NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

March 5, 2001

3:16 p.m.

REGULAR SESSION

SENATOR RAYMOND A. MEIER, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT MEIER: The Senate will come to order.

I ask everyone present to please rise and repeat with me the Pledge of Allegiance to the Flag.

(Whereupon, the assemblage recited the Pledge of Allegiance to the Flag.)

ACTING PRESIDENT MEIER: The invocation will be offered by the Reverend Peter G. Young.

REVEREND YOUNG: Let us pray.

Dear God, as we experience Your winter wonderland, we gather with a prayer that our New York State citizens will be safe on our icy highways and able to find warmth and comfort in their homes.

As we gather for our legislative priorities, may we remember those that are homeless as a result of their addiction and mental illness.

O, God, You have blessed our great Empire State with dedicated leadership that are sensitive to the poor and to the needy. We pray that You will bless them with strength

and wisdom to serve our New York State citizens. We ask You this in Your name now and forever.

Amen.

ACTING PRESIDENT MEIER: Reading of the Journal.

THE SECRETARY: In Senate, Friday, March 2nd, the Senate met pursuant to adjournment. The Journal of Thursday, March 1st, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT MEIER: 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 Libous.

SENATOR LIBOUS: Thank you, Mr. President. I'd like to place a sponsor star

on Calendar Number 111.

ACTING PRESIDENT MEIER: So ordered.

Senator Dollinger.

SENATOR DOLLINGER: Mr. President, I just give written notice, as required by Rule XI, that I will move to amend the rules by adding a new rule, XV, in relation to the ethical standards of members, officers, and employees of the Senate.

ACTING PRESIDENT MEIER: The notice has been received and will be entered in the Journal.

SENATOR DOLLINGER: Thank you.

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: Mr. President, may we please take up resolution 687, by Senator McGee, have it read in its entirety, and move for its immediate documentation.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: By Senator McGee, Legislative Resolution Number 687, memorializing Governor George E. Pataki to

proclaim April 22nd through 29th, 2001, as Shaken Baby Syndrome Awareness Week in the State of New York.

"WHEREAS, Government figures show that more than one million children were victims of abuse and neglect in 1997, causing unspeakable pain and suffering to our most vulnerable citizens; and

"WHEREAS, Of the children who are victims of abuse and neglect, more than three die each day in the United States. The rate of child fatalities rose by 37 percent between 1985 and 1997, and children who were 3 years old or younger accounted for 77 percent of the fatalities; and

"WHEREAS, The leading cause of death of abused children is head trauma, including the trauma known as shaken baby syndrome; and

"WHEREAS, Shaken baby syndrome, which results from a caregiver's losing control and shaking a baby, usually less than one year of age, can cause loss of vision, brain damage, paralysis, seizures, or death, and is a totally preventable form of child

abuse; and

"WHEREAS, An estimated 3,000 children are diagnosed with shaken baby syndrome every year, and thousands more are misdiagnosed and undetected; and

"WHEREAS, shaken baby syndrome often causes permanent, irreparable brain damage or death to an infant and may result in more than $1 million in medical costs for the care of a single disabled child during the first few years of life; and

"WHEREAS, The most effective way to end shaken baby syndrome is by preventing such abuse, and it is clear that the minimal costs of educational and preventive programs may avert enormous medical and disability costs and untold grief for many families; and

"WHEREAS, Prevention programs have been shown to raise awareness and to provide critically important information about shaken baby syndrome to parents, caregivers, daycare workers, child protection employees, law enforcement personnel, health care professionals, and legal representatives; and

"WHEREAS, Prevention of shaken baby

syndrome is supported by groups such as the Shaken Baby Alliance, an organization started by three mothers of children who had been diagnosed with shaken baby syndrome and whose mission is to educate the general public and professionals about the syndrome and to increase support for victims and their families in the health care and criminal justice systems; and

"WHEREAS, a year 2000 survey by Prevent Child Abuse America shows that half of all Americans believe that child abuse and neglect is the most important issue facing this country, as compared to other public health issues; now, therefore, be it be

"RESOLVED, That this Legislative Body pause in its deliberations to memorialize Governor George E. Pataki to proclaim April 22-29, 2001, as Shaken Baby Syndrome Awareness Week in the State of New York; and be it further

"RESOLVED, That a copy of this resolution, suitably engrossed, be transmitted to the Honorable George E. Pataki, Governor of the State of New York."

ACTING PRESIDENT MEIER: Senator McGee.

SENATOR McGEE: Thank you, Mr. President. I cannot explain to you or tell you how important this resolution is in being able to designate the week as Shaken Baby Syndrome Week.

Certainly, listening to the resolution, you can see that approximately 3,000 children are diagnosed with this shaken baby syndrome every year, and thousands more are misdiagnosed on it. Shaken baby syndrome can cause permanent brain damage, can cause death to a child.

And really, this is abuse to our - and sometimes unneeded -- certainly never needed, but abuse that they simply don't realize, caretakers just simply don't realize. And they'll pick up a small child and shake a small child, in frustration, perhaps, or in anger, because the baby has kept them up or that type of thing. This is really extremely important.

And earlier this year, this past year, Assemblyman Hoyt and I did a program

concerning -- with our hospitals in our area on the shaken baby syndrome, and we have found that the most important thing is to educate the people, to educate the parents, to educate the caretakers that you simply cannot shake a child without expecting some sort of bad damage to them.

So this is an act toward educating those caretakers that this is to give safety to the smallest, most fragile of the citizens that we represent.

So I would like to take this opportunity to open up this resolution for sponsorship by the entire Senate, because it is so extremely important.

So with that, let me say thank you so much. And please, let's everyone educate our caretakers on the fragility of our children and the fact that shaking a baby is a bad, bad thing to do.

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

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed,

nay.

(No response.)

ACTING PRESIDENT MEIER: The resolution is adopted.

Senator Bruno.

SENATOR BRUNO: Senator McGee, you want to open up this resolution for sponsorship on the floor?

And anyone that would not like to have their name on it, would you mind addressing the chair.

ACTING PRESIDENT MEIER: All members will be placed on the resolution unless they notify the chair to the contrary.

Senator Bruno.

SENATOR BRUNO: And, Mr. President, I have a resolution at the desk. I would ask that it be read in its entirety and move for its immediate adoption.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: By Senator Bruno, Legislative Resolution Number 686, expressing sincerest sorrow upon the occasion of the untimely death of legendary stock car driver

Dale Earnhardt, Sr.

"WHEREAS, It is the custom of this Legislative Body to publicly recognize the passing of a famed American athlete whose tragic and untimely death has pierced the national consciousness; and

"WHEREAS Dale Earnhardt, Sr., the legendary stock car driver who was known as "The Intimidator" died in an accident during the last lap of the Daytona 500 on Sunday, February 18, 2001, at the age of 49; and

"WHEREAS, Dale Earnhardt, Sr., was born on April 29, 1951, in Kannapolis, North Carolina. As a young boy, he watched his father, Ralph Earnhardt, race in stock car events throughout the Southeast.

"Dale Earnhardt, Sr., developed a love for the sport that would ultimately fuel one of the most successful careers in the history of motor sports. Dale Earnhardt, Sr., began racing hobby-class cars in and around Kannapolis in his late teens; and

"WHEREAS, after the death of his father in 1973, Dale Earnhardt, Sr., continued to compete on the sportsmen's circuit,

determined more than ever to be a victorious driver, racing at speedways such as Hickory, Concord, and Metrolina Fairgrounds; and

"WHEREAS, Dale Earnhardt, Sr., began his illustrious NASCAR Winston Cup career in 1975; he won 7 Winston Cup Driving Championships, six between 1986 and 1994, frequently competing at our own Watkins Glen, New York.

"Dale Earnhardt, Sr., driving the familiar No. 3 black Chevrolet with his unrelenting driving style, brought the sport of stock car racing into the mainstream of America and elevated NASCAR to a multi-million-dollar merchandising industry; and

"WHEREAS, In addition to being stock car racing's most popular and celebrated figure, Dale Earnhardt, Sr., was the proprietor of Dale Earnhardt, Incorporated, a three-car racing stable that houses the NASCAR Winston Cup series team of Dale Earnhardt, Jr., Steve Park, and Michael Waltrip.

