NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

February 8, 2000

11:10 a.m.

REGULAR SESSION

SENATOR RAYMOND MEIER, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT MEIER: The Senate will come to order.

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

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

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

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

ACTING PRESIDENT MEIER: Reading of the Journal.

THE SECRETARY: In Senate, Monday, February 7th, the Senate met pursuant to adjournment. The Journal of Saturday, February 5th, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could adopt the Resolution Calendar, with the exception of Resolution 3031.

ACTING PRESIDENT MEIER: All in favor of adopting the Resolution Calendar with the exception of Resolution 3031 signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The Resolution Calendar, with exception, is adopted.

Senator Skelos.

SENATOR SKELOS: Mr. President, there will be an immediate meeting of the Rules Committee in the Majority Conference

Room.

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

SENATOR SKELOS: Mr. President, there's a privileged resolution at the desk, Number 3021, sponsored by Senator DeFrancisco. May we please have the title read and move for its immediate adoption.

ACTING PRESIDENT MEIER: The Secretary will read the title of Resolution 3021.

THE SECRETARY: By Senator DeFrancisco, Legislative Resolution Number 3021, commemorating the 50th anniversary of television station WSTM, Channel 3.

ACTING PRESIDENT MEIER: On the resolution, all in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The resolution is adopted.

Senator Kuhl.

SENATOR KUHL: Yes, Mr. President. May we now have the title read on Resolution 3031, and I move for its immediate adoption.

ACTING PRESIDENT MEIER: The Secretary will read the title of Resolution 3031.

THE SECRETARY: By Senator DeFrancisco, Legislative Resolution Number 3031, memorializing Governor George E. Pataki to proclaim February 2000 as Black History Month in the State of New York.

ACTING PRESIDENT MEIER: Senator DeFrancisco.

SENATOR DeFRANCISCO: Last year I believe this was opened up to the entire house and everyone wanted to go on it. And I would request that that be done today and that those who do not want to be on this resolution to notify the chair.

ACTING PRESIDENT MEIER: Senator Kuhl.

SENATOR KUHL: Let's put everybody on the resolution, as we have in the

past.

ACTING PRESIDENT MEIER: Everyone will be put on the resolution. If you do not wish to be on, please notify the desk.

Senator Kuhl.

SENATOR KUHL: Move the immediate adoption of the resolution.

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

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The resolution is adopted.

Senator Kuhl.

SENATOR KUHL: Yes, Mr. President. Would you recognize Senator Schneiderman. He would like to address a resolution that was previously adopted on the Resolution Calendar.

ACTING PRESIDENT MEIER: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you,

Mr. President.

The resolution, Resolution 3032, addresses an issue that I think every member of this house should be concerned with, and that is the fact that as of February 1st, the government of Austria includes something called the Freedom Party in its ruling coalition.

The Freedom Party has risen to power very quickly. It is the most prominent and effective of the neo-Nazi parties in Europe.

It is especially troubling to me because I have many people who fled from Austria and Germany to get away from the Nazis. In my district, my predecessor, who served with many of you for many years, Senator Leichter, fled from Austria. His mother was killed by the Nazis in Austria.

So the fact that we now have the inclusion in the Austrian government of apologists for the Nazis, and xenophobes, is extremely troubling.

This resolution would express the view of this house, of the Senate, that the

State of New York should immediately review all dealings with Austria and encourage the Governor and Comptroller to take a close look at what's going on in Austria, with a view to possible sanctions.

J"rg Haider, who is the leader of the Freedom Party, has achieved a lot of prominence for his statements against every type of immigrant and his refusal to criticize the Nazi regime of the Third Reich. He has attacked his own country, suggesting that Austria is an aberration and a deformity - those are his words -- and that they should be a part of a greater German state. He has echoed Hitler's words on numerous occasions in his campaign literature, speaking of the difference between "real" Austrians and "nonreal" Austrians, by which he means anyone who is non-Aryan.

And I think this is something that all members of this house must be attentive to. We cannot allow, in the birthplace of Hitler, the rewriting of history that Haider seeks to take place. And I think that I'm going to urge that we open this resolution up

to all members of the house. This is not a partisan issue.

