

**TUESDAY, JUNE 20, 2023**

**12:24 P.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 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 Monday, June the 19th.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Mr. Speaker, I move to dispense with the further reading of the Journal of June -- Monday,

June the 19th and that the same 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 Chambers, I want to start today with a quote from Steve Jobs, remember us -- most of us know of him; probably some of us even carry around an Apple product. But his words for us today is, *If you're working on something that you really care about, you don't have to be pushed. The vision actually pulls you.* Again, these words from Steve Jobs.

Mr. Speaker, the members have on their desk a main Calendar, we also have a debate list. And after housekeeping and introductions, we're going to be working off that debate list, beginning with Calendar No. 32 by you, sir, Mr. Aubry. And then we're gonna go to Rules Report No. 850 by Ms. Hunter; followed by Rules Report No. 735 by Ms. Bichotte Hermelyn. Later today we're gonna be calling for a Rules Committee to meet. That Committee is gonna produce an A-Calendar. We are going to announce further floor activity as we proceed, but you might imagine that that A-Calendar will be at some point taken up.

So, that's the general outline of where we are, Mr. Speaker. If you have housekeeping or introductions, now would be a perfect time. Thank you, sir.

ACTING SPEAKER AUBRY: No housekeeping,

thank you, and -- but Ms. Giglio has a introduction. I wouldn't forget you, Ms. Giglio, don't worry.

MS. GIGLIO: Thank you, Mr. Speaker. I would like to introduce a dear friend of mine from Suffolk County, Town of Southold, her name is Dawn Jacobs. She's here with us today. She is a public safety dispatcher and has saved many lives, including the -- giving CPR over the phone of a baby that was not breathing. So she has an honorable job, she's a great friend and is happy to join us today.

If you would please extend all the cordialities of the House and the floor to her. Thank you.

ACTING SPEAKER AUBRY: Certainly. On behalf of Ms. Giglio, the Speaker and all the members, we welcome you here to the New York State Assembly, extend to you the privileges of the floor. Congratulations on the great work that you're doing, keep that work up and know you are always welcome here in the New York State Assembly, and happy summertime. Good to see you.

(Applause)

(Pause)

ACTING SPEAKER ZEBROWSKI: Page 21, Calendar No. 32, the Clerk will read.

THE CLERK: Assembly No. A02878-A, Calendar No. 32, Aubry, Kim, Taylor, Forrest, Burgos, Reyes, Hevesi, Fahy, O'Donnell, Mitaynes, Anderson, Mamdani, Jackson, Clark, Simon, González-Rojas, Seawright, Carroll, Gallagher, Darling, Burdick, Cruz, Epstein, Hunter, Meeks, Weprin, Kelles, L. Rosenthal, Otis,

Cook, Dinowitz, Septimo, Gibbs, Dickens, Glick, Davila, Hyndman, Pretlow, Ramos, Tapia, Lunsford, Ardila, Simone, Raga, Shimsky, Alvarez, De Los Santos, Bores, Levenberg, Walker. An act to amend the Criminal Procedure Law, in relation to motions to vacate judgment; and to repeal certain provisions of such law relating thereto.

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

An explanation has been requested, Mr. Aubry.

MR. AUBRY: Thank you, Mr. Speaker. This bill amends Article 440 of the Criminal Procedure Law, which governs the judgment motions to provide people previously convicted of crimes the opportunity for a meaningful review to -- to assure redress of wrongful convictions, including in cases where the person has pled guilty. An early print of this bill passed the Assembly in March, which was subsequently amended by the Senate and recalled to the Assembly as an A-print. The A-print of this bill makes some amendments to the bill. It clarifies that only the conviction that has been decriminalized is vacated, not the entire judgment. It clarifies that the Federal courts referred to in 440.10(i)(1) are those with jurisdiction over the New York State laws that has issues. While this would include the Southern District of New York as a Federal court whose holdings could be the basis of a lawful (inaudible), an opinion out of the U.S. 9th Judicial Court would not. Amends the section related to assigned counsel so that a pro se applicant can file an

application for assignment of counsel. While this already happens in practice, this is intended to create a uniform standard for all judgments. Eliminates the one-day protect New Yorkers felony expansion language, limits the discovery requirement for the prosecutors and -- excuse me, and law enforcement, among others.

ACTING SPEAKER ZEBROWSKI: Mr. Morinello.

MR. MORINELLO: Thank you, Mr. Speaker. Will the sponsor yield for a couple of questions?

MR. AUBRY: Certainly, Mr. Morinello.

MR. MORINELLO: Thank you.

ACTING SPEAKER ZEBROWSKI: The sponsor yields.

MR. MORINELLO: Are there currently provisions in the Criminal Procedure Law protecting defendants from wrongful convictions?

MR. AUBRY: Yes.

MR. MORINELLO: Okay. That would be Section 440 of the Criminal Procedure Law, correct?

MR. AUBRY: Yes.

MR. MORINELLO: And within that, there are various categories. After trial, new evidence being included can be appealed by 440.10(1)(g); is that correct?

MR. AUBRY: Yes.

MR. MORINELLO: Okay. Defendants who pled guilty but are exonerated by DNA evidence, is that already in the

CPL?

MR. AUBRY: No.

MR. MORINELLO: Pardon?

MR. AUBRY: I said no.

MR. MORINELLO: I would ask your counsel to look at 440.10 subdivision 1 (g-11).

What about defendants who did not understand their guilty pleas or were coerced into pleading guilty?

MR. AUBRY: Hold one minute while I confer with learned counsel.

MR. MORINELLO: Sure.

(Pause)

MR. AUBRY: So yes, but the Court of Appeals overturned that component part in, I believe, People vs. Tiger, if you'd refer to that.

MR. MORINELLO: What about those who didn't understand their guilty pleas or were coerced into pleading guilty?

MR. AUBRY: Again, those who did not understand their guilty plea?

MR. MORINELLO: Yes. Or coerced.

MR. AUBRY: So we say yes to that.

MR. MORINELLO: Convicted of -- because of misconduct by police or prosecutors?

MR. AUBRY: Yes.

MR. MORINELLO: Convicted because of

ineffective assistance of counsel?

MR. AUBRY: Yes.

MR. MORINELLO: Defendants who are entitled to the benefit of a retroactive change in the law?

MR. AUBRY: Yes.

MR. MORINELLO: Defendants who were not warned of immigration consequences of a guilty plea?

MR. AUBRY: Once again, yes.

MR. MORINELLO: Okay. So, it would just seem that all the areas that need to be addressed for someone who has the ability to ask for reconsideration are addressed already in the Criminal Procedure Law.

MR. AUBRY: I'm sorry, you'll have to say it again.

MR. MORINELLO: Well, currently it appears that under the Criminal Procedure Law, every opportunity for a reopening or an appeal after the conviction some time later, it appears that there's already provisions in the Criminal Procedure Law to afford those that were wrongfully convicted of the ability to reopen theirs.

(Pause)

MR. AUBRY: So again, so for people who are actually innocent, we're trying to expedite their ability to seek justice in these cases. And as we said in the previous debate, we listed any number of cases in the State of New York where innocence was determined years and years after imprisonment was -- the sentence that they served, and we, as the State, paid dearly for that because

those people were due restitution. And so in assisting and expediting this process and making sure that people have their ability to seek justice where they have been convicted and/or pleaded guilty to crimes they did not commit, I think what we do is provide further faith in our justice system that will not be so long deterred. And, of course, we've named a number of cases where that has happened, and we've seen what has occurred in our State in this manner.

MR. MORINELLO: But once someone realizes that they were wrongfully convicted and there is some sort of proof, do they not have the immediate right to then make this request to exonerate?

MR. AUBRY: Well, we clearly have people who have contended that they were innocent all the way through the process until the conviction and still went to jail and ended up later on being proved that they were not guilty of the crime they were convicted of. And so we think that this bill as it now amended assists in that process and assists those individuals to seek justice in a way that is more reasonable.

MR. MORINELLO: It seems that this bill would never make a conviction final, that something would always be there so that it would always seem to be an open issue; am I correct in that?

MR. AUBRY: I don't agree. I think what the bill does is gives an opportunity for people to seek the truth when that truth may have been deterred in the criminal justice process that they underwent. And so any -- you know, this is not an automatic, they



still have to seek approval and file for it and be reviewed to determine whether or not they have enough basis to proceed. So it isn't simply a open-ended process that has no end to it. It is a process that allows the court to look at these kinds of circumstances, regardless of how the judgment was made.

MR. MORINELLO: And this would be the trial court would have the right to look at it, correct?

MR. AUBRY: I can't -- we can't hear you. Say it again, I'm sorry.

MR. MORINELLO: The trial court would have the authority to look at this?

MR. AUBRY: The trial court or a court otherwise designated if the judge was no longer around to make the judgment.

MR. MORINELLO: And then this would also allow the defendant or those convicted to file an app -- a request to the trial court even if the Appellate Division has -- had ruled against that particular point.

(Pause)

MR. AUBRY: We're trying to determine if that's true or not. One moment, if you please.

MR. MORINELLO: Thank you.

On the bill, please.

ACTING SPEAKER ZEBROWSKI: On the bill.

MR. AUBRY: On the bill, Mr. Morinello.

MR. MORINELLO: Thank you.

(Laughter)

MR. AUBRY: As I -- as I said in the last one, old dog, new tricks. Thank you.

(Laughter)

MR. MORINELLO: All right.

On the bill, please.

ACTING SPEAKER ZEBROWSKI: On the bill, Mr. Morinello.

(Laughter)

MR. MORINELLO: It just seems that as admirable as the purpose of this is, it just seems that it is not needed. It'll overburden the system. But one -- one of the issues, then, is victims will have to be on their pins and needles, will have to await forever for justice because this opens the door where this could be done -- there's never any finality, and so there's not finality for the victim. In addition, in fact as written, the bill would allow trial-level courts to, in effect, review the decisions of Appellate Courts, an issue that has been previously decided by an Appellate Court could be raised again on a motion to a trial-level court to vacate the judgment by the defendant. Simply alleging one fact has not been an issue on the previous appeal. Issues that could be raised in that way could have nothing to do with the wrongfulness of the conviction but can involve any issue in the case, whether raised at the initial trial level or not. As a result, if the bill becomes law, not only will convictions never be final, no issue will ever be final. Furthermore, the hierarchy of our court system

would be turned on its heads as trial-level courts second-guess Appellate Courts on essentially the same issues that the Appellate Courts had previously decided.

Also, during this debate it was stated that the State has paid out moneys to those that may have been wrongfully convicted. But in order to be eligible for that, there would have had to have been an exoneration or an overturn of that conviction. So that in and of itself shows that the procedure is there, it is working, and that those that were wrongfully convicted that have new evidence or have reason to bring it up are already protected.

Thank you very much.

ACTING SPEAKER ZEBROWSKI: Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER ZEBROWSKI: A Party vote has been requested.

Mr. Goodell.

MR. GOODELL: Thank you, sir. For the reasons mentioned by my colleague, the Republican Conference will be generally opposed to this bill. Those who support it are certainly welcome and encouraged to vote yes here on the floor. Thank you, sir.

ACTING SPEAKER ZEBROWSKI: Thank you.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Thank you, Mr.

Speaker. The Majority Conference is going to be in support of this progressive piece of legislation; however, there may be a few that would decide to be an exception, they should do so at their seats.

ACTING SPEAKER ZEBROWSKI: Thank you.

The Clerk will record the vote.

(The Clerk recorded the vote.)

Mr. McGowan to explain his vote.

MR. MCGOWAN: Thank you, Mr. Speaker. I rise to explain my vote. I'll be voting in the negative on this bill. It's certainly a laudable goal, no one wants wrongful convictions. But under our law currently, there are numerous -- a number of mechanisms that can allow someone to challenge a conviction based upon the determination or learning later that the evidence was, in fact, false. I feel that -- that this bill is -- is too broad, and really, I think the -- the people who are gonna like this bill the most are probably criminal appellate attorneys because they're gonna be able to go through the record of virtually any case, including a plea or certainly after trial, and examine this much broader standard of -- of evidence that was likely relied upon the fact finder at trial, or that was likely relied upon by any party as a basis for a plea agreement. That's very broad. And that doesn't mean that the evidence, looking at it as a whole, in the totality of the circumstances, didn't match the standard by which the defendant is held, which is guilt beyond a reasonable doubt. I think this is not good for crime victims, this is not good for -- for the finality of -- of the case, of -- of the parties being able to move

forward, as my colleague mentioned. And again, while a laudable goal, certainly not done the right way and -- and way too broad.

So, respectfully, Mr. Speaker, I will be in the negative on this bill. Thank you, sir.

ACTING SPEAKER ZEBROWSKI: Mr. McGowan in the negative.

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

Page 18, Rules Report No. 850, the Clerk will

THE CLERK: Senate No. S07549-A, Rules Report No. 850, Senator Thomas (Assembly No. A07763, Hunter). An act in relation -- relating to a temporary in rem foreclosure moratorium; and providing for the repeal of such provisions upon the expiration thereof.

ACTING SPEAKER ZEBROWSKI: An explanation has been requested, Ms. Hunter.

MS. HUNTER: Yes, thank you. The purpose of this bill is to institute an in rem foreclosure moratorium to ensure that the New York State tax districts comply with the recent SCOTUS ruling. This is just to ensure we have legislative clarity until we get legislation in relative to Article XI. The Tyler decision did put in a de facto moratorium, this would codify that. There is an exemption for those that are already in compliance, and Article XI cannot be changed without our State action.

ACTING SPEAKER AUBRY: Mr. Goodell.

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

MS. HUNTER: Sure.

ACTING SPEAKER AUBRY: Ms. Hunter yields.

MR. GOODELL: Thank you, Ms. Hunter. So, the general purpose of this law, as I understand it, is to impose a moratorium on any tax sales with a couple of exceptions; is that correct?

MS. HUNTER: Yes.

MR. GOODELL: And so the Supreme Court ruling said that if you have a tax sale and the proceeds from the tax sale exceed the amount the taxpayer owed, the surplus had to be returned to the owner, correct?

MS. HUNTER: Correct.

MR. GOODELL: But the Supreme Court did not in any way question or challenge the right of the municipality to keep all the money up to the full amount that was due on the taxes, correct?

MS. HUNTER: They -- they would give back surplus minus the taxes owed, plus any fees or penalties.

MR. GOODELL: So, a simple example. Let's say there was 25,000 in back taxes, they had a tax sale, the property sells for 35,000, they keep the 25,000 that was owed in taxes and then the Supreme ruling would return the \$10,000 surplus, correct?

MS. HUNTER: Yes.

MR. GOODELL: Now, with a couple of exceptions, which we'll talk about, this bill would put in a one-year moratorium on any tax sales, correct?

MS. HUNTER: Any taxes?

MR. GOODELL: Yes.

MS. HUNTER: You still have to pay your taxes.

MR. GOODELL: The tax foreclosure sale, since --

MS. HUNTER: Oh, tax foreclosure.

MR. GOODELL: -- we're putting a moratorium, right, for a year on any tax foreclosure sales.

MS. HUNTER: Yes.

MR. GOODELL: With a couple of exceptions, right?

MS. HUNTER: Yes.

MR. GOODELL: So using that example that I had just a moment ago, rather than sell the property for 35,000 and return the 10,000, this bill would prohibit the municipality from even having a tax sale and collecting the first 25,000 that was owed to the municipality, correct?

(Pause)

MS. HUNTER: Yes. It would hold any of the exceeds surplus in a trust.

MR. GOODELL: Well, this actually says no tax district shall convey to any person a title to any tax-delinquent parcel which has been the subject of an in rem tax foreclosure proceeding, with a couple of small exceptions, correct?

(Pause)

MS. HUNTER: So, anything --

(Pause)

-- funds post-sale would be held in a trust until the moratorium has expired.

MR. GOODELL: Well, it bars the tax sale completely, right? Now, there is, by the way --

MS. HUNTER: If it's in an Article XI jurisdiction.

MR. GOODELL: Right. So there is a couple exceptions; one exception is if the taxing district, the municipality, acquired a tax title between May 25, 2023 and prior to June 1st. Why is there a one-week window where you could acquire a tax lien and go ahead with a tax foreclosure, but we ban all the rest of them? I mean, impose a moratorium on all the rest of them.

MS. HUNTER: It's May 25th to July 1st.

MR. GOODELL: Right, that's one week, right? Oh, I'm sorry, a month and a -- a little over a month, right? It's five weeks, why do we have a five-week window?

MS. HUNTER: That was just for the municipalities that were already in the process post-title.

MR. GOODELL: Well, as you know, a lot of counties get titled maybe in January and schedule the tax sale in June or July. Those counties would not be protected by that exemption, this only applies to counties that acquired title in that five-week period, correct?



(Pause)

MS. HUNTER: If they acquired title within that five-week period.

MR. GOODELL: Right. And everyone else is just out, right? They have a moratorium.

MS. HUNTER: Yes, if they are in an Article XI district.

MR. GOODELL: And how many counties qualify for that exception? Am I correct it was hand-drafted for a couple of individual counties?

MS. HUNTER: No, this was not hand-drafted for individual counties.

MR. GOODELL: Then which counties can qualify for that exemption and which of the other 64 counties are out in the cold?

MS. HUNTER: I -- I don't have that exact number, but just as point of reference relative to the draft of this piece of legislation, we did hear from relevant parties like the Association of Counties, Pacific Legal Foundation, my own county who is having this issue, and the Association of Towns, as well.

MR. GOODELL: Now, you're which county?

MS. HUNTER: Onondaga.

MR. GOODELL: And did Onondaga take tax title between May 25th and July 1st of this year?

MS. HUNTER: Did they or have they?

MR. GOODELL: Have they, yes.

MS. HUNTER: I don't know. I don't know.

MR. GOODELL: My guess is they did.

MS. HUNTER: Okay.

MR. GOODELL: So this law wouldn't apply to them. Have you heard from the County Executives Association? Because I've heard from my County Executive who said this will blow a \$5 million gap in his budget this year. Have you heard about -- from the County Executives (inaudible/cross-talk) --

MS. HUNTER: Well, I've heard from my County Executive.

MR. GOODELL: -- all the others.

MS. HUNTER: My County Executive, who is part of, obviously, the Association of Counties who is asking for this because they would like clarification on what to do relative to this decision. And mind you, if we're going backwards before, talking about how we got to this point, you know, for those counties who have been taking properties and -- and selling them and keeping the surplus, we found that to be the Supreme Court said that was unconstitutional. So we're just trying to give clarity and codify to make sure that the process is done appropriately, and those counties who haven't been doing it, all right, and have been taking people's property and not giving surplus that they have the amount of time necessary and that they become in compliance during the moratorium then they can move forward. But we need to make sure we're

responsible for Article XI --

MR. GOODELL: Well, let's talk about coming into coming into compliance, because I know you've been saying that if they take the surplus and hold it in a trust, then they would be in compliance with the Supreme Court, right? And we all agree, I think we're all in agreement, Supreme Court decisions never barred municipalities from collecting the taxes that were due, it only talked about what was surplus, correct?

MS. HUNTER: Correct.

MR. GOODELL: Now, you do correctly note that if you have a methodology for returning the surplus, this moratorium wouldn't apply. But looking at page 2, starting on paragraph 2, that exception only applies if you had those provisions in place since 1993 or 1994, right?

MS. HUNTER: Correct.

MR. GOODELL: So this moratorium would not allow a municipality to adopt a surplus proceeds trust fund tomorrow, they still wouldn't qualify. Because there's no way they can do it tomorrow and still have done it in 1994, right?

MS. HUNTER: Well, yes, but Article XI can only be changed with State action. It will be up to us to make sure that the process is in place appropriately relative to this Tyler decision. So we don't want to make sure that counties are picking and choosing how they implement to become in compliance, it's our responsibility to make sure that they are.

MR. GOODELL: Now, I mentioned that in my county, which is roughly, by the way, 150th of the State, no surprise since I represent just a county and a little sliver of a nation, another nation, the Seneca Nation. For our county, it was a \$5 million hole. What is it Statewide? Am I correct it would be in the range of a \$750 million gap in county budgets?

MS. HUNTER: We don't have that number right now.

MR. GOODELL: I mean, we're talking about a moratorium on all property tax foreclosures and we don't know how much it's going to cost our local governments?

MS. HUNTER: Right, but we're talking about a one-year moratorium where this will be remedied. And -- and I -- I understand what you're saying relative to having a deficit, but we're also talking about the fact that they were having, and I don't want to say it's ill-gotten gains, but they were taking monies that all weren't allowed for them to -- to keep and receive. So we want to make sure that that is rectified appropriately.

MR. GOODELL: All right. Now, of course, you know, a lot of times these tax foreclosures involve properties that are vacant. I mean, when somebody lets their property go for taxes, they're not usually on top of maintenance and repair and everything else. Isn't it true that if we have a moratorium with only a five-week exemption that might apply to a couple of special counties, those properties when they go up will not only owe another full year of

taxes, but they will have deteriorated another full year, correct?

MS. HUNTER: Well, I suppose in that instance that could be true, but every county may be different. My county might be two years before they do a tax seizure, yours might be three years. And, again, this is just for one year, they'd become in compliance, they could be doing it, get this done more quickly. And also, there are people responsible to upkeep of the property. And I believe we did pass something here saying if properties weren't up to code that municipalities could add that on to their tax bill.

MR. GOODELL: Yes, I know we keep adding more and more on. But where in this language does it say that if they come in compliance within the year they can move forward? Because I didn't see it.

(Pause)

MS. HUNTER: It's not specified.

MR. GOODELL: Okay. So this is a hard moratorium for one year with the exception of a couple special counties, which may include yours, we're not sure, a five-week carveout in the middle for some unknown reason, we don't know why, right, every other county who foreclosed earlier or later is nailed, they can't get anything. Let me ask you this: A lot of the counties reimburse towns or villages or cities within their jurisdiction for unpaid taxes. Does this bill do anything to address that situation or are counties still required to reimburse the towns, villages and cities even though this bill prohibits them from foreclosing and collecting

that money?

MS. HUNTER: Right. That's not included in this. And my county does that. They front all of the towns and villages, minus the City of Syracuse, the property taxes and they're the ones who are responsible to do the tax foreclosures. But again --

MR. GOODELL: But just to be clear, we're not sure if this bill even applies to your county, right?

MS. HUNTER: What's that?

MR. GOODELL: Just to be clear, we're not sure this bill even applies to your county, right, because your county may have acquired title between May 25th and July 1st, right?

MS. HUNTER: Again, but that was -- that five-week period was put in place to give time for those that were already in the process, that short window post-Tyler.

MR. GOODELL: But just to be clear, if you foreclose, say, on May 24th, so you're still in the process, this ban would apply, correct? If you were already in the process and you foreclosed two weeks earlier, this ban still applies, right?

(Pause)

MS. HUNTER: Well, we don't want to make guesses. This --

MR. GOODELL: So we're -- just to be clear, this only excepts that particular county that might have foreclosed after May 25th, an arbitrary date pulled out of the air, and before July 5th, and the rest of them can't collect any of their outstanding unpaid taxes,

correct, for a year?

MS. HUNTER: Again --

MR. GOODELL: Right? That's what this says, right?

MS. HUNTER: This is for a one-year moratorium --

MR. GOODELL: One-year moratorium, we're on that, yup.

MS. HUNTER: -- based on a decision by the Supreme Court that said it was unconstitutional to take people's homes and not give them the excess proceeds. We are just allowing one year, one simple year to allow counties to get themselves within compliance to allow us time, as the State who is responsible, to codify and get everything corrected within Article XI.

MR. GOODELL: Except for whatever one county might be within that five-week period. For them, apparently we don't care about it. Thank you.

On the bill, sir.

ACTING SPEAKER AUBRY: Right. And --

MR. GOODELL: Can you imagine if someone came to us and said, *We think it'd be great if we had a one-year moratorium on your salary, but don't worry, next year you'll get paid.* Really? This says to every one of our counties across this great State, *You cannot foreclose on any of your tax liens and collect anything that's due to you for a full year, with one exception. If you happen to foreclose after May 25th and before July 1st, then you can go ahead.*

*Supreme Court be damned if you happen to fall in that little window.*

Now, is there an alternative? Absolutely. No one here today is arguing that counties are entitled to what they're owed, everyone agrees. Everyone in this Chamber recognizes the Supreme Court decision that says if the county is paid more than they're owed, they have to return this surplus to the owner. We agree. So why aren't we debating a bill here that requires counties to return the surplus and let counties proceed with a tax foreclosure? Instead, we're talking about a multi-, multi-, multi-million-dollar hit on counties. Just tell the county, *Hey, it's 750 million that we're taking out of your pockets because you can't do any foreclosures this year.* How are they supposed to cover that, a line of credit? Their budgets are already done. Their budgets already include these funds. We're smarter than this. We can pass legislation that says keep the surplus in trust until we figure out how to deal with it. That's easy, isn't it? And isn't that the right solution? But instead, we blow a hole through every county budget, with the exception of one that happens to foreclose after May 25th and before July 1st. But with everyone else, we nail the counties.

This is not the right approach. We should be simply telling the counties, *Keep the surplus so that you can return it to the seller in accordance with the Supreme Court.* They can read the Supreme Court decision. They don't need us to shut down the entire system so that they can read the Supreme Court decision, they can do it on their own.

Now, if you don't think waiting a year to be paid



means anything, as you watch the property deteriorate, as you get more and more zombie properties because these properties are not on the tax roll and not being taken care of, then we're missing the point here, aren't we? We should be helping municipalities, not hurting them. For that reason, I can't support it.

Thank you, sir.

ACTING SPEAKER AUBRY: Thank you.

Mr. Ra.

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

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

MS. HUNTER: Certainly.

ACTING SPEAKER AUBRY: The sponsor yields.

MR. RA: Most -- mostly just some points of clarification, but -- but let me start with the exception and, in particular, those dates. So, my understanding is the May 25th date comes from when this decision was handed down by the Supreme Court, correct?

MS. HUNTER: Correct.

MR. RA: And where does the July 1st date come from? Is there a particular reason for that date?

(Pause)

MS. HUNTER: The -- this was in conversation with our stakeholders to try to allow time for us to come up with a

mechanism to be able to move forward so that it wasn't just on that May 25th date.

MR. RA: And if, say, you know, this has passed the Senate I believe, if this passes here, the Governor signs it, suppose the Governor signs it six months from now, which isn't, you know, un -- unheard of in -- in this Chamber as we get out of Session and usually a lot of stuff waits until later in the year, no -- nothing would change there, right? It was still be that period of time, which I would think is a little bit of uncertainty because the local governments wouldn't necessarily know prior to that July 1st date whether this bill is going to get signed into law or not.

MS. HUNTER: So if we do nothing, there is still this de facto moratorium that, again, we're trying to codify with this, and if we do nothing and the Governor doesn't sign it until December 31st --

(Pause)

-- oh yeah, there's still the moratorium if you're not being compliant. And again, it would still be us. But a member had mentioned why can't we just, well, we're on the last days of a -- a Session that was supposed to be an ending, we still have to change this Article XI in order for all of us to be in compliance.

MR. RA: Okay. So let's -- let's get into that part of this now. For clarification, to be in compliance, for -- for a municipality to be in compliance, what do they need to do?

MS. HUNTER: The mechanism in place in order for them to return the surplus funds.

MR. RA: Okay. And if a municipality were to do that, come into compliance as you're saying, they would still be subject to the moratorium, correct, unless it applies where Mr. Goodell brought up back -- all the way back into the early '90s?

MS. HUNTER: Well, nothing stops them from changing their local laws now to come into compliance.

MR. RA: But if they were to do that tomorrow or a month from now or at any point during this moratorium, they're still subject to the moratorium under the language of this bill, correct?

(Pause)

MS. HUNTER: So, based on Section 2 where -- and maybe it's not explicitly stated to, you know, our -- our liking, that it states that - glasses on here - if the municipality becomes in compliance, then they would be exempt just like these other municipalities that are already in compliance.

MR. RA: Sorry, say that again. Section 2, you're saying line 10 on, on the first page?

(Pause)

MS. HUNTER: This -- this bill provides us clarity relative to what -- I know it doesn't seem like that, but this bill does provide us clarity with the moratorium, one year, in order for these counties to be able to get this right. Those that opted out in 1994 are already in compliance, they're exempt, this doesn't apply to them.

MR. RA: Correct.

MS. HUNTER: This is for a county like mine who

were taking properties, keeping these excess funds, and we want to make sure they are all following the exact same process, that there is no room for error so if they miss steps in the process that they have to start all over again at the beginning. Again, we're just trying to codify Tyler's ruling, one year to make sure that these municipalities that weren't in compliance now are in compliance.

MR. RA: Okay. Got -- got it. But, again, if a municipality were to come into compliance during this moratorium period, are they still subject to the moratorium through the end of the one year?

MS. HUNTER: No.

MR. RA: Okay. And where -- what language provides for that in this bill? Because I see the language in Section 3 that talks about what you just mentioned, having come into compliance back -- back in the '90s, but where in the bill does it say that they would not be subject to this?

(Pause)

MS. HUNTER: Section 2.

MR. RA: So now --

MS. HUNTER: Page 2, Section 2 where we're talking about those --

(Pause)

MR. RA: So again, that -- you're talking about the language on page 2, from -- starting at line 7? I guess --

MS. HUNTER: Yes, yes.

MR. RA: -- subsection 2 of Section 3 of the bill.

MS. HUNTER: Yes.

MR. RA: But again, that talks about, you know, on January 1st, 1993, adopt a local law no later than July 1st, 1994, and then August 1st, 1994. That does not seem to me to describe the circumstances that would exist for a municipality that were to come into compliance, put this process in place tomorrow or a month from now or six months from now. How does it apply to that municipality?

MS. HUNTER: If they're not under Article XI, they can fix it themselves. If they are, we must act, hence, codifying this Tyler decision and the moratorium in order for us to take another step when we come back to make sure that we take care of Article XI.

MR. RA: Okay. I'm -- I'm going to ask again, a municipality who comes into compliance who doesn't -- this section does not apply to them, they did not have any of this in place. They -- they can come into compliance and move forward with these types of foreclosures, or they cannot?

MS. HUNTER: If they're not subject to Article XI.

MR. RA: If they're not subject to Article XI, the moratorium applies to them for the full year, or...

MS. HUNTER: Yes.

MR. RA: Okay, thank you.

My -- my last question, I guess, is -- is this, and, you know, I agree -- I agree with this court decision. I think it's a -- a rarity these days that we would see something that is a 9-0 decision in

anything in any way controversial, but it certainly makes sense, you know, that the government can't take the excess value of -- of a property. So I agree with that completely, and I think that if we were adopting a piece of legislation here to just provide to say to the municipalities, *You cannot do this, you need to put procedures in place to make sure that's returned*, I think would be fine. This -- this language is more broad in terms of the prohibitions on the municipality.

Now, my other question is really relative not just to the municipality, but to the property owner that has this, I'll call it equity, value, whatever, in that piece of property, that if we delay this, right, aren't we going to have another year of property tax delinquency, other things that may be on the property that are now eating up what monies would have otherwise been able to be returned to that homeowner?

MS. HUNTER: We want to make sure we're getting this right. I mean, there are municipalities that are exempt already who are good players and who have been doing the right thing. We're just trying to make sure, given that this decision just came. Had this decision not come, there were bills already in play in front of this Legislature to have conversations. The Governor had actually put something in her budget relative to this very thing, which we, you know, did not take up a single bill this -- this Session. But we are where we are right now because of this Tyler decision. So we're wanting to make sure -- and again, we're -- we're talking about, well,

if the municipalities don't get their money, and if the people don't get their money. We want to make sure uniformly that the municipalities are working in good order, that they are in compliance with a process that is set forward, that we have time to act relative to Article XI, or, yes, Article XI, and it's just one year. And not wanting to rush something forward gives us time to actually work through with these municipalities to make sure they get it right. Put proceeds in the bank, keep it there for -- for them to be able to give out these exceed -- excess surplus, you know, later. But again, we're talking about one year based on something that just happened. We're just trying to make sure, working with stakeholders. This didn't come out from the sky, this piece of legislation, this came from stakeholders who were saying, *Hey, we want to make sure we have a process to work through. Can we just have a brief pause while we work through in codifying this decision.*

MR. RA: Understood. And I -- I'm not sure, you know, there'd be any mechanism to put any proceeds in the bank because the -- the county can't move forward with any type of foreclosure. And -- and I understand the need to pause here, but I think what we're essentially doing is saying we need more time as a State, and if a county is able to move much more quickly than the State, we are preventing them from doing that.

So I thank you for taking the time to answer my -- my questions.

Mr. Speaker, on the bill.

MS. HUNTER: I don't agree with that.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. RA: So, just -- just back to the prior concern I just raised, suppose -- I'll give you, you know, some round numbers here. Suppose a -- there was a property who [sic] would get foreclosed on, and because of this under -- prior to this decision, maybe the county would end up with \$25,000 in excess of -- of what was owed and now that's money that the Supreme Court has said would be a taking from the homeowner, that \$25,000. Okay? Now, let's suppose there's, I don't know, \$12,000 a year in property taxes on -- on that piece of property, which maybe for some people in the State that seems excessive -- not at all for us on Long Island -- maybe with some interest that goes up a few thousand dollars more. Because there's a moratorium, you have a whole nother year of that delinquency, of late costs on prior payments that are owed, as well as new tax bills that are going to come due, which might end up at the end of the day the difference between that homeowner getting returned that \$25,000 and maybe them getting, I don't know, \$4- or \$5,000 when you factor in new bills that have come due and late fees.

So in addition to the concern at the local government level, and again, I think we're basically telling the counties, *If you're able to move faster than the State, I'm sorry, we need more time to figure this out.* But there's a concern at the homeowner level as well that we should be looking to bring these types of things to a conclusion, they take long enough as it is. And like I said, I agree



with the Court's decision, but I think that it would make more sense for us just to make explicit in the law, you can't hold this money, you have to set something up, and just once you set that up and make sure you can return those funds, move forward with -- with things as you would in the past.

For those reasons, I'm gonna be casting my voting in the negative. Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you.

Mr. Manktelow.

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

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

MS. HUNTER: Certainly.

ACTING SPEAKER AUBRY: Ms. Hunter yields.

MR. MANKTELOW: Good afternoon, Ms. Hunter; how are you?

MS. HUNTER: Very good, thank you.

MR. MANKTELOW: Good. Just a -- just a question. How will this affect abandoned properties or zombie properties that we're in the process of cleaning up across the State? And I know a lot of our local municipalities are pushing for that as well as the State, and I know our land banks have done a great, great bit of work with this. How with this affect those properties?

(Pause)

MS. HUNTER: The process will be put on hold, obviously, until the municipality comes into compliance. And I just -- I just want to reiterate, again, there is a de facto moratorium from the Supreme Court ruling. This would codify that. If we do nothing, the moratorium still would be there and it would still be up to us, the State, to act relative to those municipalities under Article XI. So it's our responsibility to take care of this.

MR. MANKTELOW: All right. And -- and just so I understand, there -- there are no carveouts for the abandoned properties or the zombie properties, correct?

MS. HUNTER: No.

MR. MANKTELOW: All right. Thank you for answering the question, much appreciated.

MS. HUNTER: You're welcome.

MR. MANKTELOW: Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you, sir.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Thank you, Mr. Speaker. I -- I do want to ask the sponsor one quick question if she will yield.

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

MS. HUNTER: Yes.

ACTING SPEAKER AUBRY: Ms. Hunter yields.

MRS. PEOPLES-STOKES: I want to say it's in the

very last section where you talk about this being applicable in most in rem foreclosures. Are there any exclusions at all?

(Pause)

MS. HUNTER: The in rem foreclosures that were for the municipalities that are already in compliance. For example, your county.

MRS. PEOPLES-STOKES: Yeah, well, that's a good one. I thought you might be speaking of that one. But doesn't this apply to the county, it also applies to municipalities like cities, too, right?

MS. HUNTER: All tax -- all tax districts.

MRS. PEOPLES-STOKES: Good. And I only say good because there are literally thousands of people who have already had their properties sold in foreclosure, and the equity that they should have gotten out on it was kept by the municipality. Now, I -- I'm not going to hold anybody accountable for that because it's not the right thing to do. But I do have to agree with my colleague on the other side who said I agree with the Supreme Court decision. That was absolutely the right decision. And I do also think it's the right decision for us to say to counties and taxing authorities, *You cannot do it in this manner. You have a year to help us understand why you were doing it that way and what you could do differently.* And I think that's reasonable.

I also think that, you know, some of these taxing authorities can use this time to actually work with the person or the

people or the company that is in foreclosure to figure out how to keep their property. There are -- there are things that local governments can do to provide an advantage to their citizens, and I would hope that they would do that.

So I want to thank you very much for sponsoring this, and on the bill, Mr. Speaker.

I know this -- this seems like, just by the previous debate that we've heard that this is the wrong thing for the State to be doing. I think it's absolutely the right thing for the State to be doing. Somebody needs to say, because everybody that's a property owner is not necessarily very wealthy. Everybody that's a property owner, quite frankly, in many cases, sometimes have these properties for, like, 30 years and they've been passed on to them by their families before them. It should not be taken when you know that assessed evaluation of these properties have gone up without giving them the benefit of having access to that surplus. And I think we start there by saying, *We're gonna give you a year to figure out how you never do this again*, and then we're gonna see what happens and hopefully at the end of that time, these municipalities, including my own, the City of Buffalo, will understand that you can do foreclosures, you can. If people are unwilling to pay and you've done whatever you can to try to help them understand that they have a responsibility and they have to -- if they can't do it, you can take some action, but you can't take all the benefit from it. You can take what you've lost in your taxes and you can give them the rest and that's it. And I'm hopeful that this

leads us towards that process, and I want to thank the sponsor for submitting this legislation because I was actually looking at sponsoring something similar myself. So thank you, Madam Hunter.

ACTING SPEAKER AUBRY: Thank you.

Mr. Gray.

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

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

MS. HUNTER: Yes.

ACTING SPEAKER AUBRY: Ms. Hunter yields.

MR. GRAY: Thank you very much. So just -- just quickly, what's the uncertainty of the Tyler decision that we're addressing here? Because the -- the legislation, the bill, says we're gonna deal with a certain --

MS. HUNTER: Article XI and those municipalities that didn't opt out.

MR. GRAY: But some municipalities right now under the Tyler decision have to return the surplus funds, correct?

MS. HUNTER: Right.

MR. GRAY: Okay. So they're really -- they can -- they can enact a local law without a moratorium; is that correct?

(Pause)

MS. HUNTER: Right. Well, in addition, as I stated, we have to act relative to Article XI, we, the State Legislature. So this

would give us enough time to put something forward in order to rectify, you know, the situation that there were bills out there that there was no agreement on with all of those amendments. So we're just trying to get to the point in this short amount of time to ensure that all municipalities come into compliance.

MR. GRAY: What -- what is the short amount of time?

MS. HUNTER: There's a one-year moratorium.

MR. GRAY: Okay. And do you think that -- and, first of all, so who's going to address the legal uncertainty here? Who -- who is actually doing -- finding the solution?

MS. HUNTER: We are.

MR. GRAY: Okay.

MS. HUNTER: We -- we're responsible for Article XI. We are responsible to make an amendment. Again, as I said, the Tyler decision puts together a de facto moratorium, and so municipalities would be in the same position. We're codifying, giving them enough time to get their acts together, and it will be essential for us when we reconvene to make sure that we take care of Article XI.

MR. GRAY: But municipalities right now are going to be bound by the Tyler decision, so we could act simultaneously. I mean, there's -- the reason for the moratorium, they're gonna be -- they're gonna be foreclosing, returning properties. By actually delaying the foreclosing, they're gonna be re-levying taxes, school taxes, local -- the town water and water sewer district taxes, all things

like that. So really, it's gonna diminish the surpluses; is that correct?

MS. HUNTER: No. That would still happen under this de facto moratorium. This is trying to make sure we're giving legislative clarity to municipalities as we move forward. Again, I can understand we're talking about for those municipalities who have been taking excess funds, they're not theirs to keep. And so we need to make sure that they have a process in place to give funds back to those legal owners.

MR. GRAY: Right. And I think all the municipalities understand right now that they have to -- they have to comply with the Tyler decision, correct?

MS. HUNTER: Right.

MR. GRAY: So, we --

MS. HUNTER: And they're looking for clarity from the --

MR. GRAY: We can figure out --

MS. HUNTER: -- State.

MR. GRAY: We can figure out Article XI while -- while municipalities are going through the foreclosure process and complying with the Tyler decision, correct?

(Pause)

MS. HUNTER: Right, if they're not subject to Article XI they can move forward and do that.

MR. GRAY: They can pass a local law. So -- so really, the point of the moratorium is moot.

MS. HUNTER: Article XI counties cannot act on their own. We must do something in order to --

MR. GRAY: Those are -- those are non-charter counties, correct?

MS. HUNTER: Correct.

MR. GRAY: Correct, okay. And -- so let's go back to Onondaga, because Onondaga -- I happened to read their -- their charter yesterday -- it says taxes levied, so levied shall include an amount to be known as a reserve for uncollected taxes. So they're actually leveling -- levying to people for uncollected taxes, correct? So -- so we'd be better off if we're just letting the foreclosures proceed and then the surpluses which they're bound by Tyler to continue forward, right?

MS. HUNTER: We -- I can keep saying the same thing over, which I'm happy to keep saying the same thing, you know, over, but this comes from having conversations with those stakeholders who did not opt out of Article XI who want to make sure they will in the future be in compliance. And so this is not for the folks who already opted out in the '90s and who are moving forward and doing what -- that they're supposed to do. This is for those counties, municipalities who did not opt out, who are in the position that they put themselves in. We're trying to work with them in order to move this process forward, codify this de facto moratorium that's already in place by the Supreme Court so that we can come together and rectify this Article XI issue, the State Legislature. And while I,



you know, can understand the -- the situation about, you know, millions of dollars and not being able to collect from -- the counties not being able to collect, they were keeping monies that weren't theirs. So we can go back and forth about that, you know, all day. We're just trying to make sure, the Supreme Court did something, there were bills in place before the Supreme Court decision that were out here, we weren't agreeing on, we couldn't come to an agreement on. Here comes the Supreme Court codifying unconstitutional taking. We want to make sure that we move forward this process appropriately for municipalities, that the guidance is very clear going forward relative to Article XI.

MR. GRAY: Right, okay. Thank you very much.

Mr. Speaker, on the bill.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. GRAY: So, the Tyler/Hennepin decision is very clear that they have to return the funds, and a moratorium is just going to -- just going to add to additional taxes that residents are going to be -- or people that have failed to pay their taxes are going to be responsible for, thereby -- thereby really diminishing what the surplus is available to them. So this does not effectively help anybody. It certainly doesn't effectively help the counties or any municipality that has to make other jurisdictions whole. So I will be voting in the negative.

Thank you.

ACTING SPEAKER AUBRY: Thank you, sir.

Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER AUBRY: A Party vote has been requested.

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 yes here on the floor.

ACTING SPEAKER AUBRY: Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Thank you, Mr. Speaker. The Democratic Conference is generally going to be in favor of this piece of legislation; however, there may be some that would choose to be an exception, they should feel free to do so at their seat. Thank you, sir.

ACTING SPEAKER AUBRY: Thank you, both.

The Clerk will record the vote.

(The Clerk recorded the vote.)

Ms. Hunter to explain her vote.

MS. HUNTER: Yes, Mr. Speaker, thank you for letting me explain my vote. We're talking today about righting actually a -- a wrong. When we're talking surplus funds, surplus equals money that's not a municipality's. So we need to be very clear about that. And we are working with these municipalities to provide them time and guidance in order to get it right, to give the money back to those folks who -- as the Majority Leader had mentioned and many

others, you know, have stated before, this could be property that someone owned for 40, 50 years and whatever the circumstances are, were not able to pay taxes. We used a \$25,000 example. What if the house was \$400,000 and the surplus was \$300,000? That's a significant amount of equity that could go back to a homeowner. We're not telling people not to take your -- pay their taxes, but we're also saying let us codify what the Supreme Court decision was, let us make sure that we have parameters in place, let us come back and take care of Article XI and give people's property back to them because the Constitution says it belongs to them, Mr. Speaker.

Thank you.

ACTING SPEAKER AUBRY: Ms. Hunter in the affirmative.

Mr. Gray to explain his vote.

MR. GRAY: Thank you, Mr. Speaker, to explain my vote. Count -- you know, jurisdictions, tax enforcement juris -- jurisdictions that foreclose on properties usually do it, obviously, for nonpayment of taxes. This will further people's indebtedness in terms of their tax obligations. And taxing jurisdictions also use that money to remediate blighted property, abandoned property and zombie properties within their jurisdiction. So it is going to do nothing in terms of property improvements and taxing jurisdictions, and it's going to do nothing for, you know, the -- the rightful owner of the property who is entitled to the surplus. And the Tyler decision already provides for that, so there is no need for this moratorium.

So thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you, sir.

Ms. Fahy to explain her vote.

MS. FAHY: Thank you, Mr. Speaker, to explain my vote just very briefly. While I look forward to continuing to work with the sponsor on this, my county of residents has raised a number of concerns, and whether -- and although it affects only a small number of cases, they're wondering if this may be necessary for compliance. And while we continue to work on a constitutional replacement in light of the Supreme Court case, a replacement for Article XI on these tax lien foreclosures, I am concerned that any delays in proceedings could end up leading to -- to more demolitions here in Albany, which has been a problem in the past.

So with that, I'm going to vote in the negative and, again, look forward to the sponsor knowing her intent was to be of assistance in light of this recent Supreme Court case. Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Ms. Fahy in the negative.

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

Page 16, Rules Report No. 735, the Clerk will read.

THE CLERK: Assembly No. A07334, Rules Report No. 735, Bichotte Hermelyn. An act to amend the New York City

Charter, in relation to the procurement limit for businesses owned by women and minorities.

ACTING SPEAKER AUBRY: On a motion by Ms. Bichotte Hermelyn, the Senate bill is before the House. The Senate bill is advanced.

An explanation is requested, Ms. Bichotte Hermelyn.

MS. BICHOTTE HERMELYN: Yes, this -- this bill would amend the New York City Charter to increase the City's discretionary spending threshold to 1.5 million for noncompetitive contracts, which also includes construction.

ACTING SPEAKER AUBRY: Mr. Goodell.

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

ACTING SPEAKER AUBRY: Ms. Bichotte Hermelyn, will you yield?

MS. BICHOTTE HERMELYN: Yes.

ACTING SPEAKER AUBRY: The sponsor yields.

MR. GOODELL: Thank you, Ms. Bichotte. What is the normal threshold where you have to have competitive bidding for municipal contracts?

MS. BICHOTTE HERMELYN: So, the threshold currently right now is at \$1 million.

MR. GOODELL: No, I mean absent MWBE status, what's the threshold for competitive bidding?

MS. BICHOTTE HERMELYN: There aren't any

thresholds, like...

MR. GOODELL: Well, I mean a municipality, if they go over a certain threshold, has to use competitive bidding, right? They don't do it for small purchases, but for larger purchases --

MS. BICHOTTE HERMELYN: Well -- well, according to the PPB rules, to be exempt from the competitive bidding, initially years ago in the City of New York it was at 25k to 30k, and that was for -- for -- it was for small businesses, MWBE. And since then, we have increased the threshold from that small amount to 150,000, and then to 500,000, then to a million, and now we're doing it to \$1.5 million.

