NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

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3:04 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 given by the Reverend Peter G. Young.

REVEREND YOUNG: Let us pray.

Dear God, we thank You for the return of our airmen.

We're grateful for Your guidance to our Senate and pray for their good health upon their return from recess, so that they might use their energy to be dedicated to our priorities of assisting our New York State citizens.

May Your wisdom guide them to be creative in their sponsorship of legislative bills that will enhance our society.

Amen.

ACTING PRESIDENT MEIER: Reading

of the Journal.

THE SECRETARY: In Senate, Monday, April 16, the Senate met pursuant to adjournment. The Journal of Friday, April 13, 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 Farley.

SENATOR FARLEY: Thank you, Mr. President. On behalf of Senator Goodman, I move that the following bill be discharged from its respective committee and be recommitted with instructions to strike the enacting clause. That's Senate 3957.

ACTING PRESIDENT MEIER: So

ordered.

Senator Farley.

SENATOR FARLEY: Mr. President, I offer the following amendments to the following Third Reading Calendar bills.

Senator Nozzolio, on page 11, Calendar Number 55, Senate Print 218.

On behalf of Senator DeFrancisco, on page 12, Calendar 96, Senate Print 512.

Senator LaValle, on page 20, Calendar 210, Senate Print 1103.

For Senator Wright, on page 23, Calendar 263, Senate Print 2503.

On behalf of Senator McGee, on page 23, Calendar Number 269, Senate Print 3187.

On behalf of Senator Stafford, on page 27, Calendar Number 324, Senate Print 3438.

And on behalf of Senator Libous, on page 29, Calendar Number 111, Senate Print 1989.

I move that these bills retain their place on the Third Reading Calendar.

ACTING PRESIDENT MEIER: The

amendments are received and adopted, and all bills will retain their place on the Third Reading Calendar.

Senator Skelos.

SENATOR SKELOS: Mr. President, I believe there's a substitution at the desk. If we could make it at this time.

ACTING PRESIDENT MEIER: Yes, there are. The Secretary will read the substitutions.

THE SECRETARY: On page 24, Senator Maltese moves to discharge, from the Committee on Consumer Protection, Assembly Bill Number 174A and substitute it for the identical Senate Bill Number 92A, Third Reading Calendar 276.

ACTING PRESIDENT MEIER: Substitution ordered.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could go to the noncontroversial calendar.

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

THE SECRETARY: Calendar Number 164, by Senator Kuhl, Senate Print 1685, an act authorizing the trustees.

SENATOR DOLLINGER: Lay it aside, please.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 189, by Senator Nozzolio, Senate Print 224, an act to amend the Correction Law.

SENATOR DOLLINGER: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 218, by Senator Padavan, Senate Print 1814, an act to amend the Agriculture and Markets Law.

SENATOR DOLLINGER: Lay the bill aside, please.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 227, by Senator Wright, Senate Print 2678, an act to amend the Highway Law.

SENATOR DOLLINGER: Lay that bill aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 250, by Member of the Assembly Lentol, Assembly Print Number 5305, an act to amend the Judiciary Law and the Penal Law.

SENATOR DOLLINGER: Lay that bill aside, please.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 260, by Senator Farley, Senate Print 2964, an act to amend the Banking Law and others.

SENATOR DOLLINGER: Lay that bill aside, please.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 268, by Senator McGee, Senate Print 3089, an act to amend the General City Law and others.

SENATOR DOLLINGER: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 288, by Member of the Assembly Magnarelli,

Assembly Print Number 5831, an act to amend the Vehicle and Traffic Law.

SENATOR DOLLINGER: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 301, by Senator LaValle, Senate Print 2589, an act to amend Chapter 554.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

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

Senator Trunzo.

SENATOR TRUNZO: Will you please put a sponsor star on Calendar Number 288, Senate Bill 3527.

ACTING PRESIDENT MEIER: A sponsor's star will be placed on Calendar 288. So ordered.

Senator Morahan.

SENATOR MORAHAN: Mr. President, now may we have the controversial reading of the calendar, please.

ACTING PRESIDENT MEIER: The

Secretary will read the controversial calendar.

THE SECRETARY: Calendar Number 164, by Senator Kuhl, Senate Print 1685, an act authorizing the trustees of the Steuben Allegany Board of Cooperative Educational Services.

SENATOR DOLLINGER: Explanation, please, Mr. President.

ACTING PRESIDENT MEIER: Senator Kuhl, an explanation has been requested of Calendar 164 by Senator Dollinger.

SENATOR KUHL: Thank you, Mr. President.

This is a bill that simply would allow the Southern Tier Library System to lease land from the Steuben Allegany BOCES on a long-term basis.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Mr. President, will the sponsor yield to a question?

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

SENATOR KUHL: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: Through you, Mr. President, why is it that the library system needs to lease the parcel from the BOCES system? Is there a difficulty with available space in the library system itself?

SENATOR KUHL: The Southern Tier Library System is one of those agencies created at the state level that oversees and coordinates the area libraries. They don't actually put books on shelves and have people come and read and provide the normal library services. They're the coordinating agency that kind of oversees the libraries and runs the book loan program for them.

That operation is out of space. They have a lease that ends at the end of this year. They would like to locate in a new facility that will accommodate their needs. And this is the most cost-efficient mechanism to do that.

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

for a question.

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

SENATOR KUHL: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: This proposal would be for a 30-year lease. And generally, under the -- I think a number of areas, both in the Education and the General Municipal Law, we don't permit public entities to enter into leases in excess of five years. Why should we make that exception in this case, and why wouldn't be it be preferable just to allow BOCES to sell the land to the library system?

SENATOR KUHL: Well, you've asked several questions, not just one, Senator, but let me try to answer that in the most efficient way that I can.

And that is, the library system currently is leasing from a private landowner. If they were to go out and own their own system, then they would in fact be expending money that they wouldn't necessarily have to

by buying property and then building.

This coordinated effort between the BOCES and themselves, really there are a lot of kind of joint operations that potentially they could enter into. And also, the land is already there, it's available. And BOCES has no desire to actually sell the property that they have.

So this was a proposal to actually allow them to utilize property that's there and existent, and also add them to their campus so that some of their students might make benefit of some of the services that they can provide.

SENATOR DOLLINGER: Through you, Mr. President, if the sponsor will yield to a final question.

ACTING PRESIDENT MEIER: Senator Kuhl, do you yield?

SENATOR KUHL: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: Through you, Mr. President, how is the 30-year lease and the construction going to be financed by the

Southern Tier Library System? If it is, as you describe it, just a coordinating agency, it wouldn't seem to have the assets or the taxing authority to levy the taxes to pay for this cost. How will the cost be paid for?

SENATOR KUHL: I believe they're financed by you and I, Senator. Through the state budget, each one of the state library systems gets funding.

And what they would have to do is to go out and borrow money from a bank and actually finance the construction and pay it back over a long period of time. And certainly no financial institution is going to loan anybody money that can't repay it in five years without the security of having a longer lease.

SENATOR MORAHAN: Excuse me, Mr. President.

ACTING PRESIDENT MEIER: Senator Morahan.

SENATOR MORAHAN: There will be an immediate meeting of the Racing, Gaming and Wagering Committee in the Majority Conference Room.

ACTING PRESIDENT MEIER: Immediate meeting of the Racing, Gaming and Wagering Committee in the Majority Conference Room.

Senator Dollinger.

SENATOR DOLLINGER: Mr. President, just briefly on the bill, and then I'll head off to the Gaming and Wagering Committee meeting.

ACTING PRESIDENT MEIER: Senator Dollinger, on the bill.

SENATOR DOLLINGER: It seems to me that this is a reasonable use of an exception to the general rule in New York that no government entity should be permitted to enter into any period longer than a five-year lease.

I think that was done for a number of reasons, most importantly to prevent one elected government from committing a subsequent elected government to the terms of a long-term lease deal.

I'm satisfied that Senator Kuhl's explanation is adequate, does the purpose, and suggests that this is in the best interests of

both the taxpayers of the State of New York, since we fund the library system, and it seems to me to be a reasonable basis for BOCES to retain control of the property if at some future time they wanted to exert control and ownership and again use it purely for educational purposes.

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

ACTING PRESIDENT MEIER: Does any other member wish to be heard on this bill?

Senator Paterson.

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

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

SENATOR KUHL: Yes, I'd be happy to.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR PATERSON: Senator, has this experience that we are going to codify here today happened to any of the libraries in the Southern Tier system before, where we've

actually leased a property from someone else but they retain control of the property?

You want the shorter question? Has this ever happened before?

SENATOR KUHL: I wasn't pausing based on not understanding your question, Senator. It was I was thinking about how to respond to what appears to be a misunderstanding that you have.

The Southern Tier Library System is a 501(c)(3) corporation that's chartered by the Board of Regents. They are one of several, and I'm not sure how many library systems there are -- it seems to me it's something like 37 throughout the entire state -- that actually oversee a geographical area. And they vary in size, they have different-sized libraries that they actually oversee.

And they provide a coordination of services from the state to the libraries. And actually, that organization itself is totally funded by the state, by our budget which we hopefully will adopt here shortly.

Now, a library that they would

participate and would be part of that system who actually provides the services to each one of the communities, generally they're chartered on their own, separately, and they may have entirely different financial circumstances. Many of them, as you may know, are struggling for dollars. They have all kinds of ways that they try to raise money. And there is some funding that is provided to them, but certainly not enough.

As a matter of fact, the Board of Regents have offered up, and Senator Farley carries, a bill that would authorize a major overhaul of the funding system for those individual libraries. But that's different from the centralized library system which this is a part of.

So has a leasing of this particular situation occurred before of the centralized library systems? I don't know. Has leasing of premises from another organization ever occurred before for one of the smaller libraries it provides the individual services to? I'm absolutely certain of that. But there never has been a need that I'm aware of

for a longer term to be extended or for a change in the law.

SENATOR PATERSON: Very good. Thank you, Mr. President.

ACTING PRESIDENT MEIER: Does any other member wish to be heard on this bill?

Senator Ada Smith.

SENATOR ADA SMITH: Thank you, Mr. President. Would the sponsor yield for a question?

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

SENATOR KUHL: Certainly, to Senator Smith. I think it's Senator Smith's birthday today.

SENATOR ADA SMITH: No, tomorrow. And you are Thursday.

(Laughter.)

SENATOR KUHL: So we'd love to have a birthday conversation. Yes, I'll yield.

SENATOR ADA SMITH: Thank you. See, you made me forget the question.

Is there a reason -- he wants to know how old you are. Is there a reason for

leasing rather -

ACTING PRESIDENT MEIER: Senator Kuhl, you don't have to yield for that.

(Laughter.)

SENATOR ADA SMITH: Is there a reason for leasing versus purchasing?

SENATOR KUHL: I haven't gotten into the internal discussions with the board of the Southern Tier Library System. I know that they have explored all the options.

And what they've come back to me with was, Could you seek out a longer-term lease so that we in fact could conclude our negotiations on the construction aspect of that with our prospective mortgagor? And I said, Yes, is this the most cost-efficient way? And they've assured me that it is.

SENATOR ADA SMITH: I'm sorry, I was not here earlier. But could you tell me exactly how long this leasing -

SENATOR KUHL: Currently the law restricts them to a five-year lease. What they're looking at is a 30-year lease.

SENATOR ADA SMITH: Once again, would the sponsor yield?

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

SENATOR KUHL: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR ADA SMITH: With a 30-year lease, it would seem to me that the amount that we would expend would be a hefty amount towards purchasing or at least a decent amount of a purchase.

SENATOR KUHL: Well, I think what you're missing, Senator, and if I can help you out -- I didn't really hear a question there, but the point is that this land that they will put this building on costs them nothing.

If they were to go and purchase something, certainly they're going to have to purchase something on a piece of property which they'd have to go out and buy.

And this is an extremely attractive piece of property. It's right off of what's called I-86, an interstate. It's right near the regional DOT facility, it's right next to a state police headquarters, it's right next to a BOCES school system.

So it provides a lot of potential opportunity at virtually no cost for -- as far as land acquisition goes. The only cost that they'll incur will be for construction.

SENATOR ADA SMITH: Thank you very much. Now that I have a better understanding of this leasing agreement, I would certainly support this bill.

ACTING PRESIDENT MEIER: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President, if Senator Kuhl would just yield for a question.

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

SENATOR KUHL: Be happy to.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR MONTGOMERY: Yes, thank you, Senator Kuhl. I support this legislation, of course. And always, you know, I think libraries are so important.

The question that I have for you is the Department of Corrections talks about the fact that inmates have been very much involved

in helping to build libraries upstate for some communities. And I'm just wondering if you have any idea if this particular library will receive assistance from DOCS, with inmates helping to construct that -- the new library.

SENATOR KUHL: I don't know, Senator, but I've heard no mention of that.

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

ACTING PRESIDENT MEIER: Any other member wish to be heard on this bill?

Debate is closed.

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll call.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Morahan.

SENATOR MORAHAN: Yes, Mr. President. Would you call up Calendar 260, Senate Bill 2964.

ACTING PRESIDENT MEIER: The Secretary will read Calendar 260.

THE SECRETARY: Calendar Number 260, by Senator Farley, Senate Print 2964, an act to amend the Banking Law, the Education Law, and the Surrogate's Court Procedure Act.

SENATOR HEVESI: Explanation.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MEIER: Senator Farley, an explanation has been requested of Calendar 260 by, I believe, Senator Paterson and Senator Hevesi.

SENATOR FARLEY: Thank you, Mr. President.

This bill would enact technical amendments that would ensure that all national banks operating in New York State are subject to the same laws. These technical amendments that we're talking about here are needed to address changes which have occurred in the banking industry as a result of the new interstate branching laws.

Prior to interstate branching, these particular laws applied to all national banks with branch offices in New York State.

However, after interstate branching, it appears that these laws may apply only to those national banks which are still headquartered in New York State.

It is important to update these laws because -- to ensure that they will continue to apply to all national banks that operate in New York. There was no intent or decision to exempt national banks headquartered in New York from New York laws.

This bill will remove any possible uncertainties or questions about applicability of these laws. It would ensure that the banks continue to be subject to the same laws and rules that apply to all other national banks that operate in New York State.

