NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

May 30, 2001

11:16 a.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 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, Tuesday, May 29, the Senate met pursuant to adjournment. The Journal of Sunday, May 27, 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 Skelos.

SENATOR SKELOS: Madam President, if we could adopt the Resolution Calendar at this time.

THE PRESIDENT: All in favor of adopting the Resolution Calendar please say aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The Resolution Calendar is adopted.

SENATOR SKELOS: Madam President.

THE PRESIDENT: Senator Skelos, we have a substitution.

SENATOR SKELOS: Senator Morahan has consented that Resolutions 2052, 2056, 2057, and 2058 be opened for sponsorship.

So with the consent of the

Minority, we'll put all the members on the resolutions. If they do not wish to sponsor the resolutions, they should notify the desk.

THE PRESIDENT: All those members who do not wish to sponsor the resolutions as expressed by Senator Skelos please notify the desk.

Senator Skelos.

SENATOR SKELOS: Madam President, are there any substitutions at the desk?

THE PRESIDENT: Yes, there are, Senator.

SENATOR SKELOS: I ask that they be made at this time.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: On page 40, Senator Maltese moves to discharge, from the Committee on Elections, Assembly Bill Number 8463 and substitute it for the identical Senate Bill Number 4913A, Third Reading Calendar 699.

THE PRESIDENT: The substitution is ordered.

Senator Skelos.

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

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 433, by Senator Rath, Senate Print 4096, an act to amend the Municipal Home Rule Law.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 37.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 486, by Senator Farley, Senate Print 2148, an act to amend the Executive Law, in relation to designation.

THE PRESIDENT: 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, 37.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 505, by Senator Stafford, Senate Print 2923, an act to amend the General Municipal Law, in relation to taking of billboards.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 573, by Senator Leibell, Senate Print 5086, an act to amend Chapter 510 of the Laws of 1996.

THE PRESIDENT: 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, 37.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 603, by Senator Seward, Senate Print 4485, an act to amend Chapter 607 of the Laws of 1999.

THE PRESIDENT: 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, 40.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 609, by Senator Wright, Senate Print 3750, an act to amend the Environmental Conservation Law, in relation to notification.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 613, by Senator Padavan, Senate Print 1219A, an act to amend the Vehicle and Traffic Law and the Administrative Code of the City of New York.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 40.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 739, by Senator McGee, Senate Print 869, an act to amend the Vehicle and Traffic Law, in relation to requiring.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 40.

THE PRESIDENT: The bill is passed.

Senator Velella.

SENATOR VELELLA: Madam

President, there will be an immediate meeting of the Local Governments Committee in the Majority Conference Room.

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

The Secretary will read.

THE SECRETARY: Calendar Number 740, by Senator Johnson, Senate Print 1367 -

THE PRESIDENT: 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, 40.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 760, by Senator Saland, Senate Print 2976, an act to authorize the Town of Poughkeepsie in the County of Dutchess.

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

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, 42.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 768, by Senator Balboni, Senate Print 3691, an act in relation to allowing the -

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 810, by Senator Meier, Senate Print 4307, an act to amend the Social Services Law, in relation to guaranteeing.

SENATOR HASSELL-THOMPSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 820, by Senator Larkin, Senate Print 2338A, an

act to amend Chapter 672 of the Laws of 1993.

THE PRESIDENT: 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 PRESIDENT: Senator Dollinger, to explain your vote.

SENATOR DOLLINGER: Thank you, Madam President.

This is another bill in a line of bills that we've passed that affect libraries and the use of Dormitory funding. I'm going to vote in favor of this bill, as I believe I have on both bills sponsored by Senator Larkin and I believe Senator Saland and others this year.

I would just encourage the sponsor. This, I think, is a very good idea. It will reduce borrowing costs for libraries around the state. And while I understand Senator Larkin's advocacy on the behalf of the Monroe Free Library, it really is a benefit that should be available to all libraries.

We ought to look at making the Dormitory Authority as the borrowing entity for all library new construction and renovation. It would reduce their costs. It's in our best interests to do that. And it's a way to give an indirect financial benefit to large numbers of libraries that are becoming more and more valuable, not only in the Monroe Free Library but throughout the state.

This is a good idea. We should do it statewide. I'll vote aye, Madam President.

THE PRESIDENT: The Secretary will announce the results.

THE SECRETARY: Ayes, 45.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 830, by Senator Bonacic, Senate Print 5141, an act to amend the Public Authorities Law, in relation to the power.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number

843, by Senator Nozzolio, Senate Print 3936, an act to amend the Penal Law, the Vehicle and Traffic Law, and the Insurance Law.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 9. This act shall take effect on the first day of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 45.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 844, by Senator Volker, Senate Print 3937, an act to amend the Penal Law, in relation to endangering the welfare of a child.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 5. This act shall take effect on the first day of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 47.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 846, by Senator Saland, Senate Print 4234, an act to amend the Penal Law, in relation to establishing.

SENATOR ADA SMITH: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 847, by Senator Volker, Senate Print 4283, an act to amend the Criminal Procedure Law, in relation to proof.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 876, by Senator Wright, Senate Print 4869, an act to amend the Public Service Law.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 896, by Senator Goodman, Senate Print 1725 -

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 913, by Senator Volker, Senate Print 4957, an act to amend the Alcoholic Beverage Control Law.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 47.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 914, by Senator Leibell, Senate Print 5135, an act to amend Chapter 929 of the Laws of 1986.

THE PRESIDENT: 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, 47.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 949, by Senator Stafford, Senate Print 3481, an act to amend the Executive Law, in relation to the Emergency Management Assistance Compact.

THE PRESIDENT: Read the last section.

SENATOR PATERSON: Lay that aside, Madam President.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 962, by Senator Volker, Senate Print 2228, an act to authorize the reopening of the optional twenty-year retirement plan.

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

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 48.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 966, by Senator Stafford, Senate Print 4236, an act to amend Chapter 688 of the Laws of 1955.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 969, by Senator Marcellino, Senate Print 5269, an act to amend the Environmental Conservation Law, in relation to continuing.

THE PRESIDENT: 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, 48.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 970, by Senator Hoffmann, Senate Print 84, an act to amend the Penal Law, in relation to

inciting to riot in the first degree.

SENATOR SCHNEIDERMAN: Lay it aside.

SENATOR DUANE: Lay it aside.

THE PRESIDENT: The bill is laid aside.

SENATOR VELELLA: Can we lay that aside for the day.

THE PRESIDENT: That bill is laid aside just for the day.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 971, by Senator Alesi, Senate Print 1133, an act to amend the Penal Law, in relation to the minimum sentence.

SENATOR DUANE: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 972, by Senator Saland, Senate Print 1342, an act to amend the Criminal Procedure Law, in relation to authorizing.

THE PRESIDENT: Read the last

section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 48.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 974, by Senator Santiago, Senate Print 2205A, an act authorizing the City of New York to reconvey its interest.

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

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 48.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 976, by Senator Alesi, Senate Print 3374, an act -

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 978, by Senator Johnson, Senate Print 4512, an act to amend the Criminal Procedure Law, in relation to prohibiting.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 979, by Senator Velella, Senate Print 4722, an act to amend the Penal Law, in relation to the crime of criminal mischief in the third degree.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 980, by Senator Velella, Senate Print 4723, an act to amend the Penal Law, in relation to the crime of unauthorized use.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 981, by Senator A. Smith, Senate Print 5308, an act authorizing the City of New York to reconvey its interest.

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

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

THE PRESIDENT: The bill is passed.

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

SENATOR VELELLA: Madam President, can you recognize Senator DeFrancisco.

THE PRESIDENT: Senator DeFrancisco.

SENATOR DeFRANCISCO: Madam President, I'd request unanimous consent to vote in the negative on Calendar 739, Senate Print 869.

THE PRESIDENT: You will be so recorded as voting in the negative, Senator.

Senator Velella.

SENATOR VELELLA: Madam President, can we proceed to the controversial calendar in order, please.

THE PRESIDENT: The Secretary will read.

Senator Duane.

SENATOR DUANE: Thank you, Madam President. With unanimous consent, I'd like

to be recorded in the negative on Calendar Number 433 and Calendar Number 739.

THE PRESIDENT: You will be so recorded as voting in the negative, Senator Duane.

Senator Velella.

SENATOR VELELLA: Madam President, there will be an immediate meeting of the Education Committee in the Majority Conference Room.

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

The Secretary will read.

THE SECRETARY: Calendar Number 505, by Senator Stafford, Senate Print 2923, an act to amend the General Municipal Law, in relation to taking of billboards.

SENATOR PATERSON: Explanation.

SENATOR SCHNEIDERMAN: Explanation.

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

SENATOR STAFFORD: Thank you, Madam President.

These bills are no strangers to any of us. This is a bill whereby if you have property and it's taken by eminent domain, you will be paid for that property. And we feel that it's a bill that should prevail.

THE PRESIDENT: Senator Oppenheimer.

SENATOR OPPENHEIMER: I guess the -- I do have a couple of questions. This is 505.

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

You may proceed, Senator.

SENATOR STAFFORD: We all work together, Madam President.

THE PRESIDENT: I ask for order on the floor. If the members would take their conversations outside the chambers so that the debate may be heard clearly.

Go ahead, Senator Oppenheimer. You may proceed with a question.

SENATOR OPPENHEIMER: Thank you.

Senator Stafford, if this bill were to pass, the municipality would no longer just

be able to require the removal of a billboard; is that true?

SENATOR STAFFORD: I'm asking what the question is, Madam President. I didn't hear it.

No, it's not true.

