

**WEDNESDAY, MARCH 23, 2022**

**11:49 A.M.**

ACTING SPEAKER AUBRY: The House will come to order.

In the absence of clergy, let us pause for a moment of silence.

(Whereupon, a moment of silence was observed.)

Visitors are invited to join the members in the Pledge of Allegiance.

(Whereupon, Acting Speaker Aubry led visitors and members in the Pledge of Allegiance.)

A quorum being present, the Clerk will read the Journal of Tuesday, March the 22nd.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Mr. Speaker, I move to

dispense with the further reading of the Journal of Tuesday, March 22nd and ask that the same would stand approved.

ACTING SPEAKER AUBRY: Without objection, so ordered.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Thank you, sir.

Colleagues and guests that are in the Chamber certainly, as always, a pleasure to see you here. I did have a quote for you today, although I'm not readily finding it so it may actually end up coming at the end of Session today. But I will have colleagues recall that they have on their desk a main Calendar as well as a debate list. And after we take up resolutions on page 3, Mr. Speaker, which I believe some of our colleagues may like to have comments on, we're going to go right to debate. And we're going to begin our debate schedule today with Calendar No. 274. That was by Ms. Weinstein. Then we're going to go to Calendar No. 1 by Mr. Quart, Calendar No. 25 by Mr. Magnarelli, Calendar No. 70 by Mr. Magnarelli, Calendar No. 118 by Mr. McDonald and Calendar No. 183 by Mrs. Gunther. There could potentially be some additional floor activity, Mr. Speaker. I will advise at that time if that's necessary. However, it is definitely for sure that there may also be a need for a Majority conference at the end of our work today and that will be held in Hearing Room B. And as always, we'll consult with our colleagues on the other side to determine their needs.

That's what we have as a general outline, Mr.

Speaker. If you have any housekeeping, now would be a great time.

ACTING SPEAKER AUBRY: No housekeeping, but an introduction by Mr. Sayegh.

MR. SAYEGH: Thank you very much, Mr. Speaker. I rise for an introduction of Mr. Ali Rashid, who is a businessman, a community leader, an activist and an organizer. Ali Rashid is an outstanding New Yorker, ambitious, hardworking, task-oriented and committed to promoting his Pakistani-American heritage. Ali attended SUNY [sic] Baruch College, graduated with honors in finance and investments while at the time launching his career in the real estate industry. He currently leads a team of Kingsland Properties, actively overseeing the company's planning and growth. Additionally, he serves a very important role as president of the American Pakistani Advocacy group known as APAC, a non-profit organization seeking to promote Pakistani ethnic identity and customs through civic engagement, education, career opportunities and personal advancement. Ali Rashid was named New York City's and State Top 100 Influential Asian-Americans in New York. And I'd like to welcome him to the Chambers to congratulate him and his fellow members of APAC that are here, to congratulate them on promoting their cultural identity and their good work in the community. Again, achieving the American Dream and becoming citizens worthy of this recognition in this Chamber, Mr. Speaker.

ACTING SPEAKER AUBRY: Certainly. On behalf of Mr. Sayegh, the Speaker and all the members, Ali, we welcome you

here to the New York State Assembly. We extend to you the privileges of the floor, congratulate you on the work that you're doing to advance Pakistani-American relations. We hope that you will continue that work, and we're so very proud that you have done this in our State. You're always welcome here. Thank you so very much.

(Applause)

We will take up resolutions on page 3. Mr. Sayegh on the resolution. The Clerk will read.

THE CLERK: Assembly Resolution No. 682, Mr. Sayegh.

Legislative Resolution memorializing Governor Kathy Hochul to proclaim March 23, 2022 as Pakistan-American Heritage Day in the State of New York.

MR. SAYEGH: Thank you very much, Mr. Speaker. I rise on this resolution, this 23rd day of May [sic] 2022 here at the New York State Assembly following the State Senate that recently proclaimed Pakistani-American Day [sic] in New York State. Today we'd like to honor the Pakistani-American community for their contributions, their hard work, their -- their assimilation into our society. Being extremely helpful, helpful in the business field, in the healthcare and education and every form of civic activity. And through the -- the American-Pakistani Advocacy Group, many members that are here today, they took the lead in promoting collaboration and cooperation with civic, local, State agencies in making sure that Pakistani-Americans become a fabric of our society.

Today I wanted to acknowledge the members that are here in the Chamber and in the balcony that are members of APAC. And the Board Members consist -- we honored earlier the President, Ali Rashid -- Amin Ghani, Naveed Chaudhry and Parvez Riaz. And also to acknowledge the members that are here, Aneeza Riaz, Danya Rashid, Ahsan Fayyaz, Zameer Chaudhry, Noor Asif, Tehmeena Khan, Nomi Malik, Mohammad Rizwan, Sultan Rashid, Faisal Khan, Emmad Syed, Maqbool Malik, Bobby Ali, Asghar Jarall, Usman Raja, Peer Syed Saqlain Haider. These individuals here are proud Pakistani-Americans and they're here to respect who we are as members of the Legislative Body of the State of New York, and to show us their commitment and dedication to the U.S.A. and increasing their respect for their heritage, their traditions and culture.

Thank you very much for the opportunity, Mr. Speaker.

ACTING SPEAKER AUBRY: Certainly. Thank you.

Ms. Rajkumar.

MS. RAJKUMAR: Thank you, Mr. Speaker. As the first South Asian American woman ever elected to a New York State office, it gives me great pleasure to support this historic resolution recognizing Pakistan Day [sic] in the State of New York. My family is originally from Multan, Pakistan, my ancestral homeland, coming from Multan, Islamabad, Karachi and Lahore. Pakistani-Americans grace the State of New York with their many contributions. The

American Pakistani Advocacy Group, APAC, and the Islamic Circle of North America were on the front lines during the COVID-19 pandemic, relentlessly serving New Yorkers fresh food, PPE and helping them with all of their needs at this very difficult time. So I commend the Pakistani-American community in New York for their incredible contributions to all fields, including medicine, finance, healthcare. They are succeeding in every field, and I commend them for their hard work.

So, Pakistan (speaking foreign language). God bless America, and I am proud to vote in support of this historic resolution.

ACTING SPEAKER AUBRY: Thank you.

Mr. Carroll.

(Applause)

MR. CARROLL: Thank you, Mr. Speaker. I stand in support of this resolution today. As a -- as the Assemblymember who represents Coney Island Avenue in Kensington, Brooklyn, which we have renamed in honor of Muhammad Ali Jinnah, the founder of modern Pakistan. The Pakistani-American community in Brooklyn is vibrant, contributes tremendously. And during the COVID-19 pandemic, a non-profit in my district, the Council of People's Organization run by Mohammad Razvi, provided more food and PPE to the residents of Brooklyn than any other non-profit in my district. The Pakistani-American community is a wonderful, wonderful addition to the vibrant tapestry that is New York, and I am so glad that we are here today commemorating this resolution in honor of

Pakistani-Americans.

Thank you so much.

ACTING SPEAKER AUBRY: On the resolution, all those in favor signify by saying aye; opposed, no. The resolution is adopted.

(Applause)

THE CLERK: Assembly Resolution No. 683, Ms. Rosenthal.

Legislative Resolution memorializing Governor Kathy Hochul to proclaim March 2022 as Cruelty-Free Cosmetics Month in the State of New York.

ACTING SPEAKER AUBRY: On the resolution, all those in favor signify by saying aye; opposed, no. The resolution is adopted.

On the debate list, Calendar No. 274, page 34, the Clerk will read.

THE CLERK: Assembly No. A07737-B, Calendar No. 274, Weinstein, Zinerman, Seawright, Colton, Simon, Zebrowski, Pretlow, Burdick, Bronson, Davila, Englebright, Dinowitz, Glick, Sayegh, Abinanti, Eichenstein, D. Rosenthal, Weprin, Gallagher, Tapia, Forrest, Otis, Carroll, Hunter, Hyndman, Taylor, Galef. An act to amend the Real Property Actions and Proceedings Law and the Civil Practice Law and Rules, in relation to the rights of parties involved in foreclosure actions.

ACTING SPEAKER AUBRY: Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER AUBRY: The Clerk will record the vote on Assembly print 7737-B. This is a Party vote. Any member who wishes to be recorded in the -- as an exception to their Conference position is reminded to contact the Majority or Minority Leader at the numbers previously provided.

Mr. Goodell.

MR. GOODELL: Thank you, sir. The Republican Conference is generally opposed to this legislation. Those who support it are encouraged to vote on the floor in favor or call the Minority Leader's Office and we will record your vote accordingly.

Thank you, sir.

ACTING SPEAKER AUBRY: Thank you, sir.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Thank you, Mr. Speaker. The Majority Conference will generally be in favor of this piece of legislation. However, there are opportunities -- if folks desire to be an exception, please call the Majority Leader's Office. We'll be pleased to take your vote and properly record it.

ACTING SPEAKER AUBRY: Thank you --

MRS. PEOPLES-STOKES: Thank you.

ACTING SPEAKER AUBRY: -- Mrs. Peoples-Stokes.

Thank you.

(The Clerk recorded the vote.)



Ms. Weinstein to explain her vote.

MS. WEINSTEIN: Thank you, Mr. Speaker. The -- the bill says that the mortgage foreclosure statute of limitations cannot be unilaterally reset by the lender merely by unilaterally discontinuing an existing foreclosure lawsuit. This bill is narrowly tailored to restore the law concerning statutes of limitations in mortgage foreclosures cases to where it was before the Engel decision in the Court of Appeals and the Romero decision of the Appellate Division 3rd Department so that foreclosing financial institutions are not excused from longstanding statute of limitations principles at the expense of New York's struggling homeowners. Of key importance is that this is remedial legislation designed to help as many homeowners as possible. The bill has a retroactive effect which complies with the recent Court of Appeals precedent in the Regina and Gleason cases and was specifically designed to solve the problem created by court decisions which veered from our original legislative intent to create a narrow and focused foreclosure remedy for mortgage lenders and not allow unlimited bites of the foreclosure apple. And finally, this bill is supported by many groups throughout New York State, including New Yorkers for Responsible Lending, AARP, the Association for Neighborhood Housing and Development, (inaudible), Legal Services, DC 37, Empire Justice Center, the Legal Aid Society, Long Island Housing Services, Mobilization for Justice, NYLAG, New Yorkers for Responsible Lending, Queens Volunteer Project -- Lawyer's Project, Teamsters Local 237, Western New York Law Center, Legal Services

of New York City. And I especially want to thank the New Yorkers for Responsible Lending for their support in -- throughout this process of -- of coming to this final legislation.

Thank you and I vote in the affirmative.

ACTING SPEAKER AUBRY: Ms. Weinstein in the affirmative.

Mr. Ra to explain his vote.

MR. RA: Thank you, Mr. Speaker. Just quickly on this bill. As was mentioned earlier, there was a -- there was a Court of Appeals decision regarding this but, you know, this bill does go beyond the provisions of that. And one of the concerns that has been raised that -- I mean, certainly, you know, we've dealt with foreclosure issues for years, dating back to, you know, the economic downturn over -- over a decade ago. I think we've learned a lot in that process, and obviously we've had issues that we've dealt with more recently. But I think the -- the net effect of this is it somewhat makes mortgage credit a riskier business, and the net result of that can be that it becomes harder to get a mortgage. Borrowers who are still eligible for mortgage credit but later default are also going to find it harder to avoid foreclosure because the (inaudible) will disincentivize lenders from working with many of them on alternative payment plans.

So as I said, while this is motivated by good intention, I think the relief that it's going to provide to some borrowers is outweighed by the damage that it may do to future borrowers, and for that reason I'm going to be voting in the negative. Thank you.

ACTING SPEAKER AUBRY: Mr. Ra in the negative. Thank you, sir.

Mr. Goodell.

MR. GOODELL: Thank you, sir. Please record my colleague Mr. Brabenec in the affirmative on this bill.

Thank you, sir.

ACTING SPEAKER AUBRY: So noted.

Mr. Abinanti to explain his vote.

MR. ABINANTI: Thank you, Mr. Speaker. I rise to compliment the Chair of the Ways and Means Committee who is carrying this legislation, and all those who are supporting this legislation. This is consumer protection legislation. This protects homeowners from unfair court decisions and it requires the equal application of the laws. After a lot of study, many legislators found that the ongoing problem with the abuse of judicial foreclosure processes was exacerbated by some imaginative lawyering on behalf of some of the mortgage lenders. There were some court decisions that basically aggregated the statute of limitations in certain circumstances. This legislation is corrective legislation. It has a retroactive application because of these misinterpretations of the law and misinterpretations of the intent of the Legislature by the courts of the State of New York.

So once again, I commend the sponsor and urge all of my colleagues to vote on behalf and vote yes on this legislation.

ACTING SPEAKER AUBRY: Mr. Abinanti in the

affirmative.

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

Calendar No. 1, page 4, the Clerk will read.

THE CLERK: Assembly No. A00081, Calendar No. 1, Quart, Jackson, Vanel, Hevesi, Seawright, Forrest, Simon, González-Rojas, Gottfried, Zinerman, Kelles, Aubry, Gibbs. An act to amend the Social Services Law, in relation to criminal history record checks of certain foster youths.

ACTING SPEAKER AUBRY: On a motion by Mr. Quart, the Senate bill is before the House. The Senate bill is advanced.

Ms. Walsh -- an explanation is requested, Mr. Quart.

MR. QUART: Good morning, Ms. Walsh. This bill will create a new subdivision of Social Services Law 378(a) to resolve an ambiguity in the law that allows 18-year-olds in foster care to be fingerprinted. This bill would amend that practice. Not to outlaw the fingerprinting, but to also say it not -- it must not happen. So it -- not to say it must not happen, but to change that process. So that's what the bill does.

MS. WALSH: Thank you, Mr. Speaker. Will the sponsor yield for a few questions?

ACTING SPEAKER AUBRY: Will you -- will you yield, Mr. Quart?

MR. QUART: I do.

ACTING SPEAKER AUBRY: The sponsor yields, ma'am.

MS. WALSH: Thank you so much. So -- so based on your explanation, then, instead of a mandatory fingerprinting of 18-and-ups in foster care or entering foster care it would be an optional thing at the discretion of the local foster care agency or something like that?

MR. QUART: Yes. Use -- you know, use the example, of New York City ACS. They would still have the option if there was cause, I presume, to seek fingerprinting. But that would require some notice to the foster parents, as well as, I would assume, some good cause for why some level of invasive law enforcement was required.

MS. WALSH: Yeah. I would note that the bill itself doesn't lay out any kind of a good cause standard or any kind of guidelines that would be followed by the local departments in assessing whether or not to require a criminal check. But I think it's important that we're talking about that that would -- that's something that you envision of as part of what will happen after this bill is passed?

MR. QUART: You're right, Ms. Walsh. I didn't lay out a specific due process because 62 counties across the State and in each have their own agencies that administer pursuant to regulations. So I left that to the counties and agencies administering the law rather

than writing out a specific due process that would apply to all 62 counties.

MS. WALSH: Could you talk a little bit about what the components of the criminal history record check are? What -- what would we learn from something like that, potentially?

MR. QUART: Well, certainly there's a fingerprinting aspect but, in essence, a lot of that would almost invariably be (inaudible) and it would be duplicative for a 18-year-old who was already within -- a juvenile within the foster care system as the Social Services Law requires fingerprinting on the front end, both of the parents and of the person -- young person under 18. But what I would imagine, beyond that fingerprinting it could be an investigation seeking to talk to individuals or run a background check on other individuals within the home. I'm sure I'm leaving out much, but I -- those are some aspects of the investigation that goes on. And it's by ACS and other State agency before someone is placed in a home.

MS. WALSH: I mean, potentially, could a background check reveal any felony or misdemeanor, criminal convictions or any pending criminal cases or any history of incarceration as an adult or any arrests pending prosecution that may be part of this person's background?

MR. QUART: Yes, it is a national and State requirement that would reveal that information.

MS. WALSH: Now, do we have an idea of how many individuals 18 and older in New York State are in foster care

would be potentially subjected to a background check?

MR. QUART: I -- I don't have an exact number of those who are specifically 18. So the answer is no.

MS. WALSH: Okay. So you mentioned that - and I would agree with you - that if we have a set of fingerprints on file for an individual it doesn't make sense to have them every single year have to be re-fingerprinted. But this -- this legislation actually goes a little bit further and makes the entire process of the background check, including fingerprints, to be -- to be optional with the -- with the Department. Is the cost -- is the cost a consideration or is it inconvenience or -- to the individual who is involved? What -- what was the impetus behind the (inaudible) behind the bill?

MR. QUART: To the first instance you point out, it is duplicative and an unnecessary use of State resources to fingerprint, if not conduct a further investigation on young individuals who have already had that done to them who the majority of them have entered the foster care system before they were 18. So that's one consideration. But the other is the stigma -- the stigma of the law enforcement aspect on young people. The national numbers and the numbers in New York City of foster care young people who turn 18 and then ultimately end up in the criminal legal system is certainly a higher percentage than other young people across the City and State. So we don't want to stigmatize the foster care population as somehow being a greater risk than any -- any other person that age in New York State.

MS. WALSH: Very good. Now, this -- this law, however, would apply to any individual in foster care, any type of foster care placement because there were -- there are different kinds of foster care placements. There are placements that are kinship foster care, there's regular foster care with non-related individuals or non-related foster parents. Then there's OCFS, Office of Children and Family Service placements in foster care of individuals who are really in a lot of ways the -- the toughest cases. They're generally have been adjudicated juvenile delinquents. They have more complex, you know, issues beyond just the possible, you know, problems or inadequacies of the birth parents. But this -- this change in the law would apply to all individuals in foster care 18 and over, correct?

MR. QUART: Correct. And, I mean, as you're a skilled family law practitioner, you want to accurately go through the many different hypotheticals and difficult circumstances. But this would apply universally.

MS. WALSH: Very good. I think that those are the only questions that I have for you. Thank you so much.

Mr. Speaker, on the bill.

ACTING SPEAKER AUBRY: On the bill, ma'am.

MS. WALSH: So, I completely understand from the reason why the sponsor has brought this forward, and I think that it does come from a good place. I -- the concerns that I have with the bill are -- are these: It does make it optional, and I think that that was an important clarification to bring out during the debate. It's not



completely eliminating the ability to do a criminal background check, but it's making it discretionary with each individual Department of Social Services. There is a -- there is a risk that goes along with that, of allowing that -- that degree of discretion among the different counties and the different agencies. There's been a lot in the news over the past few years about situations involving foster care where children and the young adults that are in foster care, and foster care environments kind of fall through the cracks that we have case workers who are tremendously overburdened. There have unfortunately have been deaths and other problems within foster care environments. So, you know, I would argue that having less scrutiny might not be such a great thing. I think that particularly with OCFS kids who are placed in foster care where these kids and young adults present in -- in a lot of ways the greatest more complex issues, it would be good for the foster parents who are stepping into the role of accepting an OCFS foster care placement to really kind of know what they're getting into. So, you know, I have had constituents reach out to me in the North Country, for example, who have taken in foster care kids through OCFS and really didn't realize the -- the extent to which they had prior problems not only with the law, but also mental health issues. So I think there are safeguards already in the law protecting the confidentiality of these searches so that they're only going to be utilized by individuals that really have a need to know. And I would really support legislation that would eliminate obvious additional costs that are really just duplicative like constantly

fingerprinting year after year as homes are being recertified. Re-fingerprinting doesn't seem to make any sense to me at all and I would support that legislation. But this kind of goes beyond that. And I think that under the circumstances, considering the wide breadth of individuals that enter foster care and all the different reasons and the individual personalities that these background checks properly controlled for confidentiality are -- are an important piece when it comes to public safety. There could be a situation where a complaint has been filed either by a birth parent, a member of the community, neighbors or whatnot, either through the -- the hotline that we have through CPS or directly to foster care regarding an individual over the age of 18 living in a foster home, and I wouldn't want this to -- this particular legislation to get in the way of trying to find out if there are pending criminal charges or if there is criminal activity that could be going on that maybe has escaped the -- the attention of foster care.

So I think for those reasons, I have a problem with this particular legislation. I would -- if it were amended to just have to do with things like duplicative fingerprinting, I would support that and I recommend everybody to. But under -- the way that it's currently worded I -- I cannot support the bill as it's currently presented and I will be voting in the negative and I would encourage my colleagues to do the same. But I do thank the sponsor for bringing this forward. I think it comes from a good place. I just think it goes a little bit too far.

Thank you.

ACTING SPEAKER AUBRY: Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Thank you, Mr.

Speaker. Will the sponsor yield for a question, please?

ACTING SPEAKER AUBRY: Mr. Quart, will you yield, sir?

MR. QUART: I will.

ACTING SPEAKER AUBRY: The sponsor yields.

MRS. PEOPLES-STOKES: Mr. Quart, I wonder if you could tell me at what age do young people age out of foster care?

MR. QUART: That -- that depends, Madam Leader.

It --

MRS. PEOPLES-STOKES: So does it go up to 21 or...

MR. QUART: Yes.

MRS. PEOPLES-STOKES: Do they age -- but can they age out at 18?

MR. QUART: They can, but not necessarily.

MRS. PEOPLES-STOKES: I guess my other question, then, would be how long has criminal background checks for children and young adults that are in foster care been in existence in the State of New York?

MR. QUART: You mean how -- how long are the fingerprints maintained and kept?

MRS. PEOPLES-STOKES: And I decided that

question is intriguing to me because generally when children are in foster care it's because somewhere along the line either their parents or some other adults have failed them and they are in need of other adult supervision. And having had some experience working with young people who had been through the foster care system, I know they are sometimes very traumatized. And I'm just trying to figure out how we, as a State, turn that traumatizing impact for children and young people into wanting to check their criminal background?

MR. QUART: Well, Madam Leader, there -- it's an excellent question. The national statistics and City and State statistics show such a high level percentage of inactivity or a connection between law enforcement and foster care children. I would set forth the proposition through likely no fault of the foster care other than a destabilizing home that he or she grew up with. And that's a small part of what we're trying to do here by limiting the background checks, limiting the investigations. At least when a foster care child turns 18 or older, as you -- as I described during the debate.

MRS. PEOPLES-STOKES: Thank you.

On the bill, Mr. Speaker. I -- I just want to commend the sponsor of this legislation. I -- I do think that at the point that someone turns 18, whether or not they are going to remain in foster care and for whatever reason our system still thinks we need to check their criminal background, whether there's been one in the past or not. Perhaps so. But if they're 18 years old and they're off on their own I don't think we should still be attempting to criminalize them by asking

for a criminal background check.