MR. GOODELL: And how high do you think this will go? I mean, it started at 25,000, right, then it went, as you mentioned, 25,000 then higher, then higher. Two years ago it was a half-million, last year it was a million, this year it's a million-and-a-half. Do you have any projection on how high the exemption from competitive bidding will go in the future?

MS. BICHOTTE HERMELYN: I would hope it goes to maybe 10 million soon, or 15 million, and that's because that 1.5 million that we're discussing is crumbs compared to the billions and billions of dollars of procurement that has been excluding minorities and women historically over the course of the years. So that 1.5 million is nothing, it's just a drop in the bucket. We are dealing with a \$20 billion procurement opportunity, 30-, 40 billion. Whatever way you want to slice and dice the number, billions. And we're just talking

about 1.5 million. And I should tell you, Mr. Goodell, that that's just a cap. Many of the MWBEs are not even bidding for that 1.5 million threshold. It's not necessarily a -- a -- a giveaway thing, as well.

There is a process in obtaining that \$1.5 million threshold.

MR. GOODELL: Now, under current law, MWBEs also have a competitive advantage, right? If they're bidding in a competitive bid situation a municipality can award it to an MWBE even though they are not the lowest responsible bidder, correct?

MS. BICHOTTE HERMELYN: Yeah, that was the best value because -- and -- and oftentimes, a smaller business, it's not only MWBEs, but a smaller business can provide a much valuable product, much valuable service; however, they may not have the -- the capacity to provide a lower bid in the same way a bigger company, a larger company can.

MR. GOODELL: And what is that -- the existing advantage in terms of how much higher? I think we just raised it, didn't we, from 5 to 10 percent?

MS. BICHOTTE HERMELYN: Yes, it's about 10 percent. And it's still, again, that's just crumbs. It's still, you know, we're inching our way.

MR. GOODELL: So just as an example, let's say under the current procedure a \$1.5 million contract, without raising this, an MWBE could bid \$150,000 more and still get the contract, right, under current law?

MS. BICHOTTE HERMELYN: Under current law,

an MWBE can bid 150,000 more, exactly, if -- yes.

MR. GOODELL: And then in addition to having a 10 percent advantage over the lowest responsible bidder, isn't it true that a lot of our contracts also require a certain percentage of a public work, typically 30 or 35 percent be MWBE, correct?

MS. BICHOTTE HERMELYN: Correct. But I should say that a vast majority of these promises are not met. They say that it's -- it's a goal, it's not mandated. Very often, a lot of these large contractors are given waivers, which is a problem because we do have Minority- and Women-owned Businesses that can perform, but very oftentimes these companies are stating that they don't have -- they don't -- they don't see anybody who can do that particular job. So yes.

MR. GOODELL: Last year, or maybe it was a couple of years ago, the New York City Comptroller came out with a report citing the MWBE program and noted that there were, in his estimate, over 900,000 MWBEs in the State of New York, but at that time there were like 6,000 that were certified. Is that still your understanding that there's a huge, huge gap between the number of MWBEs that are certified compared to the total number that are women or minority-owned businesses in New York City?

MS. BICHOTTE HERMELYN: Well, the gap has definitely decreased, okay? So many years ago it was 6,000, but the City has implemented programs to expedite the process. It takes about an average of three months to certify a Minority- and Women



Business Enterprise. Very different from the State, the State takes about two years, it's a problem. And since then, they have reached over 10,000 MWBEs. Now, when you said 900,000 or 900 -- I -- I don't know where you're getting that number. We do have a number of potential women-owned and minority-owned businesses that are willing and able to work. Sometimes, you know, it's -- the onus is on them where they have to get their paperwork prepared to -- to -- to be certified.

MR. GOODELL: The 900,000 was the number that was cited in that Comptroller's report. So if we're now up to 10,000, that means --

MS. BICHOTTE HERMELYN: We're probably more than 10,000, so don't quote me.

MR. GOODELL: Okay. But if we're -- let's say we're 20,000, that would be just over 2 percent, right? I mean, if the -- if those numbers are right, which --

MS. BICHOTTE HERMELYN: Well, I don't know how the Comptroller was defining the 900,000 --

MR. GOODELL: Okay.

MS. BICHOTTE HERMELYN: -- okay? But I can certainly say that, you know, the City of New York, the composition of the working cohort, or working group of people of minority and women makes over 61 percent. Those are tax dollars that are contributing to our billion, billion dollars of procurement opportunity. And even with that, I would say for MBEs [sic], it's only 10 percent

who gets access to that \$25 billion procurement. That's tiny and --

MR. GOODELL: Yeah, I would agree.

MS. BICHOTTE HERMELYN: -- and that's bad. That's a big disparity.

MR. GOODELL: Absolutely. Thank you very much, I appreciate your comments.

MS. BICHOTTE HERMELYN: Mm-hmm. Thank you.

MR. GOODELL: On the bill, sir.

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

MR. GOODELL: To be honest with you, the MWBE program has been extraordinarily frustrating for many of us. I am delighted to hear that the City of New York can now evaluate an application in a matter of months. Upstate, it's years, and it is unbelievably difficult to become certified as an MWBE Upstate. And I've had companies that have been run by women, they're owned entirely by women who can't get certified. It takes them years to get certified. And so at the same time we want to have these programs to help MWBEs, what's happening is that the State recognizes that MWBEs have a huge statutory preference. If you're involved in a contract Upstate, unless you can get a waiver, 30, 35 percent of the work has to be done by an MWBE. If you're bidding in New York City or anywhere else, you can bid 10 percent higher on any contract and still be awarded. Because the rewards are so high, the State

apparently takes the view that their mission is to be a gatekeeper and restrict the number of people who are certified, apparently in the misguided view that MWBEs are all out there to lie and cheat to get these huge advantages. It's a horrific disservice to all the MWBEs. And unfortunately, every time we increase the financial advantages without opening the door for legitimate businesses to become certified in a timely manner, we continue to create this huge gap where if you're one of the few that's certified, happy days. If you're not, you're out of the market.

And think about this: If in New York City they've certified 2 percent of the MWBEs and we have these huge benefits, but only if you're certified, the net effect is these advantages, ironically not the other 98 percent of MWBEs that are not certified, out of the bidding, which is exactly the opposite of what we want, right? We want all the MWBEs to be able to compete on a fair and open basis, but with the current system, the irony is this legislation actually hurts them because they no longer can be the lowest responsible bidder unless they bid more than 10 percent lower than the certified MWBE.

Ugh, it's so frustrating when we see the economics work counter to our objective to increase MWBE opportunities. Thank you, again, to my colleague.

ACTING SPEAKER AUBRY: Thank you, sir.

Ms. Giglio.

MS. GIGLIO: Yes. Thank you, Mr. Speaker. Will

the sponsor yield?

MS. BICHOTTE HERMELYN: Yes.

ACTING SPEAKER AUBRY: Ms. --

MS. GIGLIO: Okay. So if Turner Construction or (inaudible) Construction for LaGuardia Airport, JFK, any big project in New York City, there's a lot of housing projects that are going on right now, and these are \$20-, \$30 million projects, or \$50 million projects. Will that -- will that contractor be able to consider the MWBE for one-and-a-half million of that contract and then -- or is this a contract directly between the MWBE and the City of New York?

MS. BICHOTTE HERMELYN: It's a -- it's -- it's a -- it will be part of the PPB rules, the procurement rules where a City agency can have a noncompetitive bid process and select -- this is discretionary, that's why it's called discretionary -- for that particular. So it's not a conversation between the MWBE and the contractor. So those like the Turner Constructions and so forth, they have their own (inaudible), which is 30 percent.

MS. GIGLIO: Yes.

MS. BICHOTTE HERMELYN: Okay? And they have to go out and seek MWBEs to fulfill those promises.

MS. GIGLIO: Yes. Or get waivers.

MS. BICHOTTE HERMELYN: Right. And a lot of times they get waivers, which is something that we have to change, because they say, *Oh, we can't find people*, which is not true.

MS. GIGLIO: Yeah. Well, a lot of the problem is bonding, too. So if you're a big contractor and you're hiring an MWBE, they have to be bonded for the work that they're doing and then also, which is difficult --

MS. BICHOTTE HERMELYN: Very difficult.

MS. GIGLIO: -- for MWBEs, especially with a \$1.5 million contract is finding a bonding company.

MS. BICHOTTE HERMELYN: Right. So the one-and-a-half -- so I -- I would like for you to think of it as a separate thing, okay? The \$1.5 million is typically for smaller projects, smaller services, and it could fit in any of the categories whether it's construction services, professional, standard, what have you. And I would not want you to kind of mix the two. You can have a company, an MWBE who's eligible for the 1.5 million discretion and also participate in a 30 percent goal contract, subcontract with Turner Constructions. So let's -- let's try to keep those two separate.

MS. GIGLIO: Okay. And then my next question would be, on the -- the bidding, so you can procure a contract for 1.5 million or less --

MS. BICHOTTE HERMELYN: Mm-hmm.

MS. GIGLIO: And is there a minimum number of bids that has to be received, not necessarily -- not necessarily competitive, but if -- if, you know, one person bids it because one person knew about it and there aren't two other companies -- like, normally when we do a -- being from local government in a

noncompetitive bid, it's an emergency situation, you need to get something done immediately so you have to get at least three bids and then figure out who the most qualified bidder is and whether or not they would, you know, be eligible to do that work.

MS. BICHOTTE HERMELYN: Yes. So I believe that there are some safeguards that are in place. We have -- agencies are required to solicit at least three MWBEs --

MS. GIGLIO: Okay.

MS. BICHOTTE HERMELYN: -- to ensure the competition and the best value for the City. So yeah, so -- so within that process, there is a process within the process.

MS. GIGLIO: That would be great -- that's great; that's good news, I like that. So it's -- it kind of gives you an idea as to what the contract should actually cost, if you have a minimum of three bids that you've taken in.

MS. BICHOTTE HERMELYN: Exactly.

MS. GIGLIO: Otherwise you rebid it, right?

MS. BICHOTTE HERMELYN: Exactly.

MS. GIGLIO: Okay. Okay, great. And then the other question that I had was the, you know, MWBEs, I happen to be one and my last contract was New York --

ACTING SPEAKER AUBRY: Shhh.

MS. GIGLIO: -- University Hospital on 30th between 3rd and Lex where I was doing that under Turner Construction. And, you know, it was a great opportunity for a woman

business enterprise to get into the City, but there are compliance officers. Does the City of New York have a compliance officer to make sure that the WBE is compliant with the WBE outline? Because most of the time, you know, you're doing a great job in the MWBE office, and it's gotten a lot better over the years and the time frames have shortened in order to get people qualified. But the -- a lot of the, like, New York-New Jersey Port Authority and the City of New York depend on the State's qualification process to fill out and have a secondary license either with New York City or with the MTA. So I'm just wondering if New York City has a compliance office that would go out and make sure that if the person supplying, you know, a million-and-a-half worth of material, that they have a warehouse that has that material in it that they can sell to the City of New York, or is it going directly from the manufacturer to the City, which then the WBE would just be a pass-through and a broker.

MS. BICHOTTE HERMELYN: Right. So -- so I think both the State and the City has a compliance unit that checks everything that you have talked about. There have been some concerns with what they call "men with skirts," so very often White men will just give, you know, say, *Hey, my wife is the owner*. And so they -- there's some checks and balances to make sure that White women are actual owners. As you -- as you talk about warehouse and pass-throughs and distribution channels and so forth, there are compliance regulations put in place to see if that particular woman or minority-owned business enterprise is actually holding those assets,

that they own those assets, are they manufacturing those assets. And if they are a pass-through, there is a percentage, there's -- there's a sliding scale-type thing where that pass-through middle person would be -- would probably only get 30 percent credit as an MWBE.

So there's things in place right now currently in -- in the State and in the City. And I have to tell you, the City has done a great job. They have lifted their personal net worth, which is something that the State still has. They have increased their ways of assuring that MWBEs are certified within a three-month period, which the State is still struggling. You know, it takes two to three years, which is why, to our colleague, we need more funding and manpower to help escalate the certification process. I'm very happy that one of our colleagues here just passed a certification reciprocity bill which would allow the State to open their arms to those who've been certified in the City. So if the City takes only three months than the State, they don't have wait to be certified for two years in order to get State-certified. So to, again, our colleague's point in terms of having all of these MWBEs out there waiting for certification, that's another way that we can expedite the process.

MS. GIGLIO: So this doesn't preclude a company that is not a MWBE from bidding on the process, but if it's \$1.5 million or less, the City would automatically give that to the MWBE and not necessarily a company that's not certified.

MS. BICHOTTE HERMELYN: Well, it's -- it's their choice. They could -- they could give it to a White business, a White



male business, but it's the choice where the MWBE doesn't necessarily have to go through this, you know, this massive bidding process to get access to that 1.5. There will be a smaller pool of small businesses who will be competing amongst themselves, which is another issue because, again, as you mentioned, a lot of the MWBEs and small businesses are too small to get -- to have capacity, access to capital, as well as getting bonding qualified. And so this is just another route to allow small businesses, MWBEs to do work with the government and build capacity.

It showed that as we've been increasing the threshold, we've been seeing a -- a participation of about 20 to 33 percent increase in MWBE's participation, that's a huge thing.

MS. GIGLIO: It's great.

MS. BICHOTTE HERMELYN: It's great. So the 1.5, you know, we can -- we can go to the courts, we can continue to fight on crumbs, but the reality is it should be a lot higher, because we have a lot more way to go.

MS. GIGLIO: So anybody can bid on a contract with the State for 1.5 million or less and -- or I mean the City and then the City can decide if it's an MWBE or if it's just a company that's not certified who to give the contract to. So it's not mandatory that it has to go to a MWBE if it's 1.5 million or less.

MS. BICHOTTE HERMELYN: It's a discretion. It -- it -- it just allows that they can also consider MWBEs and that the MWBEs don't necessarily have to go through a competitive process

that includes a larger universe.

MS. GIGLIO: Okay. Thank you very much.

MS. BICHOTTE HERMELYN: Mm-hmm. Thank you.

Ms. GIGLIO: Thank you, Mr. Speaker.

On the bill.

ACTING SPEAKER AUBRY: On the bill.

MS. GIGLIO: I -- I -- I voted against this last year when it was increased to \$1 million because I wasn't really understanding the full process but the sponsor has answered my questions and this year I will be supporting it because anybody can bid on it and the City can decide who they're going to give the contract to, including who is most qualified to fulfill the contractual obligations.

Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you.

Mr. Ra.

MR. RA: Will the sponsor yield?

MS. BICHOTTE HERMELYN: Yes.

ACTING SPEAKER AUBRY: Ms. Bichotte Hermelyn yields.

MR. RA: Just quickly, you gave some data in terms of participation increases by MWBEs as the, you know, procurement limit has gone up. Do you have that data, you know, broken down at all, is that over the last few years because I know we did, as was mentioned earlier, we just made this go just a year ago and I assume

it's been in effect for less than a full year going from 500,000 to a million.

MS. BICHOTTE HERMELYN: Right. So -- so just so you know that the data as it relates to the increase from 150,000 to 500 million --

MR. RA: One hundred thousand.

MS. BICHOTTE HERMELYN: One hundred and fifty thousand to 500 million, we have some data that shows that the average size of contract awarded to MWBEs grows by 20 percent. Then, when we went from 100 -- 500k to 1 million, again it's very new, but so far the City has awarded 12 new contracts totaling 10.5 million and has amended 34 contracts with amendments totaling over 14.7.

Now, what -- what we can forecast potentially is that within the universe of the contracts in fiscal year 2022, the City had awarded contracts with a total of 83 million in amount of 1 million and 1.5. Most of these contracts involved professional services, construction services with the same universe of eligible contracts described in the under 1 million range. And they were contracts that were worth a total of 254 million. This increased from 1 million to 1.5. So the increase of the 1 million to 1.5 as we forecast, would then result in a 33 percent increase.

MR. RA: So give me that again because you said 84- and then 220-, 220- -- what was the number you gave?

MS. BICHOTTE HERMELYN: I gave you 83

million.

MR. RA: Okay. And then that's contracts under 1 million or that's between the 1 and 1.5?

MS. BICHOTTE HERMELYN: Between 1 million and 1.5.

MR. RA: Okay. And then what was the --

MS. BICHOTTE HERMELYN: The 250 million was contracts that were under 1 million range.

MR. RA: Under 1 million, okay.

MS. BICHOTTE HERMELYN: Mm-hmm.

MR. RA: So we're talking about eligibility for about \$84 million, at least based on last year's numbers, obviously. I would think that would --

MS. BICHOTTE HERMELYN: Crumbs, crumbs.

MR. RA: We -- you can call it crumbs, that's great but, you know, it's still taxpayer money. We've done set-asides --

MS. BICHOTTE HERMELYN: It's taxpayer money from the majority of --

MR. RA: We've done set-asides over the years. We've done all kinds of different things.

MS. BICHOTTE HERMELYN: It's not set-asides.

MR. RA: We've done all kinds of different things over the years. You can call it crumbs but it's still -- there's a reason why we have bidding in public contracts. So I -- I understand what you're trying to accomplish.

MS. BICHOTTE HERMELYN: And the reason why -- there's a reason why it was found in the City of Richmond vs. Croson that we -- if we provide data that shows that discrimination is existing -- still in existence, then we can provide programs to remedy that. The reason why we have these programs is because you know there's economic injustice. You have 61 percent of the total population who's contributing to a tax pool billions of dollars in just a small percentage, a drop in the bucket gets to benefit from the tax so we're saying the same thing. Tax dollars are going into a procurement budget. And you have women and minorities who have built the City, also and not getting their economic fair share. So we're putting in program -- it's allowed to do that, it's under the 14th Amendment equal protection, okay. It's allowed.

MR. RA: I don't think the debate is whether we're allowed to do that. I'm not -- I'm not in any way arguing that this is not a constitutional action. I think we have -- the ability we have obviously a law in place with regard to procurement and -- and we're modifying that and that -- and that's fine. But there may be MWBEs as well. There's -- there's small entities, there's large entities. There may be some -- I don't know that it's necessarily the case that none of them could ever win a contract under competitive bidding. I'm sure many have and can, but what we're trying to determine here --

MS. BICHOTTE HERMELYN: It's very few, it's very few.

MR. RA: -- what we're trying to determine here is

what the appropriate level is here because, as was stated earlier, you could have a -- a contract that's \$100,000, \$150,000 higher than another bidder that -- that it's going to be able to be awarded here. And obviously as that number goes up in what the limit is, the more of the chance that that gap could get bigger.

MS. BICHOTTE HERMELYN: Okay.

MR. RA: So, Madam Speaker, on the bill. Thank you.

ACTING SPEAKER WALLACE: On the bill.

MR. RA: So, you know, last year like I said, less than a year ago we upped this from 500,000 to 1 million. At the end of the day I think we all understand what the intention is here. I think we want to help not just MWBEs but all of our small businesses be able to access the ability to get contracts. I -- I still think to this date there's probably a lot more stuff that goes out-of-state that shouldn't. A lot more opportunities should be there for in-State businesses and certainly our MWBEs and we've taken all kinds of actions over the years to help these Minority- and Women-Owned Businesses get contracts, that's great. But we can't completely lose sight of the fact that what we're talking about is in public contracts, in public procurement we have laws related to competitive bidding. Why do we do it? Because taxpayer funds are being expended and we want to make sure that government is getting the best possible price, the best responsible bid. Somebody that's going to do the work, whatever it is, but they're going to do it in the most cost-effective manner because

that's what we owe the taxpayers of the State. Now there's certainly benefits that are accrued from -- from trying to help different types of businesses in the State and I have no problem with that, but when we just up this -- we went from 150- and we just keep going up and I think it was a good question. Where is the endpoint? Are -- are we going to be next year saying 3 million and then 5 million the year after that? I don't know. But I -- I think that the higher this number gets the more the gap could be between -- you know, if -- if you're talking about a bid coming in for \$100,000, chances are any different bids are going to be within maybe 10,000, \$20,000. As you get higher and higher there's more of a likelihood that you could have several hundred thousand dollars in difference in -- in the cost of the bid. So that's my concern and that's why I'm going to be voting in the negative. Thank you.

ACTING SPEAKER WALLACE: Ms. Bichotte Hermelyn on the bill.

MS. BICHOTTE HERMELYN: On the bill, thank you. Thank you, Mr. [Sic] Speaker for allowing me to speak on this bill. You know, I often ask the same question, where's my 40 acre and a mule? Until this day I'm asking, where's my 40 acre and a mule? The reasons why we have these programs in place is because they're still discrimination practices. I can tell you that in my district we fought for \$141 million to build a recreational center in the name of Shirley Chisholm, in a predominantly Black neighborhood and guess what? It went to a White firm. Where's the economic justice on that?

Where's my 40 acre and a mule? And those tax dollars, in those districts, were predominantly by people of color.

One of the most important battles I've fought since I've arrived in the Assembly in 2015 was to make it easier for Minority Women-Owned Businesses or MWBEs to succeed. And I'm continuously to ardently fight this uphill battle today while we have a chance to help level the playing field and ensure historically disenfranchise MWBEs get their fair share of the economic pie. MWBEs are playing a slow catchup for the decades and decades of being disproportionately stripped from our economic resources. Previous years I was proud to have sponsored a law that passed which doubled this threshold from 500,000 to 1 million, and there was a significant change in the participation and the contracts awarded. By increasing the threshold even further, the participation level of MWBEs will increase substantially and have a direct positive impact, economic impact. It will offer capacity to higher and have the tools to be successful without the barriers of competitive bidding process. A process that has been discriminatory. Let's remember, that insurances of cost-prohibitive barrier to entry and industries of construction and construction-related services. And in FY21 alone, if only half of the 100 prime contractors valued between 500,000 and 1 million had gone to MWBEs, an additional 37 million could have been awarded to MWBEs. So if I could raise the threshold to \$10 million I would. The evidence is clear, that raising the cap keeps bolstering MWBEs' success while benefiting New York.



After the State legislator [sic] raised the City's discretionary cap from 150k to 500k in 2019, the average size of contractors awarded to MWBEs rose by 20 percent. This change as advanced by New York City Mayor Eric Adams creates opportunity, increases to access to capital for MWBEs so that they can enter New York City awarding MWBEs higher value contracts through the non-competitive process. The 1.5 million increase, as mentioned, is not a big step forward. It's crumbs. Again, if we could increase this dollar amount to more millions of dollars it will probably have a bigger effect. It's time to keep leveling the playing field and sparing the success of Minority Women-Owned Business to uplift all New Yorkers.

Mr. Speaker, I'm very proud that this is a historic year in passing a number of MWBE bills such as the mentorship program which would allow the City to offer capacity billing for small businesses including MWBE by going to various training with various government agencies. A City and State MWBE certification reciprocity bill allow unsuccessful MWBE bidders to know why they didn't make a bid so that they can have a second chance next time. Changing the maximum number of employees during a disaster issuing -- issuing issues to 300 employees. Expanding the scope and requirements of the annual report from the division of MWBEs.

I want to thank, once again, the Speaker for making this historic, my colleagues, the Mayor of the City of New York and all the advocates for pushing the economic justice agenda. I will be

voting in the affirmative and I will ask my colleagues to join me in voting for this bill. Thank you.

ACTING SPEAKER WALLACE: Ms. Bichotte Hermelyn in the affirmative.

Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER WALLACE: A Party vote has been requested.

Mr. Goodell.

MR. GOODELL: Thank you, Madam Speaker. The Republican Conference is generally opposed to this legislation. Although we do have members that certainly support it and will be voting in the affirmative here on the floor. Thank you, Madam Speaker.

ACTING SPEAKER WALLACE: Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Thank you, Madam Speaker. The Majority Conference is going to be in favor of this piece of legislation. There could be a few of us that would desire to be an exception. They should feel free to do so at their seats. Thank you.

ACTING SPEAKER WALLACE: The Clerk will record the vote.

(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: Thank you, Madam Speaker. We're going to continue on our debate list. All of these next few bills are coming from the Rules Report. We're going to begin with Rules Report No. 84 by Ms. Joyner, followed by Rules Report No. 824 by Ms. Paulin, then Rules Report No. 497 by Ms. Jackson, then Rules Report No. 664 by Mr. Weprin. And then we're going to take up Rules Report No. 574, that one is by Ms. Reyes. We're going to take them in that order, Madam Speaker.

ACTING SPEAKER WALLACE: Page 10 of Rules Report No. 484, the Clerk will read.

THE CLERK: Assembly No. A01278-B, Rules Report No. 484, Joyner, Bores, Burdick, Simon, Ardila, Reyes, Taylor, Gibbs, Lunsford, Walker, L. Rosenthal, Wallace. An act to amend the Labor Law, in relation to prohibiting non-compete agreements and certain restrictive covenants.

ACTING SPEAKER WALLACE: On a motion by the Senate -- I'm sorry. On a motion by Ms. Joyner, the Senate bill is before the House. The Senate bill is advanced.

An explanation has been requested.

MS. JOYNER: Thank you. This bill would prohibit employers from seeking, demanding, requiring or accepting non-compete agreements.

ACTING SPEAKER WALLACE: Mr. Ra.

MR. RA: Thank you, Madam Speaker. Would the sponsor yield?

MS. JOYNER: Yes.

MR. RA: Thank you. So this bill, as you said, prohibits employers from seeking, requiring, demanding on non-compete agreements. There are currently a couple of things going on in this area, one of which is potential action by the Federal Government so let's start -- start there. There was talk of the Federal Government banning these types of agreements. My understanding is they have not move forward with that but is it correct that that was the impetus for this legislation?

MS. JOYNER: That is correct. So this piece of legislation mirrors what the FTC is doing. They currently have not finalized any rules, but again, you know, states are authorized to take more restrictive approaches, if necessary, but this bill is in line with what the FTC is also proposing.

MR. RA: Okay. And my understanding is that the FTC at this point has pushed this off into next year?

MS. JOYNER: I'm not sure of the deadline but there's no -- there are no proposed rules as of today.

MR. RA: Okay. Are you aware of any other state that has adopted this wide-ranging a ban on non-compete agreement?

MS. JOYNER: Yeah. So California has this piece of legislation; North Dakota, Oklahoma, Washington, D.C., Illinois, Virginia, Maine, Maryland, Rhode Island and New Hampshire has

similar non-compete bans but just for lower wage workers.

MR. RA: Just for... I'm sorry.

MS. JOYNER: Lower wage workers.

MR. RA: Okay. And -- and I think, you know, that point is an important one because I think many of us would agree with regard to lower wage workers that we should be acting to protect those workers and, you know, make sure that they're not being in any way exploited by their employers and I think that is really the point of us taking action in this area is -- is to protect employees. But I -- I want to talk about the current state of the law in New York because it's not currently the case that, you know, these can just be done just for the sake of -- of doing it by a business, right? We currently do have a standard that I think has come through the courts in New York State by which the courts determine whether or not a non-compete agreement is enforceable in New York State, correct?

MS. JOYNER: That is correct. They have a three-prong test on what courts generally disfavor non-compete agreements. So there's nothing to prohibit or allow these non-compete agreements but many people are entering into these agreements unknowingly or after they are employed and hired, they are being forced to sign these non-compete agreements and then it becomes a whole litigation process where people have to spend thousands of -- thousands of dollars to defend themselves against, you know, these -- these agreements that are not necessarily favored by the courts.

MR. RA: Yeah. So -- just so -- and -- and they're not

-- and -- and as you said, you know, we do a current three-prong test. So I -- I think it is helpful, though, that everybody understand what that is right now. So right now a non-compete agreement needs to be narrowly-tailored to protect legitimate business interests, right? And it has to be no broader than necessary to protect those legitimate interests. It has to impose no undue hardship on the employee and not be injurious to the public, correct?

MS. JOYNER: That is correct.

MR. RA: Okay. Now, this instead basically puts forth a blanket ban on the use of these types of agreements.

MS. JOYNER: That is correct.

MR. RA: Are there any exceptions or situations under which an employer would still be able to utilize such an agreement if this were adopted?

MS. JOYNER: So the current law protecting trade secrets, proprietary information, confidential lists or confidential information agreements can still be insert into to protect those -- those legitimate business interests, but as of right now this bill would create a blanket non-compete agreement.

MR. RA: Okay. And those would be really under other types of laws or theories of law --

MS. JOYNER: Correct, yes.

MR. RA: -- you know, a non-disclosure agreement or something with affect to that. Now, my understanding, though, is that many entities do -- or I'm sorry, other states that have adopted these

type of laws do have different type of exceptions. They may be for certain high-tech workers or financial services workers, you know, an industry like that being highly regulated. Why have a blanket ban as opposed to maybe some exceptions for -- for the type of workers that might be in those type of circumstances that they have access to sensitive information or trade secrets?

MS. JOYNER: So we believe that there are enough current safeguards and mechanisms in place right now to protect for those legitimate business interests. As far as having a salary threshold requirement or limiting it to certain industries, we do not feel like that is the best route so this is why we have the current bill as it is. But, no. There's no exceptions in terms of specific industries or certain salaries, no.

MR. RA: Okay. And -- now when we -- well, assuming we pass this, the Governor signs it. We wouldn't be able to -- our employers wouldn't be able to enter into these types of agreements going forward. What about any that are currently in effect that have been signed a contractual agreement between an employee and an employer?

MS. JOYNER: It's -- it's not retroactive.

MR. RA: So if --

MS. JOYNER: So it's going to apply to any agreements going forward after the effective date of this -- the passage of this bill.

MR. RA: So currently if somebody -- if an employer

and an employee had entered into this type of agreement and say it gets challenged in court, the courts would apply the three-part test we talked about earlier.

MS. JOYNER: Correct.

MR. RA: Correct. And then going forward, these would not be permissible to be able to use between an employee and employer. I guess lastly really is again, I get the intention, especially with regard to lower wage workers and -- and really industries where -- where there really isn't that type of sensitive information that might be a concern. But when you get into, you know, more sophisticated relationships where there may be trade secrets or there may be, you know, complex things that employee is trained on, I -- I -- I guess why not have some type of exceptions so that those -- that employee or employer currently, right, they can discuss and enter into an agreement with -- with both eyes open. Why not look at it more in terms of some level of transparency to make sure that a worker knows exactly what they're getting into and what restrictions might be on them but that the employer in a particular field or industry that needs to can protect their business interest?

MS. JOYNER: So we believe that there is enough in the law currently to help protect against those issues with dealing with sensitive or confidential information, but we are seeing that this is a problem that is pervasive and impacting lower wage workers and higher income workers. Physicians, we're seeing it in all industries at this point. Healthcare, engineering, technology, food services, temp



services, janitors, fitness companies, tattoo artists, hairstylists, Chipotle workers. We're seeing it run the whole gambit here. So, you know, New York is a state where we have higher income earners, right, and they may not necessarily be privy to confidential or secretive information but they're being held back from, you know, shopping their skills, having mobility to increase their salary because they're bound by these non-compete agreements. So that's why we did not pick a salary threshold or specifically narrow down it to a specific industry because we believe that there's enough protections in the current law that would address that issue.

MR. RA: And I -- I think there are as we said other, you know, theories of law and sections of law that would protect it but I don't think they do as directly as something like a non-compete is. I guess my last question, you mentioned -- you mentioned a number of different industries and workers which I would agree are not appropriate places for there to be a non-compete agreement, but I -- I can't imagine those would pass that test we talked about earlier. Now I certainly understand, right, that we -- you know, a Chipotle worker shouldn't have to go into court to throw out a non-compete agreement. I mean, I don't know, maybe -- maybe there's some magical formula on guacamole or something that they -- that the company thinks they're going to reveal. I would assume it would be something like that, some recipe or something, which seems a little silly to me, but I -- I -- I don't think that would pass this -- this test and certainly I would -- I would, you know, chastise any business that tried to do that

to a low wage worker knowing that they would have to go into court to throw it out and I think they are certainly opportunities that we can be more strict with regard -- with regard to this. But again, my problem is the blanket prohibition, because there are industries that I don't think that just, you know, a non-disclosure agreement or some other statutory or theory of law is going to be enough to protect that legitimate business interest.

MS. JOYNER: I agree with you. I agree. A Chipotle worker should not be prohibited from working across the street at a Taco Bell because of these non-compete agreements that many are unknowingly signing and entering into but there's an unspoken threat by employers, used by employers of *listen, you sign this, you're going to be prohibited from working somewhere else*. And people do not have the money to go into court to even fight and, you know, defend with this three-prong test so that's why -- that's another reason for this bill in terms of having that unspoken threat is also discouraging workers from challenging these agreements and also even entering into court. So this is why it's a blanket rule that will apply to all industries.

MR. RA: Thank you.

Mr. Speaker, on the bill.

ACTING SPEAKER ZACCARO: On the bill.

MR. RA: You know, one of the things I was just thinking about is, you know, a worker shouldn't have to go into court, you know, for -- for that certainly, but I find it kind of funny. I -- I

can't imagine the amount of times in this House in the recent years we've made sure that we made it impossible to have lower cost ways of -- of hearing disputes by banning arbitration and those types of things in every place under the sun, which -- which are cheaper ways that they've had in contracts like this for years to -- to be able to have a dispute come to a -- a quick, you know, resolution as opposed to somebody having to go into court. So I think there's some irony there. But -- but I just want to reiterate, you know, many of the -- the industries mentioned are not appropriate places for -- for a non-compete clause, but we are a state that is a capital for financial services industry that is continuing to try to reinvigorate our tech industry. And there are certainly situations in which those non-disclosure-type agreements and other types of laws are not sufficient.

Now employees, you know, have the opportunity to negotiate with a perspective employer, and if they are aware of what they're entering into, I think that is an arm's length transaction with both parties going into it with eyes wide open. With regard to companies, you know, trade secrets, processes. If employees leave and take those somewhere else, we have many employees -- employers struggle in this State. And if some small business were to lose, you know, what is, you know, one of the main things they do, that may be enough to drive them out of business. And then lastly as I said, a blanket prohibition is too strong an action here. Each industry is not the same. They have different needs. They should have the

right to contract it in a way that protects them and helps them grow. And as we talked about earlier, I'm going to repeat this. Narrowly-tailored to protect legitimate business interests has to be no broader than necessary to protect those interests. Impose no hardship on the employee and not be injurious to the public. So I think that a blanket ban goes too far in terms of allowing New York employers the ability to protect sensitive information and particular trade secrets, trade information that allow them to be successful. Thank you, Mr. Speaker.

ACTING SPEAKER ZACCARO: Mr. Ari Brown.

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

MS. JOYNER: Yes.

MR. A. BROWN: Thank you, Madam Sponsor. I think there may be an unintended consequence, a negative consequence towards the employee. This is something that happens quite often that you may want to remedy in some way. Quite often an employee buys a business from his employer, I saw many businesses in that regard and part of that contract is actually a non-competition clause, it happens all the time. So we can't always look at what the intention is, we have to actually look what the written law is and what the contract is developed. At the time that the contract is signed, he's still the employee and he's still with the other person, he or she is still the employer. This particular bill, possibly law, may cause a conflict where the -- the owner of the current business, the former employer,

can actually end up competing with the person that he sold the business with, end up hurting the employee, and that's very common, it happens every day of the week. It happened to me four times. In other words, I can sell a business, not allowed to sign a non-competition clause because we think it'll benefit the employee, but at the end of the day, I can just reopen that same business again because I wasn't allowed to sign a non-competition clause. Maybe we need a little adjustment here.

MS. JOYNER: There's nothing to prohibit confidentiality agreements or, you know, if it's a specific confidential list, those are still protected business interests that you can still enforce those types of agreements.

MR. A. BROWN: I appreciate that but what I'm getting at, is if someone owns a kitchen showroom and he's selling it to his employee, very common. And he's not allowed to sign that non-competition clause, forget about trade secrets. They commence with the sale, the next day the former owner opens up the same exact business once again because he wasn't allowed to sign the non-competition clause, because at the time one was the employee and one was the employer.

MS. JOYNER: I understand your argument. The bill does not address for sale companies, but under my reading of this bill any confidential lists, confidentiality agreements are still unenforceable under the law.

MR. A. BROWN: Thank you.

MS. JOYNER: Mm-hmm.

ACTING SPEAKER ZACCARO: Mr. Novakhov.

MR. NOVAKHOV: Thank you, Mr. Speaker.

Would the sponsor yield?

ACTING SPEAKER ZACCARO: Will the sponsor yield?

MS. JOYNER: Yes.

ACTING SPEAKER ZACCARO: The sponsor yields.

MR. NOVAKHOV: Thank you. So just coming from -- from my experience and I used to be a radio station owner. So a radio personality who didn't sign the such agreement and the radio station is investing a lot of money and effort to make this radio personality a star. Now, in a few years after investing all this money and effort, this radio personality leaves the station and goes to a different station and this will harm this radio station. How do you see -- I mean doing the blanket bill, how do you see this being solved?

MS. JOYNER: So, under Section 202 under the bill, it does speak about radio stations, networks. Currently in law there are protections already for the broadcast industries, which is very similar to this bill in terms of non-competes and banning non-competes. So this bill would just basically mirror what's already happening in practice. So that issue, yes, it's already been addressed and under this law, current law will still stand.

MR. NOVAKHOV: So you want to say that

entertainment companies and broadcast companies are the exception?

MS. JOYNER: They already are covered under non-compete agreements already. So this bill mirrors whatever protections that are currently available to that industry, and -- and to also answer your question, like there are inherent talents and skills that -- that truly belong to the worker, right? And we have to separate that from what's a legitimate business interest. So radio personality, again, that's already covered under current law, and this bill included that industry as well and it's very similar and mirrors what's already currently in law.

MR. NOVAKHOV: Okay. Thank you so much for answering the question. Thank you.

MS. JOYNER: Yes.

ACTING SPEAKER ZACCARO: Read the last section.

THE CLERK: This act shall take effect on the 30th day.

ACTING SPEAKER ZACCARO: A Party vote has been requested.

Mr. Goodell.

MR. GOODELL: Thank you, Mr. Speaker. The Republican Conference is generally opposed to this legislation for the reasons mentioned by my colleague. Those who support it can certainly vote in favor of it here on the floor. Thank you, sir.

ACTING SPEAKER ZACCARO: Mr. Benedetto.

MR. BENEDETTO: Mr. Speaker, I suggest this will be a Party vote for the Majority in the affirmative. If anybody cares to vote differently, they are free to do so.

ACTING SPEAKER ZACCARO: The Clerk will record the vote.

(The Clerk recorded the vote.)

Mr. Goodell to explain his vote.

MR. GOODELL: Thank you. Under current law it's very clear that non-compete agreements must be narrowly-tailored, they cannot impose an undue hardship on the employee, they cannot harm the public, they have to be reasonable in terms of length of time and geographic scope. All of this is well-established rules. What we haven't heard today is any reasons why the current rules don't work. But let me tell you why the current rules are needed. And why we need non-compete clauses. If you are a business in New York State and you deal with confidential information, you need a non-compete in addition to the non-disclosure, because a non-disclosure agreement or even a trademark protection only goes part way. If you have employees and you're introducing them to your primary customers, you want to make sure they don't meet the customer, turn around, undercut you the next day by leaving and opening a competing business. If you're selling a business, the buyer wants to make sure the seller isn't going to turn around and undercut him and destroy him and destroy the value of what he just paid for. I've had actual experience with this where I had a customer who ran a trucking



company and of course his dispatchers knew inside and out the methodology and the approach they use for calculating the charges. One of his dispatchers left, went to work for a competitor, undercut him unfairly, put the first company out of business. What this will do is hurt New York businesses, make it harder for them to be successful and encourage them to relocate sensitive operations out-of-state to the detriment of our State and its employees. For that reason I do not support it. Thank you, Mr. Speaker.

ACTING SPEAKER ZACCARO: Mr. Goodell in the negative.

Ms. Bichotte Hermelyn.

MS. BICHOTTE HERMELYN: Thank you, Mr. Speaker, for allowing me to explain my vote. This bill is certainly close to me because I just took a class on trade secrets at Brooklyn Law School and it was taught by Professor Kayman, and we understood the purpose of non-competes. I certainly support the notion of non-compete bill as it supports and encourage employment mobility and also competition. I also understand why we do need to protect businesses, especially when there's an economic advantage. We certainly wouldn't want Popeyes to get access to KFC's secret. However, we do have other states that includes a local hybrid where we have Massachusetts that have an exemption for certain industries like physicians, nurses, psychologists, social workers, broadcasting industries and lawyers. And I would just say that maybe we could consider having a salary threshold for COs, CFOs and key scientists.

Mr. Speaker, I will be supporting this bill because I do believe an employee should be able to move freely to their choice of employment and should not be a slave. I also believe that we should consider certain non-compete clauses and restrictive covenance for high-ranking executives, scientists, and certain industries with very high salary threshold. Thank you very much.

ACTING SPEAKER AUBRY: Ms. Bichotte Hermelyn in the affirmative.

Ms. Walsh to explain her vote.

MS. WALSH: Thank you very much, Mr. Speaker. So I understand where I believe the sponsor is coming from and I do think that there is a need for some reform in this area. Having done plaintiff side Labor Employment Law for several years at the beginning of my practice, I remember that there were a lot of, I don't want to say low level because everybody's job is important, but people that you wouldn't necessarily think would be subject to a non-compete agreement that were or confused, didn't -- signed it at the beginning of their employment, would come to me at the end and say *I guess I signed this, my former employer's now putting this in front of me, I want to be able to work, what do I do.* We don't want to have all of those people have to go into court or have the anxiety about not knowing what they can and can't do. I do think that there is a pretty strong body of case law that everybody's talked about that really do narrowly construe these types of provisions. Where the sponsor kind of loses me and for the reason why I can't support this legislation is

and has been stated, that I do think that a blanket ban is not the best solution. I think that there be a way to rework this legislation to make it a little bit more narrowly-tailored to try to address those individuals that I'm talking about that consulted with me while still at the same time recognizing that employers and employees make investments in each other during the course of employment and that they should be able to openly contract with each other about what they're going to be allowed to do and not do with their close of employment. So I'll be voting in the negative but I do appreciate where the sponsor is coming from and I would hope that in the future we could maybe work on this legislation a little more. Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you. Ms. Walsh in the negative.

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

Page 17, Rules Report No. 824, the Clerk will read.

THE CLERK: Senate No. S04907-A, Rules Report No. 824, Senator Rivera (Paulin, Seawright, Ardila, McDonald, Forrest, Septimo, González-Rojas, Simone, Solages, L. Rosenthal, Benedetto, Simon, Epstein, Glick, Zaccaro, Thiele, Aubry, Colton, Levenberg, Reyes, Zinerman, Dinowitz, Steck, De Los Santos, Raga, Otis -- A6275A). An act to amend the Public Health Law and the General Business Law, in relation to prohibiting medical debt from being collected by a consumer reporting agency or included in a

consumer report.

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

MS. PAULIN: Thank you so much. The bill prohibits medical debt from being collected by a consumer reporting agency or included in a consumer report and also prohibits medical service providers from reporting medical debt to a consumer reporting agency.

ACTING SPEAKER AUBRY: Mr. Jensen.

MR. JENSEN: Thank you very much, Mr. Speaker. Will the sponsor yield for some questions?

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

MS. PAULIN: I'd be happy to.

ACTING SPEAKER AUBRY: The sponsor yields.

MR. JENSEN: Thank you very much, Ms. Paulin. I want to look at the definition of medical debt in the legislation. Medical debt meaning an obligation or alleged obligation of a consumer to pay any amount whatsoever related to the receipt of health care services, products, or devices provided to a person by a hospital licensed under Article 28 of the chapter, a health care professional authorized under Title 8 of the Education Law, or an ambulance service certified under Article 30 of the chapter. Medical debt does not include debt charged to a credit card unless the credit card is issued under open-ended or close end plan offered specifically

for the payment of healthcare services, products or devices or persons. So I just want to narrow in on that last part about credit cards. What does it mean by open-ended or close end plan?

MS. PAULIN: So, one plan would be where there was an amount of money on it. And then the other one would be open-ended which someone could just charge.

MR. JENSEN: So would that mean like a CareCredit credit card where it's exclusively used for a customer to charge different points of care for services rendered?

MS. PAULIN: Yes. The point of care determined by the credit card issuer.

MR. JENSEN: So would that be -- under this legislation, would the any debts incurred and not paid for with that type of credit card would not be reportable to a credit agency or listed on a credit report?

MS. PAULIN: Anything on there that was for a person, as the earlier definition includes and has been deemed medical in nature by the issuer of the credit card, yeah.

MR. JENSEN: So with CareCredit being an example, they have to go to the website, they have a laundry list of different things that you can use the credit card for. For Urgent Care, for your general practitioner. But also things like spa care, weight loss, cosmetic surgery. So would any debts, medical debts incurred, using this type of credit card, not be able to be reported to a collection agency or to a credit reporting?

MS. PAULIN: I would suggest that those areas or those things that care -- that care company or that issuer has decided to include, they may either decide that they no longer want to include or they certainly could exclude those that are not within the earlier definition.

MR. JENSEN: So would they have to essentially create two separate offerings to customers; one for simply their medical services and for ancillary medical needs like the veterinarian services that you can pay for using that type of credit card?

MS. PAULIN: It's really up to them or any issuer to determine. You know, I've been on that website as well. You put in your zip code and it tells -- it pops up, you know, what you can take advantage of. It certainly would be up to them to narrow that, if that makes their lives easier, since it's under their control.

MR. JENSEN: But under right now and the service that they offer, no part of that medical debt whether it be Urgent Care, surgical care or spa care or cosmetic surgery would be able to be reported if there's a large debt that's unpaid by the consumer.

MS. PAULIN: It -- again, it would be up to the issuer to determine whether or not they were going to limit themselves from the ability to collect the money.

MR. JENSEN: But I'm saying under right now they would not be able to work with a credit reporting agency or a collection agency to ensure payment of the debt that's been rendered.

MS. PAULIN: Go -- going forward they can make

different decisions about either isolating those services that would be deemed a medical debt, or they can certainly limit the use of the card to those things that would include the definition of medical debt.

MR. JENSEN: Okay. So sticking with the idea of a credit card and debts being paid for by that. So if you use your Visa, Mastercard, American Express to pay for medical services, would the medical provisions of that credit card debt be able to be reported as it is currently under the terms of this legislation?

MS. PAULIN: No, because they owe it to the credit card company, not to the medical provider once they use that credit card to pay the medical provider.

MR. JENSEN: So what about instances with a pharmacy; CVS, Walgreens, maybe your local neighborhood pharmacy. They may not have their own credit card company but maybe they're part of a larger group. If they use that affiliated credit card, which could be both classified as one of these open-ended plans as well as a standard credit card, would they be able -- would that debt, that may not be paid, would that be able to be reported?

MS. PAULIN: So if it was a -- you mean a -- a CVS or a Walgreens credit card or something like that, I've never seen those but if they existed, they're not included in here because you can at a pharmacy buy a lot of things including green cards and batteries and orange juice and toys. So no, I would not think that they were solely devoted to health products.

MR. JENSEN: Okay. So currently as of March,

mid-March, the three largest credit reporting agencies in the country have all voluntarily taken steps to limit the amount of medical debt that they report on their credit reporting mechanisms, is that the case?

MS. PAULIN: Yes, \$500.

MR. JENSEN: Correct. So anything under \$500 is not being reported. They also extended their time frame before anything above 500 would be reported to 365 days. So you'd have to have that debt outstanding for more than a year, correct?

MS. PAULIN: Yes.

MR. JENSEN: Okay. Do you know approximately of New York how much existing medical debt is below that \$500 threshold?

