NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

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3:07 p.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will please come to order.

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

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

THE PRESIDENT: In the absence of clergy, may we bow our heads in a moment of silence.

(Whereupon, the assemblage respected a moment of silence.)

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Friday, April 27, the Senate met pursuant to adjournment. The Journal of Thursday, April 26, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Farley.

SENATOR FARLEY: Thank you, Madam President.

On behalf of Senator LaValle, Madam President, 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 3910.

THE PRESIDENT: That's so ordered, Senator.

SENATOR FARLEY: I offer the following amendments to the following third reading bills:

Senator Rath, page 18, Calendar 137, Senate Print 1457.

On behalf of Senator Saland, on page 18, Calendar 145, Senate Print 396.

On behalf of Senator Maziarz, on page 21, Calendar Number 184, Senate Print

1899.

On behalf of Senator Padavan, on page 28, Calendar 333, Senate Print 1815.

And also on behalf of Senator Bruno, on page 29, Calendar 348, Senate Print 2373.

And also for Senator LaValle, on page 33, Calendar 391, Senate Print 3292.

Madam President, I move that these bills will also retain their place on the Third Reading Calendar.

THE PRESIDENT: The amendments are received and adopted, Senator Farley, and the bills will retain their place on the Third Reading Calendar.

Senator Dollinger.

SENATOR DOLLINGER: Thank you, Madam President.

I hereby give notice that I will move the Senate, pursuant to Rule XI, to add a new rule, XV, to the Senate Rules, which will deal with ethical standards for members, officers and employees of the Senate.

If that notice could be recorded in the Journal, Madam President.

THE PRESIDENT: The notice has been received, Senator Dollinger, and will be filed in the Journal.

SENATOR DOLLINGER: Thank you.

THE PRESIDENT: You're welcome.

Senator Skelos.

SENATOR SKELOS: Madam President, would you please take up the noncontroversial reading of the calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 269, by Senator McGee, Senate Print 3187A, an act to amend the General City Law and others.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 270, by Senator Marchi, Senate Print 3326A, an act to authorize the Gingerbread Learning Center, Incorporated.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 289, by Senator Skelos, Senate Print 391, an act to amend the Vehicle and Traffic Law.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 334, by Senator Kuhl, Senate Print 2212, an act to amend the Agriculture and Markets Law.

SENATOR PATERSON: Lay that aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 354, by Senator LaValle, Senate Print 2590, an act to amend Chapter 246 of the Laws of 1916.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 418, by Senator Wright, Senate Print 14, an act to amend the Real Property Tax Law and the Education Law.

SENATOR PATERSON: Lay it aside,

please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 419, by Senator LaValle, Senate Print 1552, an act to amend the Town Law.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 432, by Senator Rath, Senate Print 4095, an act to amend the Local Finance Law.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 434, by Member of the Assembly Weinstein, Assembly Print Number 4248, an act to amend Chapter 729 of the Laws of 1994.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 456, by Senator Larkin, Senate Print 1967, an

act to amend the Civil Practice Law and Rules.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 463, by Senator Leibell, Senate Print 3236, an act to amend the Penal Law.

SENATOR OPPENHEIMER: Lay it aside.

THE PRESIDENT: The bill is laid aside.

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

SENATOR KUHL: Thank you, Madam President. Can we return to the order of motions and resolutions.

I believe that there's a privileged resolution at the desk by Senator DeFrancisco. And could we have the title of that read at this time.

THE PRESIDENT: We'll return to motions and resolutions.

The Secretary will read.

THE SECRETARY: By Senator

DeFrancisco, Legislative Resolution Number 1551, honoring the OCM BOCES Health New Vision Class in Syracuse for its participation in the "Good News! Good Kids!" Youth Responsibility Program.

THE PRESIDENT: Senator Kuhl.

SENATOR KUHL: Yes. Could you recognize Senator DeFrancisco to speak on the resolution, please.

THE PRESIDENT: Yes, I will, Senator.

Senator DeFrancisco.

SENATOR DeFRANCISCO: Thank you, Madam President.

THE PRESIDENT: You're welcome.

SENATOR DeFRANCISCO: I'm very honored to have twelve young people who have done great things in Onondaga County. They're with OCM BOCES.

And basically this group are all very highly motivated, educated people. And many of them, the members will be happy to know, are going to pursue nursing careers, because we've all talked about the shortage of nurses and what we can do to fill that gap.

But these are high school people that are going off to college, most of them; some to the military. But the fact of the matter is they all did great things for our community, and most of them centered around recognition of veterans. And being a veteran, such as myself and many of us in the chambers, we really appreciate their work. They did charity work for veterans.

They got recognition for some of the work that they've done, but not nearly as much recognition that they should have. And they were selected among many other high school students who did other good deeds in our community, and they won and came here to Albany.

And the whole point of this program -- and these students definitely exemplify this -- is despite all the media events that we hear about that are negative about young people, these are the quality in my community, the quality people who are all going to be the leaders of tomorrow.

And I recognize each and every of them and thank them from the bottom of my

heart. And we wish you the success in whatever field that you ultimately choose to go into. And they are our future leaders.

Congratulations.

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

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Kuhl.

SENATOR KUHL: Yes, Madam President. Now we would like to take up the controversial reading of the calendar, starting in regular order, with number one being Senator McGee's bill.

THE PRESIDENT: The Secretary will read number one on the Calendar, Number 269.

THE SECRETARY: Calendar Number 269, by Senator McGee, Senate Print 3187A, an act to amend the General City Law, the Town Law, and the Village Law, in relation to

walls.

SENATOR OPPENHEIMER: Explanation.

SENATOR KUHL: Can we lay that bill aside temporarily.

And I would ask the members who are within the hearing of my voice, if you have a bill on the calendar, let's be ready to debate it when it's called. If not, it may be passed over.

THE PRESIDENT: Thank you, Senator Kuhl.

The bill is laid aside temporarily.

The Secretary will read the regular calendar. I believe we're at 270.

THE SECRETARY: Calendar Number 270, by Senator Marchi, Senate Print 3326A, an act to authorize the Gingerbread Learning Center, Incorporated.

SENATOR OPPENHEIMER: Explanation, please.

THE PRESIDENT: Senator Marchi, an explanation has been requested.

SENATOR MARCHI: Madam President, the Gingerbread Learning Center is a preschool

that serves autistic children.

And I'm sure many of you are familiar with the severe problems that autistic children have and the daunting challenge that confronts those who try to help them make their way. These are autistic children between the ages of birth and five years.

The school entered into a lease in 1990 with the BK-AR Construction Company to lease the property at 80 Woodrow Avenue in Staten Island. And at that time, the developer applied for a tax abatement upon completion of the building.

The school moved into the facility in 1992 with a temporary certificate of occupancy. However, by 1994 the developer had not received the tax abatement yet, the facility had not received the permanent certificate of occupancy, and the developer declared for bankruptcy.

Now, we have a rather difficult situation confronting the Gingerbread Learning Center that had purchased the facility from a developer and completed the necessary work for

the permanent certificate of occupancy and applied for a tax exemption as a non-for-profit corporation. And that exemption was granted in 1995.

However, since the tax exemption was granted by the City of New York in March of '95, the center missed the January 15th deadline to be exempt from property taxes for the 1995-1996 fiscal year. This bill would permit to the City of New York to waive this deadline.

Now, the amount of the taxes, that originally approximated $22,000, with penalty and interest is now close to $60,000. This would be a massive and most unwelcome and inappropriate charge to levy against this non-for-profit corporation carrying on, against great adversity, the mission of the Gingerbread Learning Center.

So I would hope, Madam President, that this bill meets with your approval, since I think that a very good case has been made for the equitable definition of wholesome policy in the face of these circumstances.

SENATOR OPPENHEIMER: Thank you,

Senator Marchi. I think I'm going to support this bill, but there are just some -- I just have a couple of short questions that I just don't understand what's happened here.

According to what I read, the sponsor's memo says that they got the certificate of occupancy of the building in 1995. And they didn't receive the tax exemption status, tax-exempt status until then. Okay, so I can see them -

SENATOR MARCHI: They're clearly liable at this point.

SENATOR OPPENHEIMER: Let me just finish this question.

I can see them coming in and asking for it in 1995, but they hadn't even applied for it or received it until '95, and yet they're asking for it for '94, '93, '92. If you could explain.

SENATOR MARCHI: I'm informed, Madam President, that that issue was covered in '91 and '94. It did not -- they were not eligible for it until the certificate of occupancy had been delivered. So they're out there with this liability. I don't think

there's any question about the liability of Gingerbread at this stage.

But they would apply to the City of New York -- the developer had applied for the tax abatement but had not received it. So these people who had purchased it would appear to be liable.

This would allow the City of New York to accept an application for a waiver in this case, because they're not ready to take on a $60,000 hit at this point. It's just one year, it's not . . .

SENATOR OPPENHEIMER: If the Senator would yield for -

THE PRESIDENT: Senator Marchi, will you yield for a question?

SENATOR MARCHI: Yes, Madam President.

SENATOR OPPENHEIMER: Because I just want to make sure.

THE PRESIDENT: You may proceed.

SENATOR OPPENHEIMER: They only received the tax exempt status as of '95.

SENATOR MARCHI: Right.

SENATOR OPPENHEIMER: But they

had applied earlier in '94, '93, '92, '91?

SENATOR MARCHI: No, they applied in 1995. I don't think there's any question about the liability here.

SENATOR OPPENHEIMER: Well, then I have another question -

SENATOR MARCHI: But on the other hand, there is the awesome responsibility they carry to meet this charge. They would -- they would otherwise -- they are a genuine non-for-profit. Hopefully, by their own judgment, a very desirable facility, and in the public interest to have it operate. But they have this great debt now facing them.

SENATOR OPPENHEIMER: No, no, I -- and that's why I applaud so much the work they do. My heart goes out to them. I mean, they have to worry about financial things when they have this other huge burden.

SENATOR MARCHI: So this gives them the authority to apply for the waiver.

SENATOR OPPENHEIMER: The only other question I have -- and I will be supporting the bill, but I'm trying to understand.

THE PRESIDENT: Senator Marchi, will you yield for an additional question?

SENATOR MARCHI: Yes. Yes, Madam President.