So I applaud the sponsor of this legislation and actually look forward to voting yes on this one. Thank you.

ACTING SPEAKER AUBRY: Thank you, Mrs. Peoples-Stokes.

Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER AUBRY: The Clerk will record the vote on Senate print 5628. This is a Party vote. Any member who wishes to be recorded as an exception to their Conference position is reminded to contact the Majority or Minority Leader at the numbers previously provided.

Mr. Goodell.

MR. GOODELL: Thank you, sir. For the reasons explained by my colleague, the Republican Conference is generally opposed to this legislation. Those who wish to support it are certainly encouraged to vote on the floor in favor or call the Minority Leader's Office.

Thank you, sir.

ACTING SPEAKER AUBRY: Thank you.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Mr. Speaker, the Majority Conference will generally be in favor of this piece of legislation. However, some colleagues may desire to be an exception. They should contact the Majority Leader's Office and we will be

happy to record their vote.

ACTING SPEAKER AUBRY: Thank you, Mrs. Peoples-Stokes.

(The Clerk recorded the vote.)

Ms. Seawright to explain her vote, and I believe she's on our Zoom line.

MS. SEAWRIGHT: Thank you, Mr. Speaker, for the opportunity to explain my vote. I want to thank my colleague, the bill sponsor, for this important piece of legislation that will go a long way in helping our young people. And so I'm pleased to cast my vote in the affirmative.

Thank you.

ACTING SPEAKER AUBRY: Certainly. Ms. Seawright, who is present, votes in the affirmative. Good to see you.

Mr. Goodell.

MR. GOODELL: Thank you, sir. Please record my colleague Mr. Walczyk in the affirmative.

Thank you, sir.

ACTING SPEAKER AUBRY: Thank you so much. So noted.

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

Page 7, Calendar No. 25, the Clerk will read.

THE CLERK: Assembly No. A00354-A, Calendar

No. 25, Magnarelli, Seawright, Abinanti, Epstein, Anderson, Englebright, Simon, Galef, Kelles, Bronson, Cruz, Clark, Barrett, Meeks, Jacobson, Mitaynes, Fahy. An act to amend the Real Property Actions and Proceedings Law, in relation to special proceedings by tenants for judgment directing repairs of conditions and other relief n residential real property; and to amend the Uniform City Court Act, the Uniform District Court Act and the Uniform Justice Act, in relation to summary proceedings relating thereto.

ACTING SPEAKER AUBRY: Mr. Magnarelli, an explanation has been requested.

MR. MAGNARELLI: Yes, Mr. Speaker. The bill authorizes special proceedings by tenants for court judgments directing landlords to repair deficient conditions constituting a violation of local or State housing standards or codes.

ACTING SPEAKER AUBRY: Mr. Goodell.

MR. GOODELL: Thank you. Would the sponsor yield?

ACTING SPEAKER AUBRY: Mr. Magnarelli, will you yield, sir?

MR. MAGNARELLI: Yes.

ACTING SPEAKER AUBRY: Mr. Magnarelli yields.

MR. GOODELL: Thank you, Mr. Magnarelli. I thought it might be helpful for our colleagues if we kind of walk through the bill so we understand what it means.

MR. MAGNARELLI: Sure.

MR. GOODELL: So I'm looking for your advice and guidance.

MR. MAGNARELLI: Well, it's a special proceeding. The same type of a proceeding that a landlord would have if they were bringing in eviction of the tenant. Only this bill would deal with violations of local or State building standards and codes. The bill also authorizes courts to grant relief in the form of an order to make repairs, money judgments, a reduction in rent and any other relief the court deems just. The bill creates a process by which a tenant may commence the proceeding in court in the court clerk's office. The bill grants jurisdiction to city, district and justice courts to hear these proceedings.

MR. GOODELL: Now, the individual that can bring this action is defined as a tenant. As you know, of course, if you have a land contract and a person is buying property on an installment basis the land contract reads as though the installment purchaser is a tenant. Would this enable a person purchasing land on an installment sales agreement like a land contract to bring an action?

MR. MAGNARELLI: I think the answer to that is what does the document say? Who is --

MR. GOODELL: (Inaudible/cross-talk).

MR. MAGNARELLI: (Inaudible/cross-talk).

MR. GOODELL: Assume the documents says the tenant under the land contract, which is typical, is responsible for all



repairs and maintenance.

MR. MAGNARELLI: Then I would think that that document presented to the judge in such a proceeding would lead the judge to believe that the tenant has to make the repairs. It's as simple as that.

MR. GOODELL: We also see -- it's not as common but it's not uncommon by any means -- our triple net leases with an option to purchase. Same general concept. The lease requires the tenant to be responsible for maintenance and repair. In that situation would the tenant be able to avail themselves of this statute?

MR. MAGNARELLI: I think they -- they could avail themselves of the statute but they're going to lose. I mean, on its face the document would say that the tenant's responsible for the repairs. That would be in front of the judge, and I would assume that the judge is going to look at that document.

MR. GOODELL: Now, on almost every single lease that I've ever seen, there's typically a clause dealing with maintenance and it's -- the typical maintenance clause says the tenant's responsible for routine repairs and maintenance like replacing light bulbs, you know, cleaning faucets or, you know, the faucet screens or keeping the place clean and attractive. Would that be affected by this?

MR. MAGNARELLI: No. It -- it's not going to be affected by it. It's -- it's exactly what the lease says. So the document itself would be the defense if -- if, in fact, the tenant was coming in because the light bulbs weren't changed and the tenant was supposed

to -- to take care of the light bulbs, I think that would be on its face something that the judge would be able to deal with. It's all the other things. The things that the landlord was supposed to do that aren't done that the tenant brings in. Those are the things that would be in front of the judge.

MR. GOODELL: Of course many -- many leases with tenants require the tenant to be responsible for all of the utilities.

MR. MAGNARELLI: Correct.

MR. GOODELL: And sadly, sometimes tenants fall behind on utilities, the gas is shut off, the heat's shut off. Pipes break, there's a substantial amount of damage to the apartment. Would the tenant be able to bring an action to force the landlord to fix damages that were caused by the tenant's own failure to maintain heat?

MR. MAGNARELLI: Again, I think this bill allows the judge to -- the discretion to make a decision on what is just. So the situation you just gave me where the tenant was liable for the utility bills and failed to do it, I can't -- again, I can't say what a judge is going to do, but the bottom line is the landlord has a right to defend itself in these proceedings with the documents that it has. The leases, the agreements, the contracts. It has a right to defend itself, and if in fact the tenant was responsible for what's going on, then the tenant is responsible.

MR. GOODELL: Is there any language in this bill - and if so could you point it out for me - that it makes it clear that nothing in this bill overrides the maintenance responsibilities that

might be set forth in the contract itself?

MR. MAGNARELLI: I'm not sure I understand that question.

MR. GOODELL: So the question is this: I appreciate your answers. I agree with your answers. I just want to ask, is there any language in this bill that makes it clear that this bill is not intended to supercede any contractual provisions that exist as they relate to maintenance?

MR. MAGNARELLI: I don't think there's anything specific in the bill that says that. But the bill's intent is to take care of situations where a landlord is responsible to do something. Basically, keep a -- a residential property up to code and fails to do that. And I -- and I would point out again that the judge has the discretion to make whatever order the judge feels is necessary.

MR. GOODELL: Of course one of the most critical aspects of any lawsuit is making sure that the right people are served, and this bill lists who can be served with a commencement of a lawsuit. Is there any reason why the owner of the building is not required to be served?

MR. MAGNARELLI: Yeah, there is.

MR. GOODELL: And why wouldn't we want the owner served?

MR. MAGNARELLI: I think in -- in the best of all worlds I would agree with you 100 percent. I would want -- if I was the owner I'd like to be served. However, there are a lot of owners

who don't want to be served and who have been hiding under different -- different names and corporations and LLCs, et cetera, et cetera. So this allows those entities to be served. It also allows to serve the landlord at the address and to the name which is on the tax bill. It would also allow them to be served if they're on some type of a rental registry with the municipality. I believe that those are all just. Those are the people that are taking care of the property, that are in communication with the tenants, are supposed to be doing the right thing and they're not in many cases. So this just brings them in front of a judge. Again, the landlord has the right to defend itself in these proceedings.

MR. GOODELL: Well, of course the landlord has the right to defend themselves if they're served and know about it. But if this doesn't require the landlord to actually be served or actually know about it and it provides service provisions that are different than any of the other CPLR service provisions as they relate to a defendant that might be difficult to locate. And in particular, this provides, if I'm not mistaken, that you can serve the landlord by sending a notice to the same address that you would send a tax bill for. So for many of our landlords, particularly a smaller landlord who has a mortgage, has an escrow account which means the tax bills aren't sent to the owner, they're sent to the bank. And a bank is -- isn't expecting notices on anything other than taxes and their escrow departments have no procedure or policy or mechanism. Why would we allow a lawsuit to be brought against the owner without serving the owner or using

substitute service on the owner as in any other lawsuit, and allowing service on a bank's escrow account?

MR. MAGNARELLI: Well, I tend to not think that's the real world. Okay? Because if you're a landlord this isn't your primary residence. Your escrows are usually with your primary resident's banks. Okay? These are business entities. And I believe that they would get service, and that in all probability the people that are dealing with the property on a daily basis are the ones that are going to know that this proceeding has been commenced.

MR. GOODELL: Of course under existing law, and it's been that way for decades, a tenant that has a problem with maintenance can bring either as a defense or as an affirmative action a claim under Section 235(b) of the Real Property Law on warranty of habitability and get an offset. And the offset is based on the difference in the fair market value of the building if it were in good condition compared to the building as it actually is alleged by the tenant. Are the damages under this law limited by the difference in fair market value that would apply under Section 235(b) of the Real Property Law?

MR. MAGNARELLI: I would say no. I think that these are -- it's up to the judge.

MR. GOODELL: And I note this can be brought by a tenant that's been in possession only 30 days? So in the first month -- you make one rent payment --

MR. MAGNARELLI: Well, it all depends on what's

going on. I mean, if you don't have a sewer system or you don't have water or you don't have electricity, 30 days is a long time.

MR. GOODELL: Certainly. Thank you so much, Mr. Magnarelli.

MR. MAGNARELLI: You're welcome.

MR. GOODELL: I appreciate your comments.

On the bill, sir.

ACTING SPEAKER OTIS: On the bill.

MR. GOODELL: Thank you. So we've just gone through a period where our landlords, many of them have gone years, two years or more now, without rent. I mean, this is a horrific, horrific imposition on landlords. And then we just recently passed legislation that said if a tenant applies for emergency rental assistance it's an automatic stay of eviction, even though that fund ran out of money last year. So after just hammering our poor small landlords without any rent, we turn around and are asked to adopt today a bill that punishes landlords for not maintaining their property adequately, even though they may have gone for two, two-and-a-half years without any rent. And this bill is unique in terms of its due process. Unlike any other lawsuit, this lawsuit can be commenced without serving the owner. Unlike any other lawsuit, this lawsuit can be commenced by sending a notice to the bank, the landlord's bank. Not even to the landlord. And so we start with a process where the landlord isn't even guaranteed notice, and then we set aside the damage provisions that have been in place for literally decades dealing

with this very issue and say that damages for a tenant are unlimited. There's no limit. They could require the landlord to make whatever repairs are necessary without limit.

My friends, our landlords across the State are just reeling, especially our small landlords. And it's inappropriate to set up a procedure where a landlord can be sued for unlimited damages without even receiving actual notice, and that's exactly what this bill does. So I recommend my colleagues vote against it.

Thank you, sir.

ACTING SPEAKER AUBRY: Read the last section.

THE CLERK: This act shall take effect on the 180th day.

ACTING SPEAKER AUBRY: The Clerk will record the vote on Assembly print 354-A. This is a Party vote. Any member who wishes to be recorded as an exception to their Conference position is reminded to contact the Majority or Minority Leader at the numbers previously provided.

Mr. Goodell.

MR. GOODELL: Thank you, sir. The Republican Conference is generally opposed to this legislation. Those who support it are certainly encouraged to vote in favor of it if they're on the floor or to call the Minority Leader's Office and advise them.

Thank you, sir.

ACTING SPEAKER AUBRY: Thank you.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Thank you, Mr. Speaker. The Majority Conference will generally be in favor of this piece of legislation. However, should colleagues desire to be an exception they should please feel free to contact the Majority Leader's Office. We will make sure their vote is properly recorded.

Thank you, sir.

ACTING SPEAKER AUBRY: Thank you, ma'am.

(The Clerk recorded the vote.)

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

Page 12, Calendar No. 70, the Clerk will read.

THE CLERK: Assembly No. A01340-A, Calendar No. 70, Magnarelli, Cook, Steck, Peoples-Stokes, Lupardo, Fahy. An act to amend the Election Law, in relation to requiring that all printed political campaign mailing pieces containing or made of recyclable material include a message about recycling the printed materials.

ACTING SPEAKER AUBRY: Mr. Magnarelli, an explanation has been requested, sir.

MR. MAGNARELLI: Yes. This bill requires that all printed political campaign mailing pieces containing or made of recyclable material have affixed to it the recycling logo -- logo of three chasing arrows in a triangular configuration and the following printed message: "This material is recyclable. Please properly recycle after use." That's it.



ACTING SPEAKER AUBRY: Ms. Walsh.

MS. WALSH: Thank you, Mr. Speaker. Will the sponsor yield for just a couple of questions?

MR. MAGNARELLI: Sure.

ACTING SPEAKER AUBRY: Mr. Magnarelli yields.

MS. WALSH: And thank you very much, Mr. Magnarelli. This bill is a -- is a lot more narrow and simple than the one you just debated, so I only have just a couple of questions for you. Just to clarify. So this bill says that if your political material is being printed on recyclable paper, then you need to put the logo and the -- and the words that you just talked about on the promotional material as well, correct?

MR. MAGNARELLI: Recyclable -- yes.

MS. WALSH: But it -- so in other words, if you're printing your political material on non-recyclable paper there's no -- there's no obligation that you have to print your political material on recyclable paper based on this bill, correct?

MR. MAGNARELLI: Correct.

MS. WALSH: Yeah. So that -- I think that's an important thing to note.

Now, is there any particular font size or anything like that in the bill?

MR. MAGNARELLI: No.

MS. WALSH: Just have to squeeze it in there

somewhere, right?

MR. MAGNARELLI: That's all.

MS. WALSH: Okay. And are there any penalties for the failure to do this?

MR. MAGNARELLI: No.

MS. WALSH: Okay.

MR. MAGNARELLI: Not at this time.

MS. WALSH: All right. Very good. Thank you so much.

Mr. Speaker, on the bill.

ACTING SPEAKER AUBRY: On the bill, Ms. Walsh.

MS. WALSH: So, I think it's important to note that it's -- it's not -- if you decide to, I guess, not be environmentally friendly and print your political material on paper that's not recyclable, don't worry about it because you're not going to have to do anything different. You don't have to use recyclable material. I mean, it -- it probably would be a good thing if you did, but if you don't you don't have to worry about it. This bill isn't going to affect you. Only if you're printing on recyclable material does it require that you put that logo on that we all know, we all recognize, are the three chasing arrows and the triangle shape, on your material somewhere. But you also do have to add this language that says "This material is recyclable. Please properly recycle after use," which kind of is obvious. I mean, we all know what that -- what that symbol looks

like. And, you know, I -- I understand the reason is to try to encourage recycling. And we all know that we generate a lot of -- in -- in political season we generate a lot of material and it would be good if we recycled it. I get all of that. And there's no penalties if you fail to do it, it's just -- I don't know, I -- I really don't -- once I realized that this bill was not mandatory, but it didn't require you to print on recyclable material I felt a lot better about the bill. But I do think that there are some people who would oppose it because the feeling is that when you're trying to put out a political mailer and you're already trying to squeeze as much information as you can on that mailer, that this was just an additional requirement to add the additional language and the logo in addition to the other things that you have to put on like who paid for it and things like that.

So, some people might oppose this bill. I -- I actually plan to support it. But thank you very much, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you very much.

Mr. Lawler.

MR. LAWLER: Thank you, Mr. Speaker. Will the sponsor yield?

ACTING SPEAKER AUBRY: Mr. Magnarelli, will you yield?

MR. MAGNARELLI: Yes.

ACTING SPEAKER AUBRY: The sponsor yields.

MR. LAWLER: Thank you. Does this -- when we're

talking about political mail, does it -- does this bill in any way apply to governmental mail that goes out from the official side?

MR. MAGNARELLI: I don't believe so, no.

MR. LAWLER: Is there currently any law that requires the -- the recycling logo to be applied to government-issued mail or printing?

MR. MAGNARELLI: Not that I'm aware of, no.

MR. LAWLER: Why -- how come we did not include government mailers in this bill?

MR. MAGNARELLI: That might be my next bill.

(Laughter)

MR. LAWLER: So just to kind of reiterate, I guess, the point that my colleague was making. So we're requiring graphic designers who come up with political mailings to include a recycling logo on to it, as well as a printed message. So is that -- would that be required to be in, like, where the disclaimer part of the printed material is? Would it be -- where would it be required to be on the mailer?

MR. MAGNARELLI: I think you could put it anyplace you want on -- on -- on the mailing as long as it's safe.

MR. LAWLER: Is there a size requirement?

MR. MAGNARELLI: No.

MR. LAWLER: Okay. So it could be really tiny?

MR. MAGNARELLI: It could be really tiny. Yup.

MR. LAWLER: Could it be somewhat transparent?

MR. MAGNARELLI: Transparent?

MR. LAWLER: Yes, meaning --

MR. MAGNARELLI: You have to see it.

MR. LAWLER: -- not bold.

MR. MAGNARELLI: It doesn't have to be bold.

MR. LAWLER: Okay. Okay. Thank you.

MR. MAGNARELLI: You're welcome.

MR. LAWLER: On the bill.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. LAWLER: So, as someone who actually creates hundreds of political mailings a year outside of my work here, I find the bill very interesting. Certainly, obviously, we'd all like to see these materials recycled. I think oftentimes we do, as somebody who's been in this a long time. We do see people get a political mailing, rip it up as they get it from their mailbox and throw it in the garbage can pretty quickly. So I'm -- I'm not fully sure what the purpose of this is, other than to maybe make us feel good that we're going to try to recycle something. But I think if we're going to apply this to political campaign mail, I think it should be applied to government quasi-political campaign mail that goes out the door from this Body and our colleagues down the hall and the Second Floor and all the printed materials that we hand out at fairs and meetings and rallies and otherwise that's printed by this Body. So I would just encourage my colleague, if we're going to apply it to political mail we should also apply it to governmental mail and be consistent in our

attempts to recycle.

So, thank you.

ACTING SPEAKER AUBRY: Thank you, sir.

Read the last section.

THE CLERK: This act shall take effect on the 180th day.

ACTING SPEAKER AUBRY: The Clerk will record the vote on Assembly print 1340-A. This is a Party vote. Any member who wishes to be recorded as an exception to their Conference position is reminded to contact the Majority or Minority Leader at the numbers previously provided.

Mr. Goodell.

MR. GOODELL: Thank you, sir. The Republican Conference is generally opposed to this legislation. But those who support it are certainly encouraged to vote accordingly and we'll ensure that your vote is recorded.

Thank you, sir.

ACTING SPEAKER AUBRY: Thank you. So noted.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Thank you, Mr. Speaker. The Majority Conference is generally going to be in favor of this piece of legislation. However, should colleagues desire to be an exception they should feel free to contact the Majority Leader's Office and their vote will be properly recorded.

ACTING SPEAKER AUBRY: Thank you, ma'am.

(The Clerk recorded the vote.)

Mr. Goodell to explain his vote.

MR. GOODELL: Thank you, sir. I think it's really important that we encourage our recycling and the use of recycled materials as much as possible. And not surprisingly, the easier we make it for people to use recycled materials and the lower the cost that we have -- whether time, energy or money and using recycled materials -- the more likely we'll recycle materials. And so this is a bill that makes it more expensive or time-consuming or imposes some restrictions if you recycle if you're using recycling bill -- paper. And so I think a better approach is to encourage recycling rather than place limitations on it. And sure as shootings, sooner or later someone will forget that put on their political campaign literature that they were environmentally sensitive and used recycled paper and they someone can stand up and say, *You didn't comply with the law*. Let's use recycled paper. Let's encourage recycling. And let's do so by making fewer requirements on those who use recycled paper, not add statutory requirements.

Thank you, sir. And that's why I'm voting against this legislation. Thank you, sir.

ACTING SPEAKER AUBRY: Mr. Goodell in the negative.

Mr. Goodell.

MR. GOODELL: Thank you, sir. Please add my

colleagues Mr. DeStefano and Mr. Walczyk as affirmative on this bill.

Thank you, sir.

ACTING SPEAKER AUBRY: So noted. Thank you.

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

Page 17, Calendar No. 118, the Clerk will read.

THE CLERK: Assembly No. A03203-A, Calendar No. 118, McDonald, Galef, Stirpe, Fahy, Steck, Montesano, Simon, Cahill, Colton, Gottfried, Morinello, Ashby, Lupardo, Otis, DeStefano. An act to amend the Public Buildings Law, in relation to the authority of the Commissioner of General Services to lease public buildings.

ACTING SPEAKER AUBRY: An explanation is requested, Mr. McDonald.

MR. MCDONALD: Thank you, Mr. Speaker. The purpose of this bill is to require the disclosure of the names and the residential addresses of the natural persons who are members, managers or otherwise authorized persons of an LLC - which as many know, is a limited liability corporation - when the LLC executes a lease agreement in which the State of New York is a tenant. As many individuals know, the State leases a lot of property throughout the State of New York. These are usually lucrative leases. They're usually long-term, very stable. And because public money is involved



in the payment on those leases, it's the belief that we should make sure we have an idea of exactly who is behind those entities when renting these properties or leasing these properties.

ACTING SPEAKER AUBRY: Mr. Goodell.

MR. GOODELL: Thank you, sir. Would the sponsor yield?

ACTING SPEAKER AUBRY: Mr. McDonald, will you yield?

MR. MCDONALD: Yes, sir.

ACTING SPEAKER AUBRY: The sponsor yields, sir.

MR. GOODELL: Now, I -- I understand from the language if you have a limited liability company, a member of that limited liability company could be itself a corporation, in which case this would require the corporation who is a member of a limited liability company to disclose the name and residential address of all the shareholders, correct?

MR. MCDONALD: That is correct.