MS. PAULIN: I believe it's about 50 percent.

MR. JENSEN: My information says it's closer to 70 percent.

MS. PAULIN: Okay.

MR. JENSEN: So the vast majority of medical debt that New Yorkers currently have is already not being reported by the credit reporting agencies. So in that respect, if -- if the credit reporting agencies are already taking these proactive steps to limit the impact that unpaid medical debt is having on consumers, why is this legislation even necessary?

MS. PAULIN: I -- I think that any of us could go and have a procedure that we didn't expect, that wouldn't be covered because the insurance company didn't cover it and it was a matter of



life and death or a matter of great urgency for a family. That could happen to anyone in this room. It could happen to anyone in our families. And if it was immediately reported or even within 365 days it wasn't paid off, it would mean that potentially that same family couldn't buy a car, couldn't -- would have a credit score that would last for seven years that would harm that family. So this is an attempt to recognize that medical care is different than other debt. It spontaneously could happen to anyone, and that we have to protect families from that and from being included. It doesn't mean that the hospital or the ambulance service can't collect. We're not saying they can't collect. What we're saying is it shouldn't be included as part of their credit rating.

MR. JENSEN: But don't we already have mechanisms under State law? You bring up the example of somebody having a procedure or care provided that falls outside of insurance coverage, for example. You know, being out of network or something in that respect. Isn't there already a mechanism within State law to say -- to essentially protest that and say that it was a medical necessity, life or death hung in the balance. So don't we already have provisions in State law that protects New York's consumers allowing them to get medical necessity treatment when they need it in ensuring that there is a mechanism to remedy any outstanding costs? Whereas this would essentially allow New Yorkers to potentially run up large amounts of medical debt with limited ability for the providers who incurred that debt to be able to get paid for services rendered.

MS. PAULIN: Well, I'm not the insurance Chair; however, I have dealt with insurance companies. And in dealing with insurance companies I can tell you sometimes it takes more than a few months or a year to even get notified of a problem and then dealing with them is an additional headache. So the concern is that yes, there are remedies for many of these instances, but that they can take longer than is being allowed by these consumer-rating companies and then that lingers on someone's credit score and enable -- it doesn't enable them to do so many things in our world.

MR. JENSEN: Well, but -- but what does it do for the mechanism of when you have providers that may not be working with one of these collection agencies? What would be the process for them, you know, if they're not using, you know, an Equifax or Experian or TransUnion, how would they go about, you know, they've rendered these -- they've rendered care, they've incurred costs, you know, they have staff to pay, they have supplies that need to be paid for, and I guess how would we make the -- how would we make the providers whole for the costs that they've incurred if there's not an ability to go out and maybe not working with the credit agencies so it goes out on a credit report, but even working with an agency to help collect that debt that may be rendered, because in theory, this legislation, while it takes away the credit reporting agency, it also limits the ability to recoup the costs or into -- enter into a negotiated settlement that there's at least a portion of that debt paid. This essentially says that there's no -- there's no disclosure both on a credit

reporting or entering into an agreement to make sure that that is paid. Isn't that problematic?

MS. PAULIN: I agree that it takes away one avenue of collection; however, the avenue most used, especially by the hospitals are lawsuits, they go to court, so that avenue would still be available.

MR. JENSEN: But wouldn't that become -- wouldn't that be more costly, though, to -- if that's the only avenue left, wouldn't that be more costly to a consumer because now instead of just entering into maybe a negotiated settlement, now they're having to go to court, to trial, incurring a cost of hiring an attorney, potentially having an attorney make that negotiation, that settlement or going to trial. So now in addition to just any debts from the -- the service, the care being rendered, now they've got that debt along with legal debts from having to take care of a process that could have been done through any of these agencies through the reporting process.

MS. PAULIN: So we're talking about the most extreme where there's a dispute that can't be dealt with through negotiated agreement in the lawsuit scenario. There are, as you said, other avenues, for example, you know, fighting together with your provider against the insurance provider. And there are, of course, many, many opportunities for an individual to work out a -- a settlement or a -- a long-term agreement with -- with the health provider -- (coughing) -- sorry -- so there's other ways that they can do it. The only thing that we would be limiting would be the ability to

actually threaten -- (coughing) -- sorry -- I'm sick, hopefully not sick enough to incur all this cost, but -- but -- so hopefully, you know, we -- we are only eliminating that process where we would be hurting an individual for something that was an unexpected large cost on their family that they had no prior ability to have dealt with in any other --

MR. JENSEN: But respectfully this -- this legislation just doesn't cover emergency medical debt, it covers all medical debt. So if I walk into a cosmetic surgeon and I want to get plastic surgery, I can incur a substantial amount of medical debt, and I can just decide well, I don't want to pay that debt and there's no mechanism for that outstanding debt to ever be reported. So when I take out, you know, potentially apply for another mortgage, I could have this huge outstanding debt that I got because I wanted to get cosmetic surgery and then there'd be no way for the lender for a different financial institution to know that I'm carrying this huge debt because it's not being reported.

MS. PAULIN: So, again, the provider can still sue, the provider can still negotiate, the provider usually with cosmetic surgery, especially I would imagine gets upfront payments for very many of those reasons that you're suggesting. So the -- the only thing the provider couldn't do would -- and they can even go to a collection agency, but what they couldn't do is that collection agency couldn't use that information to damage or harm the -- the person's credit score. So I would suggest almost all avenues are still open to collect these potentially large sums or small sums, you know, but large to the

individual that -- that has them. And -- but medical debt like no other is recognizing that medical care is like no other. And that is that health service is something that many people around the world just enjoy and here we have a quasi system so-to-speak, but -- but that -- it is something that people should have the ability to use.

MR. JENSEN: Okay. Thank you very much, Ms. Paulin. I have more questions but I'm out of time. So thank you very much, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you, sir.

Mr. Blumencranz.

MR. BLUMENCRANZ: Thank you, Mr. Speaker.

Will the sponsor yield?

MS. PAULIN: Absolutely.

ACTING SPEAKER AUBRY: Ms. Paulin, you will yield she says.

MR. BLUMENCRANZ: So I just sort of want to harp on some of the points we just heard. So I -- as you know you can get cosmetic surgeries from a lot of these cards. So let's say I want to go get, you know, a nose job and a facelift at -- at \$50,000 that would be -- it would not be reported under this statute, correct?

MS. PAULIN: It would not be reported if you owed the money and you didn't pay it. It wouldn't get -- it would still be obligated on that person but it wouldn't be reported to a credit agency.

MR. BLUMENCRANZ: So within a couple months

--

MS. PAULIN: Same if you had heart surgery or --

MR. BLUMENCRANZ: Of course. So if then I wanted to go get veneers and that cost me another, you know, 20,000, 30,000, I can do that as well and they wouldn't see that previous medical debt from that plastic surgery I just received.

MS. PAULIN: When you say "they see" --

MR. BLUMENCRANZ: When you go to take out another financing loan either from the doctor's office or one of these health credit -- health card -- health credit card companies, they would not see the previous, the previous debt from that plastic --

(Inaudible/cross-talk)

MS. PAULIN: I would imagine if you're someone who didn't pay for cosmetic surgery, you would probably be likely to not pay for lots of things, so they would see that.

MR. BLUMENCRANZ: I'm -- I'm not saying that I haven't been making my payments consistently. Let's just say I have, you know, \$50,000 in -- in cosmetic medical debt and now I've -- I've gone to take on another 20,000 in dental. They would not see that previous debt. And then let's say I wanted another surgery. So I can -- I can really pile it on, correct?

MS. PAULIN: You could pile it on if that's what you wanted to do for a cosmetic surgery that you were still obligated to pay.

MR. BLUMENCRANZ: I'm -- I'm just trying to understand because, you know, if I was a -- a -- a predatory loan

provider, right, and this becomes a really great sales tax, I can say don't worry, just get this -- get this extra voluntary procedure and it won't dim your credit. I know you already have that -- that medical that you just discussed with me but this provider won't see it as well. A lot of doctor's offices, especially cosmetic doctor's offices even allow you to finance it through them and they -- they depend on this credit reporting to see if someone's, you know, bouncing around getting -- getting procedures in other places. I guess it comes back to my -- my question which is where did you -- how did you arrive on this definition of medical debt to include these card providers?

MS. PAULIN: These are the standard Article 28 providers, you know, hospitals, clinics, physicians and so forth. And so these are the providers that care for us when we do more than just cosmetic. I know that, you know, that's the category that's, you know, the most interesting or the -- the most flamboyant to talk about, but I don't know that that many people are -- I mean I guess there are some, but I don't know them who might want, you know, a facelift, a nose job, a chin lift and whatever else you can do to your body and pay lots of money and have lots of debt. I read about those people in the paper, but I don't know any. Most people I know, and that I would argue that most of us know, are the people who unexpectedly had a stroke or a heart attack and God forbid their insurance didn't pay for it and they needed special treatment. They had cancer and their insurance didn't pay for it and they wanted to go overseas for a special procedure and their insurance didn't pay for it. Those are the people

that I know and those are the people that I think are most people, and those are the people that we're trying to protect in this bill.

MR. BLUMENCRANZ: And I'd say there is no doubt that there is a (inaudible) bill like this because people do have emergency surgeries and -- and that is very important to make sure that they're not paying for that in more than one way for their lifetime. But I -- I just find it very concerning because there is an industry or at least a -- a sizable enough group of people who go on to get several elective surgeries. They can do so by, you know, if someone -- I guess my question is, if someone comes to New York, right, to get a procedure, they're using one of these credit cards, they're signing up or financing it through the doctor's office, they can spend a year doing this in multiple locations and none of the other locations respectively would know that they've already undergone procedures and have financed those procedures, correct?

MS. PAULIN: I would say if -- you know, this bill has already passed the Senate. If when it goes to the Governor's desk they want to narrow it in some way to address cosmetic surgery, I would be open to that.

MR. BLUMENCRANZ: Would you be open to limiting the scope so that it may not necessarily encompass the -- the Carecards in the way that it currently does in the definition now?

MS. PAULIN: So believe it or not, Colorado just passed a bill and they used the exact same definition of credit cards. So their experiment is going to be a little ahead of ours. So by the



time this bill reaches the Governor's desk, we'll have a better sense of how that flushes out. And again, if we have to narrow it to address or deal with the fact that those credit cards, those Carecards currently can pay for things that we would not consider medical debt in that true sense, we'll have that experiment before us and know whether or not, you know, again, we have to narrow the bill. I would be open to that as well.

MR. BLUMENCRANZ: Okay. Yeah, and I mean, I don't know if a couple of months will show us if someone's willing to get a few plastic surgeries within a year, but I guess we'll certainly see what happens in Colorado. Currently, in Federal law, are you aware they've -- they've certainly made recent changes to medical debt --

(Inaudible/cross-talk)

MS. PAULIN: I am. And we believe we are not included in the preemption.

MR. BLUMENCRANZ: So we're going to play a wait and see -- I guess I'd love to see how that sort of affects the consumer as well as what happens in Colorado before we start kind of jumping the gun to see if we are sort of going above and beyond what the Federal Government has thought was a -- was a -- a good solution.

MS. PAULIN: Or maybe what they can negotiate.

MR. BLUMENCRANZ: Sure. And what Colorado is doing, I'd love to see how its implementation goes through before we start seeing this definition in New York. But thank you very much.

On the -- on the bill.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. BLUMENCRANZ: I think it is important that we don't necessarily take a -- a predatory approach when it comes to medical billing and I think that the fact that a lot of these debts are not reported to customer reporting is a good thing. But, what I will say is that a lot of these doctor's offices are -- are trying to finance, especially the plastic surgery offices are trying to finance these procedures independently or through these card companies. And the way that the language in this bill, the definitions in this bill would roll out would be problematic, in my opinion. And I'm not sure if I'm willing to see New York be the test case as this implementation comes before us in the coming months or years. So I will be in the negative. Thank you.

ACTING SPEAKER AUBRY: Thank you, sir.

Mr. Slater.

MR. SLATER: Thank you, Mr. Speaker. Will the sponsor yield for some questions?

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

MS. PAULIN: Absolutely, thank you.

ACTING SPEAKER AUBRY: The sponsor yields.

MR. SLATER: I'll do my best to keep it as brief as we can. Thank you for taking the questions. I wanted to focus specifically on the ambulance services that are called out in this

legislation. As you know, EMS services are problematic, especially in our region in Westchester County where they're currently underway with a study on EMS services. So could you explain to me what -- what exactly the ambulance services would be prohibited from doing under your legislation?

MS. PAULIN: So, they would be allowed to collect the moneys, as they do now. They would be allowed to negotiate, as they do now. And in fact, very few of them actually report to a collection agency that then reports it. So they probably wouldn't be precluded from doing most. Some ambulance companies might report it to a collection agency that intend -- that in turn puts it on a credit rating, but I would argue that most do not.

MR. SLATER: And have you had the time to speak with some of the providers, specifically in our region, about the impact this legislation would have?

MS. PAULIN: This bill has been around for a while and we haven't heard from the hospitals or any of the other providers with any objections.

MR. SLATER: Right. But again, just going specifically to the -- the ambulance and the EMS providers and the ambulance services. It's my understanding having spoken to some of the providers in my area that they do in fact utilize a billing company and who then sends the bill to an insurance company, who then sends it to the individual. And if they're unable to -- if that individual is unable to pay, it does go to collections. So this bill -- I want to make

sure I'm accurate -- would short-circuit that process, correct?

MS. PAULIN: Well, they would do the whole first part, right?

MR. SLATER: But not the last part.

MS. PAULIN: But not the last part.

MR. SLATER: And then I've heard from others who are more regional in our area regarding indigent care. And I just want to make sure I understand and confirm, there is currently no indigent care pool in New York State specifically for ambulance services; is that correct?

MS. PAULIN: No. And as someone who worked very hard to get that community para/medicine bill that impacts all of the EMS services, there's 62 of them around the State, I would say that I have a deep concern for their survival. But I'm not -- I don't think this bill jeopardizes that.

MR. SLATER: But in regards, again, to the original question that I asked of indigent care, if there's no pool that allows for ambulance services to tap into those dollars, are they currently forced to use collection agencies to collect on their services they provide?

MS. PAULIN: They can still use collection agencies. What can't happen is those collection agencies can't turn around and post or report the -- that what is owed to the credit companies. They can still use collection agencies, which I know tack on additional percentages, which the consumer doesn't probably even know that there's that other layer. They just know that the debt that they see in

front of them is growing. So that many people just pay it knowing that that's happening. So they can still use the collection agencies. They just can't go that final step which, you know, which damages their credit score.

MR. SLATER: Understood. I appreciate that. Now what about the overall cost of care as it regards to ambulance services? Does this help the overall cost of care? Does it help lower the overall cost of care if you need an ambulance service?

MS. PAULIN: I don't think it does anything to the -- to the cost of care. It's -- I would say cost mutual.

MR. SLATER: Cost mutual, understood. Well, thank you very much for taking my questions. I appreciate it.

Mr. Speaker, on the bill if I may.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. SLATER: Having heard from several ambulance service providers from my region, they have grave concerns over the bill. I think there is some clarity that needs to be provided and engagement from local stakeholders. Many of our ambulance corps are not-for-profits, right? They rely on the billing process to be able to continue to be funded. And if they are unable to collect on those funds for any reason and it's, again, seems like there's some confusion here from their standpoint about what they're going to be able to do, then that just gets passed on to those who are able to pay, they're going to increase the cost. So you're actually potentially raising the cost of care throughout the Hudson Valley, at least in my

part of the Hudson Valley which raises significant concerns.

So I do want to thank the -- the sponsor for answering my questions, but I do think that there's more I think engagement that's needed for some of our local stakeholders. And so I appreciate that, Mr. Speaker. Thank you very much.

ACTING SPEAKER AUBRY: Thank you, sir.

Mr. Ra.

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

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

MS. PAULIN: Happy to.

ACTING SPEAKER AUBRY: Ms. Paulin yields, sir.

MR. RA: Thank -- thank you, Ms. Paulin. So just a few questions and -- and they are, you know, largely technical in nature in terms of the language of the bill. You've had a little bit of a discussion regarding the definition section and the way that it's used. So -- but let me -- let me start there, though. So the definition that's, you know, uses the term *in any way related* as opposed to a definition that would just say *amount owed to one of the providers put in there*. I mean can you provide any example of what that would encompass as opposed to a tighter definition that -- that just said any amount that was owed to one of those providers that's listed in the bill?

MS. PAULIN: You know, again, you know, we

thought that definition that we used was really very similar and it allowed us to deal with a person thing, you know, as it pertains to the credit card issue. And, you know, however, again, the bill is going to the Governor, and if the Governor wants to narrow the definition as such, and I know that was a definition promoted by one of the opposition groups, we would entertain it. We just believe our definition is better.

MR. RA: Okay. Now the bill exempts credit cards as been said. But it doesn't exempt any other type of revolving debt, correct?

MS. PAULIN: Such as?

MR. RA: You know, a home equity line of credit or -- or some other line of credit that somebody might use to pay something like this off.

MS. PAULIN: You know, I mean thank goodness I've never been in that circumstance so I would have to need -- need that, but I -- I would imagine that, you know, that if you're trying to pay off your -- your debt and you could get a willing loan to do that, then everybody would be would be -- would be happy, right?

MR. RA: Now, is the reason for exempting the credit cards in particular that now the money is owed to the credit card company or does it have to do with perhaps the difficulty in necessarily knowing whether something is a medical debt at that point?

MS. PAULIN: I think it's the difficulty of the credit

card company knowing what is specifically medical debt. And remember, if you use a credit card and you don't owe the medical facility or practitioner any money, you now owe it to the credit card company. So it's a little different. The practitioner or the medical facility is already paid. So the thought was let's not make this overly complicated, make -- make it hard for credit card companies and banks, let's just exclude it.

MR. RA: Okay. Now I -- I -- I would say that perhaps other -- those other types of lines of credit that somebody might utilize or something we might want to look into as something that is going to face that similar issue where they might just not know that something is -- is medical debt in one of those situations.

Now I want to talk about just how this is going to be implemented. The act takes effect immediately. And I assume that, you know, agencies, providers, anybody who is doing this and I would note, you know, to a prior point regarding people's credit reports, my understanding is that most hospitals in particular do not report to the three major credit bureaus. But assuming there might need to be some software changes, policy changes, are we giving adequate time for that to happen with this bill taking effect immediately?

MS. PAULIN: Well, I'll say a few things. First, remember they have to make an adjustment for the Federal provision which is \$500. And they will have already figured out a way to decide what is medical then, what isn't, it's the same thing as ours. So they will already know that. And so there may be no time requirement at



all. If there is a time lag, there's no penalty in the bill on purpose, so that it does give an adjustment time if there's a problem so that consumers can look at their credit score and figure out that there's an issue and go back and make amends. And at the same time that, you know, we adjusted to that time lag again with putting no penalty on anyone participating in the system that could potentially be harmed because they couldn't get it done in time.

MR. RA: Right. So what you just talked about, though, is -- is what my other questions really are about. So one of the things that I know some of the opponents of this bill have asked for is perhaps some type of right to cure so that if they -- you know, the law changes, they go and report medical debt, maybe somebody doesn't realize the law change, whatever it is and they realize the mistake and they want to change it, there's no - at least explicit in this legislation - right to cure for -- for that entity, correct?

MS. PAULIN: No, as there is no right to cure for any credit score follow-up, right? So, and yet people will all the time when they want to buy a new home or get a loan or a car or what have you, argue or see that their credit score, which they don't look at all the time, is lower than they might have anticipated. So then they would try to cure that problem as they would here.

MR. RA: And -- and you said that there's no penalty. So can you clarify what is meant -- the enforcement provision which is on page 2, line 21, 22 says: Any portion of a medical debt that is furnished to a consumer reporting agency shall be void. So is that

saying that the piece of data on the credit report is void or is it saying that the debt owed is void?

MS. PAULIN: It's the data.

MR. RA: The data. So -- so we're not saying that the debt itself would be void --

MS. PAULIN: No, no.

MR. RA: -- by the reporting --

MS. PAULIN: No, no.

MR. RA: The data just should not --

(Inaudible/cross-talk)

MS. PAULIN: Absolutely. The debt is still owed, it's still collectable, you know, we have to be cognisant of our -- our medical providers and so forth. And again, a lot of them are not -- you know, when you -- you -- when you look at what's happening out there, most of them are not using collection agencies and reporting this. So, you know, we're not changing that much, in the real world. We're just acknowledging that, you know, this debt is unique and this debt is something that we have to help people with.

MR. RA: Okay. And I just -- to reiterate that, just I mean the way the language is written to say any portion of a medical debt that is furnished to a consumer reporting agency shall be void. That -- that to me very much reads like we're talking about the debt itself being voided. And so I think that's an important thing to have on the record --

MS. PAULIN: We're salvaging the legislative record

that that's not the intent.

MR. RA: Yes. I think that's an important piece of the legislative record here. So -- so thank you for answering that question.

One second here. Oh, so just lastly with regard to that piece. Well, actually, I guess it's less of a concern with that clarification because my question was going to be that the enforcement provision seems to somewhat be written in an even broader sense than -- than the definition in terms of it doesn't necessarily say who has to have sent that information, right? It could be -- my understanding was it could be some other entity, maybe the hospital, provider, whoever, didn't send that information and there was a concern that they would be subject to voiding the debt. So that's much less of a concern assuming that that is not the case.

MS. PAULIN: Right.

MR. RA: So lastly, I know there was a brief discussion of the Federal Credit Reporting Act and any potential preemption, which you don't think is -- you said, I believe, that you don't think is an issue here, that this would not be preempted, correct?

MS. PAULIN: That's correct. I -- I have it here if you want to look with the specificity. But no, we don't believe it -- it -- that it precludes us from doing this bill.

MR. RA: Okay. Now one of the things that obviously already exists would be, you know, any entity that does violate, you know, we talked -- you talked about it earlier, the \$500

change, some of the other changes that have been made. So there would be penalties for any entity currently if they were to violate those, correct? If they reported that amount under \$500 say, they would be responsible for whatever penalties are provided for under the --

(Inaudible/cross-talk)

MR. RA: Okay. Thank you. I think that's all I have. Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Mr. Goodell.

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

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

MS. PAULIN: Now I know I'm at the end.

ACTING SPEAKER AUBRY: Ms. Paulin.

MR. GOODELL: We can always hope. Thank you, Ms. Paulin. So who uses these credit reports?

MS. PAULIN: Who uses them?

MR. GOODELL: Yeah. Who are the major users of the credit reports?

MS. PAULIN: I know that, you know, for example, when I've gotten loans or bought homes for me or my children frankly, they're checked. So I -- I'm assuming lenders, for the most part.

MR. GOODELL: Okay. And I would agree with you. And assuming this passes and becomes law and we no longer

report medical debt, that means then that anyone who's lending money, whether it's for buying an appliance or a new credit card or buying a car or house or anything like that or renting an apartment, those people would no longer have this information, correct?

MS. PAULIN: That's correct.

MR. GOODELL: Would they, as part of the application for a mortgage, be allowed to ask the borrower, *do you have any outstanding medical debt?*

MS. PAULIN: Yes.

MR. GOODELL: And could they then ask the borrower, *is your medical debt current?*

MS. PAULIN: Yes.

MR. GOODELL: And but this would eliminate their ability to verify what the person said, correct?

MS. PAULIN: Well, it would be -- you know, what would not be available, because I don't know that the score is broken down, you know, it's usually a score, you know.

MR. GOODELL: Well, the score isn't broken down but the credit report most assuredly is.

MS. PAULIN: I see.

MR. GOODELL: And the credit report shows every bill, you know, whether it's the utility company or whatever.

MS. PAULIN: So that the lender could obviously ask those questions and make it as part of their calculation, yes.

MR. GOODELL: But this would eliminate their

ability to verify of whether the person seeking their money or their product was telling the truth, correct?

MS. PAULIN: That's correct, but lenders could also ask for verification from other sources as well.

MR. GOODELL: I see. So it would be okay for the lender then to contact the hospital, the ambulance, healthcare agencies and say, *hey, is there any outstanding debt with this particular customer?* Of course there's HIPAA rules, right?

MS. PAULIN: There are, and I think that it's unlikely that they would do it, right? But if someone is self-acknowledging, you know, on their -- on their form, they would have to take that into the calculation.

MR. GOODELL: Now, of course, if you never pay that medical debt, sometimes the provider brings a lawsuit and gets a judgment. Is the judgment reportable to the credit agencies under this bill?

MS. PAULIN: That is a good question.

MR. GOODELL: Thank you.

MS. PAULIN: I don't know.

MR. GOODELL: If you ask enough eventually you get one that's good.

MS. PAULIN: What?

MR. GOODELL: What's your -- what's your sense?

MS. PAULIN: What's my sense. Whether the judgment is reportable.

MR. GOODELL: Correct. This would be like a Supreme Court judgment or a small claims judgement --

MS. PAULIN: Right.

MR. GOODELL: Those are always --

MS. PAULIN: So I would say --

(Inaudible/cross-talk)

MR. GOODELL: -- picked up by the credit report.

MS. PAULIN: -- that if it's coming from one of the excluded providers that are not allowed to report the information to the credit agency, then no. They would not be able to report that information to the credit agency.

MR. GOODELL: Now the credit agencies independently check for judgments. So they would not be getting the information from the hospital or the ambulance corps. They would get it from the County Clerk, because they contact the County Clerk and say, *are there any judgments against this individual?* Am I correct, then, that those judgments that they get directly from the County Clerk or the Court Clerk would still be reported?

MS. PAULIN: Hmm. Let me look. You always ask challenging questions, thank you.

(Pause)

So we prohibit them in contracts.

(Pause)

You might have found a loophole. I don't know. I know that it would be the intent of the bill, but I don't know whether

we say that in the bill.

MR. GOODELL: I see. Thank you for helping me.

On the bill, sir.

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

MR. GOODELL: So the credit reports are a tool used by lenders and landlords and others to verify the likelihood that they will be paid on time if they advance credit, and that credit might be for a new credit card. It might be for a personal loan, it might be for a home equity line of credit, it might be for any number of things. So all the lenders who rely on this, we're saying you can no longer rely on this. You can no longer rely on a credit report because it might, by law, not report debt owed by the consumer that's in default. So what's that mean? Well, it means that a bank in processing a loan might not realize that the borrower is facing a \$100,000 judgment. Or the car salesperson or any other entity. Why does that affect all of our neighbors and -- and friends? Well, because if you can't rely on a credit report what happens is the cost of borrowing goes up for everybody because the lenders have to account for that risk. But it has an unintended consequence as well to the borrower, because I can assure you that as soon as this bill goes into effect every lender is going to add a couple of questions to their -- their application, right, and the questions are going to say, *do you have any medical debt*, because they can no longer rely on the credit report. And they'll say, *is your payments on that medical debt current?* And what happens if



the consumer lies? Answer: Bank fraud. The problem is when you commit fraud on a lender, that advance of money or credit or whatever is not discharged in bankruptcy. Bankruptcy will not discharge any credit that's been advanced based on fraud. Now if it shows up in your credit report and you say nothing about it and the bank doesn't ask you about it because they don't need to because it's in your credit report it's not bank fraud. But with this bill, they will ask. And if you're not honest, that debt will burn through bankruptcy. So even if you declare bankruptcy to get rid of the medical fraud, you won't get rid of any of the other loans. The credit reports serve a valuable purpose. They help those who are engaged in extending credit to you and I and all of our friends and neighbors to know what the interest rate ought to be and how risky the investment is. And when we remove their ability to easily determine the credit rating, it will result in higher costs to each of us and all of our neighbors and friends. It's that simple. We keep talking about transparency, let's believe in transparency. And transparency means, put the facts that are true on the table. Let's not by law try to hide facts. That's the opposite of transparency and it will cost us dearly.

For that reason I can't support it. Thank you, Mr. Speaker and, again, thank you to my colleague.

ACTING SPEAKER AUBRY: Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER AUBRY: A Party vote has been requested.

Mr. Goodell.

MR. GOODELL: Thank you, sir. The Republican Conference will be generally opposed to this legislation, but those who support it can certainly vote yes here on the floor. Thank you, sir.

ACTING SPEAKER AUBRY: Mr. Benedetto.

MR. BENEDETTO: The Majority will generally be in the affirmative on this particular vote, but we will entertain anyone who would like to vote no.

ACTING SPEAKER AUBRY: Thank you both.

The Clerk will record the vote.

(The Clerk recorded the vote.)

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

Page 10, Rules Report No. 497, the Clerk will read.

THE CLERK: Senate No. S01419, Rules Report No. 497 Senator Comrie (Jackson, Tapia, Cunningham, Taylor, Dickens, Septimo, Epstein, Kelles, Forrest, Raga --A03861). An act to amend the Executive Law, in relation to requiring agencies to provide unsuccessful bidders that are certified minority and women-owned business enterprises with a written statement articulating the reasons for such rejection.

ACTING SPEAKER AUBRY: Ms. Jackson, an explanation is requested.

MS. JACKSON: All right. So this bill would require agencies to provide unsuccessful bidders that are certified and already an Women-Owned Business Enterprise - MWBE - with a written statement of the completion of the procurement selection process and that such enterprise was not selected.

ACTING SPEAKER AUBRY: Ms. Walsh.

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

ACTING SPEAKER AUBRY: Certainly. As soon as we all settle down a little bit. We are on debate. Gentlemen in the back, take your conversations under the eave or out of the Chamber, please. Folks.

MS. JACKSON: I yield.

ACTING SPEAKER AUBRY: You're quite welcome. Ms. Jackson yields.

MS. WALSH: Thank you, Mr. Speaker. So, this is our second MWBE bill that we're taking up this afternoon so I wanted to just run through exactly how this bill would work. So, first of all, just by way of background, do you know approximately how many MWBEs we've got in this State right now?

MS. JACKSON: I don't.

MS. WALSH: Okay. I was looking at some research that said that in 2020 we had about 8,300. And I don't know whether that includes the New York City MWBE program or just -- or everybody in the State, I'm not sure, but somewhere -- we're over --

over 8,000 I think is fair to say. So if one of those MWBE enterprises bids on a piece of work, it doesn't get it, what does this bill then require them to receive?

MS. JACKSON: So, as of right now, if you're a MWBE and you are -- are not selected, you can request a written statement, as of right now.

MS. WALSH: Okay.

MS. JACKSON: This bill would require it to happen regardless of if you are making the request or not, that you be provided with the written statement. So it's already in practice. It's just that the difference will now be that it's a requirement to receive -- for any MWBE to receive this written statement.

MS. WALSH: So under -- and so that written statement, does it -- does the -- under current law, does the current statement encompass the five different things that under this legislation they would get? So disclose the identity of the successful bidder/bidders; second, advise the enterprise, to the extent practicable, of the reasons for not being selected; three, include, to the extent practicable, guidance concerning methods of improving future proposals or bids; fourth, advise the enterprise, if applicable, of the opportunity to request a debriefing; and five, inform the enterprise of the services available through the Division of Minority Women's Business Development and the Office of the Minority and Women-Owned Business Enterprise statewide advocate. So all -- all five of those things, are they currently at the option of the MWBE who didn't

get the work? Is that what that notice in -- includes?

MS. JACKSON: So, as of right now the MWBEs can request a debriefing at any point, so it already exists.

MS. WALSH: And that debriefing would include those -- those --

MS. JACKSON: Right.

MS. WALSH: -- aspects of whatever --

MS. JACKSON: Whatever -- whatever they choose to talk about, yes.

MS. WALSH: So -- so what I'm hearing from you then that it's just taking something that is optional right now of the election of the non-prevailing MWBE enterprise to request and it's making it a mandatory thing; is that fair?

MS. JACKSON: Right. And remember, this is already happening. So this is just saying that it's required to happen.

MS. WALSH: What's the rationale for making it mandatory in happening in every instance versus at the election of the MWBE enterprise?

MS. JACKSON: Well, if you think about opting in and opting out of certain things, right, like if some people may know they have the option and some don't, but once you -- what we realize is that when you are already supposed to receive maybe notification for something, you're more likely to have it, more likely to read it and more likely to utilize it. And this also will tell them why they -- who was selected and why they weren't selected, which I think is helpful

information for any business to have.

MS. WALSH: Mm-hmm. No, it could be very advantageous to have the information. I just -- I was -- in thinking about the legislation, I was thinking about we've had the MWBE program for a while and it encompasses a -- a wide range of different kinds of business and different levels of business. I mean some MWBEs are -- are huge, very successful, have been around for, you know, years. It might not require the level of assistance as maybe a start-up newly-certified MWBE enterprise. So to me an opt-in, if you want to get that additional information, to me makes more sense than making it like blanket across the -- across the board. But I was just thinking about that in terms -- trying to prepare for, you know, talking to you about this. But who -- who exactly has got to give this notification? It talked about the contracting agencies. So would -- would the notification be coming from MWBE itself or is it coming through the agencies?

MS. JACKSON: It's the State agencies, it's the agencies itself. And just so -- and just to back up, if you have a larger MWBE that's pretty successful, they're more than likely getting the bids in which they are applying for. But the ones who are not, this is the ones that it's going to more -- more helpful for. I know that earlier in the debate, you know, in the other debate about the MWBE bills, there was discussion around how many -- we know businesses are MWBE but they're not certified, right, and there's a reason for that. And so this bill wants to close the loopholes and stop making it so

hard for people to receive information so they can be better at their business.

MS. WALSH: Mm-hmm, yeah, I understand. I -- I guess I'm kind of relieved to know that it's the contracting agencies in a way that have to provide this information rather than the MWBE program itself, because as we had discussed in the earlier debate, the MWBE program itself has got some issues and is in some respects kind of widely understood that it's overburdened in some respects as far as being able to respond in an efficient manner to request for MWBE certification and then recertification. So has there been any consideration of the cost or any idea of the cost in terms of time or manpower or however you measure it on these contracting agencies to respond each and every time an MWBE is not the prevailing bid?

MS. JACKSON: Yes, so there's no -- there's no thought that there would be an additional cost because this is something that they're doing already. It's just changing the requirement to make sure it's done always, but there's no thought that this will be an additional cost.

MS. WALSH: Okay. Thank you very much. I appreciate it.

Mr. Speaker, on the bill.

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

MS. WALSH: I appreciate the -- the sponsor's answers. I think that -- and I -- I hadn't been aware that this

information was available already if asked for by the MWBE that didn't get the -- didn't get the work, didn't get their bid accepted. I kind of think that that program, the way it's already set up, makes more sense to me than doing it for every single one. I think that when -- when you're talking about over 8,000 New York State certified MWBEs and that was three years ago to -- so we could be up quite a bit higher than that, I don't know how many failed bids there would be in the -- in the course of a given year, but that could be a lot of additional paperwork put on these contracting agencies. I think that the MWBE program overall needs a -- a lot of work and I was -- I'm glad that we're taking up two bills today but I don't know that they're the bills that I would choose to be -- to be working on. I think that we have to do a better job, I think, as a -- as a Body here to really try to work on this program because it really -- it comes from such a good place and a very laudable place to try to help these businesses to flourish, but I think that right now - and I mean and it was said earlier - I think that particularly the Upstate area that I -- I represent, I've got a pretty long list of women who are having a terrible time getting certified and recertified. And they include, among others, women who are running what I would call legacy businesses where perhaps their father, uncles, grandfather had owned a business that's in a very traditional contracting field and then they -- the woman has taken over the business and is legit running it but is being turned down. And it's -- it's very insulting in a -- a lot of ways to say to a woman that's running, you know, a quarry or a concrete factory or, you know, a -- a



manufacturing facility that the work that they're doing can't really be done by them. It's very insulting. And I think that -- that to have it go on for years before they actually find out whether they are approved or certified or not certified and then the process for appeal is terribly burdensome and they always have to get attorneys to represent them which is costly. I think that the MWBE program needs a lot of help. I think that this type of information about, you know, why you didn't get a bid to the extent that, you know, that they can tell you who got the bid, I mean that could provide really important information and I -- I think it could be very beneficial to MWBEs. I just think that it should -- that they should just ask if -- if they have the ability right now to ask and it's known that they can ask, then if they want to know, they'll ask. And I think that -- I think we could leave the program the way it is with all respect to the sponsor who's brought this forward. I'm not going to support this because of that. I think that -- I think that the MWBE program really needs work in other areas. I think that the -- the current state of the law in this issue is sufficient and so I'll be in the negative but I appreciate the sponsor bringing this forward. Thank you.

ACTING SPEAKER AUBRY: Read the last section.

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

ACTING SPEAKER AUBRY: A Party vote has been requested.

Mr. Goodell.

MR. GOODELL: Thank you, sir. The Republican Conference is generally opposed, but those who support it are certainly encouraged to vote yes on the floor. Thank you, sir.

ACTING SPEAKER AUBRY: Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Thank you, Mr. Speaker. The Majority Conference is in favor of this piece of legislation; however, there may be a few that would decide to be an exception, they should vote at their seat. Thank you, sir.

ACTING SPEAKER AUBRY: Thank you both.

The Clerk will record the vote.

(The Clerk recorded the vote.)

Mr. Novakhov to explain his vote.

MR. NOVAKHOV: Thank you, Mr. Speaker. I'm in the affirmative, and just recently my constituents contacted my office to get help to get a registration, the MWBE registration that she was trying to get for about a year. And she was complaining that the documents that that the -- that were requested for the registration were asked three times, the same, the very same documents, three times, which I think is unacceptable. Thank you to my colleagues in the Assembly and -- and the City of New York and the State Senate only with their help she finally got her certification just a couple of weeks ago. But I think that we -- we have to do -- there's a lot -- too much bureaucracy with that, and it is very important that it is not only explained why the organization didn't get the funds, it should be clearly explained why the organization is not being certified and why

it takes so much time for the organization to get certified and why they're asking for it, you know, just a regular simple document, three times in a row. I think that's a shame. Thank you, Mr. Speaker.

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, would you please call the Rules Committee, Rules Committee to the Speaker's Conference Room.

ACTING SPEAKER AUBRY: Rules Committee, Speaker's Conference Room immediately, please.

Page 13, Rules Report No. 664, the Clerk will read.

THE CLERK: Assembly No. A07542, Rules Report No. 664, Weprin. An act to amend the Insurance Law, in relation to exempting certain public construction projects from certain restrictions.

ACTING SPEAKER AUBRY: On a motion by Mr. Weprin, the Senate bill is before the House. The Senate bill is advanced and a explanation is requested.

Mr. Weprin.

MR. WEPRIN: Thank you, Mr. Speaker. This bill amends Section 2504 of the Insurance Law to allow the City of New York, the City School District of the City of New York, the New York

City Industrial Development Agency, the New York City Health and Hospitals Corporation and the New York City Housing Authority to use owner-controlled insurance programs, OCIPs, and contracted-controlled insurance programs, CCIPs, where a single insurance policy covers all contractors on a project in one wrap-up insurance program in connection with a contract, the principle purpose of which is construction. Under an OCIP, a single policy held by the owner covers the owner and contractors of all levels for the entire project or group of projects. Under a CCIP, the insurance policy is held by the construction manager or general contractor and covers the owner as well. OCIPs and CCIPs save money, are more efficient, lead to safe work sites and will level the playing field so that MWBEs and small contractors can be more competitive when bidding for contracts.

Currently, the New York City School Construction Authority, the Port Authority, the MTA and the public sector all use OCIPs and CCIPs and have proven their effectiveness. This legislation will extend the ability to use OCIPs and CCIPs bringing parity to construction projects throughout New York City.

ACTING SPEAKER ZACCARO: Mr. Ra.

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

ACTING SPEAKER ZACCARO: Mr. Weprin, will you yield?

MR. WEPRIN: I'd be happy to.

ACTING SPEAKER ZACCARO: The sponsor

yields.

MR. RA: Thank you. So this adds to these new entities (inaudible) being able to use the OCIPs and CCIPs. If you can just elaborate on the need for it. I'm assuming these types of entities that would engage in these contracts, you mentioned MWBEs, you mentioned small businesses, are otherwise having trouble getting coverage for these projects?

MR. WEPRIN: That is true. And this would make it cost-effective for small business enterprises and MWBEs to -- to bid because the insurance, if you have to do it on an individual basis, it could be cost-prohibitive.

MR. RA: Okay. And in -- in doing so you said -- actually, can -- you just go through the -- the difference again, the OCIP and the CCIP in terms of the coverage? It starts -- it -- it just covers all of the subcontractors under one owner plan for an OCIP, correct?

MR. WEPRIN: Yes.

MR. RA: Okay. And then the CCIP?

MR. WEPRIN: Well, same thing; with contracted and controlled insurance programs.

MR. RA: Thank you. Why -- I guess why these particular entities? Why -- does this now encompass any and all entities that would be engaging in these types of projects within New York City or (inaudible) that wouldn't?

MR. WEPRIN: I --I believe so.

(Pause)

Well, there -- there may be other entities, but this bill applies to these entities. The City of New York particularly requested these entities, but there may be other entities that may have a -- a similar problem but this certainly makes sense to put them on parity with the other government agencies that are allowed to do this.

MR. RA: And -- and one of the pieces of this also requires an annual -- a report be -- be issued by next September 30th regarding these projects, correct?

MR. WEPRIN: Yes.

MR. RA: Okay. And what is -- is the purpose of the report just basically to see how this is working? What are we looking to find out from this report?

MR. WEPRIN: We want to make sure it's working and there aren't any problems.

MR. RA: So the report as it's put together, it's my understanding it needs to include description of the project, information regarding the procurement process, the list of entities that demonstrated the capability of performing the contract, the extent the contract was awarded on a best value basis, the total award value and an explanation of the estimated savings from using owner-controlled or contractor-controlled insurance in conjunction with such contracts. So, how is that calculated? I mean would be it be based on them just going out or the -- the owner of the contractor going out and trying to get an insurance quote and then comparing that to what they could do

under their OCIP or CCIP?

MR. WEPRIN: That would be part of it. I would imagine that would be a major part of it.

MR. RA: You know, because it's asking for, right, that estimated savings. So I -- I would assume that would be a -- a big part of it.

MR. WEPRIN: Correct.

MR. RA: I -- I think -- well, I mean my -- my last question is, you know, I think that many entities, like you stated and as is the impetus for this bill, do have trouble getting coverage, the smaller entities, and it adds to the cost of the project and -- and adds to or -- or might diminish their ability to get -- to get an award of a contract. But what about the general, you know, issues that we have in the insurance market? I know that, you know, all kinds of entities are having trouble with insurance. There are a lot of regulations, there are a lot of laws out there that do contribute to that cost being so high. Do you envision that perhaps some of the information from the report might be something we can look at to talk about some of those underlying issues within the market itself that may be as much of the problem as -- as is whether or not a certain entity could use an OCIP or a CCIP?

MR. WEPRIN: That's a good suggestion, Mr. Ra. I -- I think that would certainly be something that could be included in that report.

MR. RA: Okay, that's a deal. Thank you very much,

Mr. Weprin.

MR. WEPRIN: Thank you.

MR. RA: Mr. Speaker, on the bill.

ACTING SPEAKER ZACCARO: On the bill.

MR. RA: So, you know, one of the concerns that was raised as this was going through committee is -- is exactly that, as to whether or not this really hits the problem itself, you know, we're definitely -- the problem we're trying to address is insurance availability and cost for smaller contractors and sub -- subcontractors. But New York State commercial general liability insurance market is really for a lot of these entities where the problem lies. So I thank the sponsor for -- for, you know, understanding and -- and mentioning that that might be something we want to look at in this report so that we can look at the market, look at some of the obstacles that are out there that prevent these small entities from getting insurance and -- and fix the opportunities which is going to open up opportunities for all of these small businesses, MWBEs and others. Thank you, Mr. Speaker.

ACTING SPEAKER ZACCARO: The Clerk will read. Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER ZACCARO: A Party vote has been requested.

Ms. Walsh.

MS. WALSH: Thank you, Mr. Speaker. The Republican Conference will be generally in the negative on this piece



of legislation. If there are members that wish to vote in the affirmative they can do so at their desks. Thank you.

ACTING SPEAKER ZACCARO: Ms. Solages.

MS. SOLAGES: Thank you, Mr. Speaker. The Majority Conference will be voting in the affirmative. Those who wish to vote against this provision can do so by coming to the Chamber and casting their vote.

ACTING SPEAKER ZACCARO: The Clerk will record the vote.

(The Clerk recorded the vote.)

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

(The Clerk announced the results.)

The bill is passed.

Page 18, Rules Report No. 833, the Clerk will read.

MRS. PEOPLES-STOKES: Mr. Speaker --

ACTING SPEAKER AUBRY: Oh, I'm sorry.

MRS. PEOPLES-STOKES: Mr. Speaker, apologies, sir. If we can make one pivot we're going to go to Rules Report No. 833 by Ms. Levenberg.

ACTING SPEAKER AUBRY: Let's do that again.

Page 18, Rules Report No. 833, the Clerk will read.

THE CLERK: Senate No. S06893, Rules Report No. 833, Senator Harckham (Levenberg, Burdick, Otis, Barrett, Zaccaro, Epstein, Sillitti, Sayegh, Jacobson, Shimsky, Eachus,

Shrestha, Simone, Thiele, Colton, González-Rojas, Zebrowski, McDonald, Simon, L. Rosenthal, Kelles, Paulin, Carroll, Lunsford, Woerner, Taylor, Steck, Cunningham, Novakhov, McDonough, De Los Santos, Fahy -- A7208). An act to amend the Environmental Conservation Law, in relation to decommissioning nuclear power plant discharges into the Hudson River.

ACTING SPEAKER AUBRY: An explanation is requested.

MS. LEVENBERG: Surely. So the purpose of this bill is to help prevent adverse impacts including decreased real property values for the Hudson River communities in relation to the dumping of radioactive waste into the Hudson.

ACTING SPEAKER AUBRY: Mr. Palmesano.

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

ACTING SPEAKER AUBRY: Certainly. Ms. Levenberg, will you yield?

MS. LEVENBERG: I will yield.

ACTING SPEAKER AUBRY: Sponsor will yield.

MR. PALMESANO: Thank you very much.

Currently the authority in responsibility to regulate the effluent from our nuclear power plants right now is split between two Federal agencies; the Nuclear Regulatory Commission and the Environmental Protection Agency which sets and monitors discharge of radiological waste, correct?

MS. LEVENBERG: But there is additional authority that the State also has.

MR. PALMESANO: Okay. Well, this was all part of the decommissioning plan that was put in place with the closure of Indian Point several years ago, correct?

MS. LEVENBERG: Yes.

MR. PALMESANO: And you're aware that there's been obvious communications between the Public Service Commission. And basically in that communication they cited several facts that all (inaudible) radiological discharges from nuclear power plants we're exclusively regulated by the U.S. Nuclear Regulatory Commission. And New York State regulates discharges as they relate to non-radiological substances, correct, in that communication from the Public Service Commission to the --

MS. LEVENBERG: I -- I'm not aware of that particular --

MR. PALMESANO: Okay.

MS. LEVENBERG: -- communication, but while the Federal Nuclear Regulatory Commission does have substantial control over the decommissioning of nuclear plants, New York still has a right to protect its waters in the interest of surrounding communities without running into issues of Federal preemption.

MR. PALMESANO: All right. And all the discharges from Indian Point right now are all treated, monitored and controlled and bound by conservative, Federal radiological

standards in New York State non-radiological standards. That's what's going on right now, correct?

MS. LEVENBERG: I mean right now there isn't any discharge because the plant is not operational.