THE PRESIDENT: You may proceed.

SENATOR OPPENHEIMER: Okay, this is my last question.

The building appeared, through the memo, the sponsor's memo, to be owned by BK-AR Construction prior to 1995. Wasn't the construction company liable for the taxes during the years that we're offering this rebate?

SENATOR MARCHI: Well, again, as I stated earlier, they went into bankruptcy, the builder. So this kicked in just a little too late for tears. That's what they're left with.

SENATOR OPPENHEIMER: Okay. Well, on the bill.

It's just a series of circumstances that really have brought us to this point. And I can think of no more difficult work than working with autistic children. And these people should not have the added -- these

added financial burdens of making back that taxes when they have this enormous burden to carry on their -- the really blessed work that they do.

So I'm voting for it. I hope everybody will.

THE PRESIDENT: Senator Lachman.

SENATOR LACHMAN: Yes. Through you, Madam President, will the distinguished Senator yield for another question, based upon previous questions?

THE PRESIDENT: Senator Marchi, will you yield?

SENATOR MARCHI: Yes, Senator.

THE PRESIDENT: You may proceed, Senator Lachman.

SENATOR LACHMAN: What I don't understand is why should they be asking for a tax abatement -- and this is similar to Senator Oppenheimer's question, which wasn't fully answered -- prior to their taking over ownership of the building. In '92, '93, '94, they didn't own the building. They obviously gained control of the building in '95, '96, according to the sponsor's information.

So why should they be asking for this tax abatement during a three-year period when they were not in control of the building?

SENATOR MARCHI: The '92 to '94 had been resolved, and the builder had gone into bankruptcy.

So when they took over and they were certified, their occupancy was certified, it was just too late to comply with the requirement for the request for an exemption for that one year.

SENATOR LACHMAN: One final question, Madam President, with your permission.

THE PRESIDENT: Senator, will you yield?

SENATOR MARCHI: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Lachman.

SENATOR LACHMAN: So are you saying, then, that they're not asking for a tax abatement for years '92, '93, '94 -

SENATOR MARCHI: No. No.

SENATOR LACHMAN: -- but they're

just asking for a tax abatement -

SENATOR MARCHI: That's correct.

SENATOR LACHMAN: So the sponsor's memo was not clear on that, as I read it.

SENATOR MARCHI: They're bankrupt, the prior developer. And so when it did kick in, it was just too late to -

SENATOR LACHMAN: On the bill.

As Senator Oppenheimer said, it's a wonderful institution. I've heard of it. It does great work with autistic children, and more work has to be done. And I will be supporting the bill, though I'm not certain or completely sure of some of the issues relating to it. It's a wonderful institution and should be supported.

Thank you.

SENATOR MARCHI: Thank you, Madam President.

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

Then the debate is closed.

Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

THE PRESIDENT: The bill is passed.

The Secretary will read.

THE SECRETARY: Calendar Number 289, by Senator Skelos, Senate Print 391, an act to amend the Vehicle and Traffic Law, in relation to increasing.

SENATOR DUANE: Explanation, please.

SENATOR KUHL: Lay it aside temporarily.

THE PRESIDENT: The bill is laid aside temporarily.

The Secretary will continue.

THE SECRETARY: Calendar Number 334, by Senator Kuhl, Senate Print 2212, an act to amend the Agriculture and Markets Law, in relation to the producer referendum.

SENATOR PATERSON: Explanation, please.

THE PRESIDENT: Senator Kuhl, an

explanation has been requested by Senator Paterson.

SENATOR KUHL: This is a very simple bill.

There's a requirement for a vote to be taken in certain circumstances under the Agriculture and Markets Law. This bill would change the current law which requires for a percentage of all people who are members to be changed to a successful vote being a certain percentage of all those casting their vote.

THE PRESIDENT: Senator Breslin.

SENATOR BRESLIN: Would the sponsor yield to a question or two?

THE PRESIDENT: Senator Kuhl, will you yield for a question?

SENATOR KUHL: Be happy to.

THE PRESIDENT: You may proceed, Senator Breslin.

SENATOR BRESLIN: Is there any minimum number of votes that would be necessary to establish a quorum?

SENATOR KUHL: No. No.

SENATOR BRESLIN: Again through you, Madam President, generally, how many milk

producers would be eligible to participate in this type of vote?

SENATOR KUHL: There's no, really, basis for an answer to you, Senator.

SENATOR BRESLIN: Again through you, Madam President -

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

SENATOR KUHL: Be happy to.

THE PRESIDENT: You may proceed, Senator Breslin.

SENATOR BRESLIN: Then there runs the possibility that if there was only one milk producer who voted, then that vote by that milk producer would then become the establishment of the different price; is that correct?

SENATOR KUHL: That's correct.

SENATOR BRESLIN: And again, one final question, would -

THE PRESIDENT: Senator, would you yield for a final question?

SENATOR KUHL: Yes.

THE PRESIDENT: You may proceed, Senator Breslin.

SENATOR BRESLIN: And if that one vote in fact did happen, would then that be the price established for milk throughout the State of New York?

SENATOR KUHL: No. It deals with marketing orders, and marketing orders vary throughout the state. So what you're dealing -- and that's why I couldn't give you a definitive answer to the first question you asked, Senator.

SENATOR BRESLIN: Okay. Thank you very much, Madam President.

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

Then the debate is closed.

Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Yes, just one question, Madam President. If in fact the -

SENATOR DUANE: Senator Kuhl, will you yield for a question?

SENATOR KUHL: I'll be happy to yield, Madam President.

THE PRESIDENT: You may proceed, Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Having grown up in an urban city, I would know nothing about dairy farming. So I would like to just ask you this one question.

Through you, Madam President, what are the procedures to implement an emergency milk pricing using the Rogers-Allen law?

SENATOR KUHL: Well, there has to be a petition by a number of people who actually ask for a vote to be taken, as my recollection is, Senator.

As you may know, there are several milk -- it's what they call a milk marketing order. It's in a geographical area that's established currently by federal legislation. That holds true throughout the entire country.

Over the past several years, there has been an attempt by the federal government to minimize those orders in number. And they -- but they still exist. What those orders do is establish a minimum price to be paid for certain classifications of milk that's sold.

Some classifications are fluid milk that you drink; that's Class 1. There are

others established for cheese and other kinds of situations that exist.

Several years ago, there was what was called the RCMA, it was an organization that was established to create a better than minimum order price, so that the farmers would get paid at least their cost of production. What this -- one of the downfalls of the current law was that the farmers could not get a large enough vote to continue that order. Over-order pricing is what they called it.

And one of the reasons was exactly this reason, and that is because a higher - 66 2/3 percentage of all people who were in the position in that -- of those orders were required to vote in the affirmative. And what you found was that it's very, very difficult, as you know, Senator, having been just elected, to get all people to vote.

And so we only require, for us to be successful, 50 plus 1 percent to actually vote in the affirmative. If we were all required to get 66 2/3 of all those people who were registered, there probably wouldn't be many of us sitting here in this chamber. We'd

have a lot of void seats.

So what this is is a practical approach to a problem to allow a group of individuals who are looking for a price higher than what the federal government establishes as their minimum to actually set that price.

SENATOR HASSELL-THOMPSON: Thank you, through you, Madam President. Thank you.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, if Senator Kuhl, the acting Majority Leader, would yield for a question.

THE PRESIDENT: Senator Kuhl, will you yield?

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

THE PRESIDENT: All right. You may proceed with a question, Senator Paterson.

SENATOR PATERSON: Senator, I thought you made a good point. Any possibility of changing what would be the threshold that the farmers would actually have to meet in order to vote in some of the ordered pricing?

SENATOR KUHL: Well, that's -

essentially, that's what this bill does, Senator.

SENATOR PATERSON: In other words, Madam President, if the Senator would continue to yield.

THE PRESIDENT: Senator, do you continue to yield? Senator Kuhl, I assume -

SENATOR PATERSON: Beyond this bill, that would actually -

THE PRESIDENT: You may proceed, Senator Paterson.

SENATOR PATERSON: I'm sorry, Madam President.

Beyond this bill, that would actually cure the -- I wasn't clear that this would actually cure that actual situation.

SENATOR KUHL: This is one approach, Senator. As you may remember, about I think three years ago we passed in this house, and we had a very difficult time getting the Assembly to agree, what we call a bill that would allow New York State to enter into what's called the Northeast Dairy Compact. And I think that's probably what your question was entailing.

The Northeast Dairy Compact now stands waiting for the federal government to allow us to join the other Northeastern states -- states like Vermont, Massachusetts, Rhode Island, Maine, that have already joined. There are a couple of other states like Pennsylvania and New Jersey who would join right with us, but it would have to be contiguous. So we stand as a roadblock to the entrance of those states into the Northeast Dairy Compact.

We're very, very hopeful that in fact the federal government will recognize our request and allow us to join that. That in effect would allow for a price to be established through that mechanism for farmers.

SENATOR PATERSON: Thank you very much, Madam President. On the bill.

THE PRESIDENT: You may proceed on the bill, Senator Paterson.

SENATOR PATERSON: I'm satisfied. I thought there were a couple of other measures that would need to be taken, and Senator Kuhl has satisfied me that that's

actually the case, his answer to me and his response to Senator Thompson's question, who he rightly pointed out is in her first year.

And incidentally, Senator Kuhl many times has acted as the Temporary President, Madam President, and in those days never ruled me out of order, because I've never broken the rules here in the house. And as you know, Madam President, my points are always well-taken. I would never even think of being out of order.

If I were out of order, I would say something like the fact that Helene McFarland is here all the way from St. Thomas today, but I didn't say that because that would be out of order. The fact that her mother, Senator Ruth Hassell-Thompson, is in the chamber, it's her first time she's come to visit her, I would never mention anything like that, Madam President, because -

THE PRESIDENT: And thank you so much for your observance of the rules.

SENATOR PATERSON: -- that would be out of order.

THE PRESIDENT: Does any other

member wish to be heard on this bill?

Then the debate is closed.

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

THE PRESIDENT: The bill is passed.

Senator Kuhl.

SENATOR KUHL: Yes, Madam President. May we now return back to Calendar Number 269, by Senator McGee.

THE PRESIDENT: The Secretary will read Calendar Number 269.

