting our hands around unfunded mandates.

SENATOR LEICHTER: Senator Rath, in answer to what you've said, your argument really is against your bill because it's precisely -- because we're competing in a global economy that we can't hamstring ourselves to the extent of saying, well, if there's an unfunded mandate in this -- for instance, if we require localities throughout the state to do something which is going to make the whole state more economically viable and it may impose some requirements on a locality, to say that we can't do it because it's not going to put an unfunded mandate on the locality. Competitiveness in this state depends on our acting as an entity for the

entire state and you're really hindering that competitiveness.

I mean, I think it's something that, you know, has a lot of appeal and I know you go through communities throughout New York State and I'm sure in my own city of New York and my district and you say, Hey, they shouldn't impose something on us that we don't want to do, but that's what it means being part of a greater entity is that it may happen that there are -- for the common good, you will have to bear some burden and if you're unwilling do that, we can't function as a state and not only in the area of education, not only in the area of the environment, but in so many different ways in transportation. You could even have a problem insofar as the enforcement of criminal laws are concerned.

Can somebody argue that you are imposing a mandate on a locality when you ask it to enforce the death penalty? Doesn't that mean that it's now going to have costs that are going to be greater than $20,000? I could see a locality saying, well, this is an unfunded mandate. We couldn't function. We

would be incapable of carrying out the duties and the responsibilities that we have.

Maybe it's good political fodder and I don't mean to say you're doing this politically because I know that you sincerely believe this, but I think that when you look at it and you examine it, not only because of some of what I see are some flaws in the process that you've set up in this bill, but the broader concept that you want to handcuff this state government to this extent, we would no longer be able to function as a state.

ACTING PRESIDENT MEIER: On the resolution, the Secretary will call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 1315 are Senators Connor, Lachman, LaValle, Leibell, Leichter, Markowitz, Montgomery, Paterson, Waldon. Also Senator Sampson, also Senator Santiago, also Senator Seabrook. Ayes 44, nays 12.

ACTING PRESIDENT MEIER: The

resolution is adopted.

THE SECRETARY: Calendar Number 1321, by Senator DeFrancisco, Senate Print 5338, an act to amend the Public Health Law, in relation to pharmaceutical and optical services.

SENATOR DOLLINGER: Explanation.

ACTING PRESIDENT MEIER: Senator DeFrancisco, an explanation has been requested of Calendar 1321 by Senator Dollinger.

SENATOR DeFRANCISCO: By the Health Care Reform Act of 1996, there was a patient assessment that was enacted in order to provide a fund for public good, the public goods pool and one of those -- the area that was hit was basically diagnostic and treatment centers would have this 8.18 percent assessment.

Some of the services provided by such centers are pharmaceutical and optometry services. If those services were not provided -- if they're provided elsewhere other than diagnostic centers and when it's

provided elsewhere -- when these services are provided elsewhere, there is no 8.18 percent assessment.

So the intent of this bill is really to treat diagnostic centers such as this exactly the way people dispensing optometry and pharmaceutical services are treated when they're not part of a diagnostic center; in other words, treat them the same way and that's the intent of the bill, to eliminate the 8.18 percent assessment on these type of centers for these type of services, pharmaceutical and optometry.

SENATOR DOLLINGER: Mr. President, just a couple quick questions for Senator DeFrancisco, if I can.

ACTING PRESIDENT MEIER: Senator DeFrancisco, do you yield for a question?

SENATOR DeFRANCISCO: Yes.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR DOLLINGER: What are the anticipated fiscal implications? I know your memo says that there are none to the

state, but obviously if we're going to lose some of that money, it would go into the bad debt and charity care pool.

SENATOR DeFRANCISCO: I anticipated that question and I can candidly say I have no answer, but I do know that if there has to be a backfill into this fund, it would have to come from the general revenues and my thought would be that that's fair to treat these types of delivery of services the same whether it's in a diagnostic center or elsewhere and that if we have to pull some money out of the general fund, we should do so.

SENATOR DOLLINGER: Again through you, Mr. President. I understand that the intent of the bill is to create a parity between the D and T centers and those community optical services or retail pharmacies that are doing this dispensing. What about the other portion of the market that occurs at other health care facilities? This would seem to create what was probably a lack of full extension of the assessment. We're now going to make the exception bigger

and we're going to make the competitive disadvantages of hospitals and community health centers even greater. How do we deal with that problem short of repealing the whole thing?

SENATOR DeFRANCISCO: Well, that's an excellent question and that's the problem with the bill, and the problem with the bill is that when you start, I think it's putting the camel's nose under the tent -- I could spell camel to emphasize it since today is spelling day, but that's always a problem, but I guess in balancing the respective interests, I think in this case this is a substantially unfair situation and at least correct this part and hopefully the camel won't knock down the tent.

SENATOR DOLLINGER: Thank you, Mr. President.

Just briefly on the bill.

ACTING PRESIDENT MEIER: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I appreciate Senator DeFrancisco's candid explanation of it. I think he's absolutely

right. We have an exception that benefits one party in this competitive health care environment that we try to set up, we try to balance it so that it would be fully competitive so we would reward people who, for their efficiency and ingenuity which is what happens in perfectly balanced and perfectly competitively marketplaces, we found a gap. One person was able to take advantage of it. Now what we're going to do is expand that gap a little broader so that more people can take advantage of it but not everyone, and I appreciate Senator DeFrancisco's attempt to try to restrike part of the competitive balance. I think, unfortunately, that unless you do it for all of the players in this marketplace, we're just going to exacerbate competitive advantages in what we thought was a perfectly competitive system.

I also think that because we don't know what the fiscal implication is and how much it's going to cost, I certainly understand what drives this bill but it seems to me that there is a risk associated with it in tilting the competitive forces out of whack

and frankly costing money that we don't understand.

So I'll be voting in the negative, Mr. President.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 1321 are Senators Dollinger and Leichter. Ayes 55, nays 2.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Padavan.

SENATOR PADAVAN: Mr. President, may I be recorded in the negative on Calendar Number 1295.

ACTING PRESIDENT MEIER: Without objection, Senator Padavan will be recorded in the negative on Calendar 1295.

The Secretary will read.

THE SECRETARY: Calendar Number 1328, by Senator Rath, Senate Print 6495-A, an act to amend the Real Property Tax Law, in relation to state aid.

ACTING PRESIDENT MEIER: Read the last section.

SENATOR LEICHTER: Can we have an explanation?

ACTING PRESIDENT MEIER: Senator Rath, an explanation has been requested by Senator Leichter of Calendar 1328.