"Dale Earnhardt, Sr., is survived by hi wife, Teresa, his four children, Dale,

Jr., Kerry, Kelley, and Taylor, and his mother, Martha Earnhardt; and

"WHEREAS, Dale Earnhardt, Sr., the king of his sport, will best be remembered as a loving son, a devoted husband, a proud father, and a trusted friend who brought excitement and joy to colleagues, family, friends, and millions of fans throughout his extraordinary life and career; he will be deeply missed and truly merits the grateful tribute of this Legislative Body; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to express sincerest sorrow upon the occasion of the untimely death of legendary stock car driver Dale Earnhardt, Sr.; and be it further

"RESOLVED, That copies of this resolution, suitably engrossed, be transmitted to the family of Dale Earnhardt, Sr."

ACTING PRESIDENT MEIER: Senator Bruno.

SENATOR BRUNO: Mr. President, thank you.

We just heard in a few minutes a

resolution outlining the life and accomplishments of Dale Earnhardt. And when they talk about him as being a champion, a person who excelled, he set records, I believe, in his chosen field of competition that are unequaled. And it is tragic, in his untimely death, and it's a great, great loss.

I had the privilege and pleasure of meeting Dale Earnhardt and having a picture taken with him when I was the Grand Marshal at the Global Crossing NASCAR race at Watkins Glen in August. And I know when we talked about approaching him, it was minutes before this 200-lap race.

And the officials were truly intimidated in going up to him because they felt that, you know, the adrenaline was flowing and he was in the mode to get in his car, and they were going to stop him to ask him to have a picture taken with the Grand Marshal, me. And I was saying, having known of his reputation, "Don't bother," you know. "I'll wave to him or I'll do something like that."

But he was going by us, and they

stopped him and asked. And he stood there with his helmet in his hand. And I got to tell you, I have met a lot of people who are impressive, who are outstanding, from presidents to governors to senators. But this man had a presence about him that just said a lot of things.

And you can tell that this was a competitive individual. When they called him "The Intimidator," it related to his racing style, in that he did everything and anything that was appropriate to win. As you heard, he had 76 wins, seven titles. He excelled. His son follows, as he followed in his father's footsteps.

So, you know, when we do resolutions like this, when you think about the passing of an individual that truly changed the history of NASCAR racing, of racing as such, you wonder how long it will be before it gets back to normal. Because you can't see a race or have a race anywhere but they don't refer to Dale Earnhardt and the way he competed and led his life.

I was a guest there with Senator

Randy Kuhl, who was very, very gracious in getting me there, and it was one of the most impressive things I've done in my life, with about 180,000 people in one place. And when Dale Earnhardt was getting in his car and you had people like him there, I couldn't help but reflect, when I heard what happened, on just a few months before -- a man so vibrant, alive, competing, dedicated to what he was doing, and then an untimely accident.

But he made his mark. And many of us, when we do what we do, we would like to know that we could excel with what we're dedicated and committed to do as Dale Earnhardt excelled.

So I would ask any of you that would join in this resolution to please do so. And if you don't want to for any reason, just say so and speak up.

But I was amazed at the people that indicated they couldn't go to work. These are people who are supporting families. When they heard of this accident, they were devastated; they weren't the same for days. That was the effect that this man and his presence had on

people and on the sports world.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Any member not wishing to be placed on the resolution, notify the desk.

The question is on the resolution. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The resolution is adopted.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we ask for an immediate meeting of the Rules Committee in the Majority Conference Room.

ACTING PRESIDENT MEIER: Immediate meeting of the Rules Committee in the Majority Conference Room.

SENATOR BRUNO: And can we at this time take up the noncontroversial calendar.

ACTING PRESIDENT MEIER: The

Secretary will read the noncontroversial calendar.

THE SECRETARY: Calendar Number 44, by Senator Balboni, Senate Print 859A, an act in relation to authorizing the Chabad Lubavitch of Old Westbury.

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 84, by Senator LaValle, Senate Print 1422, an act to amend the General Municipal Law, in relation to granting additional points.

ACTING PRESIDENT MEIER: Read the last section.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 85, by Senator Rath, Senate Print 1454, an act to amend the General Municipal Law, in relation to alternative methods.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on -

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 90, by Senator Goodman, Senate Print 687, an act to amend the Transportation Law, in relation to disclosure by common carriers.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 2 -

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 104, by Senator DeFrancisco, Senate Print 436, an act to amend the Criminal Procedure Law, in relation to the collection of court-imposed financial obligations.

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number

108, by Senator Volker, Senate Print 1697, an act to amend the Penal Law, in relation to arson in the fifth degree.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 128, by Senator Stafford, Senate Print 1052, an act to amend the Environmental Conservation Law, in relation to nonhazardous municipal landfill closure.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 142, by Senator Leibell, Senate Print 2337, an act to authorize the Town of Yorktown to establish.

ACTING PRESIDENT MEIER: There's a home rule message at the desk.

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number

155, by the Assembly Committee on Rules, Assembly Print Number 4446, an act to amend Chapter 416 of the Laws of 1998.

ACTING PRESIDENT MEIER: Read the last section.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

Senator Bruno, that completes the reading of the noncontroversial calendar.

SENATOR BRUNO: Can we now take up the controversial reading, Mr. President.

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

THE SECRETARY: Calendar Number 44, by Senator Balboni, Senate Print 859A, an act in relation to authorizing the Chabad Lubavitch of Old Westbury.

SENATOR PATERSON: Explanation.

SENATOR BRUNO: Lay it aside for the day.

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

THE SECRETARY: Calendar Number

84, by Senator LaValle, Senate Print 1422, an act to amend the General Municipal Law, in relation to granting additional points.

SENATOR PATERSON: Explanation, please.

SENATOR BRUNO: Can we lay it aside temporarily.

ACTING PRESIDENT MEIER: Lay the bill aside temporarily.

THE SECRETARY: Calendar Number 85, by Senator Rath, Senate Print 1454, an act to amend the General Municipal Law, in relation to alternative methods.

SENATOR PATERSON: Explanation, please.

ACTING PRESIDENT MEIER: Senator Rath, an explanation has been requested of Calendar 1454 by Senator Paterson.

SENATOR RATH: Thank you, Mr. President.

This bill is a bill which will permit municipal corporations to petition a state agency when it is imposing a regulatory mandate to approve an alternative method of implementing that mandate.

Now, we know that the flexibility discussions have been long and broad throughout so many parts of this government. And frankly, for local governments, you know, we holler about mandates and have been talking about them for -- and I say "we" because I come from local government, as so many of us do in this building and in this house.

And the opportunity to have a flexible range and to look to the state agency when at all times the state will maintain approval authority, to look to them for an alternate way to accomplish the same goal makes total good sense to me. The local governments would be extremely anxious to have it. Because, let's face it, local governments all over the state are very different - upstate, downstate, cities, towns, villages, school districts, we have a whole range.

So I would hope that my colleagues would keep in mind that they may be able to save some money if they have an alternate way of doing it. Very often the way the state recommends or suggests or mandates, if you will, is not always the least expensive. And

local governments like to try to keep costs down.

Thank you.

ACTING PRESIDENT MEIER: Senator Paterson.

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

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

SENATOR RATH: Surely.

SENATOR PATERSON: Senator, conceptually I agree with this legislation, particularly because of the different configurations of local governments. However, my question relates to the way in which these alternatives would be carried out.

Could you give me an example of a way in which the regulatory authority is transferred to the local government and then gets carried out differently? Because I don't know that the full spirit of what's in your legislation can be understood without some concrete examples.

In other words, there must have

been in your mind some situations where specifically you knew what the alternatives were. And I was just wondering if you'd share them with us so I could get a better understanding of it.

SENATOR RATH: I think, Senator, it might take me a moment or two to draw up some specific thoughts. But I think what we're attempting to do, as you pointed out, are accounting for the unique circumstances.

And it comes to my mind the kinds of things that counties would do for states. Let's just take snowplowing, for example. When counties snowplow roads that are on the state list of roads and they have an agreement as to how the counties plow those roads when they are state roads, but it's more logical for the county to do it because they're going across a state road or they have a very small space, I think that that those regulations might be very different if they were handled in counties downstate than counties upstate.

Not that that's a specific one that comes to mind because we had a problem with it when I was in local government, but it's that

kind of thing.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

Actually, Senator Rath's example is one that's actually carried out now. We do that, the agencies provide for that because they are sensitive to the different types of state. But the example is still fitting, because in those areas where the regulatory agency has not already prescribed some action in these cases, that would be a good example of what it is.

I just have one final question for Senator Rath if the Senator would yield.