THE SECRETARY: Calendar Number 269, by Senator McGee, Senate Print 3187A, an act to amend the General City Law, the Town Law, and the Village Law.

SENATOR OPPENHEIMER: Explanation, please.

THE PRESIDENT: Senator McGee, Senator Oppenheimer has asked for an explanation.

SENATOR McGEE: Certainly. Thank you, Madam President.

THE PRESIDENT: You're welcome.

SENATOR McGEE: This bill extends the authority of a town or village to permit the street encroachments exceeding 6 inches the public right of way on local streets and roads.

THE PRESIDENT: Senator Oppenheimer.

SENATOR OPPENHEIMER: If the Senator would yield.

THE PRESIDENT: Senator McGee, will you yield for a question?

SENATOR McGEE: Absolutely.

THE PRESIDENT: You may proceed.

SENATOR OPPENHEIMER: Why?

SENATOR McGEE: Why? Because many times in the rural areas -- and as a matter of fact, in the olden days, if you will, before roads became paved, before roads became the thoroughfare that we actually have nowadays, buildings were built and now, as the roads have widened, they've become encroachments on those roads. So there is a

6-inch wall right now that says if a building is 6 inches in an encroachment, then they are in fact in an encroachment and have to be moved.

This extends that and gives the municipality the opportunity to extend that 6 inches beyond. So, you know, the old corner drugstore doesn't have to be moved back 6 inches.

SENATOR OPPENHEIMER: Through you, another question.

THE PRESIDENT: Senator McGee, will you yield for a question?

SENATOR McGEE: Sure. Absolutely.

THE PRESIDENT: You may proceed, Senator.

SENATOR OPPENHEIMER: I think maybe I was interpreting this the reverse way, that there was going to be permission to extend that 6-inch encroachment even further.

SENATOR McGEE: Yes, that's exactly what I said, only I must have said it differently.

If the building is 6 inches right

now in an encroachment, rather than having to move that building back 6 inches to comply with the current law, this gives the municipality the authority, and the municipality can do it themselves, they can give it to the county DPW, whichever way they want to -- it gives that agency the authority to extend that 6 inches out maybe to 7, to 8, to 9 inches, wherever that building stands right now, so that that old corner drugstore or the old corner buildings don't have to be moved back.

This happened because in many - you know, in the olden days, many times these buildings were built without the right of way even coming into consideration.

SENATOR OPPENHEIMER: Okay. Well, I think I'm getting it.

Through you, Madam President, is this because the street is being widened rather than the building is being expanding?

SENATOR McGEE: I'm sorry, yes, Madam President, yes, I certainly will.

Through you, Madam President. And I suspect in many cases it's when they're

coming in to do a repair job, a construction job on the road itself and find out, all of a sudden, whoa, this building is 6 inches into an encroachment.

SENATOR OPPENHEIMER: Okay, I do have it now.

Another question or two.

THE PRESIDENT: Senator McGee, will you yield for an additional question?

SENATOR McGEE: Absolutely.

THE PRESIDENT: You may proceed, Senator.

SENATOR OPPENHEIMER: Is this going to apply to all buildings? In other words, it wouldn't matter whether it was commercial or residential or -

SENATOR McGEE: Yes, ma'am.

SENATOR OPPENHEIMER: It's all buildings.

SENATOR McGEE: Yes, ma'am.

SENATOR OPPENHEIMER: And I think that the only other question -- but, no, I think I've answered them all.

You've done a fine job, Senator. Thank you very much.

SENATOR McGEE: You have too, Senator. Thank you.

THE PRESIDENT: Senator Gentile.

SENATOR GENTILE: Thank you, Madam President. If the sponsor would yield for a question or two.

THE PRESIDENT: Senator McGee, will you yield?

SENATOR McGEE: Absolutely.

THE PRESIDENT: You may proceed, Senator Gentile.

SENATOR GENTILE: Thank you, Madam President, through you.

I'm curious, in reading the sponsor's memorandum here in justification, it indicates that the property, should it be over the 6-inch encroachment which is now allowed, faces very dire consequences; i.e., few would buy the property, no lending institution would take a mortgage relating to the property, often the property is abandoned.

Are we might be overstating the case a little bit, or is this situation that serious?

SENATOR McGEE: No, the situation

is that serious on many occasions. On many occasions, if the building is deemed to be in the encroachment, in an encroachment area, many banks and lending institutions will not back up a mortgage of any type.

So that it is -- we are not overstating that. I suspect it doesn't happen that much in a metropolitan area or a suburban area, but it does happen in our rural areas, yes.

SENATOR GENTILE: Through you, Madam President, if the Senator would -

THE PRESIDENT: Senator, will you yield for another question?

SENATOR McGEE: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Gentile.

SENATOR GENTILE: So there have been actual cases of property that falls into this realm that have either been abandoned or mortgages have not been able to be obtained on these properties?

SENATOR McGEE: That's correct, yes.

SENATOR GENTILE: I see. And on the bill, Madam President.

Thank you, Senator.

SENATOR McGEE: Thank you.

SENATOR GENTILE: Thank you.

Not, as Senator McGee so aptly states, being in an urban area, this might not be as severe a problem as in other parts of the State of New York, and that's why I questioned Senator McGee as to the severity of this problem.

And given the fact that she was so -- articulated so well the problem in other parts of the state, it seems clear that this is something that we need to do in order to - it's a reasonable approach to this problem.

So certainly, Senator McGee, this is a good bill, and it's a good bill even because -- it's added to because of the fact that we have several Democrats on this side of the aisle that are sponsors of this bill in addition to your name on the sponsorship. So we congratulate you for that, and we thank you for that.

And certainly I will be voting in

favor.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, if Senator McGee would yield for a question.

THE PRESIDENT: Senator, will you yield for a question?

SENATOR McGEE: I most certainly will. Thank you.

THE PRESIDENT: You may proceed, Senator Paterson.

SENATOR PATERSON: Thank you, Madam President. I'm just curious as to whether or not this license runs with the property or with the owner. If the property is reconveyed, does the new owner have to apply for the license? Or is the variance caused by the license running continually in perpetuity with the property?

SENATOR McGEE: The license exists until the -- until there's a need for -- until there's a question as to whether it impedes traffic or transportation or any kind of safety thing. So the license goes with the property.

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

Then the debate is closed.

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

THE PRESIDENT: The bill is passed.

Senator Kuhl.

SENATOR KUHL: Yes. Could you now call up Calendar Number 354 and continue in regular order then.

THE PRESIDENT: The Secretary will read Calendar Number 354 and continue in regular order.

THE SECRETARY: Calendar Number 354, by Senator LaValle, Senate Print 2590, an act to amend Chapter 246 of the Laws of 1916.

SENATOR OPPENHEIMER: Explanation.

SENATOR LACHMAN: Explanation, please.

THE PRESIDENT: Senator LaValle, Senator Lachman and Senator Oppenheimer have asked for an explanation.

SENATOR LAVALLE: Yes. Thank you, Madam President.

This legislation would increase the budget and the amount that can be spent by the Orient mosquito district. This district is in the town of Southold, was established in September of 1916. And on a regular basis from 1916 forward, we have increased the amount, the last being Chapter 196 of the Laws of 1996, and that amount was to $50,000. We are asking this body to increase that to $80,000.

That's the legislation, Madam President.

SENATOR OPPENHEIMER: Madam President.

THE PRESIDENT: Senator Oppenheimer.

SENATOR OPPENHEIMER: If Senator LaValle would yield.

SENATOR LAVALLE: Yes.

SENATOR OPPENHEIMER: I'm really

interested in this. We have the same problem, I think. So I'm going to ask a few questions.

Number one, I'm not quite sure why the town has to come to us for legislation to spend additional money in their budgets.

SENATOR LAVALLE: It's not, Senator. And I'm glad you asked that question in order for me to clarify this.

The -- there is a hamlet called Orient in the township of Southold Town. By statute, we created a special district called a mosquito district. And so this is a separate district just the way we create - this Legislature has created ambulance districts, sidewalk districts, lighting districts.

The only one of its kind, I believe, is in the town of Southold, which is a special district that has its own budget, called the Orient mosquito district. And it was created in the fine year of 1916.

SENATOR OPPENHEIMER: If Senator LaValle would yield.

THE PRESIDENT: Senator LaValle, will you yield?

SENATOR LAVALLE: Yes.

THE PRESIDENT: You may proceed, Senator Oppenheimer.

SENATOR OPPENHEIMER: Senator LaValle, we don't have separate budgets for our sewer districts where we come up here and ask for permission, or for our water districts or for our garbage districts. We all know what special districts are. Why is this different?

SENATOR LAVALLE: That's a good question.

SENATOR OPPENHEIMER: Why is this different from all other districts?

SENATOR LAVALLE: Why is this district different from every other district? Because we, by statute, because the good people of the town of Southold, being very frugal and very mindful that you can only spend what you have, statutorily put into place that you can only spend what your budget is -- under the present statute, $50,000.

In the fine year of 1916, it was established at $800. And all these years between 1916 and today, we went from $800 to

$50,000. So we are asking for an increase in the amount that can be spent to $80,000.

Now, I know that your question, which is a good one, is that we should just take off the handcuffs. But the good people of Southold, that are New Englanders by stock and tradition, want these caps and these limits so that people don't get carried away and spend a lot more money than they want to spend.

SENATOR OPPENHEIMER: Through you, Madam President, if the Senator would yield.

THE PRESIDENT: Senator LaValle, will you yield?

SENATOR LAVALLE: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Oppenheimer.

SENATOR OPPENHEIMER: Now, as I understand it, this is being paid by the municipality.

SENATOR LAVALLE: Senator -

SENATOR OPPENHEIMER: Yes? No.

SENATOR LAVALLE: -- let's take

another step back. This is -

SENATOR OPPENHEIMER: Okay. By the district, all right. By the district.

SENATOR LAVALLE: Thank you. By the people who live in the district.

SENATOR OPPENHEIMER: Right.

Now, this is really such a unique circumstance, this particular district, that I don't think it applies to almost any other district in the state. But -

SENATOR LAVALLE: That is correct.

SENATOR OPPENHEIMER: Let me question, has the county thought to do mosquito control and research as a county endeavor? Because mosquitos are not clever enough to know that they should stay in X municipality or X district. They have a tendency to fly all around. And therefore, would it not be something that your county might be interested in handling?