SENATOR RATH: In 1997 a bill was enacted enabling assessing units to qualify for state aid if a reval' at 100 percent of value is completed in '96. However, we had a technical glitch in that some assessing units were unable to qualify because they revalued at less than 100 percent before '97 -- the '97 bill was enacted and so this is just requiring that reval's be at 100 percent of value. Once that law went in in '96 because the effective date was 7/13/96, which was after the filing of the 1996

assessment rolls, the assessing units had no reason to reval' at 100 percent of value and this is a technical amendment enabling them to take advantage of this opportunity.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Mr. President, would the sponsor yield to just a couple quick questions?

ACTING PRESIDENT MEIER: Senator Rath, do you yield for a question?

SENATOR RATH: Sure.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR DOLLINGER: What towns or communities reassessed will be the beneficiary of the $80,000 benefit?

SENATOR RATH: If you'll let me take a look through my file, I'll see if I have those names here. This being a departmental bill, we did not have the names of the towns, but if you would like that information, we can get that for you, Senator.

SENATOR DOLLINGER: If you could.

SENATOR RATH: Sure.

SENATOR DOLLINGER: And the second question is why does it have -- again through you, Mr. President, if Senator Rath will continue to yield.

ACTING PRESIDENT MEIER: Senator Rath, do you continue to yield?

SENATOR RATH: Surely.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR DOLLINGER: Why does the bill have to have been deemed to be in full force and effect as of July 13th, 1996? Why that somewhat unusual date?

SENATOR RATH: The law was signed that date and so that was the date it became effective.

SENATOR DOLLINGER: So it's retroactive to the 1996 law.

Again through you, Mr. President.

ACTING PRESIDENT MEIER: Senator Rath, do you continue to yield?

SENATOR RATH: Surely.

ACTING PRESIDENT MEIER: The

Senator yields.

SENATOR DOLLINGER: Just so I make sure I understand it, this $80,000 will allow communities that had revalued prior to that law to be fully reimbursed as though they had done it after the law, is that correct?

SENATOR RATH: That's correct.

SENATOR DOLLINGER: Okay. Thank you very much, Senator Rath. The bill is acceptable to me. I would be interested in the communities that are affected by that $80,000.

SENATOR RATH: We will get you that information, Senator.

SENATOR DOLLINGER: Thank you.

ACTING PRESIDENT MEIER: Senator Stachowski.

SENATOR STACHOWSKI: Will Senator Rath yield for one question, maybe two?

ACTING PRESIDENT MEIER: Senator, do you yield?

SENATOR RATH: Yeah. Sorry, Senator.

ACTING PRESIDENT MEIER: The

Senator yields.

Senator Stachowski.

SENATOR STACHOWSKI: Senator, the only question I have, to be eligible for these grants, what particular year's value, market value do they have to use on the properties being revalued?

SENATOR RATH: I'll take a look in my folder and see if we have that information. Wait a minute. That is not in the bill that we are working with and I would have to take a little closer, deeper look here. It appears that the values that are on the assessment roll at the time of the reval' are what they would use. It would not be that it was any particular level of assessment, if that's what you're aiming to get to.

SENATOR STACHOWSKI: Mr. President, if Senator Rath will continue to yield.

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

SENATOR STACHOWSKI: Actually I was more interested, I know that certain communities use 1990-whatever assessment

values while some other use 1960-something values still today and some others use 1940 or 1930-something values on their assessment. I was just wondering if to qualify for these grants you had to be at least in the '90s?

SENATOR RATH: No, it did not -- that wasn't part of it. It was just for the assessment units that were working toward a reval' at 100 percent of value completed in 1996.

SENATOR STACHOWSKI: Mr. President, one last question.

ACTING PRESIDENT MEIER: Senator, do you continue to yield for a question?

SENATOR STACHOWSKI: So if somebody did a revaluation based on 1967 values or 1937 values, as long as that's the assessment rolls they're using, then they would qualify.

SENATOR RATH: Going up to 100 percent, right, and this is the same bill that we did last year and was signed into law.

SENATOR STACHOWSKI: Thank you.

SENATOR RATH: This just

enables others who were excluded in last year's bill to be in it this year.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1334, by Senator Johnson, Senate Print 7101, an act to amend the Transportation Law, in relation to the regulation.

ACTING PRESIDENT MEIER: Read the last section.

SENATOR LEICHTER: Explanation.

ACTING PRESIDENT MEIER: Senator Johnson, an explanation has been requested by Senator Leichter of Calendar 1334.

SENATOR JOHNSON: Mr.

President, this is going to amend the Transportation Law to bring it into conformity with federal law that preempts the states from regulating rates, routes of services of freight carriers except residential household goods movers.

SENATOR LEICHTER: Mr. President, would Senator Johnson yield to a question?

SENATOR JOHNSON: Yes.

ACTING PRESIDENT MEIER: Senator Johnson, do you yield?

SENATOR JOHNSON: Yes.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR LEICHTER: Senator, are all these provisions in here required by federal law?

SENATOR JOHNSON: That's correct.

SENATOR LEICHTER: Thank you.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 17. This act shall take effect immediately.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT MEIER: The bill is passed.

ACTING PRESIDENT MEIER: Senator Seabrook.

SENATOR SEABROOK: Yes, Mr. President. I would like to request unanimous consent to vote in the negative on Calendar Number 996.

ACTING PRESIDENT MEIER: Without objection, Senator Seabrook will be recorded in the negative on Calendar Number 996.

The Secretary will read.

THE SECRETARY: Calendar Number 1340, by Senator Nozzolio, Senate Print 7415, an act to amend the Tax Law, in relation to corporate acquisitions.

SENATOR LEICHTER: Explanation.

ACTING PRESIDENT MEIER: Senator Nozzolio, an explanation has been

requested by Senator Leichter of Calendar 1340.

SENATOR NOZZOLIO: Thank you, Mr. President. I would be glad to explain the measure.

This bill terminates carry - this bill repeals provisions of the Tax Law which have terminated loss carry-forwards of the investment tax credit and employment incentive credit provisions, that those measures will be repealed for those corporations that are acquired by another corporation. Unfortunately because of some glitch or oversight, a combination, that those corporations that were the subjects of takeovers were not allowed to carry forward those credits that I have mentioned.

SENATOR LEICHTER: Mr. President, would Senator Nozzolio yield, please?

ACTING PRESIDENT MEIER: Senator, do you yield for a question?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT MEIER: The

sponsor yields.

Senator Leichter.

SENATOR LEICHTER: Senator, isn't it a fact that the reason that the law reads as it does presently is that we're trying to protect New York companies from takeovers? There was no oversight. Isn't this provision in the law which you're repealing a protection for New York companies?