MR. GOODELL: Is there any statutory requirement or any requirement anywhere that requires --

MR. MCDONALD: I'm sorry, Mr. Goodell. I -- my mother always told me to listen to who's speaking, and unfortunately there's other people speaking. So could you repeat the question, please?

MR. GOODELL: Certainly.

MR. MCDONALD: I'm listening to you.

MR. GOODELL: So, is there any statutory or regulatory requirement or SEC requirement of any kind that requires a corporation to have the residential address of its shareholders?

MR. MCDONALD: I -- I don't know the answer to that question and I don't think it's relevant to this bill. But I --

MR. GOODELL: Well, this bill requires the corporation who is a member of an LLC to disclose the residential address of all its shareholders, correct?

MR. MCDONALD: That's correct.

MR. GOODELL: Corporations don't have -- there's nothing that requires a corporation to keep residential addresses, and I would suggest that most corporations' shareholders use stockbrokers' or use commercial addresses or their business address. So how would a corporation comply?

MR. MCDONALD: So, you know, getting back to the original intent of this legislation, if an entity wants to engage in the State on entering into a lease - which is actually a good business opportunity - they should be well aware of the fact that if there's going to be a corporation within the LLC then the members would have to disclose their residential addresses. I think your question started off with more about is there an SEC regulation. I'm not proficient on the SEC so I can't answer that question. But on this bill I can answer that question.

MR. GOODELL: As you know, some people are

very, very sensitive about their residential address, particularly if they're victims of domestic abuse or stalking. Is there any provision in this that provides them with protection from having to disclose their residential address?

MR. MCDONALD: It's a very good point. Actually, as you know, we've had this discussion before a couple of times, and I think a couple years ago at your suggestion we went back and looked at the legislation and included language for OGS to have in their regulation process some latitude to take into account those sensitive situations.

MR. GOODELL: And where is that in this legislation?

MR. MCDONALD: I think -- I had it right here. I think in -- I'm sorry, Article 6 --

(Pause)

So it magically appeared here, thankfully. So in Section 3, the Commissioner of General Services is hereby authorized and directed to promulgate rules and regulations to effectuate the purposes of this act.

MR. GOODELL: But of course no administrative agency can promulgate rules and regulations that are inconsistent with a statute, right? They have to be consistent with a statute. And so my question is, is there anything in this proposed statutory language that would authorize the issuance of rules and regulations that would protect the privacy? And the reason I ask is because if you look on

page 2, line 13 it says the identification of such names shall not be deemed to be an unwarranted invasion of personal privacy. And so it seems that the statutory language is exactly the opposite of what we would want to do, which is to protect those residential addresses for people who might be the victims of domestic abuse or stalking or something similar.

MR. MCDONALD: So, the intention is to have the same protections as afforded through FOIL.

MR. GOODELL: I apologize.

MR. MCDONALD: The intention is to have the same protections that's afforded through FOIL.

MR. GOODELL: I see. If by chance we debate this next year, I'd be happy to work with you on language that would ensure that this is the result.

Thank you very much, Mr. McDonald.

MR. MCDONALD: Thank you, Mr. Goodell.

MR. GOODELL: On the bill.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. GOODELL: Several years ago there was a lot of interest in who was actually behind an LLC because LLCs could contribute \$150,000 to political campaigns whereas a corporation had an aggregate cap of \$5,000. Well since then, the campaign law has been amended and LLCs are under the same cap as corporations. So I think the political justification, if you will, for this bill is no longer relevant. But what this bill does is it says we are going to have

regulations and laws that affect only one specific type of entity. So if you want to lease property to the State of New York and you're a corporation, don't have to disclose the names and addresses of your shareholders. A limited liability partnership, don't have to disclose. Individual, don't have to disclose the residential address. No one else who rents any property to the State of New York has to disclose residential addresses. And so I appreciate my colleague's sensitivity to -- to disclosing residential addresses. And I think he and I agree that there are situations where you just don't want to disclose residential addresses because the person is a victim of domestic abuse or going through some very difficult times or may be a victim of stalking. And unfortunately, this language doesn't protect those people. So we have a bill that requires the disclosure of residential addresses when there's no longer a justification for, you know, going after one entity and ignoring everyone else. I -- I just don't think there's an appropriate need for this and an appropriate level of protection for those who we are all very, very sensitive about who need protection about disclosure of their personal residences.

And then just an aside. This bill requires an LLC that has a corporate partner that requires that corporation to disclose the residential address of all the shareholders and virtually no -- no corporation has that information. They just simply don't have it. And if you can imagine, if they're a large corporation that was a member of an LLC -- perhaps they were in investigating in the LLC so they have a minority stake as an investment -- can you imagine the shareholder

list for a large corporation? I mean, it could be -- it could be pages and pages.

So I -- I just think those issues need to be addressed before we move forward. Thank you, sir.

ACTING SPEAKER AUBRY: Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER AUBRY: The Clerk will record the vote on Assembly print 3203-A. This is a Party vote. Any member who wishes to be recorded as an exception to their Conference position is reminded to contact the Majority or Minority Leader at the numbers previously provided.

Mr. Goodell.

MR. GOODELL: Thank you, sir. The Republican Conference is generally opposed to this legislation. Those who wish to support it can certainly vote in favor of it here on the floor or can notify the Minority Leader's Office and we will record their vote accordingly.

Thank you, sir.

ACTING SPEAKER AUBRY: So noted. Thank you.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Mr. Speaker, the Majority Conference is generally going to be in favor of this piece of legislation. However, should colleagues desire to be an exception they should feel free to contact the Majority Leader's Office and we'll

properly record their vote.

Thank you, sir.

ACTING SPEAKER AUBRY: Thank you, ma'am.

(The Clerk recorded the vote.)

Mr. McDonald to explain his vote.

MR. MCDONALD: Thank you, Mr. Speaker. And I appreciate the comments of my colleague on this legislation. You know, just a couple of points. We got into a little bit of a discussion about corporations and how they have to give their name and residential address. I've been in business for over 35, 40 years. And when I've been in business in the State of New York in a corporation, I had to list my residential address if I wanted to do business with the New York State Lottery or the Education Department. So it's not uncommon for the State to require that information. At the same token, as I referenced earlier, leases of office buildings are critically component for employees that would carry out their work. On the same token, these leases can be long-term, they can be a consistent player. They're well sought-after. And as much as LLCs are a very important vehicle in regards to protecting those who are part of that LLC, at the same time it doesn't excuse the responsibility we have when it comes to public dollars to make sure that there's accountability and individuals that are responsible to respond.

So with that, I do support this legislation. I think it has merit, and of course I'll encourage my colleagues to vote on the same.

ACTING SPEAKER AUBRY: Mr. McDonald in the affirmative.

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

Page 24, Calendar No. 183, the Clerk will read.

THE CLERK: Assembly No. A05668-A, Calendar No. 183, Gunther, Woerner, Santabarbara, Taylor, L. Rosenthal, Abinanti, Niou, Brabenec, Steck, Hevesi, Braunstein, Gottfried, McDonald, Barnwell, Galef, Reyes, Buttenschon, Sayegh. An act to amend the Public Health Law, in relation to the employment of persons to function as infection preventionists in certain general hospitals.

ACTING SPEAKER AUBRY: Read the last section.

THE CLERK: This act shall take effect January 1st.

ACTING SPEAKER AUBRY: The Clerk will record the vote on Assembly print 5668-A. This is a fast roll call. Any member who wishes to be recorded in the negative is reminded to contact the Majority or Minority Leader at the numbers previously provided.

(The Clerk recorded the vote.)

Mrs. Gunther to explain her vote.

MRS. GUNTHER: Thank you, Mr. Speaker. This legislation establishes a minimum -- a minimum credentialing standard for the infectious profession -- preventionists that are



working in the hospital setting. So, during my career as a nurse I was the infection control practitioner during the outbreaks of Vancomycin-resistant antibiotic -- Vancomycin resistance and also Magnacillin resistance. And the importance of the infection control nurse or practitioner in hospitals and many settings does prevent the transmission of disease. And I think this legislation, with all that we've gone through with COVID and the teaching that the preventionist does within a hospital setting is -- and a long-term care setting is vitally important to stop transmission and decreases the cost to nursing homes and hospitals and also saves lives.

So this is an important piece of legislation, and I certainly support it wholeheartedly. And hopefully when -- as -- as we go forward that we will have these preventionists in not only acute care hospitals, but in all healthcare settings to prevent these outbreaks like we've seen for the last two years. So thank you very much.

ACTING SPEAKER AUBRY: Mrs. Gunther in the affirmative.

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Thank you, Mr. Speaker. We should continue our work on our debate list. We're going to go right to Calendar No. 188 by Ms. Glick. Then Calendar No. 198 by Ms. Lunsford, followed by Calendar No. 221, Mr.

Englebright, Calendar No. 226 by Mr. Otis and Calendar No. 230 by Ms. Clark.

Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you, Mrs. Peoples-Stokes.

Calendar No. 188, page 24, the Clerk will read.

THE CLERK: Assembly No. A05773, Calendar No. 188, Glick, Simon, Englebright, Rozic, Cruz, Williams, Epstein, Reyes, Gottfried, Joyner, Ramos, Fall, Fernandez, Weprin, Griffin, Meeks, Aubry. An act to amend the Executive Law, in relation to equal pay disclosure with respect to State contracts.

ACTING SPEAKER AUBRY: Ms. Glick, an explanation has been requested.

MS. GLICK: Certainly, Mr. Speaker. The purpose of the bill is to have those who want to contract with the State provide to the State with a winning bid a breakdown of their pay scales based on gender, race, the various jobs involved. And we make this request so that we can try to narrow the wage gap that continues to persist despite efforts on both Federal and State levels to eliminate the wage gaps that sadly continue to persist. So the point of the State in contracting for goods or services is to try to get the best possible price for those goods and services, but at the same time we would want to be certain that the New Yorkers that are working at these firms are actually getting a fair pay for the work that they are doing and that we can incentivize companies that want to work with the State to move

towards eliminating their wage gaps. It's good for transparency. It's good for their business. People can look and see that, *Here's a company that's actually made significant progress in eliminating the wage gap. I want to work there. I wonder if they have an opening.* So I see this as a way of using the power of the State's contracts to narrow the wage gap and to get not just a good deal for the State, but also for the people who are working for the companies who are also our taxpayers.

ACTING SPEAKER AUBRY: Ms. Walsh.

MS. WALSH: Thank you, Mr. Speaker. Will the sponsor yield?

MS. GLICK: Certainly.

ACTING SPEAKER AUBRY: Ms. Glick -- Ms. Glick yields.

MS. GLICK: Absolutely.

MS. WALSH: Thank you so much. So, several questions about this -- this particular bill. Could you please talk about who the reporting requirement would apply to?

MS. GLICK: Well, it would apply to those who are a -- whether it's an individual, a business enterprise, whether it's a sole proprietorship, a partnership, a corporation, an LLC. Any other party to a State contract that is submitting a bid. And it would be a summary of data in a form that's consistent with the regulations that would be promulgated by the Comptroller of the State of New York.

MS. WALSH: Is there any particular size of

company that is encompassed by this bill and any that are -- that would fall under the threshold for this bill?

MS. GLICK: I don't believe so. Obviously -- let's see.

(Pause)

It's in excess of \$50,000.

MS. WALSH: For the -- for the size of the contract?

MS. GLICK: Yes. The contract shall be a written agreement or purchase order instrument providing for a total expenditure in excess of \$50,000, which is subject to the approval of the Comptroller.

MS. WALSH: And doesn't the bill only apply to companies that are 100 or more employees? So smaller -- what's -- what they are calling smaller businesses or what the legislation calls smaller businesses would be under 100 employees?

MS. GLICK: Well, I don't -- I -- I think that since it's a partnership, I don't believe that this is limited to those that are larger than 100. No. Since we include sole proprietorships and smaller companies, I don't believe that it -- that there's a size. Although obviously, the smaller the company is the less material -- you know, the less information they have to provide.

MS. WALSH: Okay. So you -- okay, so you think it applies to every -- everybody then. It has more to do with the size of the -- the contract itself?

MS. GLICK: Yes.

MS. WALSH: Okay. Now, does -- does this litigation -- or does this legislation, rather, require reporting data on all employees of that company or partnership regardless of whether they're actually performing work on the particular contract?

MS. GLICK: Well, I believe that it would be for certainly all of their employees in the State of New York. I don't know that it would cover those that -- if it's a large company that has locations all over the country, I don't believe it would impact all of their employees, but certainly their New York State employees.

MS. WALSH: Okay. So just hypothetically, let's say you have a company that has 500 employees and we'll say in New York State. But you're only going to be utilizing 50 of them to perform this particular State contract. Your -- your bill would require reporting on all 500; is that correct?

MS. GLICK: Yes.

MS. WALSH: Okay. So if there is a failure, a willful failure to -- to do this, to do this reporting, what are the -- what consequences, if any, are there?

MS. GLICK: Well, there would be, as stated in the -- at the end of the bill, that any contractor who willfully or intentionally fails to comply with the requirements of this article shall be liable to the contracting agency for liquidated or other appropriate damages and shall provide for other remedies on account of such breach. So it could be di minimus.

MS. WALSH: But it could be -- it could be

liquidated or other damages for failure -- if it's a willful or -- or intentional failure to comply with the filing of an equal pay report pursuant to this bill, there could be liquidated or other damages assessed by -- who would be assessing those damages?

MS. GLICK: Well, presumably that would come out of -- the Comptroller's Office would find that the contract had not been met, the terms of the contract had not been met and they would make a determination.

MS. WALSH: And, in fact, the Comptroller's Office is empowered to do this legislation to promulgate rules and regulations relating to the form, content and timeliness for the filing of the equal pay report as well as standards and procedures for all the contracting agencies, correct?

MS. GLICK: Yes.

MS. WALSH: Okay. So moving to the -- actually, the way that the reporting would work. How -- does this bill speak to certain categories or job descriptions? I mean, how -- how would this report actually be broken down?

MS. GLICK: Well, it's broken down based on how -- obviously, different companies structure their personnel in different ways. So it would be by -- presumably by title, and then based on race, ethnicity and gender.

MS. WALSH: Okay. So understanding that company to company they might call a particular set of job duties by a different name. Are there going to be set job descriptions that are

going to be applied, do you know, or does your -- does your bill speak to that at all?

MS. GLICK: It doesn't. It says that the Comptroller shall promulgate the regulations and the way in which the data should be compiled. So they may decide that the best way to do it is for those compensated under a certain threshold and those -- so they may do it in those bands or they may do it based on certain job titles.

MS. WALSH: Does your bill talk at all about just the pay and job classification, or does it also address issues like seniority or education or experience as part of the data collection?

MS. GLICK: It doesn't speak to that. And, you know, we've talked to folks who work in this arena of economic comparisons and -- and they -- their view was that it tended to average out, so seniority was not the most sensitive issue. That generally, if it's -- if you're doing work in a certain category, generally speaking, that they should be within a range. And the government does that. You know, you have certain GSA levels and they may relate to your experience or the responsibility level of the work you're doing, but there's a broad range.

MS. WALSH: I agree that there is a broad range. Now, back in December of 2017, Executive Order 162 was released which also requires a -- a reporting done. Is that in any way, do you think, duplicative of the bill -- your bill and what this is requiring?

MS. GLICK: Well, I -- I would say that -- well, first of all, despite having had an Executive Order we still see wage gaps.

So -- and the bill -- and the Executive Order was somewhat broad in its language. We're I think a little bit more specific in terms of gender, race and ethnicity.

MS. WALSH: Okay. How do you think that a bill like this that requires a report is actually going to address a -- a wage gap or pay inequality issue?

MS. GLICK: Well, I certainly think that transparency is a positive. And I think that it gives an opportunity for agencies themselves to make a determination if they have worked with a company that has a very wide wage gap, they might decide that going forward they might not be the best bidder if they are -- and we certainly think that using the power of the State's contracting authority that we can, in fact, incentivize people to narrow their pay gap. It's, in my view, more of a carrot than a stick. It's material will be available for people to see what -- whether these employers, these contractors, are folks that continue to perpetuate a wage gap, or if these are, in fact, companies that have worked diligently to reduce that and maybe have succeeded in reducing it. And then those are companies that people might be -- if they have that information available on the Comptroller's website they may, in fact, want to work for a company where there is a more egalitarian approach to wages.

MS. WALSH: So in keeping with what you're talking about with transparency, do you envision that the results of all of these equal pay reports that are going to be required to be submitted, would they be in some kind of a -- a searchable format on



the Comptroller's website? Or how do you envision this actually being useful information for people who might want to check up on certain companies?

MS. GLICK: We have great confidence that the Comptroller is committed to the ideal of reducing the wage gap. And since the -- we give fair latitude to the Comptroller in how the material will be formatted, we believe that they will do that in a fashion that makes it reasonable for an average person to be able to compare.

MS. WALSH: Well, thank you very much for answering my questions.

Mr. Speaker, on the bill.

ACTING SPEAKER AUBRY: On the bill, Ms. Walsh.

MS. WALSH: So, we already know how difficult it is to be a business in New York State, and it's -- it does seem like sometimes it's like a death by 1,000 paper cuts here in terms of what they need to compile, to provide. I -- you know, I would prefer to have a business that can deliver the best quality goods or services for the most -- the best price for the taxpayers that are going to be ultimately paying for them. But I also would say that we have to be careful, I think, when we legislate that we don't just continue to pile on additional requirements on top of what's already required. You know, prevailing wages are already required for all public works contracts. We already have this Executive Order 162 that requires a

very similar reporting. We already have Federal requirements regarding equal pay and reporting requirements. So to add this additional layer I think is going to create an additional burden. So it's not surprising that in the past and again this year, both the Associated General Contractors and the Business Council opposed this -- this bill. And I just wanted to just read a very small portion of the statement that the Business Council said. They said, *Research shows that factors such as work experience, career interruptions, the average weekly hours worked and other factors have a significant impact on total wages and inclusion of these factors significantly reduce calculations of wage gaps. However, none of these additional factors would be captured in these reporting mandates. And they conclude by saying, We believe this legislation is unnecessary, given existing State and Federal reporting mandates and could result in additional costly data collection and reporting requirements on State contractors.* You know, I don't think that we want to do that. While I'm certainly very interested in making sure that people are -- people, both men and women, whatever color, are paid commensurate with their -- with their abilities, with their skills as part of a meritocracy. I think that the way that this bill is structured it's going to be requiring reporting that's not going to really talk about the nuances of the experience an individual has when they come to work and -- which might in a very nondiscriminatory manner express why their pay is different than somebody else's.

So I think that this is a very well-intentioned bill.

Certainly, we want people with commensurate ability and skill to be paid in -- you know, in -- in an equitable fashion. But I don't believe that this bill is what's needed, particularly in this very, very unfavorable business climate that we have in the State of New York. Piling on additional regulations is just not something that I can support.

So for those reasons and because of the opposition of the Business Council and AGC, I will be opposing this particular piece of legislation and I would encourage my colleagues to do the same. Thank you.

ACTING SPEAKER HYNDMAN: Mr. Lawler.

MR. LAWLER: Thank you, Madam Speaker. Will the sponsor yield?

ACTING SPEAKER HYNDMAN: Will the sponsor yield?

MS. GLICK: Sure.

ACTING SPEAKER HYNDMAN: The sponsor yields.

MR. LAWLER: Thank you. I listened with great interest to your comments that New Yorkers should get fair pay and that there should be more transparency with respect to equal pay disclosure for the private sector. I'm curious, under current law do State departments or agencies or the Legislature have to compile similar reports and disclose them to the public?

MS. GLICK: Well, certainly we do a quarterly report

for the public. It includes all of our expenditures, including the salaries. So I can't speak to every agency, but certainly the Legislature. I see that quarterly report, occasionally find a mistake. But it is, you know, available to the public. It gets disclosed. So I do think that the -- that as we see wage gaps persist, it is -- if our goal is to see that there is more equity and more transparency, it seems like where we're contracting that is an avenue for the State to use their taxpayer money to at least in some way, I believe, it would incentivize companies to think about what that material is that's going to be made public and whether it puts them in a good light or not. Ultimately, we want to use that contracting power to advance equity, and this is one way, I think, in which we could do that.

MR. LAWLER: So, you -- you made reference to the quarterly reports for the Legislature. To the best of your knowledge, do those quarterly reports include information on gender, race, ethnicity or job category?

MS. GLICK: I don't believe so. On the other hand, we are very public. So certainly everybody in my community knows who my staff are so they can determine, you know, whether the three people, what category they fall into based on gender or race. So I think in that way it is obvious to our constituents.

MR. LAWLER: Okay. So -- so would you agree that roughly you and I both represent the same number of constituents within -- within a certain percentage?

MS. GLICK: I think that is probably true. At least

every ten years it gets readjusted. So within that time frame until a new census is taken and a new calculation is made, in theory our districts don't change dramatically.

MR. LAWLER: Okay. So assuming that fact and in the interest of pay equity and assuming that we have similar job categories for our staffs, would you agree that our staffs should be making roughly the same amount for the work that they do?

MS. GLICK: Well, I'm -- I know that it is always your intention to frame a question in a way that posits your perception. I have no idea --

MR. LAWLER: I think we all do that.

MS. GLICK: -- I have no idea whether your constituent services spend as much time as mine do, and I have no idea whether the level of committee work that your staff here might do is commensurate with the committee work that my staff does.

MR. LAWLER: Okay. So that sounded like no. You don't think that our staffs should be paid equally.

MS. GLICK: Well, you said that since we serve the same number of people roughly, that that is the basis upon which we would be basing our salaries.

MR. LAWLER: Well, the -- the idea being equal pay for equal work. So if we're roughly representing the same number of constituents, theoretically, we should all get the same allotment to hire staff. That's not what happens here. So we're today, through your legislation, going to legislate and tell the private sector what they

should and should not be doing and how they should and should not be doing it and who they should be paying, and we're compiling all of this data for transparency's sake and yet we don't do that in this Body and we are not treating our staffs the same. And that's where I find it just extremely hypocritical to legislate the private sector while not taking care of our own House first.

MS. GLICK: Well, I would suggest to you that when we're contracting with companies, we're not telling them how much they should pay people. We're simply saying that they should disclose what they're paying people.

MR. LAWLER: Okay.

MS. GLICK: And on that basis I think we are treating all members the same and the disclosure is the same.

MR. LAWLER: So, in the interest of transparency and disclosure, how much do you pay your Chief-of-Staff?

MS. GLICK: Well, I would have to look back. I think it's probably about \$60-something.

MR. LAWLER: And what is your total staff allotment?