SENATOR OPPENHEIMER: Okay. If the Senator would yield again.

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

You may proceed, Senator Oppenheimer.

SENATOR OPPENHEIMER: If the municipality could require the removal of the billboard without going to eminent domain proceedings, then why do we have this bill?

SENATOR STAFFORD: Madam President, I understand -- and I'm sure that some members of Senator Oppenheimer's family who are good lawyers -- I believe it's one of the real fine firms, I think it's the Proskauer firm. And I'm sure that if you talked to any of those lawyers, they would say if you have some property, no matter what the situation is, and it's taken, then there would

be payment. And the procedure is eminent domain.

SENATOR OPPENHEIMER: If the Senator would yield.

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

I believe that was a yes. Senator Oppenheimer, you may proceed.

SENATOR STAFFORD: Yes.

SENATOR OPPENHEIMER: Unfortunately, I don't have the entire environmental legal staff of Proskauer at my disposal. Therefore, I must pursue this with my limited abilities.

SENATOR STAFFORD: That is what we all do, Madam President, on most issues.

(Laughter.)

SENATOR OPPENHEIMER: My fear is that if there is only the eminent domain procedure available to the municipality, that they will not pursue this because they do not want to get entangled in the legal costs, rather than just simply prohibiting the billboard, as has been the situation in the past.

SENATOR STAFFORD: Madam President, I hesitate to go back to John Locke, but I find it necessary here today for just a second. And if you read John Locke, he discusses property.

And in our system, which is great, in our jurisprudential system, in our democracy, if we have property -- and we may not agree with the people that have that property, but if it's taken from them, we have eminent domain. And then we have a situation where the issues are raised and the equities are balanced.

SENATOR OPPENHEIMER: I'm not sure what that meant.

One last question, and then I -

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

You may proceed, Senator Oppenheimer.

SENATOR OPPENHEIMER: Then I think I will let the legal entities on this side of the aisle take over.

You say -- I believe you said that there still would be available to

municipalities, outside of this resorting to eminent domain, the ability to take -- to require a billboard to be removed. Is that what you said earlier? Because I believe this replaces that.

SENATOR STAFFORD: I'm going to, Madam President, ask the Senator to please ask the question again. We've got to do something about the microphones here, I think.

SENATOR OPPENHEIMER: My question is I thought earlier you had said that if this goes into effect, this bill, that municipalities still would have the authority to remove the billboard without going to eminent domain proceedings.

That isn't my understanding of the bill. That's why I'm asking again.

SENATOR STAFFORD: No, Madam President, I did not say that.

I did say, though, that -- I get back to the point. And please, it's always good to try to get to the heart of the issue to get really to the point. So I'll try to say again, we may not agree, we may not agree with individuals or businesses that have

property. But still, if the property is legal, then we find that they should be reimbursed for that property.

That's what we're talking about here. And I think that's really the heart of the issue.

SENATOR OPPENHEIMER: Well, that's a good question.

One last question.

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

SENATOR STAFFORD: By all means.

THE PRESIDENT: You may proceed, Senator Oppenheimer.

SENATOR OPPENHEIMER: My colleague is questioning, are we talking about the billboard itself or the leasing of the billboard?

SENATOR STAFFORD: Madam President, this is the entire package. We all know, in business, if you have a -- if you have the -- it's actually a lease, now that I think about it. Yes, it's a lease. It's a lease, really.

The entire package.

SENATOR OPPENHEIMER: Okay. I'm going to let my colleagues speak now.

But I -- on the bill, please, Madam President.

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

SENATOR OPPENHEIMER: As I stated earlier, I fear that moving to eminent domain proceedings for a municipality is a costly undertaking, and I think that they will not pursue it.

And therefore, I'll be voting against this bill, because I think the municipality has the right to move ahead without going to eminent domain if they consider a billboard to be in a place or in a situation which they think is undesirable for their municipality. So I'll be voting no.

And I turn it over to my legal counsel.

THE PRESIDENT: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President. If the sponsor would yield for a few questions.

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

SENATOR STAFFORD: By all means.

THE PRESIDENT: You may proceed, Senator Schneiderman.

SENATOR SCHNEIDERMAN: I appreciate the sponsor's efforts to cut to the heart of the issue before us. But it seems to me that the heart of the issue in this bill is not whether or not a billboard can be removed, but how much money it costs a municipality to remove a billboard.

Is it not true that under the current law there is a provision for payment to someone who erects a billboard in a residential area provided for through an amortization schedule?

SENATOR STAFFORD: Well, first, I would say, discussing what the heart of the matter is, I don't know whether I've ever shared with you, Senator, but we often find that one man's floor is another man's ceiling. So sometimes we don't agree on exactly what the issue is.

But you're actually correct in what

you asked.

SENATOR SCHNEIDERMAN: Thank you, Madam President. If the sponsor would continue to yield.

THE PRESIDENT: Senator Stafford, do you continue to yield?

You may proceed, Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you.

I appreciate the sponsor's metaphor. Living in Manhattan, I'm very familiar with this floor-ceiling issue. It's something that is an issue on a daily basis in my life.

However, I think that given the answer to the last question, it seems clear now that in areas that are zoned industrial or for manufacturing purposes, municipalities already are required to follow an eminent domain procedure to remove a billboard. The law now, though, provides that municipalities can pay somewhat less than would be required under such a procedure in other areas, in the pristine residential neighborhoods or open space areas of the state.

And the question is, why should we change the law and essentially transfer money from municipalities that are trying to prevent the visual pollution of billboards, why should we transfer money from those municipalities to the billboard erectors?

And that's, it seems to me, what this bill does. Why should we make that sort of a change to transfer more money to those who would erect billboards in the bucolic hills of northern New York or the bucolic hills of Morningside Heights?

SENATOR STAFFORD: It's working well in those areas, and we think it should be extended.

SENATOR SCHNEIDERMAN: Mmm.

Through you, Madam President, is there any indication from any municipality or any other source that the provision for an amortization schedule in residential neighborhoods is not working well?

SENATOR STAFFORD: In -- yes, there's been problems, Madam President.

SENATOR SCHNEIDERMAN: Could the sponsor describe any of those problems or

identify a particular problem?

SENATOR STAFFORD: Yeah. People -- you know, really, it hasn't been equitable, and this would be much more equitable as far as the people who are in this industry.

SENATOR SCHNEIDERMAN: Thank you. Thank the sponsor for his answers.

On the bill, Madam President.

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

SENATOR SCHNEIDERMAN: I think that the situation here with -- I'm not sure if it's a floor or a ceiling -- is that what this bill would do is simply transfer money from municipalities that are seeking to regulate the erection of billboards in residential areas, transfer money from the municipalities to those who erect such billboards.

I think it is tremendously important that this bill does not apply to industrial and manufacturing areas. That is already covered by the state's eminent domain proceedings. What we have in the law now is a

lesser requirement for payment for a municipality that seeks to take down a billboard in a residential neighborhood. That makes good sense.

We do not have to proceed with eminent domain proceedings in every case in which a municipality attempts to regulate what goes on in a residential community. In fact, if a municipality zoned -- provided through its own zoning regulations that you can't put up any billboards in a particular area, that would not require an eminent domain proceeding. That would not be a taking under the United States Constitution.

So it seems to me that here we have a situation where environmentalists and advocates for open space are opposed to this change in the law. They feel that the current amortization schedule provides enough compensation for a billboard erector.

The local governments -- the statewide organization that represents local governments is opposed to this, because they understand this would just make it more expensive for municipalities -- many of which

have their backs against the wall as it is as far as expenditures in their budgets go - make it more difficult for municipalities to remove billboards, make it more expensive.

I think that the current system is working well. The current system of requiring eminent domain proceedings in manufacturing and industrial areas but allowing municipalities to provide something of a lesser payment in residential areas, that's working well. I don't see any reason to change it.

I think that we have a need in this state to be conscious not just of pollution in the air and pollution in the water but to be conscious of visual pollution. A lot of communities, a lot of people in the communities of this state find that their lives are better if they can be in areas that don't have billboards all over the place. That's a reasonable use of our legislative power, to help the municipalities achieve that goal.

And I would strongly urge a no vote on this legislation. I think my floor for the

number of billboards in this state may be somewhere around Senator Stafford's ceiling, but I think in this case we can agree to disagree on this. But I just don't see a reason to change the existing law, and I urge a no vote.

Thank you, Madam President.

THE PRESIDENT: Senator Dollinger.

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

I have two thoughts to add to Senator Schneiderman's observations. One is remember that the value of a billboard is largely built, is largely based on its visibility from public highways. The public has already paid to create the value in the billboard.

We created the major highways to which these billboards are adjacent, and so as a consequence the billboard is more valuable if it's located next to Route 87 in the North Country than if it is on a small country road.

So the value of the billboard from the point of view of its renting is created by

public money. It's not created by the value -- the value does not lie in the cost of simply putting up the billboard. It's its proximity to publicly funded highways that make it valuable.

And the second problem with this bill is, if you get into eminent domain, the question is what's the fair market value of the billboard, which will be in large measure based upon its rental income. Which means that its proximity to a public investment will make it more expensive for a community to buy and retire.

It seems to me that that means, in essence, we are using the public money to create value in an asset that makes it more costly for the public to acquire and remove. That doesn't make any sense to me.

What makes sense is the current approach, which is the community simply says: We want this bulletin board removed because it's in a residential area because it's blocking the landscape or a seascape. We think it should be removed so that people can enjoy the views of New York, what New York

looks like in its natural glory without the message from an advertiser in the middle of it.