SENATOR NOZZOLIO: Mr. President, I don't believe this protects anybody, that it doesn't certainly protect jobs. It doesn't do anything but stifle commerce and initiative, that it makes New York corporations less attractive to corporations who may wish to expand in New York State, in effect, I think has the opposite effect of what Senator Leichter's commentary exhibits.

SENATOR LEICHTER: Mr. President, if Senator Nozzolio would be good enough to continue to yield.

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

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT MEIER: Senator Nozzolio yields.

SENATOR LEICHTER: Senator, isn't it a fact that we've had many instances where corporations in this state have been acquired and then have seen a reduction in employment in many instances, we've seen the whole corporation moved out of the state. Isn't that a fact?

SENATOR NOZZOLIO: Mr. President, it is a fact, as I see it, that corporations have been taken over, have been the beneficiaries of that takeover where jobs have expanded in New York State.

I have also seen corporations that haven't been taken over leaving New York State because of our oppressive tax structure and frankly, this is just another incentive for a corporation to say, no, let's not do business here in New York. Let's leave this state so we may be more attractive for business ventures and opportunities in the future.

SENATOR LEICHTER: Mr. President, if Senator Nozzolio would continue to yield.

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

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR LEICHTER: Senator Nozzolio, isn't it a fact that presently these corporations that are being taken over, they're doing business in New York State and all you're doing is inducing or enticing, if you will, for foreign corporations to come in and buy New York corporations. Isn't that what you're trying to do?

SENATOR NOZZOLIO: Mr. President, I don't believe I understood Senator Leichter's question.

SENATOR LEICHTER: Well, right now, Senator -

SENATOR NOZZOLIO: It's confusing and convoluted and frankly, I would ask him if he's going to ask me for a direct

response, I would ask for a direct question. Would you repeat it, Senator?

SENATOR LEICHTER: I would be happy to.

Senator, your bill applies to corporations that are now doing business in the state of New York. So it's not a matter of trying to save corporations in the state of New York. You have a corporation in the state of New York that's doing business that has received a tax benefit from the state of New York. To protect that corporation and to protect corporations in New York State generally, we do not allow a purchaser of a New York corporation, an out of state purchase of a New York corporation to receive tax benefits that we gave to a New York corporation.

So my question to you, very bluntly, is, aren't you by repealing the protection that now exists in law making it attractive for foreign corporations, maybe Japanese corporations or California corporations but certainly not New York corporations to come and purchase New York

corporations?

SENATOR NOZZOLIO: Mr. President, I'll try to respond to that statement that attempts to be a question.

Franz, it never ceases to amaze me and we have -- I have -- I won't say I have enjoyed these colloquies over the years but it certainly has been a stimulating exercise whenever I'm questioned by you and it never ceases to amaze me how you never see the forest through the trees. In terms of philosophy, I know you are meaning -- you're well meaning, but frankly what this measure has done is said to New York corporations, you provide -- you are less attractive to takeover, yes, but it's also less attractive for you to do business in New York State as a corporation, that you would be much better off as you're looking for those additional sources of capital, potential mergers, potential acquisitions, if you will, if you were not a New York corporation. That, in fact, says to New York corporations that here in this case the same loss carry-forwards that were allowed for those New York corporations are not going

to be allowed for those corporations that come in and infuse capital and infuse potential increases in job production in New York.

What we're saying is New York companies are not to be looked to for the infusions of capital, additional sources of revenue -- enterprise, that the rest of the nation is exhibiting and enjoying them.

Franz, I note what you're well intended to do and I compliment you on your intention, which is to ensure the continued integrity of New York corporations and maybe at the time that these provisions were enacted, it made sense. Maybe it did, maybe it didn't, but the fact of the matter, I don't disagree with the fact that those intentions were to help jobs in this state.

What has happened, though - what has happened now is that because these provisions are not available to acquiring companies, that the current company has one of two decisions. It could decide to leave so it could, in effect -- because it is a less attractive entity, or that the acquiring corporation would, in fact, say, well, maybe

this isn't such a good company to buy. Maybe this isn't such a good company to spend our capital with.

So from that standpoint, Franz, I think that certainly this may have prevented mergers in the past and acquisitions in the past. I don't think that was all necessarily good for the future of our business opportunity and enterprise in this state, and frankly I think that needs to be changed. That's why we put the bill before us.

SENATOR LEICHTER: Mr. President, if Senator Nozzolio would continue to yield.

Senator, I -

ACTING PRESIDENT MARCELLINO: Excuse me, Senator.

Senator Nozzolio, do you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT MARCELLINO: He continues to yield, Senator.

SENATOR LEICHTER: Senator, one of the -- if you take a look at what's been

happening in the state, that more often than not, when a New York corporation is acquired, there's a reduction in the work force or, in fact, there's a total elimination of the work force.

Now, it's true that in some instances maybe you can bring in a large corporation that buys a New York corporation and then actually increases business in New York, but isn't there a simple way of dealing with it and providing in your bill that the investment tax credit will be permitted to be carried over as long as the business continues to be located in New York and there's no decrease in the number of employees? Why not put that provision in your bill, Senator?

SENATOR NOZZOLIO: Well, by definition, Senator, having these loss carry forwards would ensure the future business in New York State for those years. I think that it would be another signal to business that the Legislature and the state government are trying to micromanage what they're going to do and as such say that warning lights to corporate executives making these decisions

are that we can't trust government, that New York is -- has too many strings attached to everything that's provided and that frankly we'll spend our money elsewhere.

I should also say, Franz, just because a company comes in and acquires a New York corporation, you look at it as a totally negative situation. In many cases there are in this state where that has occurred and it saved that company. It saved the company operating in New York State. It actually served to expand jobs in New York State and that that's really what we're looking at here, that as we continue to revise our tax code, bring our taxes down, we should get rid of these onerous provisions that serve only to deter investment in New York State companies.

SENATOR LEICHTER: Senator Nozzolio, one final question to you. If your intent -- if your intent is to protect New York jobs and if you're dealing with a situation where that foreign company, Japanese company to take an example buying a New York corporation is going to increase jobs in New York, why not say that that tax credit, that

benefit that we gave to New York -- a New York company will continue to be valid and maybe carried forward only if you maintain the jobs? What's unfair about that? Why should we give tax benefits to companies that come in, buy a New York company, get the benefit and then move the jobs out?