The Senate will be the first element of the New York State government, by this resolution, to take a stand saying it is not acceptable to have Nazis in the government of Austria and we are going to look very closely at every dealing we have with that country as long as they are in power.

I urge passing of the resolution.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

I want to thank Senator Schneiderman for enlightening us further on the issue, those of us that may not be fully aware of what's going on in the world at this particular time, and particularly his reference to the rewriting of history and the anachronistic sense that certain officials of Austria look at what happened in the 20th century, the greatest travesty of the 20th century, the Holocaust.

And I strongly urge that we all be

not only party to this resolution, but that it speak for the entire house.

I just wanted, as a point of order, to inquire, is this resolution open to the entire Senate body?

SENATOR SCHNEIDERMAN: I would like it to be open, if there's no objection.

SENATOR PATERSON: Thank you.

ACTING PRESIDENT MEIER: Senator Kuhl.

SENATOR KUHL: Yes, Mr. President. Could we return to the order of reports of standing committees. I believe there's a report of the Rules Committee at the desk, and I ask that it be read.

ACTING PRESIDENT MEIER: Reports of standing committees.

I'm sorry. Senator Schneiderman.

SENATOR SCHNEIDERMAN: I think we have to vote.

ACTING PRESIDENT MEIER: We did vote, Senator.

SENATOR SCHNEIDERMAN: Okay, thank you.

ACTING PRESIDENT MEIER: The

resolution was previously adopted. And pursuant to the request of the sponsor, it's open for cosponsorship.

The Secretary will read.

THE SECRETARY: Senator Bruno, from the Committee on Rules, reports the following bill direct to third reading: Senate Print 3131B, by Senator LaValle, an act to amend the Insurance Law.

ACTING PRESIDENT MEIER: Senator Kuhl.

SENATOR KUHL: Move to accept the report of the Rules Committee.

ACTING PRESIDENT MEIER: The motion is to accept the report of the Rules Committee. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The report is accepted.

Senator Kuhl.

SENATOR KUHL: Could we have

Calendar Number 231, which was just reported from Rules, taken up at this time.

ACTING PRESIDENT MEIER: The Secretary will read Calendar 231.

THE SECRETARY: Calendar Number 231, by Senator LaValle, Senate Print 3131B, an act to amend the Insurance Law, in relation to coverage for diagnosis, testing for, and treatment of infertility.

SENATOR PATERSON: Explanation.

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

SENATOR LAVALLE: Thank you, Mr. President.

SENATOR KUHL: Mr. President.

ACTING PRESIDENT MEIER: I'm sorry. Senator Kuhl. I'm sorry.

SENATOR KUHL: Mr. President, before Senator LaValle gives an explanation of the bill, could we have the last section read, please.

There are a couple of members who have other meetings in other parts of the Capitol who will need to be voted. And so

would you read the last section, please.

ACTING PRESIDENT MEIER: The Secretary will read the last section.

THE SECRETARY: Section 4. This act shall take effect July 1, 2000.

SENATOR KUHL: Call the roll.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEIER: Senator Stachowski.

SENATOR STACHOWSKI: No.

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

Senator Skelos.

SENATOR SKELOS: Aye.

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

Senator McGee.

SENATOR McGEE: No.

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

Senator Johnson.

SENATOR JOHNSON: Aye.

ACTING PRESIDENT MEIER: Senator

Johnson will be recorded in the affirmative.

Senator Goodman.

SENATOR GOODMAN: Aye.

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

Senator Hoffmann.

SENATOR HOFFMANN: Yes.

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

SENATOR KUHL: Withdraw the roll call at this point, please, and recognize Senator LaValle for an explanation.

ACTING PRESIDENT MEIER: The Secretary will withdraw the roll call.

Senator LaValle is recognized for an explanation of the bill.

SENATOR LAVALLE: Mr. President, this bill amends the Insurance Law by adding a new section that would extend health-care coverage to the diagnosis and treatment of infertility.

One of the things that we have done in this bill, in the amended version -- and this is a very, very critical point -- is that as the sponsor, chief sponsor of the bill,

along with the cosponsors, we have tried to strike a balance between the need to add coverage and not increase the cost and create additional problems for people who might be denied coverage.

And I'm sure, as we discuss this issue, we will talk about some of the points in trying to achieve the important balance in this bill.