And this bill currently says that under those circumstances, you give notice and the billboard can continue to exist for a significant period of time to allow the erector of the billboard or the owner of the billboard to recoup part of their investment, they get something back, and then the community eventually gets it removed.

But to suggest that this is a completely private investment I think is to mistake the whole purpose for which billboards serve. The value of billboards is created by the public. The public can put a reasonable restriction and a reasonable requirement on their removal when they're blocking the public assets in an unobstructed view of the beauty of New York.

I agree with Senator Schneiderman, this is the wrong way to go. It will only make it more expensive for communities to acquire these billboards, because they'll have to pay fair market value, the cost of rentals

amortized over time. In essence, this means that no billboards next to public highways that are located in residential areas will ever be removed, it will be far too expensive.

I think that's a bad idea for the future of New York.

THE PRESIDENT: Senator Stafford.

SENATOR STAFFORD: Madam President, I seldom rise again, but I do have to point out that I think I can help us all.

We're arguing here over something, but this bill will have billboards removed immediately. Immediately. They just don't stay there, they're gone. And then people are paid for what -- or the owners are paid through eminent domain, and we will not have this waiting period of ten years or more. So I think even some of my friends now are thinking about that.

So please think about it. And maybe we can get on with the bill.

THE PRESIDENT: Senator Stavisky.

SENATOR STAVISKY: Madam President, on the bill.

THE PRESIDENT: You may proceed.

SENATOR STAVISKY: While I appreciate Senator Stafford's comments and I respect his feelings about this, after listening to my colleagues, my concern is theirs plus another area. And that's the question of safety. Because people take their eyes off the road to look at the billboard and endanger other people.

And for that reason, Madam President, in addition to all of the others, I will vote no.

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

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Madam President, if I may, just in response to Senator Stafford's last, clearly articulated, but I believe somewhat erroneous point, the eminent domain procedure is available to municipalities now. They can condemn a billboard under eminent domain now. What we have also available to them is a cheaper way to remove the billboard.

This law would remove the cheaper way to remove a billboard and limit them to

the eminent domain procedure. This is not an act that speeds up the removal of billboards or in any way aids in the removal of billboards. It just makes it harder and more expensive for municipalities to remove them.

And again, I urge a no vote. 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 PRESIDENT: Senator Dollinger, to explain your vote.

SENATOR DOLLINGER: Just briefly, Madam President.

I completely concur with Senator Schneiderman. You can use eminent domain now if you want to. The reason why it isn't being used is because it's too expensive, because you in essence have to pay the fair market value of an asset that is generating

significant income because of its proximity to a public road.

I would suggest, Senator Stafford, you could now use it. Nobody does, because it's just way too expensive. Then you have a huge cost associated with trying to remove billboards.

What we've done by the current law is we've given an easy, economical way to allow the owner to recoup part of their investment, and at the same time they have these unsightly billboards removed from residential areas. That's what we should continue to do.

That's why I'm voting no, Madam President.

SENATOR STAFFORD: Madam President, could I have my name called.

THE PRESIDENT: Senator Stafford.

SENATOR STAFFORD: This is the first time in 37 years I've ever asked my name be called to explain my vote, but they're actually -- they're -- I just can't stand it.

THE PRESIDENT: Well, please proceed and explain your vote.

SENATOR STAFFORD: You people are making such mistakes. This will just be a uniform procedure now for the industry, and it will get the assets removed immediately. It's a much better way to do what some of us want to get done.

Thank you, Madam President.

THE PRESIDENT: You will be recorded as voting in the affirmative, Senator Stafford.

Senator Dollinger will be recorded as voting in the negative.

The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 505 are Senators Breslin, Brown, Dollinger, Duane, Goodman, Hassell-Thompson, LaValle, Leibell, Markowitz, Onorato, Oppenheimer, Padavan, Paterson, Schneiderman, Stachowski, and Stavisky. Also Senator Connor. Ayes, 37. Nays, 17.

THE PRESIDENT: The bill is passed.

Senator Balboni.

SENATOR BALBONI: Yes, Madam President. I'd like to make an announcement of an immediate meeting of the Civil Service and Pensions Committee in the Majority Leader's Conference Room, please.

THE PRESIDENT: There will be an immediate meeting of the Civil Service and Pensions Committee in the Majority Conference Room.

The Secretary will read.

THE SECRETARY: Calendar Number 609, by Senator Wright, Senate Print 3750, an act to amend the Environmental Conservation Law, in relation to notification.

SENATOR PATERSON: Explanation.

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

SENATOR WRIGHT: Thank you, Madam President.

We're proposing to amend the Environmental Conservation Law today by adding a provision that requires a 45-day notice of a tightness test on a petroleum bulk storage tank.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, if Senator Wright will yield for a question.

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

SENATOR WRIGHT: Yes, I will, Madam President.

THE PRESIDENT: You may proceed, Senator Paterson.

SENATOR PATERSON: Senator, in the long run I think this is actually a good idea and is environmentally sound. But I thought we might have a little public discussion on the uniqueness of it that DEC, in this case, is actually going to notify the party that theoretically should know, because they're operating in this type of business, what the requirements for a tightness test would be.

And I wanted to know, was there anything that had happened in the past or anything that you would like to bring to our attention that is relating to why we're going to divorce ourselves from the usual procedure and have the department notify the parties in

this case, where normally the parties should already know that, it should be within their contemplation when they take possession of this type of a tank.

SENATOR WRIGHT: I would certainly be glad to share with you some of the history, Senator.

The bill has its origins by virtue of a problem that a dairy farmer had in my district. And like many of the individuals that own petroleum bulk storage tanks, they are not used on a recurring basis. And this is true of many farmers and many small businesses. So when you have a five-year permitting system, frankly, it's not at the top of their list of priorities.

And in this instance, the gentleman was presented with a consent order and what I considered to be an excessive fine, because no sooner had he been informed that the permit had expired, he immediately had the necessary inspections completed and processed the necessary permits. Unfortunately, he still had an obligation for the penalty and the consent agreement.

It seemed to me, and I believe to others, since this bill is endorsed by both the Farm Bureau as well as the Environmental Advocates, that a practical solution was to ensure that notifications were sent to the holders of these permits. And by doing so, we would facilitate the regulatory process, hopefully enhance compliance, and, while there would be some minimal cost involved in terms of a notification, that minimal cost would be more than avoided by avoiding consent agreements, prosecution, and a number of other expensive measures where simple notification would ensure compliance.

Therein the bill.

SENATOR PATERSON: Thank you, Madam President. And thank you, Senator Wright.

I had two other questions relating to how the notification would occur and whether or not there was a cost, and Senator Wright in his first answer answered all three. So I thank him for his answers and for his extrasensory perception.

SENATOR WRIGHT: 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 3. This act shall take effect on the 30th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

THE PRESIDENT: The bill is passed.

SENATOR HEVESI: Madam President.

THE PRESIDENT: Senator Hevesi.

SENATOR HEVESI: Thank you, Madam President. I rise to request unanimous consent to be recorded in the negative on Calendar 505, Senate Print 2923.

THE PRESIDENT: Without objection, you will be so recorded as voting in the negative.

SENATOR HEVESI: Thank you.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number

768, by Senator Balboni, Senate Print 3691, an act in relation to allowing.

THE PRESIDENT: Read the last section.

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

SENATOR PATERSON: Explanation.

THE PRESIDENT: Senator Balboni.

SENATOR BALBONI: Yes, thank you very much.

This bill would allow the Jain Center, which is a religious organization that has facilities in Elmhurst, Queens, and in North Hempstead, Long Island, to apply for a real property tax exemption rebate as a result of the acquisition of real property after the taxable status date. And therefore placing themselves in the unenviable position of not being able to get on the tax-exempt roll for purposes of not paying real property taxes and enjoying their religious exemption.

Thank you, Madam President.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, would Senator Balboni yield for a

question.

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

SENATOR BALBONI: Yes, I do, Madam President.

THE PRESIDENT: You may proceed, Senator Paterson.

SENATOR PATERSON: Senator, I'm actually hoping that Senator Dollinger will be able to come in and continue with the questioning. This is an issue that's very important to him -

SENATOR BALBONI: You think he'd have an objection, Senator?

SENATOR PATERSON: And it's obviously very important to you.

In the meantime, what are your ideas on perhaps a tax exemption rebate task force and seminar jointly cohosted, a bipartisan effort, by you and Senator Dollinger, somewhere in Long Island or perhaps Rochester, so that perhaps we could find a way to concretize these issues on a statewide basis once and for all?

SENATOR BALBONI: Madam

President, in response to the gentleman's question, I would wholeheartedly endorse the concept of bipartisan committees. I think it's a great thing for folks on both sides of the aisle to get together. Like our budget conference committee this morning. That would have been another great opportunity for all of us to get together and talk about different things.

But be that as it may, that wouldn't help the Jain Center. And so we need to do this legislation so they can be the recipients of the benefits that we as a society have deemed they should be appropriately given.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Thank you, Madam President, the explanation is satisfactory.

And I guess we'll go ahead and accommodate the Jain Center, since this is the only means possible for us to do this now, with the addendum that I have a feeling that before this session is completed that Senator Dollinger will comment on this at some point.

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, 54.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 810, by Senator Meier, Senate Print 4307, an act to amend the Social Services Law, in relation to guaranteeing.

SENATOR BALBONI: Madam President.

THE PRESIDENT: Senator Balboni.

SENATOR BALBONI: Could we please lay that bill aside temporarily.

THE PRESIDENT: The bill is laid aside temporarily.

THE SECRETARY: Calendar Number 830, by Senator Bonacic, Senate Print 5141, an act to amend the Public Authorities Law, in

relation to the power of the State of New York Mortgage Agency.