SENATOR LAVALLE: Senator, as you know, that counties throughout the state handle this matter through their health departments. And so on the other side of the

hamlet of Orient, the county is handling mosquito control.

And as you know, in this these 84 or so years, 86 years of time that has gone by, people have handed down this tradition of serving on the district, mosquito control district, and coming before this Legislature and asking for a dollar amount. And there's great debate within the hamlet of Orient as to what should we go and ask the Legislature to increase the amount that can be spent.

And so there's something else that's very, very important, Senator. And I think many of the members in this chamber know, because of the West Nile virus, there has been great debate in each of our counties as to how do you deal with and what should be applied and what methodologies and what times of the day.

And that's the very reason why the people in Orient will always want to keep this district, because -- and I've talked to the people who do the applications and so forth, is they go literally from house to house and they talk to people. And they let them know

that they're using larvicide. And they say - they tell them the times that this is going to be applied. And everyone understands what's going on.

It's not being done by, in quotes, some big government outside of the hamlet of Orient. And so they all are basically communicating and taking care of their problem and have done so for these more than 80 years. And it's worked.

SENATOR OPPENHEIMER: Okay. I think this is my last question, if the Senator would yield.

SENATOR LAVALLE: Yes.

THE PRESIDENT: Senator, you will yield.

You may proceed, Senator Oppenheimer.

SENATOR OPPENHEIMER: Outside of this one district, is most of the rest of Suffolk handled by the county government as far as mosquito control?

SENATOR LAVALLE: Senator, this is an anomaly in the entire state. So the answer to your question is outside of this

hamlet, the County of Suffolk, through their health department, takes care of mosquito control.

SENATOR OPPENHEIMER: Okay. Thanks a lot. I appreciate that.

On the bill.

THE PRESIDENT: You may proceed on the bill, Senator.

SENATOR OPPENHEIMER: This is a really important issue for us downstate. In Suffolk and in Westchester County, we have the two highest incidences of West Nile virus being transmitted. And we have put a lot of effort and study into this in my county of Westchester, and I just wanted to know how things were handled in Suffolk.

And the concept of having counties control obviously is, I think, self-evident, that the mosquitos don't stay in just one small district, they tend to move around and you have to have one coordinated policy. Because you can't have different policies every few miles, it won't be effective.

So I'm happy to hear that the county basically has control and that this is

sort of an anomaly. And if the anomaly has been there for all these years, we'll permit the anomaly, with my vote, at least, to continue. But it is very unique.

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

Then the debate is closed.

Read the last section.

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

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

Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 418, by Senator Wright, Senate Print 14, an act to amend the Real Property Tax Law and the Education Law, in relation to the taxable status.

SENATOR ONORATO: Explanation.

THE PRESIDENT: Senator Wright, an explanation has been requested.

SENATOR WRIGHT: Thank you, Madam President.

The bill this afternoon amends the Real Property Tax Law and provides for an optional alternative procedure to establishing values of nuclear generating assets throughout the state and the methodology by which they pay revenues to local governments.

THE PRESIDENT: Senator Onorato.

SENATOR ONORATO: Madam President, will the sponsor yield for a couple of questions?

THE PRESIDENT: Senator Wright, will you yield for a question?

SENATOR WRIGHT: I will, Madam President.

THE PRESIDENT: You may proceed with a question, Senator.

SENATOR ONORATO: Senator, what's the procedure that they use to assess nuclear power plants at the present time?

SENATOR WRIGHT: Well, at the present time they are treated as specialty properties, so they are subject to advisory opinions and evaluation from the New York

State Office of Real Property Tax Services.

But aside from that, they are placed on the assessment rolls by the local assessors like any other parcel of real property in New York State.

SENATOR ONORATO: If the Senator will continue to yield.

THE PRESIDENT: Senator Wright, do you yield?

SENATOR WRIGHT: I do, Madam President.

THE PRESIDENT: You may proceed, Senator.

SENATOR ONORATO: How many power plants in the state would be affected by this legislation right now?

SENATOR WRIGHT: Well, at the current time it would affect three in Westchester County, three in Oswego County, and one in Ontario County.

SENATOR ONORATO: If you'll continue to yield, Senator.

SENATOR WRIGHT: I'll continue to yield, Madam President.

THE PRESIDENT: You may proceed,

Senator.

SENATOR ONORATO: Now, has the sale agreement with the nuclear plants to purchase Nine Mile River facilities, including the tax agreements or PILOTs, such as the legislation would apply?

SENATOR WRIGHT: If the question is, Senator, does those sale agreements change or is it affected in any way by this bill, the answer is no. They are separate and distinct.

By virtue of the local governments having negotiated those agreements, they are seeking legislation that will provide for long-term stability and being authorized by the Legislature as opposed to a one-year series of -- excuse me. As opposed to 15 one-year agreements, they would like to have one 15-year agreement.

SENATOR ONORATO: One last question, Madam President, if the Senator would continue to yield.

THE PRESIDENT: Senator Wright, do you yield?

SENATOR WRIGHT: Yes, Madam President, I will.

THE PRESIDENT: Thank you. You may proceed.

SENATOR ONORATO: I'm sure that you think this is probably good. If it's good for the nuclear power plants, would it also not be good for the rest of our power generating plants throughout the state?

SENATOR WRIGHT: Well, we chose not to predetermine that, Senator. Actually, the original bill sent over the Office of Real Property Tax Service provided a similar procedure for all electrical generating assets in the state.

Frankly, because of the difference between those assets and their varying differences of assessed value, the differences in the markets themselves between, say, hydropower versus fossil fuel versus nuclear, and because nuclear had the single largest impact on any of the tax bases, it was decided to treat nuclear first, start with that, and see if that in fact would serve as a model. And, if that was effective, then perhaps extend it to the other generating assets from the state.

But rather than take everybody on and have such a combination of assets coming on at one time under a new formula, we decided to isolate it to a limited number and start with that.

SENATOR ONORATO: One final question.

SENATOR WRIGHT: Yes, Madam President.

SENATOR ONORATO: Has any of the counties or areas raised any opposition to this particular legislation?

SENATOR WRIGHT: No. In fact, Senator, the county that I represent has provided a local resolution supporting the need for having an alternative system. They recognize that that needs to be done. So that's the only formal response that we have.

There are other versions that have certainly been discussed. But at this point I'm not aware of any formal opposition, as opposed to a high degree of formal support.

SENATOR ONORATO: Thank you, Senator.

SENATOR WRIGHT: Thank you,

Senator.

SENATOR ONORATO: On the bill.

THE PRESIDENT: You may proceed, Senator.

SENATOR ONORATO: I want to compliment Senator Wright for the bill. I think it's a pretty good bill, and I certainly do intend to vote for it. And I urge my colleagues to join me in supporting the bill.

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

Then the debate is closed.

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 418 are Senators Duane, Hassell-Thompson, Hevesi, and LaValle. Ayes, 54. Nays, 4.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 419, by Senator LaValle, Senate Print 1552, an

act to amend the Town Law, in relation to permitting.

SENATOR PATERSON: Explanation.

THE PRESIDENT: Senator LaValle, an explanation has been requested by Senator Paterson.

SENATOR LAVALLE: Senator Paterson, this bill would add to the Town Law in allowing fire districts to not only purchase equipment for purposes of fighting fires, but also allow them to lease, still being consistent with all of the finance laws that -- the General Municipal Law that applies to the purchasing of equipment.

So this merely allows them to lease equipment rather than purchase it. That's it, Senator.

SENATOR PATERSON: I'm overwhelmed.

THE PRESIDENT: Does any other member wish to be heard?

Then the debate is closed.

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

SENATOR PATERSON: Madam President.

THE PRESIDENT: The bill is passed.

Senator Paterson.

SENATOR PATERSON: Madam President, was Senator Hassell-Thompson trying to be recognized? I wondered if you might have missed that.

THE PRESIDENT: I didn't see her if she was, Senator Paterson.

Senator Hassell-Thompson, do you wish to be recognized?

SENATOR PATERSON: Thank you, Madam President.

SENATOR HASSELL-THOMPSON: Thank you, I appreciate that.

If the Senator will yield, I did have a couple of questions. Oh, the bill is passed.

SENATOR PATERSON: Madam President, we would need unanimous consent to

withdraw the roll call if we had unanimous consent. Otherwise, we don't.

THE PRESIDENT: Without objection, the roll call is withdrawn. Hearing no objection, going once, going -- the roll call is withdrawn.

SENATOR SKELOS: Madam President.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: I believe we have to reconsider the vote by which the bill was passed, and then we can -- if you would call the roll on reconsideration, please.

THE PRESIDENT: Call the roll upon reconsideration.

THE SECRETARY: Calendar Number 419, by Senator LaValle, Senate Print 1552, an act to amend the Town Law.

THE PRESIDENT: Call the roll upon reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

THE PRESIDENT: The roll call is now withdrawn. The bill is before the house.

Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank

you, Madam President. And thank you to my colleagues.

I just had a quick couple of questions if the Senator will yield.

THE PRESIDENT: Senator, will you yield?

SENATOR LAVALLE: Yes.

THE PRESIDENT: You may proceed, Senator Hassell-Thompson.

SENATOR LAVALLE: If I said no, it would have made that whole process quite in vain, wouldn't it, Senator?

SENATOR HASSELL-THOMPSON: It wouldn't have invalidated the process, but I thank you for not saying no.

Through you, Madam President. Senator, I notice that Article 11 of the Town Law authorizes town boards of one or more towns to establish this district. Does this also effect city law, is my question. For municipalities -- for cities.

SENATOR LAVALLE: Senator, I would say no. Because the process that establishes a fire district is what is followed. So within the city, you have a

citywide district, I believe.

SENATOR HASSELL-THOMPSON: I think you're relating to New York City. If you will, Madam President, through you. I think what you're describing is New York City. But I also represent Westchester, a portion of Westchester County, which is under the county's jurisdiction.

And in those cities -- what I wondered is if this law applies to those cities outside of New York City.

SENATOR LAVALLE: I would assume, if there's an established fire district, that it would.

SENATOR HASSELL-THOMPSON: Thank you. If the Senator will continue to yield.