The banking environment in the mid-1990s changed substantially with the enactment of the interstate branching laws. Incidentally, before that, a bank could only operate in one state. I don't know if you remember that.

As a result, this new environment has called into question the applicability of New York State laws, and these laws have yet

to be amended to reflect the new banking environment.

Basically, what this will do is to say that -- go with the original intent of the bill, of the law, which will apply to all national banks which are actually operating in New York State. By updating the language of these laws and removing the outdated reference to having, quote, a principal office in the state, this bill would clarify and ensure that all national banks operating in New York State are subject to the same laws.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Mr. President, if the sponsor would kindly yield for a few questions.

ACTING PRESIDENT MEIER: Senator Farley, do you yield for some questions?

SENATOR FARLEY: Yes, I will.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR PATERSON: Senator, when we were talking on April 4th, right before we left here for a few days, we actually were

talking about the convergence of Section 203 and Section 108 to accommodate the foreign banks.

Are the international banks in any way affected by this situation? I know they're not affected by this legislation. But did they have the same admonishment legally that they had to be headquartered in the same state before the passing of the interstate banking laws in the mid-'90s?

SENATOR FARLEY: No.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Mr. President, if the sponsor would yield for a question.

ACTING PRESIDENT MEIER: Senator Farley, do you yield?

SENATOR FARLEY: Sure.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR PATERSON: Mr. President, I'm interested in Senator Farley's comments about what the previous law was and the way it was written, that the addressing of the headquarters having to be in the state was

because the nationally chartered bank could only operate in one state, so then the headquarters would have had to have been there. Was that what you were saying, Senator?

SENATOR FARLEY: That's correct. That's prior to interstate branching.

SENATOR PATERSON: Right. So then obviously it would -- it would be obvious that now that the federal law has changed and accommodates several states for these different banks, they can't have their headquarters in any other than one place.

But I did notice back and forth the reference to a principal location. Is the principal location meaning the same thing as the headquarters?

SENATOR FARLEY: Well, some places in the law it refers to a particular law that applied to a bank that has a principal headquarters in New York. And what this bill would do would make sure that anybody -- any national bank that is doing business in New York State, whether headquartered here or whether it has a branch

here, would be subject to all of our laws.

SENATOR PATERSON: Thank you, Mr. President. If Senator Farley would yield for another question.

ACTING PRESIDENT MEIER: Senator Farley -

SENATOR FARLEY: Yes.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR PATERSON: Senator, how many banks that had their headquarters in New York and have left New York -- at least their headquarters, even though they're doing business and may have branches here -- would actually be affected by this legislation? Or is this something really just to clear up the technicalities in case this should ever happen so there'd be no misunderstanding?

SENATOR FARLEY: Well, I don't have an exact answer to this. But I think that -- I know that you've been here long enough to remember that Fleet Bank and Key Bank are the two most prominent examples of national banks which consolidated their multistate operations and moved out of state

to a single bank. As a result, these two banks are now headquartered elsewhere.

And that came about because we were a little bit reticent or reluctant to pass banking deregulation, and also the wild card.

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

SENATOR FARLEY: Yes.

SENATOR PATERSON: Mr. President, I do remember that. Key Bank actually was headquartered right here in Albany, and I guess about six or seven years ago they relocated to Cleveland. Or eight years ago. And it was probably as a result of some of the new changes and some of the desires they had in New York that they felt we weren't accommodating.

My question is, would the passage of the federal law, in spite of the fact that we would want to be consistent, is there necessarily a need to pass this legislation? Or does it just -- is it just preempted by the new regulations that were established about seven or eight years ago.

SENATOR FARLEY: I think, as the

good lawyer that you are, I think there's a need to do this, because there's a bit of confusion in the law. Although I think that the courts would realize, should it have to go to court, that the intent was, the legislative intent was that all national banks are covered by New York law, whether they're headquartered or branched here.

But there are places in the law right now that says that certain laws only apply to banks that are headquartered here. And that was -- that's not the intent and that's not what we want to have happen. We want all banks that are national banks that are branched or headquartered here to be subject to New York law.

SENATOR PATERSON: Mr. President -

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Mr. President, if I'm a good lawyer, then perhaps hearing what the advice is from a great lawyer, it would be a good time to defer. Thank you.

SENATOR FARLEY: Thank you.

ACTING PRESIDENT MEIER: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Yes, thank you, Mr. President. I just have one question, if the Senator would yield.

ACTING PRESIDENT MEIER: Senator Farley, do you yield?

SENATOR FARLEY: Certainly.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR HASSELL-THOMPSON: Senator Farley, I tried to follow -- through you, Mr. President, I tried to follow all of the discussion. And the only question that concerns me that I did not hear is will, in fact, by there not being a principal office here, will that have any effect on the CRA, or Community Reinvestment Act?

SENATOR FARLEY: No, it would not. Because it has to follow federal law on that one.

SENATOR HASSELL-THOMPSON: Okay. Thank you. Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Stavisky.

SENATOR STAVISKY: If Mr. Farley will yield for what I think will be one question.

SENATOR FARLEY: Certainly.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR STAVISKY: Will this have any effect on foreign banks? And I go back to what I said when we were debating the bill that Senator Paterson referred to last -- two weeks ago.

SENATOR FARLEY: No. No, it only affects nationally chartered banks. No.

SENATOR STAVISKY: The answer is no. Thank you.

ACTING PRESIDENT MEIER: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you. Through you, Mr. President, if the sponsor would yield for a few questions.

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

SENATOR FARLEY: Certainly.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR SCHNEIDERMAN: Thank you.

What I'm curious about is, does this bill eliminate any distinction in New York law between banks with their principal headquarters in New York and banks that just have branch offices in New York?

SENATOR FARLEY: No. All it does is it says that they shall be treated equally under the law, that they're both subject to our laws. That's all.

SENATOR SCHNEIDERMAN: Through you, Mr. President. But I guess what I'm getting at is that in this era of national and international banking, we have found -- and I've been participating for years in a survey of bank rates for ATMs and for savings accounts, to try and inform consumers. And what we've found is we appear to have less and less leverage as a state on some of these banks.

So the question is, are we, by passing this bill -- which I understand is to bring us into line with the federal laws - are we giving up any ability to regulate based on a distinction between banks with their

principal offices in New York and banks that do not have their principal offices here?

SENATOR FARLEY: No. We're putting all banks, and specifically certain branch banks, that only are branched here, under New York law. So we're bringing in, if you will, consolidating every national bank, making it subject to New York law.

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

ACTING PRESIDENT MEIER: Senator Farley, do you yield?

SENATOR FARLEY: Yes, I will.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR SCHNEIDERMAN: So are there any provisions left in the law after this that would provide additional benefits or advantages in the Banking Law to banks with their principal offices in New York State, as opposed to banks that just have branch offices here?

SENATOR FARLEY: No. The answer is no, not in regard to a national bank.

Incidentally, we have limited authority over a national bank anyway. For instance, we do have -- I was able to, with the support of my colleagues, put in some security for ATMs and so forth, because that's a police power. And one that we were -- we subjected national banks to, that they had to provide security for these ATMs, for the consumer using it. That sort of thing.

But on balance, we only have effect over state-chartered banks.

SENATOR SCHNEIDERMAN: Through you, Mr. President, would we still have authority after this bill was passed to regulate the fees, the double-dipping fees, as they're called, at ATMs to prevent them from charging too high a rate to someone who's not using that bank?

SENATOR FARLEY: No, it would not have any authority to do anything on fees for national banks.

That's one of the reasons we haven't moved in this area, Senator, is because all they'll do is jump to a federal charter. And as you know as well as I, the

feds are always trying to eat our lunch anyway.

SENATOR SCHNEIDERMAN: Well, through you, Mr. President, the current administration anyway, I do concur.

But a final question. After the repeal of the Glass Steigel Act, many banks are in fact seeking to do additional business in New York through their mergers or joint ventures with various sorts of securities firms. Are we preserving our ability to regulate that sort of joint activity or to encourage banks to locate in New York in order to do such activity if we pass this bill?

SENATOR FARLEY: Actually, that's very limited, because they have to follow the federal law.

SENATOR SCHNEIDERMAN: So through you, Mr. President, there's nothing that we're really giving up by this?

SENATOR FARLEY: No. As a matter of fact, we're not only not giving up, we're regulating more.

SENATOR SCHNEIDERMAN: Okay, thank you. Thank the sponsor for his answers.

ACTING PRESIDENT MEIER: Senator Onorato.

SENATOR ONORATO: Would Senator Farley yield to a question, Mr. President?

SENATOR FARLEY: Certainly.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR ONORATO: Senator Farley, under the bill would there be a minimum amount of branches that would be required to be placed in this state? Is there any minimum?

SENATOR FARLEY: No.

SENATOR ONORATO: Would one suffice?

SENATOR FARLEY: One would suffice.

SENATOR ONORATO: Okay. And the other one that I was -- why was the industrial banks -- through you, Mr. President. Senator Farley -

SENATOR FARLEY: Yup.

SENATOR ONORATO: -- why were the industrial banks omitted from this?

SENATOR FARLEY: The authority to have an industrial bank was repealed several

decades ago, before you and me. We don't have industrial banks.

SENATOR ONORATO: Okay. Thank you.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Through you, Mr. President, will the sponsor yield to my favorite question about small banks?

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

SENATOR FARLEY: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: Through you, Mr. President, how does this bill impact home office protection?

SENATOR FARLEY: It does not impact it.

SENATOR DOLLINGER: Through you, Mr. President, just a follow-up question, if I may.

ACTING PRESIDENT MEIER: Senator Farley, do you yield?

SENATOR FARLEY: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: My understanding is that this bill says that instead of having your principal place of business in certain locales, that a bank may have simply a branch in that locale and then be able to do things that have traditionally been done only by banks with their principal residence.

For example, in the city of Canandaigua, which I believe may be close to Senator Kuhl's district and might be in Senator Nozzolio's district, it has a bank, Canandaigua National Bank and Trust, which has its principal office for operations there, and that they get certain protections under state law because that's where their principal office is, in a small city.

My question is, will all national banks that have a branch in there now enjoy the same benefits that it previously reserved just to that particular instance?

SENATOR FARLEY: No. The federal law requires the same home office protection

that we do under state law. Federal law is the same as our home office protection.

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

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

SENATOR FARLEY: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: Then why do we need to do this bill if we've preserved home office protection? Aren't we allowing banks that don't have their principal place of residence in certain communities to now do traditional bank functions like manage estates, manage trusts, make loans and extend credit to infants, and -

SENATOR FARLEY: Let me just address this, Richard, if I could. Senator, excuse me.

This really has nothing to do with home office protection. This bill has nothing to do with it. This addresses other areas. Certain segments of the law -- not very many,

but a few segments of the law said that this particular law will only apply to a bank who has a principal office in New York State. We don't want that to be the case. It is not the intent that that be the case.

What we're saying is that New York law will apply to any national bank, whether it is home-officed here, whether its principal office is here, or whether they're a branch office here. That if they operate in this state, they're subject to our laws.

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

I'll take Senator Farley's word for it. As always whenever we do one of these amendments where we sort of pick out certain sections and insert new language, it's difficult to determine what the long-term ramifications are, certainly in the banking bill, which has a constant repetition of specific, defined terms which are then repeated and describe both the extent of our regulation and the ability of banks to operate and how they operate. I'll take Senator Farley's word for it.

I think that from my point of view, I continue to believe that one of our major sources of consistency in upstate New York has been the strength of our small banks. And I'm reluctant to create a playing field in which those banks will be paired in a competition with banks that have much stronger muscle because they have international or truly national bases.

And I believe that there is a justification for continuing New York's preference for certain bank operations in small communities upstate. I think they've been enormously successful. I think that's been very prudent. And I'm just concerned, as I know Senator Farley and I have talked about this concept a number of times, that we not erode that by allowing them to do bank-like things, whether it's the administration of trusts or providing loans to infants, which is another one of the sections in the bill that's amended.

But with the chairman of the Banking Committee's assurance that this does not affect that and erode that principal, I'll

vote in favor.

ACTING PRESIDENT MEIER: Senator Hevesi.

SENATOR HEVESI: Thank you, Mr. President. Would the sponsor yield, please.

ACTING PRESIDENT MEIER: Senator Farley, do you yield?

SENATOR FARLEY: Yes, I will.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HEVESI: Thank you.

Through you, Mr. President. It seems to me that the technical corrections that we're making today, if I have understood the debate correctly, were necessitated by Banking Law change that occurred five or six years ago.

My question for you is -- and I supported this last year, and I'm likely to support it again today -- in the time since these inconsistencies materialized as a result of those banking changes in the mid-1990s, has there been any national bank or any banking institution that sought to take advantage of this supposed loophole and not comply with any

aspect of New York State law?

SENATOR FARLEY: That's a good question. I have a written answer here to that question.

Currently it is assumed that the laws continue to apply to all national banks. As far as we know and are aware, out-of-state banks continue to comply with these laws, and no one has brought any legal challenge.

Nevertheless, the language of the law does raise some questions of uncertainty. If we fail to update these laws, we could someday find ourselves in a situation where an out-of-state bank may claim that it does not have to comply with certain provisions of our New York law -- for instance, ATM security. I'll just use that as an example. We believe it is appropriate to amend the -- update these laws and eliminate any uncertainty.

There's no real objection to this by anybody. And I'm confident if -- because these things fell between the cracks last year, that this should become law.

SENATOR HEVESI: Thank you. Mr. President, one final question for the sponsor,

if he would yield.

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

SENATOR FARLEY: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HEVESI: Thank you.

Through you, Mr. President. And I very much appreciate trying to take a preventative approach to remedying a problem that may exist if the future. It's a good idea. And you addressed it at the end of your comments.

But more specifically, is there any problem that the other house, the Assembly, has with this, or the Governor has with this that resulted in this dying an untimely death, as it were, last year?

SENATOR FARLEY: None whatsoever, Senator. I think that's a good point. I think that the other house will embrace this, and I'm sure that the Governor will. There's no -- it's just doing the right thing.

SENATOR HEVESI: Thank you, Mr. President.