SENATOR BALBONI: Madam President.

THE PRESIDENT: Senator Balboni.

SENATOR BALBONI: Could we please lay this bill aside temporarily. There are a lot of committee meetings going on, and we're trying to accommodate the different schedules of the Senators.

THE PRESIDENT: The bill is laid aside temporarily.

THE SECRETARY: Calendar Number 846, by Senator Saland, Senate Print 4234, an act to amend the Penal Law, in relation to establishing a presumption.

THE PRESIDENT: Senator Balboni.

SENATOR BALBONI: Madam President, could we please lay this bill aside temporarily.

THE PRESIDENT: This bill is also laid aside temporarily.

SENATOR BALBONI: Madam President, would you please go to Calendar 896, by Senator Goodman.

THE PRESIDENT: The Secretary will read Calendar 896.

THE SECRETARY: Calendar Number 896, by Senator Goodman, Senate Print 1725, an act to amend the Tax Law, in relation to the seizure and forfeiture.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, more so than an explanation, if Senator Goodman could just explain what the due process is in the procedure, I'd be satisfied.

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

SENATOR GOODMAN: Madam President, this bill seeks to amend the law to authorize peace officers designated pursuant to subdivision 5 of Section 210 of the Criminal Procedure Law to -- well, let's skip this and get to the core of this -- to seize vehicles used to transport unstamped or unlawfully stamped cigarettes.

This is a step forward in our battle against cigarette bootlegging, which, as you probably are generally aware, Senator,

is a very grave problem in New York State as a result of the increases, successive increases in cigarette tax.

Previously, as the finance commissioner for the City of New York, I waged war against the cigarette bootleggers and indeed was the only person I know who's ever personally been sued for $8 million by a group of organized crime people bringing illegal cigarettes into the State of New York. It was necessary to mount a vigorous defense, and we of course won that suit.

But the people who bring in cigarettes are not only organized crime figures, although that's a major source of funds for organized crime, they're also individuals who may go across the border and drive across the George Washington Bridge with a trunkful of cigarettes which they obtain tax-free and sell in the city at markups which are exceedingly profitable.

Presently the city tax inspectors have the power to seize bootlegged cigarettes -- unstamped or fraudulently stamped cigarettes, that is -- and vending

machines that dispense bootlegged cigarettes. New York State tax enforcement agents, in addition, have the power to seize vehicles in which bootlegged cigarettes are being transported. New York City police officers also have the power of seizure to seize vehicles that are subject to forfeiture.

The bill will improve enforcement of New York City's tax laws, both state and local, by giving New York City tax inspectors the same power as New York City police officers and New York State tax enforcement agents to seize vehicles in which bootlegged cigarettes are being transported.

The enactment of the bill will aid in the collection of cigarette taxes, deter unlawful conduct, and generate revenue through the sale of forfeited vehicles. It's strongly backed by the City of New York.

THE PRESIDENT: Senator Onorato.

SENATOR ONORATO: Madam President, will the Senator yield?

SENATOR GOODMAN: Yes, I will, Madam President.

THE PRESIDENT: The Senator does

yield. You may proceed, Senator Onorato.

SENATOR ONORATO: Senator Goodman, is there a limitation on the amount that you're talking about? Somebody traveling who runs out of cigarettes, buys a couple of cartons while they're in Virginia or something and is coming home with it, maybe he still has a carton and a half left, would he still be subject to forfeiture of his vehicle, or her vehicle, coming home from vacation under these circumstances?

SENATOR GOODMAN: This bill makes no distinction. If there is an illegal importation of cigarettes, they're subject.

You understand what this is doing. It's simply expanding to the tax employee of the department the same powers already possessed by the police and by the official - by various other officials. This is just giving one more set of officials the right to make these arrests. And this is not plowing any new ground.

SENATOR ONORATO: Thank you.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam

President, if the Senator would yield for a brief question.

THE PRESIDENT: Senator Goodman, do you yield?

SENATOR GOODMAN: Yes, surely, Senator.

THE PRESIDENT: He does yield. You may proceed.

SENATOR PATERSON: Senator, I'm interested in the rights of the city as they impinge upon the concept of due process. Moreover, what are the ways in which the owner of the vehicle can challenge the seizure? What are the processes by which we determine where the burden of proof is?

And when these matters take place, I'm just trying to ascertain what the actual procedure is by which someone who wants to aver that they have not acted in this fashion can move to try to restore their possession.

SENATOR GOODMAN: A determination will be made if there is a wrongful seizure in the matter. And that's the law as it stands on the books at this time, Senator. It's a familiar law and one with which I'm sure you,

as a jurisprudential scholar, are fully familiar.

THE PRESIDENT: Senator Stachowski.

SENATOR STACHOWSKI: Senator - just a couple of questions, if the Senator would yield.

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

SENATOR GOODMAN: Yes, I will.

THE PRESIDENT: You may proceed, Senator.

SENATOR STACHOWSKI: I'm a little confused, only as to how would they know what cars they're stopping, these tax guys? Would somebody else stop the car? And then once they stop it, what would give them the right to go through the person's car? I mean, what would be the reason they stopped this car?

For example, if it's a car, like you mentioned, with a trunkful of bootlegged cigarettes, how would they just happen to pick this car going over the George Washington Bridge?

SENATOR GOODMAN: There are

various intelligence sources which indicate when illicit purchases, illegal purchases have been made of cigarettes. Often it's those that constitute the tips which enable them to stop cars or really trucks, frequently, which have the cigarettes on board.

SENATOR STACHOWSKI: If the Senator would continue to yield.

THE PRESIDENT: Senator Goodman, do you continue to yield?

You may proceed, Senator.

SENATOR STACHOWSKI: I understand that they have this tip. But what would give them -- that alone would give them enough right to stop this car? I mean, they wouldn't get thrown out of court?

I'm not a lawyer, so bear with me. That would give them enough right to just have the car stopped and searched?

SENATOR GOODMAN: Yes, it would.

SENATOR STACHOWSKI: And it would be just -- would it be all the tax people in the City of New York or just certain tax people in the City of New York who would then become peace officers?

SENATOR GOODMAN: This refers to that group known as tax inspectors.

Excuse me, let me be a little more clear on this, Senator. Hold on just a moment.

This would be various employees of the Department of Finance not now authorized to do this. They would be peace officer - have peace officer designation. And those employees with such peace officer designation would have the right to make these arrests.

SENATOR STACHOWSKI: Madam President, if the Senator would yield for one final question.

THE PRESIDENT: Senator Goodman, will you yield?

SENATOR GOODMAN: Yes, I will.

THE PRESIDENT: You may proceed, Senator.

SENATOR STACHOWSKI: Senator, do you have any idea how many people we're talking about that have peace officer designation currently that would then be given this power? I'm just trying to get a -

SENATOR GOODMAN: I can only

reflect on what I knew at the time I was the commissioner of the department. I'd say approximately 25.

SENATOR STACHOWSKI: Madam President, I was going to stop, but I have to ask one more question.

SENATOR GOODMAN: Go right ahead.

THE PRESIDENT: You have authorization. You may proceed, Senator.

SENATOR STACHOWSKI: Senator, you don't -- through you, Madam President, you don't believe that that may have increased? Because we're talking about a long time ago. Because obviously you've been here for quite some time.

SENATOR GOODMAN: I gave you the information that's now available to me. If you'd like to research it further, that can be arranged.

SENATOR STACHOWSKI: Thank you, Madam President.

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

Then the debate is closed.

Senator Montgomery, do you wish to

be heard?

SENATOR MONTGOMERY: Yes, Madam President. If the sponsor would answer just a question that I have, a clarification.

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

SENATOR GOODMAN: Yes.

THE PRESIDENT: You may proceed, Senator Montgomery.

SENATOR MONTGOMERY: Yes, thank you. Senator Goodman, does the law currently allow for more than the seizure of the bootlegged items? Or in other words -

SENATOR GOODMAN: You mean for legitimate cigarettes?

SENATOR MONTGOMERY: Is it now possible for a person who is carrying bootlegged cigarettes, as your bill implies, to have those seized but not the vehicle? Or do we currently have the authority to seize vehicles carrying these cigarettes or carrying bootlegged cigarettes?

SENATOR GOODMAN: We presently - as I've indicated, the present law exists for a wide variety of officers. But this

simply -- the purpose of this legislation is simply to add one more category; namely, the peace officers of the Finance Department who are not presently authorized to make such seizures. And the seizure would include the vehicle itself.

SENATOR MONTGOMERY: All right. One more question.

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

SENATOR GOODMAN: Yes, I will.

THE PRESIDENT: You may proceed, Senator Montgomery.

SENATOR MONTGOMERY: Senator, do we have any idea how many of these seizures have taken place, say in the last couple of years?

SENATOR GOODMAN: Senator, may I just say I can't give you a precise number, but I know that the problem is one that's burgeoning and will be even ever greater as we increase the tax on cigarettes.

As you may recall, recent legislation passed by us does increase it very sharply. And the higher the increase in the

cigarette tax goes, the more likelihood there is smuggling of cigarettes. So I'd anticipate there'd be a very substantial expansion in the need for this type of policing.

And, frankly, I don't think it will scratch the surface. I'm quite certain from my own experience administering this law previously that there will be very significant leakage of illegal cigarettes into the state of New York, and there will be very little we can do to stop it. But we'll make our best effort.

SENATOR MONTGOMERY: One other question, if I may.

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

SENATOR GOODMAN: Yes, I will.

THE PRESIDENT: You may proceed, Senator Montgomery.