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

SENATOR RATH: Thank you, yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR PATERSON: Though I was tempted earlier, Mr. President, to ask her what brought snowplows to her mind, I think I'll figure that out for myself and will go

forward and just ask: In the different municipalities served by an agency, does this law open itself up to, in a sense, some favoritism where the agency might be more responsive to different municipalities around the state for which they have better relationships and perhaps wouldn't accord the same opportunity to municipalities in different parts of the state where they might not understand the problems as clearly?

SENATOR RATH: Senator Paterson, I'm chuckling because, as I indicated, having come from the county, I would think that there are probably no areas around the state that agencies would have a relationship that was better in one place than in the other.

Because it always seems to me whenever the state came in and wanted to negotiate with the county as to what it is that they thought we should be doing the way they thought we should be doing it, it was immediate confrontation. It was not necessarily -- it was not necessarily easy.

And from what I've heard, that's pretty traditional around the rest of the

state.

ACTING PRESIDENT MEIER: Read the last section.

Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President. Will the sponsor yield for a couple of questions.

SENATOR RATH: Surely.

ACTING PRESIDENT MEIER: Senator Rath, do you yield?

The sponsor yields.

SENATOR DOLLINGER: Senator, how long a time would you anticipate it would take the state agency to review the alternative suggestion from the municipality?

SENATOR RATH: I would imagine that inside the regulation that they were debating there would be some particular characteristics of what it was they were attempting to accomplish that might foreclose a year or a year and a half going by. I just can't imagine that it would get put on the back burner for very long without someone that wanted definition coming forward.

Now, if we need to go back and

relook at that, we certainly could amend this. But at this point I didn't see any problem with that. But your point is well taken.

SENATOR DOLLINGER: Through you, Mr. President, if the sponsor will again continue to yield.

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

SENATOR RATH: Surely.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: Senator, I know you carry the other bills that talk about mandate relief. And the crux of those bills is to reduce the cost to local government.

Is there anything in this legislation that suggests that that alternative method has to reduce the cost to the local community?

SENATOR RATH: That's another good point, Senator Dollinger. And I believe you came from local government also, did you not?

SENATOR DOLLINGER: I did.

SENATOR RATH: You know that at

every turn of the road, every nickel is being watched.

And so although we're not holding an incentive out there, what we are saying to them is if you can do it a better way, present that to us and we will approve it or not approve it, if you can find a better way for Monroe County or Erie County or whichever county it might be to work through that particular mandate.

SENATOR DOLLINGER: Through you, Mr. President, if Senator Rath will yield just to another question, please.

ACTING PRESIDENT MEIER: Senator Rath, do you yield?

SENATOR RATH: Surely.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: One of the issues with respect to many of the mandates that come down from the State of New York to our local communities is that they have an impact on third parties. They can be mandates about health coverage, they can be mandates about Medicaid coverage, the scope of those.

They can be mandates about providing, as we've done through Family Health Plus and Child Health Plus, certain ways of providing treatment to particular individuals.

This bill, as I read it, says that if there's a proposal, 45 days goes by and they haven't heard from the State of New York, they can implement the alternative. My question to you is, what happens if the implementation of that alternative changes the types of services that third parties are going to receive? Do you anticipate affecting their rights to obtain government programs or to obtain government money? Would we be influencing the rights of third parties?

SENATOR RATH: Senator, I think you're pointing to something that -- the significance of health delivery, if that kind of mandate is what you're envisioning, I'm in a much less complicated mode, as I'm thinking of the kinds of things -- mostly, obviously, traffic and public safety kinds of things.

Because when third-party payors are involved, I don't see us moving forward to try to implement something like this with a 45-day

clause in it, because there would be a whole lot more that would be involved in it than a simple relationship between the county and the state in relation to a regulation the state was imposing.

SENATOR DOLLINGER: Through you, Mr. President, just one more question for Senator Rath.

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

SENATOR RATH: Surely.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: Senator, you have included a provision here that allows a municipality to sue the state if -- and it's not quite clear. It says "the action by a state agency on a petition shall be subject to review pursuant to Article 78 of the Civil Practice Law and Rules," which is our section that is our general body of procedural law in this state.

My question is, what's the standard to be applied by the court if the courts are called on to adjudicate this alternative

method? And aren't you somewhat concerned that the courts of this state will decide whether a municipality is offered an alternative to a mandate from us?

Isn't that going to inject the courts into that unfortunate interstice between one level and government and another, and we'll have the courts acting as a referee about whether our mandates were appropriate and whether alternatives are also appropriate?

SENATOR RATH: Senator Dollinger, I was just trying to review in my mind where this bill came from, because I've had it for a couple of years. And I remember it real clearly. It was the Town of Tonawanda, in my district -- you may be familiar with it.

SENATOR DOLLINGER: I am.

SENATOR RATH: And the supervisor there asked that his department heads go back and see just what they could do to reduce costs by -- in an alternate fashion, providing the same kind of service that the state had mandated one way or the other.

And I'm not answering your question yet, but I'm leading up to it. I'm leading up

to it.

SENATOR DOLLINGER: Your answer struck a nerve. That's okay.

SENATOR RATH: A respondent chord. Okay, we'll have one more question, then, after this. Maybe two.

The point being that they came back with a chart and documentations showing around $250,000 a year of savings that they could make by alternately providing the services that the state had mandated. That was how this bill came into place.

And again, I don't see the weight of the item of the issue on the courts. I think we put that in there as a safeguard. And, frankly, again, those of us from local government would have loved it if we could take the state to court and get our point heard, because we very often thought -- and remember, I'm chairman of the Local Government Committee, so I am their advocate here.

I would think that we would love to have our voice heard in court as local government, saying, Look, if this big state is saying we have to do this this way and we can

do it and save our taxpayers a hundred thousand dollars a year, I think that's -- I think it's a fairly simple remedy.

SENATOR DOLLINGER: Thank you, Mr. President. Just on the bill, briefly.

ACTING PRESIDENT MEIER: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I also come from local government, as does Senator Rath. And I appreciate the fact that she is here advocating on behalf of local government. I think that's exactly what you should do in your position as the chair of the Local Government Committee.

I think, however, if you look at this bill in detail -- we've obviously approved this bill in the past. But if you look at it carefully, I think Senator Paterson's questions about how often would it apply, what specific mandates would it reach out to -- remember, the critical ingredient in a mandate is that we have decided, in our position as the plenary legislative power in this state, that there are certain things we can require our municipalities to do because

they are our creations. They in some ways are our sons and daughters.

And therefore, as their parent, we can require them to do certain things which may benefit other people, which may benefit third parties -- schoolchildren, families that need health care, families that need access to dental care, a whole gamut of potential resources.

And while, Senator Rath, I voted in favor of this bill -- I'm going to vote for it again -- I guess in studying it and taking a more careful look at it, I would suggest a couple of things. One, that you not allow it to interfere with the rights of third parties that we have created. That if we have a beneficiary group in these mandates, that they somehow have a right to challenge the alternative in the event that it doesn't meet their needs.

I would also suggest that if that's our goal, is to benefit third parties, that ought to be a consideration for the courts in evaluating the viability of an alternative. I don't mean to discourage innovation in the

laboratories of our local communities, but I think we have to be careful when we do it.

And lastly, Senator Rath -- as I said, I voted in favor of this, I'm going to vote in favor of it again. I would just suggest, however, that you should establish a very clear standard of when the courts can intervene and say that either our mandate is what they must comply with or their alternative is what they can elect to comply with.

Because I would suggest that without a rigorous standard for when the courts can intervene, we are going to inject the courts of this state into a constant battle between the parents, the State of New York, and the child, our municipalities. Which, as you know, come in varying sizes: Some big children, some very small children, some, like the town of Tonawanda, in-between size.

And my suggestion is that without clear standards to mediate those policy disputes, which is really what they will be, policy and cost analysis, I would suggest that

that bill doesn't have enough of a standard to tell the courts what to do. When we don't do that, we end up in situations where the courts either rule against us or they rule for us. And when they rule for us without standards, the local communities are upset. When they rule against us without standards, we end up upset.

I would just suggest that in mediating this dispute between what the parent tells the child and what the child wants to hear from the parent, we need a far more definite standard.

ACTING PRESIDENT MEIER: Senator Oppenheimer.

SENATOR OPPENHEIMER: I don't know, this analogy of family I think got carried a bit far.

But I too support the bill. I'd just like to ask one question, if the sponsor will yield.

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

SENATOR RATH: Surely.

ACTING PRESIDENT MEIER: The

sponsor yields.