ACTING PRESIDENT MEIER: Any other member wish to be heard on this bill?

Debate is closed.

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Marcellino.

SENATOR MARCELLINO: Mr. President, can we call up Calendar Number 268 at this time.

ACTING PRESIDENT MEIER: The Secretary will read Calendar 268.

THE SECRETARY: Calendar Number 268, by Senator McGee, Senate Print 3089, an act to amend the General City Law, the Town Law, and the Village Law.

SENATOR OPPENHEIMER: Explanation, please.

ACTING PRESIDENT MEIER: Senator

McGee, an explanation has been requested of Calendar 268.

SENATOR McGEE: Thank you. May I ask who asked for the explanation?

ACTING PRESIDENT MEIER: I believe it was Senator Oppenheimer.

SENATOR McGEE: Yes, this bill is designed to provide a framework for the use of planned unit developments as a tool for guiding communities in growth and development.

SENATOR OPPENHEIMER: I'm having trouble hearing, Mr. President.

SENATOR McGEE: This is a bill that's designed to help communities plan development and growth.

ACTING PRESIDENT MEIER: Senator Sampson, why do you rise?

SENATOR SAMPSON: I'll defer to -

SENATOR OPPENHEIMER: Well, thank you very much.

Thanks, Senator McGee. I understand planned unit development, and that's why I don't understand why we have the bill. So I guess I need a little more of an

explanation of why we need the planned unit development. I can only tell you I did it twenty years ago in my village. So I don't know why we need the law.

SENATOR McGEE: At the present moment, traditional zoning -

SENATOR OPPENHEIMER: I can't - whoops. Excuse me, I am having trouble hearing.

ACTING PRESIDENT MEIER: Senators, could we have some order in the chamber so that all of us can be enlightened by this debate. That's better. Thank you.

Go ahead.

SENATOR McGEE: Basically, traditionally, zoning right now as we have it typically provides for single use. In other words, it's single housing or double housing. Now, there are variances that are allowed. Single housing, double housing, agriculture, commercial, industry, business.

This one will allow what's known as a planned unit development, which will allow multiple use. In other words, we can have a cluster development which would allow senior

citizens' housing to be here, single homes, perhaps throw in a double house in here, perhaps even within that planned development, that planned community, would allow them to have restaurants, hairdressers, et cetera, et cetera.

SENATOR OPPENHEIMER: Okay. Now I can see how this varies from what I've done in the past.

Does this require or allow for only specific sites to be utilized for PUD development? Through you, Mr. President, if you'll yield.

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

SENATOR McGEE: Yes, I do.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR McGEE: It would be a township or a municipality would make the move as to whether there was a development that wanted to come in. That developer would then go to that township and say, This is what I have in mind. The township then would be able to look to see where that development is going

to go. It could be on farmland, if that's where -- you know, you want to be very careful that it's not agricultural farmland that's in use right now, it's not in an ag district, et cetera, et cetera, et cetera. The developer would have to say, This is my planned use.

In other words, it's designed basically to control, if you can, urban sprawl.

SENATOR OPPENHEIMER: Then through you, Mr. President, would there be -

ACTING PRESIDENT MEIER: Wait, wait. Whoa, whoa. Senator McGee, do you yield for another question?

SENATOR McGEE: Yes, I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR OPPENHEIMER: Then would you have certain -- would the law require certain specific parameters for the development of those sites? In other words, certain criteria that are required before the site could be established as a planned unit development?

SENATOR McGEE: Oh, there would

always have to be, Senator. I mean, when you go in to do any kind of a development, you have to go through a certain plan type that you have to go through, whether you're going to, you know, provide the water, the sewer, whether you're on environmentally touchy land, et cetera, et cetera.

This just would be able to give the township, where the developer has to go through, the ability to make a decision as to do we want a planned -- a PUD, they call them -- planned unit development rather than a specific use, senior housing or et cetera, et cetera.

SENATOR OPPENHEIMER: Thank you. But through you, Mr. President.

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

SENATOR McGEE: Certainly.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR OPPENHEIMER: Would the law have a certain requirement as far as the total size, acreage, lot size?

SENATOR McGEE: No.

SENATOR OPPENHEIMER: No?

SENATOR McGEE: It does not call for that. Does it say -- you mean, in other words, you have to use a planned unit development in a 2-acre or you must have a 13 acres to do this in? Is that what you're saying? In other words -

SENATOR OPPENHEIMER: Yeah.

SENATOR McGEE: Any time a developer will come in, a developer naturally would be able to tell you what the size of his community was or that development was going to be.

But no, this bill does not say - does not require X amount of land with it. That would be the decision of the town. Zoning always goes through the town at that point. It's a town's decision as to whether they want to do zoning -- I'm going to use town as an example -- a town's decision as to whether they want to do it or not.

So if you're saying does this bill say you must have 5 acres or 10 acres to do it, no, it does not.

SENATOR OPPENHEIMER: That's

interesting, because our law in the village where I served did have a requirement of X minimum acreage in order to permit the PUD to move ahead.

SENATOR McGEE: I suspect the local municipality itself could set that by virtue of looking at what the development was. But this law doesn't call for that.

SENATOR OPPENHEIMER: Well, then, you'd -- through you, Mr. President -

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

SENATOR McGEE: Certainly.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR OPPENHEIMER: Then do you believe or not believe that the powers of the community board, city council, or village board or planning board or zoning board, is going to be impacted? In other words, will some of their decision-making power be taken away, or do you feel it will be enhanced?

SENATOR McGEE: No, absolutely not. As a matter of fact, this bill will give them additional options to work with.

SENATOR OPPENHEIMER: Some -- oh, additional options.

SENATOR McGEE: This bill will not impact on -- not have a negative impact on anything like that. What this bill will do, it will give that municipality additional options to operate with.

In other words, they will be able to plan, use a planned unit development rather than just saying you can only use it for commercial, you can only use it for industry. This gives them the opportunity to make a planned unit development include, if they wish to do so, a portion of each and every one of those things. So it enlarges their options.

SENATOR OPPENHEIMER: Then through you, Mr. President -

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

SENATOR McGEE: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR OPPENHEIMER: Would this be like an addition to the zoning code of the individual municipality? Would they then

incorporate this into their zoning code?

SENATOR McGEE: If they wish to do so.

SENATOR OPPENHEIMER: And they - then they could limit space or a variety of choices that can be made within the planned unit development?

SENATOR McGEE: That's correct. That's correct.

SENATOR OPPENHEIMER: Is there any -

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

SENATOR McGEE: Yes, I will, thank you.

SENATOR OPPENHEIMER: I don't even have to ask.

Is there anything in the bill - I'm not certain if I read this -- in that a requirement for a public, a municipal hearing would be necessary before this could be implemented?

SENATOR McGEE: No, ma'am. If you're looking at zoning, if you're looking at zoning, that is not a public referendum.

That's a decision, it's a legislative decision made by the municipality.

SENATOR OPPENHEIMER: I just remembered my zoning law.

Okay, I think -- thank you very much, Senator McGee.

SENATOR McGEE: You're welcome.

SENATOR OPPENHEIMER: We come out of a similar background.

Well, on the bill for a moment.

ACTING PRESIDENT MEIER: Senator Oppenheimer, on the bill.

SENATOR OPPENHEIMER: The bill is a very good one. And now that I understand how, this differs somewhat from what I was doing as the head of my community twenty years ago, when I did use planned unit development to avoid basically sprawl and to make sure that the infrastructure within the planned unit development was funded both with public and private monies, which was a new concept.

And this new concept in effect took the old, standard land-use regulation pattern of the original zoning and rezoned it into something new, and that was this planned unit

development. And I think we were the first to ever try this in Westchester County twenty years ago. And it was very exciting. It did give us a lot more flexibility. And we were working with the developers, and we permitted greater density in certain areas in response to leaving open space and having a recreational area planned there.

And the design was much more flexible, because we found this kind of exception at that time called planned unit development. And it really leveraged a lot of different things. It permitted us to not only cluster and then have open space, but we worked out a maintenance of roads, which was both public and private. We had the private change the lighting and interchange on the streets, which they paid for, saving the local taxpayer a considerable amount of money.

And I think it's valuable for these -- in our cases, we saw it as a unique, large land opportunity where there was large lots, which were pretty unique in urban communities, to develop something that was new, original and could take care of a variety

of needs, and indeed saved the local taxpayer a considerable amount of money through what we were able to negotiate.

But the difference being at that time we only had mixed residential. And I can see the value of adding commercial.

We did utilize the space for negotiating -- we negotiated additional space for recreation for the community, parkland for the community. But if you're going to have a variety of zoning uses like residential, commercial, industrial, then I guess this is the value of the bill before us.

And I think it's an excellent bill, and I congratulate you.

ACTING PRESIDENT MEIER: Senator Sampson.

SENATOR SAMPSON: Will the sponsor yield for a few questions, Mr. President?

SENATOR McGEE: Yes, I will.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR SAMPSON: Through you, Mr. President, the criteria that is used in

determining these PUD zones, who's going to be involved in determining this criteria?

SENATOR McGEE: Let me -- let me -- just one moment, if I can. I do need to correct -- not correct, but enlarge a little bit on a statement that I made to Senator Oppenheimer.

You used the term "referendum." There would be public hearings held on the proposal, but there would not be a referendum, because it is a legislative duty of the municipality to make that decision.

Now, back to who -- what the criteria would be?

SENATOR SAMPSON: The criteria as to how you determine these zones, these PUD zones. What criteria is going to be used in determining it?

SENATOR McGEE: I suspect that that would be a decision made by the developer who would come in with a plan to the town board and say, This is what I would like to do, this is a portion where I would like to have senior housing, over here I would like to have perhaps a small strip mall that would

serve the senior housing, maybe a daycare center here, mixed -- double houses here.

It would be a combination of working together, the developer working with the town board or the village board as to what their -- how it fit into a planned PUD, if you will.

SENATOR SAMPSON: Through you, Mr. President, will the sponsor continue to yield?

ACTING PRESIDENT MEIER: Senator McGee, do you yield?

SENATOR McGEE: Certainly.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR SAMPSON: Senator, when we're talking about the PUD zones, we're dealing with usually large tracts of land.

SENATOR McGEE: Yes.

SENATOR SAMPSON: What about those landowners who have smaller or mid-sized property? Can they also take advantage of getting involved in this PUD development?

SENATOR McGEE: Again, I would assume -- if I may, through you, Mr.

President -- I would assume that if it's something that wouldn't fall into the scope of a PUD, they would still come under what is known as their traditional zoning.

I'm sure you're not going to take a 5-acre piece of land and going to build senior housing on it and a childcare and a restaurant and have industry in it. I suspect there has to be, within that link or within that space that that developer wants to do, to bring that into the village or the town or the municipality, whichever is doing it, and then they would make the decision.

This bill doesn't tell you whether they're going to make that decision or not. It's up to the municipality. This bill gives the municipality the option to stay with traditional zoning or to be able to go to the planned unit development.

SENATOR SAMPSON: Okay. Through you, Mr. President.

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

SENATOR McGEE: Certainly.

ACTING PRESIDENT MEIER: The

sponsor yields.

SENATOR SAMPSON: Prior to this legislation, what authority, if any, did the local municipalities or zonings have to create such a PUD development? Or if they had any at all.

SENATOR McGEE: I would assume that it would have to have been done by a piecemeal thing. If you take a township, you're going to have perhaps a village in it. In that village, you would create your own zoning, whether you have commercial, whether you have industry, or whether you have residential. And there's strict residential, or you could have residential that had a variance in it, like maybe a beauty parlor or something in it. That would be within that.

But as you go further out from a village into a township, that township then also has its own zoning to them, if they have zoning. Now, there are many areas in the State of New York that don't have zoning.

So I guess I lost track of what it was you asked me. But what -- who has the ability to say -- I'm sorry. I think I

answered your question.

SENATOR SAMPSON: Okay. Through you, Mr. President.

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

SENATOR McGEE: Certainly.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR SAMPSON: Senator, what sort of incentives, if any, would be offered to the developer and the community surrounding this development, if any?

SENATOR McGEE: I really don't know as there would be any type of incentive. I think the main incentive that you would get out of a planned unit development is the fact that you're going to be able to contain urban sprawl, you're going to be able to contain - not going to end up -- and again, I'm going to use a rural analogy, if I might -- you're not going to end up with a racetrack or a pig farm next to a -- or a car-painting business next to a residential area where it could be hazardous, where it could be -- you know, as a matter of fact, it could in fact bring down

the value of the property next to them.

So I think that that's the only incentive. If there were additional incentives, I'm sure that that's something that the developer and the municipality would have to work out amongst themselves. This does not call for incentives.

Again, the only incentive I think that you would find would be the ability to offer an option to the developer and offer an option to the municipality, the ability to be able to use a planned unit and, again, contain urban sprawl.

SENATOR SAMPSON: Okay. Thank you.

SENATOR McGEE: Thank you.

ACTING PRESIDENT MEIER: Does any other member wish to be heard on this bill?

Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Mr. President. I have just one question of the Senator.

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

SENATOR McGEE: Certainly.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HASSELL-THOMPSON: Thank you, Senator McGee. Through you, Mr. President, the only question I have is in your summary of provisions you use the words that the legislation will provide "specific statutory authority for, and guidance in." How are you defining "guidance"?

SENATOR McGEE: I'm sorry, I guess I didn't -- would you repeat it again? I'm sorry.

SENATOR HASSELL-THOMPSON: Okay. In the language of the summary of provisions, the legislation would provide specific statutory authority for and guidance in. And then it talks about the establishment of the PUD and whatever.

SENATOR McGEE: The guidance would be the fact that -- the ability for them to do it. And the fact that these are different areas -- this gives you the option of being able to go from the business, industry, et cetera, et cetera, only guidance to say this is what you can put into it, this

will allow you to step outside of your traditional one, which is the housing, the senior citizens, et cetera, et cetera. That's the guidance that you would have on it.

SENATOR HASSELL-THOMPSON: Okay. Thank you. Thank you, Senator.

SENATOR McGEE: You're welcome.

SENATOR HASSELL-THOMPSON: Through you, Mr. President, on the bill.