MS. GLICK: I don't know exactly. I have to go back. I don't want to misrepresent anything on the floor. You can look it up.

MR. LAWLER: So, my total staff allotment is \$115,000. Would you say that you get more money than that?

MS. GLICK: Yes. I've been here a lot longer than

you have. And I believe that we did discuss the fact that some seniority might be a little bit different.

MR. LAWLER: But you're getting money to hire staff.

MS. GLICK: Yes.

MR. LAWLER: The -- the staff allotment has nothing to do with your seniority. You're paid -- we're paid the same. You and I are paid \$110,000 a year. So that's pay equity, right?

MS. GLICK: Well, some could say that, you know, having waited 25 years to get an increase shows that I maybe don't make the best decisions about my personal finances.

(Laughter)

MR. LAWLER: Fair enough. But we are paid equal as representatives within this Body. Our staffs, regardless of seniority, based on this bill one of the things that you are focusing on is job category. So if we have a chief-of-staff, if we have a legislative director, theoretically they should be paid within a range. You said you want to narrow the wage gap. So I'm just wondering why we wouldn't try to ensure that the staff that works for all of us collectively, that we don't narrow the wage gap here.

MS. GLICK: Well, obviously that is something you should be taking up with Mr. Barclay.

MR. LAWLER: No, that's something for this entire Body to take up. We're trying to legislate the private sector, but we want to ignore the problems in this House? That's something all of us

should be taking up with everybody. The fact that we have staff that can barely afford to pay their bills and they work massive amounts of hours on all of our behalf and on behalf of the taxpayers of this State, and we all turned a blind eye to it and just said, *Well, that's somebody else's problem.* But we want to legislate the private sector?

MS. GLICK: Well, we're not telling the private sector how much they have to pay in this bill. We are simply saying that if you're going to contract with the State, disclose what your -- what your salaries are based on these categories.

MR. LAWLER: Do you think -- based on those four categories, do you think that should apply to the Legislature? Should we do a report by this Body to show what we pay all of the staff based on race, gender, ethnicity and job category?

MS. GLICK: I have no objection to that. I would look forward to your bill.

MR. LAWLER: Oh, I would look forward to working with you to make sure that that happens. I also have a bill to make sure that we all -- all, equally, get at least \$250,000 to hire staff so that we can pay them a fair wage. I hope you would cosponsor that legislation.

MS. GLICK: I look forward to looking at it.

MR. LAWLER: Terrific.

On the bill.

ACTING SPEAKER HYNDMAN: On the bill.

MR. LAWLER: Once again, this Body puts forth



legislation that should apply to others. Rules for thee and not for me. And I think it is extremely hypocritical that we're going to put forth a bill on pay equity and disclosures and transparency when we pay our staff peanuts. Now, you made reference to the fact that maybe your staff works harder than mine, maybe they deal with more constituent services than mine. I know for a fact that my staff works tirelessly to address the needs and the concerns of my district. My district is one of the most diverse districts in the State. And I hired a staff that is reflective of that district and the constituents that I serve so that we could serve their needs best. And I fight every day to get more money, and my Leader has fought to get us more money and I thank him for that. But it is not enough when I am only able to hire one part-time -- one full-time person and three part-time people to serve my district. We are all serving the same number of constituents, roughly. We should all be able to pay our staffs a commiserate salary and cut the -- the pay gap based on gender, based on race, based on ethnicity and based on job category. That shouldn't be too much to ask. This Chamber loses good people every day, every week, every year because we don't pay them enough. And I really -- I strongly encourage everybody, don't turn a blind eye to what goes on in this House while we're trying to legislate the private sector. Everybody here has a responsibility to make sure that their staffs are taken care of, because they do the work. They help all of us. They serve our constituents. They serve the taxpayers of the State of New York.

So I look forward to you looking at my legislation. I

look forward to working with you to make sure that these laws apply to this Body and this State government in the same way we want to legislate everybody else.

ACTING SPEAKER HYNDMAN: Read the last section.

THE CLERK: This act shall take effect January 1st.

ACTING SPEAKER HYNDMAN: The Clerk will record this vote on Assembly bill 5773. This is a Party vote. Any member who wishes to be recorded as an exception to their Conference position is reminded to contact the Majority or Minority Leader at the numbers previously provided.

Mr. Goodell.

MR. GOODELL: Thank you, Madam Chair. The Republican Conference is generally opposed to this legislation for the reasons that have been mentioned. Those, however, who support it are encouraged to vote in favor on the floor or contact the Minority Leader's Office.

Thank you, Madam Chair.

ACTING SPEAKER HYNDMAN: Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Mr. Speaker -- Madam Speaker, this will be a Party vote in favor of this legislation. However, there may be some of our colleagues who would choose to be an exception. We offer them an opportunity to call the Majority Leader's Office so that their vote can be properly recorded.

Thank you.

(The Clerk recorded the vote.)

ACTING SPEAKER HYNDMAN: Ms. Glick to explain her vote.

MS. GLICK: Thank you, Ms. Speaker. I believe that all of our efforts to eliminate the wage gap that is available and persists in the private sector using the State's contracting power, it is not too onerous for in this day and age of computers to have that information codified and provided in whatever format the Comptroller deems most efficient. I think that we've seen a lot of reasons why some people who may be, whether it's gender or race, have had an inability to lift themselves up. And it's not asking too much for the use of the State's contracting power to try to narrow that.

Despite all of the very vigorous debate, I would urge a yes vote. Thank you.

ACTING SPEAKER HYNDMAN: Ms. Walsh.

MS. WALSH: Thank you, Madam Speaker. Would you please note Mr. Schmitt and Mr. Walczyk in the affirmative on this bill?

Thank you.

ACTING SPEAKER HYNDMAN: So noted.

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

Page 26, Calendar No. 198, the Clerk will read.

THE CLERK: Assembly No. A06052, Calendar No. 198, Lunsford, Weinstein, Burgos, Taylor, Fernandez, Carroll, Walker, Cruz, Galef, Epstein, Dinowitz, Clark, Stirpe, Lupardo, Conrad, Otis, Peoples-Stokes, Anderson, Jacobson, Griffin, Bronson, L. Rosenthal, Colton, Bichotte Hermelyn, J.D. Rivera, Rajkumar, Sayegh. An act to amend the Public Health Law, in relation to requiring infection updates and infection control planning in residential healthcare facilities.

ACTING SPEAKER HYNDMAN: An explanation has been requested, Ms. Lunsford.

MS. LUNSFORD: Thank you very much. This is a very simple bill. This simply enhances our existing pandemic emergency plan to include cohorting of individuals with confirmed infections, and also to implement a reporting requirement to residents, authorized family members and caregivers within 12 hours of discovery of the infection.

ACTING SPEAKER HYNDMAN: Mr. Jensen.

MR. JENSEN: Thank you, Madam Speaker. Will the sponsor yield for a few questions?

MS. LUNSFORD: I will yield.

ACTING SPEAKER HYNDMAN: Okay. Yes, she will.

MR. JENSEN: Thank you. I thank my -- my colleague from the -- the Town of Perinton for yielding for some questions. You mentioned a 12-hour notification requirement. Why

12 hours and not 24 hours? Certainly, if there's a large-scale or even small-scale infection outbreak in a residential care facility, there may be other focuses on providing care. Why not a longer, day-long process?

MS. LUNSFORD: Given that this is a bill focused on pandemics, so potentially a very, very serious outbreak. And without knowing in the future what the incubation period could be for various illnesses, we wanted to move that time frame up a little bit just to make sure that all relevant parties could be informed as soon as practicable.

MR. JENSEN: So would this only come into effect once an official pandemic is disclosed, or is this any large-scale multiple infection happening within the facility? Whether it may be COVID-19-like, influenza, MRSA, pneumonia?

MS. LUNSFORD: This would relate specifically to a declared pandemic.

MR. JENSEN: Okay. When we're talking about a residential healthcare facility, is this only nursing homes or would this chapter apply to assisted living, independent living, acute care?

MS. LUNSFORD: So under this particular chapter, residential healthcare facility is limited to a nursing home. However, I believe that this is a good plan for other sorts of residential assisted living, Hospice care organizations to adopt. But it is not required under this statute.

MR. JENSEN: Okay. So certainly during the

creation of a care plan upon a new admission, there is notification -- preferences that a resident establishes with their family members or legal right -- legal -- people who can talk about the resident's healthcare. Would the team at the facility, would they have to follow what the existing wishes already are or would they have to get additional sign-offs or forms signed by the resident and their -- their legal representation?

MS. LUNSFORD: So the way the statute is written is it does allow for the electing of the preferred communication model of that resident. But it does say that an electronic communication would be sufficient. So I believe that if a resident elected to have a, say, a phone call placed because that is the better method for informing their particular caregiver, then that would need to be the format used or a robo call would be sufficient in that scenario.

MR. JENSEN: So they couldn't -- so it would be -- you know, if you're looking at a 300-bed facility, they may have 300 different ways of contacting. They just couldn't use a robo call to everyone, they couldn't do an e-mail blast. They would have to do it individually by the request of what's been signed off?

MS. LUNSFORD: Well, I don't think they would need 300 separate modes. I don't think that (inaudible) some people are acting like carrier pigeons. But I think what would be sufficient would be to robo call and an e-mail if those are your two available communication options. And you could do it to everyone, because there's no limitation saying you can't contact someone by one or either

method. There's just a preferred method. So if I were doing it, for efficiency's sake I'd probably do an e-mail blast and a robo call.

MR. JENSEN: So would you have to do the entire facility or would it be just based on -- if it's one nursing unit that may have that infection in place, would it only be to the residents of that specific unit or is it to the entire residential population?

MS. LUNSFORD: That's a good question. And the way this is currently written, it would require the entire facility. However, I think good practice would probably be to say that is limited to one particular floor or one particular unit.

MR. JENSEN: Okay. In relation to the cohort provision of the -- of the legislation, would the facilities have to designate -- you know, if you have six different units that they would have to say, Okay, we're going to use -- this one unit would become the infection control cohorting location, and in the event of an infectious outbreak in a pandemic situation, that we're going to move everybody who is infected into this location. Is that -- is that -- would that be the correct assumption?

MS. LUNSFORD: That would be a way to do it, but the law doesn't drill down that far. I imagine that every facility, based on what their individual layouts are like and whether the available rooms would allow for could make whatever decision was best for them. I think in nursing homes that have shared rooms this would be a more complicated question than in a private room setting. But the law does not prescribe the way in which the cohorting has to occur.

MR. JENSEN: So under the way the bill is written, a facility could use a large cafeteria or auditorium to temporarily stage those who are infectious or if they're being -- having to be moved -- residents are having to be moved from their individual rooms to make room for those under infection?

MS. LUNSFORD: Nothing in this bill specifies that that would be prohibited.

MR. JENSEN: Okay.

MS. LUNSFORD: Nor does it require that to be the case.

MR. JENSEN: What -- is there any provision within the bill that would have DOH or the Health Commissioner set more established parameters about what is acceptable for patient care and well-being based on moving the length of time they could be out of the room in that shared communal setting like in an auditorium or a -- a cafeteria?

MS. LUNSFORD: So, similar to a broader section, Section 12 that this is modifying, nothing in the bill requires DOH to limit or set guidelines around those rules. But DOH did when this chapter was originally passed in 2020, I believe. There is a guidance. It is DALDH 2009 that does set up some more specific parameters around that and DOH would be well within its rights to do so again.

MR. JENSEN: Okay. You mentioned in the bill that there are several penalties for non-compliance. What sort of civil -- civil penalties would that entail? Is there a correlation between other



operating procedures at DOH? Does it enforce for compliance that this would equate to?

MS. LUNSFORD: I think these would be -- again, this is just enhancing Section 12 as it currently exists, so those penalties that apply to the broader guidance would apply to this as well. This is just adding an additional language to that section.

MR. JENSEN: Would the compliance of this chapter, would this then become part of DOH's annual compliance and inspection process to ensure that everything is prepared in the event of a -- of an infection pandemic situation?

MS. LUNSFORD: Presumably.

MR. JENSEN: Okay. So, I mean, you can -- you can agree with me or not on this question. But this seems much like a Corgi, if you will, where this is a -- a big dog, small legs. This could have a big impact on congregate care settings, but really the impact to the staff, would it -- would it be minimal under your assumption of the increased staff (inaudible) take place in the care setting?

MS. LUNSFORD: I don't think that this would require much additional staff work. This is a plan that is already in place. I do not believe it needs to be updated unless there is a change. So once this was put in place -- which I think having a plan on how to cohort people during a pandemic is something we should be doing anyway. I don't think this would require any additional work. As it relates to the notification of residents and family members, as of right now all of our nursing homes have already set that up pursuant to

COVID guidelines. So just kind of keeping that in place and updating it as residents' contacts change or any residents come in is what I think the only additional work that needs to be done.

MR. JENSEN: Okay. Thank you very much, Ms. Lunsford.

Madam Speaker, on the bill.

ACTING SPEAKER HYNDMAN: On the bill, Mr. Jensen.

MR. JENSEN: I thank my -- my colleague for -- for answering my questions. This -- you know, certainly through the -- the situation that resident care facilities had to go through throughout the pandemic and the outbreaks, especially in the early stages, having set parameters for how to keep residents who are infected in the -- in the best possible position to recover, as well as protecting the uninfected residents, certainly does make sense. I do believe that -- that there -- there does need to be more clarification on what exactly the administration and care teams have to abide by in terms of this plan. Certainly, we do not want to keep residents out of their room in a -- in a setting like in an auditorium for longer than -- longer than is needed, especially if a nursing home does have a full census and no open beds.

So certainly, I will be supporting this bill. And I do -- I do hope that the Department of Health and the Health Commissioner do look at more specific ways for nursing homes to abide by this chapter to ensure that there's no ambiguity, because certainly over the

past two years the lack of clarity from New York State has led to many more questions for our long-term care settings, and I certainly believe in this area it's -- it's much preferable to have a specific a policy as possible.

Thank you, Madam Speaker.

ACTING SPEAKER HYNDMAN: Read the last section.

THE CLERK: This act shall take effect on the 60th day.

ACTING SPEAKER HYNDMAN: The Clerk will record the vote on Assembly Bill A -- A.6052. This is a fast roll call. Any member who wishes to be recorded in the negative is reminded to contact the Majority or Minority Leader at the numbers previously provided.

(The Clerk recorded the vote.)

ACTING SPEAKER AUBRY: Ms. Lunsford to explain her vote.

MS. LUNSFORD: Thank you very much, Mr. Speaker. This bill is a commonsense solution to help address the problems we saw at the beginning of the COVID pandemic. Too many of our most vulnerable residents were caught unaware in facilities that couldn't accommodate the needs of this pandemic and families were left in the dark, not sure what was happening. And I'm glad to see us all supporting a bill that will help remedy that, and that will give some teeth to the enforcement end so if we have facilities

that are not living up to their end of the bargain and not protecting their residents in the way we need them to that there is a remedy for those families.

Thank you very much. I'll be voting in the affirmative.

ACTING SPEAKER AUBRY: Ms. Lunsford in the affirmative.

Mr. Goodell.

MR. GOODELL: Thank you, sir. Please record my colleague Mr. Friend in the negative on this bill.

Thank you, sir.

ACTING SPEAKER AUBRY: So noted. Thank you.

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

Mr. Goodell for the purposes of an introduction.

MR. GOODELL: Thank you, Mr. Speaker. It's my great pleasure to introduce William Sledge, who is a graduate of the 210th Session Basic Graduation from the New York State Police Academy. And Mr. Sledge will now join a proud group of highly-trained officers protecting the public all across the State of New York. And he's here joining us with his parents, Bill and Jean Marie Sledge. Both of them -- both of his parents have a background in law enforcement as well, so they're following in his footsteps. Right now

he's -- he just came in from the ceremony. And he lives in Assemblywoman Jodi Giglio's Assembly District.

So on behalf of Ms. Giglio and the rest of us, would you please extend a warm welcome to our latest New York State Trooper, William Sledge.

ACTING SPEAKER AUBRY: Certainly. On behalf of Ms. Giglio, the Speaker, Mr. Goodell and all the members, we welcome you here to the New York State Assembly. We extend to you the privileges of the floor. And our congratulations on your graduation and your beginning of this law enforcement career. And I gather you're following in your parents' footsteps, and we know that that must make them proud and they have done a wonderful job to have gotten you this far. And now it's up to you, sir, to protect and serve. Thank you so very much. We hope that you will always be welcome here. Always know you can come back and visit us. Thank you.

(Applause)

Page 29, Calendar No. 221, the Clerk will read.

THE CLERK: Assembly No. A06652, Calendar No. 221, Englebright, Griffin, Burdick, Stern, Simon, Galef, Thiele, Steck, Dickens, Colton, L. Rosenthal, Abinanti, Dinowitz, Burke, McMahon, Kelles, Weprin, Glick, Gottfried, Sayegh, Jacobson. An act to amend the Environmental Conservation Law, in relation to the protection of certain streams.

ACTING SPEAKER AUBRY: An explanation is

requested, Mr. Englebright.

MR. ENGLEBRIGHT: Thank you, Mr. Speaker.

This act would reclassify Class C waterways as streams for the purposes of protection.

ACTING SPEAKER AUBRY: Mr. Palmesano.

MR. PALMESANO: Yes, Mr. Speaker. Will the sponsor yield for some questions?

ACTING SPEAKER AUBRY: Will you yield, Mr. Englebright?

MR. ENGLEBRIGHT: I yield.

ACTING SPEAKER AUBRY: The sponsor yields.

MR. PALMESANO: Thank you, Mr. Englebright. I know we discussed and debated this bill in the past. It was carried by Mr. Ryan. I don't know if we had the same debate. I know the last time this bill passed the House the Governor vetoed the bill and listed a whole series of issues with the bill. I want to read some of that and then I have a question for you after. The Governor vetoed it because there is -- the bill would have had -- cited -- had tremendous fiscal impact on State and local government; more than doubled DEC's existing planning and oversight rule; added more than 40,000 miles of stream of Class C and about 36,000 miles of Class A and B streams to subject for review by the DEC permitting authority; reviewing, issuing and enforcing permits associated with disturbances of the resources that would not be accomplished with add -- with adding a significant number of full-time staff; expansion of DEC water (inaudible) without

addressing the funding needs that would lead to lengthy permitting delays through -- and thorough and necessary review of permits; and the Environmental Conservation Law doesn't not require DEC to issue permits for all Class C streams. These streams receive substantial benefits from the oversight on our State's soil and water conservation districts. Existing conservation efforts accomplished by the districts will continue to ensure that adequate environmental controls are in place in these streams.

Does your bill -- did your bill make any changes to address that whole list of concerns that were raised by the Governor to mitigate any of that?

MR. ENGLEBRIGHT: No. And quite frankly, each year when we have our hearings, I ask -- the first question I ask each year of the Commissioner, *Do you have the personnel that you need to do your job?* And each year the response back is basically -- I'll paraphrase -- *No problem.*

MR. PALMESANO: Right.

MR. ENGLEBRIGHT: And of course there's a problem. You see that in the veto message, which focuses itself two years ago by the former Governor on the lack of adequate staff. Now that's called a contradiction. You can look that up. It's right there in the dictionary. And that contradiction needs to be corrected. So again, we're in a situation where we're trying to protect the resources of the State drinking water resources. These are streams that serve 11 million people. Direct drinking water.

MR. PALMESANO: Sure.

MR. ENGLEBRIGHT: Presently they don't have the same protections as the larger streams, but that's just unacceptable.

MR. PALMESANO: Mr. Englebright, doesn't right now the DEC have the ability to upgrade Class C streams if needed based on their evaluation of the streams to require a permit? If they so choose they can evaluate it and then require the permit at their discretion if they view it's necessary. Although the Environmental Conservation Law doesn't not require it for all Class C streams. But just a specific example for some, the DEC determines that then they can require this additional permit, correct?

MR. ENGLEBRIGHT: The DEC has the ability -- they have a good deal of -- of -- of discretion. What we're seeing is that they're not using that discretion. That's the biggest problem. And I believe that this is an important bill because it sends the signal to the Department, *Stop saying that you have enough personnel. Please tell us what you need.*

MR. PALMESANO: Right.

MR. ENGLEBRIGHT: *Give us as -- as the Legislature a chance to adequately staff the agency so that it can protect the health and well-being of our streams and our waterways --*

MR. PALMESANO: Sure. And I understand that.

MR. ENGLEBRIGHT: *-- and the drinking water sources of the people of the State.*

MR. PALMESANO: Sure. Right now our soil and



water conservation districts are an important part of that and do a lot of work in these areas. Would you agree with the following statements that, one, they provide significant benefits and oversights to these streams; two, they address -- the soil and water conservation districts address significant nutrient runoff for ag activities; three, the soil and water conservation districts implement flood mitigation and recovery and three-day stabilization projects; and four, don't soil and water conservation districts provide technical expertise to our municipalities to address local infrastructure needs like bridge and culvert work? Our soil and water conservations are a critical partner and they do that work now while working with the streams and -- and watching out for our water quality. Would you agree with that?

MR. ENGLEBRIGHT: I would agree, and your point is well-taken. These are important partners. They're important in terms of the function they serve, advisory in most cases. But it doesn't substitute for the black letter law that would protect these water courses as important as they really are, to give them the stature and the status of A and B streams, which are the same except they just have a slightly larger flow. But they perform the same function, and that's really at the base of this. This is basically a -- a recognition that we know now more than some years ago when this classification system stopped giving Class C streams the same protections as A and B. We now know, particularly with climate change, that even Class C streams have enormous flows due to -- occasionally due to rain and storm events that didn't used to be normal. They are now. So to

protect our communities from flooding and to protect those same communities for their water sourcing, we believe that this measure needs to be once again put before the Governor.

MR. PALMESANO: Do you know what the average time for issuing an Article 15 permit is right now?

MR. ENGLEBRIGHT: It would vary from -- from one region to the other. I don't know what that would be.

MR. PALMESANO: Some of the reports I've gotten back from soil and water conservation is some as much as eight months, some over a year now. And now by adding 40,000 miles of new class streams -- C streams to that is going to make that more challenging and more burdensome and more costly from a regular (inaudible-cross/talk) --

MR. ENGLEBRIGHT: Not if the agency has more personnel. We keep coming back to that. The agency has lost a third of its personnel in the last decade, and yet the requirements to protect the health and well-being of the environment that the State has increased -- the sense of urgency has increased, the agency need to step up and say, *This is what we need*, and at least what they need is to restore back to the levels that they had ten years ago.