SENATOR OPPENHEIMER: My question is without having more strict parameters of what could come back to the state in the way of definition, would we need to enlarge our bodies here to determine the validity of each of these claims? Because I can see a lot of state governments claiming that they are being, you know, put in an unfair position or they -- it is costing them too much to do. In other words, there might be a lot of contention here.

SENATOR RATH: Are you being what, Senator? I couldn't hear you.

SENATOR OPPENHEIMER: So I'm questioning what would the state government be doing in this instance. Would we have to enlarge the size of our agency in order to accomplish this?

SENATOR RATH: Oh, I see what you're saying. In order to review? In order to review? I would certainly hope not.

I wouldn't anticipate right up front that that would happen. I think there would be isolated efforts at this originally

if this was put into place, because our local governments would now have someone to go back to if they thought that they could do this a better way than they were told that they had to do it. And I think that that's all that local governments have looked for for a long time.

And in the analogy of parent and child, maybe the state knows the best but maybe the state doesn't always know the best. And I think sometimes all of us, as parents, have known our children have said things to us that we say: Hmm, I don't know to let them know that I think they're right, but I think they are.

And I'm hopeful that this would be the beginning of that, because we need the relationship between the state and the local governments to be a good, strong, healthy relationship. And I know your background, and I know you believe that and have seen these before.

Thank you, Senator.

SENATOR OPPENHEIMER: Thank you, Senator.

On the bill. I strongly favor this bill because of a personal experience when I was mayor of my community where the state government was mandating things, and contrary things. So that my village had won a grant to try to control, through the eradication of the larvae of insects, mosquitos in our title wetlands.

And we had this grant, and I put - this is sort of a silly story. We had put our Department of Public Works people into the water up to their knees, and they went around spraying, because we had had a very difficult problem with mosquitos. And we did eradicate a large amount of the larvae, and the mosquitos were much more contained that spring.

Towards the end of summer, I had come into my mayor's office the DEC, and they were about ready to arrest me because the Department of Health -- they were not aware that the Department of Health had given us this grant, and now the DEC was furious because the food chain had been interrupted.

So I think if local governments had

more opportunities to appeal to state government, as a child might appeal to a parent, that good sense can prevail and easier methods can be found. And after all, the parent is not always right.

So I will be supporting this bill.

ACTING PRESIDENT MEIER: Read the last section.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you. Through you, Mr. President, if the sponsor would yield.

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

SENATOR RATH: Surely.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR SCHNEIDERMAN: Thank you.

Just by way of following up on Senator Oppenheimer's point, are there any provisions in this bill for ongoing monitoring of these alternate implementations, to see if in fact they are working out as the state agency anticipated when it approved them?

SENATOR RATH: The bill does not

have something of the sort you're talking about. But frankly, I think that that might be another piece of legislation. That if this is successful and we see the local governments picking up on it and getting into it and the agencies coming back to us and saying, Wait a minute, you know, we need to make sure that there's an ongoing evaluation of the success or the lack thereof, in relation to implementing the regulation.

But I think that that might be in the case of a lot of things.

SENATOR SCHNEIDERMAN: Thank you. Through you, Mr. President, one additional question.

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

SENATOR RATH: Surely.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR SCHNEIDERMAN: Thank you.

I gather from your answer to an earlier question that if the alternate implementation costs more than following the regular regulatory mandate, there are not

additional funds provided through this legislation for the municipality.

SENATOR RATH: No.

SENATOR SCHNEIDERMAN: If the alternate implementation actually produces savings, would the municipality get those or would that stay with the state agency?

SENATOR RATH: No, that would stay with the municipality. Because it is a recommendation that can be accepted or can be rejected by the state agency when the petition is made by the local government.

SENATOR SCHNEIDERMAN: So that - through you, Mr. President, so that -

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

SENATOR RATH: Surely.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR SCHNEIDERMAN: So that if there was a million dollars allocated for a child safety program in New York City and New York City said, We can do it a different way that only costs $500,000, New York City would keep that additional $500,000?

SENATOR RATH: I would believe that would be between the agency and the City of New York on that point.

SENATOR SCHNEIDERMAN: Thank you very much.

Mr. President, on the bill.

ACTING PRESIDENT MEIER: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: I appreciate very much the important issue that this bill attempts to address. I am concerned, though, that in situations, particularly if there's a financial incentive one way or the other for a local government to go with an alternative method of implementation, I think that we have to be very conscious of the need for monitoring and for really increased regulatory activity.

Unfortunately, a simple regulatory mandate that mandates the same thing across the board for all the local governments in the state is easier to administer, it's easier to monitor than a more complicated and creative patchwork of different programs. We have seen this very dramatically demonstrated in a lot

of the alternative education programs that have been tried out with alternative schools and charter schools. And this is not true just in New York, but across the country. Some schools that look very promising as educational alternatives in fact have not produced the results, not provided the education.

And we need ongoing monitoring of those programs and the ability of the agency to intervene if things aren't going well and to make sure that the intended beneficiaries of these programs actually are receiving the services and in many cases the resources that the program mandates.

So I think that a critical element of making sure this succeeds is to recognize the fact that we're going to -- this is moving in the direction of bigger government. I'm not saying it's a bad thing, but a more complicated system requires more people to administer, more investigation, more monitoring. It's more creative. But we have to recognize the problems that can occur, especially if there's a financial incentive

for a local government to cut corners and do things more cheaply.

So I would urge that as we move forward in addressing this issue -- and I'm hopeful that we are going to actually get some legal changes to try and address these issues -- we acknowledge the fact that state agencies will have an additional burden and address that issue.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 60th day.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Velella.

SENATOR VELELLA: Can we recall Calendar 142.

ACTING PRESIDENT MEIER: The Secretary will read Calendar 142.

THE SECRETARY: Calendar Number 142, by Senator Leibell, Senate Print 2337, an act to authorize the Town of Yorktown to establish.

SENATOR DOLLINGER: Explanation.

ACTING PRESIDENT MEIER: Senator Leibell, an explanation has been requested of Calendar 142.

SENATOR LEIBELL: Thank you, Mr. President.

This is an act that authorizes the Town of Yorktown to establish an open space and conservation district. This is a new, unconsolidated law. We give the town the statutory authority to establish this district. It would further permit the Town of Yorktown to raise revenue for such district from a special tax levy of $30 per lot.

On November 7th of this last year, the town held a referendum on the creation of such an open space and conservation district and the assessment of a $30 per lot flat rate to finance the same, and such referendum passed overwhelmingly in favor in every one of the town's 34 election districts. Prior to

the referendum, the town conducted a written survey and public hearings which also confirmed the desire of residents to take these actions.

This bill would provide for conservation and open space in a very beautiful but fast-growing town. The bill has received a unanimous home rule message from the Town of Yorktown and would take effect immediately. EPL has also issued a memo in support of this legislation.

ACTING PRESIDENT MEIER: Senator Dollinger.

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

ACTING PRESIDENT MEIER: Senator Leibell, do you yield?

SENATOR LEIBELL: Yes, I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: Through you, Mr. President, it's my understanding that there was a referendum on this issue in November. Could you tell me what the results

of the referendum were, the percentages of the votes?

SENATOR LEIBELL: Yes, actually -- and I have some news clippings here. This was -- these were votes that were taken in seven communities throughout Westchester County, northern Westchester County, to get funds to develop land. The other six towns, the ways they are raising the funds did not require special legislation as this. The one for the Town of Yorktown does, which is why we're here today.

I think -- Senator Oppenheimer, I think one of the towns is in your district, I think, Irvington. That's not yours? No?

Well, it's -- we have seven towns. As I say, this is from Yorktown and this came out of that vote in November.

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

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

SENATOR LEIBELL: Yes, I do.

ACTING PRESIDENT MEIER: The

sponsor yields.

SENATOR DOLLINGER: What was the actual tally of votes in Yorktown? Do you have an actual breakdown of what the vote was in Yorktown itself?

SENATOR LEIBELL: You mean the actual for and against?

SENATOR DOLLINGER: Yes, for and against in percentage terms. Was this close or was this a landslide?

SENATOR LEIBELL: Well, there wasn't a recount. It was quite overwhelming.

I don't think we have the vote. Oh, we have it?

Yes, Senator, 65 percent in Yorktown, 35 opposed.

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

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

SENATOR LEIBELL: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: So I

understand this, Senator Leibell, is this a conservation and open space district that includes the entire town? Or is this a district the geographical boundary of which is included inside the town line?