SENATOR LEICHTER: Mr. President, I will answer that by saying that those job -- those associations in this state which are dedicated to the promotion of New York and the promotion of business and jobs in this state, most notably the Business Council, the New York Chamber of Commerce and Industry, both support this legislation wholeheartedly, that it affects jobs upstate and downstate and as such I think it's a measure that should be enacted.

SENATOR LEICHTER: Good. Thank you, Senator Nozzolio.

Let me just say, I mean, this is a pretty simple bill.

ACTING PRESIDENT MARCELLINO: Senator Leichter, on the bill.

SENATOR LEICHTER: On the

bill. Thank you, Mr. President.

We now give tax benefits known as an investment tax credit. That goes to companies that spend monies on capital improvements here in the state of New York. To make this available solely to the state of New York companies and to provide protection from New York companies against hostile takeovers, we say that that investment tax credit cannot be enjoyed by another company that comes out of the state and buys the New York company and we do that because we want to protect the New York company because experience has shown that very often when the New York companies are acquired by an out of state company, by a foreign company, that there's a reduction in jobs. There no longer is that nexus. There is not that attachment to the state of New York. There's a reduction in jobs. Very often the whole company has moved out of the state. As I understand the law, you could move the company out of the state and you still would be able to take the investment tax credit. So we have this protection for New York companies and Senator

Nozzolio eliminates that protection.

Now, he says, well, there's some instances where a foreign company comes, buys a New York company and increases jobs, and I said, well, in that case, why not tailor your bill to that situation? In that case we'll say to the foreign company, if you come to New York and you keep the jobs here or you increase the jobs, you can have the benefit of that tax incentive that we gave to New York corporations. It certainly makes perfectly good sense.

If you're trying to preserve jobs in New York, if you're trying to protect New York companies, you can't conceivably be for this bill and you can't go back then and say, I'm trying to better the business climate in New York. You're bettering the business climate for Japanese corporations, for other corporations out of the state that want to capture New York corporations and New York tax benefits. Why would we do that? It doesn't make sense.

ACTING PRESIDENT MARCELLINO: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President.

I have listened to this debate because this is an issue I wasn't familiar with before we walked into the chamber, but I agree, I guess -- I understand the position articulated by Senator Leichter, but it seems to me that what you're doing in this bill, at least as best I understand it, is to encourage the use of the investment tax credit in New York because if you have a corporation, a New York corporation that makes the investment and gets the investment tax credit, they built jobs, built factories, done other things to establish a presence in New York. The carry-forward of the investment tax credit becomes an asset on the corporate balance sheet. A parent thinking about buying it and perhaps buying it to continue the investment looks at the balance sheet and says there's an asset on there in the form of the carry-forward of the investment tax credit. It makes the New York corporation more valuable and it seems to me that that can only help a New York corporation if they're looking

for capital, looking for an inquisitive parent to come in and assist.

I would support an amendment that required the corporation to stay here for a longer period of time, but I think the mere fact that this bill, as I understand the language of this section of the tax code, it doesn't differentiate between the hostile takeover and merely the acquiring parent that wants to come in and perhaps make a continued investment in New York.

So I look as it as a close question. I clearly see the risk that a parent will suck out the investment tax credit and leave liabilities or leave unemployed people here in New York, but I also see that there's the same possibility that an acquiring parent would look at the balance sheet, say here's a company that has carry-forward investment tax credits that we can use, save money, make a further investment in New York and increase our presence there because they're able to -- the acquiring parent is able to use the investment tax credit as an asset on the balance sheet making the New York

corporation more valuable.

I agree it's a close question. I would support an amendment that does what you want to do to restrict it, to keep the corporation here, but I think the general idea of allowing the investment tax credit to be carried forward should be encouraged whether it's an out of state foreign corporation or a domestic corporation.

The other easy way to do it from my perspective is if I were a company faced with the situation that Senator Nozzolio talks about, I would simply whip together a quick New York subsidiary and have the New York subsidiary acquire the corporation, carry the investment tax credits forward that way and then you get the same benefits.

So I think it's a bill that may have mixed results in the marketplace, but I'm not so sure it's bad in and of itself that we allow an acquiring corporation to carry forward investment tax credits which may, in some cases, even in corporations that have limited resources and may be on the down side, it -- maybe their only significant asset is

the ability to recognize an investment tax credit carry-forward at some time in the future.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Leichter.

SENATOR LEICHTER: If Senator Dollinger would yield.

Senator, will you yield?

SENATOR DOLLINGER: Yes, I will.

SENATOR LEICHTER: Okay. Do you not agree that as this bill is drafted, that investment tax credit could be acquired along with the acquisition of a New York corporation and then the number of employees could be decreased or the number of employees could be totally eliminated and the general belief is -- and I ask you sort of as a second part of my question -- aren't we generally better off if we have a New York corporation, a New York ownership, a corporation where the management has a history of being part of its community?

SENATOR DOLLINGER: Mr. President, in response to that, I agree that an amendment that would suggest that it be a New York corporation, that is, the actual acquiring corporation, would perhaps give a greater chance, create a greater chance that the corporation would have a continuing linkage or a nexus with New York State but that isn't even necessarily true because you could have a situation where the corporation is a New York corporation, makes the acquisition, takes the investment tax credits and then six months later beats a path to North Carolina or South Carolina.

So I would support an amendment that does the kinds of things you talk about, but at the same time, I think the notion that the acquiring parent gets to use the investment tax credit carry-forward is not necessarily a bad idea because, remember, the reason why it's there is because someone went out and made an investment in jobs, plants and equipment here in New York State, and I think -- I believe it's a seven-year carry-forward for the investment tax credit or a five-year

carry-forward -- it means that the to be acquired corporation has already made an investment in New York. It's probably a better or more likely than not that the acquiring parent won't walk away from that new investment.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Leichter.

SENATOR LEICHTER: Yes. With my apologies to Senator Nozzolio, I realized there was one question I forgot to ask him, if you would be good enough to yield, Senator.

ACTING PRESIDENT MARCELLINO: Senator Nozzolio, do you yield for a last question?

SENATOR NOZZOLIO: Yes.

SENATOR LEICHTER: Senator -

ACTING PRESIDENT MARCELLINO: He yields, Senator.

SENATOR NOZZOLIO: Thank you, Mr. President.

I can't remember if I should or not in this case, maybe. This is his last

question?

SENATOR LEICHTER: Senator, why is this bill retroactive to January 1, 1997? Are we trying to benefit a particular corporation? Is there a special takeover that you have in mind that you want to benefit the acquiring corporation?

SENATOR NOZZOLIO: There are, I believe three or four companies that have been recently acquired in New York State that would benefit from this provision.