MR. PALMESANO: Well, that's how the process works so, it's all monitored, it's all analyzed, it's all treatable before there's any discharge.

MS. LEVENBERG: During the --

MR. PALMESANO: And that's the process that's used in -- in nuclear power plants. That's what was used in Indian Point when it was active, correct?

MS. LEVENBERG: During when it was active, correct.

MR. PALMESANO: Sure. So, also there are annual reports to the Federal Government and New York State independent analysis that verify that all discharges of treated water that have occurred are well -- have to be well below the Federal exposure standard and drinking water standard at the point of discharge from Indian Point, correct? That's what they analyze, that's what they do, that's what they have to report each and every time, correct?

MS. LEVENBERG: But this is about decommissioning.

MR. PALMESANO: I'm sorry. I didn't hear you.

MS. LEVENBERG: This is about decommissioning. Can you just repeat what you just said?

MR. PALMESANO: Yeah. I said that right now all discharges of treated water that occur have to be below both the Federal exposure standard and drinking water standard at a point of discharge from Indian Point, correct?

MS. LEVENBERG: True. But there's no discharge right now because --

MR. PALMESANO: I know that but --

MS. LEVENBERG: -- the plant isn't operational.

MR. PALMESANO: I know that but -- but that's all part of the process, the discharge is part of the process of what the decommissioning that they have to meet and that's all set under Federal regulation from the U.S. Nuclear Regulatory Commission and the (inaudible). They have to meet those standards that are in place, correct? So, where does --

MS. LEVENBERG: And also DEC. There's -- there's another piece of the process that you're not discussing which is the -- this regulated by a SPDES permit and the DEC --

MR. PALMESANO: I'm sorry. I can't hear you, please speak up.

MS. LEVENBERG: There's also another part of the -- the process that you're not mentioning which is part of the DEC also regulates effluent into the Hudson. That's part of a SPDES permit.

MR. PALMESANO: Yeah, on a non-radiological site because --

MS. LEVENBERG: And there's also some pieces of

radiological that -- radiological material or matter that they have oversight.

MR. PALMESANO: Okay. Was there not in a meeting recently on April 27th between the NRC, the US EPA and the State Attorney General's Office dealing with -- meaning talking about the radiological discharges from the nuclear power plants and the water bodies expressly again, fall under that control in regulation of the NRC. And that was the understanding between those three parties including the Office of Attorney General, correct?

MS. LEVENBERG: I don't understand the question.

MR. PALMESANO: Well, in August -- on April 23rd there was a meeting between the Nuclear Regulatory Commission, the US EPA and the Office of the State Attorney General's Office to discuss how the radiological discharges from nuclear power plants in water bodies, they're expressing again under that auspice of the Nuclear Regulatory Commission to the Attorney General acknowledging that as well for the State of New York.

MS. LEVENBERG: I'm not familiar with the meaning that you're speaking of, but we are not preempted from -- from what this bill would do.

MR. PALMESANO: And so you don't -- you don't feel there's any Federal preemption issues with this legislation at all?

MS. LEVENBERG: I don't, no.

MR. PALMESANO: No? I think that will be remained to be seen on that. Also, there was not -- an -- an exhaustive

analysis done by the Department of Budget's independent technical nuclear aspect expert. Basically I know the issue they talk about is dealing with tritiated water and basically setting -- determined that any method of handling this water, including storage on site will result in environmental exposure. And they concluded that discharge to the Hudson imposes the -- the lowest risk to public health and safety versus trying to handle that on site and causing problems from that perspective. These are the nuclear experts saying that.

MS. LEVENBERG: So this bill actually deals with economic impact of discharging nuclear waste into the Hudson.

MR. PALMESANO: I'm sorry. What was that last part?

MS. LEVENBERG: This bill deals with the economic impacts of discharging nuclear waste into the Hudson.

MR. PALMESANO: I understand that, but again, there's a process that's in place. They follow the Federal guidelines, the Federal regulations who have -- have authority over the radiological waste and -- and certainly everything you can look at can have a radiological impact. I mean so what does -- you know, there's I think a part of the March 23rd presentation from the individuals who did this presentation said even a banana can emit 0. -- .01 millirams (phonetic) or five times the maximum dose for liquid releases at Indian Point. That's part of the presentation they make. So when we look at this, again, and I know we were saying we're trying to monitor from economic impact but the fact of the matter is this still, this

release, this discharge has to meet those specific criteria that we talked about before. And I just think that that's something that's kind of being overlooked here and I think needs to be addressed.

MS. LEVENBERG: So the -- so the -- so the -- so the radiological waste does not have to be discharged. As you mentioned there are other options. And while some of the options that were pointed out may have different impacts, the point is that the discharge of radiological waste into the Hudson River would have a negative economic impact on the Lower Hudson Valley and all of the regions that are impacted by it in the -- in the area. And that's what this bill is seeking to address.

We're concerned that all of the -- the outcry, the public -- the -- the psychological impact on the public knowing that there's been radiological discharge into the Hudson would dampen tourism, would certainly dampen property values along the Hudson and I think that I have a 2012 report on tritium leaks by the *Associated Press* detailed decreased public confidence and adverse impacts on property values after a nearby tritium leak at a nuclear power plant southeast of Minneapolis and homeowners were unable to sell their property with one homeowner's highest offer being \$10,000 for their 18 acre property.

MR. PALMESANO: And -- and I -- I understand what you're saying there but, again, I just want to get back to the fact, wasn't there an agreement put in place when they went -- when Indian Point was closed down and went through the decommissioning



process and then when this legislation as written, wouldn't that be basically an abrupt reversal of the terms of the agreement New York State entered into with Holtec Decommissioning International to oversee the decommissioning of the site and any change from that, isn't that obviously going to lead to a -- a -- a lengthy legal dispute? Also, in the meantime, you would have to stop the decommissioning activity and would certainly possibly result in a large scale of layoffs from union workers, trades, carpenters, operating engineers. There's certainly an economic impact from that as well. And we also got -- seen a letter from the Town of Buchanan who -- mayor, who expressed some concerns. He's a part of the commission -- indepen -- Indian Point decommissioning plan and said that some of the information that's being brought forward is not really accurate. So I mean how -- how do we address those concerns? And I think what just seems -- it's my concern is, you know, from this a process, there's a process that's in place, there's a Federal regulatory Body and you also again have that stat being stated over and over again that these discharges, when they happen, are not just radiological discharges out into the community. They're analyzed, they're treated, they're monitored, they're controlled and they're bound by certain criteria. And I know you've brought up the -- the -- the -- tritiated water again and that's again where that analyst said that the safest way out for public safety and health would be through the monitor and the discharge rather than trying to handle it including an out-of-state source. So there's those who had to be taken into consideration on the

safety side. Isn't that what the Federal regulatory authority's of the Nuclear Regulatory Commission, the EPA in conjunction with the State are doing right now? So I don't understand why we -- and -- and I know -- I know what you're trying to do with the legislation but it just seems like we're kind of going off in a different direction.

MS. LEVENBERG: So the -- a couple of things that you mentioned, one of which was related to jobs. And of course we're all very concerned about jobs, nobody --

MR. PALMESANO: Of course.

MS. LEVENBERG: -- would want to negatively impact jobs.

Most recently at a meeting of the decommissioning oversight board which I sit on, the -- the issue of is this discharge part of the critical path to decommissioning? And the answer from Holtec, which is the company that's doing the decommissioning was no. As far as jobs, they're told us there are plenty of jobs for 12 -- to the 12 to the 15 years in which they plan to continue the decommissioning. They actually have up to 60 years but within the contract or the agreement with New York State they reduced that and sped it up to 12 to 15 years. And there's going to be plenty of work we were told for that time. Not all of the unions feel the same certainly about the -- the promises that have been made by the company that's doing the decommissioning. And certainly, again, they've told us there's plenty of work, even if we were to approach this differently to find a different method for getting rid of the tritiated water, that would involve more

work. There's nothing that wouldn't involve a lot of work to continue decommissioning this plant. And to not listen to the public outcry about this and to not be very considerate and thoughtful about how we go forward with decommissioning what was obviously a major energy producer for the region just doesn't make sense.

MR. PALMESANO: Okay. And I understand that. But, again, I mean from 2005 to 2019, I guess some 50.6 million gallons of processed wastewater were treated and discharged in the -- in the Hudson River from Indian Point. So -- and that's a lot more volume. So it's my understanding of the analysis of the amount of water that will be discharged from here is much less in volume and not as -- not as much (inaudible). Why is that any different than how Indian Point activated over the past, you know, years -- for 60 years when in operation, why wouldn't that be taken into account? It's going to be the same operation from that perspective but less water, less impact but still the same process with the same oversight from the Federal Government.

MS. LEVENBERG: And absolutely you're -- you're correct that this has been happening for a long time. The public really wasn't aware that this was happening and that is obviously one of the largest pieces of this, as mentioned, is what is the economic impact going to be to the region for this discharge.

Right now while we know that this has been happening for many years and we know that it was monitored, there's many who doubt the actual, you know, information that -- that the

public had been receiving because it was not out in the open. Even if it was available it's not something that was actually advertised. So now that the public has more information, there's certainly more of a perception that this is something that could have a negative impact on the region.

MR. PALMESANO: Okay. Thank you very much for your time.

Mr. Speaker, on the bill.

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

MR. PALMESANO: Certainly, Mr. Speaker, and my colleagues, I can understand the intentions of the sponsor and her concerns that she's trying to address. The point I'm trying to address and I think some of my other colleagues might want to address on this issue is the fact that this issue really falls squarely in the laps of the Federal Government under the US Nuclear Regulatory Commission, the EPA. Again, there was just a meeting with the Office of Attorney General from New York State in April verifying that all this process -- Indian Point has operated there for, you know, 60-plus years, had a process that worked in, they -- as far as the discharge. All discharges that come from Indian Point are analyzed, will be analyzed, were analyzed treated and monitored and controlled under strict Federal regulations and guidelines. And I think this really gets to the point of when Indian Point was shut down, which was a big mistake in my opinion, you took away 25 percent of reliable base load generation

from the City of New York, a 2,000 megawatt facility coming off the books for no valid reason. So now -- now what happened when that happened. Greenhouse gas emissions, fossil fuel generation increased from 75 percent in New York City to 87 percent in New York City. So I just think this is going to have an impact across the board and I think we're really basically sending a message that was put in place when this contract that was entered in New York State for decommissioning will throw open arms at agreement. We'll leave it open to a great deal of legal activity, put -- put the brakes on the decommissioning process in and of itself and lead to massive layoffs of union members who work a very important job and provide for their families.

For that reason, Mr. Speaker, I'm going to be voting in the negative and I encourage my colleagues to do the same. Thank you.

ACTING SPEAKER AUBRY: Mr. Slater.

MR. SLATER: Thank you, Mr. Speaker. Will the sponsor yield for some questions?

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

MS. LEVENBERG: Surely.

ACTING SPEAKER AUBRY: Sponsor yields.

MR. SLATER: Thank you very much, Assemblymember Levenberg, and I know how passionate you are about this issue and we've had many conversations about it. I just had

a couple of questions that I just wanted to go through so we can have a better understanding of what we're trying to achieve here.

In regards to the radiological substance that the legislation is seeking to prohibit, can you just explain again to everybody what specifically we're trying to achieve?

MS. LEVENBERG: Absolutely. So right now there is a plan to discharge 1.3 million gallons of tritiated water, that's water with tritium in it, into the Hudson River. That's it.

MR. SLATER: And so can you explain to us what tritium is?

MS. LEVENBERG: Okay, yes, I can. I know that it is - hold on for one second. Let me just get my notes, thank you. It is a radioactive isotope of hydrogen that is the by-product of energy production from nuclear power. Tritium has a physical half life of 12.3 years, meaning that it takes over 12 years for half of a given volume of tritium to decay and no longer be radioactive.

MR. SLATER: And can we find tritium in other places, international environment?

MS. LEVENBERG: Yes.

MR. SLATER: In places like groundwater?

MS. LEVENBERG: We can find tritium in other places.

MR. SLATER: Places like groundwater. And is it true that tritium can't even penetrate skin?

MS. LEVENBERG: I don't think that is the case. I

don't believe that to be true. I think tritium can penetrate a human body in -- in certain ways and can get -- can actually attach itself to other --

MR. SLATER: High doses I'm sure, right?

MS. LEVENBERG: No, I think any dose. That's not -- absolutely not clear. I've read studies where it -- it -- that is not the case so...

MR. SLATER: Understood. Does the Federal Government set Federal regulations that limit how much tritium can be in the air and water?

MS. LEVENBERG: Yes.

MR. SLATER: And in that regard that comes from the EPA I'm guessing? And the EPA drinking water standard of tritium, they have a limitation on that, correct?

MS. LEVENBERG: From 1976.

MR. SLATER: Great. And what would the tritium concentration the plan discharges at Indian Point as proposed are?

MS. LEVENBERG: I think that the total number that -- the total amount of curies that is left is 400 curies that's left in the remaining water, and that's just an estimate. That hasn't been confirmed. That's a number that's been given by the plant, it's the best guess.

MR. SLATER: So thank you for that. And I know that we've mentioned the decommissioning oversight board, the DOB that I know you're an active participant and I appreciate that. In

March, correct me if I'm wrong, that there was an expert who appeared at the March meeting; is that accurate?

MS. LEVENBERG: There are experts that appear at every meeting.

MR. SLATER: A David Lochbaum who appeared as the DOB's --

MS. LEVENBERG: He sits on --

MR. SLATER: -- independent technical and nuclear expert?

MS. LEVENBERG: Yeah, he's a member. He's a member. He sits on the -- on the decommission oversight.

MR. SLATER: Great. And -- and I believe in March he compared the maximum annual radiation dose from Indian Point to common sources of radiation and explained that in fact a banana can emit about five times the maximum dose from liquid releases than Indian Point. And I believe that's a quote that was provided at the DOB meeting.

MS. LEVENBERG: He -- he did say that and there was a -- a considerable amount of public pushback, I can tell you that. And not -- not the least of which was from -- from health -- health -- public health sources who do not believe that that is an accurate depiction of what the potential is for tritium released into water --

MR. SLATER: But he does sit on the -- on the --

MS. LEVENBERG: -- to have an impact.

MR. SLATER: -- I'm sorry. But he does sit on the



DOB, correct?

MS. LEVENBERG: He does.

MR. SLATER: Okay, thank you. And the legislation, again, since it specifically targets Indian Point, the only entity that discharges any radiological substance into the Hudson River presently. Is that accurate or are there others?

MS. LEVENBERG: Associated with decommissioning of a nuclear power plant, true.

MR. SLATER: Are there others that are not associated with decommissioning that currently do the same?

MS. LEVENBERG: I believe there are, yes.

MR. SLATER: Okay. And can you tell me where those are?

MS. LEVENBERG: No.

MR. SLATER: Okay. And let me ask you about wastewater treatment plants. Do wastewater treatment plants discharge any radiological substances into the Hudson River?

(Pause)

MS. LEVENBERG: I've heard that they could. That it's low level, not planned releases.

MR. SLATER: But if wastewater treatment plants are discharging radiological substances into the Hudson River, I guess my question is, why are we only limiting this piece of legislation to just Indian Point?

MS. LEVENBERG: Right. So -- so the wastewater

treatment plants, the result of people taking medical tests. That would be what -- what would be coming out in through the water. So this is something that we can actually measure and contain where is that probably is not. I don't really know, I'm not familiar with wastewater treatment plants and discharge (inaudible).

MR. SLATER: But if we're working off the premise that we're trying to prevent radiological substances from being discharged into the Hudson River again, why would we not expand the bill to include wastewater and not just focus on the current process at Indian Point?

MS. LEVENBERG: I agree with you that they're probably lots of cases that we should continue to address. Right now this is in our immediate future that we know of in large quantities. And we believe that we have the potential of a negative impact on our local economies. And therefore believe that this is the time to introduce this particular bill addressing this particular nuclear discharge into this water body.

MR. SLATER: Understood. Thank you for that. I'm curious if Holtech, the company that is in charge of the decommissioning, have they obtained the necessary permits for their discharge?

MS. LEVENBERG: They're in a renewal process for their SPDES permit from DEC and some of the permits were carried over from the operating nuclear power plant.

MR. SLATER: And in regards to that SPDES permit

from DEC, did they have one before the decommissioning process started?

MS. LEVENBERG: Well, *they* didn't but Entergy did and that was a carryover.

MR. SLATER: So there was -- there was a SPDES permit in place for Indian Point center is my question.

MS. LEVENBERG: There was a SPDES permit in place, yes.

MR. SLATER: Right. And so that -- so that SPDES permit again, as you stated, is issued by New York State DEC so they obviously reviewed that permit application.

MS. LEVENBERG: At the time when it was operational. Again, it was in the renewal process so it's continuing to be reviewed.

MR. SLATER: And considering I think operationally that the canal, as my understanding as explained to me, the canal that discharges the -- the wastewater being used to cool the rods is the same canal that discharges basically all products from the center; is that accurate?

MS. LEVENBERG: I didn't hear the last sentence.

MR. SLATER: The canal that is used to discharge the -- the substance in question is the same canal used to discharge basically all the runoff and wastewater as well.

MS. LEVENBERG: That's my understanding, yes.

MR. SLATER: Okay. Just wanted to make sure we

understand that. The legislation states to the extent that not -- to the extent not subject to preemption by Federal law. What State entity would make the determination that this bill is preempted under Federal law?

MS. LEVENBERG: Ultimately a court would make that determination but the DEC would determine the discharge.

MR. SLATER: Through the SPDES permit?

MS. LEVENBERG: Presumably, yes.

MR. SLATER: But they also would need to have the Federal regulatory approval as well, correct?

MS. LEVENBERG: I mean not necessarily. I --

MR. SLATER: My understanding is that a SPDES permit is more of a general permit, a general discharge permit?

MS. LEVENBERG: No. A SPDES permit is for just specific other elements that are in that are going to be discharged as part of the water that's being discharged --

MR. SLATER: So if that's the case, then DEC previously reviews, since this has been going on for so long, they've reviewed and approved the application that allowed that to continue.

MS. LEVENBERG: They do, but because the plant is being decommissioned it isn't the same. The effluent that's actually in the pool is different. It's not the same because as they're decommissioning and taking apart the plant piece by piece, other materials actually get into the spent fuel pool and other materials emerge and need to be dealt with differently. So they have to look at

what the current effluent is which is different than what it was during the operations.

MR. SLATER: Okay. The -- I just want to go back to the DOB if we can. It's my understanding that the DOB discussed the discharges of water from Indian Point as part of a larger examination of possible alternatives; is that fair and accurate?

MS. LEVENBERG: Yes.

MR. SLATER: Now -- and so the DOB did review all the options? And is it true that the DOB expert validated that this particular process was the one that posed the least public risk and that's what was presented to that working group.

MS. LEVENBERG: This was -- yes. This was what was recommended as the least of the worst,

MR. SLATER: The least of the worst.

MS. LEVENBERG: The least of the bad options.

And at the time and right now while that is that -- the recommendation from that particular expert, there are many questions that have continued to emerge from the public. And as part of this public oversight process essentially, we continue to look at -- the decommission oversight board continues to look at and question all of the information that we have before us to make sure that whatever is done is done in the safest --

MR. SLATER: Of course.

MS. LEVENBERG: -- the safest way and the best way for the entire region.

MR. SLATER: And so if that being the case, so what is the alternative being proposed if they are not able to go through with what they -- what the expert from DO -- from the DOB determined to be the method that would pose the least risk to the public?

MS. LEVENBERG: So some of the suggestions that have been made are to allow the water to remain in the spent fuel pools, to move it to dry cast storage, to transport it and bury it, to solidify it and/or to find other ways to evaporate it off site and capture the evaporation. There continue to be studies of this type of decommissioning that have been done on Fukushima and while they also plan to release a lot of effluent into the Atlantic, there is -- the Pacific, there is no -- there's not a lot of agreement that that is actually the safest and best way to get rid of that effluent either. They're talking about much larger amounts. So there continue to be studies, I guess. The -- I don't think that the answer right now is before us. But I do believe what is before us is the issue that this bill deals with, which is what is the economic impact going to be on the region if we continue to move forward and discharge this effluent with radiological matter into it into our beautiful Hudson River --

MR. SLATER: Yep.

MS. LEVENBERG: -- where we have so many businesses. People kayaking, boating, swimming, recreating, so much tourism, I think it's like \$4.4 million -- billion, \$4.4 billion of tourism in the region, and people are looking to build and just, you know,

again looking at that one example of the impact of knowing a little bit of nuclear waste was released in Minneapolis --

MR. SLATER: Right. No, I understand.

MS. LEVENBERG: -- to see what the -- the diminishing property values are. Again, much of this I agree is psychological. And while we have heard from the experts, we don't have all of the answers yet.

MR. SLATER: Can I just --

MS. LEVENBERG: -- and not having all of the answers is exactly what this bill is looking to deal with which is making sure that we don't move forward swiftly with a bad idea because it's the most expedient and will really end up giving the owner of the plant the most money from the trust -- the \$2 billion trust fund that's been set aside for this decommission.

MR. SLATER: Thank you. And just quickly if I can just going back two more questions. So you gave me all those alternatives. Were they examined before the expert said that the current process would propose the least risk to the public?

MS. LEVENBERG: They were examined.

MR. SLATER: They were examined.

MS. LEVENBERG: I don't think -- I don't think what was examined was the psychological impact.

MR. SLATER: And this was still, though, determined by the expert to be the least -- the least threat -- pose the least threat to the public.

MS. LEVENBERG: Again --

(Inaudible/cross-talk)

MR. SLATER: Thank you. And just quickly if I could in my remaining time. I just want to touch base on -- on the labor force, because I know that there's been a lot of questions surrounding labor force. And so if -- if we're going to suspend the decommissioning of the plant, it's my understanding that Holtech has told the labor organizations that have a number of jobs there that they're no longer going to be needed. And so how are we supplanting that loss of employment for people like the carpenters and the operating engineers and IBEW?

MS. LEVENBERG: So those are your words that the decommissioning would be suspended. That is -- those are not our words and that's certainly not the words of this bill. This bill only says that you cannot discharge --

MR. SLATER: Just to be clear --

MS. LEVENBERG: -- radiological waste --

MR. SLATER: -- that was Holtec's words.

MS. LEVENBERG: -- and Holtec has said that this is not part of the critical path, as I mentioned earlier, to decommission the plant. There's still plenty of work to be done, they haven't even come up yet with the plan for the first reactor, reactor number one. So there's so much work still to be done as mentioned. They've said that there's easily 12 to 15 years of -- of work. The more creative that we can come up with our human ingenuity, the more jobs we're going to



have for carpenters and all the other experts that are still needed at that plant to make sure that the safety commission of the plant does continue.

MR. SLATER: Thank you very much. I appreciate you answering my questions.

If I can, Mr. Speaker, quickly on the bill.

My clock was off there so I apologize.

ACTING SPEAKER AUBRY: You --

MR. SLATER: Thank you very much, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you.

Mr. Durso.

MR. DURSO: Thank you, Mr. Speaker. Would the sponsor yield for some questions?

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

MS. LEVENBERG: Yes.

ACTING SPEAKER AUBRY: The sponsor yields.

MR. DURSO: Thank you, sir. Just to go over a couple things and I don't want to act like I'm an expert on this and I'm sure I'll repeat some of my questions, but the decommissioning process. Was that voted on by the Legislature?

MS. LEVENBERG: Yes.

MR. DURSO: Okay.

MS. LEVENBERG: I'm sorry, I'm sorry. No. The decommission oversight board. Not the decommissioning project --

process, no.

MR. DURSO: So the decommission oversight board you said was --

MS. LEVENBERG: Yes. The decommission oversight board was established by the Legislature.

MR. DURSO: Okay. So that's the only vote that the Legislature took in regard to the de -- de -- decommissioning of Indian Point.

MS. LEVENBERG: As far as I'm aware, yes.

MR. DURSO: Okay. Now, do you know, by any chance, just off the top of your head, what the vote was on the floor or if there's any members here that voted in favor or against the bill?

MS. LEVENBERG: I do not know and I was not a member at the time.

MR. DURSO: Okay. So why if this commission was formed and a plan was approved, why are we deviating from it now? In other words, if it was -- if the whole plan was approved regardless prior, why is it changing now? Has something changed?

MS. LEVENBERG: I think more than anything what's changed is public perception. And this bill deals with that issue in particular. This bill deals with economic impacts to the Hudson River Valley, and that is something that is intrinsically impacted by public perception.

MR. DURSO: Okay. So well, in regards to that you're saying public perception. In -- in what regard? Meaning is it

perception or did the actual health concerns or anything change to what we originally had voted on to now?

MS. LEVENBERG: So, again, what was voted on was the decommissioning oversight board. The plan that was in place didn't actually include specifics about how this particular effluent was going to be discharged. It allowed for the safety commissioning of the power plant. As part of the decommissioning oversight board there are many public meetings and during those public meetings, much information is shared. When the information was shared by Holtec that the decommissioning part of the plan would involve the discharge of the radio (inaudible) into the Hudson specifically. Originally they told us it was 1 million gallons and then a couple weeks later they changed it to 1.3 million gallons. I think that the public trust was eroded and it continues to be eroded because of other information that arises. So while it may have seemed okay, well, we've been doing it for 60 years so let's just keep doing it, that isn't really a good enough explanation for the public who didn't even know that this was happening. So as we have more and more information about the process about what is actually going into again our beautiful Hudson River, we have more feedback from the public. And as we have more feedback from the public, it's our duty, as you know, to respond to our constituents. There were 500,000 people who signed a petition saying they don't believe we should be discharging nuclear, you know, radiological waste into the Hudson. I think if you asked anybody on the street, as my colleague mentioned earlier today, if you stopped

anybody and said *should we put nuclear waste into the Hudson*, they're not going to say yes.

MR. DURSO: Under -- understood. My -- my question with that, though, is that now this plan that was put in place was obviously approved by New York State, the EPA, so on and so forth. So it was approved by New York -- if it was not approved by New York State.

MS. LEVENBERG: I don't think the EPA has an oversight of this. They're the ones who established certain regulations related to -- to drinking water, but they don't have an approval in this process. I think only it's the NRC and the DEC that really are the ones issuing permits for this -- pieces of this process to continue. So NRC has -- has oversight, PSC has oversight and DEC has oversight and then there's also PHMSA that has a little bit of something to do with it because there are gas pipelines running underneath that you probably heard about at some point in the past.

MR. DURSO: Sure. So if -- if all those entities had approved it, right, the permit, right, they obviously approved the permits for it. What's changed since they approved it to now? As you said just the public perception, correct?

MS. LEVENBERG: Well, a combination. So the -- the per -- the permits that were initially approved by the NRC were approved for the operating power plant. And again, as I mentioned, many of those permits just were carried over to the decommissioned power plant so we're now in a different phase of the plant itself. It's

no longer operational. It's now in this decommissioning mode. So while they may have permits that were carryovers like the SPDES permit I mentioned from DEC and -- and okayed by the NRC, again, that is part of the process and they could also get a permit to dispose of the waste differently. This is how they've decided to do it and this is where the pushback is coming from and this is where our many, many constituents across New York State are calling for us to do something about it.

MR. DURSO: Okay. So with that being said, though, as you just said, so the current permits, right, that are -- that are approved for the -- the decommissioning, right, they were approved with this plan in place. But my question is we're only -- we're not changing it because permits weren't approved, the process wasn't approved, we're changing it because of, again, as you said of public perception, what were worried about the economic impact in the areas is what you said, correct?

MS. LEVENBERG: Yeah. I mean I would argue that we're actually not changing anything. What we're doing is we're putting legislation in place to protect the economic volatility of the Hudson River.

MR. DURSO: Well, we are changing it. If the process was approved by the NRC of New York State --

MS. LEVENBERG: I mean the process wasn't approved. As I said, there are different pieces of the process that the NRC allows and permits and that the DEC allows and permits. It's not

the -- the entire process as a whole. That's not what was permitted.

MR. DURSO: Okay. So in that regard, what's -- and I know you explained it but if we could maybe go over it a little bit more, what's the plan currently if this legislation is to go through to remove the wastewater that's at Indian Point?

MS. LEVENBERG: Again, there are number of different plans, there are a number of different options and there are some that have been done elsewhere. Right now there's a plan, there's a pilgrim, Vermont Nuclear that I think has buried the waste. And then that you can transport it, you can bury it, evaporation, offsite, long-term storage and for a short-term -- I'm just going to actually go back to one thing.

MR. DURSO: Sure.

MS. LEVENBERG: Recently when we introduce this legislation, Senator Harckham and I introduced this legislation, the -- Holtec had originally said they were going to discharge as early as -- originally they said as early as August, they were going to give 30-day heads up to the decommissioning oversight board. Right after we introduced this legislation, they actually changed that and said, oh, we're now want to do that in June. As you can imagine there was incredible pushback and many people very upset that they had moved up the date to June. The reason they said was because they wanted to clean the spent fuel pools and they wanted to release some of the water so they could get six feet down so that they could scrub the sides of the spent fuel pools of the boric acid that it accumulated.

When that -- when they agreed to -- to wait to do the discharge and continue to discuss what the decommission oversight board and others and the PSC, that they came back recently and told us that they had managed to clean the sides of the spent fuel pools anyway without the discharge. Recently, I also read another article --

MR. DURSO: And I don't mean --

MS. LEVENBERG: -- yeah, so the answer is --

MR. DURSO: -- (inaudible) not answering the question.

MS. LEVENBERG: -- there are creative ways that we can find to do something differently that hasn't been discovered yet.

MR. DURSO: Sure. You said --

MS. LEVENBERG: Right now we said we can leave the -- we can leave the effluent in the spent fuel pools for a period of time while we continue to study better methods to discharge of this waste.

MR. DURSO: I mean, and I don't mean to -- that's not answering the question.

MS. LEVENBERG: Yeah, so the answer is there are creative ways that we can find to do something differently that hasn't been discovered yet.

MR. DURSO: Sure, you said --

MS. LEVENBERG: Right now, we said we can leave the -- we can leave the -- the effluent in the spent fuel pools for

a period of time while we continue to study better methods to discharge of this waste.

MR. DURSO: Okay. So one of them that you'd mentioned that I just want to touch on, you said bury it.

MS. LEVENBERG: True.

MR. DURSO: Right? So wouldn't -- burying it where, in the ground?

MS. LEVENBERG: That's an option --

MR. DURSO: Well, so there's a --

MS. LEVENBERG: -- and, again, in casks in ground, the not just discharging it into the ground.

MR. DURSO: Oh, so just in casks in the ground you're saying.

MS. LEVENBERG: Correct.

MR. DURSO: Okay. So --

MS. LEVENBERG: And solidifying it, putting it into casks, burying it, and that's something that's been done elsewhere.

MR. DURSO: Okay. So we don't -- okay, so -- understood. Just touching on a couple things with the time I have left. Again, as we talked about, the labor force that is working there, I know you'd mentioned that Holtec is saying that people aren't going to be out of work, or you were saying that people aren't going to be out of work but they could do other jobs. Is there a plan for the people if -- if the decommissioning process stops or it changes, right, they may not need some of the labor force that is there. So is there a plan in



place, since this plan was already put in place and many of our union workers have a job and had really were planning on working there for years as the decommission process took place. Do we have a plan in place to take care of them and their families, give them gainful employment because they were planning on this job that was approved?

MS. LEVENBERG: So it's interesting that you should mention the promise of jobs. I mean, Holtec had promised to keep many jobs and then they laid off many. I had a conversation the other day with some of the carpenters who, again, I said to them, just, you know, similar to like Holtec is promising them these jobs, but there are also pieces of the contract that are in place that are downsizing many jobs from I think 250 to 50 as part of Phase 3. So they already have told us they only have 50 employees left, I think, that are part of UWA. And when I talked to the union representative from UWA, you know, they're not happy because of the layoffs that have taken place, or the downsizing that have taken place.

MR. DURSO: Well, I'm sure none of the union members that work there are happy.

MS. LEVENBERG: There are many union members that are not happy with what has happened --

MR. DURSO: Sure.

MS. LEVENBERG: -- and even the carpenters, when I suggested that, in fact, Holtec had said that there were many jobs that will be available for 12 to 15 years to come, they said, *Well,*

*we don't trust them.*

MR. DURSO: So there's no plan in place. That was my question.

MS. LEVENBERG: I -- I don't think that there's a plan in place at all for -- for anybody from Holtec right now, and I certainly think that by Holtec, you know, using labor to put a wedge in the discussion and stifle public comment on this issue is not a productive way to move forward with decommissioning a major power plant.

MR. DURSO: To be -- to be honest, ma'am, I mean, listen. Carpenters, for one, and other labor unions have certain jurisdictions, so they can't just be moved around constantly.

MS. LEVENBERG: Well, the carpenters actually I don't believe work directly for Holtec. They work for some of the other -- the other companies that Holtec hires. So there's many jobs that are available. They've had job fairs, they talked to us about how they've been able to find jobs for all -- for people in other -- on other projects. So in other words, if Champion is the company that's doing the work for Holtec that's hiring carpenters, and Champion has a lot of other facilities that they're working at, they're actually able to -- to place their workers at other places.

MR. DURSO: Okay. Well, again, according to most of the -- the labor force that I've spoken to with this, they can't just be moved around from job to job, they can't just be put somewhere else. But something else that you had mentioned saying that labor is using

themselves as a wedge to --

MS. LEVENBERG: No, Holtec is using them as a wedge.

MR. DURSO: Oh, Holtec, excuse me, is using labor as a wedge to stifle public comment, I think that's a little disingenuous when --

MS. LEVENBERG: Really?

MR. DURSO: -- most of the people that were there, and -- not most, excuse me, a lot of people that were there, whether they were protesting (inaudible) had out-of-State license plates. So I mean, if -- if you have people that are coming in from out of State that are protesting this, who is really putting the wedge into this? That's my question.

MS. LEVENBERG: I mean, I -- I can't talk about if the -- if the workers were coming from out of State, but I know --

MR. DURSO: I didn't say workers.

MS. LEVENBERG: -- a lot of workers were -- were showing up to protest outside my office, so I don't know, does that mean that there wasn't enough work for them at the plant that day and they were just being paid to protest outside my office? I know for a fact that, you know, that they were certainly paid to protest and my guess is that they're either being paid by Holtec or one of its subsidiaries.

MR. DURSO: Oh, you think they were being paid by one of the subsidiaries of Holtec to, again, you're saying, go against

what your -- your bill.

MS. LEVENBERG: Absolutely.

MR. DURSO: Was there any money put into protestors on the other side in favor of your bill?

MS. LEVENBERG: Absolutely not. And I have no idea -- not certainly -- the -- the -- all -- all of these people are constituents that -- that we are meeting with and we can care about every one of them. So we want make sure that there are jobs, we believe there are jobs. We believe that this is -- again, when asked specifically at the last Decommissioning Oversight Board if there were jobs for people for 12 to 15 years to come, we were told under no uncertain circumstance by Rich Burrioni, who happens to be the person who sits on the Decommissioning Oversight Board representing Holtec, that there was plenty of work for everybody for the next 12 to 15 years. And something has to be done with the waste, all of the waste, all of the waste from the decommissioned plant. And there's so much work that needs to be done by skilled labor, I cannot imagine that we can't find work for all of these people.

MR. DURSO: I -- I agree with you and I hope we can. I thank you for your time, I appreciate it.

MS. LEVENBERG: Thank you.

MR. DURSO: Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you.

Mr. Ra.

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

yield?

MS. LEVENBERG: Yes.

ACTING SPEAKER AUBRY: Ms. Levenberg yields.

MR. RA: So, I have a couple of things I wanted to discuss, but I wanted to start with your -- your conversation with my colleague earlier talked about an individual who was part of the -- who was part of the, I forget what it's called, what's the --

MS. LEVENBERG: Decommissioning Oversight Board.

MR. RA: Decommissioning Oversight Board, thank you, and some of the comments that he had made and you alluded to them not being well-received. But my understanding is this individual is a retired nuclear engineer, former director of the Nuclear Safety Project for the Union of Concerned Scientists, so certainly has some credentials. Was any of the, you know, disbelief or opposition to what he represented from people with similar scientific credentials?

MS. LEVENBERG: Yes.

MR. RA: Okay. Can you cite anybody who -- who disputed this?

MS. LEVENBERG: I don't -- I don't have that at my fingertips, but there was definitely pushback by -- by other nuclear experts who have been studying this issue and looking at other power plants. And certainly, other power plants have come up with other options. And the one particular one that I can mention is from

Fairewinds Associates and they -- Arnie Gunderson is the Chief Engineer and I believe he worked at a number of nuclear power plants in -- over the -- over -- in the past and basically said that there's no site in the U.S. that is economically or environmentally ready for the necessary cleanup to decommissioning -- to decommission all these leaking, old reactors.

MR. Ra: Okay. Well, I -- I think, you know, to -- to that statement and to the general point, I think we would all agree, in an ideal world we're not dealing with any of this, but we are -- we are left with choosing the best alternative from an environmental standpoint of what's available. Now, one of the things Mr. Lochbaum said in a presentation earlier this year, he identified four of what he felt were feasible options, controlled and treated discharge to the Hudson River; evaporation into the air; ship -- shipment offsite for burial; or long-term storage on the site, and -- and he concluded that none of these would -- no method of handling tritium water at Indian Point will prevent tritium from entering the environment, including maintaining it at the site. But he concluded that while all four of the options would meet Federal standards, discharge to the Hudson River possesses the lowest risk to public health and safety. So did any of those other, you know, experts or anybody else come to a different conclusion that one of these other options was a better one?

MS. LEVENBERG: Well, certainly Vermont Yankee did, and I do believe that other experts have -- had suggested that we shouldn't rush the process and, in fact, we should take more

time to come up with other alternatives. One of the -- again, I'm citing the expert Arnie Gunderson that I mentioned, Chief Engineer for Fairewinds Associates, who said that their review of techniques, data and submission to the NRC make it clear that there are no verifiable records of how much and how many different radioactive isotopes were previously released into the Hudson River, and that no details fully analyzed the toxic, radioactive isotopes in the effluent that the decommissioning corporation Holtec hopes to release. So there are certainly questions coming from other nuclear experts, and that, again, has put pressure on public perception which is what we're talking about with this bill, the economic impact of discharging radioactive effluent into the Hudson River.

MR. RA: Okay. Okay. That -- that calls to mind a -- a different question in a second, but, again, so was there then a recommendation on one of those options or was it some option that somebody may come up with in the future or something that hasn't been tried in the past?

MS. LEVENBERG: Again, as mentioned, there have been other options that have actually been put into place, similar to Vermont Yankee where there was transportation and burial. I have heard from other experts that burial is the preferred option, while this particular expert didn't agree with that. And, again, I will mention that this is an unpaid volunteer from the Union of Concerned Scientists, Dave Lochbaum, that he has himself also said that there is no -- agreed that there is no safe level of tritium release. So right now,

this suggestion that this is the best way to go is the best of the worst, and if we take more time to study this we're hopeful that, again, as I mentioned, that human ingenuity can come -- come in and come up with a better plan not only that would impact us here in the Hudson Valley, but across all of the decommissioning nuclear power plants here in this area as well as in the United States --

MR. RA: Okay.

MS. LEVENBERG: -- as well as internationally, I guess.

MR. RA: Now, with regard to, you know, taking some time to figure out what the best option is, all right, what this piece of legislation does, though, it doesn't say stop the discharge, it -- it actually bans discharging this type of effluent -- it puts it into New York State law. It's not for a time certain, correct? It bans --

MS. LEVENBERG: True.

MR. RA: -- utilizing that type of procedure.

MS. LEVENBERG: Yes.

MR. RA: So it's not as if we're saying, *Hey, we're gonna put a pause on this and then maybe down the line we decide, you know what, this is the best option*, we would have to come back and change this law if they were to decide that was, in fact, the best option.

MS. LEVENBERG: True. This puts a stop to it right now and it's -- we're in a time frame that is heightened, again, and sped up for a variety of reasons, and right now we believe that this is



the best path forward to disallow the discharge into the Hudson River --

MR. RA: Okay.

MS. LEVENBERG: -- during decommissioning.

MR. RA: So getting into this provision and that we're banning this, it was mentioned briefly earlier regarding a potential Federal preemption, all right, and there's a case, Train v. Colorado Public Institute -- Public Interest Research Group, I'm sorry, that went into basically, you know, the Federal Water Pollution Control Act and how it might apply in the situation of something that was subject to the regulation of the Atomic Energy Commission. And basically, it concluded that, you know, the Federal prohibitions related to clean water and all of that did not apply in those type of situations. It really explicitly did not apply in -- in terms of radio -- radiological waste that was governed by those Federal statutes dealing with nuclear energy and the Atomic Energy Act. So why is this not Federally preempted?

MS. LEVENBERG: Because it has to do with the economic impacts of the action. We don't believe that it -- it will -- that it is Federally preempted because it specifically has to do with the economic impacts of the discharge.

MR. RA: Okay, so -- so --

MS. LEVENBERG: And because the Supreme Court agreed with the 9th Circuit that the State has the ability to regulate if it would have a negative impact on the economy.

MR. RA: So are we then talking about a situation where if we were trying to regulate environmental impacts it might be prevented, but not if we're regulating economic impacts?

MS. LEVENBERG: This bill doesn't talk about environmental impacts.

MR. RA: Because, I mean, it would seem to me, then, that we're having a conversation that is certainly, I would think, anybody who, you know, looks at this and -- and looks at our votes afterwards is going to make a case that this was about environmental impacts. I know you talked about property values and all those types of things. But, I mean, at the end of the day we have lots of Federal regulation that is involved in this. So are we really just dealing with people's perception and concern that this is going in, or are we dealing with actual environmental concerns that might be there?

MS. LEVENBERG: We're dealing with the economic impact, and that is a combination of public perception and what that has to do with environmental or health impacts. So even though this bill doesn't discuss environmental health impacts, the public perception is tied to what they believe -- the public believes could -- could actually happen to them if they were to swim, boat, paddle or live on and dip their toes into the Hudson River.

MR. RA: Okay. Now --

MS. LEVENBERG: The people aren't going to come here, we are worried that this is gonna depress tourism in the area, and also depress building values.

MR. RA: Okay. Now, in terms of economic impacts, because I think if we're talking about economic impacts, right, all that stuff is part of it, tourism and -- and home values and all of that. But certainly, I think that makes very, very legitimate part of this conversation the concerns that have been raised by many regarding union labor that is working at the site. Because there's no doubt that if you're talking about jobs in the hundreds of those individuals, that is certainly an economic impact on the region as well.

MS. LEVENBERG: Again, you're talking about specific jobs for a specific plan and there are going to be other jobs for another specific plan. And we're also talking about jobs that would be involved with building, jobs that are involved in tourism, there's so many jobs, what was it, 65 -- 65,000 jobs in the region. There's so many jobs on so many different levels. We heard recently about job fairs, and obviously we know people are trying to hire across the region and they're looking for skilled labor. The folks who are, again, have basically been used to put this wedge in between the process and the public to claim that they're -- that they're -- they're going to be at a loss, I'm not going to say that these particular jobs, I can't say exactly what's going to happen with those particular jobs, but I know for a fact because Holtec has told us, has promised that there are gonna be jobs for the next 12 to 15 years. And I know that the plant has to be decommissioned, that there's going to be a lot of work that's just part of the decommissioning process, not to mention all of the other jobs that are gonna be available for people who work in other -- in other

industries, related industries. And we would hate to see any of those building or construction jobs lost, either, because of a negative impact on the Hudson River Valley.

MR. RA: Okay. Let me lastly say as we talk about the economic impacts, my understanding, and you can tell me if I'm incorrect, is that business groups within Westchester have expressed opposition to this, and in addition, the local village that is the host site of Indian Point has also expressed opposition to this bill because, you know, they were operating under the understanding that they were going to get this plant decommissioned and be able to move on as a, you know, as a village, as a region, as soon as possible and that this is going to delay that.

MS. LEVENBERG: Well, the Town of Cortland has come out asking at the very least for a moratorium. They're the local municipality. Yes, the Village of Buchanan has complained about the slowdown. And so many others, though, have said, *Well, it's bigger than the Village of Buchanan, this is the entire Hudson Valley region that's going to be impacted, and we also have a say.* There are certainly the PTA and all the parents who are concerned about air quality from the decommissioning plant -- the decommissioning process whose kids go to the Blue -- Blue Lantern, Buch -- and Buchanan-Verplanck. And there are so many other schools that are nearby, they're concerned about the process. Parents and, again, local constituents are concerned about fishing, they've been fishing on the river forever. I have one person who worked at Indian Point for many

years is, in fact, a carpenter himself, fishes on the Hudson and absolutely believes that this is the wrong way to go. I've gotten many letters from past employees and people who are concerned that -- that the wool is being pulled over our eyes and this is not -- this is just a -- a large corporation trying to get the most money out of the process. So again, I think what we're -- what we're obligated to do is to make sure that our constituents are represented in this process and that we make sure that the entire Hudson Valley is in good stead -- that we leave it in good stead instead of worse.

MR. RA: Thank you. My -- my time's running short, so I thank you for taking the time to answer my questions.

Mr. Speaker, on the bill.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. RA: Thank -- thank you. Just quickly. If this legislation were to pass as currently written, it'd be an abrupt reversal of the terms of the agreement New York entered with Holtec Decommissioning International to oversee decommissioning activity in the State and would likely result in a likely legal dispute. In the meantime, all decommissioning activity at the site would shut down, resulting in large-scale layoffs to union members. That's a concern. If we were talking about economics, we certainly have to be thinking about the men and women of labor who are working at that site. And we also, when you think about the dispute, have to think about the Federal issues and the preemption issues that also might be subject to litigation. So we've done all kinds of things in the last few years as a

result of the decommissioning in terms of labor, in terms of, you know, taxing different assets, all these types of things for something that we shouldn't even be dealing with to begin with, because -- well, I'm out of time. I'm going to be voting in the negative.

ACTING SPEAKER AUBRY: Mr. Goodell.

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

MS. LEVENBERG: Yes.

ACTING SPEAKER AUBRY: Ms. Levenberg yields, sir.

MR. GOODELL: Thank you. I -- I just had some questions that -- on some of your prior comments that I was hoping you would clarify them. What you indicated to me is we're talking about over a million gallons of water?

MS. LEVENBERG: Tritiated water.

MR. GOODELL: Tritia --

MS. LEVENBERG: 1.3 million gallons of tritiated water.

MR. GOODELL: I see. And the tritium is a byproduct of the fact that this water was used to cool the reactors; is that correct?

MS. LEVENBERG: It was the spent fuel rods that were sitting in the pool.

MR. GOODELL: But we're not talking about any of the uranium or any of the nuclear components of this nuclear power

plant, correct?

MS. LEVENBERG: Other components can actually be treated out, but tritium cannot.

MR. GOODELL: I see. And am I correct, it seemed to me that you were saying that there was a prior SPDES permit when this plant was operating. Was this water then being pulled from the Hudson, used to cool the rods and then sent back into the Hudson in the past?

MS. LEVENBERG: I believe -- I don't know if it was used to cool the rods, but it was definitely used -- there was water that was pulled from the Hudson and put back into the Hudson and I'm not 100 percent sure how that process worked. But certainly, tritiated water, yes, was put back into the Hudson.

MR. GOODELL: I see. And how many years has that been occurring?

MS. LEVENBERG: For 60.

MR. GOODELL: Sixty years.

MS. LEVENBERG: Correct.