And I might add, in meeting over a ten-month period of time with many of the stakeholders, trying to incorporate many of the pieces of input that we received to achieve this balance, we tried to be as inclusionary in points of view -- to incorporate those points of view in this legislation.

I got into this issue because of a very, very important program, and maybe one of the leading programs dealing with infertility, that has been established at Mather Memorial Hospital in the village that I live in, in Port Jefferson. There have been articles that have been written about the program and the two doctors that began the program in Port

Jefferson.

As you well know, as members we are invited to various ceremonial functions, and I have attended those functions and spoken, I spoke to, couples who were very, very emotional over the fact that they could not have a child, that they had tried but to no avail.

One in every five couples are infertile, and this affects approximately 5.3 million Americans. What do we talk about as a definition of infertility? Well, first, we begin that it's a condition of the reproductive system that deals with a couple who have been unable to achieve conception after one year of unprotected, well-timed intercourse -- and that would be a six-month period if the woman is over age 35 -- or a woman unable to carry a pregnancy to a live birth.

A most amazing thing is that approximately 40 percent of infertility is due to female factors, 40 percent due to male factors, and the balance is due to either a combination of the two or simply -- and we've

heard this before -- unknown factors.

Since 1970, approximately 72,000 babies have been born in the United States as a result of assisted reproductive technologies. And later on in the debate I'm just going to use the term ART, assisted reproductive technologies. Approximately 16,500 have been born in 1995 alone, just one year.

There are conventional infertility treatments, and those include -- and are covered, by the way, under medical plans - hormone therapy, where fertility is achieved through medication; surgical procedures to correct a physical blockage or a structural problem in the reproductive organs; or intrauterine insemination, which involves inserting specially prepared sperm through the cervix into the woman's uterus to increase the likelihood of fertilization.

And probably the best known of the assisted reproductive technologies, the ART, is the in vitro fertilization -- that is, an embryo transfer -- which is a procedure in which eggs are removed from the ovaries,

fertilized by sperm outside the body and then transferred back into the uterus of the woman.

As I have indicated, the input that we received from the original bill dealt with a great concern about the cost. And so in order to achieve the balance that I talked about, we looked at establishing some parameters that were realistic parameters, that individuals who are involved both on the medical side and those couples who have either had treatment, infertility treatments, or those who are presently involved in treatments indicated to us that the parameters that we have included in this bill are realistic.

One is to establish a $60,000 lifetime limit on benefits. Prescription drugs are not subject to the lifetime cap. The bill requires that a person be insured for 12 months before accessing infertility coverage. Certain procedures, such as reversal of sterilization, reversal of sex-change operations, cloning, or sperm or egg retrieval from deceased individuals are not covered under the bill.

The use of sperm or eggs from

deceased individuals are covered, however, if the deceased person had provided some prior authorization, whether that be in a will or some other document indicating that this is a wish that they have.

This bill includes and requires that the Superintendent of Insurance order a study of the utilization trends and experiences and the rate-premium impact to health insurance consumers. And, lastly, the bill has a two-year sunset. This bill would take effect July 1, 2000, and would sunset July 1, 2002.

I would like to thank some people before, I'm sure, answering some questions or simply listening to various points of view on the bill. I would like to thank my colleagues Senator Morahan, Senator Lachman; my former counsel, who had been with me 19 years, who started working on this bill, Brian Murphy, who is now with the Health Department; my present counsel, who in 39 days in my office was given this bill to work on, and that's Mike Kinna. I would also like to thank the Majority Leader's chief counsel, Ken Riddett,

Majority Leader's counsel Caron O'Brien-Crummey, and also Abe Lackman, who is the Secretary of our Finance Committee.

I would like to thank all of those people, and my sponsors who are on this bill, for working with me to help improve the bill to place before this body a realistic bill, a balanced bill, and one that will, I believe, be cost-neutral.

Our own Empire Plan, state plan, has just included infertility treatments at no additional cost. And I'm sure we'll talk about that some more. But I want to repeat again, the sensitivity on the cost issue is one that this body and the Legislature has addressed in terms of providing additional coverage, whatever it be, but not increasing the premiums so that we add to the uncovered pool of individuals.