SENATOR LEICHTER: Mr. President, Senator Nozzolio, could you tell us which of these corporations are?

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

SENATOR NOZZOLIO: I thought that was the last question, Senator.

ACTING PRESIDENT MARCELLINO: Apparently he has one more, Senator.

SENATOR NOZZOLIO: The -- I'm informed that the -- there is a company called the International Imaging Materials, Inc., with over 750 employees in Amherst, New York, Gould's Pumps, which has been acquired by ITT

Industries, Inc. in Central New York, Dresser Industries in -- with manufacturing plants in Painted Post, Olean and Wellsville and General Motors Delco Chassis Motor and Actuator Operations headquartered in Rochester.

SENATOR LEICHTER: Good. Thank you, Senator Nozzolio. You're forthcoming as always.

I just want to point out to my colleagues, whatever the merits of the arguments were beforehand -- and I don't disagree with Senator Dollinger's point which really isn't that different from mine which is if you want to put in some protection for - to keep jobs in New York, I would have no difficulty in voting for this, but now it's a totally different kettle of fish. We're giving a benefit to corporations that have already made the acquisition.

So if the argument is, Hey, we want to do this to be more competitive, to try to bring in capital, this has already happened. This is a retroactive benefit and gift that we're giving certain corporations. I don't know where they were from. They were

out of the state of New York. It would be interesting to know, maybe Senator Nozzolio can tell us if he does, whether any of these corporations have decreased the number of jobs that they have in New York after acquiring the New York corporation, but why in God's name would you throw away taxpayers' money by giving a tax benefit to these corporations? I mean, that really -- it's the worst sort of special interest legislation. Whether or not we should do this -- and I think as it's written you shouldn't do this bill but you certainly shouldn't do it if it's retroactive.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT MARCELLINO: The bill is passed with one negative vote.

Sorry, Senator Montgomery. Why do you rise?

SENATOR MONTGOMERY: I'm rising to vote in the negative with Senator Leichter on that bill that just passed. Am I too late?

ACTING PRESIDENT MARCELLINO: Since the bill was just marked passed, Senator, would you make a request for unanimous consent.

SENATOR MONTGOMERY: Mr. President, I request to be recorded in the negative on Calendar 13...

ACTING PRESIDENT MARCELLINO: ...40, I believe it is.

SENATOR MONTGOMERY: ...40. Thank you.

ACTING PRESIDENT MARCELLINO: Without objection, so ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1349, by Senator Stafford, Senate Print 7622, an act to amend Chapter 814 of the Laws of 1987, amending the State Finance Law.

ACTING PRESIDENT MARCELLINO:

Read the last section.

THE SECRETARY: Section 9. This act shall take effect January 1.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

SENATOR STACHOWSKI: Explanation.

ACTING PRESIDENT MARCELLINO: Excuse me, Senator Leichter.

Senator, I'm sorry. I could not hear it.

SENATOR LEICHTER: Can we have an explanation.

ACTING PRESIDENT MARCELLINO: Senator Stafford, Senator Leichter is requesting an explanation.

SENATOR STAFFORD: By all means.

Mr. President, this bill makes permanent the New York State Governmental Accountability Audit and Internal Control Act which we passed in 1987. It's been temporary.

I can go into many, many

details but let me try to summarize it. Effective January 1, '99, the following would be permanent. It amends the (inaudible) to make act's -- make the act's definition of internal control. They'll be consistent with the (inaudible) and with that included in generally accepted auditing standards.

Now, what that is, you know, you put out a statement and you, in effect, say the state has been audited and within the principles of accounting, here's what we found.

ACTING PRESIDENT MARCELLINO: Senator Stafford, with due respect, the stenographer is having difficulty picking up the sound of your voice.

SENATOR STAFFORD: Sorry.

ACTING PRESIDENT MARCELLINO: Thank you.

SENATOR STAFFORD: Want me to start over?

ACTING PRESIDENT MARCELLINO: Yes, please, Senator.

SENATOR STAFFORD: All right. Somebody said, Oh, no.

ACTING PRESIDENT MARCELLINO: I'm sure Senator Leichter couldn't hear it, so -

SENATOR STAFFORD: Right. But he knows the bill already. Anybody who has been educated on the Charles knows accounting much better than I do.

Now, it also amends the Finance Law that updates the state comptroller's responsibilities by specifically authorizing the comptroller to issue internal control audit standards.

I'm not making light here, but I'm going to mention this, and I'll bet Senator Leichter knows this. This says state comptroller. Is Carl McCall the comptroller or the comptroller? That's in the Constitution, comptroller?

ACTING PRESIDENT MARCELLINO: Senator, are you addressing the Chair because I'm sure I don't know.

SENATOR STAFFORD: Right, comptroller, but we know exactly what we're talking about. We're talking about the office that is held now by Carl McCall. It was held

before by Ned Regan and before that by Colonel Levitt and before that Frank Moore and before that J. Raymond McGovern.

It also amends the Executive - Executive Law and the Public Authorities Law to update the definitions of internal controls related to the responsibilities of the state agencies.

SENATOR LEICHTER: Mr. President, excuse me for interrupting, Senator.

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

SENATOR LEICHTER: If you would yield to a question, that may make your explanation briefer.

SENATOR STAFFORD: Always will yield.

ACTING PRESIDENT MARCELLINO: The Senator yields.

SENATOR LEICHTER: Is the state comptroller, however you spell it -- I spell it c-o-m-p-t-r-o-l-l-e-r, but is he in favor of this bill?

SENATOR STAFFORD: Is he? I

would be glad to hold the bill and find out - I took for granted that he was in favor of this. It increases his -- I don't want to use the word "power" because that isn't a good word, but let me say it increases his shop. Also it was passed on a bipartisan basis - I'll be serious. It was passed on a bipartisan basis. I remember I had some concerns. I said, are we just adding another bureaucracy here and adding -- passing laws for the sake of passing laws? I do not think so. We get an audited statement of the state. The firm that gets the responsibility -- you're not yawning, Mr. President.

ACTING PRESIDENT MARCELLINO: Never, sir.

SENATOR STAFFORD: I'm afraid you were, but I certainly understand. We now get an audited statement and I think it's in the 90s. I think we should have an audited statement from a certified public accountant firm. I can't always say that -- I can't always say this, but I've actually read their report and it actually is impressive because someone professionally is saying or setting

forth exactly what the books of New York State say.

SENATOR LEICHTER: Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Leichter.

SENATOR LEICHTER: Senator Stafford, I think you're right that it would seem, as I read this, to certainly enhance or be in conformity with the comptroller's power, but let me take you up on your kind offer. Would you lay this aside?