MR. PALMESANO: Well, the person at DEC's responsibility is going to increase more significantly with this because they -- the projections are that the applications are going to increase by some estimates by 40 to 50 times more, which could increase that time frame for getting permit approvals. And then of course the DEC

is going to be significantly involved the implementing -- the implementation of the CLCPA, which is going to have a whole nother effect when you're going to need people from a regulatory side. So how much staff are we going to be able to put in there to handle all of these requirements?

MR. ENGLEBRIGHT: We'd like to have an answer to those questions and you rightly pose from the agency. Instead of the boiler plate response that seems to be driven by the Department from the fiscal side of -- of the Executive which is, *Everything is fine*.

MR. PALMESANO: Mr. Englebright, have you had any conversations with the list of organizations that have come out and opposed this -- this bill? Our soil and water conservation districts are opposed, our town and county highway superintendents are opposed. The Farm Bureau is opposed. Our utilities have expressed significant concerns with the legislation as well. And the Empire State Forest Products Association have all expressed their opposition. Have you had conversations with them to address their concerns and needs?

MR. ENGLEBRIGHT: I've read all of the memoranda, and those memoranda represent a form of conversation. So yes, we've heard from them and we have examined carefully all of their thoughts.

MR. PALMESANO: I guess there has been --

MR. ENGLEBRIGHT: It doesn't change the reality that the resource that we're talking about deserves a greater level of

protection that is presently afforded.

MR. PALMESANO: And I understand that, Mr. Englebright. But (inaudible) the far-reaching impact, this is going to change the whole environmental process in the regulation of this. And giving those organizations which play important part -- you know, our highway superintendents as far as doing road, bridge and culvert work and having to deal with shutdowns or flooding issues. If they can't do that work and if the time process gets extended more significantly, I know you bringing -- we need more staff, but the staff's not there -- then that's going to pose a problem. Why wouldn't we want to -- wouldn't it be wise -- I know you said you read the memoranda -- to sit down with them and go through those issues and talk with them?

MR. ENGLEBRIGHT: I'd be very happy to do that. And I -- I read your portion of the debate of two years ago - very articulate, as always - and you advocated for that process. And I'm certainly, as Mr. Ryan was, very open to sitting down and listening. I would also point out, as Mr. Ryan did, that under Chapter 155, '01, our highway superintendents are already provided substantial latitude and protection from the kinds of delays that might endanger the people they serve. They're the same people.

MR. PALMESANO: Sure. So you'll commit here that you'll sit down with these groups and talk to them to kind of try to address their problems --

MR. ENGLEBRIGHT: Yes, sir.

MR. PALMESANO: -- and if -- if they identify problems that in fact you will amend the bill and make it more significantly (inaudible)? And certainly the issues with the DEC.

MR. ENGLEBRIGHT: Absolutely.

MR. PALMESANO: I do want to get back to our local highway superintendents. I mean, we always talk about our local bridges and program -- bridges and culverts through the CHIPS program. You know, many of these counties need up to 80 percent of their roads, bridges and culverts are located over these Class C streams which would now require them to receive State approval and designed for, like, a 150-foot span of a -- a full bank. There's estimates that the highway superintendents have shared with us that this could take a normal project that they normally do that might cost \$90,000 for a culvert and could -- could extend it to over \$1 million because of the time constraints, because of the delays, because of the cost implemented to that. Isn't that something that should be a concern to all -- all of us, given the strains that are already placed on those highway superintendents in doing that important work?

MR. ENGLEBRIGHT: I, of course, am concerned if there are actual circumstances like that. The postulate that something would increase ten-fold seems to me to be something of -- of a stretch as being normal. But as I indicated a moment ago, I would happy to sit down and talk with any superintendent who has expressed concerns.

MR. PALMESANO: All right. Thank you, Mr.

Englebright. I think I had most of my questions. I'm going to go on the bill now for a little bit.

MR. ENGLEBRIGHT: Thank you.

MR. PALMESANO: Thank you, Mr. Speaker, my colleagues. I certainly understand the intention behind what the -- the sponsor is trying to do, but I think this poses a tremendous problem and burden for our local agencies that we talked about. I will go back to one. You know, our local highway superintendents, they -- you know, the potential cost increases for our local municipalities for bridge and culvert work, costly delays and burdensome delays which can be significant, waiting for DEC approval. Now some of these projects are taking eight months (inaudible) some said more than a year or years to take care of. I know the answer is always more staff, but that's not what's going to happen. Dealing with our road and bridge projects, you know -- which they do this work to help prevent flooding. We've had disastrous flooding. You know, in Steuben County we had -- we had Tropical Storm Fred on August 18th which was disastrous work. You know, this work is important to prevent these flooding issues and stop shutdowns and closures and deal with emergency vehicles getting to emergencies. And these highway superintendents, these local municipalities are stressed enough as it is. Our soil and water conservation districts, right now they are great stewards of our streams and our resources and protecting our water quality. They do that now. They're a part of doing the job. This is just going to put additional stress and burden on them. It's going to be

costly to the taxpayer and not going to get the work done that we need to do. You know, the soil and water conservations that work with public entities are private citizens. They deal with the stream habitat, they do streambank stabilization. They do important flood remediation and flood mitigation work. They do important nutrient runoff for ag activities. They -- they provide great technical expertise to our municipalities to address our infrastructure needs. Again, our local roads, bridges and culverts. And I will remind my colleagues, don't forget CHIPS in the budget. Let's not let it be flat again. Advocate for that. Because even that money, they're going to need more of it to deal with these -- these burdensome regulations, by the way. This bill will lead to much -- many more costly challenges and crippling time delays. It's not necessarily going to help and actually going to hurt the very people you're trying to help. Our farmers, the farming community. This is going to hurt and hinder their ability to quickly clear the waterways and waiting -- and to obtain time-consuming permits for their approval. They do not have -- you know, the farmers do not have that extra time to wait for -- wait to protect their crops from natural elements and from flooding and disasters. They don't have the time to -- to -- and luxury to wait for these time-delayed permits. But that's why they work with the soil and water conservation districts. This Body has already put a tremendous burden on our farming community with the disastrous farm labor bill which is going to add to -- if this moves forward is going to cripple our agricultural community by putting them -- 98

percent of our farms are family-owned farms, and the strain on our family-owned farms for sure. Let's not -- and I -- I take it on top of it, the CLCPA is going to put additional burden not just on everyone, but our farms in particular as well. Let's not make it even more difficult on our farmers - again, 98 percent of which are family-owned farms - by putting additional burdens and challenges and costly time delays on them. They won't have the time to wait to act. They have to act quickly. This will prevent them from that ability to do that. So that's our farmers.

Our utilities are doing important infrastructure work to ensure timely resiliency and reliability of the system to ensure proper and effective service for businesses and residents while trying to protect their ratepayer. You know, we have a number of bills that come through this House saying we want to deal with the power outages and restoration and putting more mandates on utilities. But this is going to make it more difficult for the utilities to do routine infrastructure improvements in these streams when right now they work in the proper process, working with our soil and water conservation districts. If you create a more timely burden and time frame for them to have to work to get these approvals, they can't get the work done. So then when these power outages happen, then you're going to go after the utility companies again which -- because you're saying they're not acting quick enough. Or you're not -- it's too -- it's going to be too costly and time-consuming to fix some of these repairs that need to be done.



The Empire State Forest and Timber Management Organization. You know, this is going to hinder their forest land owners and ability to manage their forests and --

(Buzzer sounds)

-- and undertake responsible timber harvest. I'll come back.

ACTING SPEAKER AUBRY: Mr. Smullen.

MR. SMULLEN: Thank you, Mr. Speaker. If my colleague would like to finish, I'd yield back to him and then pick up after him, sir?

ACTING SPEAKER AUBRY: Yes. I think we'll allow that.

Mr. Palmesano.

MR. PALMESANO: Thank you, Mr. Smullen. I was near --

ACTING SPEAKER AUBRY: Only if you promise to give up some of your time -- no.

MR. PALMESANO: I will.

(Laughter)

Thank you, Mr. Smullen, my colleagues. I'm about done and I think seeing me up here once is enough for many of my colleagues, so I'll try to finish up. I mentioned the utilities, Empire State Forest and Products Association, the ability for forest owners to manage their forest and doing timber harvest. And certainly the DEC, the burden that's going to be placed upon them with time and

resources and staff. And I don't think it's enough to say we're just going to hire more and more staff. I mean, I think the problem is we have a partnership in place there. These -- these organizations, again, the county highway superintendents, soil and water conservation districts, the New York Farm Bureau, our utilities, Empire State Forest Products Association, the DEC, the taxpayers, can read off the list of all of these. I mean this is just a -- I'm just very concerned this is going to be a negative impact, it's going to be more expensive, time, costly delays for this permit process which is going to slow down critical infrastructure improvement projects whether it's done by utilities, whether it's done by our town and county highway superintendents. We gave the example of the town and highway superintendents where a simple bridge culvert project that might cost \$90,000 could be delayed and cost taxpayers \$1 million. I mean, that's -- that's not what we need to see happening. When these projects that the highway superintendents dig over these streams and these culvert work needs to be addressed in a timely manner to prevent devastating flooding. I mean, your side of the aisle talks about devastating flooding issues and we need to do work, so they want to try to do this work but this is going to hinder that ability because they're not going to get the permits in a timely manner.

So I guess I would ask and, you know, given the -- the tremendous work that our soil and water conservation districts, as I mentioned as well, I would, you know, I'd love to see the sponsor pull back on this legislation, but I do appreciate the fact that he said

that he will have conversations with them to address some of these problems. I just think it's problematic. I just want to again read the veto message that none of these issues were addressed with the legislation about the tremendous fiscal impact to our State and local governments, doubling the amount of planning and oversight role of the DEC, adding 40,000 miles of Class C streams, above the 36,000 miles already, for DEC permitting authority, reviewing and issuing and reenforcing these permits associated with these disturbances is going to require significant additional staff and that's -- and the staff and the demands on the DEC with how to deal with the CLCPA on top of -- above these other things, it's being more and more problematic.

I just would urge my colleagues to vote no on this legislation. If this House and the Senate passes it, I would certainly urge the Governor to veto again, because I don't think this is going to solve any problems, this is going to make things more -- much more difficult to do the -- for our agencies and the soil and water and the highway superintendents and utilities, or farmers, to do the important critical infrastructure work they need to protect the taxpayers and to protect themselves and their organization. So for that reason I'm going to be voting no on this bill and I urge my colleagues to vote no as well. Thank you.

ACTING SPEAKER AUBRY: Thank you, sir.

Mr. Smullen, now you may begin.

MR. SMULLEN: Thank you, Mr. Speaker. Would

the sponsor yield for a few questions, please?

ACTING SPEAKER AUBRY: Mr. Englebright, will you yield?

MR. ENGLEBRIGHT: I yield.

ACTING SPEAKER AUBRY: The sponsor yields.

MR. SMULLEN: Thank you, Chair Englebright. I appreciate my colleague's comments and your answers to them. I'll try not to cover the same ground. But we're -- but we are talking about a lot of ground here in New York State that would be affected by this bill. According to the Sierra Club, I read their memo, the legislation here would affect 40,000 miles of Class C streams in New York. Is this any estimate been made by either this Body or an outside body such as the DEC or the Sierra Club on how many acres that this would actually regulate and put under State regulation?

MR. ENGLEBRIGHT: I have not seen that calculation.

MR. SMULLEN: I know it's a -- it's pretty significant if we consider Class A waters, Class B waters and now Class C waters. We're talking a pretty good size chunk of New York State, wouldn't you say?

MR. ENGLEBRIGHT: It would be proportional to what we're familiar with. We are a State in a temperate climate that has a lot of rainfall and has a lot of steam courses, and our State is quite large; it's on the scale of many nations. So it's probably a significant amount of acreage, I don't know what that acreage would

be precisely but this is a significant natural resource which is why we bring this -- this bill to the floor. To ignore that resource, the Class C streams from being protected at the same level as A and B streams is to invite their degradation. And there's the cost, we've heard a lot about cost in the last few minutes, it is the cost of restoring those streams and repairing the damage from mismanagement that is allowed. You can bulldoze a Class C stream, for example. You can change the water course and a -- a former downstream who's dependent upon that water might find that the water is no longer coming and is no longer available for agricultural purposes. That belies the need for thought. And that's really what this bill calls for; thinking ahead, planning ahead, and caring for resources in a way that it doesn't degrade the multiple people in our community who make use of the resource.

MR. SMULLEN: Well, thank you for those comments. As you know, I -- I used to manage the Hudson River-Black River Regulating District. According to the Sierra Club's estimates, about ten percent more of the Hudson and the Black River watersheds would now be -- fall under this regulation. And I guess we see things differently in terms of the level and intensity to which regulation should be applied to land, whether it should be more local or whether it should be more State or, in some ways with some of the legislation that's out there, to make, you know, up to 30 percent of all lands in the United States monitored and managed according to a certain scheme. So I guess we'll agree to disagree on the -- the

methods --

MR. ENGLEBRIGHT: I'm not sure we disagree totally. Actually, I respect your point of view. I believe that the responsibility should be shared, but as a State representative I believe that the State should set the standard of expectation for protection of such an important resource. But certainly, local jurisdictions have a very important role to play as partners in maintaining and stewarding that resource going forward.

MR. SMULLEN: Certainly. And I see from the -- the various memos on both sides that if all you've got is a hammer then everything starts to look like a nail.

MR. ENGLEBRIGHT: Okay.

MR. SMULLEN: But let's -- let's talk a little bit about the permitting process in specific. I understood that you decry DEC's lack of staff to -- to manage this permitting process, but when we talk about the protection of waters permits, the stream regulations, those are administrative in nature so once they're in place, why would there be a need for a lot more permitting if, for instance, soil and water conservation districts and local jurisdictions, municipalities were then perhaps in this bill or another bill delegated that authority to monitor and manage those things on behalf of their local governments.

MR. ENGLEBRIGHT: I agree with you again. It is the Governor who said he didn't have staff when he vetoed this three years ago; in fact, with a little forethought and planning, and particularly developing cooperative relationships between the State

DEC and local government planners, with a little bit of forethought you don't have to be in such a crisis of decision against the clock and you can actually probably manage these streams in the same context that they are presently managing A and B streams.

MR. SMULLEN: Now, for instance, how would this new -- new process affect permitting in multi-jurisdictional areas like the Adirondack Park? It also has the Adirondack Park Agency inserting itself into local affairs.

MR. ENGLEBRIGHT: It doesn't change anything; in fact, in the debate of two years ago when Mr. Ryan was advocating for passage of this bill into law, he made the point that during Hurricane Irene that there were numerous watercourses in the Adirondacks that were -- were repaired under the emergency provisions that the Governor declared, that did not require permitting and were expedited, and that there were no loss of time in terms of response for the public's protection and well-being.

MR. SMULLEN: Well, thank you for that --

MR. ENGLEBRIGHT: He made specific reference to the Adirondacks in that case.

MR. SMULLEN: And that's right. And I appreciate you for segueing to my stream restoration initiative, which is the ability of local jurisdictions to work with counties and with the State and the State regulatory agencies to do what I call, *A stitch in nine to save time* in terms of streams, restoring them ahead of time so when a big rain comes like the Halloween flood of 2019 which directly

affected two significant areas in my district, one in Hamilton County, one in Herkimer County, which were caused by microburst type conditions with five inches of rain falling in a concentrated one-hour time frame to which you couldn't possibly plan ahead other than to clean the streams ahead of time so they didn't overwhelm bridges and culverts and roads and cause significantly more damage.

One of the things that I'm -- I'm fearful of a bill like this that goes into Class C streams is that that will preclude such co-activity on the part of local governments who all know their areas best, who know where the choke points are, who know where when the big rains come, where the damage occurs, that this is going to, in a blanket way, it's going to snuff out that initiative. Could we perhaps write into a -- a bill such as this, perhaps if the Governor vetoes it again, in the future if we have to come back with it, could we write that initiative into legislation so it would codify for these municipalities the ability to be able to do such proactive things to save the taxpayers money?

MR. ENGLEBRIGHT: Certainly I would be open to a -- a conversation if -- if there's a real problem. I don't believe that there is a real problem in terms of what is allowed presently. I think that the Department and local government should, in fact, have the kinds of conversations, particularly given the changes in climate that we're seeing now with these -- these microbursts, intensive rain events that are very uncommon within the history of our State, but are now becoming common. So it makes sense to have that, but again, I -- I



believe that that discretion is already available.

MR. SMULLEN: Well, these -- these things have happened throughout our history and, in fact, in 1913 the flood that actually flooded Albany and Broadway is what led to the development of the Hudson River-Black River Regulating District to prevent flooding in such things. Six reservoirs in the Adirondacks that then, you know, impound water at the right time to regulate the stream so it can't flood. We could talk a lot about the -- the causes of flooding and whatnot, but one thing we do have control over certainly is the ability to get State regulatory policy right to be able to help not only our municipalities and our counties, but also State agencies that do these things, but also to help private landowners preserve their value. What I wanted to ask you is how do you think this bill will affect private property values in rural areas that have Class C streams?

MR. ENGLEBRIGHT: I think it will protect those properties from having changes upstream off of their property taking place without permits, without any notification, suddenly the streams can be diverted, rerouted presently. I think it would protect the landowners who depend upon the water that they draw from those streams for their own local agricultural purposes and for the beauty and aesthetic that the streams bring to their property, which translates into value.

MR. SMULLEN: Well, thank you for that, Mr. Englebright. I don't know that farmers would agree with that, but we'll, you know, we will see how this gets adjusted and absorbed as it

-- as it moves forward.

Mr. Speaker, on the bill.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. SMULLEN: So what we have here is a -- is an initiative that's actually going to provide more regulation for a significant portion of the State. And -- and I'm not sure that the regulation is needed if local jurisdictions, municipalities, soil and water conservation districts, and private landowners actually do what's intended in this bill.

The reason I'm concerned is that this is going to -- is going to require a significant -- significantly more permitting in the process. And permitting costs money, and it costs landowners money and it reduces the ability of people to do what they can with their private property. And this is the way it's been for many years. And what I think we're doing is we're taking some -- some -- some very narrow areas that need to be regulated a little bit more thoroughly. The examples of Class C streams that need to be regulated more thoroughly, but then we're applying it to the entire State. And -- and the worry is is that one-size-fits-all legislation, you know, more permitting, more costs, more time to have to do these fairly simple activities is going to become prohibitive and is going to lend overall to the climate for towns, for farmers, for private landowners and it -- and it's going to cost them overall with their -- with the value of their property either to conduct agriculture activity, to conduct forestry activity, or to simply own and enjoy their property. And I think that

the -- the Governor's veto previously explained a lot of this very thoroughly.

For this reason I -- I'd encourage all my colleagues on both sides of the aisle to think clearly and closely about this legislation and vote against it because I think it's not necessary at this time.

Thank you, Mr. Speaker, and to the sponsor.

ACTING SPEAKER AUBRY: Thank you, sir.

Mr. Tague.

MR. TAGUE: Thank you, Mr. Speaker. I'm going to save Mr. Englebright some of his debate time and I'm just going to speak on the bill, if I can, Mr. Speaker.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. TAGUE: Thank you. Again, like my colleagues have -- have said and I -- and I have said in the past on this bill, this comes back to me as far as agriculture. They are the two most important things in this world, in New York State, are water and food. The inability of our farmers to produce food or, in case of emergency, get to their properties, get to the barn in case of an emergency, is a serious problem. I don't know why we just don't leave it the way that it is.

Our water and soil conservation specialists, they're the ones that should regulate and be in charge of these programs. You know, just for instance, culvert replacements. The cost of a -- of a culvert replacement can go from anywhere from \$90,000 up to \$1 million under a program like this, you know, and from somebody that

was affected personally by Irene and Lee, I can tell you that we in -- in my home county of Schoharie are still dealing with USDA and DEC with stream bank repair from way back in 2011. And the biggest problem, sir, is the fact of the permit.

So I had mentioned last time we debated this bill I would be open to some amendments to the bill and would possibly then support it because I don't think any of us in this room don't agree with the fact that water and food are the most important thing that each and every one of us have -- we need, it's a necessity to live. So for those reasons, Mr. Speaker, and again, I commend the -- the sponsor of the bill, I have a great deal of respect for him. I just would like to see the bill tweaked before I can support it. For those reasons, I will be voting in the negative and I encourage everyone in this Body that likes water and food to do the same thing. Thank you, sir.

ACTING SPEAKER AUBRY: Thank you, Mr. Tague.

Read the last section.

THE CLERK: This act shall take effect on the 90th day.

ACTING SPEAKER AUBRY: The Clerk will record the vote on Assembly print 6652. This is a Party vote. Any member who wishes to be recorded as an exception to the Conference position is reminded to contact the Majority or Minority Leader at the numbers previously provided.

Mr. Goodell.

MR. GOODELL: Thank you, sir. For the reasons mentioned by my colleagues, the Republican Conference is generally opposed to this legislation. Those who support it can certainly vote in favor of it here on the floor or by calling in their vote to the Minority Leader's Office. Thank you, sir.

ACTING SPEAKER AUBRY: Thank you.

Ms. Hyndman.

MS. HYNDMAN: I would like to remind my colleagues that this is a Party vote. Majority members will be recorded in the affirmative. If there are any exceptions, I ask Majority members to contact the Majority Leader's Office at the number previously provided and then their names will be announced accordingly.

ACTING SPEAKER AUBRY: Thank you.

(The Clerk recorded the vote.)

Mr. Englebright to explain his vote.

MR. ENGLEBRIGHT: Thank you, Mr. Speaker. I think this is an important measure. We've learned a lot more in recent decades about the importance of even our smallest flowing streams. They protect critical habitat. They protect against flooding. They feed into the larger streams and are part of the same systems. They filter harmful pollutants, they recharge our drinking water. They are just as vital and just as important. And protecting them proactively, preventively, which is what this measure does, makes a lot of sense from a financial and fiscal perspective. It's a lot more

expensive to try to clean up contamination or injury to a natural waterway due to carelessness.

And so this requires thought. Thought is not a bad thing. This is, in fact, something that will help protect the environment and protect human health at the same time. I urge my colleagues to vote aye. I vote aye, as well.

ACTING SPEAKER AUBRY: Mr. Englebright in the affirmative.

Mr. Palmesano to explain his vote.