ACTING PRESIDENT MEIER: Senator Hassell-Thompson, on the bill.

SENATOR HASSELL-THOMPSON: I have the distinct advantage of having just come out of a city council where we just did a major PUD. And it was interesting to me at that time that there were many, many questions that the city council members had of our planning department, and it was clear that there were no statutory -- there was no statutory language that would limit it, so that we were able to be very, very creative in terms of how we developed this property.

And as I read the legislation, I think we followed the guidelines. And even though we created it ourselves, it looked as

though you lifted the language from that which we did.

So I'm very supportive of the bill, obviously, because we were extremely successful. And I think the thing that becomes very important in the language of this is the adherence, particularly to the public hearings and to community hearings to ensure that when you develop these parcels of land that everyone feels that they have input.

Because we also did it so well that we were able to sustain a lawsuit that was brought by a neighboring community based upon the amount of traffic and other issues that they thought would be raised, based on the abutment of this development to their school district.

So we did our job well. And in reading the legislation, you did yours very well. So I can appreciate that and be very supportive of this legislation.

Thank you.

ACTING PRESIDENT MEIER: Does any other member wish to be heard on this bill?

Debate is closed.

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Marcellino.

SENATOR MARCELLINO: Mr. President, at this time can we call up Calendar Number 227.

ACTING PRESIDENT MEIER: The Secretary will read Calendar 227.

THE SECRETARY: Calendar Number 227, by Senator Wright, Senate Print 2678, an act to amend the Highway Law, in relation to designating.

SENATOR DOLLINGER: Explanation.

ACTING PRESIDENT MEIER: Senator Wright, an explanation has been requested of Calendar 227 by Senator Dollinger.

SENATOR WRIGHT: Thank you, Mr.

President.

The bill before us amends the Highway Law. It takes a portion of state highway currently designated as New York State Route 12 and changes that designation to the POW-MIA Memorial Highway.

ACTING PRESIDENT MEIER: Senator Brown.

SENATOR BROWN: Through you, Mr. President, would the sponsor yield for a question?

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

SENATOR WRIGHT: I will, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR BROWN: It seems like I have seen this designation before. Senator Wright, are there other such highways designated in the state?

SENATOR WRIGHT: Yes, there are, Mr. President.

SENATOR BROWN: Through you, Mr. President, would the sponsor continue to

yield?

ACTING PRESIDENT MEIER: Senator Wright, do you yield?

SENATOR WRIGHT: I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR BROWN: Senator Wright, where are the others?

SENATOR WRIGHT: The first one is a portion of a state highway in Kings and Queens County. The second is -- excuse me, that's a bridge, not a highway, in Herkimer County. There's another bridge in Suffolk County. And there's a memorial highway in Monroe County and a memorial highway in Richmond County. So if you were traveling in any of those areas, you would encounter a MIA-POW New York State memorial highway.

SENATOR BROWN: Thank you. That's why it looks familiar. There's one in Monroe, which is Rochester, right outside of Buffalo.

SENATOR WRIGHT: On the way home. There you go.

SENATOR BROWN: Yes, on the way

home.

Through you, Mr. President, would the sponsor yield for another question?

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

SENATOR WRIGHT: I will, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR BROWN: Through this POW-MIA designation, will there be additional resources to maintain this section of the highway?

SENATOR WRIGHT: There will be no additional resources required in terms of maintenance. There would be the ongoing maintenance effort of the State Department of Transportation.

The only cost that we could identify would be accrued to signage, and we believe that is minimal. But more importantly, the advocates and proponents of this designation, many of whom are the various American Legion and VFW posts along the length and breadth of this highway, have already

expressed a willingness to purchase and secure the necessary signage as part of their commitment as citizens.

SENATOR BROWN: Senator Wright was way ahead of me. He asked my next question.

However, through you, Mr. President, would the sponsor continue to yield?

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

SENATOR WRIGHT: I certainly will.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR BROWN: How long is the actual section of the highway that will be designated for this purpose? And when the thruway is designated for such a purpose, is the length the same in every case?

SENATOR WRIGHT: Let me answer the last question first. That would be no.

In terms of the first question, frankly. I don't have the scale on this map, but it's about that long on a state highway

map (indicating).

SENATOR BROWN: Okay.

SENATOR WRIGHT: It would commence in the town of Morristown, which is in the northwestern corner of Saint Lawrence County. It would proceed east to the village of Alexandria Bay, in the northeast corner of Jefferson County. It would proceed along the Saint Lawrence River, through the crossings of Fishers Landing, into the village of Clayton, which is about the midpoint of the northern edge of Jefferson County, whereupon it would then proceed south.

It would proceed south through Jefferson County, through Depauville down into Brownville, through there into the town of Watertown, thereby arriving at the city of Watertown. Whereupon, it would continue to proceed south through South Rutland, Copenhagen. Upon arriving in Copenhagen, it would be in Lewis County.

We have now gone into Senator Meier's district, so I will discontinue my description at that point. But it does continue further south into Senator Meier's

district, into and including the city of Utica, in Oneida County.

SENATOR BROWN: Thank you. Through you, Mr. President, would the sponsor yield for one final question?

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

SENATOR WRIGHT: Yes, I will, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR BROWN: Senator Wright, is there anything that limits these -- I know that all of us want to honor our POWs and MIAs. Is there anything that limits these from placed all the way up and down the state highway, from Long Island all the way to Niagara Falls?

SENATOR WRIGHT: There are no limitations other than those imposed by the State Legislature, Senator.

If one looks at the designations to date, I think you'll find that they are regionally dispersed throughout the state, they are reflective of urban and rural

interests. I think there is a great deal of recognition among the people of this state as to the importance of our veterans, a willingness to designate and recognize our veterans, and I think this is just one more example of that.

SENATOR BROWN: Thank you, Senator.

SENATOR WRIGHT: Thank you.

SENATOR BROWN: On the bill, Mr. President.

ACTING PRESIDENT MEIER: Senator Brown, on the bill.

SENATOR BROWN: This certainly is something that I think we all support. I think giving honor to the men and women who have served our country is an important thing.

And certainly placing such signage and making such a designation on the state highway system gives the opportunity for hundreds of thousands of people to see the signage and to reflect and remember those men and women who have courageously served our country in the armed services, particularly those who have been prisoners of war and those

who have been missing in action during the course of their service.

So I support this wholeheartedly and thank Senator Wright for introducing this legislation with Senator Meier.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Through you, Mr. President, will the sponsor yield to just one question?

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

SENATOR WRIGHT: I will, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: Does the designation of Route 12 as a POW-MIA Highway in any way interfere with the Seaway Trail program? Which I believe also follows a portion of Route 12 that borders the Saint Lawrence River, as you described it, Senator Wright.

SENATOR WRIGHT: That is correct. They would be following a similar path of

highway. But there is no inherent conflict in the two statutes.

The only potential conflict would be in signage. By virtue of federal requirements for the trail designation of the Seaway Trail, there are federal restrictions on appropriate utilization of signage. However, State DOT signage of course would conform with those federal requirements. So I don't envision any conflict or problem.

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

ACTING PRESIDENT MEIER: Senator Dollinger, on the bill.

SENATOR DOLLINGER: Route 12, which I am well familiar with in my experience in the North Country, is an important source of revenue for the communities along its way. It has that wonderful distinction of going 55 at some times and then immediately going through a small town where the speed limits drops to 30.

And a number of my clients, even in Rochester, New York, have been found to be going somewhere in excess of 30 miles an hour

as they pass through these innumerable small communities along Route 12.

It's a familiar experience, I think, to those of us who have traveled in the North Country to meet some of the fine officers either of the State Police or of these small communities on Route 12 when we have been moving at a speed slightly more than the town restriction.

But I agree with Senator Brown. I think this is an interesting highway from the early development of New York State's highway system, flowing one way in the north, to the northwest, and then eventually turning around and driving down through the northeast along the Saint Lawrence River.

I was concerned about the Seaway Trail question, but I think Senator Wright is correct, that even though they will have the same designation, the difference in signage could explain that.

So I appreciate Senator Wright's preparation in response to the questions from Senator Brown, and I will be voting in favor, Mr. President.

ACTING PRESIDENT MEIER: Senator Gentile.

SENATOR GENTILE: Yes, thank you, Mr. President. If the sponsor would yield to a question or two.

ACTING PRESIDENT MEIER: Senator Wright, do you yield?

SENATOR WRIGHT: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR GENTILE: Senator, in looking over the legislation, and particularly the sponsor's memo, you do go into how bravely the POWs and MIAs have fought and why we need to designate or why we should designate this portion of Route 12 as POW-MIA Memorial Highway.

However, in reading part of this sponsor's memo, there's something that strikes me here that sounds as if it's a step back from trying to honor our POWs and MIAs. And by that, I mean in the sponsor's memo it says, "To avoid confusion and to limit any possible disruption of commerce, this designation shall

be one of ceremonial nature and the official name of such highway shall not be changed."

I don't understand that, Senator, in the sense that either we're naming it for POW-MIAs or we're not. And if we are, why not make this an official name change?

SENATOR WRIGHT: Well, I believe, Senator, that that's the kind of language that is used throughout several pages of designation in Highway Law.

And it's simply a distinction that while we are recognizing the nature of the acknowledgment, at the same time, for very specific legal purposes, it remains the designated route numbers to ensure coordination of federal and state highway systems. And I'm sure there's a corresponding linkage there with federal and state highway assistance as well.

SENATOR GENTILE: If the Senator would continue to yield.

SENATOR WRIGHT: I will, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR GENTILE: Through you, Mr. President. What would be the downside of making this -- the official title as Route 12, slash, POW-MIA Memorial Highway? Would there be any downside to making that the official name of it?

SENATOR WRIGHT: Well, frankly, I'm not aware of any, Senator.

But I'm assuming that the counsel that prepared this memo, based upon the research that was done, anticipated that that might have the potential at the current or future date, so made sure that we avoided and precluded that problem.

SENATOR GENTILE: Through you, Mr. President.

ACTING PRESIDENT MEIER: Senator Wright, do you yield?

SENATOR WRIGHT: Yes, Mr. President, I will.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR GENTILE: So, Senator, then you're suggesting that because only this portion of Route 12 is designated as such,

POW-MIA Memorial Highway, that that may cause some confusion with other parts of Route 12? I'm just trying to understand what you're saying.

SENATOR WRIGHT: No, no, Senator. I don't believe I suggested that. I believe what I clearly indicated was I was not personally or specifically aware of the reason for that language.

But I made a reasonable assumption that the counsel that included that did so in anticipation of either known or potential problems, and therefore would try to avoid those in the future.

I don't believe it changes or diminishes in any way our efforts to designate and recognize the highway.

SENATOR GENTILE: Through you, Mr. President.

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

SENATOR WRIGHT: Yes, Mr. President, I'll be glad to respond.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR GENTILE: So then if we take this to the next step, would there be any restrictions on, sometime in the future, also naming this portion of Route 12 for some other group; for example, recipients of the Purple Heart? Could we then add that designation to this portion of Route 12, since the POW-MIA designation is not an official name change?

SENATOR WRIGHT: I'm not aware of any restriction that would apply.

SENATOR GENTILE: So I would assume the answer is yes, we can -

SENATOR WRIGHT: No, I said I'm not aware of any. That's my answer.

SENATOR GENTILE: Okay. Thank you, Senator.

SENATOR WRIGHT: Thank you, Senator.

SENATOR GENTILE: On the bill, Mr. President.

ACTING PRESIDENT MEIER: Senator Gentile, on the bill.

SENATOR GENTILE: And I appreciate the responses from Senator Wright.

Certainly POW-MIA Memorial Highway

is a designation that has, as indicated, been used around the state. It's been used in my county, in Richmond County. Certainly as a member of the Veterans Committee here in the State Senate, I have been in full support of these types of measures.

I believe that we should make it an official name change, or a -- the old name, Route 12, slash, POW-MIA Memorial Highway. I don't see why we cannot make it an official name change. I think veterans deserve to have it officially named Route 12/POW-MIA Memorial Highway. And I say that for anywhere in the state, not just for Route 12.

Given that, nevertheless, I will support this legislation. I thank Senator Wright for his answers, and I think this a good bill.

ACTING PRESIDENT MEIER: Senator Onorato.

SENATOR ONORATO: Senator Wright, will -- Mr. President, will the Senator yield to a question?

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

SENATOR WRIGHT: Yes, I will, Mr. President.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR ONORATO: I'd just like to know, basically, will this have any enabling legislation if any other community would like to opt into it in the future to name a particular portion of the state highway that runs through their particular communities? Or will we have to do a separate bill again to enable that particular community to opt into this very, very worthwhile bill?

SENATOR WRIGHT: This bill does not provide for inclusion of any other region in the state other than the region specifically defined and described in the bill.

I have at least two pages of various designations throughout the state that have been done in a like fashion. So my belief is it would probably, absent a much broader bill being introduced, would require specific legislation of a like nature.

SENATOR ONORATO: Through you,

Mr. President.

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

SENATOR WRIGHT: I do, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR ONORATO: Would it be possible to have a broader bill that would basically cover the thought that I just referred to you, making -- giving enabling legislation to any community that so desires? So long, of course, that it doesn't overrun with another portion of the highways that -

SENATOR WRIGHT: Correct. I don't know, and it would be presumptive for me to offer an opinion, since that's not an issue that we've researched. I'm not aware of anything that would preclude a general enabling legislation, thereby designating the authority to perhaps the Commissioner of Transportation or to a local designation. But I'm not aware of any prohibitive . . .

SENATOR ONORATO: One final question through you, Mr. President.

ACTING PRESIDENT MEIER: Senator Wright, do you yield?

SENATOR WRIGHT: Yes, Mr. President, I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR ONORATO: This is only applying to state highways? In other words, it would not prohibit a city of New York or the city council from designating a particular portion of their community with the same designation, provided, of course, it is not a state highway?

SENATOR WRIGHT: That would be my understanding, there is nothing in this bill that would restrict any local designation.

SENATOR ONORATO: Thank you.

SENATOR WRIGHT: Thank you.

ACTING PRESIDENT MEIER: Any other member wish to be heard on this bill?