SENATOR MONTGOMERY: Yes. Senator Goodman, what do we have in place to collect based on a person bringing in bootlegged cigarettes? Is there any compensation that the state gets for evasion of taxes or anything other than just to punish

the person, seize the vehicle?

SENATOR GOODMAN: I'm not quite sure of the purpose of your -- you're asking is there a bounty on cigarette seizures? I'm not -

SENATOR MONTGOMERY: Is there an avenue to compensate the state for the loss in taxes based on this bootlegging problem?

SENATOR GOODMAN: No, no, Senator, there's no avenue in place. I'm not sure what type of an avenue you have. If you've got one, please let me know. Because it would be nice to think there's someone up above the clouds who could intervene and compensate us for these losses, but that doesn't exist in the real world.

SENATOR MONTGOMERY: So in addition to seizing the person's vehicle, there is no fine involved in terms of tax evasion?

SENATOR GOODMAN: Oh, I see, you're asking about a fine. Just a minute. Let me check that.

There are criminal prosecutions for evasion, and there are fines that are

appertaining thereto. And there are also restitution provisions within the law.

SENATOR MONTGOMERY: Okay. Thank you. 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, 57.

THE PRESIDENT: The bill is passed.

Senator Balboni.

SENATOR BALBONI: Yes, Madam President. Would you please call a Rules Committee meeting in the Majority Conference Room.

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

SENATOR BALBONI: Thank you, Madam President.

THE PRESIDENT: You're welcome.

Senator Montgomery.

SENATOR MONTGOMERY: Yes, Madam President. May I have consent to be recorded no on Calendar 505.

THE PRESIDENT: Hearing no objection, you will be so recorded as voting in the negative, Senator.

SENATOR MONTGOMERY: Thank you.

THE PRESIDENT: Senator Balboni.

SENATOR BALBONI: Yes, Madam President. Would you please call up Calendar Number 971.

THE PRESIDENT: The Secretary will read Calendar Number 971.

THE SECRETARY: Calendar Number 971, by Senator Alesi, Senate Print 1133, an act to amend the Penal Law, in relation to the minimum sentence.

SENATOR MONTGOMERY: Explanation.

SENATOR PATERSON: Explanation.

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

SENATOR ALESI: Thank you, Madam President.

This bill simply makes a technical correction to existing law by removing the word "indeterminate" as it applies to the use of a firearm during the commission of a Class B violent felony.

Thank you, Madam President.

THE PRESIDENT: Senator Montgomery.

SENATOR MONTGOMERY: Yes, if I can just ask a question of Senator Alesi.

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

SENATOR ALESI: Yes, Madam President.

THE PRESIDENT: You may proceed.

SENATOR MONTGOMERY: Yes. Senator Alesi, if I understand the legislation, it is -- it provides additional -- an additional consecutive sentence of five years of imprisonment upon conviction for criminal use of a firearm. And that sentence should be added to any minimum sentence for any underlying Class B felony.

So that means, then, that in addition to any sentence that a person

receives if there is a firearm involved, they get an additional five years automatically, no matter what the primary charge is?

SENATOR ALESI: Through you, Madam President, with all respect to Senator Montgomery, you began your remarks with "if I understand it correctly." I would respectfully submit that you perhaps don't understand it.

That is existing law that you have already described. This bill simply takes the "indeterminate" and removes it, from saying "indeterminate sentence" to "a sentence."

And the reason for that is as applies to this section of law two years ago, those classifications of B felony would all be determinate. And so this simply closes a loophole. And the net effect of that is that anyone who is a repeat offender would be covered under this law, just as someone who is a first-time offender already is.

SENATOR MONTGOMERY: Through you, Mr. President.

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

SENATOR ALESI: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Montgomery.

SENATOR MONTGOMERY: Thank you.

Is it the case, Senator, that some of the -- someone with a B felony may not be in fact -- it may not be a violent felony offense, but with this law it would be automatic, an automatic additional five years, determinate?

SENATOR ALESI: Through you, Madam President. As the law currently exists, passed in this house several years ago and signed into law by the Governor, relative to a B violent felony, anyone who is convicted of a crime such as that while using a gun in the commission of that crime would have an automatic five year add-on.

SENATOR MONTGOMERY: Thank you. Thank you, Senator.

SENATOR ALESI: 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: Those recorded in the negative on Calendar Number 971 are Senators Duane, Hassell-Thompson, and Montgomery. Ayes, 54. Nays, 3.

THE PRESIDENT: The bill is passed.

Senator Duane.

SENATOR DUANE: Thank you, Madam President. I was out of the chamber at a committee meeting, and I wish to be recorded in the negative, without objection, on Calendar Number 896.

THE PRESIDENT: Without objection, you will be so recorded as voting in the negative.

Senator Balboni.

SENATOR BALBONI: Yes, Madam President. Could you please call up Calendar Number 976, by Senator Alesi.

THE PRESIDENT: The Secretary will read Calendar 976.

THE SECRETARY: Calendar Number 976, by Senator Alesi, Senate Print 3374, an act to amend the Retirement and Social Security Law, in relation to retirement of deputy sheriffs.

SENATOR PATERSON: Explanation.

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

SENATOR ALESI: Thank you, Madam President.

This is in response to a home rule message that would provide for deputized court security to have the 25 year at 50 percent pay privilege upon their retirement at 25 years.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, I have one question for Senator Alesi.

THE PRESIDENT: Senator Alesi, will you yield for one question?

SENATOR ALESI: It's always my pleasure to yield to Senator Paterson.

THE PRESIDENT: You may proceed,

Senator Paterson.

SENATOR PATERSON: Thank you, Madam President.

I'm just asking if there had been any changes or corrections to the bill from last year when the Governor vetoed it. And I voted for the bill last year and just wouldn't like to see it get vetoed by the Governor again. And I just wanted an update on what the bill's status for becoming law is.

SENATOR ALESI: Through you, Madam President, thank you, Senator. There have been some changes.

Most significantly, the veto message centered around the fact that last year's bill included civil as well as deputized court security.

This bill does not deal with civil. It is strictly relative to deputized court security and recognizes that those deputized court security share some of the same dangerous duties as deputized sheriff's deputies in the jail as well.

So in response to your question, the reference to "civil" has been removed.

And that was the main objection in the Governor's veto message.

Thank you, Madam President.

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

Then the debate is closed.

There is a home rule message at the desk.

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

SENATOR MEIER: The bill is passed.

Senator Balboni.

SENATOR BALBONI: Yes, Madam President. Can we please call up Calendar Number 949, by Senator Stafford.

THE PRESIDENT: The Secretary will read Calendar Number 949.

THE SECRETARY: Calendar Number 949, by Senator Stafford, Senate Print 3481, an act to amend the Executive Law, in relation

to the Emergency Management Assistance Compact.

SENATOR PATERSON: Explanation.

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

SENATOR STAFFORD: Madam President, I'm very pleased to sponsor and support this bill, which will really put New York State in an organization where many of us feel that it would be helpful to us and others. It's always good to think of others.

And this will establish the Emergency Management Assistance Compact. It authorizes the state to join this compact, a compact where a number of states cooperate and assist each other if a disaster occurs. Member states are required to formulate procedures for cooperating with other states. A state may also only request assistance after it has declared a state of emergency.

Thirty-four states and Congress have already approved the compact. And this is a department bill from the State Emergency Management Office. We think it's a good bill.

And, Madam President, I can go back

on some of my experience. I've been a member for a number of years -- I won't tell how many years -- of the Forest Fire Control Commission, which is a group of Northeastern states that support each other on forest fires. That's changed a bit, however, because of the way that we fight fires. But cooperation is very important.

There is not a concern for a fiscal impact at this time. And I think it is the right way to go, and I agree with the department. Thank you.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, certainly in an emergency or some type of disaster we would want to make it easy for people to come in from out of state or for even our workers to go out of state to assist other states. And that's probably a real good reason why 34 of the states have ratified the Emergency Management Assistance Compact.

However, I'm curious as to why we exact an immunity standard on those workers for any type of misfeasance of duty, rather than an indemnification.

Certainly, such as in Good Samaritan-type legislation, we don't want a person who in good faith goes to the aid of another to be victimized or even sued or in any way be held responsible for a situation that was not caused by them.

And certainly we would want a limited standard -- if there was some kind of an accident that occurred during the commission of a Good Samaritan act, we would not want for that person to be held to the same standard as if they were actually just in their day-to-day activities.

But nonetheless, there are situations where the definition of good faith certainly calls for subjective determinations. And in the present case, because we're talking about activities that involve what is really an amalgamation of the laws of different states, there are conflicts in those laws. And different states have different standards for what constitutes recklessness and what constitutes improper behavior.

And last year I voted against this legislation because I didn't feel that I could

totally understand what those standards are going to be. So if Senator Stafford would yield for a question.

THE PRESIDENT: Senator Stafford?

SENATOR STAFFORD: By all means.

THE PRESIDENT: You may proceed.

SENATOR PATERSON: My question is, why are we using an immunity standard for any worker who participates in one of these emergency management situations, as opposed to indemnification, if the action -- if the faith of the action is in question?

SENATOR STAFFORD: Madam President, I say this with good humor, I hope. My question is, why doesn't Senator Paterson understand what I told him last year?

(Laughter.)

SENATOR STAFFORD: But I will say it again, Madam President.

When we're talking about a situation where there's a disaster and we're interested in people cooperating and we're interested in meeting that disaster and we want as many people to get the help as we can get, I suggest, Madam President, that we're

not really having on the front burner holding those people liable for what they do. We want them to be there, to be of assistance.