SENATOR LEIBELL: This will be a district that includes the -- it will have the same district as the town district, as the town lines.

SENATOR DOLLINGER: Again through you, Mr. President, if Senator Leibell will continue to yield. Because I obviously wasn't clear with my question.

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

SENATOR LEIBELL: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: My question is, Senator Leibell, is this a district the boundaries of which are the town boundaries, or is this a specific section of the town that they -

SENATOR LEIBELL: No, no. It is the -- to answer your question, the boundaries

are the same for the town and the district.

SENATOR DOLLINGER: Okay. Through you, Mr. President, if Senator Leibell will continue to yield.

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

SENATOR LEIBELL: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: So this in essence allows -- will the town board act as the board of trustees or the board for the district, the commissioners for the district?

SENATOR LEIBELL: That's my understanding.

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

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

SENATOR LEIBELL: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: So because the district is coterminous with the town, the

town could use money from this fund to buy parcels all over the town to preserve pieces of open space?

SENATOR LEIBELL: For open space, environmentally sensitive pieces.

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

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

SENATOR LEIBELL: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: This is a per-lot taxation, which, as you properly point out in the memo, is contrary to the ad valorem method by which we usually tax real property.

My question is, could you just explain to me the theory of why they did it that way? Obviously the voters have approved it, they've chosen to do it that way. Why did they choose to do it by dollar size without taking into account the value of the property? A million-dollar house and a $100,000 house are in essence paying the same amount.

SENATOR LEIBELL: The other towns did it in different ways, different -- a variety of fashions, the other six towns.

But as I noted in my earlier comments, the town did a survey and they held a hearing. And based on that information and intake they got back from the constituents, this is the way that they wished to go forward in order to acquire these properties.

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

ACTING PRESIDENT MEIER: Senator Leibell, do you yield?

SENATOR LEIBELL: Yeah.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: When the referendum was held in November, was it held to create the district and to finance it with this set -

SENATOR LEIBELL: Yes. Yes.

SENATOR DOLLINGER: -- set dollar per property valuation assessed? Interesting.

A final question through you,

Mr. President, to Senator Leibell.

ACTING PRESIDENT MEIER: Senator Leibell, do you still yield?

SENATOR LEIBELL: Yes, I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: Do you have any other instances in New York State in which we have varied the ad valorem property tax into a per-parcel property tax valuation? And, as a dovetail question to that, is it constitutionally acceptable to do it this way, when I believe isn't it the state constitution that requires ad valorem taxation?

SENATOR LEIBELL: In a nutshell, we feel it's constitutional.

Would you like me to read you the -

SENATOR DOLLINGER: I would suggest, Senator Leibell, if I got any other answer to that question, you and I wouldn't be here.

SENATOR LEIBELL: Yeah. Let me just -- if you'd like, I can read you the question the way it was phrased on the ballot.

And it was: "Should the Town of Yorktown create a dedicated open space and conservation district subject to New York State enabling legislation that would be funded through an annual per-lot charge of $30?"

SENATOR DOLLINGER: Just one final question, since this raises another issue.

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

SENATOR LEIBELL: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: Through you, Mr. President, the $30 per-lot assessment will be an annual assessment that will continue to replenish this fund over time?

SENATOR LEIBELL: Yes.

SENATOR DOLLINGER: And how much, approximately, is it supposed to raise? About $350,000?

SENATOR LEIBELL: Approximately $396,000.

SENATOR DOLLINGER: Senator Oppenheimer was whispering the same number in

my ear.

Mr. President, just on the bill, ever so briefly.

ACTING PRESIDENT MEIER: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I actually commend Senator Leibell, whose reputation in the environmental community is well-known, for this bill.

I think or I hope that this bill is a sign of the future in New York, that this kind of alternative to taxation that would say to a community since everyone benefits through the preservation of environmentally sensitive properties, that to some extent it is as much a value to the person with a smaller house as it is to a bigger house to be able to preserve these kinds of properties.

And it seems to me that if a community freely chooses to adopt an equalized property or per-lot assessment, regardless of its value, that's the kind of innovation which, in my discussion earlier with Senator Rath when she talked about alternative ways of doing things, it seems to me that the Town of

Yorktown has found a good alternative way to do it that achieves the right goal.

The only other consideration I have is something that doesn't really relate to the bill as much as to the procedure. It's just my hope that these kinds of innovations that occur in communities represented by Republicans in this house, if other communities come forward with similar ideas, alternatives that have the same merits as Senator Leibell's, that they'll find a way to get access to this floor too.

It may not be through motions to discharge, but we hope it comes through the normal channels at the latter part of this session, that these kinds of ideas that are I think perhaps even cutting-edge, Senator Leibell, will find a way to make it to this floor again in the future.

ACTING PRESIDENT MEIER: Senator Oppenheimer.

SENATOR OPPENHEIMER: If Senator Leibell will yield for a question.

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

SENATOR LEIBELL: Absolutely.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR OPPENHEIMER: This is very creative. And I applaud the people of Yorktown. I find it very, very interesting because it's different. It's unique.

I know that in our county we have about seven communities, I think, that have now voted to create a fund to purchase open space and sensitive land. Do you know if this has been discussed in any of those other communities, or did they go with ad valorem?

SENATOR LEIBELL: Senator, my understanding is that -- and I was there, I was involved. And in northern Westchester, this achieved across-the-board bipartisan support.

And probably to answer somewhat Senator Dollinger's inquiry before, this is carried in the other house by Assemblywoman Sandy Galef. We have both worked on this legislation together.

As to the actual mechanics, each town chose the mechanics that their

constituents wished to see. This was unique to Yorktown. It's not representative of the way the other towns wish to fund the open space acquisition.

But having said that, all of these towns, these seven towns throughout northern Westchester, wish to accomplish the same end.

ACTING PRESIDENT MEIER: Senator Oppenheimer.

SENATOR OPPENHEIMER: Thank you, Senator.

Just on the bill.

ACTING PRESIDENT MEIER: Senator Oppenheimer, on the bill.

SENATOR OPPENHEIMER: This is just a terrific bill. And we in our county happen to be particularly sensitive to environmental issues and very supportive of these issues; indeed, very supportive with our own dollars.

And being mindful of that, we have had several communities go to votes on should we spend our taxpayer money to purchase open space. And most of the communities have been upcounty; several have been -- a couple have

been downcounty in Westchester.

And it's a shame that this concept did not come around earlier, because many of the downcounty communities have absolutely no open space left. And at this juncture, it's like the horse has left the barn and there's not very much that can be done. And were this concept around earlier, even a decade ago, we would have been so much better off in the southern part of Westchester than we are today.

And I applaud the northern part of our county where so many communities are saying this is important enough to us that we are willing to put our money behind our mouths. And it's a fine bill. And I'm very pleased to support it.

ACTING PRESIDENT MEIER: Senator Gentile.

SENATOR GENTILE: Mr. President, will the sponsor yield for a question?

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

SENATOR LEIBELL: Yes.

ACTING PRESIDENT MEIER: The

sponsor yields.

SENATOR GENTILE: Senator, I'm just a little bit confused as to the actual operation of what is being created here.

You had indicated -- the Senator had indicated that the district, this open space and conservation district, would be coterminous with the entire town of Yorktown. Am I correct about that, Senator?

SENATOR LEIBELL: Yes.

SENATOR GENTILE: Okay. If the Senator would continue to yield, I have additional questions.

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

SENATOR LEIBELL: Mm-hmm. Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR GENTILE: The question I have, Senator, is that once these open spaces are purchased by the Town of Yorktown, are they considered to be parkland at that point, once these open spaces are purchased?

SENATOR LEIBELL: They would be properties of the district. Now -- I'm sorry.

I think you could describe them as parkland, possibly. Maybe on some occasions they won't be. But they are meant to be taken and to be nondeveloped.

SENATOR GENTILE: If the sponsor would continue to yield.

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

SENATOR LEIBELL: That's right. Only parkland if they're actually dedicated as such. Or actually used.

SENATOR GENTILE: Will the sponsor continue to yield?

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

SENATOR LEIBELL: Yeah.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR GENTILE: So then, Senator, based on that response, I'm not sure what the purchasing of the open space would be considered under the creation of this district.

SENATOR LEIBELL: Well, Senator, it would be exactly that. It would be open

space. If you mean it as a word of art, parkland. As was noted, if they're used that way and dedicated with that purpose, they would be parkland.

Otherwise, they are meant to be taken out of the possibility for development and to be owned by that district.