We just made a major effort with Family Plus to include and protect individuals who prior to the coverage would have been uninsured. So this Legislature has shown a sensitivity to that issue. I, as sponsor, have continued with that sensitivity in

providing what I believe is a bill that is well balanced.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Kuhl.

SENATOR KUHL: Yes, Mr. President. Could you read the last section, please.

ACTING PRESIDENT MEIER: The Secretary will read the last section.

THE SECRETARY: Section 4. This act shall take effect July 1, 2000.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

SENATOR KUHL: Ask Senator Stafford for his vote, please.

ACTING PRESIDENT MEIER: Certainly.

Senator Stafford.

SENATOR STAFFORD: Aye.

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

SENATOR KUHL: Will you withdraw the roll call, please.

ACTING PRESIDENT MEIER: The roll call will be withdrawn.

SENATOR KUHL: Also, Mr. President, I'd like to make an announcement. There will be an immediate meeting of the Children and Families Committee in the Majority Conference Room.

ACTING PRESIDENT MEIER: There will be an immediate meeting of the Children and Families Committee in the Majority Conference Room.

Senator Breslin.

SENATOR BRESLIN: Yes, Mr. President. Would the sponsor yield for a question or two?

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

SENATOR LAVALLE: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR BRESLIN: Through you, Mr. President.

You indicated that over 5 million people in the United States suffer from

infertility. And in the bill it uses a limit of $60,000 per situation, excluding prescription drugs. Have you provided or had an analysis of what the increased cost would be to incorporate this plan within existing policies?

SENATOR LAVALLE: Senator, as I had indicated, we have some models. First, I talked about the Empire Plan. It is new, but at this point there was no additional cost for providing the infertility treatment.

The next best model that we can look at is the State of Massachusetts, in which the increase was about $1.70 per month in a plan that is far broader, far more expansive than ours. And so when we look at the Massachusetts plan, based on -- by the way, the insurance companies did the study. So we assume that that would be the most liberal interpretation of cost mandated to a policy, that we believe that this will be neutral.

Now, that's one of the reasons, however -- I'll be very candid with you. We have studies all over the place. We looked at

Illinois; we got different numbers from different people. You can make different arguments about Massachusetts. But one of the answers is that's why we sunset the bill, that's why we include the study. So that we could be assured of what the numbers are based on the New York experience, which so many times is different from any other state and any other experience.

SENATOR BRESLIN: Through you, again, Mr. President. Would the sponsor yield to a question?

SENATOR LAVALLE: Yes.

ACTING PRESIDENT MEIER: The sponsor continues to yield.

Senator Breslin.

SENATOR BRESLIN: Can you tell us, if you know, approximately how many people in the State of New York, as opposed to the 5 million nationally, would be subject to the infertility process?

SENATOR LAVALLE: I do not know that number.

SENATOR BRESLIN: And again through you, Mr. President.

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

SENATOR LAVALLE: Yes. Yes, I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR BRESLIN: Would there be any effect on the sunsetting of this bill, if in fact it was passed -- the sunsetting of this bill on any kind of collective bargaining agreements by providing a value under a contract and then taking it away at the sunset period?

SENATOR LAVALLE: Senator, I think you know that I've had 24 years of experience in this chamber. When I look at provisions that sunset, whether it's the heart bill for volunteer firemen and paid fire personnel -- and we could go through hundreds of bills -- the experience is that there is a continuation of that coverage.

The question may come not so much whether infertility treatments will lapse out of policies, but whether we need to, in two years, in July 2002, need to fine-tune the

legislation. Both ways. Because there are some people that feel that we should be more inclusive, more expansive in the provisions in this bill.

Well, we may get to the year 2002 and find out exactly what I'm saying, is that this is neutral. We may want to consider when we get to 2002 to maybe fine-tune it the other way, to include things that maybe we felt we couldn't afford to do at this juncture.

But whether it would lapse and not be restored, I seriously doubt that that would happen.

SENATOR BRESLIN: Mr. President, on the bill.

ACTING PRESIDENT MEIER: Senator Breslin, on the bill.

SENATOR BRESLIN: Now, I commend Senator LaValle for his zeal in preparation of this bill and his discussion of the recently enacted Health Care Reform Act, wherein we provided for hopefully an additional million people of the some 3 million people in this state who have no health insurance. And I emphasize no health insurance.