Senator M. Smith.

SENATOR MALCOLM SMITH: Thank you very much, Mr. President. On the bill.

ACTING PRESIDENT MEIER: Senator Malcolm Smith, on the bill.

SENATOR MALCOLM SMITH: I have no question for the Senator. I just think he is so right on the mark in terms of what he is trying to do.

As one who has a very special place in my heart for all veterans, I couldn't help but speak to this particular bill in just support of it and indicate that probably there is nothing more that we could do, if not more, than designate certain areas of highways or physical facilities, whether it was a building, institutions -- I just believe that every day of our life we should be doing something related to veterans, devoting something to them, whether it's a specific day or a specific street or a specific holiday, whatever you want to call it. Because clearly, we owe much of our existence to them.

And I know from time to time one might consider this to be very repetitious, but I will tell everyone in this chamber that as long as I'm living, I'm going to do all that I can every day to make sure that something is said on behalf of veterans or done on their behalf.

And, Senator Wright, my kudos to you. And if at any point in time any of my colleagues want to question you again about something like that, you come see me.

Thank you.

ACTING PRESIDENT MEIER: Does any other member wish to be heard on this bill?

Debate is closed.

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, 59.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Marcellino.

SENATOR MARCELLINO: Mr. President, at this time can we take up Calendar Number 189.

ACTING PRESIDENT MEIER: The Secretary will read Calendar 189.

THE SECRETARY: Calendar Number 189, by Senator Nozzolio, Senate Print 224, an

act amending the Correction Law, in relation to requiring.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT MEIER: Senator Nozzolio, an explanation has been requested of Calendar 189 by Senator Schneiderman.

SENATOR NOZZOLIO: Thank you, Mr. President.

This bill has passed the Senate each year since 1997. The purpose of the measure is to require inmates in our state correctional facilities to make a modest copayment for medical treatment. The legislation models the copayment after the copayment that is made by other state employees, by all state employees through their own health insurance. If it's good enough for our state workers, it should be good enough for our prison inmates.

This legislation also ensures that no inmate would be denied medical treatment for lack of ability to pay.

ACTING PRESIDENT MEIER: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Yes, thank you, Mr. President. Through you, if the sponsor would yield for a few questions.

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

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR SCHNEIDERMAN: Thank you.

I'm curious as to -- we have had a debate on this bill in past years relating to other needs inmates may have for money in prison and other uses for it. What other services, if any, are inmates required to pay for while serving their sentences?

SENATOR NOZZOLIO: Mr. President, through you, that all too few. All too few services are being borne by inmates as opposed to the burden borne by the taxpayers of this state, including victims.

That commissary expenses of some sort are paid for out of inmate expenditures -- candy, cigarettes, that sort of thing sold in commissaries. But other than

that, there really isn't too many services paid for by inmates.

Although last year we did succeed in a filing fee. That there is a sport that was engaged in in our prison system called prisoners' litigation, and that that sport now has a fee to it. That those who engage in litigation will have to pay, just as other citizens do, a modest filing fee when they initiate their lawsuits.

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

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

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR SCHNEIDERMAN: And you may have covered this when you were referring to the commissary, but isn't it true that inmates have to provide themselves with any sort of toiletries or supplements of any kind, even if it's not really of a medical nature,

for the basic prison meals, any kinds of vitamins or treatments that aren't covered by the prison medical system, which is in fact fairly spartan in terms of treatment facilities?

SENATOR NOZZOLIO: Mr. President, I don't really understand what that question is.

But I think that there may be things that inmates pay for by themselves - extra vitamins, extra things that they're able to bring in. That's possible. But it's certainly not part of the program.

SENATOR SCHNEIDERMAN: Through you, Mr. President, aren't inmates required to pay for -- make payments for correspondence and communication with the outside world?

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

SENATOR NOZZOLIO: Yes, Mr. President.

SENATOR SCHNEIDERMAN: Yes, you yield, or yes, yes?

ACTING PRESIDENT MEIER: I believe he said yes.

SENATOR SCHNEIDERMAN: Thank you.

Then through you, Mr. President, has any consideration been given to the fact that as a policy in this state I think at many levels we encourage inmates to maintain contact with their home communities, with their loved ones, since they all or just about all at some point rejoin society -- has there been any consideration given to the fact that this bill may limit their ability to maintain such communication?

SENATOR NOZZOLIO: No, Mr. President.

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

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

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR SCHNEIDERMAN: Thank you.

How was the $7 amount arrived at?

SENATOR NOZZOLIO: Mr. President,

the response to that, as I mentioned in my opening remarks, this $7 fee, as I stated in my opening remarks -- I'll repeat it again - that this fee was arrived at by looking at the copayment made by those who are in state service who are in a healthcare plan sponsored by the state service.

And that is the copayment that legislators here pay, that the state employees who are participating in the health insurance program pay. We thought that that would be a good model to use for the copayment.

SENATOR SCHNEIDERMAN: Finally, through you, Mr. President -- by the way, Senator Breslin keeps saying "I pay 8, I pay 8." I hope you can help counsel him on how he got on that sort of a plan. Senator Stavisky pays 10. Obviously, you've got some information we need to get.

One final question, if the sponsor would continue to yield, Mr. President.

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

SENATOR NOZZOLIO: Yes.

ACTING PRESIDENT MEIER: The

sponsor yields.

SENATOR SCHNEIDERMAN: I note - and I think that it may be a very good provision. I'm very curious how this was arrived at -- that inmates will not be assessed copayment for psychiatric visits.

What was the genesis of that distinction, since it seems almost to run counter to many of our other laws that actually make it more difficult for people to have mental health illnesses covered by insurance or treated and treated the same as physical illnesses?

SENATOR NOZZOLIO: We, Mr. President, excluded the psychiatric cost, because in many cases the psychiatric -- the psychotic inmate is not working. In many instances, the psychotic inmate is not aware of what they're doing. So it made sense that -- for those types of calls that those would be excluded.

If Senator Schneiderman would like to amend this measure, we'd certainly entertain inclusion. But we thought that initially we would make this provision only

apply to medical payments.

SENATOR SCHNEIDERMAN: I'm sorry, I couldn't hear the last part.

SENATOR NOZZOLIO: Medical.

SENATOR SCHNEIDERMAN: Mental?

SENATOR NOZZOLIO: Medical.

ACTING PRESIDENT MEIER: Medical.

SENATOR SCHNEIDERMAN: I understand.

And through you, Mr. President, who will make the assessment of whether -

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

SENATOR NOZZOLIO: Yes. I yielded to one more question a question ago, but I'd be glad to yield again.

SENATOR SCHNEIDERMAN: Thank you.

I'm just curious as to how will the assessment be made that a particular inmate's needs are for mental health rather than physical health or psychiatric rather than medical.

SENATOR NOZZOLIO: Mr. President, each facility has a separate psychiatric staff, a psychiatric unit, requests for

psychiatric services. I think that there's certainly enough delineation within the system that no special delineation needs to be made in this legislation.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Stavisky.

SENATOR STAVISKY: If the Senator will yield for a number of questions.

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

SENATOR NOZZOLIO: Yes.

SENATOR STAVISKY: I have a number of questions.

ACTING PRESIDENT MEIER: He yields.

SENATOR STAVISKY: Would you explain how the medical treatment system works in our prison system? I assume the prisoner does not have a choice the way we do. But how does the system work in the prisons?

SENATOR NOZZOLIO: There is -- to answer this question, an extremely broad

question, that each -- to answer it as simply as I can, that each prisoner receives whatever medical services are necessary.

SENATOR STAVISKY: But who provides the service? Through you, Mr. President, I'd like to know who provides the service.

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

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR STAVISKY: How is the service provided? I assume that there is no choice, no HMO, for example.

SENATOR NOZZOLIO: Yes, that's correct.

ACTING PRESIDENT MEIER: He said yes, that's correct.

SENATOR STAVISKY: Mr. President -

SENATOR ONORATO: Mr. President, point of -

ACTING PRESIDENT MEIER: Senator

Onorato, why do you rise?

SENATOR ONORATO: I'm having a very, very difficult time to hear -

SENATOR STAVISKY: Me too.

SENATOR ONORATO: -- anything that's going on. I don't know if these microphones are on, and if they work. And if they don't, I think, in view of the fact that we have a budget surplus, I think it's time that we replaced these antiquated microphones so that we can actually hear what's going on in this chamber.

ACTING PRESIDENT MEIER: Senator Stavisky, do you have another question?

SENATOR STAVISKY: Or else we can see an ear doctor.

ACTING PRESIDENT MEIER: Senator Stavisky, are you asking Senator Nozzolio to yield to another question?

SENATOR STAVISKY: Yes, I'm asking Senator Nozzolio to yield.

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

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR STAVISKY: How does the telephone system work in the state correctional facilities? I'm looking for comparability along those lines.

SENATOR NOZZOLIO: Mr. President, through you, that this bill has nothing to do with the telephone system in our state facilities.

SENATOR STAVISKY: I understand that, but -

ACTING PRESIDENT MEIER: Senator Stavisky.

SENATOR STAVISKY: Mr. President, perhaps I didn't make my question clear enough.

Can we use the telephone system as a comparable system for the prisoners? In other words, what I'm asking is how do the - do the inmates pay for telephone service? Let me ask you that question.

SENATOR NOZZOLIO: Do I have to yield, Mr. President?

ACTING PRESIDENT MEIER: I

believe so. Do you yield for that question?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR NOZZOLIO: The question, I believe, was do inmates pay for telephone services. The answer is yes, they do.

ACTING PRESIDENT MEIER: Senator Stavisky.

SENATOR STAVISKY: Are they - through you, Mr. President -

ACTING PRESIDENT MEIER: Are you requesting the sponsor to yield for another question?

SENATOR STAVISKY: Yes, that's what I just -

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

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR STAVISKY: In other words, if an inmate were to place a telephone

call, they would be paying for their own telephone calls without a surcharge?

SENATOR NOZZOLIO: That, Mr. President, inmates make collect calls. They have the opportunity to make those collect calls through pay phones which exist in the prison system. Every prison across the system has pay phones that inmates are allowed to use pay phones.

SENATOR STAVISKY: Mr. President, I'm having a lot of trouble hearing that answer.

ACTING PRESIDENT MEIER: Senator Nozzolio, Senator Stavisky says she can't hear.

SENATOR NOZZOLIO: I'd be glad to repeat my answer, Mr. President.

That to answer Senator Stavisky's question, again, that each inmate is allowed to make and utilize calls on the pay phones that exist in each of the correctional facilities. Some may be barred because of bad behavior, but the inmates by and large are allowed to make those calls. They also are allowed to make collect calls in those

prison -- in those pay phones at each prison.

SENATOR STAVISKY: And the monies that are -

ACTING PRESIDENT MEIER: Senator Stavisky, are you -

SENATOR STAVISKY: Yeah, I only have a few more questions, if the Senator would yield.

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

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR STAVISKY: The monies collected from the telephone calls, those that are not made collect, do they go into a segregated fund or into the prison's general fund?

SENATOR NOZZOLIO: Mr. President, that this question relating to telephone calls, I've gone through the legislation that I have before us today and I see no reference to telephone calls. And this is a bill on medical copayments.

I think the distinguished Senator might have this mistaken in some way. But I see no relevance or germaneness to this question.

ACTING PRESIDENT MEIER: I tend to agree with your point, Senator.

Senator Stavisky.

SENATOR STAVISKY: I will tie it together when I make my comments at the end.

And I have just one last question.

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

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR STAVISKY: Can you tell us if there's comparability in the federal prisons? In other words, do they have a surcharge for health care in the federal prisons?

SENATOR NOZZOLIO: Mr. President, this requirement is -- yes, it is in the federal system as well as the states of California, Connecticut, Ohio, Pennsylvania,

New Jersey. Each have established this copayment system.

SENATOR STAVISKY: That was not my question. My question was in the federal penitentiary, for example, in Allenwood or - what's the other one? -- Marion, do they charge the inmates a copayment for health care?

SENATOR NOZZOLIO: Federal inmates are billed directly to the jurisdiction which was agreed to by the federal agency. That we're not certain about the other copayment system that every federal prison may utilize.

SENATOR STAVISKY: Mr. President, we -- I'm not the only one. I -- I cannot hear.

SENATOR NOZZOLIO: Senator, that the -- I am not certain about whether a federal -- I didn't understand your question, first.

That those federal inmates who may be in our state facilities are going to be billed to the appropriate federal agency. But in terms of the federal system, I listed the

states that have a copayment system. I am not certain whether or not the federal system has copayment requirements for medical services.

SENATOR STAVISKY: And my last question, if the Senator will yield.

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

SENATOR NOZZOLIO: Another last question? Yes, Mr. President.

ACTING PRESIDENT MEIER: I'm not going to comment.

The Senator will yield.

SENATOR STAVISKY: Mr. President, are the monies that are going to be collected from the copayments, are they going to be held in a segregated, separate account to take care of expenses for the inmates' medical care?

SENATOR NOZZOLIO: Mr. President, the answer is that these monies will go into the account for each facility, and the facility will determine the needs of its inmates and utilize those funds appropriately.

SENATOR STAVISKY: Thank you, Mr. President.

On the bill.

ACTING PRESIDENT MEIER: Senator Stavisky, on the bill.

SENATOR STAVISKY: The reason I asked about the telephone surcharges and payments received, the monies received on telephone calls, is because I think there is comparability. The monies from copayments made by the inmates going simply into the correctional facilities general fund.

It seems to me that if you're going to collect money for health care, then it ought to be segregated and used for health care. And the same is true of other special surcharges.

It seems to me that this is a bad bill. I voted against it last year, and I intend to vote no again this year.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President. I just have one question for Senator Nozzolio.

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

Senator Montgomery?

SENATOR NOZZOLIO: I'd be happy to yield to Senator Montgomery.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR MONTGOMERY: Okay. Thank you.

Senator Nozzolio, in the memo, the sponsor's memo on this bill, under the justification you say that New York currently spends 121 million each year on prison health services. You also state that instituting a copayment on inmates for medical treatment will reduce the large number of abusive medical visits and hold inmates partially responsible for their own health care expenses and provide a revenue source.