SENATOR GENTILE: If the Senator would continue to yield.

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

SENATOR LEIBELL: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR GENTILE: Well, Senator, then under what auspices would this land be controlled? Would it be the town park service, would it be the county department of forestry? Under what auspices -

SENATOR LEIBELL: It would be controlled by that district, the district that's created.

SENATOR GENTILE: It would be controlled by the conservation and open space district?

SENATOR LEIBELL: Yes.

SENATOR GENTILE: If the Senator would continue to yield.

SENATOR LEIBELL: Yes.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR GENTILE: So, Senator, as we know, we create the open spaces and the conservation district, but sometime down in the future, 10, 20, 30, 40 years from now, when circumstances change and the leadership changes in that area, and should there be a need or a desire to sell off part of that land that now has been created as an open space, would it be under this legislation a requirement, as it is a requirement for parkland anywhere in the state, that in order for parkland -- to alienate parkland it must first get the approval of the State Legislature?

SENATOR LEIBELL: We do not have a copy of the plan. The plan will come out from them after we pass this enabling legislation. And based on that, we'd be able to give you better answers on that.

But the goal is, as I've said, to take land and to permanently preserve it so it will not be developed.

SENATOR GENTILE: If the Senator will continue to yield for -

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

SENATOR LEIBELL: Yes.

SENATOR GENTILE: I suppose, Senator, my question is currently, the current law in the state is that any parkland, any alienation of parkland must first receive the approval of the State Legislature. In this instance, if for some reason in the future some of this open land, the desire was to alienate it and sell it off, that alienation, would that alienation need the approval of the State Legislature?

SENATOR LEIBELL: If it were used and dedicated as parkland, it would require our action to do something different with it.

SENATOR GENTILE: But -- if the Senator would continue to yield further.

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

SENATOR LEIBELL: Yes.

SENATOR GENTILE: But you're saying in this instance, in this instance it may or may not be designated as parkland?

SENATOR LEIBELL: That's correct.

SENATOR GENTILE: Under this district.

SENATOR LEIBELL: That's correct.

SENATOR GENTILE: On the bill, Mr. President. Thank you, Senator.

ACTING PRESIDENT MEIER: Senator Gentile, on the bill.

SENATOR GENTILE: I too applaud this legislation and the efforts by Senator Leibell to create the open space and conservation district, or at least make the way so that the voters can have the district as they so desire.

The only concern I have is the alienation in some future time of some of this open space. And I would suggest that if not in this legislation, in some future legislation we make it clear that any open space that has been created in this district -- or any district, for that

matter -- we make it clear that open space is important to this state, parkland is important to this state, open space be designated as parkland and therefore come under the statute, that any alienation of parkland first receive the approval of the State Legislature.

I think in that way there will be no question as to whether land is designated parkland or not and whether or not it meets the approval of the State Legislature. We need to have the approval of the State Legislature in any alienation.

And in your case, in the case of Yorktown, I think it holds whether or not it is considered open land or parkland.

ACTING PRESIDENT MEIER: 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 MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT MEIER: The bill

is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you please call up Calendar 155, by Senator Alesi.

ACTING PRESIDENT MEIER: The Secretary will read Calendar 155.

THE SECRETARY: Calendar Number 155, by the Assembly Committee on Rules, Assembly Print Number 4446, an act to amend Chapter 416 of the Laws of 1998 amending the State Administrative Procedure Act.

SENATOR DOLLINGER: Explanation, Mr. President.

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

SENATOR ALESI: Thank you, Mr. President.

This bill makes permanent the comprehensive exemption for filing notices for telephone companies and makes it retroactive to March of 2001.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Yes, Mr.

President, if the sponsor will yield just to a couple of questions.

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

SENATOR ALESI: I will yield, yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: Thank you.

Through you, Mr. President, we have had an exemption in effect for these kinds of tariff notices for how long?

SENATOR ALESI: For a number of different variations on the exemption, since 1991. Most recently in 1997, which you supported, Senator Dollinger.

SENATOR DOLLINGER: Through you, Mr. President, if the sponsor will continue to yield.

SENATOR ALESI: I'll be happy to.

SENATOR DOLLINGER: Thank you, Mr. President.

As I understand it, this simply - does this do away with the notice requirement? Does it still require some public comment

period before these changes occur?

SENATOR ALESI: No, Senator, the bill clearly states that it will make permanent the existing comprehensive exemption. The comprehensive exemption itself says that because there is a SAPA requirement and a Public Service Commission requirement, that there's no need to duplicate the services.

And in fact, the Public Service Commission requirement is more friendly to the process, enabling telecommunications companies to get their services to market in a more expeditious way.

SENATOR DOLLINGER: Through you again, Mr. President. One final question may clarify all of this.

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

SENATOR ALESI: For one last question, I'll be happy to yield.

SENATOR DOLLINGER: So what this does is this simply removes the duplication of the notice under the State Administrative Procedure Act as well as the notice of the

PSC, and consumers who are concerned about their ability to publicly comment on the rate would be able to adhere to the PSC process?

SENATOR ALESI: In response to the question, Mr. President, it removes the duplication, it makes it permanent, it makes it retroactive to March 1st of 2001, in view of the fact that the Assembly has already passed this.

SENATOR DOLLINGER: Again through you, Mr. President, just so I make sure that the -

SENATOR ALESI: Uh-uh, uh-uh, uh-uh.

ACTING PRESIDENT MEIER: Are you asking Senator Alesi to yield?

SENATOR DOLLINGER: Yes, I am, Mr. President.

ACTING PRESIDENT MEIER: Senator Alesi, do you yield?

SENATOR ALESI: I'll yield.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: Again, just so I'm sure. The PSC notification of the

public comment period would still apply? This doesn't change that in any way; is that correct?

SENATOR ALESI: You're correct.

SENATOR DOLLINGER: No further questions from me, Mr. President.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Skelos.

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

ACTING PRESIDENT MEIER: Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Bruno, from the Committee on Rules, reports the following bill direct to third reading: Senate Print 2963, by Senator Leibell, an act to authorize the Town of Yorktown to fund certain sewer districts.

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

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

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The report of the Rules Committee is accepted.

Senator Skelos.

SENATOR SKELOS: Mr. President, may we please take up the Rules report at this time.

ACTING PRESIDENT MEIER: The

Secretary will read.

THE SECRETARY: Calendar Number 192, by Senator Leibell, Senate Print 2963, an act to authorize the Town of Yorktown to fund certain sewer districts.

SENATOR STACHOWSKI: Explanation.

ACTING PRESIDENT MEIER: Senator Leibell, an explanation has been requested by Senator Stachowski.

SENATOR LEIBELL: Thank you, Mr. President.

This bill would enact a new, unconsolidated law to provide the Town of Yorktown, in Westchester County, with the statutory authority to continue their sewer district bonding repayment schedule in accordance to a predetermined fiscal plan.

This bill has been requested by the town after consultation with the State Comptroller, so as not to impose an undue tax burden on town or sewer district residents while still providing for important sewer district improvements. The sewer districts involved would include the Mohegan East sewer district, the Mohegan West sewer district, the

Chalet sewer district, and the Clover sewer district.

Pursuant to the terms of this bill, all repayments by the sewer districts would be completed by the year 2009.

ACTING PRESIDENT MEIER: Senator Stachowski.

SENATOR STACHOWSKI: Would the Senator yield for a question?

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

SENATOR LEIBELL: Yes, I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR STACHOWSKI: I know in Rules it was said that we needed to get this done right away because the town had paid the money and now wanted to get the money back.

The question I have is the repayment of this, will this only be on the people that live in the sewer districts or will the whole town share in this debt or does the whole town share in this debt now and it will -- because in most areas, the sewer district, if you live in that district, you

pay for it; if you don't, you don't.

SENATOR LEIBELL: The reason for this legislation is that this was money that was put forward by the town for the benefit of those sewer districts, and this is now a method of allowing for the repayment.

What I should explain to you is that in this area, and through much of the areas, many of the areas in Westchester County that are in the New York City Watershed, these sewer districts are necessary and critically important to the health and well-being not only of the residents who live there but for those in the New York City Watershed. They are very, very expensive to do. And in fact, you may be servicing very few families, as is the case with these districts.

So the town put the money forward, as they have attempted to do in the past, and now is a -- the town sends out the tax bills in March. And without these, the tax bills would be very different if they are not able to go through this elongated repayment schedule.