MR. GOODELL: So after 60 years of this process, do we have any documented correlation between the discharge that's occurred for the last six decades and any documented health effects?

MS. LEVENBERG: We do have cancer maps, but that's pretty much all that we have that -- that can be correlated, or that has been correlated. There are certainly other issues that have -- that have arisen that put into question other impacts of tritium besides just

cancer.

MR. GOODELL: So it's your view that even though we've been doing this for 60 years, we can't do it again as part of the decommissioning; is that correct?

MS. LEVENBERG: As mentioned, over those 60 years it wasn't at all clear that the public was aware that this was happening, and now they are.

MR. GOODELL: You mean for six decades nobody understood what was going on?

MS. LEVENBERG: I would say yes.

MR. GOODELL: That's interesting.

MS. LEVENBERG: Did -- did you know?

MR. GOODELL: Well, Indian Point is not even on my half of the State, and I'm about as far --

MS. LEVENBERG: Just saying.

MR. GOODELL: -- from Indian Point as you can get and still be in the same state.

MS. LEVENBERG: Yeah, but -- yeah, but you are smart so I thought maybe you'd have known.

MR. GOODELL: No, I haven't been studying the -- the discharge or the operations aspect of this plant. You mentioned that there was a concern that might affect people who go fishing, boating or -- or swimming?

MS. LEVENBERG: A perception, correct. I said the perception of people who are boating or swimming or recreating on



the Hudson. There are seven communities that actually get their drinking water from the Hudson. And again, while all of these studies do point to the low impact, the overall perception of the public is that we're dumping radiological waste into the Hudson and that is not acceptable after years of trying to clean up the Hudson from the PCBs that GE put in to the Hudson from -- from paint and other -- other sources. This is yet another example of using our Hudson basically as a brownfield cleanup site so we can just say, *Okay, we're gonna clean up this non-operational nuclear power plant and just dump the waste right in our backyard.*

MR. GOODELL: So, you know, I've been involved in this actually for decades, not involving Indian Point, but in other contexts, and as you know, there's a lot of public confusion about radiation. If you were to ask a general person, *Are you radioactive*, they would probably say, incorrectly, no. But in reality, every one of us is radioactive, correct?

MS. LEVENBERG: And it's cumulative, too.

MR. GOODELL: Yes. And, in fact --

MS. LEVENBERG: Don't forget that.

MR. GOODELL: -- we use radioactivity to date things. That's how carbon-14 works, that's exactly how it works. We monitor how much carbon-14 is in whatever we're trying to date. So if you were to ask people, *Well, what about my farm, is the dirt radioactive?* And the answer is, yes, everything's radioactive. *What about my drinking water, is that radioactive?* Yes, everything in the

world is radioactive. But the real question is how radioactive. So my question to you is, how does the radioactivity of this water compare to the naturally-occurring groundwater in that community?

MS. LEVENBERG: I don't think I have the answer to that.

MR. GOODELL: How does it compare to the dirt in that community?

MS. LEVENBERG: So again, we're talking about the economic impact. As I mentioned --

MR. GOODELL: No, I understand.

MS. LEVENBERG: -- public perception --

MR. GOODELL: No, I'm just trying to get a nice sense of how radioactive.

MS. LEVENBERG: I -- I don't actually know how it compares to the groundwater or the dirt.

MR. GOODELL: Well, we heard earlier --

MS. LEVENBERG: But I do know that it's 400 curies of radiological -- of tritiated -- of tritium that would be in the -- the dump of 1.3 million gallons. And, again, this does not feel right. I mean, I'm not gonna throw my microwave into the Hudson when I'm done with it.

MR. GOODELL: So I'm just trying to get an understanding. Do we have any information other than the fact that it's 1/5th as radioactive as a banana, do we have any other information that gives us an idea of how radioactive this is?

MS. LEVENBERG: Mostly what we have is comparisons to what had been dumped before. And, again --

MR. GOODELL: But no comparison to, like --

MS. LEVENBERG: -- the public wasn't even aware of that dumping before.

MR. GOODELL: But no comparison to, say, the effluent from treated sewage, right? Because --

MS. LEVENBERG: I don't have that at my fingertips, sorry.

MR. GOODELL: Okay. Great.

Again, thank you very much, I appreciate it. It's been a long day, you've done a great job. Thank you very much.

On the bill, sir.

MS. LEVENBERG: Thank you.

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

MR. GOODELL: We wrestle with all the time the difference between fact and fiction, between perception and reality. The fact is that everything in the world is radioactive; that's a fact. When people talk about being radioactive, though, they're really wanting to talk about how radioactive. And we wrestled with this in my county. I mentioned I had some -- a little bit of experience because my county operates a landfill, and 30 years ago we took the waste paper from a nuclear power plant, and there were some members of the public who said, *OMG* - I'm not quite sure what that

means - *OMG, we're taking waste from a nuclear power plant.* Well, that news -- that paper, you know, the -- the waste paper had a lower level of radioactivity than the naturally-occurring radioactivity in the ground. In other words, when we brought that waste in from that nuclear power plant - whoo, that's scary - when we brought that waste in, the level of radioactivity in our landfill when down because it was lower than the background radiation.

And so we're told that a banana has five times more radiation than a comparable volume of this water. So instead of getting people excited and causing economic harm, let's focus on fact, not fiction. Let's correct the perception so that people know that the discharge of this water is not gonna create any more problem than it did for the last six decades. It didn't create a problem then, it's not going to create a problem now. The nuclear experts say this is the best environmental approach, we should recognize their expertise.

Thank you, sir.

ACTING SPEAKER AUBRY: Thank you, sir.

Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER AUBRY: A Party vote has been requested.

Mr. Goodell.

MR. GOODELL: Thank you, sir. The Republican Conference is generally opposed to this bill, although we may have some members that support it, in which case they can vote yes here on

the floor.

ACTING SPEAKER AUBRY: Thank you.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Thank you, Mr. Speaker. Our conference, the Democratic Conference, is generally gonna be in favor of this piece of progressive, environmental legislation. There may be some who want to be an exception, they could feel free to do so at their seat.

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

Ms. Levenberg to -- oh.

The Clerk will record the vote.

(The Clerk recorded the vote.)

Ms. Levenberg to explain her vote.

MS. LEVENBERG: Thank you, Mr. Speaker. Thank you to all of my colleagues for this discussion. The decommissioning of Indian Point is the number one issue that residents write to me about. My office and Assembly offices around the State have heard from thousands, hundreds of thousands of constituents on this issue. The overwhelming majority of the comments from people with a broad range of political views express feelings ranging from discomfort to dismay to outrage. People are having a lot of difficulty understanding why a company is allowed to discharge radioactive wastewater into a river from what is essentially a brownfield cleanup, regardless of the wishes of those who live near

it. We cannot move forward without the public's trust in this process. Public perception of a polluted, hazardous river will undermine our local economy in various ways, harming property values, business interests and much more.

The Hudson River has come a long way in the past few decades. So many people have worked incredibly hard to make the Hudson Valley a premier destination to live, work, and play. People are concerned about returning to the bad old days of treating our rivers like industrial dumping grounds. We cannot ignore these concerns.

More than 30 municipalities represented by elected officials on both sides of the aisle, including five county executives, have passed resolutions or spoken out in support of this legislation, urging New York State to take more control over this process. Our constituents want the State to have more say over what can and cannot go into our rivers and when. I, along with my colleagues, care deeply about all of our constituents, including our local and State workforce. I hear the concerns predominantly of one labor union, fearful of layoffs if this bill passes. As I've mentioned, at the most recent meeting of the Indian Point Decommissioning Oversight Board, I specifically asked about the labor implications of different waste management options. Based on what we were told, layoffs are not an inevitable result of this legislation; if anything, pursuing alternatives should increase the number for experienced workers which these unions represent. In the absence of this legislation, the elected

officials on the DOB have had difficulty standing up for those who are fearful of the impact that the proposed wastewater releases will have on our region's economic development, which ultimately impacts all of New York. This bill gives us the power to protect our interests.

I will be voting in the affirmative and I urge my colleagues to do the same. Thank you so much.

ACTING SPEAKER AUBRY: Thank you. Ms. Levenberg in the affirmative.

Mrs. Peoples-Stokes to explain her vote.

MRS. PEOPLES-STOKES: Thank you, Mr. Speaker. I just want to quickly rise to commend the sponsor of this legislation and for the manner in which she handled the debate. It's really kind of critical when people are listening to their constituents who -- it may not be your perception, but it is her constituents' perception and, quite honestly, it's mine, too. The Hudson River is one of the longest rivers in the world, 315 miles long. I'm not even sure what spot it's in. I know it ends in New York City, but I don't know if the mileage is left between where my colleague lives and where it goes into the Atlantic. But I believe if the people who live there are concerned about hazardous waste being put into the source that we need for life, you can't even live life without water, if they're concern is -- is about what is happening and she wants to fix that, I admire her for doing so and I'm pleased to be voting in the affirmative.

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

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

Page 11, Rules Report No. 571, the Clerk will read.

THE CLERK: Senate No. S01066-B, Rules Report No. 571, Senator Mayer (A01709-B, Reyes, Paulin, Otis, Dinowitz, Burgos, Raga, Shrestha, Forrest, Dickens, O'Donnell, Levenberg, Simon, Ardila, González-Rojas, Kelles, McDonald, Cunningham, Carroll, Seawright, Fahy, Shimsky, Glick, Gibbs, L. Rosenthal, Burdick, Cruz, De Los Santos, Bores, Hevesi, McMahon, Epstein, Wallace, Lavine, Thiele, Sillitti, Aubry, Weprin, Clark, Septimo, Simone, Jacobson). An act to amend the Criminal Procedure Law, the Executive Law, the Civil Practice Law and Rules, the Insurance Law and the Education Law, in relation to legally protected healthy activity providers.

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

MS. REYES: This bill would establish protections for providers performing legally-protected health activity in the State of New York. It precludes State and local government entities from complying with or facilitating enforcement actions under the laws of other states, where the actions are based on conduct that is lawful in New York State and is performed within the State.

ACTING SPEAKER AUBRY: Mr. Goodell.

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



yield?

ACTING SPEAKER AUBRY: Ms. Reyes, will you

yield?

MS. REYES: Yes.

ACTING SPEAKER AUBRY: The sponsor yields, sir.

MR. GOODELL: Thank you, Ms. Reyes. I was hoping you could give us some insights on how to deal with jurisdictional issues when there's cross-border issues. For example, we know if somebody in New York illegally fires a gun and kills somebody in Pennsylvania, Pennsylvania, where the person was killed, has jurisdiction and can seek extradition even though the person who fired the gun was in New York. I mean, that's pretty well-established, right? So how does this bill relate where a New York physician prescribes medication to kill an unborn child in a state where that medication is illegal? Isn't the state where the child is killed, don't they have the same jurisdiction under their criminal laws --

MS. REYES: The doctor is not killing a child.

MR. GOODELL: Unborn child isn't -- isn't that the purpose of abortion?

MS. REYES: But the physician is not present in the (inaudible).

MR. GOODELL: Right, I understand. Likewise, the shooter in New York, using that example, who kills somebody in

Pennsylvania, Pennsylvania has jurisdiction to seek extradition. No one's challenging that, that's been the law for decades. So if a New York physician prescribes medication that kills an unborn baby in another state where that's illegal, doesn't the other state have jurisdiction to seek extradition?

MS. REYES: The physician is not in that state. And the Interstate Rendition Clause says that the person has to commit a crime -- which, again, this is not that, nobody's committing a crime -- in another state and then have to flee.

MR. GOODELL: Well, there's multiple, multiple examples where a person never leaves New York State but most clearly commits a crime in a different state, right? For example, let's say you have someone who's engaged in a telephone scam. They never leave New York State, they call a resident in a different state, they scam them out of money. Am I correct the other state has criminal jurisdiction, correct?

MS. REYES: Correct, but we're providing that New York State is protecting the provider for performing lawful practices, health-protected activity in the State of New York.

MR. GOODELL: So --

MS. REYES: -- within their scope of practice and licensure.

MR. GOODELL: Right. And, likewise, my first example was someone fires a gun across the border, kills somebody in a neighboring state, the neighboring state has criminal jurisdiction,

correct?

MS. REYES: Correct.

MR. GOODELL: So there are multiple situations where an individual never leaves New York State ever -- born here, raised here, never leaves -- but commits a crime that hurts somebody in a different state, correct?

MS. REYES: Correct.

MR. GOODELL: And that other state has then criminal jurisdiction to seek extradition, correct?

MS. REYES: Correct.

MR. GOODELL: Okay, so --

MS. REYES: Except that the physicians are not committing a crime.

MR. GOODELL: Well, so if the other state says it's a crime to prescribe this medication --

MS. REYES: But it's not a crime in New York and they --

MR. GOODELL: I understand, but if it's a crime in the other state, the fact that the person who is committing that crime is doing so using a telephone or Zoom or telehealth, they are still committing the crime in the other state, correct?

MS. REYES: Not necessarily. They're not in the other state.

MR. GOODELL: So how is that different than someone who uses a telephone or Zoom or some other means to fleece

somebody from the other state?

MS. REYES: Because it's a legally-protected health activity of the State of New York.

MR. GOODELL: So your view is even though they're violating the law of the other state, maybe even knowingly and intentionally violating the law of the other state, we are not going to honor the New York -- the United State Constitution as it relates to extradition?

MS. REYES: Correct, because they are not in another state. They are still in New York and they haven't fled said state who may seek --

MR. GOODELL: So are there other crimes that a New Yorker can commit that would be a crime in the other state, or the injury occurs in the other state where it violates the other state's criminal law where we say, *We don't care, we're not going to honor or respect the other state?* Are there other situations other than just, you know, killing an unborn baby?

MS. REYES: This is for legally-protected health activity under the --

MR. GOODELL: Well, we're talking about abortion, right?

MS. REYES: -- scope of practice of a physician.

MR. GOODELL: Yeah, we're talking about abortion, right?

MS. REYES: Yes.

MR. GOODELL: And abortion involves killing an unborn baby.

MS. REYES: Not -- but not just abortion, this could be the management of a miscarriage, this could be --

MR. GOODELL: No, I understand, but let's focus on abortion because that has very clear --

MS. REYES: Because you want to, but that's not just what this is about.

MR. GOODELL: Well, I understand there may be other issues as well, I just want to look at this for the moment. Are there other situations where a New York physician or anyone else in New York can violate a foreign and other states' laws, criminal laws, and avoid extradition?

MS. REYES: I'm not certain, but the activity that we're referring to in this bill is lawful in the State of New York.

MR. GOODELL: And illegal in other states, correct?

MS. REYES: For now, presumably. And the physician is present in our State -- the physician is never present in another state, they're doing it while they're here.

MR. GOODELL: Now, let me reverse that a little bit. New York has its own Board of Health, you know, the State -- State Department of Health, and New York State has certain things that we allow, right, and certain things that we don't allow. So let's say another state, let me step back five years, if I may, and the other state legalizes marijuana and we are not there yet. Was it your view

that the other state -- residents in the other state can then sell marijuana to New Yorkers in New York and New York could not have enforced it?

MS. REYES: That's not germane to this bill, and neither is my view.

MR. GOODELL: And neither is what?

MS. REYES: My view. You're asking me about my view.

MR. GOODELL: Oh, okay. So are there other situations where people who are outside of New York can violate New York law without New York being able to do anything about it?

MS. REYES: I don't have an answer for that.

MR. GOODELL: Okay. I don't either. I'm not aware of any others.

Thank you very much, I appreciate your comments.

Sir, on the bill.

ACTING SPEAKER AUBRY: On the bill.

MR. GOODELL: You know, we have 50 states in the United States, and we recognize that not every state is identical to New York. That New York, for example, authorizes abortion right up until the day before the child is born under certain circumstances. We authorize late-term abortion. We advertise it. Well, we want to be the abortion capital of the world, apparently. And I -- I've opposed those views and I voted against them, but I recognize that the Majority has passed them. But other states place a much greater value on the

unborn child. Other states take the view that the unborn child is probably -- needs the protection of the state. And they limit abortion. Sometimes they only allow abortion until there's a heartbeat, and once there's a heartbeat they say, *You know, it better be a special condition.* Not New York, but other states.

And we have always, over the decades, over the centuries, have acknowledged that if somebody who's in New York violates another state's criminal laws and does so knowingly and intentionally, the other state can extradite the person. But this bill is astounding because it says a New Yorker using telehealth can violate another state's criminal laws and do so with impunity. And that's wrong. We need to respect the sovereignty and the independence and the -- and the right of other states to pass their own criminal laws. And, by the way, we want them to respect us, too, don't they? We want them to respect us. So if we ban a product, let's say we ban GORE-TEX because it has chemicals that make it waterproof, we don't want other states just to thumb their nose at us and send us all their GORE-TEX. And we routinely, don't we, we routinely pass laws banning certain products in New York, don't we? And don't we want the other states to respect our decision? We should respect their jurisdiction, as well. That road goes both ways. And for that reason, I cannot support this because I believe it is an unconstitutional attempt to allow New York physicians to knowingly and intentionally violate the law of other states with impunity. That's bad public policy. Regardless how you feel on the abortion issue, it's bad public policy

and we should not embrace it.

Thank you, sir.

ACTING SPEAKER AUBRY: Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER AUBRY: A Party vote has been requested.

Mr. Goodell.

MR. GOODELL: Thank you, sir. The Republican Conference is generally opposed. Certainly, those who support this legislation can vote in favor here on the floor. Thank you, sir.

ACTING SPEAKER AUBRY: Thank you.

Mr. Vanel.

MR. VANEL: Thank you, Mr. Speaker. This will be a Party vote, the Majority will be in favor of this legislation. If those that are opposed may do so at their desk.

ACTING SPEAKER AUBRY: Thank you, sir.

The Clerk will record the vote.

(The Clerk recorded the vote.)

Ms. Walsh to explain her vote.

MS. WALSH: Thank you, Mr. Speaker. So, I just rise to add emphasis to the comments that were made during the debate of this bill. I think that this is an extremely -- wow, worrisome doesn't even cut it. I think this is a really troublesome bill for all the reasons that have been stated. You know, I support telehealth because I -- I think particularly in some of the rural areas that I represent, I



think telehealth is an important way to -- to provide help to people who can't get it in other ways in person. But I think that it creates, really, a slippery slope that we're going to have to confront as a Legislature, and I don't like this bill because I think it's addressing it in the wrong way.

You know, we didn't see it this year, but we know that the Medical Aid in Dying bill is something that might be considered. You know, we're talking about abortion services here. Are we next going to be talking about the end-of-life services being done through telehealth potentially? I think that -- I think that it's very elitist of us in New York to think that it's our way or the highway, we're right and anybody else who is -- in other states is wrong. I think that that really does really run afoul of -- of the way that we have approached our republic since it was created.

So I think that this is a real problem bill and I would encourage a no vote. I'm going to be voting in the negative. Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Ms. Walsh in the negative.

Ms. Glick to explain her vote.

MS. GLICK: Thank you, Mr. Speaker, to explain my vote. I thank the sponsor for this measure, and I'm proud of New York State. Just because other states are denying women their right to control their own bodies, I'm proud that New York is standing up for women across the country.

I withdraw my request and vote in the affirmative.

ACTING SPEAKER AUBRY: Ms. Glick in the affirmative.

Ms. Reyes.

MS. REYES: Thank you, Mr. Speaker. I just wanted to correct the record. Nothing in this bill would handcuff another state from legally prosecuting a physician who is negligent or who actually does commit a crime. We are just affirming that in New York State we protect the rights of physicians to perform, again, legally-protected health activities. And in that case it means providing services to women who, in other states, may not have options because they were taken away from them.

The physician -- the New York Academy of Family Physicians really requested this. There is a cohort of doctors, a very small one at that, that already provides these services and they are fearful that their licenses are in jeopardy and just want to assure them that in New York, we protect them. So I want to thank them, I want to thank Planned Parenthood and the NIRH, NYCLU and the Medical Students for Choice for all their advocacy around this, as well as my colleague, Senator Shelly Mayer for her partnership, and the Committee Chairs that helped push this through; the Health Committee, the Codes Committee, the Higher Ed Committee and the Insurance Committee for helping move this bill through. And I of course vote in the affirmative.

Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Ms. Reyes 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. If we could now turn our attention to Rules Report No. 668 by Ms. Cruz, followed by Rules Report No. 694 by Yours Truly, Mrs. Peoples-Stokes.

ACTING SPEAKER AUBRY: Thank you very much.

Page 14, Rules Report No. 668, the Clerk will read.

THE CLERK: Senate No. S02832-A, Rules Report No. 668, Senator Breslin (A00154-A, Cruz, Aubry, DeStefano, Dickens, Cook, Fall, Epstein, Williams, McMahon, Weprin, Vanel, McDonough, Ramos, Jacobson, Steck, Lupardo, Brabenec, Burgos, Dinowitz, Colton, Rozic, Reyes, Lucas, Carroll, Thiele, González-Rojas, Bores, Hevesi, Woerner, Burdick, Buttenschon, Benedetto, Santabarbara, Tapia, Anderson, Simone, Zaccaro, De Los Santos, Cunningham, Pheffer Amato, Raga, Gibbs, Chandler-Waterman, Durso, Sillitti, Alvarez, Ardila, Lee, Davila, L. Rosenthal, Glick, Simon). An act to amend the Penal Law, in relation to wage theft.

ACTING SPEAKER AUBRY: Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER AUBRY: The Clerk will record the vote.

(The Clerk recorded the vote.)

Ms. Cruz to explain her vote.

MS. CRUZ: Thank you, Mr. Speaker. This bill was actually born 24 years ago when my mother, who was a domestic worker, was the victim of wage theft. So I'm a little bit emotional, so bear with me if I go over my two minutes; please, John, my apologies. We are not going after the good guys. What we want to do is make sure that the people who made a mistake, they don't have to face the law in the way that people who are purposely stealing for workers would have to do it. We want to make sure that kids who are 16 years old like I was never have to watch their parents make a decision between food, a roof over their heads or the money that is needed for the -- for the family. Employers should not be using stealing wages as a way to do business, and we need to hold them accountable. I want to thank the Speaker who, several years ago, began down the road of combatting wage theft. And now we get to do so in this way. I want to thank the carpenters who helped us create a coalition that led us to today. I want to thank our Attorney General, several of the district attorneys who have supported this effort. What we want to do is make sure that employers know if they come purposely and steal the wages of workers, we are going to hold them accountable. The day that you are stealing wages from workers is gone. We are no longer going to let you do this, and I cannot be prouder. I want to thank, also, 32BJ,

the Mason Tenders Council, and I want thank my dear friend Diana Florence who's a former District Attorney in Manhattan who helped us write this bill. The idea is that if you work a day in New York, you should receive your wages. That is wage theft and that ends today.

Thank you.

ACTING SPEAKER AUBRY: Ms. Cruz in the affirmative.

Mr. Goodell to explain his vote.

MR. GOODELL: Thank you, sir. This bill is the latest in a series of bills that try to make it very difficult, even criminal, to work in New York State. And what it does is it says that if an employer for some reason shorts an employee their wage, we can add up all those little -- little shortages in order to make a big crime. And so think about this, if you're a shoplifter and you shoplift \$200 a day and over the week you shoplift, you know, \$1,200 or \$1,500, we don't aggregate them, it's separate misdemeanors for each one. But this says that if over a time period, over a length of time for some reason the employer makes a mistake on the wages and is short, we'll add it all up so instead of being a misdemeanor we can make it a felony. That's an amazing thing, isn't it? New York has the distinction of making employers felonies on wage mistakes.

Now, you might think, well, why would anyone ever short a wage, because it talks about wage theft. Well, let me give you some simple examples. If you think what you have to pay your employees is simple, think again. Let's say you run a restaurant and

your servers share their tips with the kitchen, because they know when you serve a great steak that's perfectly made, they get a better tip. Is that legal? Not in New York. Could it result in a felony under this bill? You bet. Or what about this? You tell your employees, *It's really important that you show up on time. We open the doors at 9 o'clock, we run a busy business, a retail*, and they show up at five of and clock in. Do you have to pay them that five minutes? Answer is, yes, and if you didn't, wage theft. And this bill would allow them to add up all those little times and make it a felony.

So, I don't support this bill because I don't think we need to make businessmen who make mistakes on a small level into felons by adding up all their small mistakes into a large mistake.

Thank you, sir.

ACTING SPEAKER AUBRY: Mr. Goodell in the negative.

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

Page 15, Rules Report No. 694, the Clerk will read.

THE CLERK: Senate No. S07505, Rules Report No. 694, Senator Bailey (A04618-B, Peoples-Stokes, Lupardo, Zinerman). An act to amend the Criminal Procedure Law, in relation to making technical corrections regarding the unlawful possession and sale of cannabis.

ACTING SPEAKER AUBRY: An explanation is

requested, Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Thank you, sir. This bill makes technical corrections regarding the unlawful possession and the sale of cannabis. The bill fixes incorrect cross-referenced -- incorrect information that was cross-referenced in the Criminal Procedure Law that was enacted in 2021 by the Marihuana Regulation Taxation Act. The error in law has resulted in certain convictions that are eligible for a lower-level resentencing based on MRTA have not been able to proceed. And so we need to make this technical correction so that those people who want to access this opportunity can do so.

ACTING SPEAKER AUBRY: Mr. McGowan.

MR. MCGOWAN: Thank you, Mr. Sponsor -- excuse me. Thank you, Mr. Speaker. Will the sponsor yield for a few questions?

ACTING SPEAKER AUBRY: Mrs. Peoples-Stokes, will you yield?

MRS. PEOPLES-STOKES: Yes, sir. It would be my pleasure.

ACTING SPEAKER AUBRY: The sponsor yields, Mr. McGowan.

MR. MCGOWAN: Thank you, sir, and thank you, ma'am. I just have a -- a few questions about this bill. Could you -- could you explain in any more detail why this change is necessary?

MRS. PEOPLES-STOKES: Well, as I just mentioned, the error in the original law has resulted in certain

convictions that are ineligible for the lower resentencing based on MRTA. And these folks have been unable to proceed, their attorneys have been unable to protect them. And so we need to make this technical change because the intent of the legislation was to allow folks who had low-level marijuana crimes under those that were passed in MRTA to have their records expunged. We would like to see them have that done, there are people who would like to take advantage of it.

MR. MCGOWAN: When was this technical error that you mentioned discovered?

MRS. PEOPLES-STOKES: What exactly was the wording? The incorrect references means the defendant must demonstrate a severe and ongoing consequence from their original conviction. That's not necessary.

MR. MCGOWAN: So -- so my question, ma'am, is when was that technical error that you've described discovered?

MRS. PEOPLES-STOKES: When it was brought to the attention of an attorney who was representing their client.

MR. MCGOWAN: And when you say essentially that there were consequences that were, I guess, not intended with the present language, right, so you're talking about the original legislative intent of the bill?

MRS. PEOPLES-STOKES: Exactly.

MR. MCGOWAN: Okay. And so some convictions resulted that ultimately were not able to -- to be vacated under current



law; is that -- is that accurate?

MRS. PEOPLES-STOKES: In drafting this -- drafting this error has resulted in many individuals not being able to take advantage of the relief of resentencing provisions. The intention of the legislation was to allow people who were eligible for that to be available to them. Those words prohibit some people from being able to do it, and so we would like to remove them.

MR. MCGOWAN: Do we have an approximate number of these individuals who have been negatively impacted as a result of the current language which you say is in contrast to the legislative intent of the bill?

MRS. PEOPLES-STOKES: Well, I think my last count that I've heard is something like over 400,000 people had had their records expunged or...

MR. MCGOWAN: Four hundred thousand who were expunged?

MRS. PEOPLES-STOKES: New Yorkers.

MR. MCGOWAN: Okay. So my question is, essentially you're saying that there are more individuals who -- who should have had their records expunged --

MRS. PEOPLES-STOKES: Exactly.

MR. MCGOWAN: -- but for this, as you described, a technical error in the drafting of the bill, correct?

MRS. PEOPLES-STOKES: Right. So it's like it would be automatic --

(Pause)

Okay, so we actually don't know how many people have taken advantage of the resentencing piece of this, but I do know that there are some 400,000 New Yorkers who have had their records expunged and/or cleared as a result of MRTA. And we could add to that number by technically cleaning up this language in this bill.

MR. MCGOWAN: Okay. So I guess my question is, and maybe you don't know, but if -- if you do know, is there any anticipation of how many more individuals would qualify under this change that's being proposed here?

MRS. PEOPLES-STOKES: Actually, I don't know that. I do know of at least three people because I know of their attorney who contacted me and needed support.

MR. MCGOWAN: Okay, so you were contacted by an attorney for three individuals.

MRS. PEOPLES-STOKES: Exactly.

MR. MCGOWAN: Okay. Is this -- we talk about and what's here in the sponsor's memo and you mentioned it today, that this is a -- a technical error and you talk about an error in the drafting. Isn't this really just a change afterwards rather than talking about an error or some type of technical issue with the drafting? I'm not sure I see that distinction, I'm just trying to understand --

MRS. PEOPLES-STOKES: I wish you were right about that, because I know it would make you feel better and make other people feel better, but no, this bill is doing exactly what it's

asking to do, to correct an error that was made.

MR. MCGOWAN: Okay. I guess what I'm hung up on is why we say it's an -- a drafting error and not just we want change it after the fact. I just -- I'm trying to understand that distinction.

MRS. PEOPLES-STOKES: Well, because if it had been drafted appropriately it would not have excluded or added this language, it wouldn't have been there. And the fact that it was found after the fact says that it was an error in drafting and that's why we have to fix it.

MR. MCGOWAN: My review of the change, it's -- it's actually very minor, right? We're -- we're swapping out subparagraph 1 for subparagraph 2 of paragraph A of subdivision 440.46-a. So we're swapping one section.

MRS. PEOPLES-STOKES: Okay, so that's -- that's what we need to change in order to provide this opportunity for New Yorkers who would like to avail themselves of it.

MR. MCGOWAN: I'm just, again, I guess it's -- it's still not clear to me how the current law is not consistent with the legislative intent of the law enacted in 2021, and not just a, *Hey, you know what? We want to change this.*

MRS. PEOPLES-STOKES: Well, sir, I wish everything in -- in life was perfect. I know I try to be, but sometimes I make an error and I made an error that time so I need to correct it.

MR. MCGOWAN: Okay. I -- I respect what you're saying, ma'am, I -- I'm still not sure that it really -- it -- it answers my

question, but I'm going to move on to another point. And I -- I think we can infer this, but essentially what this does is it broadens the number of qualifying offenses that would be eligible for an application to vacate a conviction; is that correct?

MRS. PEOPLES-STOKES: No, that is -- that's your interpretation. The -- again, the intent of this bill is to fix incorrect cross-references in the Criminal Procedure Law that was enacted in 2021 by the Marihuana Regulation Tax Act.

MR. MCGOWAN: I understand that and I -- and I respect that is the stated intent of the bill, I guess. But by doing this, we are broadening the number of offenses that qualify for this type of vacature, correct?

MRS. PEOPLES-STOKES: Well, we intended these number of offenses to be included, and if we had not made this error they would have been. So that's why we're here to correct it.

MR. MCGOWAN: Okay. Thank you, ma'am. I appreciate your time.

Mr. Speaker, on the bill.

MRS. PEOPLES-STOKES: You are very welcome, sir.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. MCGOWAN: I certainly appreciate what the sponsor has indicated as the intent of this bill. It's been enacted as of 2021. I -- I really don't see, though, how this was a -- we can toss this up to a drafting error, and I think the concern there is that when we

say that, *Oh, it's just a drafting error*, it sounds like it's -- it was actually described as a technical change, and I'm not sure that it is. This seems much more substantive. This is going to enhance and broaden the number of offenses that qualify. Although, when you look at the bill and the proposal here, the actual change is relatively minor, we're swapping out subsection 1 for subsection 2. So that looks minor. But the effect I believe is much more significant.

So I think it's, you know, I'm not -- I'm not gonna say it's -- it's disingenuous, I'm not gonna say that, but it almost, in my opinion, leads to that type of a conclusion by merely referring to it as a -- a drafting error and a technical error. I think it's a change. I think it's a change in the law. I think that perhaps, you know, as -- as the sponsor indicated, there was a -- an attorney who had clients who -- who perhaps was not able to get the relief that he or she was intending for his client so brought this -- and here we are. But I -- I think that we have to call it what it is. This is a substantive change, this broadens the qualifying offenses and that's what this bill does. It's not merely a technical error. From my interpretation and my analysis of the bill as well as the responses -- and I appreciate the sponsor for answering my questions, but I think it's a little more than what's been described today, sir. So I appreciate your time.

Thank you, Mr. Speaker.

MRS. PEOPLES-STOKES: Mr. Speaker, while I do appreciate the gentleman's comments --

ACTING SPEAKER AUBRY: Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: -- his opinion is important. But I will say we have been here the entire day listening to someone else tell us what the intent of our legislation is. This legislation actually will cover people who should have already been covered. The 400,000-some-odd people who already have been -- had their records sealed and/or expunged, their -- their sentencing levels were higher than the ones that we're trying to add now. It was clearly an error that was made. And again, I mean, I don't mind apologizing for making this error. But those people who have lower sentencing and less time that they have to spend in jail, they still have not had access to MRTA and we want them to have access to it. And so no matter what anyone else thinks the purpose of this is, I'm telling you, this is the purpose of it: To give people an opportunity that we designed for them to have in 2021 that they have not been eligible to have. And so I respectfully [sic] hear the gentleman's opinion, but I totally disagree with it and I think it's disingenuous for him to suggest why I would put in a piece of legislation.

ACTING SPEAKER AUBRY: Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER AUBRY: A Party vote has been requested.

Mr. Goodell.

MR. GOODELL: Thank you, sir. The Republican Conference is generally opposed to this. Those who support it are certainly welcome to vote yes on the floor. Thank you, sir.

ACTING SPEAKER AUBRY: Thank you.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Thank you, Mr.

Speaker. The Democratic Conference is generally gonna be in favor of this piece of legislation that actually allows people to have an opportunity to have a second chance at life; however, there may be some who would desire to not be supportive, they can feel free to vote at their seat. Thank you, sir.

ACTING SPEAKER AUBRY: Thank you.

The Clerk will record the vote.

(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, members now have on their desk an A-Calendar. I would like to move to advance that A-Calendar.

ACTING SPEAKER AUBRY: On Mrs. Peoples-Stokes' motion, the A-Calendar is advanced.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Thank you, sir. If we can call our attention to page 3 and we're gonna take up Rules Report No. 865 and then 866, followed by 863 and 864. If I could attach names to that, Mr. Speaker, 865 is by Ms. Rosenthal; 866 is by Ms.

Paulin; 863 is by Mr. Dinowitz and Ms. Rosenthal; and 864 is by Ms. Rosenthal.

ACTING SPEAKER AUBRY: Thank you.

MRS. PEOPLES-STOKES: Thank you.

ACTING SPEAKER AUBRY: On the A-Calendar, page 3, Rules Report No. 865, the Clerk will read.

THE CLERK: Assembly No. A06655-A, Rules Report No. 865, L. Rosenthal. An act to amend the General Municipal Law, the Local Finance Law, the Private Housing Finance Law and the New York City Charter, in relation to enacting the "Housing Affordability, Resiliency and Energy Efficiency Investment Act of 2023."

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

Mr. Goodell? Thank you, sir.

Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER AUBRY: The Clerk will record the vote.

(The Clerk recorded the vote.)

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

Page 3, Rules Report No. 866, the Clerk will read.



THE CLERK: Assembly No. A07338, Rules Report No. 866, Paulin. An act to amend the Public Health Law, in relation to newborn screening for glucose-6-phosphate dehydrogenase deficiency.

ACTING SPEAKER AUBRY: On a motion by Ms. Paulin, the Senate bill is before the House. The Senate bill is advanced. Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER AUBRY: The Clerk will record the vote.

(The Clerk recorded the vote.)

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

Page 3, Rules Report No. 863, the Clerk will read.

THE CLERK: Assembly No. A04047-B, Rules Report No. 863, Dinowitz, L. Rosenthal. An act to apply for [sic] the Housing Stability and Tenant Protection Act of 2019 to rent calculations and rent records maintenance and destruction.

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

An explanation is requested.

MR. DINOWITZ: Okay. This will probably take a few minutes but I'm sure after I finish you'll not only want to support

the bill, but you may even want to cosponsor it.

(Laughter)

So, this bill relates to how the legal regulated rent is determined in overcharge cases for rent-stabilized apartments. The bill provides that for the portions of an overcharge claim involving rents paid prior to June 14th, 2019 -- that's pre-Housing Stability and Tenant Protection Act, that's HSTPA -- the legal rent is determined based on changes enacted in the -- in the HSTP -- blah, HSTPA. Where a legal rent has already been calculated for prior to June 14th, 1919 [sic], nothing limits a recalculation for what the rent should be post-HSTPA.

So let me -- let me just give a little explanation since you asked for an explanation. Part F of the HSTPA was intended to ensure that tenants were not left paying more for their rent-stabilized apartments than they rightfully should. For many reasons, tenants did not challenge rent overcharges within four years under the prior law. The four-year rule created a rigid and artificial base date and prevented tenants from examining more than four years of their apartment's rent history to prove that their rent was improper, except in limited circumstances. So in practice, what this meant was that once four years had passed, the landlords could use the base-date rent to continue to collect illegally-inflated rents with impunity unless the tenant could show that fraud had occurred. But unfortunately, if the landlord simply illegally doubled the rent, for example, without engaging in any sort of scheme over and above that to evade detection

of its illegal activity, that wasn't considered fraud. The result was that many landlords' illegal rent increases were shielded from review, leading to a loss of affordability. So what Part F of the HSTPA did was it removed the strict limits placed by the four-year rule and the base date, and instead allowed tenants, courts and DHCR to examine the entire rental history as necessary to determine the last reliable rent, and it also changed the statute of limitations for collecting rent overcharges to six years. Part F operated in two distinct ways; one, it -- retroactivity in terms of establishing the rules for the refund of rent overcharges that had occurred in the past and prospectively in terms of settling -- setting the rent that a landlord could lawfully charge in the future. But in each case, the legal rent is -- is set based on the rent in the last reliable annual registration statement.

So what happened is this law was challenged, and in April of 2020 the Court of Appeals found in the case of Regina Metropolitan Company v. New York State DHCR that the retroactive application of Part F was unconstitutional. But it also said that in -- in its decision that, and this is a quote, "Our narrow holding here determining that the newly-enacted overcharge calculation provisions may not be applied retroactively constitutes nothing more than an appropriate exercise of this quintessential judicial authority." So, the Court of Appeals found that the retroactive application was unconstitutional for two connected reasons; one, forcing landlords to pay back rent that they had lawfully collected in the past based on prior overcharge rules was not rationally related -- rationally related to

any of the rent stabilization's policies goals. In other words, it would not deter illegal rent increases or return apartments to rent stabilization. Also, landlords could not be penalized for the absence of records that they had lawfully discarded under the prior rules. So the Court of Appeals stated on numerous occasions in their decision that it was not ruling on the prospective application of Part F, it acknowledged that prospective application (inaudible) the HSTPA's legislative goals by deterring future overcharges. It also noted that retroactive imposition of overcharges was different than requiring landlords to, quote, "shoulder a new payment obligation going forward." And what that meant was that the Court explicitly did not place any limitation on Part F's impact on rent, rents charged and collected after June 15th, 2019, and that was about the time that the HSTPA was passed by this Body.

And I could go on, but I'm sure -- I'm sure, Mr. Fitzpatrick, you might have a question or two.

ACTING SPEAKER ZACCARO: Mr. Fitzpatrick.

MR. FITZPATRICK: Thank you, Mr. Speaker. Will the sponsor yield for some questions?

ACTING SPEAKER ZACCARO: Will the sponsor yield?

MR. DINOWITZ: I will.

ACTING SPEAKER ZACCARO: The sponsor yields.

MR. FITZPATRICK: So Mr. Dinowitz, can you

explain why common -- common law fraud needs to be replaced by the presumption of fraud? Why are we doing that?

MR. DINOWITZ: Why what? Why do we have to do that?

MR. FITZPATRICK: The alleged fraud with the presumption of fraud. Why is that being done?

MR. DINOWITZ: I -- I think what we want to do in this bill is to make sure that there's no question what -- what -- what the rules are here, whether it's in terms of fraud or in general, the application of the prospectivity of the law that we passed in June of 2019. So in the past, common law fraud was -- may have been raised as an issue in the court but that's not part of this bill.

MR. FITZPATRICK: So -- so how is a building owner supposed to, you know, calculate an accurate rent roll when, you know, in a couple of years cases can be filed and you're going back beyond six years to find, you know, to get this information. Prior rent increases were, you know, were handled under the old set of laws, and now we're, you know, we're just pushing that aside. We're saying you can go back even farther. Some of these records may not even be available, you know, to come to what you believe would be an accurate calculation for a new base rent.

MR. DINOWITZ: Well -- well, first of all, records aren't always available. Of course we would want to know that the records weren't made unavailable for bad reasons which sometimes happens, but let -- let me just tell you how -- how this came about in

the first place.

MR. FITZPATRICK: Mm-hmm.

MR. DINOWITZ: Some years ago, and I don't remember what year but I had several people come to my office with -- and it became apparent that the rents they were being charged were not necessarily accurate. So what we did, we helped them get a -- a rent history from DHCR and --

MR. FITZPATRICK: May I ask what lead them to believe that those rents were not accurate? What were they accusing the landlord of?

MR. DINOWITZ: They were out of whack with -- with other tenants in their buildings, for example, with similar apartments, so it became clear to me --

MR. FITZPATRICK: Define *out of whack*, what does that mean?

MR. DINOWITZ: Well, if -- if one tenant is paying let's say for a rent-stabilized apartment \$1,200 and another tenant was paying \$2,000 and there was no other major differences, you know when an apartment turns over more the rents can be higher --

MR. FITZPATRICK: Sure.

MR. DINOWITZ: But if borrowing something different, there's no reason why two similar apartments in the same building that are rent-stabilized should have radically different rents. And so after --

MR. FITZPATRICK: Could one have had an IAI or

--

MR. DINOWITZ: What?

MR. FITZPATRICK: Could one have had an IAI, you know, a building of an improvement or to contribute to that difference --

MR. DINOWITZ: Well, how --

MR. FITZPATRICK: I mean how are tenants --  
(Inaudible/cross-talk)

MR. DINOWITZ: IAI could have --

MR. FITZPATRICK: -- know exactly --

MR. DINOWITZ: -- could have contributed to --

MR. FITZPATRICK: -- how would one tenant --

MR. DINOWITZ: Well, let me -- let me finish answering your question --

MR. FITZPATRICK: Sure.

MR. DINOWITZ: -- that you asked and interrupted me a few times. It was -- it was clear to me that something strange was afoot and what -- what was clear to me is that at some point in time somebody, either the landlord or perhaps the previous landlord if there was a previous landlord, raised the rent inappropriately, that was my conclusion. But because of the rule at the time, if -- if the landlord lied, cheated, or even made a mistake - and I'm not saying it could have been one over the other but in either case and four years had left there wasn't a thing the tenants could do about it. So not only was the tenant paying a higher rent than that tenant should've been paying, but

in addition, that rent -- that higher rent was going to continue forever and future rent increases over and above that were going to compound the injustice that took place. So what I did is I put in a bill to change that. And that bill was incorporated into the legislation that we passed in June of 2019 in the HSTPA. And that particular provision or I guess other provisions, too, but that particular provision was challenged in court, and at least on a narrow point part of the challenge was successful. And the part that was successful was that under certain circumstances the retroactivity clause in the -- the legislation was overturned by the Court of Appeals, the previous Court of Appeals, yes, a few years ago.

MR. FITZPATRICK: Okay. So -- so going back, allowing -- allowing this recovery to go back prior to the six years over this presumption of fraud, you know, going back, possibly back to the early '70s when the rent stabilization law was enacted, how -- where is the fairness to the building owner to allow such an egregious, you know, lookback period when this information may not be available, you know, successive turnover in ownership, things like that, records, a belief that records are no longer needed to be retained and they're discarded. Where is the fairness for the building owner when they followed the rules as they were under the previous set of laws and now we are moving the goal posts, which is so common in housing legislation, as -- as we all know. So where -- I mean, how do you -- how do you explain the fairness aspect of this? I mean, I know --



MR. DINOWITZ: Are you putting a question mark and ending your sentence at any time soon?

MR. FITZPATRICK: You know, I know we, you know, you like to vilify the building owner as the root of all evil in -- in any housing problem. But there are building owners who follow one set of rules, now the goal posts have been moved and now they are unfairly exposed to, you know, restoring a former rent that was legitimate.

MR. DINOWITZ: Well, well, first of all, we're not talking about cases going back to the 1970s --

MR. FITZPATRICK: But they're --

MR. DINOWITZ: Let me --

MR. FITZPATRICK: -- (inaudible/cross-talk) the records.

MR. DINOWITZ: Let me -- well, let me ask you a question, please. But secondly, we're not talking about landlords who follow the rules. We're talking about -- and I'm sure most landlords do follow the rules. We're talking about landlords who did not follow the rules either by way of making a mistake, which could happen, or by way of not making a mistake but deliberately putting --

MR. FITZPATRICK: Right.

MR. DINOWITZ: -- putting in bad information, misinformation, lying --

MR. FITZPATRICK: Right.

MR. DINOWITZ: -- and that's what we're talking

about here. We're not talking about landlords who follow the rules. Landlords who follow the rules should have no problem, nobody is talking about any of that in this legislation --

MR. FITZPATRICK: Right.

MR. DINOWITZ: -- whatsoever. With the fraud exception, you can't go back that far anyway. Based on case law alone you can't go back that far.

MR. FITZPATRICK: So, you know, there's a legal principle called *res judicata*. So the doctor claims that preclusion that protects individuals from endlessly litigating the same issue over and over again once it has been properly decided by the proper authority. So here we have a Court of Appeals decision, and now you're trying to do an end run around that -- that Court of Appeals decision, and here we have, again, building owners being subject to, you know, the same harassment from the Legislature, you know, again and again.

MR. DINOWITZ: Well, my heart bleeds for the building owners --

MR. FITZPATRICK: I know, I know.

MR. DINOWITZ: -- and I mean that very sincerely, but that's not what we're talking about here. We're not -- we're not talking about that at all. This legislation does not, does not attempt to do an end run around the Regina case. It does not attempt to overturn it. The Regina case was a very nuanced narrowly-based case and the part that you're talking about dealt with the issue of retroactivity, but the -- the rest of part F of the HS -- those five initials, the Housing

Stability and Tenant Protection Act, HSTPA, did not deal with the retroactivity part alone. It dealt with other stuff and that part was not overturned by the court.

MR. FITZPATRICK: Right.

MR. DINOWITZ: The court upheld or -- upheld that part, so it overturned a little piece of it and that's -- we're attempting to correct that. We have legislative intent in here to make sure that it's clear what's being done here, and I think that you're talking about things that have nothing do with the bill or are relevant to the court case.

MR. FITZPATRICK: I would disagree, but, you know, were tenants ever prevented from filing charges under the DHCR before the housing -- the new housing act in 2019?

MR. DINOWITZ: You know, you know something? It's -- it's like talking about a person on whom -- I shouldn't bring this up because you don't like it. If -- if -- if there was like let's say medical malpractice done on you but you had no reason to be able to know that and only were able to discover it many years later, that -- that's how I look at this. There's no reason most tenants would know that a -- a -- a deception was committed by a particular landlord until they somehow discover it because why would they know it. They may not have even been the tenant against who the perception was --

MR. FITZPATRICK: But they --

MR. DINOWITZ: -- was done.