SENATOR STAFFORD: I can't believe I would overspeak like that. Amazing but, of course, you and I work on camaraderie.

SENATOR LEICHTER: And you're the best. You're the best, the absolute best.

SENATOR STAFFORD: I have a memo that says "Opposed, none available." No opposition.

SENATOR LEICHTER: All right. Would you mind if we got the views of the comptroller and put this bill over until tomorrow?

SENATOR STAFFORD: You know I overstepped on that one.

SENATOR LEICHTER: That's because you're the best and I mean that.

SENATOR STAFFORD: The comptroller has no position.

Now, this bill -- I will say, this bill has been out there. We've had it in effect since 1987 and we're just making it permanent. I certainly understand your interest.

SENATOR LEICHTER: Thank you.

ACTING PRESIDENT MARCELLINO: Read the last section, please, quickly.

THE SECRETARY: Section 9. This act shall take effect January 1.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT MARCELLINO: The bill is passed.

SENATOR STAFFORD: I would just mention this also because we all need to learn

every day. Senator Cook has been most helpful -- excuse me, Mr. President. Could I just mention this.

ACTING PRESIDENT MARCELLINO: If you wish, sir.

SENATOR STAFFORD: Senator Cook has been most helpful. It's spelled comptroller c-o-m-p-t-r-o-l-l-e-r, but it is pronounced, as Senator Leichter said, comptroller.

ACTING PRESIDENT MARCELLINO: For the record, Senator Stafford's comments will be enshrined -- should be enshrined in the record.

THE SECRETARY: Calendar Number 1351, by Senator Meier, Senate Print 7635, an act to amend the Civil Rights Law, in relation to the right of public petition and participation.

ACTING PRESIDENT MARCELLINO: Read the last section.

SENATOR LEICHTER: Can we have an explanation, please.

ACTING PRESIDENT MARCELLINO: Senator Meier, an explanation has been

requested by Senator Leichter.

SENATOR MEIER: Mr. President, this bill confers a limited immunity from civil liability for actions which people take to petition their government for a redress of grievances.

Let me explain it more particularly by describing the kind of fact pattern where this would come into play. This is something that occurred in my district where some citizens were concerned about the manner in which public funds and public property were being used. They used the Freedom of Information Law and other mechanisms available by law to citizens to question their government about how funds were being used. They gathered that information. The information they gathered later resulted in some public officials being indicted and later convicted. Those public officials, while this was going on, brought a lawsuit against those citizens. Those citizens, because they took an interest in their government and were attempting to stop an improper use of town resources, had to expend

funds for attorneys and legal expenses, had to go through the emotional trauma of defending a lawsuit. This bill would provide a limited immunity, which would, in effect, be an affirmative defense.

The present state of the law in New York is such that this kind of immunity only applies where the public action being questioned by a citizen would be the granting of a permit, a zoning variance, that kind of thing.

ACTING PRESIDENT MARCELLINO: Read the last section.

SENATOR LEICHTER: Just one question, please.

ACTING PRESIDENT MARCELLINO: Senator Leichter.

SENATOR LEICHTER: Senator Meier.

ACTING PRESIDENT MARCELLINO: Excuse me, Senator. Are you asking Senator Meier to -

SENATOR LEICHTER: Yes.

ACTING PRESIDENT MARCELLINO: Does the Senator yield?

SENATOR MEIER: Yes.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR LEICHTER: Senator, I appreciate the benefit we get from giving protection to citizens and trying to avoid the slap suit. I'm just concerned -- let me first ask you, except as otherwise provided in Section 76 (a) of this article, what does that provide?

SENATOR MEIER: Section 76 (a) of the Civil Rights Law, the exception would apply to cases where the slap suit brought against the citizen -- the exception involves falsity, malice, reckless disregard for the truth. So, in other words, when I say it's a limited immunity, those would be the exceptions where it would not apply.

SENATOR LEICHTER: That was precisely what I had in mind. So if I'm correct, you're not eliminating those instances where somebody acts out of malice or acts in a defamatory manner.

SENATOR MEIER: No. That's correct, Senator. That's exactly the intent

of the bill.

SENATOR LEICHTER: Good. Thank you.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Skelos, that finishes the controversial calendar.

SENATOR SKELOS: Mr. President, would you please call up Calendar Number 13... yes. 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 MARCELLINO: 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 bills:

Senate Print 2653, by Senator Kuhl, an act to amend the Tax Law;

5098-B, by Senator Skelos, an act to amend the Real Property Tax Law;

5477-C, by Senator Goodman, an act to amend the Public Health Law;

5696-A, by Senator Smith, an act authorizing the city of New York;

5780-A, by Senator LaValle, an act to amend the Mental Hygiene Law and others;

6036, by Senator Holland, an act authorizing and directing the Commissioner of General Services;

6200, by Senator Volker, an act to amend the Erie County Tax Act;

6311-A, by Senator Meier, an act to authorize the city of Utica;

6360-A, by Senator Holland, an act to amend the Social Services Law;

6391, by Senator Seward, an act

to amend Chapter 463 of the Laws of 1995;

6528, by Senator Trunzo, an act to amend the General Municipal Law;

6638-A, by Senator Santiago, an act to authorize the city of New York;

6722-A, by Senator Breslin, an act to authorize the city of Cohoes;

6755, by Senator Johnson, an act to amend the Real Property Tax Law;

6830, by Senator Leibell, an act to amend the Town Law and the Public Officers Law;

6831, by Senator Leibell, an act to amend the Town Law and the Public Officers Law;

6926, by Senator Wright, an act to amend the General Municipal Law and the Local Finance Law;

7008-A, by Senator Goodman, an act to amend the General Municipal Law;

7193-A, by Senator Skelos, an act to amend Chapter 269 of the Laws of 1979;

7288, by Senator Leibell, an act to amend the Education Law;

7385, by Senator Saland, an act

to authorize the town of LaGrange;

7388-B, by Senator Saland, an act to amend the Tax Law and the General Municipal Law;

7527-A, by Senator Maziarz, an act to legalize, validate, ratify and confirm;

7588, by Senator Velella, an act to amend the Insurance Law;

7626, by Senator Marcellino, an act authorizing the assessor of the county of Nassau;

7627, by Senator Skelos, an act authorizing the assessor of the county of Nassau;

7644, by Senator Stafford, an act to amend Chapter 466 of the Laws of 1995;

7659, by Senator Volker, an act to amend the Mental Hygiene Law; and

7744, by Senator Spano, an act to amend the Workers' Compensation Law and the Insurance Law.