THE PRESIDENT: Senator, do you yield?

SENATOR LAVALLE: Yes.

THE PRESIDENT: You may proceed, Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Would there be limitations on the types of equipment that could be leased?

SENATOR LaVALLE: Yes. It talks

about -- while we talk about those pieces of equipment that are in the extinguishment - and if you read the bill right along, it talks about may purchase or lease apparatus and equipment for the extinguishment and the prevention of fires, and for the purposes of emergency rescue and first aid and fire/police squads.

So that could include, for instance, an automobile for the police chief, or it could include various computerized equipment that we use in mapping out routes for the fire trucks. So there are some tangential pieces of equipment that go beyond, let's say, a fire truck, but are used as part of the fire-fighting apparatus.

SENATOR HASSELL-THOMPSON: On the bill, Madam President.

THE PRESIDENT: You may proceed.

SENATOR HASSELL-THOMPSON: Thank you, Senator.

One of the reasons that I asked the question is because, having come from the city of Mount Vernon and being a city council person, we had some equipment that probably

was the first piece that they bought after they took horses off. And we continue to use those primarily because to pass the bond in order to purchase new equipment becomes very, very difficult.

So I recognize for townships it has to be equally, if not greater in difficulty in posting bonds for trucks that at this point may cost as much as $600,000 or better. And without some matching funds from the feds, this becomes very difficult.

So I am in support. I just needed to be sure that this would in fact be something that would allow municipalities other than towns to be able to participate in. Because I certainly know that when you have to replace major pieces of equipment at better than a half million dollars apiece, it really becomes burdensome for most of our municipalities.

Thank you again, Madam President. Thank you, Senator.

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

Then the debate is closed.

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 432, by Senator Rath, Senate Print 4095, an act to amend the Local Finance Law, in relation to statutory installment bonds.

SENATOR HEVESI: Explanation, please.

THE PRESIDENT: Senator Rath, an explanation has been requested by Senator Hevesi.

SENATOR RATH: Madam President, this bill allows for local governments and public corporations to issue and sell statutory installment bonds rather than only serial bonds to the New York State Environmental Facilities Corporation, in a principal amount in excess of a million dollars at either a fixed rate of interest or,

if the bond provides for serial maturities, at a rate set for each maturity which is fixed on the date of the issuance.

THE PRESIDENT: Senator Hevesi.

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

THE PRESIDENT: Senator Rath -

SENATOR RATH: Surely.

THE PRESIDENT: Senator Rath does yield. You may proceed, Senator.

SENATOR HEVESI: Thank you.

Through you, Madam President, I have a few questions on this issue. I read the sponsor's memo, so I believe I have a fairly good understanding of what you're attempting to accomplish here.

My first question for you, Senator, is the -- one of the reasons, according to the memo, that this is necessary is that there are twenty different debt instruments which have to be issued right now, if you're issuing serial bonds as opposed to installment bonds. And so this is simply a mechanism that would reduce clerical errors or other -- or, you know, using extra paper. Is that -

SENATOR RATH: That's it.

SENATOR HEVESI: Am I correct?

SENATOR RATH: That's it, Senator. You have it.

SENATOR HEVESI: Thank you, Madam President. Would the sponsor continue to yield?

THE PRESIDENT: Senator Rath, will you yield?

SENATOR RATH: Surely.

THE PRESIDENT: You may proceed.

SENATOR HEVESI: Thank you, Madam President. What I'm a little bit less clear on is the issue of the one million dollar limit. So could you explain the implications of lifting the $1 million cap right now and maybe explore the reason why that limit existed in the first place and why it's not a problem to lift it now?

SENATOR RATH: The limit of a million dollars was available before, but it was not done -- couldn't be done before -- I mean before, which is right now, in just one bond. It had to be in more than one bond if it was more than a million dollars.

This way -- and you were right on, and your first answer was correct, in that it would alleviate all the paperwork because of the multiple people who are involved in a deal like that and the -- as the bonds mature and giving the payouts, et cetera, it's a very clerically intense kind of activity.

But the million dollars was - which is at level right now, was never - well, not a cap as such. My counsel is advising me, and he's right. It was just a mechanism for how it could be disbursed, how the debt could be disbursed.

SENATOR HEVESI: Okay. Thank you, Madam President. If the sponsor would yield to an additional question.

THE PRESIDENT: Senator, do you yield?

SENATOR RATH: Surely.

THE PRESIDENT: You may proceed, Senator Hevesi.

SENATOR HEVESI: My understanding is that there are a great many projects that are financed through this mechanism here which we're adjusting here today. What kind of

projects are we looking at, and have we seen an expansion in the financing of these types of environmental projects where we're seeing a trending upwards in the issuance of debt to support those projects?

SENATOR RATH: Well, let me point out a couple to you. And you've hit a very important point.

And I believe the reason that we were requested to introduce this legislation, the EFC has issued 5.3 billion in bonds under the Clean Water Revolving Loan Fund and 530 million under the Drinking Water Revolving Loan Fund. And it's critically needed. Obviously these projects are critically needed for localities as they attempt to improve their environmental circumstances.

SENATOR HEVESI: Thank you.

Madam President, if the sponsor would yield to a final question.

THE PRESIDENT: Senator, will you yield?

SENATOR RATH: Surely.

THE PRESIDENT: You may proceed, Senator Hevesi.

SENATOR HEVESI: I can see if we pass this legislation how it would ease the bureaucratic burdens for EFC. Does the passage of this bill have a similar effect for local governments who are winding their way through this process? Are we easing their burden right now if we pass this bill?

SENATOR RATH: Absolutely, Senator. It will be a much easier process for the local governments.

SENATOR HEVESI: Okay. Thank you very much. Thank the sponsor. Thank you, Madam President.

SENATOR RATH: Thank you.

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

Then the debate is closed.

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 434, by Member of the Assembly Weinstein, Assembly Print Number 4248, an act to amend Chapter 729 of the Laws of 1994.

SENATOR STAVISKY: Explanation.

THE PRESIDENT: Senator Farley, an explanation has been requested by Senator Stavisky, I believe.

SENATOR FARLEY: Yes. This is a one-year extender of Chapter 729 of the laws of 1994, which was previously extended in 2000, 1999, '98, '97, '96, and '95. Chapter 47 of 2000 currently expires on May 15th, in just a few days. And this bill continues for one year, until May 15, 2002, the protection of health insurance benefits granted to retired school employees.

Basically, this companion bill passed the Assembly unanimously on March 19th.

Under the 1994 law, which was extended by this bill, retirees of school districts and BOCES are guaranteed continuation of their existing health insurance coverage unless the school negotiates a corresponding change in benefits

with the active employees.

This particular piece of legislation protects senior citizens and retired people -- bus drivers, teachers, everybody that works for the school system - from changes in their health insurance unless they change it for all the employees.

THE PRESIDENT: Senator Stavisky.

SENATOR STAVISKY: If the sponsor would yield.

THE PRESIDENT: Will you yield, Senator Farley?

SENATOR FARLEY: Yes.

THE PRESIDENT: You may proceed, Senator.

SENATOR STAVISKY: This bill has seen a lot of sunsets, I see. Can you, Mr. Farley, explain why the bill has so many sunsets and not a permanent provision?

SENATOR FARLEY: There is a permanent bill currently -- I think it's on the Senate calendar right now. Let me see if I can give you the number of it. Well, 377. Legislation is currently on the Senate calendar. It's been introduced in both

houses. It's on third reading here in the Senate. It's 377 to make it permanent.

But as we approach this May 15th date, we've got to do at least this. Now, if we pass the permanent one, which I would -- I certainly would support and like, then it has no bearing on this particular bill because - but we cannot let it expire.

And this bill -- this is a bill - we do a lot of bills here, but this is one that's on its way to the Governor, which would be signed in the next few days.

SENATOR STAVISKY: Oh. I'm happy to hear that, Mr. Farley.

On the bill.

THE PRESIDENT: You may proceed on the bill, Senator.

SENATOR STAVISKY: Senator Farley. I apologize.

SENATOR FARLEY: That's all right.

SENATOR STAVISKY: I apologize.

SENATOR FARLEY: Apology accepted.

SENATOR STAVISKY: I forgot the

title for a second.

I think this bill is crucial. And I think it's crucial because it's unfair to have older people in the situation of uncertainty and flux. They have to know that their health coverage is preserved, that it's going to be protected, and that -- they shouldn't have to come to the Legislature each year, hat in hand, asking for this legislation.

This sort of, to me, goes along with the COLA that we based last year to make it permanent. Each year the older adults -- I hate the word "seniors" -- the older adult population has to come and beg. And I think that's demeaning, and I think it's wrong, and I think we certainly ought to make this permanent.

My father was a retiree from the - a teacher who had retired -- lived 30 years beyond his retirement date, 25 years beyond the date he retired. And each year he would ask, "Are they going to pass the COLA?" And I think the seniors who are covered by this bill are in the same situation.

It's something that we ought to make permanent, and I certainly hope that that happens very soon.

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

Then the debate is closed.

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

THE PRESIDENT: The bill is passed.

Senator Skelos.

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

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

The Secretary will read.

THE SECRETARY: Calendar Number 456, by Senator Larkin, Senate Print 1967, an act to amend the Civil Practice Law and Rules,

in relation to authorizing.

SENATOR BROWN: Explanation.

THE PRESIDENT: Senator Larkin, an explanation has been requested.

SENATOR LARKIN: By who?

THE PRESIDENT: By Senator Brown.

SENATOR LARKIN: Senator Brown, this is a bill that was requested by the Attorney General, Mr. Spitzer.

Basically, this bill permits the law enforcement officials to retain electronic equipment that has been seized and forfeited during criminal proceedings. This equipment can then be utilized by such law enforcement officials for their law enforcement use.

This bill was passed in '97 and '98. And the bill actually just amends something that we're doing to add this in so that they can take advantage of this equipment to be used by law enforcement, and it saves them and their money.

THE PRESIDENT: Senator Brown.

SENATOR BROWN: Through you, Madam President, would Senator Larkin yield?

THE PRESIDENT: Senator, will you

yield?

SENATOR LARKIN: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Brown.

SENATOR BROWN: Senator, I'm in favor of this. But I'm wondering, through this seizure would the municipality, separate from the police department, also be able to use the equipment?