And I'm just wondering, Senator Nozzolio -- Mr. President, through you -- what percent or how much of this 121 million do we expect to recoup from this copayment program?

SENATOR NOZZOLIO: Mr. President, it's estimated that between seven and $8 million a year will be realized as a result of the establishment of a copay.

SENATOR MONTGOMERY: Through you, Mr. President, I didn't hear -

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

SENATOR MONTGOMERY: -- I didn't hear if it were 7 or 70 million.

SENATOR NOZZOLIO: Mr. President, between 7 and 8 million a year. Between $7 million and $8 million a year it is estimated that copayment would reap into the utilization of our correctional facilities.

SENATOR MONTGOMERY: All right. Thank you. So that's not quite 10 percent, it seems to me, Mr. President.

I would just like to read into the record some information that is available to all of us, from DOCS, a statement from Senator Nozzolio himself, as well as some of the news outlets across our state.

ACTING PRESIDENT MEIER: Senator Montgomery, on the bill.

SENATOR MONTGOMERY: On the bill.

Under the heading "Public Views Inmate Work for Taxpayer Projects," this is an article that talks about the exhibit that we

had here in the State Capitol about two weeks ago. It says that seating desks and other furniture produced for use in schools and government offices and institutions, Braille signs, which are regularly produced to ensure compliance with the Americans Disabilities Act, and many other items were displayed for us to review and to view.

There is a quote by Governor Pataki which says, inmate -- who said -- this is Governor Pataki's direct quote, "Inmate labor inside our prisons continues to provide wide-ranging benefits for taxpayers of New York State. Through these efforts and other successful prison initiatives, inmates are helping to help offset the cost of their incarceration while at the same time providing something of value to tens of thousands of New Yorkers." That was a quote by Governor Pataki at the opening of the DOCS exhibit.

"Almost everything that is used inside our prisons, from clothing for staff and inmates to bedding supplies, is made by inmates. Braille textbooks for blind schoolchildren, prescription eyewear for some

Medicaid clients, brochures for visitors to New York State parks, cleaning items, and dozens of other products." That was a quote by Commissioner Goord when he described some of the activities of inmates in our facilities.

"Inmates long have assisted New Yorkers in recovering from natural disasters like blizzards, floods, tornados, and ice storms. Earlier this year," says Commissioner Goord, "their efforts and those of our correction officers were instrumental in helping residents of Western New York recover from the heavy snows which blanketed the region."

I also have a quote from Senator Nozzolio: "The division of industries remains one of the key, unknown, unsung success stories of the Department of Correctional Services. That statement comes directly from Senator Nozzolio himself.

In the same issue of the DOCS report, they go on to talk about inmates who have sorted and bagged 1500 tons of food for needy New Yorkers. Inmates at seven state

prisons in western and northern New York recently sorted and bagged in excess of 300,000 pounds of surplus onions for distribution to needy individuals and families throughout New York State.

In another article, "Inmates' Work Helps Preserve a Cemetery in Elmira. 30 Elmira correctional facility inmates, in a way of giving back to the community and boosting their own self-esteem and making lengthy prison sentences pass more quickly, became involved in a project to rebuild a fence for a cemetery.

"It took the inmates about six months to transform 26 tons of iron into 232 ten-foot fence sections and the same number of 11-foot posts. More than 3 miles of bar stock was cut by hand into 3,712 six-foot pieces and welded onto the frame. Inmates used a hand torch to cut the posts and then buffed the metal's rough edges with a grinder.

"Inmates from the prison's machine shop built the brackets to connect the sections, while others in the maintenance department hand painted and completed

sections.

"When the trucks delivered the iron, all 26 tons were unloaded by hand. We had a 62-year-old inmate spend four days straight doing nothing but cutting the pieces."

In another article, inmates build playhouses for charity. "At the Elmira correctional facility, in a unique program that helps abused and neglected kids in Chemung and Schuyler counties, nearly twenty inmates at the prison built two dollhouses and an 8-foot-tall playhouse for CASA of Chemung and Schuyler counties, which is a nonprofit children's advocacy program. The walk-in, wood frame playhouse features clapboard siding, scroll work on the gable ends, and other detailed craftsmanship. About 14 inmates spent three weeks building it."

Each month -- and we additionally have a thank-you letter from a Rochester gentleman who noted that there were several inmates in front of his home removing snow from a fire hydrant which had been covered for some days, and he thanked them for that.

I wanted to read this into the record, Mr. President, because each time this report comes out, there are articles in it which describe what inmates do to pay back to communities across the state in some small way; sometimes, very large ways.

So I think that it is very shortsighted for us to have a bill before us which would charge them a copayment which does not even recoup 10 percent of what it theoretically costs to provide health services, while at the same time we reap a tremendous benefit as taxpayers from the activities of inmates within the prisons.

Certainly, Mr. President, I would like to see more productive programs for inmates and by inmates. But nonetheless, the little that we have produces an enormous benefit for taxpayers in New York State.

So I certainly do not support this attempt to charge inmates for their health care, because I don't believe it is fair to ask inmates to pay for their health care. We at least should provide health care for them, because they in fact do come out of the

facilities, do work in communities, and certainly eventually will return to communities from which they originated. And the least that we should be looking to do is make sure that their basic health needs are provided for while they're incarcerated.

So I will be voting no on this legislation. Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Lachman.

SENATOR LACHMAN: Will the Senator yield for a question?

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

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR LACHMAN: I'm aware of the fact that prisoners get a certain stipend when they work. Do you know what the stipend is? Is it consistent throughout the state, or does it vary from county to county?

SENATOR NOZZOLIO: It's a

statewide system, Mr. President. It varies depending on the job. An inmate can -

SENATOR LACHMAN: How much is it? I'm sorry. Through you, Mr. President.

SENATOR NOZZOLIO: Inmate wage amounts, hourly wages, depending on the grade, the type of work, it could go anywhere from 7 cents to 65 cents an hour.

SENATOR LACHMAN: Seven -

SENATOR NOZZOLIO: -- cents to 65 cents an hour.

SENATOR LACHMAN: -- to 65 cents an hour.

And, Mr. President, may I continue?

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

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR LACHMAN: What is the maximum amount of hours that a prisoner can work?

SENATOR NOZZOLIO: I'm not quite sure, Mr. President. I believe it depends on

the job, the availability. Usually there is much more work in our prison system than there are inmates to fill those positions.

SENATOR LACHMAN: Mr. President, my final question, if the Senator continues to yield.

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

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR LACHMAN: If the prisoner is not currently working and therefore can't afford to pay the copayment, will he be covered by the state if his health is at risk?

SENATOR NOZZOLIO: Yes, Mr. President. That although this makes a modest responsibility for an inmate to take care of their own medical care expenses, no inmate is going to be denied medical services for their lack of ability to pay.

SENATOR LACHMAN: No prisoner will be denied medical service even if he lacks payment for copayment?

SENATOR NOZZOLIO: That's correct.

SENATOR LACHMAN: Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Onorato.

SENATOR ONORATO: Mr. President, will the sponsor yield?

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

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR ONORATO: Senator Nozzolio, if an inmate's family has a health plan currently in effect, a family plan, are they covered while they are in prison? Can they use that as coverage for medical benefits?

SENATOR NOZZOLIO: Mr. President, the question certainly depends on the plan. I assume most families do not have HMOs of certain correctional facilities located in

their plans.

I think you have to look at the plan, Senator, that individual families have. But I doubt too many include your state prison facilities as part of the HMOs covered under those family plans.

SENATOR ONORATO: Through you, Mr. President.

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

SENATOR ONORATO: If in fact they do have a health plan coverage, has the state at any time made an attempt to collect their medical payments from an HMO plan whether they belong to an HMO or not, or if they belong to simply a private health plan that they -- just like us, we have a health plan and we have a copay.

SENATOR NOZZOLIO: Mr. President, I'm unaware of any attempts in the state to recover from individual, private health care insurers.

SENATOR ONORATO: Through you, Mr. President.

ACTING PRESIDENT MEIER: Senator

Nozzolio, do you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR ONORATO: Senator Nozzolio, you state that you would charge a $7 medical copay for an individual who is currently earning anywhere from 7 cents an hour to 65 cents an hour. We here in the Legislature are very, very blessed that we are charged $8 as a copay and we're making $90,000 a year.

Don't you think that, by comparison, that charging a $7 copay for an inmate making 7 cents an hour is a little bit beyond their means?

SENATOR NOZZOLIO: Mr. President, I think it's an affront to the working men and women in this state who are working for this state that support those who are in prison - through three meals a day, through their housing, their clothing, their education, all other items that are given to prisoners in an effort to rehabilitate them. Those costs are

borne by the taxpayers of the state.

And I think it's an insult -- you asked my opinion, Senator. I think it's an insult to those who are footing the bill that they themselves, as state employees, must provide not just their own copay for their own health insurance but for all the other benefits given to prison inmates.

Let's not forget these inmates are there for a reason. And the reason is they victimized society. And in many cases, they bludgeoned their victims. That we need to keep that in focus here. This is an hourly wage issue. This is an issue of fairness, of equity to crime victims, and of setting up a modest system.

As I mentioned, the states of California, Connecticut, Ohio, Pennsylvania, New Jersey, they've all respected their taxpayers and said to their taxpayers that we believe inmates should pay for part of their medical treatment. New York should be the same.

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

yield.

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

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR ONORATO: Senator Nozzolio, in view of the fact that they -- and I don't have any problem with a prisoner who really comes from a wealthy family and can really afford to pay that. I'm having a problem fathoming the fact that they make below the minimum wage while they're actually working in prison to pay this off.

And if they are unfortunate enough to become sick at one time or another and require treatment and they've got to pay $7, is there any provisions in here to allow them to make up for it so that they'll have some money to go to the PX in the prison system at a later date to recoup some of that money? You know, while they're sick, they're not going to be able to work.

SENATOR NOZZOLIO: Mr. President,

I direct Senator Onorato's concerns to lines 15 through 20 on page 1 of the legislation. That each inmate account is credited and debited for their copayment. No one will be refused medical treatment if they do not have enough money in their account for making this copayment. And that certainly we're trying to establish balance here.

SENATOR ONORATO: Through you, Mr. President.

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

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR ONORATO: My concern was if they don't have -- if they don't have enough money to make the copayment. I don't know if you've established a minimum amount that they have in their account. But assuming that they have $25 in their account that they've earned and they required to go to the medical facility for four visits, they are now completely wiped out and they have no further

means of going to get any other items that they would require from the -- will there be provisions to allow them to earn some other additional funds to make up for it?

SENATOR NOZZOLIO: Mr. President, there are more jobs in our correctional facilities than there are inmates willing to fill those jobs. That we have inmates not forced to work in New York, although that certainly could be debated on another occasion as to the viability and wisdom of making inmates work while they're incarcerated. That's not the issue before us today.

What's before us today is the payment of a small medical copayment fee. That no inmate, according to this legislation, is going to be denied that medical treatment if they do not have enough money in their account to meet the satisfaction of the small copayment this legislation requires.

SENATOR ONORATO: Thank you.

ACTING PRESIDENT MEIER: Senator Dollinger.

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

ACTING PRESIDENT MEIER: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I voted in favor of this bill in the past. I'm going to vote for it again.

I would just encourage Senator Nozzolio to basically challenge our colleagues in the Assembly to bring this bill out, and this whole concept of inmate health, out to part of our debate both in this chamber and the other chamber.

I think there's been a recent episode in Rochester, New York, with respect to the county jail and the private concern that was hired to provide health care in the county jail, which has led to serious questions raised about the quality of inmate health.

I think there's a critical issue facing New York, as we have 70,000 people in our prison system, a rising incidence of hepatitis and tuberculosis which can significantly influence the entire population. I'm not opposed to the concept of copays, but I think that this bill merits a full

discussion with our colleagues in the Assembly.

And this whole concept of inmate health and the quality of health care we provide in our prisons is critically important now. There's a huge population that is going to go back into the general population, be released from prison. And the question of the quality of their health care, especially with respect to infectious diseases, is I think a critically important part of our public health.

So I'm going to vote in favor of this bill, and I'm going to urge Senator Nozzolio to call out our friends in the Assembly. And what I would think should happen is there should be a joint Assembly and Senate committee that should analyze the questions related to inmate health and make a full report to the Legislature on the steps necessary to provide quality health care in our prisons. So that we don't have the unfortunate consequence not only of a rising incidence of infectious diseases in our prisons but the enormous danger that that

poses to our general population.

This is a tip of the iceberg. I'm willing to vote in favor of it, Mr. President. But the iceberg, the portion that remains submerged, is what is dangerous to our public health. And I would just encourage Senator Nozzolio to take my yes vote to the Assembly and to challenge them to come forward and address this issue.

ACTING PRESIDENT MEIER: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Yes, thank you, Mr. President, if the Senator would yield.

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

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HASSELL-THOMPSON: Thank you, Mr. President. Through you. Prison health is an outside contracted entity and is supported by the general revenue fund. Senator, can you tell me currently, since

there is no mechanism to receive funds, how does this bill intend to do that?

SENATOR NOZZOLIO: Mr. President, I don't understand the question.

SENATOR HASSELL-THOMPSON: I'll repeat the question.

We're talking about prison health, and we're talking about copayments that prisoners would pay. And currently we contract outside services for prison health. There is a mechanism to dispense, but there is not a mechanism to collect.

How, then, will this legislation impact that? And will we be creating a superstructure that would allow for these payments to be collected? And what would be the fiscal impact to the state if we had to do that?

SENATOR NOZZOLIO: Mr. President, the procedures established under this legislation require inmates to log in to schedule their visits, providing their name, ID, and documentation and description of their complaint. We also allow, under Section 6, that no inmate shall be refused any treatment.

That it's a very simple procedure, as simple as it is to stand in a sick call is now.

That I do not understand the complicating factors that are suggested by this question.

SENATOR HASSELL-THOMPSON: Through you, Mr. President, then let me ask the question this way.

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

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HASSELL-THOMPSON: Is the money deducted from the inmate's account and, in that deduction, how is it paid into -- back into the general revenue fund?