MR. FITZPATRICK: -- they -- they had four years

under the old law to discover this.

MR. DINOWITZ: But what --

MR. FITZPATRICK: (Inaudible/cross-talk) -- that four years --

MR. DINOWITZ: -- what are they supposed to send out a search party? There's no way to discover in most cases.

MR. FITZPATRICK: -- they probably had -- let me finish. Within that four-year period they had a renewal of that lease more than likely, maybe two. So they had more than ample time to discover if they had something wrong. And in four years they have lots of conversations with their neighbors, you know, over rent, et cetera, et cetera. So expanding it to six years, we oppose that, but in four years there was nothing preventing tenants from going to DHCR with this issue before the HSTPA.

MR. DINOWITZ: See, that's the thing about a deception. You don't always easily discover it. And the mere fact that some time has gone by doesn't mean that the onus should be on an innocent tenant to know about a deception that was -- was done against them or even against their predecessor tenant.

MR. FITZPATRICK: But the tenant has at least one lease renewal in that four-year period, maybe two --

MR. DINOWITZ: Maybe.

MR. FITZPATRICK: -- and maybe they consult with an attorney. I'm sure many do. But if they're reading their lease, they had more than enough time with four years, that's a long period of

time to go to DHCR. It wasn't necessary to do this. Now, you're allowing, you know, to find -- to go back to that base rent, you're allowing -- you know, you're giving permission to go much back much, much farther, you know, than six years to find, you know, with documentation. And again, that documentation may not be available.

MR. DINOWITZ: So it sounds like you're saying - and tell me if I'm wrong, but I'm sure I'm not, it sounds like you're saying if a landlord does something illegal and the tenant doesn't discover it, then the landlord should be able to profit from that illegality. If -- if a landlord, and again, I want to just say that I don't think most landlords do that, so nobody should have their heads explode when I say this. If a landlord does something wrong, lying about the -- the appropriate rent, for example, and then the tenant or the next tenant doesn't discover it, the landlord shouldn't be rewarded for that because he got away with it, and that's what -- I think that's what you're kind of suggesting --

MR. FITZPATRICK: No.

MR. DINOWITZ: -- should happen.

MR. FITZPATRICK: No. No, that's not what I'm saying at all is that there, you know, you're assuming that every case there's an act of deception involved --

MR. DINOWITZ: No. I just said most landlords are not doing that.

MR. FITZPATRICK: And, you know, maybe it does happen, all right, maybe it does happen, all right. Not every landlord

is perfect, not every tenant is perfect, we -- all know that, but there -- it wasn't broke and there was no need to fix it, I would argue under the prior rules. But the due process for the property owner here is being discarded. It's being, you know, I think with mistreatment of, you know, a building owner in this case. They're already dealing with rent-stabilization, the inability to charge enough rent to cover the cost of running their buildings, all right, pay their taxes and their water and their solid waste removal, et cetera. It's already very difficult in most cases for building owners to do that. Now, you have a situation where somebody thinks they were overcharged, maybe legitimately, maybe not, but now the due process that's afforded to the landlord is -- is not being respected.

MR. DINOWITZ: Well, I -- I look at that a little differently. First of all, I don't accept your contention that most landlords are like struggling to survive. I -- I don't doubt that there are some landlords that are not necessarily swimming in money, but I can assure you that a huge number of landlords, probably the vast majority, are doing fine, they just want more, they just want more. But if they -- if they did do something wrong they shouldn't profit from it. And I'm really shocked that anybody would suggest that if somebody does something wrong that -- I mean some people here are -- are very much in favor of strong enforcement of laws. Well, putting in the wrong amount on the rent that -- that is being charged to somebody, that's kind of -- to me it's a criminal act, but aside from that I would think we would want to do the right thing. For the small

number of landlords who are engaging in these deceptions, they shouldn't continue forever and ever 'cause that's what it would amount to. If they can't challenge, they shouldn't forever and ever be profiting or windfall profit, but again, this bill -- this bill is a narrow bill meant to address the issues raised by the court in the Regina case and it deals with the fact that part of the retroactivity portion of the bill was overturned by the court, but certainly not the part of the legislation -- of the law that deals with prospectivity.

MR. FITZPATRICK: Correct, very good. Mr. Dinowitz, thank you very much.

Mr. Speaker, on the bill.

MR. DINOWITZ: Anytime.

ACTING SPEAKER ZACCARO: On the bill.

MR. FITZPATRICK: You know, housing -- you know, housing legislation, you know, the issue of housing in New York, especially New York City has always been a very difficult issue. We don't have enough housing. We need to construct more. The Governor is now trying to push the State forward in that regard. I know a --

(Buzzer sounded).

MR. DINOWITZ: Oh, darn.

MR. FITZPATRICK: Okay. I know a number of municipalities --

ACTING SPEAKER ZACCARO: You're on your second 15, Mr. Fitzpatrick.

MR. FITZPATRICK: Okay. So, the -- again, the -- the problem over the years in all the years I've been dealing with housing here is, you know, the Majority likes to continue to move the goal post every time it sees a potential problem. The issue of fairness for the landlord, the property owner, the person who's providing the service of housing is always the villain, in every single case always the villain. Oh, not all of them, but, you know, there's a presumption that the -- the property owner is always the villain. And I get that, you know, there are more tenants equaling votes than there are landlords, much more, far few. But the -- the issue of fairness here has been just thrown out the window. Landlords that follow the law under -- under DHCR, all right, have now as a result of this case or this legislation, their due process is being just tossed out the window. It is not fair. This presumption that every landlord is doing something wrong or ripping off the tenant I think is -- is wrong. It's -- you know, it -- it seeks to kind of create an environment in the debate that, you know, we're on the side of the good guy and the landlord is always the bad guy. It's -- it's not helpful. Yes, there may be one or two landlords that -- that are a problem, I'll give you that. But we have a lot of -- we have a lot of tenants that create many, many problems in these buildings as well, far more of those than there are bad landlords, by the way. So, this bill it is believed is unconstitutional. It will more than likely be challenged, and I think probably successfully. But in the end, due process is important and moving the goal post is never a good thing. It's -- it's wrong to do this and that what's happening here,



and for that reason I'll be voting no. Thank you.

ACTING SPEAKER ZACCARO: Mr. Ra.

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

ACTING SPEAKER ZACCARO: Will the sponsor yield?

MR. DINOWITZ: Yes.

ACTING SPEAKER ZACCARO: The sponsor yields.

MR. RA: Just really one question. Can you clarify -- so it would be on page 2 at the bottom, Section 2, subdivision B, those last few lines. It says, the legal regulated rent for the portion of any overcharged claim involving rents paid prior to June 14, 2019 shall be determined under pre-HSTPA law including the default formula in cases of fraud is codified herein. Is the intention that that standard that is in use where fraud is established could be used even where fraud is not established?

MR. DINOWITZ: Well, either fraud is established or it's not established.

MR. RA: Well, I'm saying would that -- my understanding was that the standard that is there is different for -- for the, you know, calculating on the past rent when there's fraud established, but would that be in use in either case?

MR. DINOWITZ: You're looking at like line 49 through 53?

MR. RA: Yes.

(Pause)

So it says, including the default formula in cases of fraud. So, are we saying that the formula we're using in cases of fraud is applicable whether there was or was not fraud?

MR. DINOWITZ: No. No. I didn't say that.

MR. RA: Okay. So your intention is that the prior standard, prior to the HSTPA, what was in law at that point, would be applicable if there's not fraud, that standard as was the case at the time would be applicable.

MR. DINOWITZ: Yes.

MR. RA: Okay. Thank you.

Thank you, Mr. Speaker.

MR. DINOWITZ: Welcome.

ACTING SPEAKER ZACCARO: Mr. Tannousis.

MR. TANNOUSIS: Will the sponsor yield?

ACTING SPEAKER ZACCARO: Will the sponsor yield?

MR. DINOWITZ: Yes.

ACTING SPEAKER ZACCARO: The sponsor yields.

MR. TANNOUSIS: Thank you. I don't want to be too repetitive, Mr. Dinowitz, but I do have some questions and it goes off of what Mr. Ra just said. Now, I want to clarify something in your

bill. Now, previous to obviously to this bill's current enactment, right, there was a common law fraud that would have to be proven, correct? Isn't that correct?

MR. DINOWITZ: No, not for these purposes.

MR. TANNOUSIS: Okay. So what -- then what exactly would you have to prove in regards to fraud?

MR. DINOWITZ: Let me consult my notes.

(Pause)

If there was a -- a fraudulent scheme to deregulate the apartment such as raising the rent improperly such that at the time it exceeded the -- the level, which I guess we call that luxury decontrol at the time, which would have deregulated the apartment.

MR. TANNOUSIS: Okay, thank you. Now, just one or two more brief questions and I just want to thumb this down as much as possible, right? So there was a court case, Regina Metropolitan v. New York State Division of Housing Community Renewal, correct?

MR. DINOWITZ: Yes.

MR. TANNOUSIS: Okay. And in that case, the court found, the Court of Appeals, which is the highest court in the State, found that imposing provisions of the HSTPA retroactively directly violates due process, specifically holding that although the Legislature appears to have intended that the retroactive period be bounded only by the length of the apartment's rental history, such a vast period of retroactivity upends owners' expectations of repose

relating to conduct that may have occurred many years prior to the recovery period. Would that be a fair statement to say it was a decision in the Regina case?

MR. DINOWITZ: Well, I have a copy of the 80 page decision here I can consult, but I will take you at your word that that's an accurate quote.

MR. TANNOUSIS: I appreciate that, especially since I'm reading exactly from the case, thank you. And just to be clear, with this legislation that you are now introducing to pass today, now they are allowed to go back, correct, and collect from the landlord? Is that my understanding of your law here or is there -- is there another interpretation that maybe I'm misunderstanding here?

MR. DINOWITZ: This -- this legislation takes into account and attempts to conform with the ruling in Regina as it applies to retroactivity.

MR. TANNOUSIS: Okay. So is it your testimony here today that this law is constitutional? Does it violate a landlord's due process rights with the enactment of this law?

MR. DINOWITZ: Well, I'm not testifying but it will be my statement that I'm not a judge, nor are you, that would be for a court to decide and a judge to decide should the law be challenged, but I don't believe that this violates the bill. That is, I don't believe it violates anything. Otherwise I wouldn't have introduced it.

MR. TANNOUSIS: Okay. Thank you, Mr. Dinowitz.

On the bill.

ACTING SPEAKER ZACCARO: On the bill.

MR. TANNOUSIS: Thank you. Mr. Speaker, another day in the State of New York, another day where we are chasing landlords out of the State. And I'm not talking about big landlords, I'm not even talking about medium-sized landlords, I'm talking about small landlords, immigrants that came here for the American Dream now will not and continuously are not able to afford to be landlords, and they are leaving for greener pastures. The State of the Florida, for example, where they have more rights. This Body continuously assumes that landlords are greedy and commit illegal acts, and that is an unfair assumption. And if we continue to do this, we will continue to chase business and tax money out of New York State. I am against this piece of legislation. Thank you very much.

ACTING SPEAKER ZACCARO: Mr. Goodell.

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

ACTING SPEAKER ZACCARO: Will the sponsor yield?

MR. DINOWITZ: Of course.

ACTING SPEAKER ZACCARO: The sponsor yields.

MR. GOODELL: Thank you, Mr. Dinowitz. And I appreciate someone who is trying to explain the complex housing laws in New York City to someone who fortunately lives on the

opposite end of the State. But I'm looking --

MR. DINOWITZ: Did you say fortunately?

MR. GOODELL: Yes, fortunately, yes. In my -- in my community we don't have a housing crisis, in my community the market is allowed to work effectively, in my community landlords can make a profit by building housing and so they build housing to meet the needs, in my community we don't regulate every aspect of rent, and so it's been very successful in my community. But I understand that since the 1940s you've had temporary rent control in New York City and it's a whole different market and so I appreciate your expertise in that area. My question relates on page 3, lines 43 through 47. And normally when we're dealing with fraud it's the obligation of the person who is asserting the fraud to prove it beyond a preponderance of evidence. Am I correct that if the records are missing, going back years, there's a presumption of fraud and that you then automatically kick into the default formula?

MR. DINOWITZ: I don't think there's a presumption of fraud if the records are missing.

MR. GOODELL: But it -- it goes into the default formula, correct?

MR. DINOWITZ: If the records --

(Pause)

-- no, that -- that -- that -- that's just not true. Now, I -- I think I mentioned this earlier or I alluded to it, if a landlord deliberately destroys the records, well that's a whole nother story, but

no. Otherwise what you're saying is -- is not the case. But by the way, I -- I -- tell me if I'm wrong, but of your 130 some-odd-thousand constituents, I'm pretty sure not a single constituent is directly impacted by this bill.

MR. GOODELL: No, thank God, they aren't.

MR. DINOWITZ: So why do you care then?

MR. GOODELL: Well, surprising as it may sound, I actually have relatives that live in New York City and I'm -- I'm concerned about their well-being, even though they're not able to vote for me. Would you address the issue; how does this process work when you have sequential owners?

MR. DINOWITZ: When you have -- I'm sorry, when you have what?

MR. GOODELL: When you have sequential owners. In other words, when a landlord who owned the apartment say in 2019 sells it to a new owner. The new owner may not necessarily have all those prior records, correct?

MR. DINOWITZ: That's correct.

MR. GOODELL: And so how does this address that situation?

MR. DINOWITZ: I -- I don't -- as I'm sure I mentioned earlier, whether or not there have been -- there's been one landlord or a series of landlords and the same thing is true with tenants is not necessarily relevant. What's -- what's relevant is whether or not the rent was illegally jacked up by somebody in the past, whether it's

the current landlord or a prior landlord. And of course, in most -- in many cases, a tenant wouldn't know anything about it and there are many tenants, for one reason or another, who are frightened of -- of making claims against landlords, sadly.

MR. GOODELL: So if you're a new owner and let's say you bought the -- the apartment building in 2022.

MR. DINOWITZ: Mm-hmm.

MR. GOODELL: And in order to finance it you would use a rent roll in order to get the loan from the bank, no doubt and the bank would make the loan based on what the current rents are on that rent roll. Is there anything to indicate that the new owner would have any notice or knowledge of any impropriety of a prior owner?

MR. DINOWITZ: Well, not necessarily, but as -- as Mr. Fitzpatrick mentioned earlier when he suggested that a tenant should be able to know whether something wrong was done some years earlier, a landlord probably is even in a better position to figure that out --

MR. GOODELL: Well, no doubt --

(Inaudible/cross-talk)

MR. DINOWITZ: -- being a good business person.

MR. GOODELL: But as I think we all recognize that as Mr. Fitzpatrick pointed out, there's no question whatsoever the tenant knows what the rent is, right? When they sign the lease renewal --



MR. DINOWITZ: The tenant --

MR. GOODELL: -- they should know what the rent is.

MR. DINOWITZ: -- should know what their own rent is.

MR. GOODELL: Yeah. And so they sign on that, they obviously are not hoodwinked over what the monthly rent is. And this is all designed to give them the opportunity after they've already knowingly, intentionally, voluntarily with full knowledge signed off on the lease agreeing to pay a certain rent. This allows them to go back and challenge the rent that they already agreed to, right? I mean that's the whole purpose of this, correct?

MR. DINOWITZ: It allows a challenge if there is some impropriety. It just doesn't willy-nilly say, *oh, you can all challenge the rent*, you have to have some evidence to do that. And in terms of the landlord, I'm sure that a new landlord would want to do his or her due diligence in terms of investigating the rental history of that building or buildings.

MR. GOODELL: Now, as -- as you correctly noted, this only applies to New York City for which I'm thankful. I'm correct, right, there is a well-recognized housing crisis in New York City?

MR. DINOWITZ: I believe, according to the Governor, that there's a housing crisis Statewide.

MR. GOODELL: The Governor's mistaken on that

belief, by the way, as it applies --

MR. DINOWITZ: I don't know.

MR. GOODELL: -- to much of Upstate --

MR. DINOWITZ: I trust the Governor on that.

MR. GOODELL: -- but certainly, certainly it's your belief she's correct as it relates to New York City, correct?

MR. DINOWITZ: Well, I -- I'm not going to deny that we need more housing, but I also believe that the bigger crisis lies in affordability. That if we were able to resolve the affordability crisis that that would be much more helpful of the -- of the two, but yes. I do believe we need to have more housing, and maybe there's room in your district for more housing.

MR. GOODELL: Certainly any residents in New York City would like to come and --

MR. DINOWITZ: (Inaudible)

MR. GOODELL: -- get affordable housing. They are certainly welcome to come. But how does this or doesn't it? Does this address the availability of housing? Does this encourage more housing, for example?

MR. DINOWITZ: This -- this is a veryily -- very-narrowly drawn bill dealing with a -- a -- specific subject. This bill does not address that issue. That's an issue which perhaps we should address and I think we should, but that would be another bill, not this bill.

MR. GOODELL: Now is it your belief, then, that if

you expand the ability of tenants after they have signed the lease with a designated rent and know exactly what they agreed to pay, is it your belief that expanding the ability of tenants to then challenge that rent and try to get a lower rent will somehow encourage more housing or is that just completely irrelevant?

MR. DINOWITZ: Well, it might discourage certain of -- of the small group of landlords who are committing, you know, fraud or whatever. It might discourage them from doing that if they knew that there was a decent chance that that would be challenged and overturned, but in terms of housing, I'm pretty sure what you're talking about now is totally irrelevant to this particular bill.

MR. GOODELL: Again, thank you, Mr. --

MR. DINOWITZ: Which is often the case, by the way.

GOODELL: Again, Mr. Dinowitz, thank you very much for trying to explain the complex New York City housing market to me.

MR. DINOWITZ: You're welcome.

MR. GOODELL: Sir, on the bill.

ACTING SPEAKER ZACCARO: On the bill.

MR. GOODELL: In Upstate where I am, the private sector market addresses housing issues, and it's really quite, quite remarkable. It's a process that's been going on for hundreds or thousands of years but the way it works in a nutshell is that when there's a shortage and demand exceeds supply, the prices go up, the

profitability of building new housing also goes up. New housing is then built or made available. The supply then increases. As supply increases the prices come back down and stabilize. Now despite the fact that economists have recognized the supply and demand law for centuries, in New York City we tried a new experiment, a temporary rent control starting in the 1940s where we artificially reduced the price through rent control. And not surprisingly when we did, investors left the market, because if you have money and you have two options; one, where you lose money or make very little and the second where you make a lot, you go where you can make the most money. And so New York successfully has created a massive housing crisis, congratulations. And after 70 or 80 years of a failed experiment we want to double down with this legislation. Now maybe a better approach would be to encourage more housing to be built in New York City. Maybe more housing would help the housing crisis rather than forcing the existing landlords to have to defend lawsuits that go back, in this case, six years or more that may involve prior landlords all in an effort by the tenant to pay less than they agreed to in a written contract. Fundamentally unfair. Fundamentally increasing the housing crisis in New York City. And thankfully, anyone who is looking for affordable housing is welcome to come to my community where the housing is very affordable and readily- available because we still believe in the private sector market and the law of supply and demand. Thank you, sir.

ACTING SPEAKER ZACCARO: Mr. McGowan.

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

ACTING SPEAKER ZACCARO: Will the sponsor yield?

MR. DINOWITZ: I will.

ACTING SPEAKER ZACCARO: He will.

MR. MCGOWAN: Thank you, Mr. Dinowitz. Just trying to understand the -- the process here. I've been listening to the debate and -- and your responses. Essentially if -- if enacted, this would allow a recalculation of -- of qualifying apartments for -- for the rent, correct?

MR. DINOWITZ: In certain situations.

MR. MCGOWAN: Okay. So how does that certain situation begin?

MR. DINOWITZ: If the landlord put the wrong rent into the forms that the landlord files with HCR, then that could be challenged.

MR. MCGOWAN: And when you say the "wrong rent," can you explain that, how that process would work and that trigger event?

MR. DINOWITZ: Yes. If you're rent-stabilized, the rents can go up through each lease by a certain specified amount as determined by the Rent Guidelines Board in June of a particular year. And so, for example, it's -- it's coming up like now, and that -- that'll affect leases that run starting October 1st of this year, either for a year

or two years. They'll determine what the allowable percentage increases for rent-stabilized apartments. There are other potential reasons why rent in those apartments can go up. Now that happens over -- it could happen over several successive leases, but if it's determined after being challenged that somehow the -- the -- the landlord filed information with HCR that was just not correct and therefore future rent increases - so let's say the rent should've been \$1,500 back in, you know, five years ago, for example, or four years ago, make it four years since we're talking about 2019. If the landlord filed misinformation regarding that which then allowed that landlord to get a higher rent and then base future increases on that higher rent, that's -- I mean to me that's stealing, but I don't know if that's exactly how the law would describe it. But in any case, that could be undone based on the law that's already in effect. We're not talking about creating that now because the HSTPA provided for that, that rent increases occurring after June of 2019 can be challenged as a result of the law. What changed between when we passed the law and now is this Regina court decision which indicated that in certain cases it can't be applied retroactively before that time.

MR. MCGOWAN: So this law creates a -- a lookback, a retroactive period to -- to look back and see if there was some type of really wrongdoing we're talking about on the part of the landlord, right?

MR. DINOWITZ: No. This bill, we're not talking about retroactivity in the sense of -- of the original bill. We're -- we're

correcting that based on other results of the court decision.

MR. MCGOWAN: This bill will permit recalculation of legal regulated rent from June 14th, '19 forward, correct?

MR. DINOWITZ: Yes.

MR. MCGOWAN: But in order to do that the triggering event, essentially the -- the tenant has to -- has to do what in order to -- to question or challenge the rent saying that it was artificially increased previously? What -- what does a tenant have to do to start this process?

MR. DINOWITZ: Well, if I was advising a tenant and our office advises tenants and sometimes landlords all the time. The first thing I would do is tell that tenant to get a -- a rent history from HCR. If -- if it appears that there was something irregular in that rent history, then the tenant can file with -- with HCR, with the State Housing Agency.

MR. MCGOWAN: So if just the tenant takes a look at that rent history and you said something appears irregularly, I mean what -- what standard is that? What's the -- I mean what subjectively what one tenant views as perhaps that looks irregular, you said yourself a few moments ago there could be circumstances legally when the rent could be increased above the standard. So I mean, can any tenant just get the rent history and then say that looks irregular and start this process?

MR. DINOWITZ: They can start a process but it won't be well-founded if there's no fraud or anything else. But I'll give

you a -- a very specific example of how it could work. So the tenant gets the rent history and they noticed that the rent in 2020 was \$1,500 and then in 2022 suddenly under the next tenancy it was \$3,000.

Under the current rules, I -- I cannot imagine how the -- and I don't think you can -- how the rent can go up that radically in such a short period of time. But if the next tenant in 2022 signed the lease for \$3,000, then this tenant could challenge that on the basis that it shouldn't have gone up by that much, that the normal rent increase for a rent-stabilized apartment determined by the rent-stabilization board is done in June and it's a certain percentage and there might be other potential reasons why there's an increase. You know, we changed the rules with H -- with -- with -- with improvements in the apartment whether it was, you know, inside the apartment increases or there was an MCI, but in -- in no case could the rent have gone up legitimately so radically, so yes. Sometimes on the face of it you could see that something irregular was done and that should be very challengeable.

MR. MCGOWAN: Okay. But the tenant doesn't necessarily know that from just looking at the rent history, right? There has to be some type of really discovery or -- or -- when does the -- the shift or is the burden ever shifted to the landlord to then defend, right? If a tenant feels that perhaps there's an irregularity and you said yourself has to be fraud or some type of wrongdoing, does the tenant -- is the tenant able just to say, *well, that doesn't look right to me, it's probably some type of fraud* and then is it on the landlord to then defend themselves in this challenge or does -- is there any type of



minimal showing that the tenant would have to meet some type of minimal standard to be met in order to start this process to go forward?

MR. DINOWITZ: Well -- well, there's no guilty until proven innocent if that's essentially what you're asking.

MR. MCGOWAN: Well, that's my question.

(Inaudible/cross-talk)

MR. DINOWITZ: Let me finish. If the tenant challenges that, then it's up to HCR to investigate that and to look into the history and to see if there's any reason to believe that something irregular was done.

MR. MCGOWAN: So I guess my concern, sir, is that this could perhaps open the flood gates to -- to challenges, right? And we're looking back and now we can recalculate. They might as well, let me see if I can recalculate my rent. You talked about fraud, you talked about wrongdoing, some type of impropriety, right? Are these -- are those really the limited circumstances generally, right, some type of wrongdoing that would allow this recalculation to be done?

MR. DINOWITZ: I -- I would imagine that such recalculations would not happen terribly often because I don't think, I hope, but I -- I don't think that -- that there are -- there are so many cases where a -- a landlord is committing such a terrible fraud on a tenant where they're imposing higher rents. I mean I -- I can't quantify that, but I don't believe the majority of landlords are doing it, but certainly a tenant should be in a position to challenge wrongdoing. I

don't think anybody would want to argue with that. And if it can be shown that there was wrongdoing, then the tenant should not have to pay a higher rent than the tenant would otherwise be required to pay. And certainly any time since June of 2019, any rent that they overpaid, they -- they should be made whole again.

MR. MCGOWAN: So let's start -- let's -- let's take it from that premise, right? Yes, I agree with you. I don't think a majority of landlords are committing any type of wrongdoing in this situation. Let's put that kind of to the side, right. And I don't think perhaps, you know, a majority of tenants are looking to take advantage of this new law. But what are the, you know, parameters or any minimal qualifications that has to be established? I mean, my concern here is that you're opening through this bill, right, we're opening the flood gates to allow more of these challenges that are going back in time and there has to be -- I mean if you bring a -- a civil suit in an alleged fraud, there's a heightened pleading standard in a civil action. Here, we're talking about whether there has to be fraud, but I don't see, you know, any -- discussion or anything in the bill talking about what has to be shown by the tenant. And my concern is that, you know, this could just be something that's -- that's challenged and I don't think there's any downside to the -- to the tenant. Why not challenge? Right? Let's see if there's some fraud. Let's open up --

(Inaudible/cross-talk)

MR. DINOWITZ: Well, let me leave you at your concerns because the law, even though it's been partially overturned,

has been in effect for several years. There has been no flood gate of -- of -- of challenges, so there's no reason to assume at this point when there's not even retroactivity that there would be a flood gate. Keep in mind that this bill is essentially not new stuff. We passed the law in 2019. No flood gate, no -- no huge number of challenges, hasn't happened.

MR. MCGOWAN: But you don't have to establish fraud in order to have your rent calculated under this bill; is that correct?

MR. DINOWITZ: You can prove the landlord made a mistake. Not every mistake is fraud. Sometimes a mistake is a mistake.

MR. MCGOWAN: Okay. So before we were talking about, I believe you used the word *impropriety*, fraud's been tossed around. Some type of wrongdoing which to me infers some type of, you know, kind of malice or some type of, you know, intent to -- to do wrong, right? Intent to --

MR. DINOWITZ: I don't see (inaudible/cross-talk) implies that at all.

MR. MCGOWAN: Well, you're talking about a mistake. So a landlord makes a mistake. That could be challenged.

MR. DINOWITZ: A landlord makes a mistake, should he profit from that mistake? Should a tenant have to suffer because a landlord made a mistake? Of course not. You wouldn't want that to happen to you.

MR. MCGOWAN: So what is the standard? What -- what is -- it's not just fraud, it's -- it's really any type of recalculation. And there's no -- and if it's purely a mistake, you're talking about a profit, I'm not sure if there's a profit. I think that's -- it's easy to say but I'm not sure that that can be quantified.

MR. DINOWITZ: The standard is either the numbers are correct or they're not correct, whether it's because of fraud or a mistake. To -- to a tenant it probably doesn't matter.

MR. MCGOWAN: So it (inaudible/cross-talk) liability.

MR. DINOWITZ: What -- what matters to the tenant is that because of that mistake, that tenant has suffered a financial loss and would continue to do so indefinitely.

MR. MCGOWAN: So it's essentially strict liability. The numbers are wrong, that's it. But you said there are exceptions when the numbers could be higher, right?

MR. DINOWITZ: Well, I'm -- I'm not sure what you mean.

MR. MCGOWAN: Okay. So it's essentially whether it's a mistake or something worse, some type of intentional wrongdoing, we'll call it fraud. It doesn't matter, it's the same thing under this bill, right?

MR. DINOWITZ: Well, it's the same thing in terms of whether the tenant should be made whole because of the mistake or fraud. From the tenant's perspective they -- they -- they lost money

and they may want their money back and they should be entitled to it. If there was no mistake, if there was no fraud, which I'm sure is the case in the vast majority of cases, then nobody gets hurt here. This is not meant to hurt anybody. This is -- this is just about justice and equity about a tenant not having to suffer a financial loss because bad information, whether deliberately or not, was -- was put out there by the landlord in terms of what the rent is or was in the past. Because once the mistake is made in the past and the rent is raised, all future rent increases are based on that mistake compounding the injustice that's committed on the tenant.

MR. MCGOWAN: So I -- I think the issue I have, though, is we're -- we're talking about fraud and -- and mistakes is really the same thing. I'm not sure where -- where else we do that in the law. I'm not sure, right, in the housing context where else we do that. I mean we've been holding landlords to that standard, a mistake is going to be the same thing as fraud. You might as well just say it's a mistake and it doesn't matter fraud, it's all the same thing and the landlords are going to be put in the same situation.

MR. DINOWITZ: Well, I know you're not suggesting that a mistake by the landlord should cause a tenant huge amounts of money anymore than I would suggest that if the tenant's rent is \$1,500 and they send in a \$1,000 every month and then five years later the landlord discovers it, I mean the landlord might have some redress because that's how it's dealt within this particular bill, but the point being, if -- if a landlord makes a mistake, the landlord

shouldn't profit from that mistake. I can't imagine anybody who would think that's a fair and just outcome to -- to any situation.

MR. MCGOWAN: But these are essentially leases that are entered into freely by private parties, correct?

MR. DINOWITZ: A landlord sent a tenant a lease, the tenant signs the lease, the tenant agrees to the lease, that doesn't mean the tenant should be the victim of either fraud or a mistake. And simply because somebody signs a lease for an amount that's wrong, doesn't mean they shouldn't be able to recover financially from that. Why would you think -- why would you think they shouldn't get money back?

MR. MCGOWAN: Well, I'm -- I'm just trying to understand the situation here, right. So two parties are free to enter into a contract, right? Private parties enter into this lease, and the tenant has every opportunity to research and do this analysis before signing that lease, correct?

(Inaudible/cross-talk)

MR. DINOWITZ: That's true, but the -- the information isn't always readily available. And simply because a tenant signs a lease and then discovers the mistake, doesn't mean that the tenant shouldn't be able to recover those damages.

MR. MCGOWAN: So I guess my final question is, has there been any analysis as to -- my concern is flood gates, my concern is an expansion based on this legislation. Any -- any analysis

--

(Buzzer sounded)

I guess not. Well, any analysis about the effect of this and how many apartments or how many tenants can make this new application for recalculation?

MR. DINOWITZ: Well, as -- as I've already said, we've had a few years since the underlying law which covers this was passed and there have been no flood gates opened. So there's no reason in the world to assume that suddenly the flood gates will be open now 'cause nothing is going to change in terms of -- of -- of tenants being able to go back to look at those rents after 2019.

ACTING SPEAKER AUBRY: Thank you, Mr. McGowan.

MR. MCGOWAN: Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Mr. Blumencranz.

MR. BLUMENCRANZ: Thank you. Will the sponsor yield?

MR. DINOWITZ: Yes.

ACTING SPEAKER AUBRY: Mr. Dinowitz yields.

MR. BLUMENCRANZ: Just a few questions. So regarding somebody who lived in one of these apartments, they agreed to pay a certain amount before they lived there, they live there for a few years, they move out. Now can they sue asking for their money back for the percentage they felt they were wronged by the housing provider?

MR. DINOWITZ: I don't know that they can but let

me double-check.

(Pause)

Okay. Have to be a current tenant.

MR. BLUMENCRANZ: Only current, okay. Just to go back to the point that my colleague made here. So the information is not available how much other listings have rented for within your building in the past when you're looking to rent an apartment in New York City right now?

MR. DINOWITZ: I think you can get information on the rent history of your own apartment. I'm not sure that information on other peoples' apartments are readily available to you. Now somebody else can do their own rent history and then give that information to you, but essentially if it's not readily available.

MR. BLUMENCRANZ: So you can't go on StreetEasy and see what listings were listed for or what they rented for?

MR. DINOWITZ: Not as far as I know.

MR. BLUMENCRANZ: Pretty sure -- pretty sure you can but I -- I could be -- could be wrong at least the last time I checked.

Now as far as the J51, the -- the tax abatements that the buildings received. Let's say I owned a building, I received that tax abatement and then maybe some mistake had happened and -- and the rent was changed in a way that you may have disagreed with. Now I sold the building, someone else owns it. Who is going to be



sued in that instance if there was either a mistake or an impropriety on the -- on the side of the landlord or missing documentation?

MR. DINOWITZ: I -- I would think and, once again, not addressed in the bill, that the current landlord would be the one that would be challenged, but I would also think that the current landlord could institute an action against the previous landlord as well.

MR. BLUMENCRANZ: All right. And then just one more question. Generally, do you believe that this will -- that this change in legislation will have a different outcome in the courts than the original portion of the bill that you had amended? I mean will the courts will -- will rule differently that this won't create an undue burden on the landlords or in the way of due process --

MR. DINOWITZ: Well, on -- on the -- the part that's covered by this legislation I think the courts would rule the same way in that they upheld the portion of the original law except as it pertained to retroactivity. So this is -- this is not doing that. So I -- I am certain, not being a judge of course, but I'm certain that this would be upheld by the courts.

MR. BLUMENCRANZ: All right. Thank you very much.

MR. DINOWITZ: You're welcome.

ACTING SPEAKER AUBRY: Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER AUBRY: A Party vote has

been requested.

Mr. Goodell.

MR. GOODELL: Thank you, sir. The Republican Conference is generally opposed to this legislation. Certainly those who support it can vote in favor here on the floor. Thank you, sir.

ACTING SPEAKER AUBRY: Mr. Ramos.

MR. RAMOS: Mr. Speaker, this will be a Party vote. We'll be generally in the affirmative. If anybody wishes to vote in the negative, please let -- let us know.

ACTING SPEAKER AUBRY: Thank you both.

The Clerk will record the vote.

(The Clerk recorded the vote.)

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

Page 3, Rules Report No. 864, the Clerk will read.

THE CLERK: Assembly No. A06216-B, Rules Report No. 864, L. Rosenthal. An act to amend the Administrative Code of the City of New York and the Emergency Tenant Protection Act of Nineteen Seventy-Four, in relation to establishing the legal regulated rent for the combination of two or more vacant apartments; to amend the Public Housing Law, in relation to defining permanently vacated; to amend the Emergency Tent Protection Act of Nineteen Seventy-Four, in relation to exemptions from rent stabilization on the basis of substantial rehabilitation; and to repeal paragraph (d) of

Subdivision 4 of Section 14 of the Public Housing Law, in relation there to (Part A); to define clearly the scope of the fraud exception to the pre-HSTPA four-year rule for calculating rents (Part B); and to amend the Administrative Code of the City of New York, the Emergency Tenant Protection Act of Nineteen Seventy-Four and the Public Housing Law, in relation to the failure of owners to file rent registration statements and the enforcement powers of the commissioner of housing and community renewal (Part C).

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

And an explanation is requested.

Ms. Rosenthal.

MS. ROSENTHAL: This bill provides parameters for setting a new legal regulated rent when a regulated unit has been combined with regulated or unregulated units. It provides a definition of permanently vacated related to succession rights. It also requires an owner claiming an exemption from the ETPA on the basis of substantial rehabilitation to seek approval from DHCR within one year of completion of the substantial rehabilitation and provides grounds for denial of substantial rehabilitation exemption. The bill codifies the standards for the fraud exception to the four-year lookback period for overcharges prior to the HSTPA by providing an owner is deemed to have committed fraud. If they committed material breach of any duty to disclose truthfully rent or lease information for

claiming an unlawful rent or claiming to have deregulated a unit regardless of its fraud under common law or if the complaining tenant specifically relied on untruthful or misleading statements. The bill also provides conduct presumed to be the product of fraud is unlawful deregulation. The bill provides an increase penalty for delinquent rent registration statements of \$500 per unit per month and the bill provides DHCR with enforcement mechanisms including the power to issue orders for the rent regulation laws.

ACTING SPEAKER AUBRY: Mr. Fitzpatrick.

MR. FITZPATRICK: Thank you, Mr. Speaker.

Would the sponsor yield for --

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

MR. FITZPATRICK: -- a conversation?

MS. ROSENTHAL: Yes, I will.

ACTING SPEAKER AUBRY: The sponsor yields.

MR. FITZPATRICK: Thank you, Linda. So --

MS. ROSENTHAL: Ms. Rosenthal to you.

MR. FITZPATRICK: I'm sorry?

MS. ROSENTHAL: Ms. Rosenthal.

MR. FITZPATRICK: Ms. Rosenthal, that's fine. All right, Ms. Rosenthal.

MS. ROSENTHAL: Yes.

MR. FITZPATRICK: Okay. So, let's begin with reconfiguration of apartments. So, you have a, you know, one

bedroom and maybe a -- a studio and the building owner would like to combine them to provide a larger apartment for a family. And we know there's a very real shortage of larger apartments for families.

MS. ROSENTHAL: No, that -- that's debatable.

MR. FITZPATRICK: I'm sorry?

MS. ROSENTHAL: That's debatable, but go ahead.

MR. FITZPATRICK: Well, okay. As -- as you say, I would argue there is a -- a shortage for larger families. So the new legal rent is the rent stabilized unit one, plus unit two, all right. So and if there's the rent stabilized unit and a free market unit, the new legal rent equals the percent increase in -- let's see, the increase in space, the percentage of space, plus the RGB increase, plus an IAI, all right. So they're not able to calculate the legal rent the way that follows decades of HCR precedent. So this was the last -- with all the changes that were made, this was one of the last opportunities for, you know, a landlord to, you know, merge -- you know, merge units to create a new unit in the hopes of trying to, you know, charge a higher rent, you know, given that all the other units are rent stabilized, and they are struggling to try and, you know, keep their heads above water, especially the smaller landlords. So why -- why are we breaking with all of these years of DHCR precedent?

MS. ROSENTHAL: So, first of all, a landlord could combine two studios under that scenario and that would not be suitable for a family. So there are different -- a landlord could combine two studios under the same assumption as you said --

MR. FITZPATRICK: Right.

MS. ROSENTHAL: -- and that would not be suitable for a family. In fact, that is an attempt to circumvent the rent laws.

MR. FITZPATRICK: Well, you could argue that point, but you are -- do you believe that's the case in every situation or if he only has two, you know, two studio apartments and you can merge them and create an opportunity, you have two bathrooms with two merged studio apartments and you have two rooms that could accommodate a family of three or four people.

MS. ROSENTHAL: They -- they --

MR. FITZPATRICK: So why -- it -- it isn't always the case of trying to skirt the rent laws.

MS. ROSENTHAL: No, it's not always the case, it's often the case.

MR. FITZPATRICK: But is that the assumption you make every time?

MS. ROSENTHAL: However -- however, the landlord can combine them, but then if one of them was rent regulated then the new apartment would be rent regulated.

MR. FITZPATRICK: So then --

MS. ROSENTHAL: Let me give you an example from the Upper West Side.

MR. FITZPATRICK: Sure.

MS. ROSENTHAL: A landlord combined two apartments and decided that they were \$13,500 a month.

MR. FITZPATRICK: Mm-hmm.

MS. ROSENTHAL: Now they were originally both rent regulated so they were nowhere near that amount. Thirteen thousand, five hundred is an outrageous rent for where -- where the building was located and what the two previous apartments fetched. So this is an attempt to make sure that the rent -- the apartments that are rent regulated do not disappear through what we call Frankensteining.

MR. FITZPATRICK: Mm-hmm, okay.

MS. ROSENTHAL: Yeah. And it also previously -- it wasn't specified in law in the regulations, so this is an attempt as well at clarification on what happens when a landlord combines regulated and non-regulated.

MR. FITZPATRICK: But even still, if you combined two units and even if the rent is a -- a figure you don't approve of, that is still the amount of rent that the landlord is taking in. It is improving the assessed value, the value of the property. It is allowing the landlord by, you know, taking in more rent to spend more on the upkeep and improvement of the property. So why -- why is that a bad thing?

MS. ROSENTHAL: No, this is -- this is an attempt to circumvent the rent regulation law. As you know, we passed in the HSTPA the end of vacancy decontrol.

MR. FITZPATRICK: Right.

MS. ROSENTHAL: So units that are rent regulated

will stay rent regulated in perpetuity. So you can't remove them simply by combining them. And that is one of the attempts by combining them.

MR. FITZPATRICK: Well, you know, all of -- all of the many years that you and I have debated these housing proposals, it has created a system where landlords were trying to find opportunities to, you know, to bring in more money. And at every opportunity, the Majority here has moved the goal posts, you know, to make sure that didn't happen. And what has suffered? We don't see an increase in the production of housing, we don't see -- you know, we see the quality of services in these building suffer because there's not enough income coming in to cover some of these. I remember when my daughter, you know, lived on the Upper East Side and there were, you know, rats infested in the building and she called me up and says, you know, daddy, you know, you know, do something. And I said, well, sweetheart, you know, there's not enough money coming in, what's your rent? It was very, very low. And I said, well, this is why you have rats because there's not enough money to cover --

MS. ROSENTHAL: And actually rats -- rats are everywhere.

MR. FITZPATRICK: They are everywhere. They are everywhere.

MS. ROSENTHAL: They are in the most expensive and in the cheapest.

MR. FITZPATRICK: Okay. But the City -- the City



gains when you have a merger of these two units creating a market rate unit. The City gains additional tax revenue, the building is in better shape because there's more money coming in, all right. You know call it Frankensteining if you want, but it is the last opportunity for a building owner to try and produce more income, improve the quality of his or her building. And you're taking this away from them. And I just wonder what -- you know, who gains --

MS. ROSENTHAL: Actually who gains is the system of rent regulation and two different families that will now be able to rent a rent stabilized apartment. This is also for, as you said, one of the last ways that a landlord will be able to raise their income.

MR. FITZPATRICK: So there's no --

MS. ROSENTHAL: No one said -- wait, let me answer.

MR. FITZPATRICK: Okay.

MS. ROSENTHAL: No one says that the additional income they get by illegally deregulating an apartment will go toward building improvements.

MR. FITZPATRICK: It's not illegal --

MS. ROSENTHAL: I mean this is money the landlord wants to collect. They can't circumvent the rent regulation system in this manner.

MR. FITZPATRICK: But they're not illegally deregulating the apartment, they're simply merging two units to create a larger unit. You know, what I think you're saying to me is that a

studio apartment is just fine for a family. So a family is what --

MS. ROSENTHAL: I'm not deciding who lives in a studio. Some families unfortunately only can afford to rent a studio, but saying that the -- the reason behind this is to provide apartments for families is as relevant as me saying it's to combine two studios. You know, it -- it doesn't specify the size of either apartment, but what it does do and what it has been doing is having us lose many rent regulated apartments. And there are other complications with this. For example, many landlords, not all, some, keep units vacant in the hope that the tenant next door will leave. And there are ways to harass that tenant making their life very uncomfortable so they will leave, then you can combine apartments. You know, there are many, many tactics to arrive at the combining of apartments and some of them involve tenant harassment. In addition --

(Inaudible/cross-talk)

-- when you leave -- let me just finish this -- when you leave units vacant, it contributes to a deterioration of the building and that has happened and that also chases tenants out.

MR. FITZPATRICK: I would argue it's a potential improvement. But can you give me an example of what harassment, what -- how do they harass?

MS. ROSENTHAL: Well, first of all, there are many ways to harass, not provide heat or hot water. Have -- make consistent requests to pay a tenant off to leave, and that happens a lot. You know, file lawsuits against them. I have -- I have a tenant in my

-- in my district who -- who's dragged to court by the landlord every chance he can get.

MR. FITZPATRICK: Mm-hmm.

MS. ROSENTHAL: There's a bicycle in the hallway, lawsuit. You made too much noise, lawsuit. It's -- that's a form of harassment. Not everyone does that, of course, but those that do have the intention of chasing tenants out.

MR. FITZPATRICK: Well, in a case like that the tenant is harassing, you know, their fellow tenants with their behavior. So how -- you know, if the landlord is cracking down on behavior like you're not supposed to leave your bicycle in the hallway, you know --

MS. ROSENTHAL: Okay. That's not worth a lawsuit, okay?

MR. FITZPATRICK: Well, maybe it's a problem. I don't know the details of that case but maybe --

MS. ROSENTHAL: Maybe you could just ask him but he prefer to send his team --

MR. FITZPATRICK: -- it might be a chronic, persistent problem.

MS. ROSENTHAL: -- to send his team --

MR. FITZPATRICK: -- for which a lawsuit might be required.

MS. ROSENTHAL: -- was -- in this case it was not a persistent problem.

MR. FITZPATRICK: Okay.

MS. ROSENTHAL: It was another reason in the landlord's mind to bring the tenant to court when the tenant could not afford a lawyer and the landlord had a whole set of lawyers. So that's just some examples of what harassment is.

MR. FITZPATRICK: Okay. So all right. Let's -- let me move on to the succession issue. And, you know, the -- when you say *permanently vacated*, all right, so we have this problem of, you know, family members, people trying to save a unit, you know, for -- for a relative, and that unit should go back on the market for someone else to rent that unit. And they are -- so you're redefining vacating the apartment to physically leaving? How do you-- how are you redefining this?

MS. ROSENTHAL: To physically leave it. And there were two -- there were two different rulings on this matter.

MR. FITZPATRICK: Right.

MS. ROSENTHAL: One in the First Department and one in the Second Department. And so HCR thought this isn't fair that someone who lives in the Bronx has to follow a certain rule and someone who lives on Staten Island has to follow a different rule. So HCR wrote in regulations that this is how we should do it. When -- if someone's living with their mother and their mother moves out but the -- the son, let's say, has been living with her for 30 years. There's no reason that he should be kicked out. And so this just simplifies and fixes the two different opinions in the way that HCR recommends and that's to state when the person leaves the apartment is when the

succession can happen.

MR. FITZPATRICK: Look. Any son who lives with his mother for 30 years deserves to be, you know, booted out quite frankly. But in reality --

(Laughter)

MS. ROSENTHAL: Actually, if you've read so many college-educated kids come back and live with their parents.

MR. FITZPATRICK: Yes, they do but they're not the lease holder.

MS. ROSENTHAL: No, but they are entitled.

MR. FITZPATRICK: I think what you're -- what you're --

MS. ROSENTHAL: They're entitled to be the lease holder.

ACTING SPEAKER AUBRY: Hello, hello, hello. You've been doing this a long time, the two of you. We ask a question, we answer it. We don't talk over each other because we get nowhere when we do that, right? So ask the question, answer the question, you know, and you can go on the bill any time you want.

MR. FITZPATRICK: Sure, thank you, Mr. Speaker.

Ms. Rosenthal?

MS. ROSENTHAL: Yes.