I understand why Senator Paterson asked the question. I understand the interests involved. And this time I would suggest that the interest is the people who would be harmed by this disaster.

THE PRESIDENT: Senator Balboni.

SENATOR BALBONI: Yes, Madam President. Please permit me to interrupt briefly, Senator Stafford.

Please call an immediate meeting of the Crime and Corrections Committee in the Majority Conference Room, if you would, please.

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

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 Balboni.

SENATOR BALBONI: Yes, Madam President. Would you please call up Calendar 966, by Senator Stafford.

THE PRESIDENT: The Secretary will read Calendar 966.

THE SECRETARY: Calendar Number 966, by Senator Stafford, Senate Print 4236, an act to amend Chapter 688 of the Laws of 1955.

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

Read the last section.

SENATOR PATERSON: Explanation.

THE PRESIDENT: I would ask that the members take their conversations outside the chambers.

Senator Paterson, you did ask for an explanation?

SENATOR PATERSON: Yes, I did,

Madam President.

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

SENATOR STAFFORD: Thank you, Madam President.

This bill involves the Schroon Lake Park District. And for those of you who don't get into the woods that often, or into the real rural areas, dams are very, very, very important. And if they aren't replaced and repaired, they can wipe out villages, wipe out highways. It can be very, very serious.

We have a situation in the Schroon Lake area where a dam has to be replaced. And therefore, they are asking for an increase in the amount that they can borrow so that they can bond this project and amortize it.

And it is very important for the environment, it's very important for the wildlife, and it's very important for the people.

Thank you.

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

Does any other member wish to be

heard?

Senator Paterson.

SENATOR PATERSON: Yes, Madam President, a brief question, if Senator Stafford would yield.

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

SENATOR STAFFORD: Yes.

THE PRESIDENT: You may proceed, Senator.

SENATOR PATERSON: Senator, does this legislation cover all of the residents of the town or just those in the park district? Who are -- tell me the class of people that are affected by this legislation.

SENATOR STAFFORD: Just those, Madam President, just those in the park district.

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

Then the debate is closed.

There's a home rule message at the desk.

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 Balboni.

SENATOR BALBONI: Yes, Madam President. Would you please call up Calendar Number 830, by Senator Bonacic.

THE PRESIDENT: The Secretary will read Calendar 830.

THE SECRETARY: Calendar Number 830, by Senator Bonacic, Senate Print 5141, an act to amend the Public Authorities Law, in relation to the power of the State of New York Mortgage Agency.

SENATOR PATERSON: Explanation.

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

SENATOR BONACIC: Thank you, Madam President.

This is a legislation that will amend the Public Authorities Law in relation to the power of the State of New York Mortgage

Agency, SONYMA, to invest in obligations in which the Comptroller of the State of New York is authorized to invest.

Right now we want to give SONYMA the same powers as those of what we call the New York State Housing Finance Agency, HFA, to invest in obligations which the Comptroller is authorized to invest in.

This organization, SONYMA, uses their proceeds to lend for one-to-four-unit affordable housing. And one of the problems is their bonds become due every April 1st and October 1st. So they're sitting on these revenues, it could be anywhere from $180 million to $200 million. They want to keep them invested so they're gaining interest, so when the maturity of the debt comes due they can access the money.

Right now, they have to look into only long-term security investments and they're prohibited in what we call repurchase agreements.

So this is what the purpose of the legislation is.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Madam President, that was outstanding.

SENATOR BONACIC: Thank you very much, Senator Paterson. I always thought you were intelligent and wise. Thank you.

THE PRESIDENT: The debate is definitely closed.

(Laughter.)

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 5. 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 Balboni.

SENATOR BALBONI: Yes, Madam President. Would you please call up Calendar Number 810, by Senator Meier.

THE PRESIDENT: The Secretary will read Calendar 810.

THE SECRETARY: Calendar Number 810, by Senator Meier, Senate Print 4307, an

act to amend the Social Services Law, in relation to guaranteeing.

SENATOR HASSELL-THOMPSON: Explanation.

SENATOR PATERSON: Explanation.

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

SENATOR MEIER: Madam President, with some trepidation following the preceding act, I'll try.

The purpose of this bill really is to clarify the legislative intent behind a law that we passed two years ago. The law that we passed two years ago makes it possible for public assistance recipients who may be working or in other circumstances to forgo their cash assistance and to still maintain their eligibility for child support.

What this bill does is makes it quite clear that it is the intent of the Legislature that we are guaranteeing that child support benefit.

In order to more fully explain, I can just briefly give you three examples that pretty much covers all of the instances under

which a public assistance recipient would find this beneficial.

One would be where a public assistance recipient is actually working but is not receiving enough earnings to fully get off public assistance. They might be receiving a cash benefit of $20 or even less. It permits them to forgo the cash benefit, keep the public assistance or -- and keep the child support assistance, childcare assistance. That stops the five-year clock from running on federal participation.

The second would be where the absent parent may be faithfully paying child support and where the custodial parent may have little or no cash benefit in actuality coming. Again, they have the ability then to forgo the cash assistance portion but to remain eligible for childcare.

And the third would be where one is an applicant for public assistance. They may be working and might be eligible for a very small cash assistance allowance. This permits them, once again, to forgo that cash assistance but to remain entirely eligible for

childcare.

This gives the public assistance recipient the option to avoid the catch-22 situation, where they can give up the cash assistance, stop the five-year clock from running, but still remain eligible for childcare.

Before we passed the 1999 law, the catch-22 was that if you gave up the cash assistance to stop the five-year clock from running, even though it might be as little as $20 or even $10, because you're no longer a full-blown public assistance case, you lose your eligibility for childcare.

So we're trying to clarify the legislative intent and to make it easier for that public assistance recipient to work.

THE PRESIDENT: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Madam President. If the Senator will yield just for a couple of questions.

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

SENATOR MEIER: Yes, I would,

Madam President.

THE PRESIDENT: You may proceed, Senator.

SENATOR HASSELL-THOMPSON: First, let me say I am truly in support of the bill, particularly in the way that you've explained it. But there are just a couple of concerns that I have, not about the bill but the bill intent.

If the intent of the legislation is to guarantee childcare assistance to families, wouldn't be it be feasible to attach funding to this legislation, since the Executive's proposed budget for 2001-2002 supports the current level of 174,000 childcare subsidies?

SENATOR MEIER: Well, Madam President, the answer to that is the funding is there. Because remember, this is an either-or situation. This is someone who would be eligible for public assistance in any event. And what this does is it permits that person to receive only the childcare portion and to forgo a very minimal amount of cash assistance.

So what it seeks to avoid is the

type of catch-22 situation where we have some Social Services districts literally requiring someone, in order to receive childcare so they can continue to work, to be a full-blown public assistance recipient.

So I would argue, Madam President, that really that instance costs more money than when we simply permit someone to receive childcare so they can work.

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

THE PRESIDENT: Senator Meier, do you continue to yield?

SENATOR MEIER: Yes, I would, Madam President.

THE PRESIDENT: You may proceed.

SENATOR HASSELL-THOMPSON: You've explained -- in your explanation of the bill, you very carefully talked about the recipient who has not yet used up their five years of federal benefits.

My question is, are families eligible for childcare subsidies after they have used up their five years?

SENATOR MEIER: Yes, they are.

They would be eligible for transitional benefits for a period of up to one year, where the children are 13 years of age or younger.

SENATOR HASSELL-THOMPSON: Or whichever comes first?

SENATOR MEIER: You're talking about -- when you say whichever comes first, you mean the age of the child or the -

SENATOR HASSELL-THOMPSON: Age of the child or the year of the benefits.

SENATOR MEIER: No, I think the benefit would end when the child reaches 13 years of age.

SENATOR HASSELL-THOMPSON: If the Senator would continue to yield, Madam President.

THE PRESIDENT: Senator Meier, do you continue to yield?

SENATOR MEIER: Yes, Madam President.

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

SENATOR HASSELL-THOMPSON: How many families do we anticipate will roll over to the safety net program at the end of this

year, and how many will be eligible for guaranteed childcare subsidies?

SENATOR MEIER: I think we're looking at around 90,000 families statewide, at the present time, look like they might wind up in the safety net. Approximately 75,000 of those families would be in the New York City area; the balance in the rest of the state, of course.

It would depend upon whether they meet the existing eligibility criteria of having a child 13 years of age or younger and requiring the childcare assistance to meet some activity approved as work.

SENATOR HASSELL-THOMPSON: If the Senator would continue to yield, Madam President.

THE PRESIDENT: Senator, do you continue to yield?

SENATOR MEIER: Yes, I do, Madam President.

THE PRESIDENT: You may proceed.

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

Senator, are you aware that in

New York City alone that there's a waiting list of over 40,000 children for subsidized childcare slots?

SENATOR MEIER: I'm aware there's a waiting list in the City of New York as well as some other counties around the state.

And the interesting thing about this bill, once again, is that I think it may encourage local Social Services districts to try to do more planning to make more childcare available without a waiting list.

Because -- and I would point out that Governor Pataki has consistently increased funding in budgets for childcare slots.

But not only that. Remember, under this legislation, these local Social Services districts, be they the City of New York or counties on the Island or upstate, are paying this money out anyway to people as full-blown public assistance recipients. It would certainly be much more to their advantage to pay the money out in the form of childcare and to make planning for those slots.

SENATOR HASSELL-THOMPSON: If the

Senator would continue to yield.

THE PRESIDENT: Senator Meier, do you yield?

SENATOR MEIER: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator.