MR. PALMESANO: Yes, Mr. Speaker, my colleagues, to explain my vote. I first wanted to say, I didn't get a chance to say thank you to the sponsor for the debate, I always appreciate our conversations on important issues. That being said, I know the sponsor said we needed to have more resources for our DEC. We need to provide more resources to our local municipalities because this is definitely going to negatively impact our local and town highway superintendents when you're adding 40,000 miles of streams. It's estimated that 80 percent of the streams flow through local municipalities are bridge and culvert work. That's an additional 32,000 miles that's going to be the responsibility of our local municipalities, which is going to be significant time delays, costly time delays when they're trying to do critical infrastructure improvement work that needs to be done in a timely manner to address flooding issues that we keep continuing to see. If they're not being able to get the permits timely enough to do this work, when

these floods come through it's going to create more devastation for these local municipalities.

We talked about how this could increase culvert work, a simple culvert project by 90 -- from \$90,000 to over \$1 million. This is going to increase the times for permits and -- and more than double the amount of permits that our local municipalities are going to have to do for these projects. So we need to make sure there are resources for our local municipalities and our highway superintendents.

So I will emphasize to my colleagues, again, when you're putting -- when you're negotiating this budget if you're not advocating for additional funding for the CHIPS program, which you put zero dollars in for additional money in in your one-House budget while the Senate put \$250 million in for CHIPS, I would urge you if you -- this is an important priority for you, you better provide some critical resources to our local highway superintendents through important programs like the CHIPS program, when they're already being slammed with increased costs. The steel mill products are up over 113 percent. Plastic, construction projects, over 30 percent -- 35 percent. And our diesel fuel is up over 50 percent. So they have constraints on their system. They need resources. We need to be a partner. It's critical for you to make that emphasis in your conference and with your colleagues on the other side of the aisle and the Governor, like we will continue to do, that we need to put money into our local infrastructure for our CHIPS program to make sure that

we're protecting the taxpayer and providing the necessary resources to deal with these mandates that are going to happen, to make sure that you make the necessary improvements to protect the taxpayer and to make these improvements now. So thank you, Mr. Speaker. I vote no.

ACTING SPEAKER AUBRY: Mr. Palmesano in the negative.

Mr. Manktelow to explain his vote.

MR. MANKTELOW: Thank you, Mr. Speaker. Just a couple of my concerns on this bill, as well as some of my colleagues stated. A lot of our soil and water conservation districts that are working in the Upstate area, the lag time for permits now is already six to nine months, and with the weather that we have in New York, and it's always lovely around the -- around the whole year, but again, the timeline for doing projects is so far behind where we are in our districts. And as the sponsor said, he has spoken to the Commissioner of DEC, I was involved in some of those meetings about the manpower, the FTEs, the full time equivalent. We need those in place before anything like this happens.

And my last thought is as we continue to push fresh, clean water to our rural areas through water districts, this will definitely slow down those projects. As you stated earlier that DEC does not have the manpower to make these permits happen. And I could support some of this with a few of those minor changes. Those are my concerns, that's the only reason I will not support this at this



time. So thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you, sir.

Mr. Goodell.

MR. GOODELL: Thank you, sir. Please record my colleagues Mr. DeStefano, Mr. Reilly, and Mr. Schmitt in the affirmative. Thank you, sir.

ACTING SPEAKER AUBRY: So noted, thank you.

Ms. Hyndman.

MS. HYNDMAN: Please record our colleague Mr. Stirpe in the negative. Thank you.

ACTING SPEAKER AUBRY: So noted, thank you.

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

Page 30, Calendar No. 226, the Clerk will read.

THE CLERK: Assembly No. A06906, Calendar No. 226, Otis, Abinanti, Seawright, Simon, Stirpe. An act to amend the Real Property Law, in relation to requiring landlords to mitigate damages when commercial tenants vacate premises in violation of the terms of the lease.

ACTING SPEAKER AUBRY: An explanation is requested, Mr. Otis. Thank you.

MR. OTIS: Surely. Hello, Mr. Goodell; nice to see you. Before 1995, the law in New York State in the case of a tenant leaving a lease early was the general law in the liability world which

is that the landlord had a duty to minimize damages, meaning to make some efforts to try and re-rent the property and that was the law until a Court of Appeals decision in 1995 which changed that. In 2019, we passed Housing Law legislation that restored the duty to minimize in the case of residential leases, but did not make that correction in the case of commercial leases.

Now, why this -- so what this bill does is this bill brings us back to the pre-1995 law, the duty to minimize and why is this a good policy for commerce, for business and the perspective that I bring to introducing and advocating and supporting this bill. Today if a commercial tenant leaves a location and the landlord is due that rent, the landlord has no duty to make any attempt to try and re-rent that property, and they may or may not be able to, but the duty to minimize would be better for commerce. I have been approached by some small business people in retail locations who are frustrated that because a neighboring landlord does not have the duty to minimize, they leave the space vacant, they don't try and -- and bring it to market and re-rent the property. The -- we can talk further, you're going to have additional questions, but the -- in anticipating some of that, the burden for duty to minimize is not that high a burden for a landlord to make. And the law, and we can go into it if -- if your questions go in that way, the law, when we did the law for residential leases in 2019 had language that I would say a low bar for landlords to fulfill the duty to minimize, even if they are not successful.

So I'll leave it there and I look forward to your

questions.

ACTING SPEAKER AUBRY: Mr. Goodell.

MR. GOODELL: Thank you, Mr. Speaker. Would the sponsor yield?

ACTING SPEAKER AUBRY: Sir, do you yield?

MR. OTIS: Of course, happily.

ACTING SPEAKER AUBRY: The sponsor yields.

MR. GOODELL: Thank you, Mr. Otis, and thank you for that explanation.

I want to look at some of the specific aspects of the language here and talk a little bit in the context of a commercial lease. Obviously, a commercial lease is very, very different than a residential lease because typically in a residential lease, a landlord says, *This is the lease agreement. If you want it, sign it, and if you don't want it, go somewhere else.* But on a commercial lease, particularly larger, commercial leases, those contracts are typically negotiated between parties, both of whom are represented by attorneys. And in that context, they can negotiate, you know, the fair allocation of risk which is then reflected in the monthly rent. So just so we're all clear, there is nothing in current law that would prevent a tenant from requiring in the lease agreement that the landlord mitigate, correct?

MR. OTIS: Well, that is correct but this is actually the crux of the policy decision or philosophical decision. We, in other occasions, I passed a bill a few years ago in a related area related to the Yellowstone case that was sidelined for a short period of time by

the Court of Appeals and reinstated by legislation that we had -- that we had enacted. We sometimes say as a matter of public policy, certain lease provisions are not in the best interest of the public and rule them null and void. And so that's what this legislation would do. That is what we did in 2019 as it relates to residential leases.

And I would just also indicate, because I'm dying to read this language, that the language in the 2019 law was carefully crafted to, again, make the -- the burden not that high, that the burden on the landlord would be to make a good faith attempt according to the landlord's resources and abilities, take reasonable and customary actions to rent the premises at fair market value. Not very restrictive, they go through the effort to post it and see if they can get a tenant. They're not obligated to take a tenant if it doesn't fit the situation. And so I think this is a reasonable balance and I think, again, in the name of commerce and in the name of not having vacant stores, at least this gives another bite at the apple that some stores will (inaudible) for an additional period of time.

MR. GOODELL: And I appreciate that explanation, I do, although I think my question was really very narrow, which was nothing in current law prohibits the parties in their contract negotiations from having a duty to mitigate. And your answer was no, nothing prohibits it. I just want to follow up, I'm correct that nothing in current law would prohibit a tenant from having the right to sublease it, correct?

MR. OTIS: That is correct. You could have contract

provisions that allow or not allow subleasing --

MR. GOODELL: Certainly, but that --

MR. OTIS: And that's not indicated in this --

MR. GOODELL: -- that would be a matter of negotiation, not a matter of statute. Often in commercial leases the parties will put in a liquidated damage clause, and they do so for many, many valid commercial reasons. From the tenant's perspective, a liquidated damage clause defines clearly what their liability might be, and they can cap it or... but they negotiate it and everyone understands what it is. From the landlord's perspective, a liquidated damage clause is very important because often a landlord will use a commercial lease as security for a loan. And so the landlord needs to know and the lender needs to know if something goes awry what's going on. But this legislation says any provision in the lease that exempts the landlord's duty to mitigate damages shall be void as contrary to public policy.

So why is it we would want by statute to make it illegal for commercial entities to negotiate a liquidated damage clause, which is common in many commercial contexts. Why would we want by statute to make it illegal for a common clause in a commercial contract?

MR. OTIS: Well, I would say that is it not -- it does not necessarily follow that a liquidated damage clause would be precluded, because while you could have a liquidated damage clause and the parties could agree to that and proceed that way if the space

was vacant, we still could provide the duty to minimize damages for the landlord, and those actually could exist simultaneously.

MR. GOODELL: I guess I don't understand that because the whole purpose of a liquidated damage clause is to get out of this duty to mitigate and to define the damages. But just move on just a little bit, this bill provides that upon re-renting of the property by the landlord, the lease with the prior tenant terminates. So does that mean, then, the lease to the prior tenant is valid until the commercial landlord re-rents?

MR. OTIS: I'm not sure what -- that's what the bill says. So let's take a hypothetical.

MR. GOODELL: Well, we can look at the bill language first. If you look at page 1, line 14.

MR. OTIS: That's the existing law for residential leases. What the bill language does is the bill language merely deletes the exclusion for commercial.

MR. GOODELL: So I'm trying to get an understanding how --

MR. OTIS: So you're reading the existing statute is what you're reading.

MR. GOODELL: But the existing language that I quoted does not currently apply at all to commercial leases.

MR. OTIS: That's correct.

MR. GOODELL: So then in the context of a commercial lease, looking at line 14, it says the new tenant's lease,

that would be a replacement tenant, shall once in effect, terminate the previous tenant's lease. That would now apply in the context of commercial transactions if we pass this, correct?

MR. OTIS: Is that a --

MR. GOODELL: So the question then is, does that mean that the prior commercial tenant's lease remains valid until the new lease is signed, at which point the prior lease is terminated?

MR. OTIS: Well, the way the duty to minimize works is if you bring somebody in and you -- you get -- you can take over the part that the -- the original tenant walked away from, that -- that tenant is now going to be paying the rent.

MR. GOODELL: But up until then, the current -- the prior lease is still valid?

MR. OTIS: So you're asking the question are they due the part that they owed before you brought in the new tenant, I would say yes.

MR. GOODELL: No, my -- I'm really going into the question of is this an alternative procedure to an eviction because normally, as you know, a landlord is precluded from self-help, absent a court order. Is this an alternative, then, that's instead of going through a court order you just re-rent it if the prior tenant is vacant?

MR. OTIS: The fact pattern of this case is the case of a tenant who leaves on their own --

MR. GOODELL: And so --

MR. OTIS: -- Not an eviction situation.

MR. GOODELL: So then what is required before the landlord has this duty? Do they have to get a letter from the tenant saying, *Hi, I'm your tenant, I breach it*. Or can they walk by in the mall and notice there's no -- no employees? I mean, what triggers it normally, as you know, both in residential and commercial context, the fact the tenant may not be in possession doesn't mean the tenant has abandoned. So does it take a default on the part of the tenant? And if it's a default, is it followed up by a court determination, or is it an extension of self-help?

MR. OTIS: So with the law that we passed in 2019, some of --

MR. GOODELL: By the way, I voted against that, too, but -- I apologize; go ahead, Mr. Otis.

MR. OTIS: You digress.

MR. GOODELL: Yes, I digress; I thought you were.

MR. OTIS: The 2019 law left a good deal of the refereeing of these, those kinds of details, to the court, to the judge. And so that would be the case for the commercial situation, as well, in terms of the series of hypothetical questions you threw in there.

MR. GOODELL: Mr. Otis, always, I appreciate your comments and thoughts. Thank you very much.

On the bill.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. GOODELL: In the commercial context, the parties are generally represented by attorneys and they negotiate these



terms and conditions, and that negotiation has many ramifications often well beyond that particular lease. So if you're running a mall, for example, you have agreement with all your tenants over what the mix is going to be in the mall. So there can only be a certain number of shoe stores or a certain amount of general stores or sports stores. It's all part of the deal. And when you own a mall and you're renting out commercial space, that mall itself often has significant debt load which is secured by the lease agreements. And those lease agreements typically have liquidated damage clause so that the bank knows that if for some reason one of your retail clients leaves, or customers leaves, the bank is still protected. And so what we are doing as a Legislature is we're saying with this legislation that in our great wisdom here sitting on the floor of the Legislature in Albany, we know more about how commercial leases should be structured than everyone else in the State who is getting negotiating these. And by statute, we say those liquidated damage clauses, to the extent they might affect the duty to mitigate, are void.

And so unless all of us here have detailed experience in negotiating commercial agreements, we by statute upend this entire process. So we change the burden of proof that would otherwise apply, shift it from the defaulting tenant to the innocent landlord. We upend the financial considerations that apply when banks are making loans secured by these leases. We ignore the fact that the tenant has the right to sublease, which means that if the tenant wants to pull out, the tenant could have negotiated the right to sublease and the tenant

could mitigate damages on their own. We ignore that and we upend the entire process. And just for good measure, by statute we say that all the commercial leases in the State of New York that have contrary provisions are now null and void as it relates to those contrary provisions, even though those contrary provisions may have been a major factor in the rent that was negotiated at that time. And even though the Federal Constitution bars us from passing legislation that impairs the existing, the validity of an existing contract.

So I would recommend my colleagues not support this, and I note that last year there were 49 no votes, so we had bipartisan opposition, and I hope that we continue to have bipartisan opposition by respecting the right of parties in a commercial context to negotiate the terms and conditions of their own lease so that it makes sense to them and that we don't superimpose some other rule over and above what they negotiate. Thank you very much, Mr. Speaker. And again, I always appreciate the comments from my colleague. Thank you, Mr. Otis.

ACTING SPEAKER AUBRY: Mr. Ra.

MR. RA: Thank you, Mr. Speaker. Will the sponsor yield?

ACTING SPEAKER AUBRY: The sponsor yields.

MR. OTIS: I will yield.

MR. RA: Thank you, Mr. Otis. So I just wanted to get into a little bit more of just the -- really the duty that we're imposing on, you know, on the commercial landlord. And certainly I

understand the idea of, you know, trying to help maybe a business who has to break one of these leases, but certainly in the district I represent and I assume throughout the State, these commercial landlords are small businesses themselves, and I wanted to start with so what exactly -- it says in good faith and according to the landlord's resources and abilities, you know, and that's the existing law that we are now, as you said, which would be applied in the commercial context here. So what is expected of a commercial landlord? Because that may be -- those abilities and efforts may be different in the commercial context than perhaps they are in a residential context when you're trying to mitigate damages. Is it, *I have to*, you know, *hire some type of broker to try to get me a tenant?* Is it, *I put up some signs and maybe I get a call; if I don't get any calls I'm good.* What are we expecting of that commercial landlord?

MR. OTIS: I think the language makes the burden rather low, and so it is likely that -- that listing it in a traditional way, I mean, the language again is good faith according to landlord's resources and abilities to take reasonable and customary actions. So a judge is ultimately going to decide whether they did that in a good faith way, but the burden is rather low. And I just share, the other side of this is unnecessarily vacant stores where -- where again, not just other commercial players in a business district, but also communities are sometimes frustrated. There's an empty storefront, the landlord has no burden to make even any effort to fill the space. This would allow them to do that with no significant burden. So I think there is a

public policy issue here that we should all get support -- all support despite the -- the fine comments of Mr. Goodell, notwithstanding his wisdom on the law and whatnot, that this is something that will help businesses on both sides of the ledger here.

But I'll name another factor, and especially during COVID, but at any time, sometimes there are businesses that have multiple locations and sometimes in our time, some of them had to downsize, close some of their locations, but they're still alive as a business, they are trying to survive. And the duty to minimize, in a sense, what their obligation is going to be if someone can -- if a landlord can re-rent the space that they vacated, might be a helping hand in terms of helping that that -- downsizing business keep that enterprise going.

MR. RA: Okay, thank you for that. And obviously I think we -- we, you know, we'd be remiss when we're looking at any of these issues to not, obviously, recognize the circumstances we find ourselves under, you know, and it's been a difficult time, certainly for -- for many businesses and depending on what type of entity you were, you may have had some, you know, substantial period of time that you were unable to operate at all or maybe you were operating in some, you know, reduced capacity.

So the other question I had, so you have to, if you're able to rent at either the agreed upon rent that was under your -- your prior lease or fair market value, whichever was lower. Now, if, assuming the landlord is able to do that, say the fair market value is

less, or perhaps two sophisticated parties had entered into a contract, maybe they thought a location was great, maybe they thought a business was great, didn't work out, the fair market value of that -- of that site becomes less. Is there any opportunity for the landlord if they enter into a lease now at, you know, a lower rate to recover any of the difference between what was obligated by the -- by the tenant under the contract?

MR. OTIS: I see nothing in the -- the bill or the law that would preclude that and, certainly, this would -- a judge, in a sense, would be the referee in this, but I see nothing that would preclude that.

MR. RA: Okay. Thank you very much, Mr. Otis.

Mr. Speaker, on the bill.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. RA: Thank you. You know, I certainly recognize and I think we all see it in districts we represent throughout the State, we don't want vacant storefronts, we want, you know, these storefronts to be full, but we're also, I think in these instances, I mean, you can see different type of circumstances. There could be a circumstance where there's a business, maybe they had to unfortunately close -- close as a result of, you know, the time we've come through. It could be the type of example that the sponsor mentioned where maybe a business has multiple locations and maybe scales back one of them or maybe needs less space because of a change in doing business, you know, whether it's maybe less

employees are coming in in-person and you don't need as much space or anything like that. Or it could be that because there are vacancies around that somebody sees an opportunity to go to another location because there -- maybe it's a better location, maybe it has better parking, maybe it's a busier shopping center where more of the storefronts are rented and they think they're going to do better there, especially if it's a business that maybe relies on some foot traffic.

So, you know, I can certainly see that -- that end of it, but again, commercial landlords in many, if not most instances, are also, you know, small businesses themselves, and sometimes, you know, some entity -- maybe they're a store owner who rented for years and eventually had the opportunity to buy, you know, a number of storefronts and maybe they're renting some of them.

So -- so I think the problem I see here is that we're taking a provision that applies in residential situations and applying it to commercial. I think they are different situations in a lot of ways. My -- my colleague mentioned earlier, often times, you know, you're coming -- entering into a contract, it's a little bit more of a situation where both parties are, you know, as often said, sophisticated parties that, you know, they're represented by somebody, they're -- there's a legal review of the contract. So I think it is appropriate in some ways to treat that differently than the residential context. And again, these are businesses themselves, local, small businesses themselves, these tenants, and this is just an additional thing where, you know, some tenant leaves in the middle of the lease, and these are more likely to

be multi-year leases than -- than say in the residential context. And you could be stuck with, now, for multiple years you're now out of -- of rent that you would've been getting under -- under a contract that maybe you were counting on to pay your local property taxes, to pay all the costs of running, you know, especially if you're in a shopping center where there's multiple stores or multiple connected buildings that you own and it does put -- put them in a difficult situation.

So I thank the sponsor for answering the questions, but I'm going to be voting in the negative. Thank you.

ACTING SPEAKER AUBRY: Thank you, Mr. Ra.  
Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER AUBRY: The Clerk will record the vote on Assembly print 6906. This is a Party vote. Any member who wishes to be recorded as an exception to the Conference position is reminded to contact the Majority or Minority Leader at the numbers previously provided.

Mr. Goodell.

MR. GOODELL: Thank you, sir. The Republican Conference will be generally opposed to this legislation. Those who support it should contact us or vote on the floor in favor. Thank you, sir.

ACTING SPEAKER AUBRY: Thank you.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Thank you, Mr.

Speaker. The Majority Conference is generally going to be in support of this piece of legislation; however, should there be colleagues that would desire to be an exception, they should contact the Majority Leader's Office and their vote will be properly recorded. Thank you, sir.

ACTING SPEAKER AUBRY: Thank you, Mrs. Peoples-Stokes.

(The Clerk recorded the vote.)

Mr. Otis to explain his vote.

MR. OTIS: Just two small things to add: Number one, if a commercial landlord cannot re-rent the space, the obligation of the tenant that left is not discharged; the debt is still owed. And before a court decision in 1995, this was the law for commercial leases in -- in New York State. So I ask to give due consideration to all the comments that you've heard and I vote aye. Thank you.

ACTING SPEAKER AUBRY: Mr. Otis in the affirmative.

MRS. PEOPLES-STOKES: Mr. Speaker, if you could please record our colleague Mr. Braunstein in the negative on this piece of legislation.

ACTING SPEAKER AUBRY: So noted, thank you. Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

Page 31, Calendar No. 230, the Clerk will read.



THE CLERK: Assembly No. A07093, Calendar No. 230, Clark. An act to amend the Social Services Law, in relation to eligibility requirements for the receipt of child care assistance.

ACTING SPEAKER AUBRY: An explanation is requested, Ms. Clark.

MS. CLARK: Hello. Sure. So currently, if you are a family making up to 200 percent of the poverty level and you qualify for child care subsidies, there is a 17.5 hour work requirement also included in the ability for you to get that subsidy. As we're trying to encourage and remove barriers to get better careers, so higher education, vocational training, or trades, we are hoping to find different ways to remove those barriers. So taking out the 17.5 hour work requirement would do that. Raising children is a job in and of itself - I know that well with three of my own - and going to school or into a career training program is also a full-time job. So adding a burden of more requirements on that might be a barrier that keeps people from getting to self-sufficiency and a job that pays their bills.

ACTING SPEAKER AUBRY: Mr. Simpson.

MR. SIMPSON: Thank you, Mr. Speaker. Would the sponsor yield for a few questions?

ACTING SPEAKER AUBRY: Will you yield?

MS. CLARK: Of course.

ACTING SPEAKER AUBRY: Ms. Clark yields.

MR. SIMPSON: Thank you. So in this bill, you know, you took out -- the bill does not have the requirement of 17.5

hours per week of work, still is the requirement that you're attending post-secondary educational -- a post-secondary educational program, but there aren't any standards or any requirements on that. So is there a reason why? I mean, you know, you mentioned that it's a full-time job between education and raising a family, which I can certainly understand, but if the taxpayers are funding this and, you know, what is the requirement for education?

MS. CLARK: Well, I think the more restrictive you put language into say what that post-secondary education looks like or has to be, the more barriers you put into whatever career paths people are trying to get into. Education looks so different to so many people at so many different forms, particularly as we see with online learning or with vocational or trades learning. It all can feel and look different. So the more narrower we put the language, the less likely we're able to capture more people who are trying to get to better careers.