All bills ordered direct for third reading.

ACTING PRESIDENT MARCELLINO: Senator Skelos.

SENATOR SKELOS: Move to accept the report of the Rules Committee.

ACTING PRESIDENT MARCELLINO: All in favor of accepting the report of the Rules Committee signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The report of the Rules Committee is accepted.

Senator Skelos.

SENATOR SKELOS: Mr. President, at this time would you please call up Calendar Number 1317, Senate 7744, and ask that it have its third reading. It was just reported from the Rules Committee.

ACTING PRESIDENT MARCELLINO: The Secretary will read.

THE SECRETARY: Calendar Number 1317, by Senator Spano, Senate Print 7744, an act to amend the Workers' Compensation Law and the Insurance Law.

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

ACTING PRESIDENT MARCELLINO:

There is a message, Senator.

SENATOR SKELOS: Move to accept.

ACTING PRESIDENT MARCELLINO: The motion is to move to accept the message of necessity. All in favor signify by saying aye.

(Response of "Aye".)

Opposed, nay.

(There was no response.)

The message is accepted.

Read the last section.

THE SECRETARY: Section 9. This act shall take effect in 90 days.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes 57 -- ayes 56, nays 1, Senator Cook recorded in the negative.

ACTING PRESIDENT MARCELLINO: Senator Stavisky too.

THE SECRETARY: On Calendar 1317, those recorded in the negative, Senators

Cook and Stavisky. Ayes 55, nays 2.

ACTING PRESIDENT MARCELLINO: Excuse me. Senator, you just wanted to check in? I'm sorry.

SENATOR STAVISKY: I also wish to be recorded -

ACTING PRESIDENT MARCELLINO: Senator, can we just finish this bill? We're on a roll call. I'm sorry.

Please announce the negatives again so we clarify it.

THE SECRETARY: On Calendar Number 1317, those recorded in the negative, Senators Cook and Meier. Ayes 55, nays 2.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Stavisky.

SENATOR STAVISKY: Mr. President, without objection, I shall like to be recorded in the negative on Calendar 996 and Calendar 1315.

ACTING PRESIDENT MARCELLINO: Without objection, Senator Stavisky will be recorded in the negative on Calendars Number 996 and 1313.

SENATOR SKELOS: Mr. President, I believe there may be some other individuals that want to be recorded in the negative on some bills. If you could recognize them to ask for unanimous consent.

ACTING PRESIDENT MARCELLINO: Senator Seward.

SENATOR SEWARD: Yes, Senate 7744. I'm not sure of the Calendar Number, but Senate Bill 7744.

ACTING PRESIDENT MARCELLINO: That's 1317.

SENATOR SEWARD: I'd ask unanimous consent to be recorded in the negative.

ACTING PRESIDENT MARCELLINO: Without objection, so ordered.

Is there anyone else? Senator Meier -- sorry.

Senator Skelos.

SENATOR SKELOS: Mr. President, is there any housekeeping at the desk?

ACTING PRESIDENT MARCELLINO: Yes, there is, Senator. We'll return to motions and resolutions.

Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, on behalf of Senator Hannon, on page number 9, I offer the following amendments to Calendar Number 334, Senate Print Number 1736-B, and ask that said bill retain its place on the third reading.

ACTING PRESIDENT MARCELLINO: The amendments are received and the bill will retain its place on the Third Reading Calendar.

Senator Fuschillo.

SENATOR FUSCHILLO: On behalf of Senator LaValle, on page number 39, I offer the following amendments to Calendar Number 1168, Senate Print Number 7134, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT MARCELLINO: So ordered.

Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, I wish to call up on behalf of Senator Johnson, Print Number 2684-B, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT MARCELLINO: The Secretary will read.

THE SECRETARY: Calendar Number 257, by Senator Johnson, Senate Print 2684-B, an act to amend the Insurance Law.

ACTING PRESIDENT MARCELLINO: Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, I now move to reconsider the vote by which the bill was passed.

ACTING PRESIDENT MARCELLINO: Call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT MARCELLINO: Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, I now offer the following amendments.

ACTING PRESIDENT MARCELLINO: The amendments are accepted.

Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, on behalf of Senator Libous, I wish

to call up Print Number 1122-A, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT MARCELLINO: The Secretary will read.

THE SECRETARY: Calendar Number 1, by Senator Libous, Senate Print 1122-A, an act to amend the Vehicle and Traffic Law.

ACTING PRESIDENT MARCELLINO: Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, I now move to reconsider the vote by which the bill was passed.

ACTING PRESIDENT MARCELLINO: Call the roll on reconsideration, please.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT MARCELLINO: Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, I now offer the following amendments.

ACTING PRESIDENT MARCELLINO: The amendments are accepted.

Senator Meier.

SENATOR MEIER: Mr. President, I wish to call up my bill, Print Number 7426, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT MARCELLINO: The Secretary will read.

THE SECRETARY: Calendar Number 1038, by Senator Meier, Senate Print 7426, an act to authorize the town of New Hartford.

ACTING PRESIDENT MARCELLINO: Senator Meier.

SENATOR MEIER: I now move to reconsider the vote by which the bill was passed.

ACTING PRESIDENT MEIER: Call the roll on reconsideration, please.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT MARCELLINO: Senator Meier.

SENATOR MEIER: Mr. President, I now offer the following amendments.

ACTING PRESIDENT MEIER: The amendments are accepted.

Senator Meier.

SENATOR MEIER: Mr. President, I wish to call up Senator Goodman's bill, Print Number 7317-A, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT MARCELLINO: Call the roll -- I'm sorry -- the Secretary will read.

THE SECRETARY: Calendar Number 1093, by Senator Goodman, Senate Print 7317-A, an act to amend the Tax Law.

ACTING PRESIDENT MARCELLINO: Senator Meier.

SENATOR MEIER: Mr. President, I now move to reconsider the vote by which the bill was passed.

ACTING PRESIDENT MEIER: Please call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT MARCELLINO: Senator Meier.

SENATOR MEIER: I now offer the following amendments.

ACTING PRESIDENT MEIER: The amendments are accepted.

Senator Meier.

SENATOR MEIER: Mr. President, I wish to call up Senator DeFrancisco's bill, Print Number 477-B, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT MARCELLINO: The Secretary will read.

THE SECRETARY: Calendar Number 536, by Senator DeFrancisco, Senate Print 477-B, an act to amend the Real Property Tax Law.

SENATOR MEIER: I now move to reconsider the vote by which the bill was passed.

ACTING PRESIDENT MARCELLINO: Please call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT MARCELLINO: Senator Meier.