SENATOR LARKIN: Yes. There's a procedure in here about how you go about getting it. The law operates that the claiming agent -- in other words, if the town is the one that's involved in it, they get first bids on that equipment. If not, it goes back in to the district attorney or the attorney general. If there's no use for it there, then it will go to auction.

SENATOR BROWN: Okay. Thank you. That's all I have.

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

Then the debate is closed.

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 463, by Senator Leibell, Senate Print 3236, an act to amend the Penal Law, in relation to unlawful defilement.

SENATOR DUANE: Explanation, please.

THE PRESIDENT: Senator Leibell, Senator Duane has requested an explanation.

SENATOR LEIBELL: Thank you, Madam President.

This bill would add a new article, 270.08, to the Penal Law, to create the new crime of the unlawful defilement of a water supply. A person would be guilty of this new crime if they intentionally introduced, placed, or caused to be introduced or placed into the water supply a defiling agent, with the intent to cause or with the reckless

disregard of causing the sickness, physical injury, severe disfigurement or death of another human being, or with the intent to cause irreparable harm to such water supply or to disturb the public peace.

Pursuant to this legislation, the term "water supply" would mean any public or private transmission facility, treatment facility, source of supply facility, well, or reservoir which provides potable water for residential, commercial, industrial and/or fire service needs.

A defiling agent would be defined as any chemical, biological, or radioactive agent or substance which is capable, when introduced or placed into a water supply, of causing the sickness, physical injury, severe disfigurement, or death of a human being, or causing irreparable harm to such water supply or causing a disturbance to the public peace.

Pursuant to this legislation, a defiling agent would not include a substance which is introduced or placed into a water supply by any municipal or state entity or by any agricultural or industrial entity as a

result of its ordinary, lawful operations.

Presently there is currently no crime which addresses the unlawful defilement of a water supply. Although other criminal conduct may cover such action, such as criminal tampering, a Class D felony, there is no direct criminal sanction for an activity that can cause such severe potential harm.

Clean, safe, potable water is indispensable to our society and our state. Because of natural conditions and the quantities consumed, our water supplies are often publicly exposed and readily accessible to those who might wish to cause mass harm.

THE PRESIDENT: Senator Duane.

SENATOR DUANE: Thank you. If the sponsor would yield for a question.

THE PRESIDENT: Senator Leibell, will you yield?

SENATOR LEIBELL: Yes, I do.

THE PRESIDENT: Thank you. You may proceed, Senator Duane.

SENATOR DUANE: Thank you. What happens now if someone defiles water?

SENATOR LEIBELL: It's

conceivable that it would be covered under a criminal tampering statute.

The reason for this bill is there's not a specific statute that would cover it. Depending on the conduct, it could conceivably not be covered.

SENATOR DUANE: Through you, Madam President, if the sponsor would yield.

THE PRESIDENT: Senator Leibell, will you yield for another question?

SENATOR LEIBELL: Yes, I do.

THE PRESIDENT: You may proceed, Senator.

SENATOR DUANE: If you put cyanide in the water, would that be covered under this bill or preexisting law?

SENATOR LEIBELL: Yes, it would.

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

THE PRESIDENT: Senator, will you yield?

SENATOR LEIBELL: Yes.

THE PRESIDENT: You may proceed, Senator Duane.

SENATOR DUANE: Is there an amount of cyanide being put in the water that might cause one of these bills to be -- this bill or present law to be used?

SENATOR LEIBELL: It's a biological agent, so it would be covered under this legislation. Not by amount.

SENATOR DUANE: And through you, Madam President, if the sponsor would continue to yield.

THE PRESIDENT: Senator, will you yield?

SENATOR LEIBELL: Yes.

THE PRESIDENT: You may proceed, Senator Duane?

SENATOR DUANE: Is there anything in New York State law or regulation right now that covers cyanide being in water?

SENATOR LEIBELL: There may be regulations.

SENATOR DUANE: Through you, Madam President. But no law?

SENATOR LEIBELL: I'm not aware of any.

SENATOR DUANE: Thank you.

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

Then the debate is closed.

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

THE PRESIDENT: The bill is passed.

Senator Marcellino.

SENATOR MARCELLINO: Yes, Madam President, can we call at this time Calendar Number 289.

THE PRESIDENT: The Secretary will read Calendar Number 289.

THE SECRETARY: Calendar Number 289, by Senator Skelos, Senate Print 391, an act to amend the Vehicle and Traffic Law, in relation to increasing.

SENATOR DUANE: Explanation, please.

THE PRESIDENT: Senator Skelos,

Senator Duane has requested an explanation.

SENATOR SKELOS: Thank you, Madam President.

This bill provides for a mandatory license suspension for repeat drunk driving offenses, a mandatory five-year revocation of a driver's license when a person is convicted of a DWI or DWAI drugs for the third time in ten years.

It also would provide for a five-year license revocation when a driver is convicted of a DWI, DWAI drugs, or DWAI, having been previously convicted twice within five years under Section 1192 of the Vehicle and Traffic Law.

THE PRESIDENT: Senator Duane.

SENATOR DUANE: Through you, Madam President, if the sponsor would yield.

THE PRESIDENT: Senator Skelos, will you yield for a question?

SENATOR SKELOS: Yes.

THE PRESIDENT: You may proceed with a question, Senator.

SENATOR DUANE: I'm wondering if the sponsor has a breakdown on the number of

drivers convicted for DWI that it's repeat - in other words, not their first DWI offense - what the percentage is, say, per year.

SENATOR SKELOS: In response, no.

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

THE PRESIDENT: Senator Skelos, do you yield?

SENATOR SKELOS: Yes.

THE PRESIDENT: You may proceed, Senator.

SENATOR DUANE: Does the legislation allow for mandatory treatment instead of mandatory license suspension or revocation?

SENATOR SKELOS: If I may respond, Madam President, no.

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

THE PRESIDENT: Senator, do you yield?

SENATOR SKELOS: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator.

SENATOR DUANE: Does the sponsor see the possibility of including mandatory treatment as one of the options which a judge could use in a case like this, whether it's the second or third time of being before the court on a DUI or a DWI?

SENATOR SKELOS: If I may respond, just -- are you asking me to explain the bill or are you asking me about possibilities of other legislation?

SENATOR DUANE: To explain the bill, how the bill came to be.

SENATOR SKELOS: The bill is very simple, Madam President. If I could continue, it basically is my explanation.

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

THE PRESIDENT: Senator, do you yield?

SENATOR SKELOS: Yes, Madam President.

THE PRESIDENT: You may proceed,

Senator Duane.

SENATOR DUANE: How was the five years -- how did you come to the five years' suspension? Why not six or three or 4½? Why five?

SENATOR SKELOS: Are you asking me how I came up with the five-year number?

SENATOR DUANE: How and why, Madam President.

SENATOR SKELOS: How what?

SENATOR DUANE: How and why.

SENATOR SKELOS: How and why? You know, Senator Duane, like much legislation, you know, why do we have three to five, two to six, a lot of it is what you think is appropriate legislation in our own individual minds. And I think this is a natural progression in terms of punishing individuals that are repeat alcohol and drug offenders on the roads. And what we're trying to do is make our roads safer for all of our constituents.

SENATOR DUANE: Thank you, Madam President.

On the bill.

THE PRESIDENT: You may proceed on the bill, Senator Duane.

SENATOR DUANE: It's not the first time I've raised the issue of treatment instead of just punishment for DWI and DUIs.

I noticed, I believe it was in the New York Times this weekend, a couple of letters about two very prominent people who are suffering from the disease of alcoholism and drug abuse. One is Darryl Strawberry, and the other is Robert Downey, Jr. And interestingly, despite incarceration and threats of incarceration, that really hasn't done anything to treat the underlying disease of alcoholism and drug addiction which seems to afflict them so greatly.

I think that we do ourselves a disservice by only looking at the issue of drug addiction and alcoholism as criminal justice issues. If we don't also, on the other hand, look at the underlying disease part of the havoc that alcoholism and drug addiction causes in our society, I don't think that we're doing a good job.

I would be interested to see -- and

I've been here now for almost three years, and I actually basically gave up on the Alcoholism and Drug Addiction Committee to actually get breakdowns on, for instance, the efficacy of just punishment and not treatment. Many of you have heard in this body the debate that we've been having around the Rockefeller Drug Laws and mandatory sentencing that goes along with that and how more recent thinking on that is that mandatory terms are not really in the best interests either of society or the criminal justice system or those victimized by drug addiction and drug abuse.

And so now to pass legislation which doesn't even talk about an option of mandatory treatment seems like it's really not -- really just isn't making much sense right now.

I'd like to know, whether it's in our state or other states, when it is that people are sentenced to mandatory treatment, if that is as effective as incarcerating people. I don't know the answer to that question. I would like to know the answer to that question. I would ask those questions,

but I didn't get the sense that I was going to get a lot of answers on those questions right here. So what I'll do is I'll just try to answer the questions myself as best as I can.

One of the things that even the Governor's Rockefeller Drug Law reforms talks about is the ability of judges to sentence people to treatment. That certainly seems like a good idea. In California, the people of that state just passed a referendum which requires that judges send people to treatment on their first and second convictions for drug offenses. This I know is repeat; I believe it starts with three.

Well, three is just one more time than two. What are we doing at the first-time convictions and second-time convictions or, for that matter, third-time convictions?

I'm in no way trying to apologize for or in any way decrease the severity of someone who's driving under the influence or driving while intoxicated. And in fact, I tend to vote for laws that have to do with the person responsible losing their license to drive.

I generally vote against bills which say that you lose registration for the car, because I think that negatively or could negatively impact an entire family who may need a car to get to work or to get to school or something like that. So I don't think that that's fair.

But I do think that there are consequences for the irresponsible use of alcohol or the illegal use of drugs while driving. And so clearly, we do have to do something. But maybe for the first two times it should be a mandatory treatment with suspension of the license while the treatment is going on. And maybe that would be appropriate for the third time as well.

It also occurs to me that one of the problems that we had with, for instance, the Rockefeller Drug Laws are the mandates. And that maybe what we need to do is to leave some options open to the judge in a case like this.