MR. FITZPATRICK: I -- I think what -- what an attempt here is being made to got -- play fast and loose here with some of these regulations to allow the succession where succession should

not be allowed to occur. That, you know, that mother who lives there, her son may have lived there for 30 years. That's irrelevant.

MS. ROSENTHAL: Well, it's not.

MR. FITZPATRICK: No, it is irrelevant because the mother is the leaseholder and if she decides to leave, you're playing a game here, in my opinion, in trying to facilitate succession by allowing this nexus -- you know, this nexus to continue when -- when that -- when that lease expires, all right, that apartment should be vacated. But well, yeah, yeah, my son lived here for 30 years. Well, if he can afford the lease, so be it. But if he can't, the family is going to move out and it opens that apartment for another family.

MS. ROSENTHAL: But we -- we are not changing the law. We're just clarifying when the succession rights kick in, and that is when the original leaseholder moves out. That's all.

MR. FITZPATRICK: Okay, okay, very good. All right. So when we get -- get, you know, substantial rehabilitation, again, the issue of denying due process to owners by, you know, seeking documents from, you know, many, many years ago beyond the, you know, the six years, we -- we went over that on a prior bill but, you know, why using a -- why does this statute propose using a different method, you know, to calculate rent when it was used elsewhere -- than what was used elsewhere in the State, was that your rent stabilization law? Why are we using this new methodology? What -- what was -- what was wrong with the old set of regs? (Inaudible) takes change here.

MS. ROSENTHAL: It -- it doesn't really change anything. Currently landlords can claim an exemption from rent stabilization if they replace at least 75 percent of a building's systems and can show the building was in substandard or deteriorated conditions.

MR. FITZPATRICK: Okay.

MS. ROSENTHAL: Often certain landlords use that as a way to get out of rent regulation, once again.

MR. FITZPATRICK: Okay.

MS. ROSENTHAL: HCR proposed these changes and we are codifying it. We're codifying that they would have to seek approval for HCR and they have one year after the substantial rehabilitation has been accomplished --

MR. FITZPATRICK: Right.

MS. ROSENTHAL: -- to just notify HCR. Here's what we did, we want to take these units out of rent regulation and HCR, if -- if -- if they've done the 75 percent substantial rehab, HCR will say okay. So it just clarifies.

MR. FITZPATRICK: Okay, okay, very good. I've used up enough time. Ms. Rosenthal, thank you very much for your --

MS. ROSENTHAL: Thank you, Mr. Fitzpatrick.

MR. FITZPATRICK: You're welcome.

Mr. Speaker, on the bill.

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

MR. FITZPATRICK: I -- I have colleagues who want to ask further questions but, you know, again, as you said before, we've been doing this for many years now. And, you know, the goal posts have moved so often and so rapidly, I'm dizzy after doing this for, you know, 19 years. And it does get tiresome but, you know, the bottom line is, you know, any opportunity -- you know, the -- the -- the landlord, the property owner, always the villain, always the villain, never given a fair shake here. You're presumed guilty and they make it very hard for the landlord to prove him or herself innocent in -- in housing legislation in New York State. It's an unfair process. It's -- it's, you know, constant moving of the goal posts as I mentioned. Housing, we need to increase the supply so that we can stop playing these games and stop harassing landlords because they're the ones getting harassed by this Legislature with this constant change of the rules. What the Governor is proposing by bypassing local -- local zoning and SEQRA requirements is not the best way to do this, but we need to do a better job in this Legislature to create more carrots and use fewer sticks to create more housing for the people of New York State, and especially in New York City. This problem is only getting worse. We are discouraging -- every time we do this we undertake, you know, this moving of the goal post. We discourage the -- the construction of new housing, we make it more difficult for people who own property to provide the service of housing for their fellow citizens, we make it much more difficult for them. We increase the cost, but we don't let them recoup that cost because we keep the rent



artificially low. And because of that, they will keep units off the market because they can't recover their costs. That further exacerbates the housing problem. And if we don't deal with this soon, we are going to create a very real problem. We're going to have landlords that are just going to walk away from their buildings and we're going to go back to what things were like in the '70s. And I don't think any of us want to go back to that -- to that era. But we better start treating property owners more fairly and be more respectful of the law of supply and demand. If we don't increase the supply, you know, demand is -- is still growing but the supply is not. And scarcity equals pricing power in economics. And you can only keep things artificially low for so long before you create these very real distortions in the marketplace, and we have that in abundance in the City of New York.

So I would advocate a no vote on this bill and we need to implement more market-oriented solutions to solve our housing prices here in the State of New York, because this Legislature is responsible for much of the problem in my humble opinion. Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you, Mr. Fitzpatrick.

Mr. Ra.

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

ACTING SPEAKER AUBRY: Ms. Rosenthal, will

you yield?

MS. ROSENTHAL: Yes.

ACTING SPEAKER AUBRY: The sponsor yields.

MR. RA: Thank you, Ms. Rosenthal. I -- I want to concentrate on part B with regard to this bill and its attempt to define the scope of the fraud exception to the pre-HSTPA four year rule. Can you explain what the scope of the exemption that this bill is attempting to put into statute is?

MS. ROSENTHAL: Well, this part of the bill is really just clarifying the rule and the law that has been in place since 2005. Through the -- through the Thornton and Grimm. Grimm has been in place since 2005. And so this part of the bill just clarifies that that has been the law pre-HSTPA and now post-HSTPA.

MR. RA: Okay. Now this is being read to -- to essentially, you know, create a per se fraud presumption that we're going to presume that a landlord has -- is -- is guilty of fraud if they, you know, really the burden, I guess, would be on them to show reliance on some type of regulation; is that correct? Or some type of ruling?

MS. ROSENTHAL: No, well, I -- I wouldn't agree.

MR. RA: Okay. How -- how would you characterize it then? Who -- who is the burden on to show that there was some level of fraud then?

MS. ROSENTHAL: If the landlord did perpetrate fraud, then I guess they would have to show it, yes.

MR. RA: Who -- well, who would be "they" there?

MS. ROSENTHAL: Okay. So conduct that's presumed to be the product of fraud, would be unlawful deregulation including deregulation from claiming an unlawful increase bringing the rent above luxury deregged threshold unless the owner can prove a good faith reliance on the directive from HCR is one example.

MR. RA: Correct. So doesn't that essentially mean that the burden is on the landlord to show that reliance? So -- so they -- really it's not on somebody else in proving that the landlord is guilty of fraud, it's on the landlord to show that it was not fraud.

MS. ROSENTHAL: Well, it's on the -- the tenant has to request the rent history and then DHCR, ask DHCR to -- to research what the rent was set initially.

MR. RA: Okay. So let me give you a scenario. A landlord --

MS. ROSENTHAL: I mean that -- sorry. The tenant has to make a colorable claim that there is fraud going on.

MR. RA: Okay. So a landlord who deregulated during the J51 tax abatement period, right? Meaning basically by virtue of they -- having received the J51 tax abatement and deregulating an apartment once the rent reached over the threshold that was permitted for luxury high-rent deregulation. Would that landlord be presumed guilty of fraud?

MS. ROSENTHAL: Well, that's the Roberts decision and -- and if the landlord relied on an erroneous interpretation by

DHCR, you know, that's not their fault; however, they do have to register those units as rent regulated.

MR. RA: Okay. I'm glad you got into that. So the registration - and, you know, I see at the bottom of page 5, it talks about, right, the following conduct shall presume to have been the product of -- of such fraud; the unlawful deregulation including such deregulation as results from claiming of an unlawful increase. And then it goes on and says, or beginning October 1st, 2011 failing to register as rent stabilized any apartment in a building receiving J51 or 421A benefits.

Now the concern that has been brought to my attention is that a landlord in that circumstance, as a result of how some of this has changed over time, may not have registered or known to register because they wouldn't know what to base the rent on.

MS. ROSENTHAL: They -- they have to register the rent based on a directive or ruling from HCR. And there have been numerous rulings that say that landlords have to register their rent regulated apartments.

MR. RA: Correct. And under this, though, right, there is -- I -- I don't know if we've had this previously, there is now a fine for the failure to register each unit?

MS. ROSENTHAL: In this -- in this bill, yes.

MR. RA: And that's \$500 per month?

MS. ROSENTHAL: That is \$500. And the reason for that is because at least since 1984, landlords have been required to

register the rent stabilized apartments with DHCR. There have been cases that say you must register and some landlords have continued to refuse to register. So in order to keep rent regulated apartments in the system, they have to register them and this is often a way to charge them -- charge them market rate by simply not registering. So, you have to register by April 1st. You have until July actually to register. Then DHCR has to notify you. This could take months and months, so there's ample opportunity for a landlord to follow the law, which is you must register your rent regulated apartments. I don't -- I don't really see why repudiation and ignoring that -- that law should not result in a fine.

MR. RA: Well, I -- I'm not advocating for ignoring -- ignoring the law, but -- but as I said -- said, if you look at that language that's at the end of -- of page 5 here, right, there's been a number of cases over -- over the years, right? So there's Roberts from 2009, going forward at the time DHCR and the court permitted deregulation during the J51 tax abatement period. There was no guidance provided at the time as to calculate -- how to calculate the legal regulated rents that had been deregulated under the law as it had existed prior to that decision. And then the question on how to calculate the legal regulated rents for those apartments. Over the years there's been guidance, there's been other decisions like the decision. That creates certainly uncertainty for the landlord as to what the proper rent would be and I -- and I think that that has been an impediment to landlords registering who did not know what the

proper legal rent was because of this mish mosh of -- of different cases and directives from DHCR that have come about over the years.

MS. ROSENTHAL: Well, that -- that may be your assumption. I -- I ascribe different motives because they have been told over and over and over again you must register. If there's a problem with what the actual legal rent is, they can discuss it with HCR, but they knew that they had to register.

MR. RA: Okay. So now, what -- what about a landlord that after Roberts, right, registered their regulated apartments, did their best under the information that was available to them to figure out what the proper rent would be, but their calculations were incorrect. And it seems under this bill now that incorrect calculation now becomes an indicia of fraud.

MS. ROSENTHAL: It could be, yes.

MR. RA: So -- so again, that's why I believe that this bill imposes a per se fraud presumption that if the landlord has failed to register the legal regulated rent that was impermissibly deregulated during J51 period, the failure is really automatically fraud regardless of the prior elements that we would have looked at such as material, factual misrepresentation, reliance injury, even without those being met.

MS. ROSENTHAL: No, no. It -- it would have to be a colorable claim. The tenant can't just assert that there's fraud. There has to be a -- you know, a legit reason for suspecting fraud.

MR. RA: Okay. Well, my -- my -- my reading here

is that this -- this does make things a -- to continue to be a bit unclear, you know, for -- for the landlords.

Now as we look at some of the other issues in this, right, I -- I wanted to get back to a issue that Mr. Fitzpatrick brought up regarding the combination of apartments.

MS. ROSENTHAL: Right.

MR. RA: So the language looks very general here in terms of how it's written. We talked about combining two rent regulated apartments or a regulated apartment or a free market apartment. Is there any intention that that would apply if it was two free market apartments that were combined?

MS. ROSENTHAL: No. If it's two free market then the combined one is free market.

MR. RA: Okay, great. Thank you. Thank you, Ms. Rosenthal.

Mr. Speaker, on the bill.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. RA: Thank you. So, again, my concern here is that, you know, a landlord trying to really, you know, do the right thing complying with the law still has the potential of being essentially accused of and really being under the standard here, you know, guilty of fraud. There are clear, you know, instances of common law fraud that we're familiar with in the past that would meet this exception under this four year lookback, but it essentially under this is on the landlord to prove that there is no fraud. If they have, you know,

violated some provisions because they believed or even understood under law at that time that a unit could get -- could be deregulated and then it turns out later that changed, they're guilty of fraud. If they failed to register because they didn't know how to calculate the rent, which as I said, there's several court decisions and other regulatory determinations that have made that difficult to determine, they're guilty of fraud. If they went ahead and registered because we want them to register and they did their best under the information that was available to them to come up with what the number was but made a mistake because they incorrectly understood the standard which as I said is not all that clear, they're guilty of fraud. So, once again, I think we're putting more and more obstacles in the way for landlords to try to invest in and keep up good housing stock in cities and -- and counties where rent control applies, and it's not going to help increase housing stock, it's going to continue to decrease it. So I'm going to be casting my vote in the negative. Thank you.

ACTING SPEAKER AUBRY: Thank you, sir.

Mr. Slater.

MR. SLATER: Thank you, Mr. Speaker. Will the sponsor yield for some questions?

ACTING SPEAKER AUBRY: Ms. --

MS. ROSENTHAL: Yes, I will.

ACTING SPEAKER AUBRY: The sponsor yields.

MR. SLATER: Thank you, Assemblymember Rosenthal. So I'm going to do my best not to ask what's already been



asked before me by my colleagues, but I'm curious if you can explain to me the current methodology when it comes to setting rent levels on rents when units are combined. I know that's something we keep talking about when you're combining units. So can you explain the methodology that's currently in place to do that?

MS. ROSENTHAL: Currently -- currently the landlord combines units and decides what they want to charge.

MR. SLATER: Even for rent regulated units?

MS. ROSENTHAL: Yes.

MR. SLATER: Okay. And approximately can you tell me how long that methodology has been in place?

MS. ROSENTHAL: You know, because the -- the HSTPA was a little unclear, at least -- at least since then.

MR. SLATER: At least I'm sorry?

MS. ROSENTHAL: At least since then. It's probably been going on for years but I don't have an exact number.

MR. SLATER: Okay, no problem. Can you tell me if there are other programs in place that would incentivize our property owners in New York City to make the necessary investments in their properties? What other options do they have if they're looking to invest?

MS. ROSENTHAL: There are MCIs, there are IAIs, those are just some of the...

MR. SLATER: Okay. And I'm just curious because we keep hearing about a housing crisis across the State, and I also

hear that there's approximately 45,000 vacant units in New York City. Have -- have you heard the same?

MS. ROSENTHAL: I've heard a varying number. Forty-five, 60, 5,000, it's -- it's hard to determine.

MR. SLATER: Well, I keep hearing 45,000 but hopefully we can get a clearer picture on that. And I've heard from property owners who say that the rent regs that are in place make it cost-prohibitive for them to reinvest in their units to bring those vacancies up to code so that they can be used. So I'm curious if your proposed legislation will solve that problem.

MS. ROSENTHAL: This legislation was not intended to solve an issue that some people doubt is a serious issue as some would say.

MR. SLATER: Okay, all right. Well, again, if -- respectfully I might disagree with that but --

MS. ROSENTHAL: You can.

MR. SLATER: Other questions that I'm thinking of here. As it relates to the owners who have made substantial rehabilitations --

MS. ROSENTHAL: Yep.

MR. SLATER: -- and who've qualified for their rehab exemption, will now be required to apply to DHCR for the very exemption that they already obtained; is that correct?

MS. ROSENTHAL: Well, if they obtained it already then there's no need to reapply.

MR. SLATER: So they don't have to reapply?

MS. ROSENTHAL: Not if they've already obtained it.

MR. SLATER: And for those who didn't apply and they have to submit that application, what -- what's the time frame for them --

MS. ROSENTHAL: They have one year.

MR. SLATER: One year, not six months?

MS. ROSENTHAL: No, one year.

MR. SLATER: Okay. Very good, I appreciate that. If we can pivot, I know Mr. Ra just asked several questions regarding fraud, but I just want to dive into that a little deeper if we can. I'm just curious if property owners are entitled to due process, because it sounded to me like it's a bit backwards in the sense that they've already -- under the legislation, they have to disprove the fact that they've committed fraud rather than the other way around. So I'm just curious if property owners have that right to due process.

MS. ROSENTHAL: They do, but they don't have a right to not be truthful when they charge a certain rent.

MR. SLATER: And I agree with you on that a hundred percent. And I'm just curious if the bill -- so the bill establishes a per se fraud presumption when an owner has received a J51 tax abatement and deregulated an apartment once the rent reached over the threshold at that time that was permitted for high rent regulations, is that accurate?

MS. ROSENTHAL: I mean this is old -- old cases under Roberts, yeah.

MR. SLATER: Right, but that's -- but that's correct, right, as I -- as I just explained? I'm just making sure I understand what -- what you're trying to accomplish.

MS. ROSENTHAL: Yeah, but I mean but it's old, yeah.

MR. SLATER: Okay. So forcing landlords to defend themselves when they do not have access to evidence -- to the evidence to defend themselves. So I guess I'm curious, though, because if you purchase a piece of property and it says that you need four years worth of files.

MS. ROSENTHAL: Right.

MR. SLATER: So what happens if I purchase a piece of property but I don't receive the four years worth of files or the four years worth of records on that piece of property?

MS. ROSENTHAL: Well, I've -- I've had cases -- I had a case where a new landlord said he didn't have the files. In fact, the tenant knew where the files were because they were in a storage unit.

MR. SLATER: Mm-hmm.

MS. ROSENTHAL: So in general, a landlord - unless they've destroyed the files for some reason - would convey those to the new owner.

MR. SLATER: But you've seen examples where that

didn't happen.

MS. ROSENTHAL: No. He said he didn't know where they were but they were there. He just said he didn't know where they were.

MR. SLATER: Understood. Understood. In your opinion, does -- does this condition -- and I want to go back to that number again, does it encourage the investment in those 45,000 vacant units?

MS. ROSENTHAL: That's not the subject of this bill.

MR. SLATER: The 45,000 vacant units. I'm just trying to understand what we're trying to accomplish because, again, we keep talking about housing. And so does your legislation help encourage property owners to invest in their properties and reinvest in their properties so that we can bring those vacant units up to code? Or is it going to make it more -- are you putting more obstacles in their way is my question.

MS. ROSENTHAL: No. Actually, a landlord is free under IAI, MCI to make repairs and to apartments and to the building as a whole. Nothing would stop them. And in fact, some would prefer to take the tax write-off than actually repair some of the apartments that they can.

MR. SLATER: And I've heard from property owners who respectfully disagree with that. They'd like to reinvest in their properties but the way the system's set up, it's cost-prohibitive.

In 2016 DHCR issued guidelines directing landlords on how to calculate legal regulated rent; is that correct, in 2016?

(Pause)

MS. ROSENTHAL: I believe so but I have to look that up.

MR. SLATER: Okay. And then in -- in 2020 the Regina case invalidated that guidance; is that also correct?

MS. ROSENTHAL: Well, you -- you heard the whole debate about -- about Regina.

MR. SLATER: So that's a yes.

MS. ROSENTHAL: Mm-hmm.

MR. SLATER: Thank you. And would this bill make an end-around establish a precedent from our State's highest court if that's the case?

MS. ROSENTHAL: Can you clarify?

MR. SLATER: So would the bill make --

MS. ROSENTHAL: Wait, wait, one second.

MR. SLATER: -- establish a precedent from our State's highest court?

MS. ROSENTHAL: I'm sorry. It's hard for me to hear because people are talking. Thank you. I can't hear.

MR. SLATER: I'm sorry. Give me one second here just to make sure we covered everything I wanted to ask. Well, I do think that we've covered most of it and I appreciate your time. I know it was noisy, but thank you,

MS. ROSENTHAL: Okay, thank you.

MR. SLATER: Mr. Speaker, on the bill if I may.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. SLATER: Thank you. I just continue to have reservations because as I stated, we keep hearing about a housing crisis in the State and I'm not seeing us take any meaningful action that's going to help our property owners, especially in New York City reinvest in their properties to create more units or to renovate their units to bring them up to code. I do think there are significant issues that have been raised on this particular bill, specifically when it regards to the fraud portion and it makes me wonder really what we're trying to accomplish. Again, I completely agree that those landlords, those bad actors do need to be held accountable, but I don't think we should be painting with a broad brush in that respect, and I feel that this piece of legislation is not going to be the answer to solving the housing problems that we're facing here in New York State. And I don't think it does -- I don't think it really provides the type of incentive and confidence in our property owners in New York City to encourage them to reinvest in the properties that they currently have.

So I'll be voting in the negative on this bill. I appreciate the sponsor for her time. Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you, sir.

Mr. Blumencranz.

MR. BLUMENCRANZ: Thank you. Will the sponsor yield?

ACTING SPEAKER AUBRY: Ms. Rosenthal?

MS. ROSENTHAL: Yes.

ACTING SPEAKER AUBRY: Ms. Rosenthal yields, sir.

MR. BLUMENCRANZ: Thanks, Ms. Rosenthal. So does -- in your opinion, do you believe that this bill comports with the established judicial precedent in Regina? And before you answer, I just want to read the precedent in the -- in the -- in the case on page 370. They state that, *citing established precedent, it states retroactive legislation is viewed with great suspicion and that this deeply rooted presumption against retroactivity is based on the elementary considerations of fairness that individuals should not have the opportunity to know what the law is and conform to their conduct accordingly.*

MS. ROSENTHAL: I don't -- I don't have that particular page in front of me.

MR. BLUMENCRANZ: So, just to sum it up, they believe that this -- this -- these retroactive rulings, which is what they found before, was not comported by the law. Do you believe that that -- these retroactive regulations that you --

MS. ROSENTHAL: The rules -- the rules -- the rules create STPA were discussed in the post-HTPA are discussed, so I think it's fine.

MR. BLUMENCRANZ: All right. And just to clarify again, the -- the way this is going to be deliberated will be in --



I'm presuming in our -- our court system in the City, correct?

MS. ROSENTHAL: In the State it could be.

MR. BLUMENCRANZ: All right. And then just to ask one more. So the Supreme Court has cautioned the *careful consideration of retroactive statutes is warranted because the Legislature's unmatched powers allow for it to sweep away the settled expectations suddenly and without individual consideration and that its responsiveness to political pressures posed a risk that may be tempted to use retroactive legislation as a means of retribution against unpopular or unpopular groups or individuals*. Is that not exactly what this bill seeks to do?

MS. ROSENTHAL: No. It actually is not, and this bill is merely stating what the law has been since 2005. It's almost 20 years that the law has been established, and this just clarifies it. It doesn't -- it doesn't go retroactively. It just states what the law is. It makes it more understandable for those who might misinterpret it.

MR. BLUMENCRANZ: So this bill in no way will function retroactively.

MS. ROSENTHAL: This bill doesn't deal with retroactivity.

MR. BLUMENCRANZ: Not at all?

MS. ROSENTHAL: I said what the bill does. It -- it clarifies what law has been, what the law is.

MR. BLUMENCRANZ: So it doesn't -- so it clarifies without changing what --

MS. ROSENTHAL: It doesn't change the law because the law has remained the same since 2005.

MR. BLUMENCRANZ: Okay. All right. Thank you so much.

MS. ROSENTHAL: Thank you.

MR. BLUMENCRANZ: On the bill, please.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. BLUMENCRANZ: So I think my colleague made a very valid point and so did the sponsor when they said there are many vacant units and there are many landlords that see the burdens in place in New York City, provide a situation where it is more cost-effective and more efficient to take a tax deduction than to reinvest into our housing stock. We are now faced with a situation where we're going to make that process even worse. Part of this bill will allow for the continuum of family members to have greater clarity that they can stay in units and that expand the definition of family continues to -- continues to get seemingly bigger and bigger. So not only will fixing a unit potentially create a four or five generation tenant that is virtually impossible to remove, but it incentivizes again, to leave the units vacant until you can do away with the apartment as it exists as a rent regulated unit, because it's much easier and much more cost-effective than actually providing new housing stock. Once again, I know the sponsor doesn't believe that there is that much available housing stock, but I think if you talk to anyone in the industry they'll tell you that there is plenty of empty apartments and

under no circumstances under the legislative environment we've created would they consider creating new housing stock, especially affordable housing stock considering the way that we treat our small-time housing providers, our new New Yorkers who hope to one day be housing providers. It really -- it's -- it's another sad day but we continue to dismantle the housing environment in the City of New York and thus, we hurt the State and its economy.

So I simply cannot support a bill that furthers a downward spiral and affordability in our cities in New York and I hope that my colleagues will do the same. Thank you.

ACTING SPEAKER AUBRY: Thank you, sir.

Mr. Goodell.

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

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

MS. ROSENTHAL: Yes.

ACTING SPEAKER AUBRY: Ms. Rosenthal yields.

MR. GOODELL: Thank you, Ms. Rosenthal.

Looking at page 4 of the -- of the bill, I see there's new language added starting on line 32 through 36. What's the purpose of that new language?

MS. ROSENTHAL: Let me first get there.

(Pause)

Okay. Got it.

MR. GOODELL: What's the purpose of that new language?

MS. ROSENTHAL: It -- it clarifies when the -- the tenant of record has vacated the apartment.

MR. GOODELL: And that vacating the apartment by the tenant then triggers the family succession provisions; is that correct?

MS. ROSENTHAL: Yes.

MR. GOODELL: And then family members defined as anyone that is related to mother, father, aunt, uncle, cousin, son, daughter, daughter-in-law, son-in-law --

MS. ROSENTHAL: Various other categories, yeah.

MR. GOODELL: Yeah. And it also includes people that aren't related to you at all, correct?

MS. ROSENTHAL: Yes, if they are -- well, a spouse is not related to their spouse, that's by marriage. So it could be a domestic partner, um... um, yeah. One of the -- one of the conditions is that there is an emotional and financial commitment and interdependence between the two.

MR. GOODELL: So just going back to this language. So you have a tenant that has a rent stabilized apartment, right, that's what we're talking about, and that tenant say retires to Florida and stops visiting.

MS. ROSENTHAL: Stops what?

MR. GOODELL: Stops visiting. No longer comes to

New York State at all, lives in Florida.

MS. ROSENTHAL: They can -- they can visit.

MR. GOODELL: And this provision says that for the purposes of their kids or relatives, when they move to Florida that's when the kids or relatives became entitled to, if you will, inherit the lease, is that correct?

MS. ROSENTHAL: Well, I wouldn't say inherit, but they would be eligible to succeed.

MR. GOODELL: Eligible to succeed. And then is it the intent that these rent regulated apartments would be almost like an inheritance, that once you got one, your extended relatives into perpetuity would have the opportunity to succeed to you?

MS. ROSENTHAL: Well, you know, it's not inheritance because you don't own the apartment, but if you meet the -- the legal conditions, then you are eligible to succeed.

MR. GOODELL: Now, under the original law when the apartment was vacant, the landlord had an opportunity to raise the rent, correct?

MS. ROSENTHAL: Well, that -- that's not relevant. We're talking about when someone lives there with someone else.

MR. GOODELL: Right, I understand, but we're talking about vacancy. So when the apartment --

MS. ROSENTHAL: No, we're -- we're not talking about vacancies. This is talking about when someone leaves an apartment if they lived with someone else for two years.

MR. GOODELL: I understand that. So I want to try to get clarity on what impact this has on the rent. So if an apartment is vacated and nobody wants to succeed to that apartment, no relative, then the landlord can raise the rent, correct? I mean there's restrictions but they can raise the rent.

MS. ROSENTHAL: Well, when a new tenant moves in they can apply the -- the rent guideline's board numbers, yeah.

MR. GOODELL: But if one of your relatives, say a grandchild or maybe a grandchild of an in-law or whatever or maybe not even somebody who's related that might have an emotional or financial connection to the apartment, they then succeed to the same rent that the prior owner had, correct?

MS. ROSENTHAL: Yes.

MR. GOODELL: So this expansion that you have on terms of when that --

MS. ROSENTHAL: I mean, you know, when the -- when the lease is then put in the successor's name, they can have the usual one year or two year increase.

MR. GOODELL: I see, thank you for that. When an owner combines two apartments, obviously that can entail a substantial expense. I mean you're opening holes in the wall, you want to finish it, refinish it, you're going to change it out, you don't need two kitchens --

MS. ROSENTHAL: Right.

MR. GOODELL: -- all that. Does this allow for the

owner to recover those costs by increasing the rent?

MS. ROSENTHAL: No. They can apply the IAI and any IAI that's left over from either apartment, and they can use that money, but that's how they can increase the rent.

MR. GOODELL: But it doesn't -- it doesn't translate it --

MS. ROSENTHAL: When a -- when a new lease is offered, it has to be rent stabilized lease. And, um... and there's a -- there's a new rent set when you combine a rent regulated with a non-regulated.

MR. GOODELL: I understand, but that new rent, under this law, does not take into account the cost of those changes, correct?

MS. ROSENTHAL: The what?

MR. GOODELL: The new rent on a combined unit --

MS. ROSENTHAL: Yeah.

MR. GOODELL: -- does not take into account the cost of combining them under this statute, right?

MS. ROSENTHAL: As I said, you get the individual apartment improvement increase from both apartments from what's left. If they haven't used it, you would get all of it. If they've used some of it, you get what's left.

MR. GOODELL: And one last question, I think, I hope. When an owner does a substantial rehabilitation --

MS. ROSENTHAL: Right.

MR. GOODELL: -- and presumably we want to encourage that, right?

MS. ROSENTHAL: Wanted to what?

MR. GOODELL: Presumably we want to encourage owners to make substantial rehabilitations, correct?

MS. ROSENTHAL: If -- if -- if their -- if their building is in bad shape then yes, they can do that.

MR. GOODELL: Now this imposes a new requirement that after they've made the investment --

MS. ROSENTHAL: Right.

MR. GOODELL: -- after they've spent the money --

MS. ROSENTHAL: Yes.

MR. GOODELL: -- they have to then seek approval?

MS. ROSENTHAL: They have to seek approval to take the units out of rent regulation.

MR. GOODELL: I see. And if DHCR disagrees, then even though the landlord made that investment, can the landlord increase the rent to cover the amortization of those expenses?

MS. ROSENTHAL: But A, you're supposing that DHCR will say no, and I don't know what that's based on. But they can use -- they have MCIs, they could -- they could use -- MCIs.

MR. GOODELL: I see. Thank you very much.

MS. ROSENTHAL: Thank you.

MR. GOODELL: Mr. Speaker, on the bill.



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

MR. GOODELL: I -- I must confess, I'm continuously confused over what New York City is trying to do to address its housing crisis. And maybe it's just because I'm from Upstate and -- and we do it -- do things differently. Upstate, you know we have a tenant comes in and they sign a lease. It's great. You know, they agree to the rent, landlord agrees to the rent, tenant moves in, life is good. At the end of the lease, if the tenant wants to stay longer the tenant signs a new lease, maybe a new rent, maybe not, tenant signs a new lease, landlord signs a new lease, life is good. Apparently in New York City, you can sign a written lease and you and your kids and your grandkids and your relatives into perpetuity have the right to a rent stabilized apartment. That's astounding to me. It's like signing a permanent lease with kids that aren't even born yet having a right to succession. But then this bill takes it one step further. I didn't think that was possible until I read the bill. It takes it one step further. It says if a landlord takes two units, spends money, combines them, makes them into a new unit, looking for a new opportunity for a larger family to rent it. This one says you can't recover the money that you spent to bring it together. The rent is the same rent as the two separate. Why would any landlord ever do that?

Now if our objective is to make sure we don't have larger units and that we don't have major renovations, then I understand this, because that's what this does. But it takes it one step

further and says, we all hate these -- these run-down apartments but if the landlord makes substantial renovations, this bill says he might not even be able to recover it, because after he's made the renovation he has to go to DHCR and convince them that the renovations were needed. Now just imagine for a moment that you are a landlord. And I come to you and say hey, wouldn't it be great if you renovated these apartments. And you're going to say, let's just get this straight. You want me to make the investment, you want me to borrow the money, you want me to spend all the money that needs to be -- you want me to renovate this apartment so it meets the current modern standards and it's a beautiful apartment. But you're telling me I might not be able to raise the rent? And I might not even be able to recover my investment? That I have to go in front of DHCR and convince them that the substantial renovations were needed.

My friends, this is a great bill if we want to make sure we don't do substantial renovations. It's a great bill if we want to make sure we don't combine units and make them available for larger families. It's a great unit if we want to make sure that you can have a rent controlled apartment available to your unborn relatives because they might be grandkids of grandkids because that's how long this perpetuity goes. But if you want to address the housing crisis, this is the wrong approach. And for that reason I won't be able to support it. Thank you.

ACTING SPEAKER AUBRY: Thank you.

Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER AUBRY: A Party vote has been requested.

Mr. Goodell.

MR. GOODELL: Thank you, sir. The Republican Party is generally opposed to this legislation, but those who support it can certainly vote yes, or their grandkids could vote yes as the case might be. Thank you, sir.

ACTING SPEAKER AUBRY: Thank you.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Thank you, Mr. Speaker. I think the grandkids would have to get elected first to vote here. But the Democratic Conference is going to be in favor of this piece of legislation; however, there may be some exceptions, folks should feel free to vote at their seat. Thank you, sir.

ACTING SPEAKER AUBRY: Thank you.

The Clerk will record the vote.

(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, if we could continue our progress we're making on this debate list, we are now going to turn our attention to Rules Report No. 387 by Ms. Weinstein;

followed by Rules Report No. 689 by Mr. Jacobson; and then Rules Report No. 772 by Ms. Clark; followed by 753 by Ms. Gallagher. In that order, Mr. Speaker. Thank you, sir.

ACTING SPEAKER AUBRY: Thank you.

Page 8, Rules Report No. 387, the Clerk will read.

THE CLERK: Assembly No. A06656, Rules Report No. 387, Weinstein, Hyndman, Epstein, Wallace, Tapia, L. Rosenthal, Thiele, McDonald, Gunther, Otis, Dinowitz, Cruz, Hunter, Kelles, Sayegh, Colton, Glick, Zebrowski, Reyes, Lee, Gibbs, Cunningham, Raga, Anderson. An act to amend the Real Property Actions and Proceedings Law, the Real Property Law, the Criminal Procedure Law and the civil Practice Law and Rules, in relation to the theft of real property and protections for victims of real property theft.

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

Mr. Goodell.

MR. GOODELL: Thank you, sir.

On the bill.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. GOODELL: This is an interesting bill because it states that a governmental entity, Federal, State or local government, that's conducting an investigation over whether or not there might be a theft or fraud in a real estate transaction, including the financing of it, can, just by showing that they're doing an investigation, obtain a stay

of a court-issued warrant of eviction or a court-issued judgment. Now, think about that. They can -- they can stop a court-ordered eviction and they can stop -- or they can stop the enforcement of a judgment as long as the investigation continues. So it's an indefinite stop, even though the court has already examined the issue and issued a court order.

Now, normally in a civil proceeding, if you get -- if you're applying for a stay, a TRO, a temporary restraining order or a permanent injunction, you have to show several things. You first have to show likelihood of success on the merits. This bill doesn't require any showing of success on the merits. Second, in order to get a stay, you have to show to the satisfaction of the court that you are likely to win, and you'll have irreparable harm if you don't, if there's not an injunction. This doesn't require any showing of irreparable harm. Third, normally in order to show up in a court and seek an injunction, you have to establish that you yourself have standing, that you have a stake in this issue. Not in this case. This can be brought by a government agency that has no stake in the proceeding at all.

Now, typically if a court issues an injunction, because it's a preliminary remedy, they typically -- in fact, they're required by law to require a bond so that if they were wrong, the party whose transaction was stopped can get reimbursed for the damages. No bond here. No bond requirement at all. And then last, normally if you seek an injunction and you're wrong, you pay damages. But not here. So think about the due process issues that are involved with this

legislation. You have the ability of a government agency to stop the enforcement of a court-issued eviction, to stop the enforcement of a court-issued judgment without establishing a likelihood of success on the merits, without showing irreparable harm if the injunction is not granted, without having any standing, without having any stake in it, without being liable for any damages. And you can get the injunction forever as long as you claim without judicial review that you have good faith belief that there might be a problem with the financing or some other aspect.

This bill, I think, is misnamed. It should be named "The Destruction of All Due Process Rights to Private Property Without Any Judicial Review." I think that's a catchier title. But that's what this bill does and I cannot support it. And anyone who's got any ounce of civil libertarianism in them should be outraged, as I am. Thank you, sir.

ACTING SPEAKER AUBRY: Read the last section.

THE CLERK: This act shall take effect on the 30th day.

ACTING SPEAKER AUBRY: A Party vote has been requested.

Mr. Goodell.

MR. GOODELL: Thank you. The Republican Conference is generally opposed to this, but those who support it can certainly vote yes here on the floor. Thank you, sir.

ACTING SPEAKER AUBRY: Thank you.

Mrs. Peoples-Stokes.

MRS. PEOPLES-STOKES: Thank you, Mr.

Speaker. The Democratic Conference is generally in support of this piece of legislation; however, there may be some folks that would desire to be an exception, they should feel free to do so at their seats. Perhaps when we hear from the lead sponsor, we'll know what the real name of the bill is. Thank you, sir.

ACTING SPEAKER AUBRY: Thank you.

The Clerk will record the vote.

(The Clerk recorded the vote.)

Ms. Weinstein to explain her vote.

MS. WEINSTEIN: Despite Mr. Goodell's kind offer, I think I'll reject his -- the name that he would like to -- the renaming of this bill. And let me just clearly state that the purpose of this bill is to increase protections against deed theft by providing homeowners and prosecutors tools to assist in restoring title to the rightful homeowners, extending certain consumer protections to homeowners in distress and preventing deed theft scammers from utilizing the courts and the law to their advantage in carrying out the fraud.

In New York City from June 2014 to April 2021, there were over 3,400 complaints of homeowners, most often elderly, often Black or Brown, often in gentrifying neighborhoods being -- having their homes stolen out from under them by unscrupulous real estate brokers, unscrupulous individuals claiming, claiming to be able to help them satisfy their debts. These are people who -- homeowners

who are what we like to say are house rich and cash poor, and they're taking -- been taken advantage of over the years. The Attorney General has had over 291 complaints sent to her. There are DAs, it is not -- that have had complaints. It is not only a New York City issue. And this is -- we -- we've had some -- two debates earlier about keeping people in their homes, this is a critical measure to give tools to both homeowners so they can stay in their home, and to prevent them from having the courts evict them.

And with that, I would urge my colleagues to vote in the affirmative.

ACTING SPEAKER AUBRY: Ms. Weinstein in the affirmative.

Ms. Walker to explain her vote.

MS. WALKER: Thank you, Mr. Speaker. I request the opportunity to abstain in order to explain my vote. There are a few glaring problems with this bill. First, the language in the bill adds additional provisions to RPL 266 which (inaudible) protection for people who commit fraud against homeowners, couched as expectations to a rebuttable presumption of notice of fraud in Section 5 of the bill. This would effectively absolve fraudsters and every person or entity participating in the deed fraud or facilitating the deed fraud with them from culpability and liability once the fraudster simply gets his or her coconspirator in the deed theft ring to record a statement that the fraudster simply paid off or assumed the victim's mortgage. Then after the stay is granted and a criminal proceeding is



taking place, there is now another case where the civil case can continue, and the -- the burden of proof there is not beyond a reasonable doubt as in a criminal case, but it is a much lower presumption that the litigant would have to overcome. And once this fraudulent by preponderance of the evidence is found, which is, of course, a much lower -- a much lower standard of proof, a person, once they've been convicted in the criminal offense has this lower standard and if they are convicted or they're found guilty in the civil defense -- in the civil case, one of the defenses that they have for that is to file a assumption of the mortgage, in -- in -- in essence, absolving that person or the original owner of any title to the property. And we're watching in a number of cases in Brooklyn where there are a number of people who are coming to folk and then helping them come -- come out of their mortgage by saying, *Let me assume your mortgage, I'll give you this money, pay off the underlying mortgage.* They don't have to go through any in rem proceedings or foreclosure proceedings, the property just passes by operation of law.

And so we want to ensure that people are not being defrauded of their property based on this bill, so we hope that maybe there could be some changes that can be considered because we don't want people who are fraudsters to become bona fide purchasers for value.

Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: And how do you vote?

MS. WALKER: I vote in the negative.

ACTING SPEAKER AUBRY: Thank you. Ms. Walker in the negative.

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

Page 15, Rules Report No. 689, the Clerk will read.

THE CLERK: Senate No. S04234-A, Rules Report No. 689, Senator Hinchey (A04055-A, Jacobson, Eachus, Gunther, Shrestha, Gallagher, Ardila, Buttenschon, Colton, Shimsky, Thiele, Seawright, Clark, Dickens, Miller, Brabenec, K. Brown, Simon, Raga, Santabarbara, Otis). An act to amend the Public Service Law, in relation to the finality of certain utility charges and the contents of utility bills.

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

MR. JACOBSON: Thank you, Mr. Speaker. This bill will address the issue of late billing by utilities by requiring the utility to bill within two months of the date that the bill was originally due. If they do not bill within the two-month period, they cannot back-bill. Currently, the state of the law is that for residential customers, the utility has four months, and for non-residential, they have six months. Unfortunately, some utilities, notably Central Hudson, has -- have ignored the rules and they've billed six, eight, 12 months or more for residential, and also later -- late for nonresidential.

Also, this bill requires that with each billing sent to the customer, there are records of the utility billing at that address for the past two years. That is so that the consumer will be able to have something to compare their bill with, so this way they will have some concept whether the bill is correct or not and whether they have to try to contest the bill or get an explanation from the utility.

ACTING SPEAKER AUBRY: Mr. Palmesano.

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

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

MR. JACOBSON: Yes.

ACTING SPEAKER AUBRY: The sponsor yields.

MR. PALMESANO: Thank you, Mr. Jacobson, and I know we talked a little bit about this in the past. The first question I want to ask you, so now you're saying if there's not a bill that's not received within two months, there could be no back billing, so that -- there would be no obligation for the -- the customer to pay back that obligation that they used, energy, electric, gas. Now they would not have to pay that, so the debt would be wiped away, correct?

MR. JACOBSON: That's right. Right now, it's four months and if they do later than four months then they wouldn't have pay either. So what we're doing is we're changing it from four to two for residential and from six to two for nonresidential.

MR. PALMESANO: And -- and you would

recognize the fact that there's a lot that goes into billing, we have a lot of -- you know, energy bills have changed with net metering, you know, other types of things out there on the bills that are changing things. That has a factor in that. Also, you know, one of the issues during COVID is being able to get into -- to the -- into the property to read the meters if they're inside. That could be a problem because I know talked about smart meters, which would be an ideal thing to have. But not all have smart meters, not all the times the customers can get in there, the -- the service can't get into those places to check those meters, so that can have an impact on that as well, correct? If they don't -- if the -- if the person reading the meter can't get into the house, which does happen, it happened a lot during COVID, they have to be able to get in. And there's been times, I have people come to my house to read and I'm not there and they don't read it for several months unless you call it in. So that has -- that has an effect on the meter. And I think what I'm getting at is how do you get to the point where you tell someone they're not going to be able to bill for charges that they've accrued?

MR. JACOBSON: Well, if the problem of the delay in billing is due to the culpability of the customer or it's due to the non-neglect of the utility, then it wouldn't apply. That's what the law says now.

MR. PALMESANO: All right. But like in your bill on page 2 you said, well, I guess it goes over to page 2, it said unless the failure of the corporation or municipality to bill sooner was not

due to the neglecege [sic] or the neglect of the corporation or municipality. What about if -- some -- some companies, they have third-party resources that bill, how does that work? Or some go through the post office. In that case, does that mean that the utility or the --

MR. JACOBSON: If someone what? I -- it's a little -- Mr. Speaker, it's a little noisy in here.

ACTING SPEAKER AUBRY: Certainly.

One minute.

Shh. Members.

MR. JACOBSON: Thank you. Would you ask the question again?

MR. PALMESANO: Yes, sure. In some instances, like these utilities might use a third party consultant to do the billing. What if there's problems there? What if there's problems with the mail? In that case, does that mean the utility or whoever may be absolved from the -- from this issue, or no?

MR. JACOBSON: I think two months is plenty of time. If -- if the bill is due June 1st, I think somehow the utility can get the bill there by August 1st. I -- I don't think that if they -- that the mail will delay it for a two-month period.

MR. PALMESANO: How would it relate to an e-mail? I mean, because sometimes in the bill says mail. Is e-mail acceptable? Would that two-month period start when the e-mail hits, or does it got to be a paper copy or what, as far as definition?

MR. JACOBSON: Well, the consumer would have a copy of the bill and they would -- they would know when they got it and go from there.

MR. PALMESANO: Okay. How about with ESCOs? We know well -- very well, ESCOs, most ESCOs are billed by the utility, because ESCOs don't do their own billing, they're on the utility bill. Now, say there's a delay. Does that mean the ESCO doesn't get paid, or who would -- if the utility doesn't bill it out, how would that work and how -- how would that work for that process? Does that mean that the ESCO would not be entitled to payment, or the utility would get paid, or how would that work?

MR. JACOBSON: They're under the same rules, and I don't see the problem. For example, most of the water companies use smart meters. That would be very easy. And when I spoke to the CEO of Central Hudson, the one that was fired, or quit, I should say, and the -- and the new one, it would come out to \$2.50 a month per customer. So I -- the utilities can find a way. I think two months is a tremendous time, and they need an incentive. They need an incentive because obviously four months wasn't enough.

MR. PALMESANO: And are you aware of any other situation where a bill is late and the customer does receive the commodity, the services, and the payment is waived? Or is it just in this situation?

MR. JACOBSON: I think by having this penalty on the utility, it'll give them an incentive to get their act together. And I

think that also that a customer should have the right to have a bill on a timely basis that is transparent.

MR. PALMESANO: I'm not disputing that, but isn't there other alternatives to re -- remediate that problem rather than saying, *Okay, you don't have to pay your bill* all of a sudden. I mean, isn't there a better way to do that? We can -- you could look at -- give them more time to pay the bill, making sure it's accurate, making sure there's no penalties or late fees. But just to say now you don't have to pay your -- the power that you're using in your household just because the bill came after two months now instead of four months or six months, that's very problematic and you're basically -- it's a statutory, regulatory process for reimbursement.

MR. JACOBSON: This bill doesn't prohibit an estimated bill if the circumstances arise that they can use an estimated bill. This is to get the bill out the door, and then obviously, the consumer can deal with it then. I don't think it's too hard to ask that 60 days to get a bill out the door.

MR. PALMESANO: And the other part of this bill, as you said, now a lot of energy bills, utility bills, they have one year's worth of data, they might have a graph. Like, I have NYSEG, I've got a graph, I'll see the uses. Why now to double that and say you need two years worth of data, two years worth of information. Wasn't one year enough to get an accurate read when you're comparing your usage from July of 2023 to July of 2022?

MR. JACOBSON: No, I don't think so because if

you have just recently purchased a house, I think you -- or an apartment, a condo, you would then want to have -- go back more than a year so you know -- you have something to compare it to. And -- and the bill provides that you do it in graphic and in written form so that people can compare, it'll have amount that's done, that's being used and what the rate was then.

MR. PALMESANO: What -- why are the commercial customers, including large businesses included in this? Because with commercial customers when you're talking about rates, I mean, you've got off peak, peak, peak demand. I mean, that makes it more -- much more complicated in putting that together, as well, doesn't it, and how would that --

MR. JACOBSON: Well, I think that commercial customers -- and we all in this room talk about how we like to promote business -- should also be entitle -- entitled to a timely and transparent bill, and there's no reason they should be six months. A meter is a meter, it's on a street. They can get it, I guarantee you. If the utility wants to get the bill out the door, they can do it. I have complete confidence; in fact, I would say that most of the time, this bill would not apply because the utility will get their act together.