SENATOR MEIER: I now offer the following amendments.

ACTING PRESIDENT MARCELLINO: The amendments are accepted.

Senator Meier.

SENATOR MEIER: Mr. President, on page number 22, I offer the following amendments to Calendar Number 759, Senate Print Number 5975, and ask that said bill retain its place on the Third Reading Calendar.

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

Senator Meier.

SENATOR MEIER: Mr. President, on page number 34, I offer the following amendments to Senator Alesi's bill, Calendar Number 1057, Senate Print 6501, and ask that said bill retain its place on the Third Reading Calendar.

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

Senator Meier.

SENATOR MEIER: Mr. President, I wish to call up Senator Leibell's bill, Print Number 3929-A, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT MARCELLINO: The Secretary will read.

THE SECRETARY: Calendar Number 1234, by Senator Leibell, Senate Print 3929-A, an act to amend the Real Property Actions and Proceedings Law.

SENATOR MEIER: I now move to reconsider the vote by which this bill was passed.

ACTING PRESIDENT MARCELLINO: Please call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT MARCELLINO: Senator Meier.

SENATOR MEIER: Mr. President, I now offer the following amendments.

ACTING PRESIDENT MEIER: The amendments are accepted. Thank you, Senator Meier.

Senator Seward.

SENATOR SEWARD: Yes. If Senator Meier would yield, I would like to -

ACTING PRESIDENT MARCELLINO: The Senator graciously yields.

SENATOR SEWARD: On behalf of Senator Velella, Mr. President, I wish to call up Calendar Number 356, Assembly Print Number 3169-A.

ACTING PRESIDENT MARCELLINO: The Secretary will read.

THE SECRETARY: Calendar Number 356, by member of the Assembly Pheffer, Assembly Print 3169-A, an act to amend the Real Property Tax Law.

ACTING PRESIDENT MARCELLINO: Senator Seward.

SENATOR SEWARD: I now move to reconsider the vote by which this Assembly bill was substituted for Senator Velella's bill, Senate Print Number 4597-A, on March 11.

ACTING PRESIDENT MARCELLINO: Call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT MARCELLINO: Senator Seward.

SENATOR SEWARD: I now move that Assembly Bill Number 3169-A be recommitted to the Committee on Rules and Senate -- the Senate bill be restored to the order of Third Reading Calendar.

ACTING PRESIDENT MARCELLINO: So ordered.

Senator Seward.

SENATOR SEWARD: Yes, Mr. President. I wish to call up Calendar Number 784, Assembly Print Number 4798.

ACTING PRESIDENT MARCELLINO: The Secretary will read.

THE SECRETARY: Calendar Number 784, by member of the Assembly Nolan, Assembly Print 4798, an act to amend the Labor Law.

SENATOR SEWARD: I now move to reconsider the vote by which this Assembly bill was substituted for Senator Spano's bill, Senate Print Number 2821, on May 6th.

ACTING PRESIDENT MARCELLINO: Call the roll on reconsideration, please.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 57.

ACTING PRESIDENT MARCELLINO: Senator Seward.

SENATOR SEWARD: Mr. President, I now move that Assembly Bill Number 4798 be committed to the Committee on Rules and Senator Spano's Senate bill be restored to the order of Third Reading Calendar.

ACTING PRESIDENT MARCELLINO: So ordered.

SENATOR SEWARD: Mr. President, I now offer the following amendments.

ACTING PRESIDENT MARCELLINO: The amendments are accepted.

Senator Skelos, may we do some substitutions.

SENATOR SKELOS: Please make the substitutions.

ACTING PRESIDENT MARCELLINO: The Secretary will read.

THE SECRETARY: On page 4, Senator LaValle moves to discharge from the Committee on Rules Assembly Bill Number 8579-A

and substitute it for the identical Third Reading Calendar 66.

On page 8, Senator Present moves to discharge from the Committee on Rules Assembly Bill Number 6084-A and substitute it for the identical Third Reading Calendar 295.

On page 12, Senator Cook moves to discharge from the Committee on Rules Assembly Bill Number 1664-C and substitute it for the identical Third Reading Calendar 446.

On page 18, Senator Cook moves to discharge from the Committee on Rules Assembly Bill Number 9444-A and substitute it for the identical Third Reading Calendar 666.

On page 20, Senator Volker moves to discharge from the Committee on Rules Assembly Bill Number 3998-A and substitute it for the identical Third Reading Calendar 717.

On page 29, Senator Leibell moves to discharge from the Committee on Rules Assembly Bill Number 4328 and substitute it for the identical Third Reading Calendar 913.

And on page 33, Senator LaValle moves to discharge from the Committee on Rules Assembly Bill Number 9181 and substitute it

for the identical Third Reading Calendar 1016.

ACTING PRESIDENT MARCELLINO: All substitutions are ordered.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could return to the order of motions and resolutions and please recognize Senator Meier.

ACTING PRESIDENT MARCELLINO: We'll return to the order of motions and resolutions.

Senator Meier.

SENATOR MEIER: Mr. President, on behalf of Senator Volker, I wish to call up Print Number 3358-A, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT MARCELLINO: The Secretary will read.

THE SECRETARY: Calendar Number 314, by Senator Volker, Senate Print 3358-A, an act to amend the Alcoholic Beverage Control Law and others.

ACTING PRESIDENT MARCELLINO: Senator Meier.

SENATOR MEIER: Mr. President,

I now move to reconsider the vote by which this bill was passed.

ACTING PRESIDENT MARCELLINO: Please call the roll on reconsideration.

(The Secretary called the roll on reconsideration.)

THE SECRETARY: Ayes 58.

ACTING PRESIDENT MARCELLINO: Senator Meier.

SENATOR MEIER: I now offer the following amendments.

ACTING PRESIDENT MARCELLINO: The amendments are accepted.

Senator Alesi.

SENATOR ALESI: Thank you, Mr. President.

On page 44, I offer the following amendments to Calendar Number 1333, Senate Print Number 7035-A, and ask that said bill retain its place on the Third Reading Calendar.

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

Senator Skelos.

SENATOR SKELOS: Is there any housekeeping at the desk?

ACTING PRESIDENT MARCELLINO: The house is clean, sir.

SENATOR SKELOS: Mr. President, there being no further business, I move we adjourn until Tuesday, June 16th, at 11:30 a.m. sharp.

ACTING PRESIDENT MARCELLINO: The Senate will stand adjourned until Tuesday, that is tomorrow, at 11:30 a.m. sharp.

(Whereupon, at 6:18 p.m., the Senate adjourned.)