One of the things that I've been objecting to in the -- I'm sorry. One of the things that I have been objecting to about the

Rockefeller Drug Laws and even the Governor's reform package of the Rockefeller Drug Laws is that it still leaves too much authority in the hands of the district attorney. I think that in most cases it's best to give discretion to the judges as well, who can also act with the advice or maybe the consent of a district attorney.

In cases having to do with alcohol and drug convictions, even when it applies to people who are behind the wheel, maybe that needs to rest in -- the decision-making needs to rest in the hands of judges and DAs, and maybe we should have social workers or alcohol and substance abuse professionals involved in a situation like that.

You know, I want to go back to the bills that we've also had which have to do with taking away a person's registration for their car and how that might impact what happens with the family. For instance, a family that can't get to work anymore, a husband who's convicted of drunken driving and then would lose their registration and the wife needed to get to work but couldn't get to

work because they don't have a car anymore, because the registration has been lifted. And in many parts of our state, of course, we don't have very good public transportation. Maybe they would lose their job. Maybe they would get evicted from their home. And I certainly know how that feels. While I've never been evicted from my home, I am about to be evicted from my office, and I can tell you that doesn't feel too good.

So I think in a lot of these cases what we need to do is to really look to the experts on these things. I don't know whether anybody in this body is a licensed social worker -- or actually, I guess we don't license social workers. But I think that social workers should be licensed. And if they were licensed, I would hope that we would have some in the body. I don't know whether we do.

But I also think that it would be good to have someone here who's an expert in alcohol and drug addiction. Now, since none of us are experts in that field, as far as I know, maybe what would be good is if we had a

hearing where we called in alcoholism and drug counselors to find out what the professionals think.

You know, we often hear from MADD, which is a terrific group, Mothers Against Drunken Driving. And I actually don't see a memo connected to this bill. They probably are in favor of this bill, although I didn't see any memos from them on it. But I think it would be terrific to have a hearing and have Mothers Against Drunken Driving come and testify on it. I think it would be terrific if we had people that worked in the field of alcoholism and substance abuse come and talk about what is most effective.

My first year here, I believe, one of the things that we saw was a demonstration of the -- I believe it's called an interlock device, where a person has to blow into something in order to get their car door open or the ignition started, I believe it was. Well, maybe that's something that should be mandated as well. Maybe that's what should happen after the first time so we never get to a third time after the first time someone is

convicted of drunken driving or driving under the influence, that it would be mandated that they put an interlock device on their car so that there would be no chance that it would happen another time. Or maybe an interlock device and a mandate that they go to treatment as well. That might be the way that we should go.

And, see, there's so many possibilities, so many possibilities and so many questions about what to do about cases where people get behind the wheel they're under the influence of alcohol or drugs. I wish that there were more people here that could actually hear this debate, although there wasn't really much of a debate, although there wasn't really much of a debate. Although I was willing to debate. But there really wasn't much of a debate about this particular bill, and that's too bad.

So let me just recap the things that I thought were so very important. I think it would be interesting to know what the statistical breakdown is in the state for this year, or maybe we could look at the past five

years -- just to pick a number randomly, five years -- on the number of people in the state who have been convicted a second or a third time of driving under the influence or driving while intoxicated.

I'd be interested to see what other states do, how many years they suspend licenses if -- or revoke licenses, for how many years they revoke licenses in similar situations to this. Do they all choose five years? Did some of them have a rationale for the number of years they chose? It would be interesting also to see if they actually debated these things in committee or on the floor. Maybe we could pull together transcripts of what other legislatures have done, hearings that they've had, experts that they've talked to, see what their states, Mothers Against Drunken Driving thought about the bills that they voted on having to do with this issue.

And of course, as I've mentioned before, to have treatment professionals come in to tell us what is really the thing that is working the best to stop drunken driving and

driving under the influence on our roads. Because it is a terrible thing when someone does that. And as I say, they should be held responsible.

Although, as I also believe, prevention is probably the best thing. And so why don't we look to the interlock device, see whether or not that would work. That way, if someone's been caught drunken driving once or driving under the influence once, it would be virtually impossible for them to do it again if they're required to have an interlock device on their car.

I hope that I've provided some food for thought for the few colleagues of mine who are actually here in the chamber to hear this. Because, you know, we're constantly voting on these drunk driving bills. Time after time, we have bills about drunk driving, which is a terrible thing. But as I say as I started this, and to go full circle, yeah, I suppose in this day and age we'll always be looking at substance abuse as something that needs attention by the criminal justice system.

But to only consider things from

the point of view of the criminal justice system and to not look at it from the disease model and to talk to people who actually treat the disease of alcoholism and drug addiction, I think we do ourselves an enormous disservice.

I don't claim to be an expert in that field. I don't think we have any CACs here in the body who know about that sort of thing. But I would certainly be interested in hearing what their point of view is on the bill. And I look forward to having a further discussion or debate about this. Personally, though I was going to say shockingly, that's what I get paid for. Of course, I'm not getting paid now, because we don't have a budget, which is pretty shameful in and of itself.

In fact, even if I wanted to pay the rent on my office space, I don't have any money right now, because, you know, I'm not getting paid. So I couldn't even pay the rent on my office space, small though it is, small and hot, crowded though my office space is. Did I mention that it was small and hot and

crowded? Dusty. We have no cleaning service. I do pay for the water there. It's about drunk driving, I know, this bill, so I wouldn't put vodka in the cooler or anything, but I couldn't afford it. I can barely afford the water cooler, which I keep there for my employees so that they can drink water since we have no water source in it. But I may not even be able to afford for the water for them now, because as I -- did I mention, we're not getting paid. So I couldn't even pay the rent on that.

THE PRESIDENT: Senator Duane. Senator Duane.

Senator Marcellino.

SENATOR MARCELLINO: I have been sitting and listening, as I do for most of the time on most of the debate, and I find most of the questions enlightening and good. But in this case we seem to be off the tangent here. We were on repeat offenders for DWI. We're now off to somebody's office, district office. All interesting; if he wants to talk about it in the lounge, be happy to hear it, but not here.

THE PRESIDENT: All right. I'll just remind Senator Duane, with all due respect, please keep your remarks germane to the substance of the bill.

SENATOR DUANE: I'm sorry, Madam President.

THE PRESIDENT: Thank you.

SENATOR DUANE: The anxiety of the situation in my office was getting to me.

THE PRESIDENT: Thank you for the apology, Senator.

SENATOR DUANE: But anyway, so I just think that a further, broader, a wider discussion on the issue of DWI and DUI and how that could best be worked on in our state, whether it's strictly criminal justice or whether it's also a treatment situation, is certainly worth our time and effort.

Thank you, Madam President.

THE PRESIDENT: You're welcome, Senator Duane.

Senator Hevesi.

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

THE PRESIDENT: Senator Skelos,

will you yield?

SENATOR SKELOS: I certainly will, Madam President.

THE PRESIDENT: Thank you, Senator.

You may proceed.

SENATOR HEVESI: Thank you. Through you, Madam President. Senator Skelos, are you aware at that if your legislation here today passes, and subsequent to its passage an individual on his third conviction for DWI or DWAI has his license suspended for five years, that that individual can still get 14 convictions for driving with that suspended license before that individual is eligible for felony-level penalties?

SENATOR SKELOS: I'm aware of what is in this legislation in terms of at least suspending the license.

SENATOR HEVESI: Madam President, would the sponsor continue to yield?

THE PRESIDENT: Senator, will you yield?

SENATOR SKELOS: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Hevesi.

SENATOR HEVESI: Thank you. Through you, Madam President. If it were true, which I'm contending it is, Senator Skelos, that you can reoffend on a suspended license 14 times before you get a felony offense, wouldn't it seem that this legislation, though it goes absolutely in the right direction and I'm going to support it, doesn't really have the teeth to be efficacious?

SENATOR SKELOS: It does have the teeth in terms of suspending a person's license, improving on the law that exists right now. And I'm certain that there is other legislation that other members have that would deal with the situation that you're raising in a very effective and a very swift manner through additional punishment.

The problem that we face, quite honestly, Senator Hevesi, is that the Assembly leadership will not allow bills like this out onto the floor, and other pieces of legislation that are looking to crack down on

people that are killing other people on the roads because they're driving while intoxicated or driving with suspended licenses. And I think your effort and the effort of many should be in the other house, in getting them to pass this type of legislation.

SENATOR HEVESI: Madam President, on the bill.

THE PRESIDENT: You may proceed on the bill, Senator Hevesi.

SENATOR HEVESI: Thank you. I thank the sponsor for bringing this legislation and for the thoughtful answer.

My problem is that though we may have some difficulties passing a more strict bill with regards to driving with a suspended license in the other house, I know, because we had a discussion on this issue about three weeks ago, Senator Marcellino brought a piece of legislation which attempted to address this issue. But again, I thought that even Senator Marcellino's well-intentioned effort was - did certainly not go far enough.

Because what his legislation did

was it kicked aggravated unlicensed operation in the second degree to the first degree on the third conviction as opposed to the fourth, but didn't touch the issue of the fact that you are still only eligible for misdemeanor-level penalties up until the 14th time that you reoffend on a driving with a suspended license charge.

And so why we don't take another step forward -- and I believe Senator Marcellino, in that debate, was certainly open and willing to going further. I don't think that anybody in this house or even in the other house would argue that 14 times is necessary and is a prudent thing to do.

So this legislation is good. Somebody who reoffends on a DWI conviction three times within ten years certainly should have their license suspended for a period of five years or even more.

But if we have nothing on the books right now that prevents somebody who gets the additional penalty provided under Senator Skelos's bill of license suspension for five years, if we don't have something to make the

license suspension enforceable and to deter people from violating their license suspension, then I suggest to you that this legislation today is really not going to have a tremendous impact. It will only have an impact with those individuals who hold sacrosanct the law and would never drive with a suspended license.

But the people we're talking about are people who have reoffended three times on a drunk driving charge. So to give them the benefit of the doubt just seems that it's not the prudent thing to do.

So, you know, and if it's true, Senator Skelos and Senator Marcellino, that the Assembly wouldn't -- won't pass another version, a more stringent version, then let's pass the bill as we did earlier this year, Senator Marcellino's version, and let's pass the tougher one also, and then present them with both pieces of legislation. And if they'll only act on the less stringent one, then we'll know for sure what the situation is.