SENATOR NOZZOLIO: Mr. President, the process where each inmate is debited their account and the account is frozen, those descriptions are placed in the bill. Also, as is that the commissioner is allowed to promulgate, under this legislation, rules necessary for the implementation of the

provisions. That the commissioner will then put in his formal rule-making authority the process where these individual funds will be expended and collected.

SENATOR HASSELL-THOMPSON: And collected. Was that the response?

SENATOR NOZZOLIO: Yes, Mr. President.

SENATOR HASSELL-THOMPSON: I still -- through you, Mr. President -

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

SENATOR HASSELL-THOMPSON: Yes, I would.

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

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HASSELL-THOMPSON: My question continues to be you explained the process in terms of the how. But you have not explained -- the question that I asked was, how does the mechanism trigger -- for the

money that is collected from the prisoner, there is no mechanism currently, in public state law, in Public Health Law within the prison to collect. How will that be structured?

SENATOR NOZZOLIO: Looking at page 2, lines -- line 5 through 8, it's listed, Mr. President, that monies collected pursuant to the section -- I'll read it - will be plead available for the operation of the correctional facility.

Section 10, line 7, says the commissioner shall promulgate rules and regulations necessary for the implementation of the -- of this section. That the monies collected will be, as the statute will require, made available for the operation of the correctional facility where they're collected from.

If an inmate is in Attica and is seeking medical treatment in Attica, the monies collected will be used in Attica, and the commissioner will set up the necessary regulatory process where those monies will be utilized.

SENATOR HASSELL-THOMPSON: If the Senator will yield for one other question.

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

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HASSELL-THOMPSON: Your statement was that this money would then go back into the general use fund, as -- using Attica as an example of how this would occur.

Would then -- my question, then, would the amount of general revenue fund that is appropriated for that prison be reduced by that amount of money?

SENATOR NOZZOLIO: Mr. President, the answer is no.

SENATOR HASSELL-THOMPSON: I will honor my last -- that as my only question. Thank you, Mr. President. Thank you.

SENATOR NOZZOLIO: Thank you.

ACTING PRESIDENT MEIER: For the information of the Senators, we're running a list of the order that people have sought

recognition. We have Senators Brown, Espada, and Mendez, in that order.

Senator Brown is next.

SENATOR BROWN: Through you, Mr. President, will the Senator yield?

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

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR BROWN: I know that through this bill, as I understand it, the inmate will be assessed a copayment for medical treatment received. If the inmate never builds up an account where they never have money that can be subtracted from, at the end of their stay in prison, once that inmate is released, could an inmate conceivably leave a state facility owing the state money for medical treatment?

SENATOR NOZZOLIO: Mr. President, yes.

SENATOR BROWN: Through you, Mr.

President, would the sponsor continue to yield?

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

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR BROWN: So understanding that an inmate could conceivably leave a prison owing the state money for medical treatment, would that amount, after the period of incarceration, be waived, or would this inmate actually be faced with the burden of having to pay that indebtedness to the state?

SENATOR NOZZOLIO: That the process upon which the copayment is collected would result in the inmate receiving medical services if he did not pay that copayment. Because this legislation specifically says no inmate will be denied medical services if they could not afford the copay, if there was not enough money in their account to establish that copay.

The legislation also establishes a

logging and a posting on the inmate's account of the charge. So that, in effect, there would be a debit on that inmate account.

I think the regulations certainly could address that issue that the commissioner would have to promulgate on the process. There is no compulsion in this legislation that the state go after that amount. Assuming a hundred visits that would result in $700, it would probably cost the state more to go after that once an inmate left.

And I think it would have been to be -- it's a very good question, Mr. President. I think it would have to be something subject to the regulations that the commissioner would have to promulgate.

SENATOR BROWN: On the bill, Mr. President.

ACTING PRESIDENT MEIER: Senator Brown, on the bill.

SENATOR BROWN: I want to thank Senator Nozzolio for responding to my questions.

I'm inclined to vote in favor of this measure. I think this is fiscally

responsible. I've read the bill memo that indicates the amount of money that we spend as a state on the health care of persons incarcerated in the state. And I think it is reasonable for inmates to be able to contribute toward the health benefits that they do receive from the State of New York. And I certainly am also mindful that people incarcerated are people that have committed crimes against their fellow citizens in the state.

My one concern, upon hearing the responses to the two questions that I asked, is that inmates could conceivably complete their term of incarceration owing the state money. And I was happy to hear Senator Nozzolio say that he would be willing to look at that.

Because certainly I think it would be reasonable and make sense for some kind of procedure to waive the amount owed at the end of an inmate's period of incarceration or cap the amount owed so an inmate, depending on what kind of medical treatment they receive - say an inmate develops some form of cancer or

some other expensive form of medical illness, medical procedure while they are incarcerated, that they wouldn't leave a correctional facility owing the state an exorbitant amount of money.

But with that being said, I do support this legislation. I think citizens who are not incarcerated certainly have to pay for their health care. And I think just because someone is incarcerated should not exempt them from being able to contribute to the cost of their health care.

So I will be voting in the affirmative when it's time to vote. Thank you.

ACTING PRESIDENT MEIER: Senator Espada.

SENATOR ESPADA: Thank you, Mr. President. On the bill.

ACTING PRESIDENT MEIER: Senator Espada, on the bill.

SENATOR ESPADA: The sponsor has asked us to focus and to keep a focus, and I ask us to visit reality. I mean, we're talking about people who have lost their

freedom. We're talking about, in many instances, 23 hours of solitary confinement, as documented by my colleagues Senators Duane and Montgomery, a high incidence of rape and other forms of violence, daily rituals of degradation. We're talking about telephone surcharges of family members, just basic forms of communication.

We're talking about chronic illnesses -- TB, hepatitis, HIV, sexually transmitted diseases, cancers, heart ailments, greater than the average member of the free society.

We're talking about a country that is the greatest democracy on earth but that jails over 2 million people. This is well known throughout the world.

And so we're putting people in jail that need to be in jail. We're also not providing a system of quality -- or shall I say we do provide a system of legal representation that has been chronicled to be clearly inadequate and way below anyone's exceptions. 1600 people in a caseload for a public defender, meeting their clients for the

first time in court.

I share this context because context is important. And the details of this bill are only important, I think, in an abstractual sense. Because the fact of the matter is that we're clear where the sponsor is coming from, we're clear where others who support him come from. They want to pile punishment on top of punishment.

And I just cite the other realities because just think for a moment how silly we would be, how nonproductive we are when we curtail and erect barriers to getting basic health care, basic health care that for anyone that dares look at it would not wish that upon their worst enemy, and now we are erecting these other barriers, on top of continued exploitation of these people who are in there making lots of folks rich on the outside. This too has been chronicled and documented.

So my basic question is yes, we have a focus, we have a reality, and we have a continuation of piling punishment on top of punishment to people, then denying them basic access to care. They're going to make their

way back into society, and we want them to be integrated back with their families, back into their community, and not do some of the things that have been done to them on the inside to us once they reach the outside.

I'm not talking pampering here, I'm talking about you've kept them in jail. They have no quality legal representation. Maybe, maybe some of them. I'll take your percentages. 1 percent of them are inside and innocent of the crime that they were accused of.

But this is a wholesale mix of an angry, ill-informed, pro-getting-elected-in certain-districts kind of approach to legislating something that makes no sense when you visit the reality of people in jail, when you visit their conditions, and when you visit what we still maintain should be basic rehabilitation. Even if you don't buy that, how about basic humanity?

I would vote, Mr. President, against this bill for all those reasons and many, many more.

ACTING PRESIDENT MEIER: Senator

Mendez.

SENATOR MENDEZ: Thank you, Mr. President. I wonder if Senator Nozzolio would yield for a question.

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

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR MENDEZ: Senator Nozzolio, you mentioned that there are other states that do have in fact this same kind of legislation into law. Tell me, aren't inmates supposed to be wardens of the state?

SENATOR NOZZOLIO: Mr. President, I apologize, I could not hear Senator Mendez's question.

SENATOR MENDEZ: My question is a simple, little one. Aren't inmates supposed to be wardens of the state? Wards of the state, I'm sorry.

SENATOR NOZZOLIO: Yes, Mr. President, inmates are considered wards of the

state.

SENATOR MENDEZ: So once the state -

ACTING PRESIDENT MEIER: You want Senator Nozzolio to yield to another question?

SENATOR MENDEZ: Yes, thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Nozzolio, do you yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR MENDEZ: Once the state takes the responsibility of having wards, wouldn't you say it is the responsibility of the state to provide for health, education, counseling or whatever?

SENATOR NOZZOLIO: Yes, Mr. President, I believe it is the responsibility of the state to provide those services.

SENATOR MENDEZ: And, Mr. President -- thank you. And, Mr. President, I understand that all medical services in the New York State prison system are given to

outside corporations. There was a time, I believe I'm correct, in which doctors within the facilities would take care of the medical problems of the inmates.

And I understand that -- and I understand that some of those corporations are not delivering the kinds of medical services that we are paying for. Is that a reality, Senator Nozzolio?

SENATOR NOZZOLIO: Mr. President.

ACTING PRESIDENT MEIER: Senator Nozzolio.

SENATOR NOZZOLIO: I'm sorry, Mr. President, the question was so long I couldn't understand it.

SENATOR MENDEZ: Mr. President, Senator Nozzolio, I understand that the medical services in the state prison system is given out to private organizations. Is that a fact?

SENATOR NOZZOLIO: Mr. President, there are a number of services provided to inmates that are not located right on the prison itself. For instance, those prisoners at Auburn that require serious medical

attention might have to go to Syracuse and be taken care of at Upstate Medical Center and other private or public health providers.

So it's not exclusively provided by state doctors or the like. I think that's the gist of Senator Mendez's question.

SENATOR MENDEZ: Thank you, Mr. President. I understand that there has been some discontent with the kind of medical services that are being provided by some of those organizations because we are not receiving the good medical services for the kinds of monies that the state is paying for those. Is that a fact, Senator Nozzolio?

SENATOR NOZZOLIO: Senator Mendez may be correct.

SENATOR MENDEZ: Well, I'll tell you, I happen -- on the bill.

Thank you, Senator Nozzolio.

ACTING PRESIDENT MEIER: Senator Mendez, on the bill.

SENATOR MENDEZ: Mr. President, I think that this is a very bad bill. I don't care if the other 49 states do have similar bills like this already made law. The fact is

that all these inmates, they committed a crime. In our civilized society, they have to go back to prison and pay for it, pay back to society for their transgression.

However, being wards of the state, the state should pay for their rehabilitation, they should pay for their medical services, and they should pay for all the things that are needed so when they reenter society, they will be useful not only to their families and their neighborhood but to all of us.

Thank you. I'll vote no.

ACTING PRESIDENT MEIER: Does any other member wish to be heard on this bill?

Debate is closed.

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

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

SENATOR MONTGOMERY: Yes, Mr. President. I'm voting no on this bill, and

I'm joining my colleagues Senators Duane, Markowitz, Mendez, Onorato, Oppenheimer, Paterson, Sampson, Santiago, Schneiderman, Seabrook, Senator Ada Smith, Senator Stavisky, and Senator Marchi, who we all voted no in the year 2000, and we're voting no, most of us, again.

We are talking about many different needs in terms of health care. I don't know how people who are in the SHU units, doubled up, how are they going to get -- receive health care, how will they ever pay for it? They don't work and they are in there for long periods of time, some of them.

How do we treat inmates who are injured? That's not apparent in this legislation. There are no exemptions. We - we're charging people who earn 65 cents an hour or less. There are no exemptions from payment, because even though there's a clause that says that if they don't have money they don't have to pay, their account gets frozen. So whenever they do get money, they will be charged.

And in some instances, as my

colleague Senator Brown has pointed out, they could possibly leave prison owing money for their health care, and how will they get money, earn money to repay? So they'll probably end up back in prison because they didn't pay their health care bill.

So there are many, many flaws with this legislation, in addition to the fact that it's just plain mean-spirited and does not do anything, not even recoup enough money to pay for the costs of implementing it.

So, Mr. President, I vote no.

ACTING PRESIDENT MEIER: Senator Montgomery will be recorded in the negative.

Senator Oppenheimer, to explain her vote.

SENATOR OPPENHEIMER: Thank you, Mr. President.

I'm voting no because it occurred to me that if there wasn't any money in the account that the patient would not be getting health care. And not to receive health care in our society when, number one, there might be a contagious disease there -- I mean, things that could be transmitted to other

people within the prison -- it sounds like an absurd and kind of stupid thing to be doing, to deprive them of health care because they don't have the money, and that might cost us much more as a society.

The other point I would like to make is this is an opportunity for me to say that what we are providing in the form of education in prisons is almost meaningless. And that we have proven with statistics that if an inmate is able to access a college degree, that you will probably never see that inmate again. And that might be one of the reasons that we are not putting the kind of education into prisons that we ought to be.

We can show that with a four-year degree, that the typical inmate comes back at a rate of maybe 5 percent. With a two-year degree from a junior college, the equivalent of a junior-college degree, chances of that inmate coming back is something like 18 percent. And that without education and with only the slimmest degree of education, that the likelihood of that prisoner returning is very high, somewhere around 60 or

70 percent.

It makes no sense not to be providing higher education to our prisoners that are capable of higher education, because it then puts them on a path of leading a productive life and joining and becoming part of our society.

Thank you very much. I'm voting no.

ACTING PRESIDENT MEIER: Senator Oppenheimer will be recorded in the negative.

Senator Onorato.

SENATOR ONORATO: Thank you, Mr. President, to explain my vote.

As I've stated earlier, I believe in the concept of this here. But this particular bill does not fit my idea of the concept. It's so full of flaws. Prison is a very, very violent place. We have people who have committed violent crimes that are in there. We're asking them to pay a copayment of $7, which is not commensurate with the amount of money that they're actually earning while they're in prison.

And it doesn't even -- I just went

over the bill again. It doesn't cover a prisoner who is attacked and savagely beaten by another inmate and requires hospitalization. You're telling him now that while he's in prison and he's getting beaten and he's a victim of a crime within the prison system, he is required to make a copayment for being victimized while they're in prison.