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

Senator, you just generated another question. Having met just this past week with people from parts of my district, the Childcare Council, to talk about some of these childcare issues and what the impact is just currently, not even including those that at the end of this year that will -- where the sunset will fall on those who will no longer be eligible, my sense is that this bill will kick in and will continue to support a tremendous number of them.

But the problem goes to the issue that you just raised. Counties -- and particularly Westchester County has threatened not to continue to pay its portion and wants the state -- wants to see the state pay a

greater portion of childcare support payments, as opposed to what is currently being paid. And also, the Childcare Council is pushing to have parents -- have a cap put on the portion that parents can afford to pay.

What do you think this bill is going to do in terms of the number of slots that are -- currently that are needed, and in addition to those slots that may not be filled because there is not the kind of county support, and if -- and if the state does not up the ante in terms of the amount that it is currently putting in?

SENATOR MEIER: Well, we're getting into something that is somewhat apart from this bill. But let me just peel that apart a little bit.

SENATOR HASSELL-THOMPSON: Okay.

SENATOR MEIER: In terms of the amount that parents are required to pay, we are working on a bill and we're trying to get a handle on the fiscal implications of what happens when we play with that cap. And I'd be happy to separately have a discussion with you about that.

And, you know, this gets complicated. We have to be very careful that we don't impose additional unfunded mandates on the county. This bill works with money that is guaranteed, that flows in any event. The question is whether it flows to fund a full-blown public assistance case or a childcare-only case with perhaps some other supportive benefits.

But I think, Senator, you're highlighting something that is very critical. The people have children, the children have to be cared for if we expect them to work. And it's something that I know the Governor has paid a great deal of attention to, we have paid attention to. And -- but we need to look at it further.

SENATOR HASSELL-THOMPSON: Thank you.

On the bill.

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

SENATOR HASSELL-THOMPSON: Just briefly.

As I see the bill, potentially

New York State could save a lot of money. And having had a conversation with Senator Meier, I know that that was not the intent of this bill. But certainly New York State is always happy if in fact it does save money. But this bill, however -

THE PRESIDENT: Excuse me, Senator.

Senator Balboni, why do you rise?

SENATOR BALBONI: I apologize. We're just trying to get some committee meetings going.

SENATOR HASSELL-THOMPSON: And it's my Transportation, so I hope you'll wait.

SENATOR BALBONI: No, it's not. It's Higher Education.

SENATOR HASSELL-THOMPSON: Good.

SENATOR BALBONI: Higher Education in Room 328, Madam President.

THE PRESIDENT: There will be a Higher Education Committee meeting in Room 328.

SENATOR BALBONI: Thank you. My apologies.

THE PRESIDENT: Excuse us. You

may proceed, Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you. I was just hoping to get this bill done before Transportation. Thank you.

But this bill, as I see it, does not address the problems -- some of the problems of childcare, such as the lengthy waiting lists, standard care, and high cost to families.

I do appreciate the thoughtfulness of the way in which Senator Meier not only answered the questions but certainly in the way that he is crafting the bill. And I would like to say to him that I will support this bill and will accept his invitation to participate with him in an ongoing way to craft other portions of this bill as we look at childcare for the state of New York.

Thank you, Madam President.

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

Senator Oppenheimer.

SENATOR OPPENHEIMER: Thank you. On the bill.

THE PRESIDENT: You may proceed

on the bill, Senator.

SENATOR OPPENHEIMER: This is a very good bill.

And one of our concerns is that either when people leave government assistance that they don't have the care necessary for health for their children, they don't have the money necessary for transportation. Too many things evaporate when you give up the basic subsidies.

So this is an excellent bill, because it says we will continue paying for childcare or a portion of that subsidy.

I just want to underline what Senator Hassell-Thompson has said. We are so far from meeting the needs of our low-income residents as far as childcare that there simply has to be some new thinking, somewhat out of the box, which is going to address the issue of subsidizing our low-income neighbors.

They are working full-time, in many cases, both parents. And the situation that presents itself with a lack of available subsidized childcare in a quality setting with teachers who are skilled is simply appalling.

And we must turn our attention to it.

And I'd be delighted to sit down with anyone and discuss this, because we must do something.

Thank you.

THE PRESIDENT: Senator Balboni.

SENATOR BALBONI: Yes, Madam President. Would you please call a meeting of the Transportation Committee in the Majority Conference Room.

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

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

Then the debate is closed.

Read the last section.

THE SECRETARY: Section 3. 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 Dollinger.

SENATOR DOLLINGER: Madam President, could I have unanimous consent to be recorded in the negative on Calendar Number 768, which is one of Senator Balboni's property tax exemption bills.

Thank you, Madam President.

THE PRESIDENT: Without objection, you will be so recorded as voting in the negative, Senator Dollinger.

Senator Balboni.

SENATOR BALBONI: Yes, Madam President. Could we please return to the reports of standing committees. There is a Rules report at the desk.

THE PRESIDENT: Reports of standing committees.

The Secretary will read.

SENATOR BALBONI: Thank you.

THE SECRETARY: Senator Bruno, from the Committee on Rules, reports the following bills:

Senate Print 85, by Senator Skelos, an act to amend the Civil Rights Law.

2540, by Senator Leibell, an act in relation to maintaining.

2546, by Senator Marchi, an act to amend the Not-for-Profit Corporation Law.

2711, by Senator Padavan, an act to amend the Penal Law.

3408, by Senator Velella, an act to amend the Penal Law.

4327, by Senator Volker, an act to amend the Criminal Procedure Law.

4371A, by Senator Seward, an act to amend the Criminal Procedure Law.

4454, by Senator Leibell, an act to amend the Public Officers Law.

4517, by Senator McGee, an act authorizing the conveyance.

4840, by Senator Stafford, an act to authorize the reopening.

5090A, by Senator Connor, an act to authorize the St. Anne's School.

5297, by Senator Volker, an act to amend the Public Authorities Law.

5299, by Senator Johnson, an act to amend the Vehicle and Traffic Law.

5322, by Senator LaValle, an act to amend the Town Law.

5368, by Senator Skelos, an act to

amend Chapter 704 of the Laws of 1991.

5377, by Senator Balboni, an act in relation to authorizing.

And 5394, by Senator Lack, an act to amend Chapter 83 of the Laws of 1995.

All bills ordered direct to third reading.

ACTING PRESIDENT MEIER: Senator Balboni.

SENATOR BALBONI: Yes, Mr. President. I move to accept the report of the Rules Committee.

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

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

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

All bills directly to third reading.

Senator Balboni.

SENATOR BALBONI: Yes, could we

please take up Calendar 984.

ACTING PRESIDENT MEIER: The Secretary will read Calendar 984.

THE SECRETARY: Calendar Number 984, by Senator Lack, Senate Print 5394, an act to amend Chapter 83 of the Laws of 1995 amending the State Finance Law.

SENATOR SKELOS: Mr. President, is there a message of necessity at the desk?

ACTING PRESIDENT MEIER: Yes, there is, Senator.

SENATOR SKELOS: Move to accept.

ACTING PRESIDENT MEIER: The question is on accepting the message of necessity. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The message is accepted. The bill is before the house.

SENATOR DOLLINGER: Explanation.

ACTING PRESIDENT MEIER: Senator

Lack, an explanation has been requested by Senator Dollinger.

SENATOR LACK: This is a three-way agreement to end sequestration.

ACTING PRESIDENT MEIER: Senator Dollinger.

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

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

SENATOR LACK: One question, yes.

ACTING PRESIDENT MEIER: The sponsor yields for one question.

SENATOR DOLLINGER: How does this bill and the permanent repeal of the sequestration rule, how does it affect a death case? How would you see it being handled in a death case?

SENATOR LACK: There was consideration given, Mr. President, to special rules in a death case. After due deliberation and discussions between the Senate, the Assembly, and the Governor's office, up to and including last night, there is no effect

whatsoever given to a death case over any other case, except for the fact, of course, that a judge in any trial in which he or she determines it's necessary can order a jury sequestered.

SENATOR DOLLINGER: Through you, Mr. President. First of all, thank you to Senator Lack for the response to the question and the update on those negotiations.

I'm going to vote in favor of this bill, as I have for other extensions of the repeal of the sequestration rule, but I do it with one caveat. And that is, I would strongly urge judges in death cases to very carefully review the issue of jury sequestration during the process of deliberation.

Because, while sequestration may not be required during the presentation of evidence, at the point of deliberation, when we rely on our twelve-member juries to decide both the effect -- the liability portion of the trial and the sentence portion of the trial, I'm actually more concerned about the sentence portion because of the risk that, as

oftentimes has happened in our county, where we've had three death cases, there's constant speculation in the media and in the printed newspapers about what effect certain evidence will have on the imposition of the death sentence.

And I'm concerned, and I would strongly urge -- while I believe we have to vest trial judges with the discretion to do this, I would just strongly urge that the trial judges of this state, who I have a lot of confidence in, should very, very carefully examine a request for sequestration during both the liability but, even more importantly, during the sentence portion of capital cases, because of the great danger that commentary in the media during the deliberation phase could substantially impact the result.

I've agreed with eliminating sequestration. I think -- I have confidence that our judges will do the right thing. I would just strongly urge, Mr. President, as my own little commentary on this bill, that the state trial judges look very carefully and strongly consider sequestering trial jurors

during the deliberation of both liability and sentencing phase in capital cases.

And I thank, by the way, the chairman of the Judiciary Committee for his work on this bill in making this happen.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Mr. President, I concur with Senator Dollinger's feelings but would add to them that if the issue is one that there will be a greater onus on our trial judges, particularly during the liability stage, to be making the determination as to whether or not the jury is sequestered, I would just like to point out that it also has a kind of corollary effect on the use of cameras in the courtroom.