ACTING PRESIDENT MEIER: Senator

Lachman.

SENATOR LACHMAN: Will the distinguished Senator from Yorktown yield for a question, Mr. Chairman.

ACTING PRESIDENT MEIER: Senator Leibell, do you yield?

SENATOR LEIBELL: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR LEIBELL: And I want to make sure you understand, this is not a sewer district to go in the open space that I was just talking about. I want to clarify that.

(Laughter.)

SENATOR LACHMAN: Okay. Why didn't the sewer districts, or the encompassing entity, issue bonds for this rather than going to the general funds -- have an advance on the general funds of the area?

SENATOR LEIBELL: The goal was to attempt to minimize the cost.

SENATOR LACHMAN: Itemize?

SENATOR LEIBELL: Minimize the cost for these residents.

And to do that, they borrowed the

money from the town at large. Which you can do. You can transfer funds within -- from the town on a loan basis. The difference is those monies have to be paid back within that year.

The town was not really aware of that. And the burden is too great if they don't stretch out this payment period for the monies to go back to the general revenues of the town.

SENATOR LACHMAN: And that's why an advance was made rather than -
Mr. Chairman, is that why the advance was made?

SENATOR LEIBELL: Yes, that's correct.

SENATOR LACHMAN: Thank you.

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

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you please call up Calendar Number 104, by Senator DeFrancisco.

ACTING PRESIDENT MEIER: The Secretary will read Calendar Number 104.

THE SECRETARY: Calendar Number 104, by Senator DeFrancisco, Senate Print 436, an act to amend the Criminal Procedure Law, in relation to the collection of court-imposed financial obligations.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MEIER: Senator DeFrancisco, Senator Paterson has requested an explanation.

SENATOR DeFRANCISCO: A court, upon sentencing, can sentence an individual to a fine which would include a surcharge, a mandatory surcharge that the Legislature has imposed for various reasons, or it can require restitution. And the law that is in existence presently allows for the district attorney - requires the district attorney, if the court

so orders, to prepare such an order and file it.

The problem is very rarely do these fines or these orders get enforced, because the only person allowed to do that would be the district attorney of that county. And in most counties, the district attorneys don't have the civil collection priorities. They'd be, rather, doing prosecutions.

What this bill does is that if there's a court-ordered fine or restitution, it allows for others to actually enforce the judgment, the court order that was reduced to a judgment. And those others, according to this bill, would be the county representative, such as the county attorney; the victim, if it's restitution; and also, I believe, the - there's one other group I can't remember right now.

But I think that's -- that's the intent of it. And I believe last year it passed 61 to nothing.

SENATOR PATERSON: The corporation counsel of that municipality - Mr. President, if the Senator would yield.

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

SENATOR DeFRANCISCO: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR PATERSON: Would that be the third entity?

SENATOR DeFRANCISCO: Yes. I'm sorry, you're correct. Thank you.

SENATOR PATERSON: So actually - if the Senator will continue to yield.

SENATOR DeFRANCISCO: Yes.

SENATOR PATERSON: So actually what's happening now is that we're really just treating the issue as a civil matter. And even though the -- because the district attorney's impact, by getting involved, was really civil in the first place.

SENATOR DeFRANCISCO: That's correct.

SENATOR PATERSON: Thank you, Mr. President.

ACTING PRESIDENT McGEE: Senator Gentile.

SENATOR GENTILE: If the sponsor

would yield for just a question.

ACTING PRESIDENT McGEE: Does the sponsor yield?

SENATOR DeFRANCISCO: Yes.

ACTING PRESIDENT McGEE: Thank you.

SENATOR GENTILE: I'm curious as to the actual practicality of this. Authorizing other units of the municipality to enforce the money judgments that may be imposed by a district attorney is all well and good. But practically, how does the other - how do the other aspects of that municipality pick up on that judgment and carry through the enforcement?

SENATOR DeFRANCISCO: Well, it could either be the county attorney, as far as the municipality is concerned -- at which time, if there's a fine that's supposed to be paid to a certain entity that the judge would state in the court order, it would allow the county attorney to process that -- or restitution. It might be restitution to a county for some damage that occurred in the course of the crime.

It also allows victims -- many times a victim may have a restitution order and they never see it enforced, for whatever reason that may be. They would have an incentive to collect on that judgment if the restitution was significant enough.

SENATOR GENTILE: If the sponsor would yield for one more question.

ACTING PRESIDENT McGEE: Will the sponsor yield for one more question?

SENATOR DeFRANCISCO: Yes.

SENATOR GENTILE: So in effect, the judge imposing a fine or some type of money judgment would put the case on the calendar once again and -

SENATOR DeFRANCISCO: No, no, no, I'm sorry. What would happen is once the court order was signed, it would be filed with the county clerk and become a part of the judgment roll. So it would be a judgment. Just like if you sued somebody and you got a judgment, you filed it, you've got ten years to bring some type of enforcement action. This is an enforcement action on the judgment.

SENATOR GENTILE: Thank you.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Madam President, would you please call up Senator Stafford's bill, Calendar 128.

ACTING PRESIDENT McGEE: Bill 128. The Secretary will read.

THE SECRETARY: Calendar Number 128, by Senator Stafford, Senate Print Number 1052, an act to amend the Environmental Conservation Law, in relation to nonhazardous municipal landfill closure project.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT McGEE: Senator Stafford, an explanation is requested.

SENATOR STAFFORD: Thank you.

Madam President, this would simply allow municipalities to be reimbursed when they relied upon the law and they went ahead and started really before the actual date was set for reimbursement.

And this bill passed June 21st, 1994, without a single no vote. It passed on June 21 again, in 1995, without a single no vote. Then it passed on February 6, 1996, without a single no vote, February 3, 1997, without a no vote, February 23, 1998, without a no vote, February 8, 1999, without a no vote, and February 28, 2000, without a no vote.

ACTING PRESIDENT McGEE: Senator Paterson.

SENATOR PATERSON: Here on March the 5th of 2001, I'd like to know if the Senator would yield for a few questions.

ACTING PRESIDENT McGEE: Senator Stafford, will you yield for a few questions?

SENATOR STAFFORD: Yes.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR STAFFORD: This is March

what, now?

(Laughter.)

SENATOR PATERSON: Senator, I was wondering to what extent this legislation would have an impact on the Bond Act that's been passed since this legislation was passing here in the Senate.

SENATOR STAFFORD: Well, I think it might possibly be involved with the Bond Act. But of course when we passed the Bond Act, we didn't know exactly what projects would be involved.

SENATOR PATERSON: Right. Mr. President, if this bill passed on February 21st of 1994, February 21st of 1995, February 6th of 1996, February 3rd of 1997, February 23rd of 1998, February 8th of 1999, and February 28th of 2000 -- if I got that right, Senator -

SENATOR STAFFORD: If you didn't read that, I'm leaving.

SENATOR PATERSON: My question is, why has it not passed the Assembly?

SENATOR STAFFORD: Well, of course I find that there are many vagaries and

vicissitudes with which we have to deal. And I find often that sometimes, even when you raise the issues and balance the equities, you don't quite find the responsiveness that you would expect.

But we just keep working and hope that the Speaker will get the correct advice. I'm sure it's his staff that's not doing the job over there. And I'm sure that maybe they will find that they're not really as aware as they should be.

SENATOR PATERSON: Mr. President, if Senator Stafford would -- Madam President, excuse me, if Senator Stafford would yield for another question.

ACTING PRESIDENT McGEE: Senator Stafford, do you continue to yield?

SENATOR STAFFORD: By all means.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR PATERSON: Perhaps we might be able to interest the Assembly in this bill. One of the things that I think might be an issue is the number of landfills and perhaps their general location. If you could

tell us that, maybe that would be helpful.

SENATOR STAFFORD: Well, it of course is sometimes hard to get exact details. But we feel really, again, on a serious note, any municipality that relied upon the law and they were of the opinion that they were going to get assistance, we think they should.

And, yes, they were encouraged. I have many. It's a very, very serious situation. And I think that their reliance really is what we should really work with.

SENATOR PATERSON: Madam President, I want to thank Senator Stafford for his responsiveness, as he's always been whenever I inquire of matters of him on the floor, and say on the bill that perhaps the -

ACTING PRESIDENT McGEE: Senator Paterson, on the bill.

SENATOR PATERSON: -- perhaps the comprehensive discussion we've had on this legislation may change its future here on March the 5th, 2001.