Now, you know, this bill needs a lot of work on it. And when they do that work and they make sense out of it, I will vote yes. But under the current form, I will vote no.

ACTING PRESIDENT MEIER: Senator Onorato will be recorded in the negative.

Senator Schneiderman, to explain his vote.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

I think that one of the issues that is raised by this bill and is an incredibly important issue is something that we really need to address in a more comprehensive way, and that is the cost of our state's correction system. We are told that we are entering a

period of economic downturn. We are told that several years from now our budget surpluses will turn into deficits.

We need money for schools, we need money for health care, we need money for housing. And there's no greater drain on state's resources than the unreasonable expenses of operating this correction system.

I would respectfully submit, however, the way to deal with that issue is not to require copayments from inmates but to deal with the fact that we have a lot of people serving much too much time in the prison system. And if we don't take the opportunity presented to us this year to reform the Rockefeller Drug Laws and deal with some sentencing reform issues, which everyone seems reluctant to address because I guess you can never be hurt by appearing to be too tough on crime, we are going to suffer and our state is going to suffer.

And I think that the only thing for us to do is deal with the issue of cost that Senator Nozzolio has identified here in an honest way. Let's reform our sentencing laws.

Let's get people who don't need to be in prison out of prison. Let's save the state some money we can spend better in other ways.

ACTING PRESIDENT MEIER: Senator Schneiderman will be recorded in the negative.

Senator Stavisky, to explain her vote.

SENATOR STAVISKY: Mr. President, I wish to vote no on this bill. It seems to me that it would set a dreadful, dreadful precedent. The next thing you know, when teachers come to teach inmates, we're going to start charging them tuition payments.

I can see that as the next step, and I think we ought to draw the line at this point and say no.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Stavisky will be recorded in the negative.

Senator Hassell-Thompson, to explain her vote.

SENATOR HASSELL-THOMPSON: Thank you, Mr. President.

I too will be voting no. I believe in concept there are some remunerations and

different areas where in prison reform I think that we ought to be looking at how inmates can pay back some costs. But I don't think that this is the bill to begin to do that.

And even though the Senator's legislation speaks to saving the state money, when asked the question what happens to this money, will this be used to pay down some of the bill, the answer to that was that it would not.

And it would seem that it would give the commissioner a slush fund as opposed to going to reducing the cost of inmates' expenditures to the state. So therefore, it's in opposition to what his own legislative intent seems to be, so I will be voting no.

ACTING PRESIDENT MEIER: Senator Hassell-Thompson will be recorded in the negative.

Senator Gentile, to explain his vote.

SENATOR GENTILE: Thank you, Mr. President.

While this bill may not be perfect and may have some flaws, it is not without

precedent. As Senator Nozzolio has indicated, this bill is similar to bills that have been introduced and passed in Arizona, Minnesota, Pennsylvania, and Nevada. In each of those cases, this bill has produced savings for the state and has sent a message to the inmates and to the people of the state that copayments are some form of remuneration for the state.

It's not a perfect bill, but it's a good bill, and I will be voting with Senator Nozzolio in the affirmative.

ACTING PRESIDENT MEIER: Senator Gentile will be recorded in the affirmative.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 189 are Senators Duane, Espada, Gonzalez, Hassell-Thompson, Marchi, Markowitz, Mendez, Montgomery, Onorato, Oppenheimer, Paterson, Sampson, Santiago, Schneiderman, A. Smith, M. Smith, and Senator Stavisky. Ayes, 42. Nays, 17.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Marcellino.

SENATOR MARCELLINO: Yes, Mr. President. At this time can we call up Calendar Number 250.

ACTING PRESIDENT MEIER: The Secretary will read Calendar 250.

THE SECRETARY: Calendar Number 250, by Member of the Assembly Lentol, Assembly Print Number 5305, an act to amend the Judiciary Law and the Penal Law.

SENATOR BRESLIN: Explanation.

ACTING PRESIDENT MEIER: Senator Lack, an explanation has been requested by Senator Breslin of Calendar 250.

SENATOR LACK: Thank you, Mr. President.

Mr. President, this bill would amend the Penal Law. It's a bill we passed last year -- the Assembly has now joined us and passed it this year -- which would create the new crime of providing a juror with an unlawful gratuity based upon an actual case that occurred in the City of New York a couple of years ago.

We introduced our own bill two years ago. We've then substituted a bill that

we received from the judiciary that's virtually the same as what we passed. And it basically would establish a Class A misdemeanor when a person who had been party to an action tries to confer with the intent to reward a juror for said service on a jury with an unlawful gratuity.

ACTING PRESIDENT MEIER: Senator Breslin.

SENATOR BRESLIN: Mr. President, through you, would the sponsor yield to a question?

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

SENATOR LACK: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR BRESLIN: Under the existing law as it is now, what would happen if someone offered a gratuity to a juror after either a criminal or a civil trial?

SENATOR LACK: He'd pocket the money and pay taxes to the IRS and the State Tax Department.

SENATOR BRESLIN: Mr. President, if the sponsor would continue to yield.

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

SENATOR LACK: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR BRESLIN: Under the law as proposed, if there was a situation during a long trial, as a number of us have had, there's a bonding between a -

SENATOR LACK: Excuse me, Mr. President, I can't hear Senator Breslin.

ACTING PRESIDENT MEIER: Can we have a little order in the chamber, please. Keep the conversation down so we can all hear the debate.

Senator Breslin.

SENATOR BRESLIN: Again through you, Mr. President, through long trials at times there's a bonding between the defendant, either in a criminal or a civil trial. And if a defendant is exonerated in a criminal trial, again one of length, he's built up a bond with

that juror. And if he sent them fruit baskets or things like that, would that be accountable under the new proposed law?

SENATOR LACK: No, Mr. President, of course we're talking about an amendment to the Penal Law, which in and by itself has to be strictly construed. In addition to that, the body of the bill itself, in line 15, says there has to be intent to reward such person -- in this case, the juror -- for said service.

So unless -- and indeed, flowers, a bottle of liquor, "come on out and have a drink" or any other such situation is not termed to be an unlawful gratuity unless same is meant to reward such person for such service, in the same way that Abe Hirschfeld passed out checks for $2,500, which was the gravamen that led to the submission of the instant bill.

SENATOR BRESLIN: Again through you, Mr. President, if the sponsor would yield.

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

SENATOR LACK: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR BRESLIN: Were there any other cases other than the Abe Hirschfeld case which precipitated the introduction of this legislation?

SENATOR LACK: No, I'm happy to say that as far as I know, in the annals of modern-day New York penal law, Mr. Hirschfeld seems to have been unique and thought about this all by himself. And there are no other recorded instances of anybody, including former candidates for office in the Democratic Party, like Mr. Hirschfeld, who has paid off people for serving on a jury.

And the whole point of this particular bill, Mr. President -- by the way, which poses no penalties for those who receive the money -- is to pose penalties for those who try to give the money specifically as a reward.

And in Mr. Hirschfeld's case, since that has been brought up, he specifically, Mr.

President, did just that. It was not a "thanks so much for sitting for a month right here, here's a bottle of liquor," or "can we get a drink, I know it was a long time in which you people had to serve," or "please accept these flowers so you can smell them nicely for a couple of days because you had to sit in a jury box for a month," this was, "Hey, you guys did a great thing, and I want to pay you, here's $2,500," and he passed out checks to whoever wanted to take them.

SENATOR BRESLIN: One final question, if the sponsor would yield, Mr. President.

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

SENATOR LACK: Yes, I will.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR BRESLIN: In the summary of the legislation, it indicates that there's no financial impact. But it also says that there's -- that the OCA would undertake a significant amount of advertising to let people know that this law exists. It seemed

to be somewhat contradictory.

Is there the thought of any expenditure of dollars to accomplish that goal?

SENATOR LACK: From what I understand, Mr. President, we're talking about a minimal amount. And the, quote, unquote, advertising is in and around the courthouse, in the same way that OCA posts all sorts of things. One of which is, don't give unlawful gratuities to jurors to reward them for their service.

I mean, as far as I'm concerned, OCA has chosen a very neutral term in terms of "unlawful gratuity." Personally, I think it's bribery. But I will go along with unlawful gratuity. It would establish a Class A misdemeanor. We have separate penalties for bribery.

But I do have to hand it to Mr. Hirschfeld. He found in what he was doing that technically, as a former assistant DA myself, of course it isn't bribery, and therefore there was no violation in his writing out checks to jurors. But be that as

it may, from now on anybody who tries that type of thing will have committed a Class A misdemeanor.

SENATOR BRESLIN: And I apologize, there is one question that led through the answer to the prior question.

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

SENATOR LACK: Absolutely.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR BRESLIN: I happen to agree with the bribery designation. And given that, was there any consideration given to making it a felony rather than a Class A misdemeanor?

SENATOR LACK: There was some consideration, Mr. President. But by the way the Penal Law is structured and other offenses that constitute something close to tampering with a witness or a juror, and since this occurs allegedly after the fact, after the completion of whatever the instant trial that gave rise to the factual situation to be accomplished here, it was decided to leave it

as a Class A misdemeanor.

I would assume, if somebody comes up with a new or more novel approach on how to handle this -- I mean, because I can think of ways -- I mean, I can think of ways to violate this immediately. This was put in specifically for what it was supposed to do, not allow for a repeat of what Mr. Hirschfeld did. If indeed somebody wants to get more innovative or ingenious and create new and better ways to carry on the purpose that Mr. Hirschfeld has managed to establish in our law, I can think of further ways to structure this that would have resulted in what I would consider to be felonious behavior for which this unlawful gratuity statute -- assuming it's passed by this house and signed into law by the Governor -- would just be the misdemeanor compared to the felonious statute, I'd be only to happy to draft.

SENATOR BRESLIN: Thank you, Mr. President. On the bill.

ACTING PRESIDENT MEIER: Senator Breslin, on the bill.

SENATOR BRESLIN: I think I first

will compliment Senator Lack on the bill itself. It does close a loophole that when we read about Abe Hirschfeld offering $2,500 to jurors after a trial, and particularly a Democrat doing that, I think we were all, quite frankly, shocked. And the quicker we close that loophole, the quicker we make sure that that doesn't happen again, the better off all of us will be.

And for that reason, I will vote in the affirmative.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Mr. President, on the bill.

ACTING PRESIDENT MEIER: Senator Paterson, on the bill.

SENATOR PATERSON: And in somewhat response to Senator Breslin's question to Senator Lack, it is my awareness that in November of 1992, when Lemrick Nelson was convicted in the state trial for the murder of Yankel Rosenbaum -- I'm sorry, he was acquitted in 1992. He was later convicted of civil rights violations in that same act on

the federal level. But in 1992, in November, when he was acquitted on the state trial, that the defense attorneys held a party for the jurors that was estimated to have cost over $2,000.

And it not only, in many people's opinions, really did a lot of disservice to the process but it also heightened already existing tensions in communities around New York City after that case.

So this was another example, Senator Lack, of an act occurring after a trial, as a gratuity for what was the perceived result of the trial, but it also tampered with the legal process. Because if you were in the second trial and were a juror, you might have expected the same treatment.

So these things do happen, and this legislation is very much in order.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Mr. President, I voted for this bill in the past, I'm going to vote in favor of it again. I think it continues to preserve the integrity

of both the criminal and civil jury process, but the grand jury process as well.

There's only one suggestion I would make to OCA if this bill becomes law, and that is to require that the instructions that be given in the empaneling of a grand jury include an instruction that the offer of a gift at any point in the process could constitute either a bribe or, after the process is concluded, the offer of a gift could constitute a misdemeanor under this statute.

I think that it would be important to inform jurors at the time of their charge in a grand jury, at the time of their charge in either a civil or a criminal case, that the offer of a gift, even after their jury duty is committed, would nonetheless violate the laws of this state.

I think with that suggestion to OCA that the sponsor, as the chairman of the Judiciary Committee, could clearly convey that to the chief judge, that that should become a permanent part of the instructions of the empaneling judge at either -- empaneling of

the grand jury or either the civil or the criminal jury in these cases.

With that bit of advice, Mr. President, I'll be voting in favor.

ACTING PRESIDENT MEIER: Does any other member wish to be heard on this bill?

Debate is closed.

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEIER: Announce the results.

THE SECRETARY: Ayes, 58. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Marcellino.

SENATOR MARCELLINO: Yes, Mr. President. Is there any housekeeping at the desk?

ACTING PRESIDENT MEIER: Yes, we

have one substitution, Senator.

SENATOR MARCELLINO: Make the substitution, please.

ACTING PRESIDENT MEIER: The Secretary will read the substitution.

THE SECRETARY: On page number 16, Senator DeFrancisco moves to discharge, from the Committee on Energy and Telecommunications, Assembly Bill Number 1270 and substitute it for the identical Senate Bill Number 579, Third Reading Calendar 157.

ACTING PRESIDENT MEIER: Substitution ordered.

Senator Marcellino.

SENATOR MARCELLINO: Yes, Mr. President. Would you recognize Senator Dollinger, please.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President, and thanks to the Minority Leader.

I hereby give notice to the Senate, pursuant to Rule XI, of my intention to amend Rule XV to create a new rule for the Senate

with respect to the ethical standards of officers, employees, and members of the New York State Senate.

ACTING PRESIDENT MEIER: The notice is at the desk. It will be entered in the Journal.

SENATOR DOLLINGER: Thank you.

ACTING PRESIDENT MEIER: Senator Marcellino.

SENATOR MARCELLINO: Would you recognize Senator Paterson, please.

SENATOR PATERSON: Mr. President, there will be a conference of the Minority tomorrow morning at 10:30 in the Minority Conference Room. So that's on Wednesday, April the 18th, all members of the Minority and those who would like to become members can report to Room 314 to a conference.

ACTING PRESIDENT MEIER: Minority conference tomorrow morning at 10:30 a.m.

Senator Marcellino.

SENATOR MARCELLINO: Mr. President, there being no further business, I move we adjourn until Wednesday, April 18th, at 11:00 a.m.

ACTING PRESIDENT MEIER: On motion, the Senate stands adjourned until Wednesday, April 18th, at 11:00 a.m.

(Whereupon, at 5:50 p.m., the Senate adjourned.)