But for us not to act puts us in

the position of being responsible for drunk driving and driving with suspended license recidivists. And I don't want to be in that position.

So, Madam President, I'm going to support this legislation, but I would implore the Majority to take some further action on this very well-intended legislation that really can be broadened to have a positive impact, that's really going to have the effect of stopping drunk driving and driving with suspended licenses in New York State.

Thank you.

THE PRESIDENT: Senator Volker.

SENATOR VOLKER: Madam President, I hesitated to speak, but since this has been brought up -- and as somebody been involved in this issue for a long time, I was chairman of the subcommittee on alcoholism, which was the only subcommittee of the Mental Health Committee since its inception back in 1974, and until it became -- it lapsed because the committee was set up for alcoholism and drug abuse.

And I was fascinated to listen to

the discussion about proof of whether these laws had done any good, because New York is a model state in DWI. No state in the union that any of us know have ever seen such an enormous drop in DWI deaths, such an enormous drop in DWI injuries.

We do not have the most people in the country in jail -- I thought we did. We have about 850 people that go on to a correctional facility just out -- it's in my district. It was partly at my behest. We wanted to put all the people involved in DWI at one facility, because they are what you would -- most of them are what you would call genuine nonviolent offenders. But a lot of them are alcoholics that go on to -- they receive treatment, they receive all sorts of special kind of operations that are there.

Not well known, because of course good news in this state, just like, you know, shock incarceration that has been extremely successful in this state, where this state has had the greatest success in the drop of inmate population in any of our times.

Senator, the only thing I got to

respond to you about when you say somebody can do it 14 times, I don't know where that is. You do in that upstate New York, you're in jail. Remember, you can go to jail. Three DWIs, and I got to tell you, in Western New York and virtually anyplace in upstate New York, you are in jail.

In fact, today you don't even, for the most part, although what sometimes people do -- I mean, and most of the people that are arrested under these things, this .08 stuff and all that, I mean, you don't get arrested on .08. I mean, most of people are .15 to .25. That's where the accidents are. I mean, I investigated thousands of accidents in my time when I was a police officer. I worked nights. We didn't see any .10. The people who were in the accidents were a lot higher, I'll tell you that.

But, Senator, I guess I'm a little baffled. I think what Senator Skelos is trying to do is he's trying to deal with the driving part of it, the issue of driving, and the issue of after you get out of jail. Because if you're busted that many times, you

either are in jail or you've been in jail in virtually any county in this state. Now, maybe not in New York City, I don't know. And remember, I'm the guy who has tried to pass aggravated unlicensed operation, primarily for New York City, for years, and we cannot get the Assembly to pass it.

And by the way, Senator, you talk about tough legislation, we just reported out of my committee Senator Wright's bill, which used to be a piece of mine and so forth, which is tough DWI legislation. And I expect that that bill will be on a calendar very shortly; that is, you know, here. If it's on the floor, it's on the calendar. And I agree with you.

But I must agree with Senator Skelos. And that is that for various reasons the Assembly has not wanted to pass tough criminal legislation involving DWI or, in fact, even traffic legislation involving DWI. And on the other hand, we can't get them to pass the so-called aggravated unlicensed operation bill, which will deal with people who multiply drive their cars without having a

license, and after it's been suspended or whatever.

So, you know, I can only say that yeah, we want to pass tough legislation. Senator Skelos has had, I think, even tougher legislation than this. The problem is we've got to get it through the other house. And there is a bill on this calendar that I expect we're going to be doing fairly shortly -- and by the way, I see Senator McGee's here, and a piece of that bill is hers, because what we did was merge it all together in one bill, which often we like to do, rather than have it, you know, in a series of bills.

That bill, I expect this house will send it over to the Assembly. But I have to be honest with you. The chances of that passing the Assembly are very slim.

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

Then the debate is closed.

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator Hevesi, to explain your vote.

SENATOR HEVESI: Thank you, Madam President.

One point that I neglected to make when I was speaking on the bill regards something that Senator Duane alluded to and he's spoken about a number of times. And I spoke about this I believe last week. And it's a mandatory treatment option which -- and I'll just repeat what I said the last time - if we're not doing it for moral reasons, because we recognize that some individuals are afflicted with the disease of alcoholism, then we should be doing it as a matter of public safety.

Because we have statistics and studies which show that of people who received treatment subsequent to a driving-while intoxicated-related crime, only -- and this sounds high, but 25 percent of those receiving treatment subsequent to a conviction reoffend. Of those individuals who did not receive

treatment, 70 percent reoffend.

And that in and of itself and alone should tell us that we need to spend some money in order to impose a mandatory treatment option (a) because it's right and (b) because it's smart.

I vote aye on this legislation.

THE PRESIDENT: Senator Hevesi, you will be recorded as voting in the affirmative on this bill.

The Secretary will announce the results.

THE SECRETARY: Ayes, 59.

THE PRESIDENT: The bill is passed.

Senator Marcellino.

SENATOR MARCELLINO: Madam President, may we return now to the reports of standing committees. I believe you have a report of the Rules Committee at the desk. May it be read.

THE PRESIDENT: Reports of standing committees, Rules Committee.

The Secretary will read.

THE SECRETARY: Senator Bruno,

from the Committee on Rules, reports the following bill direct to third reading:

Senate Print 5152, by Senator Lack, an act to amend the Tax Law.

THE PRESIDENT: Senator Marcellino.

SENATOR MARCELLINO: Move to accept the report of the Rules Committee, Madam President.

THE PRESIDENT: All those in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The motion is carried.

Senator Marcellino.

SENATOR MARCELLINO: Can we now take up the Rules report, Madam President.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 566, by Senator Lack, Senate Print 5152, an act to amend the Tax Law, in relation to extending authority.

SENATOR DOLLINGER: Explanation, please.

THE PRESIDENT: Senator Lack, an explanation has been requested by Senator Dollinger.

SENATOR LACK: Thank you, Madam President.

This is the Suffolk County sales tax extender and restoral. The county would like to change the sunset date on their sales tax to November 30, 2003, to extend the three-quarter-percent sales tax as well as to increase it, as a result of current economic conditions, by one quarter, which is actually a restoral back to what it was in 1995.

There's a home rule message at the desk. There was an 11 to 6, with one abstention, vote in the county legislature. Both the majority leader, who is a Republican, and the minority leader, who is a Democrat, voted for the home rule message and the bill that's before us.

In fact, the bill that's before us is being carried in the Assembly at the request of the Majority Democrats who

represent the Assembly from Suffolk County, and there's a three-way agreement on putting this into effect as soon as possible.

SENATOR DOLLINGER: Just through you, Madam President -

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: -- will Senator Lack yield just to one question?

THE PRESIDENT: Senator Lack, will you yield?

SENATOR LACK: Yes, Madam President.

THE PRESIDENT: You may proceed with a question, Senator Dollinger.

SENATOR DOLLINGER: We have done these bills on a number of occasions, and we do them for two-year periods. Was there any consideration given just to making it permanent?

This is obviously a revenue that the county is going to anticipate both now and in the future. Does it make any sense to just permanently memorialize this and not have people voting both in Suffolk County and here

for tax increases or tax restorals or whatever we want to call it?

Doesn't it make good sense? These sales tax revenues are indispensable to the functioning of county government. Wouldn't it make sense to just make it permanent?

SENATOR LACK: Well, Madam President, as Senator Dollinger certainly knows, as a former member of the Monroe County legislature, nobody wants to be in the county legislature at the time something is made permanent for which you then vote on.

Of course, as Senator Dollinger also knows, as a former member of that legislature, this is a two-tiered process for any county legislature, and that certainly includes Suffolk. There's a home rule request which they have already voted on. If we have enacted that, assuming we do today, and it's signed into law by the Governor, then they have to pass it again.

This is a reelection year for the Suffolk County legislature. I don't think that the Suffolk County legislature or, I would daresay, any county legislature that I

know -- or city council. I don't mean just to pick on counties -- would want to make permanent this type of measure.

And indeed, at this point in time, Madam President, there's a quarter-percent increase which everybody has agreed to, which I said was really a restoral. It's been taken off and put on again.

So in terms of the economic conditions in Suffolk County, which enjoys a very good tax rating, it is certainly conceivable in the not too distant future that the extra quarter-percent levy would not be utilized by the county. So having, as it were, a temporary, transient nature with respect to the entire additional tax is still not a bad thing to have at this time.

And while you might say there's an institutionalization of at least three-quarters of a penny, I certainly understand the political ramifications from both major political parties in Suffolk County that this is something to be done on a biannual basis and not on a permanent basis.

But I will be glad to pass, Madam

President, Senator Dollinger's recommendations on to Suffolk County. And if anybody in the county legislature has the chutzpah and wants to follow up on it, I'll be glad to let Senator Dollinger know.

THE PRESIDENT: Senator Dollinger.

SENATOR DOLLINGER: Explanation satisfactory, Madam President.

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

Then the debate is closed.

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57. Nays, 2. Senators Dollinger and Gentile recorded in the negative.

THE PRESIDENT: The bill is passed.

Senator Marcellino.

SENATOR MARCELLINO: Madam President, is there any housekeeping at the

desk?

THE PRESIDENT: We do have housekeeping, Senator.

SENATOR MARCELLINO: Would you please clean the house.

THE PRESIDENT: Senator Fuschillo, housekeeping.

SENATOR FUSCHILLO: Thank you, Madam President.

THE PRESIDENT: You're welcome, Senator.

SENATOR FUSCHILLO: On behalf of Senator Saland, on page 40 I offer the following amendments to Calendar Number 467, Senate Print Number 4233, and ask that said bill retain its place on Third Reading Calendar.

THE PRESIDENT: The amendments are received and approved, Senator, and the bill will retain its place on the Third Reading Calendar.

SENATOR FUSCHILLO: Thank you, Madam President.

THE PRESIDENT: You're welcome. Senator Marcellino.

SENATOR MARCELLINO: Madam President, if there isn't any more business before the house, I would recommend that we adjourn until Tuesday, May 1st, at 3:00 p.m.

THE PRESIDENT: On motion, the Senate stands adjourned until Tuesday, May 1st, 3:00 p.m.

(Whereupon, at 5:11 p.m., the Senate adjourned.)