I rest.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Madam President, if you could call up Calendar Number 84, by Senator LaValle.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 84, by Senator LaValle, Senate Print 1422, an act to amend the General Municipal Law, in relation to granting additional points.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT McGEE: Senator LaValle, an explanation has been requested.

SENATOR LAVALLE: Thank you, Madam President.

This bill passed 59 to zero last year. This bill would clarify and add one

area that volunteer firefighters, in meeting the 50 points that they must secure in order to receive the award -- by adding the teaching of fire prevention classes in order to meet their 50-point commitment.

And some of the things that they must already do, of course, are fighting fires, dealing with things around the firehouse, marching in parades. And what we're adding to all of those things that are listed in the service award bill are allowing them to gain points, within the 50 required points, teaching fire prevention classes.

That's it, Madam President.

ACTING PRESIDENT McGEE: Senator Paterson.

SENATOR PATERSON: Madam President, that certainly sounds, to me, pretty straightforward. And the only question I have, if Senator LaValle would yield -

SENATOR LAVALLE: Yes, I'd be delighted to.

SENATOR PATERSON: Senator -- I don't know if he's delighted by my question or delighted by the fact that there will be one

question.

I just wanted to ask what NYCOM and some of the other municipalities feel about this, being that this was not included in the original list of methods in which the volunteer firefighters make points. Was it simply an omission, or was there a reason that they had for it not being the case that they now have chosen to take a second look at it?

SENATOR LAVALLE: Senator, this is somewhat a similar question that Senator Dollinger asked me last year.

And certainly, as you know, the world evolves year by year. And as the volunteer fire service looks at what their members are doing, they make requests of the Legislature to add different things that the volunteer fireperson would do in meeting their 50-point requirement.

Now, I can't believe that anyone would be opposed to this, because we are not shrinking the number of points, we're not broadening the number of points, but we're just saying within the same 50 points that you are using to make the service award, we are

merely adding another item that they can do.

And indeed, Senator, a year or five years from now there may be other items that we might want to amend the legislation to actually add as part of the duties and responsibilities in earning the 50 points, that we can come up with something else.

So I can't believe that anyone would have a problem with this, because it's cost-neutral. We're not changing the number of points. We're not really -- and we're not adding something that is offensive. We're adding something that is really good, because we want more volunteers to go out to our schools, to go out to nonprofit groups and talk about fire prevention.

So it's really a good thing, and that's what this is all about, to really spur people to go out and do good things in the community, talking about fire prevention.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Bonacic.

SENATOR BONACIC: Thank you, Madam President. Can we now call up Calendar 108, please.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 108, by Senator Volker, Senate Print 1697, an act to amend the Penal Law, in relation to arson in the fifth degree.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT McGEE: Senator Volker, an explanation has been requested.

SENATOR VOLKER: Madam President, I apologize, I was outside trying to work with the Assembly on some bills.

This bill is a bill that was suggested to us by some downstate law enforcement group, I believe by the Metro Police people and Suffolk County Detectives

Association. And it came out of a series of incidents involved in Dumpster fires.

And what happened is there's been a great deal, apparently, of malicious mischief, which is what the charge sometimes is. And they've had difficulty getting convictions when these Dumpster fires in particular are deliberately started.

And this bill was designed specifically in that area. Initially, it was talked about to become a Class E felony because of the -- frankly, the problem with New York City where nobody pays any attention, it seems like, unless it's a felony.

But the agreement was that we would make this arson in the fifth degree, which is a Class E misdemeanor. And in other words, that you would prosecute somebody under the arson statute when the act results in damage to property.

Most of the time this would be disorderly conduct or criminal mischief, which in most cases would be a violation. And this would make it a Class E misdemeanor.

SENATOR PATERSON: Madam

President.

ACTING PRESIDENT McGEE: Senator Paterson.

SENATOR PATERSON: Would Senator Volker yield for a question.

ACTING PRESIDENT McGEE: Senator Volker, will you yield?

SENATOR VOLKER: Sure.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR PATERSON: Senator, my understanding of this bill is that the difference between arson in the fifth degree and malicious mischief, which is the way it's prosecuted now, is that in a malicious mischief case it didn't completely fulfill the danger that a Class 5 arson would, because in any situation involving fire, there's the fear, particularly in those Dumpster situations, of it spreading.

So that the malicious mischief standard wasn't really communicating to juries or to judges the danger that this person was causing.

SENATOR VOLKER: That is a better

explanation than I made of the bill. Yes.

SENATOR PATERSON: Thank you, Senator Volker.

Madam President, if the Senator would continue to yield.

ACTING PRESIDENT McGEE: Senator Volker -

SENATOR VOLKER: Yes.

SENATOR PATERSON: Now, just a technical clarification. It's a Class E misdemeanor, or is that -

SENATOR VOLKER: No, no, no.

SENATOR PATERSON: -- the Class E felony that becomes a misdemeanor?

SENATOR VOLKER: No, no. It's a Class A misdemeanor.

SENATOR PATERSON: I see.

SENATOR VOLKER: I was referring initially that the initial discussions we had, it was requested it be a Class E felony. But we finally agreed -- well, in part because the Assembly had great problems with that -- that we would -- in effect, what we're doing here is raising the general level of this kind of action actually from a violation to a Class A

misdemeanor, is what we're doing. Because normally what they end up with is they can't get anything more than a violation for this kind of action. And this way now, you would make it a Class A misdemeanor.

The E felony was the initial discussion, which didn't happen.

ACTING PRESIDENT McGEE: Senator Paterson.

SENATOR PATERSON: Madam President, on the bill.

ACTING PRESIDENT McGEE: Senator Paterson, on the bill.

SENATOR PATERSON: The Class A misdemeanor and the E felony almost rotate from time to time. And I can see why Senator Volker wanted it to be that way, because many of those Class E felonies wind up as Class A misdemeanors.

But even that it didn't work out that way, it probably is a lot better to label this type of an action under a misdemeanor statute rather than a violation, because the malicious mischief relates a lot of times more to vandalism and those types of things where,

after the perpetrator leaves, the circumstances pretty much stay the same. In the case that is before us now, there's always the opportunity of a spreading of a fire. And I can understand the change.

If Senator Volker would yield for one last question.

ACTING PRESIDENT McGEE: Senator Volker, will you yield?

SENATOR VOLKER: Yes. Yes.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR PATERSON: In the cases of fourth-degree arson, how do they now distinguish themselves from this new classification of fifth degree?

SENATOR VOLKER: I think the fourth-degree arson is -- that's a -- that I believe is a felony.

And I think the difference is that there is -- and I'd have to look it up - there is a danger, there's some more immediate danger, I think, to -- more serious danger to person and property than would be the case in this situation.

SENATOR GENTILE: Madam President.

ACTING PRESIDENT McGEE: Senator Gentile.

SENATOR GENTILE: On the bill, Madam President.

ACTING PRESIDENT McGEE: Senator Gentile, on the bill.

SENATOR GENTILE: I would add to my esteemed colleague Senator Paterson's remarks by adding that reckless endangerment and criminal mischief not only do not adequately tell a jury the circumstances about which a defendant is being charged, but I would argue that it also inadequately tells a prosecutor or anyone looking at a criminal history sheet, the NYSID sheet of previous convictions, whether or not someone was involved in some type of arson, if in fact that was the only conviction, a criminal mischief conviction was the only conviction on a previous time for someone who is involved on a series of arsons.

So certainly having a charge, a misdemeanor that says arson in the fifth

degree, I believe it is, will adequately reflect on someone's criminal history sheet exactly what that person is being convicted of, rather than just a generic reckless endangerment or a generic criminal mischief.

So I want to congratulate our learned colleague Senator Volker for filling in that gap for us here.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Bonacic.

SENATOR BONACIC: Madam President, could you call Calendar Number 90, please.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 90, by Senator Goodman, Senate Print 687, an act to amend the Transportation Law, in relation to disclosure.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT McGEE: I'm sorry, Senator Bonacic, an explanation has been requested.

SENATOR BONACIC: Madam President, we ask that that be laid aside for the day, please.

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

Senator Bonacic.

SENATOR BONACIC: Madam President, is there any other housekeeping at the desk?

ACTING PRESIDENT McGEE: No, there is not, Senator.

SENATOR BONACIC: There being no further business, I move we adjourn until Tuesday, March 6, at 11:00 a.m.

ACTING PRESIDENT McGEE: We stand adjourned until Tuesday, March 6, at 11:00 a.m.

(Whereupon, at 4:53 p.m., the Senate adjourned.)