MR. SIMPSON: So -- and actually, I'm glad you brought that up. I mean, over the past two years we've seen how rapidly things have changed, learning, working, all of that. And with this change in -- in the law, would this allow for unemployed families to obtain child care at the taxpayers' expense, even though they're home full-time and may be attending school by Zoom, and it could be for maybe one credit hour?

MS. CLARK: Well, I would never want to say that there's no value in online education or that it isn't as hard or as challenging because it is online versus in person. I think the point of

the coursework is that it is challenging, it is pushing you to achieve whatever you need to achieve to get a degree. Whether it's online or in person, you still have to put in the time to do the papers, you still have to put in the time to read the lectures, you still have to do all of that. The intent of the bill and who it's -- it's not saying you can't work, it's just saying it's not one of the requirements if you're trying to obtain a higher education or post-secondary degree or certification or whatever it may be.

MR. SIMPSON: Right, so it's our hope to see more people take advantage of this --

MS. CLARK: I mean, are they taking advantage of it --

MR. SIMPSON: Or not taking -- I don't mean take advantage the way that -- I may not -- didn't articulate that. We want more people to be eligible for this that have children and be able to further their -- their opportunities for education.

MS. CLARK: Correct. And as a child myself who, when my dad was very sick, my mom realized she did not have the skills to support her two children, she went back to school very late in her life and I was dragged often to classes when she could not afford child care. And it's not an ideal situation, and that's who we're most helping here, right? We're helping those families that understand that they need to get skills to get a career and we don't want to hold them back. And not to mention, child care is actually really good for the children, as well. So this is a win-win situation for taxpayers.

MR. SIMPSON: Yeah, I can -- I can remember, I've got two children and my wife and I, you know, it was a whole different world when we woke up and saw the impacts to our jobs and what we were doing and, fortunately, we were able to structure our time with our kids and our work schedules so that it did work. But --

MS. CLARK: Absolutely.

MR. SIMPSON: -- I can't -- and, you know, that -- that requirement or that need to have two jobs hasn't dissipated, it's even greater now --

MS. CLARK: Yes.

MR. SIMPSON: -- in a family.

So I also have a question as far as the impacts to, you know, fiscally. And I have here the New York State Child Care Task Force. You know -- and in 2019, you know, they've got every county and the corresponding percentage, share of percentage of income over the Federal poverty level, and it ranges from ten percent to as high as 35 percent. So with more people, you know, being eligible for this and not having the work requirement, not having a requirement other than to be attending, you know, some kind of post-secondary education, what do we see the impacts to the overall amount of funds that we have available to fund it, because certainly there's going to be, you know, we're going to include more people.

MS. CLARK: Well, currently we've seen in our counties, from Erie to Monroe and a few others that I've already looked at, that aren't even spending what they have now. We're

always looking for ways to include more families. Actually, many of the burdensome requirements we have put on have kept families from accessing it which means counties have not given out as money, they've actually lost families who were taking subsidies because of some of these burdens and challenges. So they already have the dollars, they're not all being spent. Not to mention as a State, we are already this year looking at putting \$3 billion into child care. It's a huge relief for our counties, taking the burden off the local governments because we see it as our obligation as a State to really invest in child care, invest in our families and make sure we're figuring out how to better the whole system so that our -- our families can get the education or the careers that they need while also making sure our children are in the child care centers and facilities, or wherever it may be, getting whatever they need as children, socializing, education as well.

MR. SIMPSON: So when you mentioned that some counties aren't using those funds, aren't getting it out the door, is that representative of most counties, less than half, a small percentage?

MS. CLARK: I mean I -- we just know that Erie County came out with that study so it has been very top of my mind. I have not looked at every single county. I would guess most counties are finding families -- there's a lot of problems with the subsidy system, not just for those (inaudible) families, but providers also don't like it because they're not getting paid at a rate -- they actually lose money on our current subsidy system because we don't pay them

enough of the market rate to actually even pay their own bills and -- and survive as a provider. So there's so many things in the system that are making it challenging, this is one piece that we're trying to fix. I think, as a Body, we've also looked at trying to fix every single piece of the child care equation and this year we've done a really good job at our budget that's starting that process.

MR. SIMPSON: Yeah, I think it would be important to know how many of those dollars aren't being spent, you know, especially when we're proposing \$3 billion, you know, and I don't know how much is -- is -- would go up against that.

MS. CLARK: I don't think people don't want child care, or providers don't want to offer child care. I think we are just seeing now the remnants of not investing enough in this system over the years and bringing up child care workforce to a living wage and all the different problems that we see. So it's hard to fix one piece and another, this is one tweak that I know our advocates have been really passionate about, to help more of our families, and I think it will go a long to doing that.

MR. SIMPSON: Okay. Well, thank you for answering my questions.

MS. CLARK: Absolutely, thank you.

MR. SIMPSON: Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you.

Mr. Goodell.

MR. GOODELL: Thank you, sir.

On the bill.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. GOODELL: As -- as the comments from our colleagues indicated, the current law provides that the State will pay for child care if someone is going to school and they're working at least part-time. And the reason there's a requirement that they're working at least part-time is because we recognize that we need to prioritize our resources. And so if mom or dad, or mom and dad aren't available to take care of their own kids, obviously we want to be able to help them with child care. But if they're at home, we expect them to take care of their own kids before we ask the taxpayers to take care of their kids.

The current law requires that to be eligible, you have to be working at least 17.5 hours in work activities. I think it's important to recognize that work activities under the Federal guidelines include job training and job efforts to get into the workforce. So what this bill says is that the taxpayers will pay to take care of child care if someone is enrolled in college regardless of how many hours they're taking and regardless of how many hours they're at home. So under this bill, a person would be eligible for taxpayer-funded child care even though they're home 24/7 taking a one credit course by Zoom.

Unfortunately right now, most of our counties struggle to cover the cost of child care for those who are working and are below 200 percent of poverty who already meet this standard.

There's not enough money in my county and most of my adjoining counties to even cover the current standard. Now we want to expand it to include those who very well may be home full-time and are seeking the taxpayers to pay for child care for their children. Now, I am very much appreciative of the fact that the budget proposal includes an additional \$700 million in child care, and perhaps once we provide \$700 million and expand the eligibility on that we can look at this, but in the meantime, as my colleague pointed out, we need to make sure that limited child care resources are available to those who aren't at home and, therefore, cannot easily take care of their own kids before we expand child care to those who may be at home 24/7.

Thank you, sir.

ACTING SPEAKER AUBRY: Read the last section.

THE CLERK: This act shall take effect on the 365th day.

ACTING SPEAKER AUBRY: The Clerk will record the vote on Assembly print 7093. This is a Party vote. Any member who wishes to be recorded as an exception to the Conference position is reminded to contact the Majority or Minority Leader at the numbers previously provided.

Mr. Goodell.

MR. GOODELL: Thank you, sir. For the reasons mentioned earlier, the Republican Conference is generally opposed to this bill, but those who support it are certainly encouraged to vote yes on the floor of the Assembly, or to contact the Minority Leader's



Office. Thank you, sir.

ACTING SPEAKER AUBRY: Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Thank you, Mr.

Speaker. This will be a Party vote in the affirmative on this one; however, there may be colleagues that would desire to be an exception. They should feel free to contact the Majority Leader's Office and we'll be pleased to record their vote.

ACTING SPEAKER AUBRY: Thank you, Mrs. Peoples-Stokes.

(The Clerk recorded the vote.)

Ms. Clark to explain her vote.

MS. CLARK: Thank you, Mr. Speaker. I do think it's a dangerous precedent to talk about a one-credit course at home online and, therefore, sweep up into it countless heads of households and families where people are going back to school full-time and really, really, really scrambling to make sure that they're at a career path and getting the skills they need to support their family down the road. So we are doing our best to invest in child care and we're doing a lot of different things this year. We did a lot of things last year and there's been a huge influx of Federal dollars, as well.

So I think this is the time to really think of that family and that person who is really doing all these great things to get on a career path that allows for self-sufficiency and a living wage and all the things that we want out of everybody to be able to achieve. And in that time, make sure that their children are getting child care, they're

getting provided for, they're getting all the wonderful things that we need, that we want all of our children to have. It takes a village to raise our children, I firmly believe that, I see it in my own household, and I see it in countless others. So I'm just so proud of this bill, it's one step to help more and more families achieve what they want out of the American Dream. Thank you.

ACTING SPEAKER AUBRY: Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Mr. Speaker, if we can continue our work on the floor today with Calendar No. 252 by Mr. Otis; followed by Calendar No. 274 -- no, I'm sorry, 264 -- no, no we're not going to do that one either. I'm going to turn the page, Mr. Speaker. We are going to go to 295, that one is by Mr. Gottfried, and then 414 by Mr. Magnarelli, and 463 by Ms. Glick. In that order, Mr. Speaker. Thank you.

ACTING SPEAKER AUBRY: Thank you, Mrs. Peoples-Stokes.

Calendar No. 252, page 32, the Clerk will read.

THE CLERK: Assembly No. A07541, Calendar No. 252, Otis, Abinanti, Burdick, Galef, Paulin, Rozic, Sayegh, Seawright, Thiele, Zebrowski. An act to amend the Public Service Law, in relation to the contents of emergency response plans required to be

submitted to the Public Service Commission by electric corporations.

ACTING SPEAKER AUBRY: An explanation is requested, Mr. Otis.

MR. OTIS: Thank you. This legislation amends the Public Service Law provision related to electric utility emergency management plans. And so utilities in coming up with storm recovery plans need to submit plans currently. What this bill -- what the existing statute includes is language pretty clear that the plan should be -- emergency response plan should be designed for reasonably prompt restoration of service. And throughout the State over many years, we have different storm events with different performance from different utilities at different times. The Public Service Commission has done a very good job of issuing reports and recommendations and evaluating the response from different utilities for different storms, and many of those utilities have responded with changes in their procedures, and that is all well and good, but the emergency response plans could be improved by factoring in, as is done in some other jurisdictions and is done informally in some ways with a more of a connection to a time-based metric for a goal for restoring power.

And why is this necessary? It's necessary because consumers, residential consumers, businesses are sometimes frustrated by being out of power six, seven, eight days in storms that maybe a utility was well prepared for and the storm was worse, or maybe a utility was not properly prepared and didn't assemble resources in -- in advance. So I'll read you the key language here that we would be

adding to the emergency response plan section of the law and that is, *The plans would include language to support reasonably prompt restoration of service in the case of an emergency event. Emergency response plans should include details of staffing, equipment, and a performance schedule with the goal of achieving restoration of service based upon a time-based restoration schedule established by the Commission, that is the Public Service Commission. In establishing such a time-based restoration schedule, the Commission shall utilize benchmarks for the restoration of service which include, but are not limited to, the percentage of customers restored within each 24-hour interval following the storm, and consideration of different kinds of storm events.*

Having followed storms around the State for a few decades, I think this would be an important enhancement. I think it will be actually an assist to the utility companies as well, but we need to get some time-based metrics more formally into this process. The duty to come up with what that metric system and those benchmarks would look like is not in the legislation, but is delegated to the Public Service Commission with their expertise and their ongoing working relationship with the utility companies. There is my explanation; Phil, the floor is yours.

ACTING SPEAKER AUBRY: Mr. Palmesano.

MR. PALMESANO: Yes, thank you, Mr. Speaker.

Will the sponsor yield for some questions?

ACTING SPEAKER AUBRY: Mr. Otis, will you

yield?

MR. OTIS: I will.

ACTING SPEAKER AUBRY: Mr. Otis yields, sir.

MR. PALMESANO: Thank you, Steve. I appreciate it. I know we've discussed this bill in the past, I agree with you that, you know, prompt restoration and making safe are always the priorities of when there's storms, so I have a few questions for you. First of all, every -- every incident is different, you know, you can have -- depending on the size of storm, what comes through, so isn't it really an event that causes a widespread outage? They're different, and by establishing these time-based targets, they really have to be generic, arbitrary and almost an exact because you can't predict the response and the time frame until you know what -- you have an actual storm event. How do you reconcile that?

MR. OTIS: Well, the goal is not to have a one-size-fits-all situation, but I'll tell you, one of -- one of the goals is if there's a time-based metric fed into here, I do think that utility companies would take more seriously the responsibility of assembling either local staff or bringing in outside mutual aid, help from other utilities. And so we've had circumstances where some of the utilities in our State have been caught short where there's a -- sometimes there's a storm that is hard to predict and they have very little advance notice. But sometimes we've had storms where there's plenty of weather warnings and in one storm a utility may choose to prepare and another storm they may not. And another piece of the action here is

how much --

MR. PALMESANO: Okay.

MR. OTIS: -- how much is on the -- one more point -- how much is on the staffing level of the home utility at the time. And what happened after some of the storms we had a few years ago is the Public Service Commission recommended that utilities increase their -- their in-house staffing to be better prepared for -- for impromptu storms.

MR. PALMESANO: And the PSC right now when they submit those emergency response plans, the PSC can adjust those accordingly when they review them if they want improvements. They have that authority right now, correct?

MR. OTIS: Correct, and they would under the bill, yes.

MR. PALMESANO: Now, does the PSC have to establish a target for each outage or storm, or is it -- how is that determined? Does the PSC -- would the PSC be required to establish a target for each outage in any event or storm?

MR. OTIS: They would set up a metric system that would -- that would -- it would not be per storm, it would be what I would anticipate that they would do with the expertise that they have is that they would have different frameworks for different kinds of -- kinds of storms in advance. They're not setting it up, *Oh, the storm is coming, here's our benchmark*. They would be set up in advance with some sort of multi-faceted structure.

MR. PALMESANO: And would they have to take into account with this, you know, this situation that it's handed, the poles that are down, the lines that are down, all of which determine the -- or dictate the time and restoration of how that restoration ever takes place, correct?

MR. OTIS: Those certainly would be considerations and I'd say that currently now when there is a post-storm event, the Public Service Commission looks at a utility's performance on some of those factors already.

MR. PALMESANO: Okay. Now what would happen if, you know, if really the target that was established that they're going to be required to do under this legislation, was by all accounts unreasonable to achieve based on the storm that came through after the fact and they had to put this in their emergency response plan? How does that impact --

MR. OTIS: I don't think it's any different than it is now which is the Public Service Commission exercises its judgment in evaluating the performance of utilities and are realistic about the on-the-ground events in a real storm. And so they're sympathetic when they should be sympathetic, and they're unsympathetic and issue fines when they should be unsympathetic.

MR. PALMESANO: All right. And I agree, when we talk about again, the priority absolutely when these storm outages happen is priority number one is for the utility company to use their dedicated workers to make the situation safe, you know, get the lines,

the wires taken care of, that's priority number one, and then go on after -- with that process to try to have restoration as quickly as possible, correct?

MR. OTIS: Yes and, in fact, I think this bill would help with the -- the safety of in-house employees and other people that are brought in because where utility worker safety is most at-risk is where they are understaffed in these events.

MR. PALMESANO: Right, and I mean, obviously, we want proper staffing I would think, you know, I remember when there was a storm, we had hearings a year-and-a-half ago, it was a 14-hour hearing on the storms that took place and I remember Governor Cuomo came out I think 24 hours after a storm, attacking the utility companies but, in essence, attacking those dedicated, brave workers that go out in those storms. I remember talking to -- it was union officials on that hearing and I said, *By attacking you, how did that -- how did that address your morale of your workers?* He said they basically were devastated that the Governor of the State came out and attacked them when all they were trying to do was to serve their community and their neighbors with the best possible effort they could, and that's what their priorities are, to make safe and restore as quickly as possible.

Aren't you -- don't you have any concern that by having this time-based performance metric included in it, is that -- there's going to be more focus put on that rather than let's doing the job we need to do, make safe and get the restoration and power as



quickly as possible? Because, again, each event is different so how can a generic really, which it would be, an emergency response plan dictate the event that's going to be at hand, how severe the storm is, if it's snow, if it's ice, preventing a utility to get to certain areas that need to be treated. Aren't you concerned that we're spending more time dealing with this time-based restoration concept instead of dealing with making it safe and putting the restoration in place?

MR. OTIS: You know, I actually think to the contrary that it will promote better preparedness on the part of utilities, and I think that anyone that has criticized a utility company in relation to storm response would not be criticizing the staff or the employees. They would be criticizing the management decisions on the resources that they assembled ahead of time and -- and whether they were -- assembled them in the way to do the job.

MR. PALMESANO: Right. Well, I remember in that specific instance, the Governor came out less than 24 hours later, it was a devastating storm that happened down in the City, criticizing the utility but basically, it was those utility workers who went out and risked their lives in a dangerous situation felt that, it hurt their morale, they didn't understand where it's coming from. So I think we need to be careful because it's easy to say a utility and think it means the management, but it's those workers who are out there doing the difficult job and trying to make safe and restore the power back to their neighbors, families, and friends.

Just kind of going from this perspective if, say, a

utility failed to meet one of these really generic based restoration targets, if it doesn't meet the plan, that's part of their plan, this mandate for a specific outage event, would they be subject to penalties by the PSC if they don't meet the time-based restoration schedule that this legislation would now include in the plan, in which the utility -- the PSC could put in the plan if the PSC determined it was necessary but now we're going to put it in the plan with this legislation. Would they be subject to penalties?

MR. OTIS: Yeah, I think it's no different than the situation is now and I think that if, again, I think I mentioned this in my remarks a few moments ago, if a utility doesn't meet the timetable but there's good reason that they weren't able to, the Public Service Commission in those circumstances does not issue fines and is sympathetic. In situations where they're not prepared, it's a different story. I'd say this: There are times where a storm is coming and we all have utilities, and there are times when a storm is coming and you see a utility company pre-assembling teams to deal with the storm and they generally respond better. Sometimes a storm is coming and there's no pre-assembling of staff and -- where there should have been, and that's a situation where there probably should be fines.

MR. PALMESANO: All right. So penalties could happen based on the language of this bill that would be added into the (inaudible). Now, with these penalties, would they be recoverable from the ratepayers because -- or would they have to be paid by the shareholders? How would that work, because obviously storm

recovery costs are part of a -- of the utility's operation and they could bring that to the PSC for approval. Would those storm covers or would those penalties be subject to ratepayers or shareholders, or is that defined or is that -- how would that be determined?

MR. OTIS: You know, I -- you ask a good question that will get an answer to how it works now because I'm not totally sure. I think it should come from the shareholders, not the ratepayers.

MR. PALMESANO: Okay. And I would just say that they're going to find ways to get back to the ratepayer because ultimately, all these costs, these -- I mean, they're plans that we keep putting in place, more mandates we put in the utility company, the bill we debated the other day about requiring utility companies to provide generators to all fire and police and, you know, I think all that adds more, which is ultimately paid by the utility and the ratepayer. But does -- would this bill require the PSC to establish the benchmarks required in the emergency response plan? Would they go through like a proceeding involving the customers and the utilities for comment and interaction, or would it be basically just the PSC making the determination outright?

MR. OTIS: Well, the Public Service Commission issues regulations now related to the emergency plan requirement and, in fact, after some of our storm events, I think most notably the ones that we had in 2018, the Public Service Commission, based upon a lot of the public comments, did upgrade some of the requirements in their regulations apart from anything that we, as a Legislature, has done.

So it would be the same process.

MR. PALMESANO: All right. Thank you, Mr. Otis, for your time.

Mr. Speaker, on the bill, please.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. PALMESANO: Certainly I understand and appreciate the intention behind this legislation. They want to -- we want to see a place -- we want to see power restored as quickly as possible after a storm. We want to see our utility workers out there being safe and making the process safer, their residents, while they restore the process. But I think what I've seen over a period of time over the past two years is a number of bills that come forward that continue to put more and more requirements on utilities, whether it's providing generators, putting additional plans in place, having to provide this, this, and that. Often, that's going to be borne by the ratepayer and I think when we're talking about these emergencies, we're trying to address these situations and I think it's more complicated and there's some of these things out of control of the utility. And when I say *utility*, I go back to the ratepayer because it ultimately comes back to impacting the ratepayer.

I think the best thing we can do is legislation we have passed that would deal with storm resiliency and hardening plans, I think that's critical so they can make the important infrastructure improvements that need to be addressed to make these critical infrastructure improvements. And this goes back to the bill we talked

about earlier with the streams, that when the utilities are trying to do this important infrastructure work, now they're going to be required to do, if that bill becomes law, they would be required to do more permits, which are timely, costly, and don't allow them to get the projects done in a timely manner. And then when we have these storms, there's going to be more requirements and burdens placed on them and then penalties and fees.

I just think the number one issue is to deal with getting and making safe the dangerous trees, the wires, and making sure we have resiliency in the system. That should be the focus. I just really believe every storm situation is different, not every one is the same. And to try to incorporate a storm recovery plan on a time-based schedule when we don't know what the extent of that storm can be, how do you predict that, how big it's going to be, how impactful it's going to be, it's almost impossible. It's really -- this is really just going to be a generic, arbitrary, and an inexact time schedule and then ultimately what that will ultimately open the utilities, hence the taxpayer, ratepayer, is subject to penalties and fines because whenever there's something that doesn't happen in the time frame people want, we want penalties and fines. But that ultimately comes back on the ratepayer.

I think we need to look at -- really look at more of a collaborative approach, you know, working with the utilities, working with the municipalities, working with the PSC to find a process to determine the best way, making sure that the resources and the

infrastructure is improved. I do believe this is well-intentioned, but I think it just creates more problems than need to be done. I think we need to get past and really, again, focus on everything we can to make safe and restore the power as quickly as possible rather than focusing on a generic, arbitrary, and really inexact time-based restoration schedule because, again, every storm is different. We don't know if it's going to be ice, we don't know if it's going to be snow, we don't know if it's going to be flooding. And to think that these utility companies can put forth a time-based restoration schedule because we're here, not out in the field, not knowing how to deal with the storm, we have the experts doing that, to mandate that and put that in the storm recovery plan.

I think we're -- when we have the PSC experts who do the plans who have the ability to say, *We're going to incorporate that into the plan*, but now we're telling the PSC, *No, now you have to incorporate this into the plan* and now it's going to make it more difficult and it's going to open up for more lawsuits and fines and I just don't think that really solves the problem we're getting at. The main problem we want to get at is how to make these storm recoveries and restoration to the power as quickly and as effectively as possible. I just think this legislation focuses on the wrong thing and is counter to what the goal is and I just think it's going to make it more problematic and not really get to the end goal that we want to accomplish.