MR. PALMESANO: So, now, a utility can't bill and can't collect. So who picks up -- isn't that cost absorbed that's gonna have to be spread out over rate -- there's gonna be cost recovery on this that ratepayer -- the utility is gonna have to come back and go before the PSC to recover cost for losses, I mean, or do you just



expect -- is that just expected that the utility has to eat that? I mean, because there is a cost recovery mechanism in this, and if you're not -- even if you're telling customers they don't have to pay for their bill because it -- the bill came two or three months or four months later, and I understand what you're trying to do with this, but the end of the day, that customer used that energy. They used that commodity, they should be paying for it. And we -- if there's problems, they can look at ways to ameliorate it versus saying now you don't have to pay your bill.

MR. JACOBSON: Well, if the utility decides they -- or in the course of their neglect ends up ignoring the law, they should pay a penalty. And this -- this would not be -- the cost of what they lose would not be passed along to the consumer, it would go to their profits. And I think that the utility, very simply, would -- would come to the realization that they should send the bills out on a timely basis.

MR. PALMESANO: Also, I know there's been concerns relative to sharing of data. I mean, is there -- does your legislation do any -- have any specific measures that address privacy concerns that could be due about -- about sharing data and information that would be used in providing this information?

(Pause)

MR. JACOBSON: Yeah, well, like -- like they do now in some places on a limited basis, there's -- there's no identity revealed of the prior owner. It doesn't say in -- in the -- in the -- in the bill that there's gonna be a -- you have to give the name -- name of the

person, it just says the bills at that address.

MR. PALMESANO: Okay. Another question I wanted to ask, when we talked about the two year -- going back to the two year's worth of data, obviously that's gonna be more data, more information, more paper, which is -- there's -- there's always costs associated. I know every time we bring up bills like this you say, *Well, it's just a little bit here, a little bit here*, and there's been a number of utility bills that have come through this House and we say it's a little bit here, a little bit here. But that all little bit always adds up and it's ultimately borne by the ratepayer. This bill will be borne by the ratepayer, too. How do you justify that and how do you justify that to make sure, obviously, with the mandates that are coming in place for the CLCPA on the utility as well on the cost side?

MR. JACOBSON: It's not gonna be borne by the ratepayer.

MR. PALMESANO: How do you assure it's not gonna be borne by the ratepayer when they're trying to operate in a situation from that perspective, that they have to -- they have a statutory authority to provide this service and to be paid for, but now you're saying they're not gonna have to pay for it because the bill might have been two months late versus four months or six months.

MR. JACOBSON: Well, you can justify it because you -- because you want to have a timely bill. And if having a law there without -- if four months isn't enough, maybe two months will be. And that isn't that hard. That isn't that hard. It could even be an

estimated bill under the circumstances under the statute now. So let's just get the bill out the door, people can see what's there and it's simple.

MR. PALMESANO: I understand. And I understand that those changes Long Island has been problems. Is there any means test to this? I mean, what about a, you know, anyone -- a -- a multi-millionaire, if their bill comes three months late, now they don't have to pay their bill? Is there any means test? And is -- is there really harm to that customer, you know, if they're making a million dollars that they're -- now they're getting a bill that's three months and they're using a lot of energy because (inaudible) --

MR. JACOBSON: It -- it applies to all residential and all nonresidential and it'll make it easy. That way everybody gets their bill and they can get on with their lives.

MR. PALMESANO: I -- I appreciate how you always say it will make it easy, but this is not an easy industry. This is -- there's a lot of complexities to it that have to be addressed, and I think I'm just concerned in the direction you're heading with this.

MR. JACOBSON: Most utilities give the bill on a timely basis, all right?

MR. PALMESANO: Yes.

MR. JACOBSON: So they found a way. So those that don't, maybe they can ask others and maybe they'll realize if they -- if they have to (inaudible) penalty they'll get their act together.

MR. PALMESANO: So your problem is with one

utility. That's what you're hearing from, that you talked about. You talked about -- I mean, so if it's one utility, I mean, now you're changing the rules for everybody instead of like when we say, why not address issues with one -- one provider if that's what needs to be addressed. But you're changing the game all across the board for every utility now when it's, as you said, most do it -- do it the one way, now you're saying you've gotta pay two years of data when one year of data worked fine, now you're saying two years of data. But your -- your issues are with one utility versus all of them. That's -- that's a concern, don't you think?

MR. JACOBSON: Well, we can't write laws just to target an individual provider. And I think that by having this requirement, everyone will get their act together and then we go from there. I -- I don't -- I haven't had the personal experience of other utilities, but I am sure that everybody in this room would like to get their bills on a regular basis and know, have something to compare it to to see whether they're getting ripped off.

MR. PALMESANO: And I did want to -- one -- I did really want to go back to the ESCO utility billing question, because I know we talked about it. But just to clarify, most ESCOs do not do their own billing. Most of the billing is done by the utility. So the ESCO is the contractor for the supply, the utility does the billing for them. So if the utility doesn't -- say there's a delay on the utility side, does that mean the ESCO who didn't send out the bill now will not get paid, or are you saying -- is there's a penalty that's gonna be in place,

or how is that gonna be worked out now?

MR. JACOBSON: Well, if they send out an incorrect bill, it can be corrected, the same way that if they sent out a bill that's too high, that can be dealt with.

MR. PALMESANO: I'm -- I'm not asking about a -- an incorrect bill, I'm asking, the utility -- the -- the ESCO doesn't send out its own bill. They say how much energy they're using and then it goes to the utility and then the utility sends out the bill on behalf of the ESCO.

MR. JACOBSON: Oh, you're saying they're using a third party to send it out?

MR. PALMESANO: Yeah, it's like -- it could be -- in some -- in some cases there are third parties, so who is responsible for the third-party billing? Is that -- I mean, they don't recoup the payment, and what happens if the utility is sending it for the ESCO? Does that mean the ESCO doesn't get the payment?

MR. JACOBSON: If the third party doesn't -- if the third party doesn't send it out then the utility suffers. I would think that the utility would go after the third party because they didn't live up to their obligation to them.

MR. PALMESANO: Or vice-versa because --  
(Buzzer sounds)

I know we're getting into this and it's, you know, I know you keep saying it's easy, easy, but obviously it's not as easy as we're saying. So I kind of -- I'm not -- I don't have a ton more, Mr.

Jacobson, but I did want to ask a couple of other things, if I could. Where was I? Okay. So, how do you feel with examples that you might have, that with the historic data that is out there, how can -- how can we empower informed decisions about energy consumption and costs and how will this extended information contribute to improving the overall customer experience if we're not sure we're -- what specific claims we're having to say that this is going to be beneficial?

MR. JACOBSON: So that when the consumer gets a bill and they think it's outrageous, or they want to know whether it is or not, they can compare it to the past record and see. And if all of a sudden their bill is five times or seven times the amount that it usually is, then they can see what they're being charged per unit, they can make an intelligent decision and take the appropriate action.

MR. PALMESANO: Okay. I just have a couple other quick questions here, if I may. So with this, and now, obviously, they're gonna say that there's more -- from a cost perspective you're gonna need more meter readers, you're gonna need smart meters, which there are gonna be costs to that. And you're saying if there's issues with that then obviously they still can't recoup those costs if the losses are beyond two months. That's how this bill would act now compared to what we have on the books right now, correct?

MR. JACOBSON: Well, if it's not negligence on the part of the utility, then that is a reason for them not to, but they can't get out from a bill because they put in faulty property -- I mean, faulty,

and they could get -- look. All they have to do is get a bill out the door. It's not that hard.

MR. PALMESANO: I hear ya. I understand, Mr. Jacobson, and I -- I do appreciate your time, Mr. Jacobson. I try to --

MR. JACOBSON: Thank you.

MR. PALMESANO: Mr. Speaker, on the bill.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. PALMESANO: Yes, Mr. Speaker. I understand the intention of the sponsor, we've talked about this issue. I know most of his issues involve one specific utility. I think there's problems here from a number of perspectives; number one, I think a lot of the legislation we continue to bring in this House, this is one of them, we continue to get in the areas of where the PSC would have jurisdiction, they could address these issues if they thought there was a need to address it. I think that's one of the areas we look -- look at. I think also, I think this is something that's ultimately gonna shift costs. I don't know how you can say it's not gonna shift costs, because if -- if it becomes more expensive for different things, that's gonna be borne by the ratepayer. You know, higher utility costs are gonna come about when they don't have the revenues if now we're saying to the utility company, *Oh, you don't have to -- you don't -- now you don't have to pay your utility bill if it comes two months later -- more than two months.* And this is kind of in violation of the statutory agreement right now that we have in the law for prudent costs that must be reasonably recovered. And I think the individual's getting the benefit

of the commodity to heat their home, to power their lights, they know they're getting it. And if there's a delay and a problem not getting a bill, there are ways we can address this issue. We can look at figuring a payment issue that could be addressed, making sure there's no late payments or penalties. There are things we can do. But it should not absolve a customer for having to pay for the -- for their utility usage that they acquired. It can be an exorbitant amount. We talked about it earlier. There's no means test on this, so if a multi-millionaire or a business that's making a lot of money just because maybe they didn't get their -- they got their bill a little late, now they don't have to pay their bill to NYSEG or RG&E or National Grid or whatever it may be, and then who pays the balance of that? That cost will get shifted to other ratepayers. I don't see how we can sit here and say it's not gonna happen because there are -- there are loss recovery -- cost recovery recoupment stats in process with PSC law and Public Service Law that they're gonna have a right to go to the PSC to petition for higher -- for those costs recoveries that's gonna be borne by the ratepayer. And time and time again we see legislation in this House, we say, *Well, it's a little bit here, a little bit here*, and we fail to continue to address the main driver that continues to drive up our energy bills.

I mean, I -- I love when bills like this come forward, but when we talk about the -- the Green New Deal, CLCPA policies that continue to put in place, those are the things that are driving up bills for New Yorkers. National Grid said a 17 percent increase is due because of the CLCPA mandates. This is gonna be more and more



burdensome for New Yorkers. We don't put that on the bill. We don't put how much are the green energy costs to meet these mandates and these requirements are costing consumers. We should be putting that on the bill, but we don't do that. And I just think this is just a step in a direction I don't think is gonna be very helpful in solving a problem. I think -- now we're saying they've got to put two years worth of materials on a bill, when most probably do about a year, now we have to provide two years worth of data in a graph form and in numeric form. That's more paperwork, that's more pages, that's more costs that must be borne by the ratepayer. And it just seems so easy that this side of the aisle is always happy to bring forth legislation that just continues to nick and nick and nick just with additional costs and they say it's not so much, but it is. But then when you talk about the true cost drivers that are driving up our utility bills, which is the (inaudible) so-called green policies that are being advocated in this State without any reference to affordability, without any concern to reliability. And you talk about businesses, when we talk about -- when we talk about energy bills, businesses in New York can say, because when we talk about energy policy they care about two things: Affordability and reliability. And if they're not getting affordability and reliability in New York State, they're gonna go someplace where they can get it, and all it's gonna continue to do is putting in place policies that only affects New York. It doesn't compete with other states, it doesn't compete with other states. Our country's the one that's driving up global emissions. We've said it over and over again,

and I'll say it again, New York only contributes 0.4 percent of global emissions. China contributes 29 percent, has 1,000 coal plants and building more. India and Russia on top of it, those three are 40 percent of global emissions, but here we are putting more and more mandates that are gonna be costly retrofits for homes, 35-, 40,000-plus to convert your homes. And I know the Governor says she's not coming after your gas stove; yeah she is. That's what the policies in this -- in the C -- Climate Action Council plans are advocating. Come 2030, if it goes the way they want, when your gas boiler or furnace goes you will not be able to replace it with a natural gas boiler or furnace.

This all goes hand in hand with the utility bills, the energy bills that continue to come out of this House. It's all about raising costs to consumers. And I understand what the sponsor is trying to do, I understand we want try to address, and we should do. Smart meters would be a good thing, but not everyone is receptive [sic] to smart meters. We need more staff out there to get there, we need to make sure the doors are being opened. If someone comes and knocks on your door and no one opens the door, you can't get a reading if the meter's inside. It's happened to me month after month after month. Yes, you can try to do estimates, but something better has to be done on this process and I just don't think this is the right approach to do it and I think there's a better way we could be looking at this. I think our overall energy policy and I just think there's just too much here. And I think telling a company that is providing a

valuable service to keep your lights on, to keep your heat on, to keep your gas on, deserves to be paid for those services they are providing. And I just think this sends a very kind of suspectful [sic] mess -- suspect message that we're saying, you know what? Just because there could be problems and with the com -- the complexities of our energy bills these days and the process with net metering, a whole host of issues out there, that makes it more and more difficult, more and more challenging. But at the end of the day if there are problems, we can address those problems without saying, *Oh, by the way, you're absolved of paying your bill*. It shouldn't work like that. We see more and more issues with legislation, whether it's housing, it doesn't matter. We just don't want to say you don't have to pay, don't pay the rent, don't pay the energy bill, don't pay your gas bill. It doesn't matter what it is, and I just think it sends the wrong message. And ultimately, these costs have to be made up. The utilities are gonna go before the PSC, they're gonna petition for the cost recovery and they have a right to do that because they have a right to get paid for the services they are providing to the customers, the businesses, the manufacturers, the residential users. And to think that there's not even some means test to this, that a multi-millionaire can make -- use excessive energy and maybe if their bill's late, now they don't have to pay their bill? It sends the wrong message and I just don't think this is right approach.

I think this is a bad bill. It's my hope if it goes forward it doesn't get acted upon, but I'm going to be voting no on this

bill, Mr. Speaker, and I encourage my colleagues to do the same and I just want to say thank you to the sponsor for his time. Thank you.

ACTING SPEAKER ZACCARO: Mr. Goodell.

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

ACTING SPEAKER ZACCARO: Will the sponsor yield?

MR. JACOBSON: Yes.

ACTING SPEAKER ZACCARO: Mr. Jacobson yields.

MR. GOODELL: Thank you, Mr. Jacobson. I'm looking at the bill language on page 1, and this two-month period starts when the electricity, for example, is first provided, correct?

MR. JACOBSON: Yeah.

MR. GOODELL: So just to make sure I understand the time frame, January 1st, your power's on, the utility company normally bills for the whole month of January, that bill typically comes out a week later. Certainly in my case. So you're saying if they're three weeks late on the bill they can't collect?

MR. JACOBSON: If the bill is due January 1st --

MR. GOODELL: But -- but it's not measured from when the bill comes out, it's measured from the date the power's first provided.

MR. JACOBSON: The statute now says that we're changing from the amount of months. It says for, in this case it'll be

two months prior to the mailing of the first bill to the customer for such service, unless the failure of the corporation or municipality to bill sooner was not due to the neglect of the corporation, municipality or utility, or was due to the culpable conduct of the customer.

MR. GOODELL: Well, normally the bill comes once a month, right?

MR. JACOBSON: Yeah.

MR. GOODELL: So normally the utility company is billing five or six weeks in arrears from the time the --

MR. JACOBSON: Yeah, normally it comes once a month, and so if they're late by a little bit and it's two months, up to two months, that's fine.

MR. GOODELL: So using my example, starting out the new year, let's say I'm a new customer, I sign up, I get power January 1st. My normal bill would come the first or second week in February, right, and if that bill is two or three weeks late and arrives in March, I don't have to pay for what I was using in January, correct?

MR. JACOBSON: Well, I think on your hypothetical you're changing the facts. If the bill was supposed to be on the first, which would include service before the first, then they have 'til the end of February to get the bill out. That's all.

MR. GOODELL: Okay. Is there any exception that if there's like a major storm, like Superstorm Sandy or anything like that?

MR. JACOBSON: Yeah, I don't think that a storm

would delay it for two months.

MR. GOODELL: Well, actually, we're only talking about less than a one-month delay, right?

MR. JACOBSON: The storm would not be negligence or a neglect of the utility. On the other hand, they could still issue -- if they couldn't get there, if they didn't have the smart meters, if they didn't have any way of doing it, they could still, perhaps -- they could always do an estimated bill because that would be a circumstance that would be allowed.

MR. GOODELL: Thank you, Mr. Jacobson. I appreciate it.

MR. JACOBSON: Thank you.

MR. GOODELL: On the bill, sir.

ACTING SPEAKER ZACCARO: On the bill.

MR. GOODELL: So we keep hearing tonight that if the bill is two months late, the utility customer wouldn't have to pay it. But actually, when you start tracking it it's if the bill is less than one month late they wouldn't have to pay because the measurement starts not from when the bill is supposed to go out, but when the power is first provided. So if you start getting utility service January 1st, under this bill, if that bill that you would normally get sometime in February doesn't arrive until the beginning of March, you get January free. It's not two months, it's three weeks because it's not measured from when the bill is supposed to go out, it's measured from when the power was first given to you. Now, why does it matter?

Because if we pass a law that says if the bill is three weeks late from its normal monthly billing, you get the power for free, it isn't free. That charge is going to go on my bill and then your bill and then everyone else's bill. That's the way it works. The utility company doesn't have a money tree in the backyard.

So let's talk about some of the options. Why would the bill perhaps be three weeks late? Well, maybe because the utility company, to keep our utility rates low, trusts us enough to self-report. But not everyone who self-reports is there on the very first of the month. The self-reporter himself or herself might be a week or two late. Now, we're told you can solve this with electronic meters. That's cool. In my community, rural communities, we don't have them. Why? Because we trust the residents to give us an interim reading and then we correct it. The utility company comes by every two or three months and checks it. So what's this bill do? It gives the opportunity to people who are gaming the system to get free electricity if the bill is three weeks late, and it forces us, everyone else who pays on time, to pay more and it incurs more costs because the utility system has to staff up.

Now, I've been in private practice for 40 years, I have to tell you, I have yet to find a client complain when I said, *I am sorry I didn't send you a bill sooner*. I will also tell you that when I send a bill late, I still expect my client to pay it.

I appreciate my colleague's objective to have timely bills, but just three weeks late from when it's supposed to be is too

short of a time frame. I think the current standard is better. Thank you, sir. And again, thank you to my colleague.

ACTING SPEAKER ZACCARO: Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER ZACCARO: The Clerk will record the vote.

(The Clerk recorded the vote.)

Mr. Beephan to explain his vote.

MR. BEEPHAN: Thank you, Mr. Speaker. You know, after listening to this debate I understand the concerns of my colleagues, but I share a district along with the bill sponsor and a number of other colleagues in the room here today, and our residents, as particular with the utility company that this all stems from went months and months and months without a bill due to a billing system upgrade that posed a severe impact to their quality of lives. And I'll tell you how. That -- that utility company withheld bills for up to six months, customers would call the utility company and say, *Hey, I don't have a bill, what should I do?* They can't get in contact with a call center because they're already understaffed, and by the time they get a bill it's for \$5,000. They're calling their elected officials saying, *What do I do? I can't afford to pay this.* And when they finally get in touch with someone from the utility company they're being told, *You're out of luck. You owe that full amount, otherwise we may have to cut off your -- your -- your electricity.* And I don't think that's fair.



You know, this issue in our community started back when I was a councilman. And as a -- as a at-large member for a small community, we received hundreds and hundreds and hundreds of calls just on a local level, and now that's -- that is completely exasperated across our whole district.

So while I do have concerns about the bill, I -- I have to support this for my residents and for the pain that they've gone through over the past few years. Hopefully this will balance the -- the impacts that they've had and maybe make it a little bit better in the future. So thank you to the sponsor. I'll be in the affirmative.

ACTING SPEAKER ZACCARO: Mr. Beephan in the affirmative.

Mr. Jacobson.

MR. JACOBSON: To explain my vote, Mr. Speaker. Utilities have responsibility to send a timely and transparent bill. That's what this would do. Now, despite what you might have heard during this debate, and I appreciate my colleague's mentioning of all the problems that we've had in the area and the complaints that we've had, this bill doesn't say one week or two weeks or three weeks, it says -- it says two months; two months to get a bill out the door. That's -- that's not too much to ask. There's many ways they can do it. And by supplying the billing records for the past two years, customers will have a chance to compare their bill to previous bills to see if the bill is in the ballpark. And this is the least we can do. The utilities can do this if they want, most utilities do. So then there should be no

problem if those utilities that don't do it get -- so they can get their act together.

So I appreciate those -- the support on this bill and I vote -- proudly vote in the affirmative.

ACTING SPEAKER ZACCARO: Mr. Jacobson in the affirmative.

Are there any other votes? Announce the -- announce the results.

(The Clerk announced the results.)

The bill is passed.

Page 16, Rules Report No. 772, the Clerk will read.

THE CLERK: Senate No. S01684-A, Rules Report No. 772, Senator Hinchey (A06843-A, Clark, Bronson, Meeks). An act to amend the Emergency Tenant Protection Act of 1974, in relation to studies to determine vacancy rates.

ACTING SPEAKER ZACCARO: An explanation has been requested, Mr. Goodell -- Ms. Clark.

MS. CLARK: This bill would require owners in municipalities that are completing vacancy rate surveys to respond to that survey and provide certain information about rent records and occupied or vacant units.

ACTING SPEAKER ZACCARO: Mr. Fitzpatrick.

MR. FITZPATRICK: Thank you, Mr. Speaker.

Would Ms. Clark yield for a few questions?

ACTING SPEAKER ZACCARO: Does the sponsor

yield?

MS. CLARK: Of course.

ACTING SPEAKER ZACCARO: The sponsor yields.

MR. FITZPATRICK: Thank you, Ms. Clark. The -- how would this -- how would your legislation encourage, cajole - pick your term - to get cooperation from --

MS. CLARK: Sure. There's multiple ways. I think the whole point was to give municipalities lots of tools that they can use, but they don't have to use.

MR. FITZPATRICK: Okay.

MS. CLARK: What we saw in -- you know, there's two case studies that we've had to look at, one in Kingston and one in my city of Rochester. So when Kingston originally did it, they didn't, you know, put any enforcement in it. The second time they put some penalties, some financial penalties in it. They also didn't say that they might show up there in person, and they also, in the second time they said it, said it would count as 0 percent if you did not respond. So what they did is they used a couple of different tools to really require those who are landlords what could potentially be rent-stabilized buildings to -- to answer these studies with more teeth, as you might say, and got much different results. So we know in Rochester where they didn't do any of those things, what the vacancy rate study showed was something we don't think was quite accurate of what's actually happening in our housing stock in the City of Rochester.

MR. FITZPATRICK: So -- so did Rochester see an uptick in cooperation or participation in that study because of it?

MS. CLARK: Kingston did. They ended up -- when they did it the second time with a little more teeth in it --

MR. FITZPATRICK: Right.

MS. CLARK: -- they got way more respondents with only 20 not responding out of over 1,200 units.

MR. FITZPATRICK: Could you repeat that, 20?

MS. CLARK: Twenty out of 1,200.

MR. FITZPATRICK: Twenty out of 1,200 responded.

MS. CLARK: Didn't respond.

MR. FITZPATRICK: Did not, okay. All right. So is it not -- it would appear to me somewhat of a heavy-handed approach, it's kind of a threat. If you don't cooperate, you're going to...

MS. CLARK: You don't have to use all the tools, you can choose which ones you want to use.

MR. FITZPATRICK: I'm sorry?

MS. CLARK: You don't have to use any of the tools, you can choose. I mean, the biggest one is if you're counting a nonresponse as zero, if you're required to count a nonresponse as zero, I think more landlords might be just by that motivated alone to answer if they have vacancies.

MR. FITZPATRICK: Okay, sure. So was there feedback from the landlords as to why they didn't -- chose not to

participate?

MS. CLARK: Yeah. There -- I mean, if you read some of their quotes, some just said they didn't like the study, some said they didn't feel like they needed to answer it, it wasn't required. You know, we got a lot of different quotes from some of our landlords of why they didn't, but it doesn't help a municipality if they're not actually getting accurate information about what's happening in their rental properties.

MR. FITZPATRICK: Right. Did they offer any suggestions on what might get them to participate, or --

MS. CLARK: Not that I saw. I think, you know, much like many of the processes that landlords, particularly -- and these are what we would consider potentially rent-stabilized, so they're bigger units, buildings of six units or more. These are not small doubles or -- or Upstate we have a lot of four-unit places. But six is a fairly substantial building, so they're not necessarily our small landlords. So they didn't -- they didn't necessarily give any feedback as to why they didn't answer, but we need to figure out ways to motivate to make sure that they are. That's the only way we get accurate information. We only have 37 percent respondents in the City of Rochester's study.

MR. FITZPATRICK: Right. So was any thought given in Kingston maybe to use maybe more of an incentive approach, a carrot rather than a stick approach?

MS. CLARK: Well, when Kingston went from a just

a non -- a very neutral, no teeth, they got no response or very -- they got a much less response rate. When they used a few more teeth they got a very low, very, very, very low -- less -- almost less than 2 percent didn't respond.

MR. FITZPATRICK: Was there any feedback after -- after the threat of sanctions were -- were used to encourage participation? What was the feedback then? How did they...

MS. CLARK: I think that they understood that they were getting a much more accurate picture. I mean, that's the whole point, right, is to get the accurate picture of actually what's happening. I mean, why wouldn't people want to respond, I guess, is the question I would have back. Why wouldn't a landlord want to say --

MR. FITZPATRICK: Well, it's private property so they --

MS. CLARK: It's private property, but you got to get a C of O, you've got to clean up your trash, you've got to mow your lawn. I mean, there's all these things that you have to do.

MR. FITZPATRICK: Yeah, when you hold a gun to their head, you know --

MS. CLARK: Who's holding a --

MR. FITZPATRICK: Well, the sanctions are the gun to force compliance. You're forcing compliance here --

MS. CLARK: To -- I mean, we still have 20 people that didn't --

MR. FITZPATRICK: -- with the threat -- with the

threat of sanctions.

MS. CLARK: -- respond, so there's no force. A fine is a fine. I mean, you can choose to accept a fine or not.

MR. FITZPATRICK: Okay. Very good. Thank you, Ms. Clark.

Mr. Speaker, on the bill.

ACTING SPEAKER ZACCARO: On the bill.

MR. FITZPATRICK: It -- it's, you know, getting an accurate count of course is desirable to help the community. I think the landlord community would just prefer that, you know, having a gun held to your head to force compliance is no way to, I think, to run a business or run a township. But understanding that we need to get an accurate count, I think a more positive approach would have worked. (Inaudible), you know, maybe offer incentives, maybe some kind of a tax break. That would certainly, I think, get a desired response. You know, make it worth their while. You know, taxes are very high here in New York, maybe a tax break to get compliance would a better route rather than threaten sanctions. After all, this is private property. Nobody should be compelled, you know, to participate against their will. But the government wants, you know, to get this information and they will use these levers of power to force compliance, as is their -- their prerogative. But it's one we disagree with, it's a heavy-handed approach, and not one, maybe a tax break or other incentive to get compliance would be better and help property owners, landlords, building owners, lower their costs, their cost of

doing business rather than threaten with sanctions.

So for that reason I oppose this bill and urge my colleagues to consider doing the same. Thank you.

ACTING SPEAKER ZACCARO: Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER ZACCARO: A Party vote has been requested.

Mr. Goodell.

MR. GOODELL: Thank you, sir. The Republican Conference is generally opposed to this bill for the reasons mentioned by my colleague. Those who support it can certainly vote yes on the floor. Thank you, sir.

ACTING SPEAKER ZACCARO: Ms. Solages.

MS. SOLAGES: The Majority Conference will be voting in the affirmative. Those who wish to vote against this provision can come to the Chamber and cast their vote. Thank you.

ACTING SPEAKER ZACCARO: The Clerk will record the vote.

(The Clerk recorded the vote.)

Mr. Goodell.

MR. GOODELL: Thank you, sir. This is a very simple bill. It imposes a \$1,000 fine if a private landowner doesn't respond to a government survey and disclose how much he's charging a private client for rent. It's not necessary for New York to regulate



every single aspect of every single landlord and impose huge fines if they don't comply with a curiosity survey.

For that reason, I will not support it. Thank you.

ACTING SPEAKER ZACCARO: Mr. Goodell in the negative.

Ms. Clark to explain her vote.

MS. CLARK: Thank you, Mr. Speaker. I think we've all, through tonight and through actually this whole Session and a couple years into this now, understand that we have a housing crisis -- I think it's been mentioned actually a couple of times tonight -- across the State, and there is a lot of pressure on our municipalities to figure out solutions. I agree, it's a multi-faceted approach from building more housing, building more affordable housing, but also understanding that in places like the City of Rochester, 60 percent of those who live there are renters. And there are things and pressures in the market that the city needs to understand before it can really come up with a comprehensive plan. These aren't curiosity studies, these are actually meaningful studies that give people a good understanding of what's happening in their rental markets, what units are consistently being rented, how many vacancies there are, if there are vacancies that aren't being used for potentially things like short-term rentals or other things that aren't even being considered. These are factors the city needs to know to address this issue so that they can better help their tenants who are really facing a crisis that is really making it hard for them just to make ends meet. We know stable housing leads to better

outcomes. And when it comes to the teeth in this, these are all just options. It's not a fine of \$1,000, it's a fine up to. But if cities are working with their landlords and they're trying to figure out answers to these vacancy studies so that they can make informed decisions and informed policy, they have to have tools. They don't have to go up to \$1,000, they don't even have to use a fine. They can use the 0 percent for non-response rate, they can use other teeth that are in the bill to make sure that they're getting the answer. It is just an option, it is not something that is mandated or making them do that to their landlords. They can work with them to get however best responses they can, and hopefully the cities and municipalities will do that.

So I vote in the affirmative. Thank you.

ACTING SPEAKER ZACCARO: Ms. Clark in the affirmative.

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

ACTING SPEAKER ZACCARO: Page 16, Rules Report No. 753, the Clerk will read.

THE CLERK: Senate No. S00995-B, Rules Report No. 753, Senator Hoylman-Sigal (Gallagher, Mitaynes, González-Rojas, L. Rosenthal, Epstein, Kim, Thiele, Mamdani, Simon, Davila, Forrest, Carroll, Kelles, Shrestha, Glick, Magnarelli, Rozic, Jacobson, Shimsky, Sillitti, Burgos, Gibbs, Benedetto, Santabarbara, Simone, Steck, Brabenec, Bores, Slater, Reyes,

Levenberg, Seawright, Raga --A3484A). An act to amend the Limited Liability Company Law and the Executive Law, in relation to the disclosure of beneficial owners of limited liability companies.

ACTING SPEAKER ZACCARO: An explanation has been requested.

Ms. Gallagher.

MS. GALLAGHER: This bill amends the Limited Liability Company Law to require disclosure of beneficial owners in an effort to provide greater transparency in LLC ownership.

ACTING SPEAKER ZACCARO: Mr. Blumencranz.

MR. BLUMENCRANZ: Thank you, Mr. Speaker.

Will the sponsor yield?

ACTING SPEAKER ZACCARO: Will the sponsor yield?

MS. GALLAGHER: I will yield.

ACTING SPEAKER ZACCARO: The sponsor yields.

MR. BLUMENCRANZ: Ms. Gallagher, so could you describe to me the purpose of an LLC, please?

(Pause)

MS. GALLAGHER: The purpose of an LLC is to grant the investors and the owners limited liability.

MR. BLUMENCRANZ: Can you describe to me what an S corp is, please?

MS. GALLAGHER: S corp?

MR. BLUMENCRANZ: Yes.

(Pause)

MS. GALLAGHER: An S corp is a business that can elect to have a pass-through form of taxation with fewer than 100 shareholders.

MR. BLUMENCRANZ: Can you describe to me what an LLP is.

(Pause)

MS. GALLAGHER: That would be a Limited Liability Partnership.

MR. BLUMENCRANZ: And what is the difference between an LLP and an LLC?

(Pause)

MS. GALLAGHER: Partners have to be natural persons.

MR. BLUMENCRANZ: Now, could you describe to me why your piece of legislation specifies that LLCs would be subject to this disclosure and not the other corporate entities?

(Pause)

MS. GALLAGHER: LLCs can be formed anonymously and that is what we're looking to target.

MR. BLUMENCRANZ: So you couldn't have any anonymity with the other -- you know, if you have an S corp that purchases property, you'd know who the shareholders and benefactory -- benefactors were for that -- that property?

MS. GALLAGHER: That would be a different bill.

MR. BLUMENCRANZ: No, I'm asking -- I'm asking the differences. So you -- there's -- there's no way of keeping your name as being a benefactor as a corporation?

(Pause)

MS. GALLAGHER: This is the LLC Transparency Act, not the S corp Transparency Act.

MR. BLUMENCRANZ: I'm trying to understand why you chose just LLCs, but I'll move on.

MS. GALLAGHER: Thank you.

MR. BLUMENCRANZ: So as far as the bill is concerned, how does it differ from the Federal piece of legislation that was passed and introduced?

MS. GALLAGHER: The Federal legislation is -- is held at the Federal level, and this particular piece would be held at the Department of State. So it would allow for our State to use the information to investigate crimes.

MR. BLUMENCRANZ: To investigate what?

(Pause)

MS. GALLAGHER: Potential crimes that are committed or investigate actions of the LLC.

MR. BLUMENCRANZ: I'm -- I'm sorry. I'm a little confused. I thought this bill specifically just forced the benefactors of an LLC to report to a newly-created State database. Am I incorrect in my understanding of the piece of legislation?

(Pause)

MS. GALLAGHER: Putting this in this State entity, in this State database, makes it easier to investigate on the State level and it also makes it publicly accessible to members of the public, obviously.

MR. BLUMENCRANZ: All right. So I'm just curious, what about larger -- larger entity holders. So if I'm a large business and I have an LLC that purchased property, will I be subject to this law?

MS. GALLAGHER: Yes, if you're a beneficial owner.

MR. BLUMENCRANZ: It is my understanding that if you have over \$20 million in gross receipts, have 20 full-time employees and a physical presence in the United States you are exempt from this piece of legislation. Am I incorrect in my interpretation of the bill?

(Pause)

MS. GALLAGHER: That is one of the 23 exemptions.

MR. BLUMENCRANZ: Yes, there are many.

MS. GALLAGHER: But you didn't define what you meant by "large" so...

MR. BLUMENCRANZ: I did not, you are correct. I -- considering the price of property in New York, especially New York City, I would say that that wouldn't even be very large but I

digress. I'm just curious, what happens if I own an LLC and then I have a subsidiary LLC that the only benefactor -- benefactor would be the -- the original LLC? Would they be subject to the same reporting guidelines?

MS. GALLAGHER: Yes. They -- you're -- you would be the beneficial owner for both of those entities.

MR. BLUMENCRANZ: I am just the owner of one entity which owns another entity. So that second entity --

MS. GALLAGHER: Because you own the first -- because you own the second entity, you are benefiting from that ownership, then you are a beneficial owner.

MR. BLUMENCRANZ: Really? Okay, all right. So...

MS. GALLAGHER: Direct or indirect beneficial ownership.

MR. BLUMENCRANZ: But if I take that LLC and I put it say into a trust or I allow my child to have -- be the beneficiary, then I would not have to report any information, correct?

(Pause)

MS. GALLAGHER: Parents and guardians are reported as the beneficial owner until the -- the child is of age.

MR. BLUMENCRANZ: Even if it's in trust?

(Pause)

MS. GALLAGHER: Can you repeat the question, please?

MR. BLUMENCRANZ: Will I have to report the information you provide; name, date of birth, current business address, identifying number from an acceptable identification documentation as defined in the bill? Would I have to report that as a trust?

(Pause)

MS. GALLAGHER: Under the Federal law, trusts are covered as a form of beneficial ownership and this is modeled after that.

MR. BLUMENCRANZ: Okay, but you exempt it in your writing -- in your writing of the bill, no? As one of your 23 exemptions you mentioned previously?

(Pause)

MS. GALLAGHER: We interpret that situation to not be exempt.

MR. BLUMENCRANZ: So -- okay. So trusts are not exempt from this piece of legislation. So I can have a piece of property in trust for my children being the only beneficiaries and they are not exempt from this. So trusts will have to show --

MS. GALLAGHER: Once they are --

MR. BLUMENCRANZ: -- who the trustees are.

MS. GALLAGHER: Once they are of age, once they are of age, they will be listed as beneficial owners in the database.

MR. BLUMENCRANZ: So they won't be until they turn a certain age.

MS. GALLAGHER: Until then you will be there.



MR. BLUMENCRANZ: Ah.

MS. GALLAGHER: As their parent.

MR. BLUMENCRANZ: The parent?

MS. GALLAGHER: Yes.

MR. BLUMENCRANZ: Even those it's a trust?

MS. GALLAGHER: Correct, because it's an LLC.

MR. BLUMENCRANZ: I'm not sure if that's correct, but okay. Now if -- again, if I create an LLP, same purpose, just multiple partners, similar protections, I would not be subject to this law.

(Pause)

MS. GALLAGHER: I'm sorry. Can you repeat the question?

MR. BLUMENCRANZ: Would an -- would an LLP be subject to the same regulations or I can just have a partnership, do the same exact business operations I was planning on doing and not be subject to this piece of legislation? I would not have to provide all of the information you're asking for.

MS. GALLAGHER: This law only applies to LLCs and I'd like to keep the questioning on LLCs, please.

MR. BLUMENCRANZ: Okay. So then why do you choose to just include LLCs?

MS. GALLAGHER: Because LLCs can be created anonymously.

MR. BLUMENCRANZ: You're aware that there are

other ways of doing the same business practice and keeping yourself anonymous without necessarily being an LLC. So it just creates a burden, correct?

MS. GALLAGHER: Well, I invite you to write another law that does just that.

MR. BLUMENCRANZ: Okay. Have you set aside any appropriations for the creation of this very large database that will have to house all of this important and sometimes private information?

MS. GALLAGHER: The database in fact already exists. We are just adding more information to it.

MR. BLUMENCRANZ: What are you -- I'm sorry. I wasn't really -- I was unclear about your previous answer regarding the benefit of providing all this information to the public in a way that, in my understanding, Federal law and the Federal statute does not do, which is allow it to be publically-available in the same level of access. Why do you choose to have a further reaching version of the same Federal piece of legislation?

(Pause)

MS. GALLAGHER: This information benefits the public and the local governments in a way that the Federal law does not and cannot.

MR. BLUMENCRANZ: So let's say I want to sue a property owner, right? They're -- I'm suing the LLC because the LLC owns the property.

MS. GALLAGHER: Mm-hmm.

MR. BLUMENCRANZ: What will happen in that case if I choose to - now that I know who owns that piece of property - am I going to sue them as well?

(Pause)

MS. GALLAGHER: You will sue the LLC and we will be able to direct that towards the owner, rather than spending years searching for who the LLC is owned by.

MR. BLUMENCRANZ: Well, my main question is why do you need to know? I mean the point of an LLC is to provide that privacy protection for that business so that they don't have to disclose that information for various reasons. A lot of it is security and protection for property owners.

MS. GALLAGHER: Corporate anonymity is not guaranteed to anyone and it is -- it is a public benefit for the local government and civil society to be able to find out who is utilizing the LLC to do a variety of businesses, and I can get into some examples if you'd like.

MR. BLUMENCRANZ: Sure. Why don't you give me some examples.

MS. GALLAGHER: Sure. So there are many different kinds of ways that the anonymous LLCs have been used. They have been used in -- they have been implicated in terrorists financing, sanctions invasion, tax avoidance, narcotics trafficking, human trafficking, insurance fraud, bid rigging, other acts of official

corruption, housing violations, widespread labor violations and keeping this information secret obstructs routine operation of local government, such as code enforcement. It harms businesses, for example, when banks or land title agents struggle to identify the beneficial owners of parties to transactions in order to comply with anti-money laundering rules.

MR. BLUMENCRANZ: All right. I -- I understand. Thank you. So you --

MS. GALLAGHER: I could go on if you'd like.

MR. BLUMENCRANZ: I'm sure, I'm sure you can. But what I'd like to point out is that for the vast majority of those elicited operations that you described, they would probably fall into one of the various categories and it wouldn't be so hard, especially considering a lot of these are criminal organizations you're describing, for them to conceal their identity in one of the many -- the scores of ways you allow for exemptions in this bill. It seems to me that it only really affects small businesses or relatively modestly-sized businesses and especially law-abiding citizens. So I would just like to know in what world do you think a bill that exempts pretty much everyone who -- those bad actors, that this would be an effective way of stopping crime organizations that have under \$20 million or under 20 employees or can't simply find another way to hide their assets?

MS. GALLAGHER: The bill actually eases significant burdens on small businesses such as difficulties identifying beneficial owners of parties to certain banking, insurance, real estate

transactions which can be made by anonymous LLCs and there's a variety of other ways that small businesses are harmed by anonymous shell companies. So this is going to do a great deal of good. And it might not do every single good thing in the world for everyone, but taking away one disguise is better than having more.

MR. BLUMENCRANZ: Is that why the Small Business Council and other business groups have wholeheartedly objected to the piece of legislation because it helps them so much?

(Pause)

MS. GALLAGHER: Okay. The small business majority, the leading representative of 25 million small businesses in the US, is that large to you, wrote to Congress in 2017 and wrote that we have experienced the harms of anonymous companies first hand. Shell companies have been used to undermine the integrity of supply chains, disrupt local commerce and falsely underbid and win contracts that they have no intention of fulfilling. Fraudulent business-to-business companies, present increased risks to honest small businesses looking to subcontract to leverage opportunities to grow their business. With -- and with anonymity there is less accountability.

MR. BLUMENCRANZ: So you're aware those small businesses are frustrated because large businesses, over \$20 million, are using these LLCs to operate covertly, which you exempt from your bill. So I don't understand how it helps them. If it continues to protect large corporations and continues to neglect protecting the small

businesses, we'll then have to tell everybody who they are, where they are, if their family members are also owners who they are. They'll be able to find out, you know, what property they may own, especially you, as a public official, if you were -- if you were aware that you could purchase your property anonymously, now you cannot. Other public figures --

MS. GALLAGHER: I would never do that.

MR. BLUMENCRANZ: -- other public figures will fall into the same category. So, thank you and that's -- that's all.

(Buzzer sounded)

MS. GALLAGHER: You are so welcome.

ACTING SPEAKER AUBRY: Ms. Simon.

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

MS. GALLAGHER: I yield.

ACTING SPEAKER AUBRY: The sponsor yields.

MS. SIMON: Thank you. I have a -- a few questions about the intent of this legislation. A few years ago I passed a bill that required that LLCs disclosed were not allowed to make court donations to political campaigns beyond those of any other corporation, and the reason for that was often because LLCs were making donation contributions as if they were a person, an individual and racking up meant people would start lots of LLCs. This bill would help with that as well, wouldn't it, because it would identify the beneficial owners; is that correct?

MS. GALLAGHER: Yes. That's correct.

MS. SIMON: And this would -- actually LLCs could be extraordinarily wealthy; isn't that correct?

MS. GALLAGHER: That's correct.

MS. SIMON: And LLC ownership, if somebody is a -- is a trust under the Uniform Gift to Minors Act, would -- would be -- actually, the trustee would be the entity that would be acting on behalf of that child; would they not?

MS. GALLAGHER: Correct.

MS. SIMON: Thank you.

MS. GALLAGHER: Thank you.

MS. SIMON: And so this is really, it seems to me, a method of protecting the public from corporate shenanigans, for lack of a better term. Would that be an accurate representation?

MS. GALLAGHER: Absolutely. I think you truly understand the -- the intent of this bill.

MS. SIMON: Thank you, Ms. Gallagher. And I -- I might say, I think you did pretty well in your impromptu bar exam review. Thank you.

MS. GALLAGHER: Thank you.

MS. SIMON: Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Mr. Goodell.

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

MS. GALLAGHER: Gladly.

ACTING SPEAKER AUBRY: The sponsor yields.

MR. GOODELL: Thank you very much. I see that one of the items that has to be disclosed for all the beneficial owners is their date of birth. Why do we care what their birthday is and why should that be reported to the government?

MS. GALLAGHER: Correct. So the date of birth allows a simple way to submit the same form to both the Federal program and the State program. It's already requested on the Federal program. And it makes it easier to identify when it is a minor child that's being put down as the beneficial owner, and make sure that that -- that doesn't go forward and it also allows us to be able to see the differences between 40 different John Smiths that apply for the -- the LLC.

MR. GOODELL: Now, I see on page 3 starting at the top of the page and subparagraph b, all personal or identifying information is to be held confidential if it isn't otherwise required to be disclosed in the business entity database. And it references Section 100b of the Executive Law, but 100b of the Executive Law deals with the licensing of security officers. Can you help me here? What is it -- what is the correct reference --

MS. GALLAGHER: Sure.

MR. GOODELL: -- and what is not disclosed in the business database?

(Pause)

MS. GALLAGHER: 100b of the Executive Law is



what codifies the database.

MR. GOODELL: And are you looking at it?

MS. GALLAGHER: Page 5 of the bill, Section 9, the Executive Law is amended by adding a new Section 100b to read as follows. Would you like me to read it?

MR. GOODELL: No, that's fine.

MS. GALLAGHER: Okay, thanks.

MR. GOODELL: So it's a new section in the bill itself.

MS. GALLAGHER: Right.

MR. GOODELL: Thank you, because obviously I couldn't find it in the existing statute. And what has to be disclosed under this new Section 100b? Or, more accurately, what is still confidential?

(Pause)

MS. GALLAGHER: Only the legal name and current business address are disclosed publicly.

MR. GOODELL: So we have all this data that has to be reported to the Secretary of State, including names and dates of birth and street addresses and everything else, and then the law goes on to say, but it shall all be kept confidential; is that correct?

MS. GALLAGHER: Right. The name and the current business address are what is accessible by the public. The rest is available for State -- the State to be able to look at if they need to and if they choose to in terms of a -- of a situation.

MR. GOODELL: Thank you very much for those clarifications.

MS. GALLAGHER: Thank you.

MR. GOODELL: Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you, sir.

Read the last section.

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

ACTING SPEAKER AUBRY: A Party vote has been requested.

Mr. Goodell.

MR. GOODELL: Thank you, sir. The Republican Conference is generally opposed to this legislation. Certainly those who support it can vote in favor of it. 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 piece of legislation; however, those who want to be an exception should vote at their seat. Thank you, sir.

ACTING SPEAKER AUBRY: Thank you.

The Clerk will record the vote.

(The Clerk recorded the vote.)

Ms. Gallagher to explain her vote.

MS. GALLAGHER: Thank you so much. I am very

thankful to the Speaker and to the conference for bringing this bill forward. I became aware of this issue when I was working with the mobilization against displacement and a group of tenant advocates and I were trying to discover who a negligent landlord was and we found that there were thousands of LLCs all going to the same address, and it was very, very difficult for anyone to get justice. The more I looked into the issue, the more I saw that this was happening at all different levels and that's why we've been very proud to receive a lot of support and -- and folks fighting for this bill including the Building Construction and Trades Council [sic], the Carpenters Union, the Hotel Trades Council [sic], Reinvent Albany, the FACT Coalition and the New York Association of Land Title Agents [sic]. So I -- I'm really grateful that we're able to take this first step. Passing this bill is making history. It is the first publicly-accessible beneficial ownership database in the country, and New York is setting a new standard for transparency in the United States. 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, do you have any further housekeeping or resolutions?

ACTING SPEAKER AUBRY: Mrs. Peoples-Stokes, we have neither one and I'm so pleased to answer that question.

MRS. PEOPLES-STOKES: Thank you so much, sir.

And I move that the Assembly stand adjourned until 9:00 a.m.,  
Wednesday, June the 21st, tomorrow being a Session day.

ACTING SPEAKER AUBRY: The Assembly stands  
adjourned.

(Whereupon, at 10:04 p.m., the Assembly stood  
adjourned until Wednesday, June 21st at 9:00 a.m., Wednesday being  
a Session day.)