If there are going to be cameras in the courtroom and the juries are not going to be sequestered, that only adds to the fears that Senator Dollinger just expressed, where you might have an unintentional taint of the process because of the heightened interest in the case and also the tremendous availability of the media in that regard.

So if we are going to continue cameras in the courtroom, I think that's something that the judges are going to have to take into consideration, along with the issues that exist in terms of jury sequestration as it stands.

ACTING PRESIDENT MEIER: Any other Senator wish to be heard on the bill?

Hearing none, debate is closed.

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you please call up Calendar Number 983.

ACTING PRESIDENT MEIER: The Secretary will read Calendar 983.

THE SECRETARY: Calendar Number 983, by Senator Skelos, Senate Print 5368, an

act to amend Chapter 704 of the Laws of 1991.

ACTING PRESIDENT MEIER: Read the last section.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MEIER: Senator Skelos, an explanation has been requested by Senator Paterson.

SENATOR SKELOS: Thank you.

This bill would extend the sunset provisions of Article 25 of the Arts and Cultural Affairs Law, also known as the ticket-scalping legislation, to June 20, 2001.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Mr. President, a brief question, if Senator Skelos is in a mood to yield.

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

SENATOR SKELOS: I shall.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR PATERSON: I assume that what we're really trying to do is to negotiate for something a lot longer and more

comprehensive, and that's what we need the time for.

SENATOR SKELOS: I'm delighted to yield to you and answer yes.

SENATOR PATERSON: Then I am similarly delighted.

ACTING PRESIDENT MEIER: Any other Senator wish to be heard on the bill?

Hearing none, debate is closed.

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Duane, why do you rise?

SENATOR DUANE: Thank you, Mr. President. With unanimous consent, I'd like to be recorded in the negative on Calendar Number 949. I was out of the room in a committee meeting when it came up for a vote.

ACTING PRESIDENT MEIER: Without

objection, Senator Duane will be recorded in the negative on Calendar Number 949.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you please call up Calendar Number 978, by Senator Johnson.

ACTING PRESIDENT MEIER: The Secretary will read Calendar 978.

THE SECRETARY: Calendar Number 978, by Senator Johnson, Senate Print 4512, an act to amend the Criminal Procedure Law, in relation to prohibiting issuance.

ACTING PRESIDENT MEIER: Read the last section.

SENATOR DOLLINGER: Explanation.

ACTING PRESIDENT MEIER: Senator Johnson, an explanation has been requested by Senator Dollinger.

SENATOR JOHNSON: Mr. President, this provides that those convicted of sodomy and rape in the second and third degrees, which are D and E class felony sex crimes, would not be released -- those convicted of those crimes would not be released upon their own recognizance or upon bail pending appeal

of their conviction.

And the process of appeal is being expedited in this case by -- the appeal must be perfected within 60 days and completed within 120 days.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Through you, Mr. President, if Senator Johnson will just yield to one question.

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

The sponsor yields.

SENATOR JOHNSON: Yes.

SENATOR DOLLINGER: Senator Johnson, just so I know, how have generally the rules for expedited appeals worked in other contexts?

My only concern is, Senator Johnson, as a practitioner largely in the Fourth Department, we can wait sometimes as long as a year for an opinion or for a decision to come down from the appellate courts. And I'm just concerned that even with an attempt to expedite it, we may not get to

that goal.

I understand that the purpose is to deny an order of recognizance or bail for someone who is convicted while they await their appeal. But my only question is, how realistic is this that you think we'll get quicker decisions from the appellate division?

SENATOR JOHNSON: I hope it's more realistic than the rule about getting our budget on time.

I trust that the courts will see that this is expedited according to the law which we're passing today.

SENATOR DOLLINGER: So, Senator Johnson, you're suggesting that expedited for the courts should mean something different than April 1st for the Legislature?

SENATOR JOHNSON: Jim Lack told me judges are special people.

SENATOR DOLLINGER: Through you, Mr. President, I'm going to vote in favor of this bill. I think this is a reasonable restriction to reduce both bail and ROR releases for those who have already been convicted.

And I think it's important, as Senator Johnson points out, these are people who have been found guilty. And the question is if we can arrange an expedited appeal. I'm just always a bit leery about the notion of expedited appeals. It means they're processed quicker to the courts, but it doesn't necessarily mean the court's decision is rendered as promptly as we would like it.

So I'll vote in favor and I'll wait and see what happens, Mr. President.

ACTING PRESIDENT MEIER: Any other Senator wish to be heard?

Debate is closed.

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Please call up

Calendar 846, by Senator Saland.

ACTING PRESIDENT MEIER: The Secretary will read Calendar 846.

THE SECRETARY: Calendar Number 846, by Senator Saland, Senate Print 4234, an act to amend the Penal Law, in relation to establishing.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: Mr. President, if we could just stand at ease, I believe Senator Saland is in a Higher Ed Committee meeting.

ACTING PRESIDENT MEIER: The Senate will stand at ease.

Senator Skelos.

SENATOR SKELOS: Mr. President, while we're waiting, could we please lay aside for the day Calendar Number 847 and Calendar 876, at the request of the sponsors.

ACTING PRESIDENT MEIER: Calendars 847 and 876 will be laid aside at the request of the sponsors.

SENATOR SKELOS: Mr. President,

is there any housekeeping at the desk?

ACTING PRESIDENT MEIER: We have some motions, Senator Skelos.

Senator Farley.

SENATOR FARLEY: Thank you, Mr. President.

On behalf of Senator Rath, would you please remove the sponsor's star from Calendar 136.

ACTING PRESIDENT MEIER: So ordered.

SENATOR FARLEY: On behalf of Senator Wright, Mr. President, I move, on page 51, the following amendments to Calendar Number 836, Senate Print 3499, and I ask that that bill retain its place on the Third Reading Calendar.

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

Senator Skelos.

SENATOR SKELOS: Mr. President, at this time would you please call up calendar 846, by Senator Saland.

ACTING PRESIDENT MEIER: The Secretary will read Calendar 846.

THE SECRETARY: Calendar Number 846, by Senator Saland, Senate Print 4234, an act to amend the Penal Law, in relation to establishing.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MEIER: Senator Saland, an explanation has been requested of Calendar 846 by Senator Paterson.

SENATOR SALAND: Thank you, Mr. President.

Mr. President, this is a bill which in many respects is a companion to the bill that we did yesterday, the purpose of which really is to deal with the issue of abduction of children by family members.

What this bill would do would be to create a rebuttable presumption that a person who removes a child does so -- who removes a child in violation of a court order does so with the knowledge that in fact he or she is violating that court order.

And we create a mechanism whereby substituted service can be accomplished to

give notice to that person of the entry of that order. And the order is critical in that it triggers the involvement of the FBI.

Without having this order of custody, which can be stymied by a parent abducting with the child and absenting themselves from a jurisdiction, you cannot bring in the FBI. And obviously, the earlier you bring in the FBI, the greater the likelihood of a successful investigation.

The numbers are staggering. Some 350,000 or more children are abducted during the course of the year nationally, and some 75 percent of those children are generally taken by a family member.

This is an effort to, at the very least, level the playing field and give the aggrieved parent the opportunity to as quickly as possible regain access to his or her child, and certainly to spare the extraordinary trauma and anguish associated with these types of abductions, to spare the child that type of anguish.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR SKELOS: Mr. President, may I interrupt for one second.

ACTING PRESIDENT MEIER: I'm sorry, Senator Paterson.

I'm sorry, Senator Skelos.

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

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

Senator Paterson.

SENATOR PATERSON: Mr. President, this bill was laid aside by Senator Smith. The record will reflect that last year Senators Smith and DeFrancisco voted no. She is currently in the Transportation Committee meeting, and therefore she may want to record her vote later.

But I just wanted to put that on the record.

ACTING PRESIDENT MEIER: Any other Senator wish to be heard on the bill?

Read the last section.

THE SECRETARY: Section 2. This

act shall take effect on the first day of November.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57. Nays, 1. Senator Montgomery recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, perhaps we can just stand at ease for a moment, as members come back from the committee meeting, so they could record their votes.

ACTING PRESIDENT MEIER: The Senate will stand at ease.

(Whereupon, the Senate stood at ease at 1:10 p.m.)

(Whereupon, the Senate reconvened at 1:15 p.m.)

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: Would you please recognize Senator Ada Smith.

ACTING PRESIDENT MEIER: Senator Ada Smith.

SENATOR ADA SMITH: Thank you, Mr. President. I request unanimous consent to be recorded in the negative on Calendar Number 846, Bill Number S4234.

ACTING PRESIDENT MEIER: Without objection, Senator Ada Smith will be recorded in the negative on Calendar 846.

Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President, I would like unanimous consent to be recorded in the negative on Calendar Number 844.

ACTING PRESIDENT MEIER: Without objection, Senator Montgomery will be recorded in the negative on Calendar 844.

Senator Lachman.

SENATOR LACHMAN: Yes, Mr. President, I would request unanimous consent now to be recorded in the negative on Item 505, Calendar Number 505.

ACTING PRESIDENT MEIER: Without

objection, Senator Lachman will be recorded in the negative on Calendar 505.

Senator Skelos.

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

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

SENATOR SKELOS: There being no further business, I move we adjourn until Thursday, May 31st, at 11:00 a.m.

ACTING PRESIDENT MEIER: On motion, the Senate stands adjourned until Thursday, May 31st, at 11:00 a.m.

(Whereupon, at 1:17 p.m., the Senate adjourned.)