So based on those reasons, Mr. Speaker, I think we

can do better, but I appreciate the dialog with the sponsor and his intention behind it. But based on those reasons, Mr. Speaker, I'm going to be voting in the negative and I would urge my colleagues -- some of my colleagues to join me in that vote. Thank you.

ACTING SPEAKER AUBRY: Thank you, sir.

Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER AUBRY: The Clerk will record the vote on Assembly print 7541. This is a Party vote. Any member who wishes to be recorded as a negative -- as an exception to the Conference position is reminded to contact the Majority or Minority Leader at the numbers previously provided.

Mr. Goodell.

MR. GOODELL: Thank you, sir. The Republican Conference is generally opposed to this legislation. Those who support it are certainly encouraged to vote in favor on the floor of the Legislature, or by contacting our Minority Leader's Office. Thank you, sir.

ACTING SPEAKER AUBRY: Thank you.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Thank you, Mr. Speaker. The Majority colleagues are generally going to be in favor of this piece of legislation; however, there may be some that would decide to be an exception. They should feel free to contact the Majority Leader's Office and we will properly record their vote.

Thank you, sir.

ACTING SPEAKER AUBRY: Thank you, Mrs.

Peoples-Stokes.

(The Clerk recorded the vote.)

Mr. Goodell.

MR. GOODELL: Thank you, sir. Please record my colleague Mr. Reilly and Mr. Tannousis in the affirmative. Thank you, sir.

ACTING SPEAKER AUBRY: So noted, thank you.

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

Page 36, Calendar No. 295, the Clerk will read.

THE CLERK: Assembly No. A07363-A, Calendar No. 295, Gottfried, Dinowitz, Steck, Fahy, McDonald, Reyes, Hevesi, Braunstein, L. Rosenthal, Mamdani, Seawright, Simon, Woerner, Cruz, Burgos, Galef, González-Rojas, Epstein, Solages, Bichotte Hermelyn, O'Donnell, Mitaynes, Burdick, Forrest, Otis, Colton, McDonough, Benedetto, J. Rivera, Kelles, Gibbs, Kim, Fernandez, Ramos, Anderson, Thiele. An act to amend the Civil Practice Law and Rules, in relation to protecting patients from certain penalties due to money judgments arising from actions brought by hospitals or health care professionals.

ACTING SPEAKER AUBRY: Mr. Goodell, I can't hear you.



MR. GOODELL: Thank you. Would the sponsor yield?

ACTING SPEAKER AUBRY: Mr. Gottfried, will you yield, sir?

MR. GOTTFRIED: Yes.

MR. GOODELL: Thank you, Mr. Gottfried. This bill appears to be fairly straightforward. It says that no property lien would be entered against a debtor's primary residence in actions brought by a hospital or an individual licensed under the Education Law, which would be a physician, licensed physician, correct?

MR. GOTTFRIED: Well, health care professionals, yes.

MR. GOODELL: The first question I had is would this -- this exemption doesn't have any exceptions, for example, if the medical expense related to cosmetic surgery, for example; am I correct? It wouldn't matter what type of medical expense was incurred?

MR. GOTTFRIED: That is correct, although in my experience since such procedures are not covered by insurance, I think providers of that kind of surgery generally make financial arrangements beforehand.

MR. GOODELL: But if for some reason the homeowner violated the contract to pay the provider, this would eliminate the opportunity for the provider to enforce a contractual arrangement they might have for that type of optioned surgery and get

recovery or a judgment against the debtor, that would apply against their -- all their assets, correct?

MR. GOTTFRIED: Well, I think those -- the kind of arrangement that you're referring to would -- would, I think, ordinarily involve payment up front rather than after the fact. But you're correct, the bill would apply in such a case.

MR. GOODELL: Now, I know based on our own health insurance that we have here, many times I get a bill from the provider for medical care and the insurance reimbursement comes to me and not the provider. Does this language have any exception for a hospital seeking a judgment against a patient where the patient has been reimbursed by their insurance company but has refused to turn the money over to the hospital or the doctor?

MR. GOTTFRIED: Well, I think nowadays the most common practice with insurance is that the payment goes to -- to the provider. That certainly has been my experience. But no, the bill does not have an exception for the occasional case where the insurance company sends payment to the patient.

MR. GOODELL: Just an aside, Mr. Gottfried, my wife had some dental work and I asked her if I needed to transfer some money from my account into her account, she said, *No, but you have to turn over that insurance reimbursement check to me*, and I did so we're a happy household.

MR. GOTTFRIED: Well, I'm glad to hear that.

MR. GOODELL: At least on that issue, for sure; I'm

very fortunate to have a great wife. As you know, there's a Federal homestead exemption that gives an exemption for primary residence of \$150,000 for an individual, \$300,000 for a couple and that's net equity. So you could have a -- let's say you have a \$600,000 home and you have a mortgage of over \$300,000. Your home would be protected by the homestead exemption. Why is it that we want to extend this homestead exemption for medical expenses regardless of the value of your house? Isn't it better to, like, simply recognize the Federal homestead exemption and protect those who aren't multi-millionaires or have mansions from this type of judgment?

MR. GOTTFRIED: Well, I guess the price of housing and what you get for \$300,000 varies a lot from one end of the State to the other, and I don't know where on the economic spectrum someone with a \$300,000 house in your district is, but in the Downstate area that does not buy you a mansion. That does not buy you a lot of housing at all.

MR. GOODELL: Well to be clear, the homestead exemption applies to your equity in a house, not to the price of the house. So if you have \$300,000 in equity over and above any mortgages or other judgments, that is the level of protection. So -- so my question then is does this legislation allow a judgment to be applied to homes worth over \$1 million, for example, or over a certain high-income threshold?

MR. GOTTFRIED: No.

MR. GOODELL: Now, you mentioned, correctly so,

that the value of housing can vary substantially across the State. In addition to the Federal homestead exemption, we have a New York State homestead exemption. And the New York State homestead exemption actually does vary by county across the State. Wouldn't that make more sense to look at just adjusting that homestead exemption as it relates to medical expenses rather than provide an unlimited homestead exemption?

MR. GOTTFRIED: I don't think so. Those dollar amounts with inflation tend to very quickly become way out of date and are hard to -- to apply in individual circumstances. And, you know, you still have the provision that this bill amends that does not, in its current form, exempt a primary residence, hence the need for the bill.

MR. GOODELL: Of course under current law, if a hospital doesn't receive payment for the surgery, including elective surgery or cosmetic surgery or whatever the surgery might be, they get reimbursement, don't they, through the bad debt insurity pool?

MR. GOTTFRIED: In many cases they do. In most cases, that level of reimbursement can be pretty limited but whatever reimbursement they get, and we also have a financial assistance law in this State that says if you're -- depending on your level of income, there are limits on, at least in concept, it needs to be strengthened, but there is concept of a limit on what the hospital can charge you in the first place. So yes, those -- if a hospital gets -- gets its bill paid -- well, the -- the bad debt charity care system, you know, does not

reimburse a hospital bill by bill, it reimburse -- it provides financial aid to the hospital in bulk. So that system is not quite relevant of this bill, but I'm not quite sure what you're getting at so maybe if you could make the question --

MR. GOODELL: Okay.

MR. GOTTFRIED: -- clearer.

MR. GOODELL: But of course those financial protections that you mentioned in terms of protecting a consumer on excessive charges are -- tend to be income-related, right? I mean, if you're a very wealthy person you don't normally get those types of protections, correct?

MR. GOTTFRIED: That is correct.

MR. GOODELL: Thank you very much for your comments, Mr. Gottfried. As always, I appreciate your knowledge on these issues. Thank you so much.

On the bill, sir.

MR. GOTTFRIED: You're welcome.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. GOODELL: There's no doubt that in New York State we want to make sure that anyone who needs medical care gets it, and that that medical care does not bankrupt them. Fortunately in New York State between the essential care plan, private insurance, self-funded employer plans and Medicaid and Medicare, about 95 percent of our population is covered with insurance. That insurance, though, typically doesn't cover certain procedures, or is limited in

certain procedures, particularly cosmetic surgery, optional surgeries, and some other plans where it's not considered a major medical expense. So in those situations, of course, the provider for sometimes very expensive cosmetic surgery, wants to make sure they get paid and many of the providers will sign an installment payment plan with a patient so they don't have to come up with all the money up front, especially if they're a patient with moderate means.

The problem with this bill is it says those installment payment plans won't be enforceable by a judgment against the individual's home regardless of the individual's income and regardless of the value of their home. So you can have a wealthy couple go in with cosmetic surgery, they own a multi-million dollar home and as the sponsor noted, there's no -- no limit on the value of the home that they would have, no limit on their homestead exemption whatsoever. Under current law, there's a limit on how much equity you can have before a judgment kicks in.

So I appreciate the sponsor's desire, but all of us need to recognize that if you've got somebody that's got a multi-million dollar home and they run up a large medical expense for optional services and they don't have to pay because there's no judgment against their property, everyone else has to pay more, either in higher insurance rates or higher fees from the provider, or higher costs to the hospital. There's no free ride. So I would support this concept if it were limited to those who have modest means or modest homes, but this bill is not limited to those with modest means or modest homes or

getting necessary care and, instead, would implement an unlimited homestead exemption regardless of the value of the person's home, regardless of whether it was optional service, and regardless of whether the patient has been reimbursed by the insurance company has refused to pay the provider. And the net effect of an unlimited homestead exemption is that everyone else, including our senior citizens and those who are retirees and everyone else will pay much more for coverage.

And for that reason, I and many of my colleagues will be opposing this bill in this current format. Thank you, sir. And again, thank you to my colleague. I always appreciate your comments, sir.

ACTING SPEAKER AUBRY: Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER AUBRY: The Clerk will record the vote on Assembly print 7363. This is a Pparty vote. Any member who wishes to be recorded as an exception to the Conference position is reminded to contact the Majority or Minority Leader at the numbers previously provided.

Mr. Goodell.

MR. GOODELL: Thank you, sir. The Republican Conference is generally opposed to this legislation, but certainly those who support it are encouraged to vote in favor on the floor of the Assembly, or let the Minority Leader's Office know. Thank you, sir.

ACTING SPEAKER AUBRY: Thank you.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Thank you, Mr.

Speaker. The Majority Conference is generally going to be in favor of this pro-consumer bill; however, there may be colleagues that would decide not to do so. They should feel free to contact the Majority Leader's Office and we will be happy to record their vote.

ACTING SPEAKER AUBRY: Thank you, Mrs. Peoples-Stokes.

(The Clerk recorded the vote.)

Mrs. Peoples-Stokes to explain her vote.

MRS. PEOPLES-STOKES: Thank you, Mr.

Speaker, for the opportunity to explain my vote. I actually rise to thank the sponsor of this legislation, because I think what this will do is perhaps stop pushing people into homelessness after they've had a major medical issue. And I do understand that when you use medical and hospital services they do need to be compensated, but there are times in life when people just don't have the resources to the extent that people -- that hospitals are asking for. And the last thing you should be able to do is make a person homeless after you've made them healthy. And I think that this legislation will go a long way to helping to ensure that that doesn't happen. And, by the way, we will be joining other states that already do this because it makes sense to protect people's homes that's actually the first step in having generational wealth to pass on to your family.

And so I really like this legislation a lot and I'm



encouraging all of my colleagues to, you know, vote in favor of something that is for the people, actually it's for the people. It's not against hospitals or physicians, it's for the people and I am grateful to have the opportunity to support it and I thank the sponsor for introducing it.

ACTING SPEAKER AUBRY: Mrs. Peoples-Stokes in the affirmative.

Mr. Goodell.

MR. GOODELL: Thank you, sir. Please record my colleague Mr. Schmitt in the affirmative. Thank you, sir.

ACTING SPEAKER AUBRY: So noted.

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

Calendar No. 414, page 39, the Clerk will read.

THE CLERK: Assembly No. A09161, Calendar No. 414, Magnarelli. An act to amend the Vehicle and Traffic Law, in relation to making technical corrections to such law.

ACTING SPEAKER AUBRY: Mr. Goodell.

MR. GOODELL: Thank you, sir. Would the sponsor yield?

ACTING SPEAKER AUBRY: Mr. Magnarelli, will you yield, sir?

MR. MAGNARELLI: Yes, sir.

ACTING SPEAKER AUBRY: Mr. Magnarelli

yields.

MR. GOODELL: Thank you, Mr. Magnarelli. This bill is a chapter amendment relating to the legislation we passed last year dealing with speed cameras in highway construction zones and, as you know, last year there were a number of concerns raised about a lack of due process, no opportunity for the person who receives the citation to seek judicial review. We had strict liability of the owner so even if the owner was in Florida and it was somebody else like their son or daughter driving, the owner got the bill. There was a concern that the cameras would be on 24/7 even if there were no workers there. Of course the -- there's no obligation for an opportunity for an individual to verify the accuracy of the cameras. They were certified, but there's no independent verification. There was a concern that the speed limits themselves where the cameras were set significantly higher than the work speed zone, almost as though it was permission to go a certain speed over, I think it was ten miles an hour. Does this chapter amendment address any of those issues that were raised last year?

MR. MAGNARELLI: No, sir, it doesn't.

MR. GOODELL: What does it do?

MR. MAGNARELLI: It is simply an amendment to the bills that we passed dealing with work zones and also with enforcement of weight limitations on the BQE. And the amendments are to sections of the law impacted by each of these chapters because they overlapped and were separately amended. This is strictly a

technical cleanup bill simply relettering and renumbering overlapping provisions. It does nothing else. It has no policy impact whatsoever.

MR. GOODELL: Thank you very much, Mr. Magnarelli, for a clean understandable, precise, explanation of this chapter amendment. Thank you, sir.

On the bill.

ACTING SPEAKER AUBRY: On the bill, Mr. Goodell.

MR. GOODELL: I appreciate Mr. Magnarelli's comments, as always. There was a lot of opposition last year to this bill for the reasons that I mentioned dealing with due process, strict liability and inability of the driver to independently verify the accuracy of the camera, the fact that the cameras were set at ten miles an hour over the speed limit, which almost encourages people to go up to nine miles an hour faster. I'm disappointed that we don't see a chapter amendment that addresses those issues, because I think they're all readily addressable. I think there's solutions and as the -- as my colleague noted, this bill just renumbers and reletters the original bill without addressing any of those concerns.

So I suspect those who didn't like the first bill will probably not like the second bill even though it has new numbers and letters. And those who liked the first bill will probably be delighted to find that the lettering and numbering is more consistent with the other provisions of the law. Thank you, sir.

ACTING SPEAKER AUBRY: Thank you.

Read the last section.

THE CLERK: This act shall take immediately.

ACTING SPEAKER AUBRY: The Clerk will record the vote on Assembly print 9161. This is a Party vote. Any member who wishes to be recorded as an exception to the Conference position is reminded to contact the Majority or Minority Leader at the numbers previously provided.

Mr. Goodell.

MR. GOODELL: Thank you, sir. Although all my Republican colleagues I'm sure really appreciate a well-numbered and lettered legislation, since this bill doesn't address the original concerns, it will be a Party vote in the negative. Those who support it now that we have new lettering and numbering should certainly vote yes on the floor of the Assembly or contact the Minority Leader's Office and we will record your vote. Thank you, sir.

ACTING SPEAKER AUBRY: Thank you.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Mr. Speaker, the Majority colleagues will generally be voting in favor of this legislation; however, there may be others who would decide to be an exception. They should feel free to reach out to the Majority Leader's Office and we will properly record their vote. Thank you, sir.

ACTING SPEAKER AUBRY: Thank you, ma'am.

(The Clerk recorded the vote.)

Mr. Goodell.

MR. GOODELL: Thank you, sir. Please record the following colleagues in favor of this legislation: Mr. Brown, Mr. Byrne, Mr. DeStefano, and Mr. Walczyk. Thank you, sir.

ACTING SPEAKER AUBRY: So noted.

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

Calendar No. 463, page 44, the Clerk will read.

THE CLERK: Senate No. S06529, Calendar No. 463, Senator Stavisky (Glick--A09391). An act to amend the Education Law, in relation to prohibiting discrimination, intimidation and retaliation against students of proprietary schools who file a written complaint or exercise their right of private action against a proprietary school.

ACTING SPEAKER AUBRY: An explanation is requested, Ms. Glick.

MS. GLICK: Certainly, Mr. Speaker. The purpose of the bill is to protect students at private career schools from any retaliation, discrimination, should they bring a private right of action. They have the right under Education Law to file a complaint, Education Law 5003 1C, they can file a written complaint regarding the conduct of the school with the State Education Department, which explicitly gives them the right of action under the Department's complaint procedures. But we wouldn't want those students who do so from using any intimidation to dissuade students from proceeding

with said complaint.

I had an occasion some years ago to have two young women come to see me. You know, I don't know how they found me, but the school was in my district, they didn't live there, and they really felt that they had been misled, that the program of study that they were undertaking was actually provided no real career path and they felt that they had wasted not just money, but their time. One young woman -- they were very smart and they said, *You know, I could have been a nurse by now instead of some medical assistant for which they had no actual career path for me.* So they had tried to complain with the school and to try to get their money back and they really had no -- they had not gotten any response. And they were -- they tried to dissuade them from filing a complaint and the like. Ultimately, we had a positive resolution in that the State Education Department got them their money back, but they had lost quite a bit of time in what they said were useless, wasted watching of videos and no substantive education in an area that they thought they were going to get.

So this is an SED Departmental bill. They brought it to us so that -- I gather from their experience that sometimes schools can be maybe a little bit more aggressive in trying to dissuade students from filing those complaints.

MS. WALSH: Thank you, Mr. Speaker --

ACTING SPEAKER AUBRY: Ms. Walsh.

MS. WALSH: -- will the sponsor yield for just a

couple questions?

ACTING SPEAKER AUBRY: Ms. Glick, will you yield?

MS. GLICK: Sure.

ACTING SPEAKER AUBRY: Ms. Glick yields.

MS. WALSH: Thank you so much. So just a couple of questions to just clarify the bill. Your explanation was great. With a licensed, private career school which is what is referred to in the bill itself, could you just give some -- give some examples of what kind of school that would be, is that like a business school or like a --

MS. GLICK: I think it's pretty broad.

MS. WALSH: Yeah, okay.

MS. GLICK: The State Education Department has a pretty wide range of proprietary private career schools. They may do things that are some more technical that have to do with learning a particular skill around HVAC or in this instance, they were -- the school had a variety of health care related -- seemingly related career paths. So I think it's a pretty wide diverse group of schools and people choose those because they're not seeking a degree. They want something that gets them into a career track fast, and sometimes the presentation of what may, in fact, be a career path may be thinner than what is -- they are led to believe.

MS. WALSH: Okay. So is this -- does this bill kind of close a loophole? Are these protections already available to students who are at other kinds of schools but just these weren't

covered under existing law, or...

MS. GLICK: Well, I think they're guaranteed a right of private action under Education Law, but I think that probably the State Education Department has had some complaints that their attempts to pursue have been maybe more aggressively dissuaded than the Department felt was appropriate considering that under the law, they have that right. They don't want anyone to be discriminated against or retaliated against should they do that, and it might have something to do with the discussion of whether or not they should be getting any of their money back.

MS. WALSH: Okay. So you mentioned that this was an SED program bill. Do we have any idea about how pervasive a problem this is? I mean, you gave one of your own personal examples of being approached by a couple of students of proprietary school, but do we know -- do we have anything from SED indicating, you know, how great of a problem this might be?

MS. GLICK: You know, I honestly don't have data that indicates that there's a certain percentage of students that have experienced this, but clearly the Department felt that they've had enough pushback at some point that they felt that they needed to make certain that it was clear in the law that students were protected from intimidation based on this, you know, their seeking redress.

MS. WALSH: And I think it's interesting -- thank you. I think it's interesting that, and I didn't realize this until we began the debate, but really complaint, a complaint, my mind immediately



went towards perhaps a complaint about the behavior of a professor or the behavior of an instructor, something like that I would be familiar with, that kind of a complaint having done, you know, that kind of work in the past in my legal career. But this could be complaint, the word *complaint* could encompass just not feeling that this course of study was, you know, beneficial, or they want to get their money back or they don't feel like they're really being properly trained. It's really a broad sense of complaint, then, is that -- do I have that right?

MS. GLICK: They have a right under Education Law to file a complaint. The complaint could be about any range of things.

MS. WALSH: Okay.

MS. GLICK: But that there should not be any attempt to dissuade or intimidate somebody who is pursuing a right of action. And if they're pursuing a right of action, clearly they're not just looking to file a complaint that, you know, the lighting isn't good or something of that sort; they are essentially saying they want to get their money back.

MS. WALSH: And there are two tracks that are really available to such a student, then, there's the track of going through SED complaint process, or there'd be a track of going to a private right of action directly against the -- the school, correct?

MS. GLICK: Yes.

MS. WALSH: Okay. All right. Thank you very much for your answers to my questions.

MS. GLICK: Thank you.

MS. WALSH: And thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you.

Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER AUBRY: The Clerk will record the vote on Senate print 6529. This is a fast roll call. Any member who wishes to be recorded in the negative is reminded to contact the Majority or Minority Leader at the numbers previously provided.

(The Clerk recorded the vote.)

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Mr. Speaker, we didn't get a chance to give a quote of the day earlier, so I would like to give it now. And sometimes, you know, things seem more appropriate now than they would have seemed earlier. So the quote today is from Mary Anne Radmacher. She is a writer and an artist. She does a lot of workshops on living a fuller and creative balanced life. And so her words for us today, *Courage doesn't always roar. Sometimes, courage is that little voice at the end of the day that says, 'I'll try again tomorrow'*. Again, I think her words are very appropriate.

Mr. Speaker, I would ask if you have any further housekeeping or resolutions?

ACTING SPEAKER AUBRY: First of all, I think

you planned that.

(Laughter)

Never mind, you didn't forget it this morning, you planned that.

Certainly, we have some housekeeping.

On a motion by Mr. Englebright, page 22, Calendar No. 177, Bill No. 5532, amendments are received and adopted.

We have numerous fine resolutions which we will take up with one vote. On the resolutions, all those in favor signify by saying aye; opposed, no. The resolutions are adopted.

(Whereupon, Assembly Resolution Nos. 684-688 were unanimously approved.)

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Mr. Speaker, I move that the Assembly stand adjourned until 9:30 a.m., Thursday, March the 24th, tomorrow being a Session day.

ACTING SPEAKER AUBRY: We will try again tomorrow.

The Assembly is adjourned.

(Whereupon, at 4:57 p.m., the Assembly stood adjourned until Thursday, March 24th at 9:30 a.m., Thursday being a Session day.)