And now we have an additional mandate, an additional mandate which many in the medical community believe will add 3 to 5 percent on to premiums. And I impress upon this body that 1 percent, the addition of 1 percent on a premium puts an additional 60,000 people on the unenrolled insurance rolls. That means that they have no health coverage. And if you take the out number of 5 percent, that means in the neighborhood of $300,000 additional people.

So we take two steps forward with HCRA and one step back with this mandate. And I urge us to consider -- and my heart goes out to those people who have fertility problems. But we must remember, it's a finite dollar. And that finite dollar is not covering the people of the state of New York with health insurance, something they should expect as a matter of right.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Bruno.

SENATOR BRUNO: Mr. President, can we read the last section and call the roll

for the purposes of Senator Trunzo casting his vote at this time.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 4. This act shall take effect July 1, 2000.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEIER: Senator Trunzo.

SENATOR TRUNZO: Yes.

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

Senator Bruno.

SENATOR BRUNO: Mr. President, can we withdraw the roll call.

ACTING PRESIDENT MEIER: The roll call will be withdrawn.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you. Through you, Mr. President, if the sponsor would yield to a question.

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

SENATOR LAVALLE: Yes, I will.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR SCHNEIDERMAN: My question relates to the -- and I'm trying to find the proper subsection. It's the end of Section 13A, the exemption for organizations connected to religious institutions, at the very, very bottom of Section 13A, which states "if the group or entity on whose behalf the policy is issued is operated, supervised, or controlled by or in connection with a religious organization or denominational group or entity, then nothing in this paragraph shall require the policy to cover any diagnosis or treatment."

And my first question is, what does that refer to, "group or entity"? What would that include? Does that include employers or providers of a plan?

SENATOR LAVALLE: The first part, Senator, deals with employers, and the second part deals with insurers and HMOs.

One of the things that we have used here, which I think is very, very important,

is a benchmark definition by IRS that defines a 501C3, defines a 501C3. This was put in because of -- and let me just say that conscience clauses -- and that's what this is all about, what Senator Schneiderman has read to us -- is something that the states of California, Illinois, Montana, and Texas, that have similar laws as this, all have conscience clauses. Along with the federal government, under the Omnibus Spending Bill, included a conscience clause.

And so -- and we have recognized to some degree conscience clauses in the Executive Law and the Human Rights Law, to allow religious -- those individuals, employers -- and in this case insurers or HMOs -- who have religious beliefs, religious tenets, to opt out. So it is specifically narrowly defined to cover those 501C3s and HMOs.

And there's only one HMO, Fidelis Care of New York, that does business here in New York, which is the New York State Catholic health plan. So when we talk about the broader provision, we're talking about that

plan specifically.

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

SENATOR LAVALLE: Yes.

ACTING PRESIDENT MEIER: The sponsor continues to yield.

SENATOR SCHNEIDERMAN: Just a few more questions.

So the term "group" refers to employers and "entity" refers to HMOs? Is that what I understood?

SENATOR LAVALLE: Pardon me?

SENATOR SCHNEIDERMAN: In this phrasing, you've said the first and then the second. The word "group," "if the group or entity on whose behalf the policy is issued," "group" in that case refers to employers?

SENATOR LAVALLE: Yes.

SENATOR SCHNEIDERMAN: And "entity" refers to HMOs?

SENATOR LAVALLE: Yes.

SENATOR SCHNEIDERMAN: Okay.

I appreciate the sponsor's statement about conscience clauses. The

reason I'm asking this is I've never seen a conscience clause drafted this broadly.

Is it my understanding that "group" -- because it doesn't say anything about this in here -- that "group" would exclude for-profit companies that offer this, "group" as an employer? Most of these are offered by for-profit corporations. Would they be excluded or not?

SENATOR LAVALLE: It's exactly what I said to you, Senator. It would have to be a not-for-profit corporation. The language that we put in used the benchmark IRS language for 501C3 corporations.

SENATOR SCHNEIDERMAN: So any for-profit company would not be eligible for an opt-out under this conscience clause?

SENATOR LAVALLE: That is - that's my understanding.

SENATOR SCHNEIDERMAN: Okay -

SENATOR LAVALLE: I just want to -- there is a -- we're dealing with a conscience clause, and the answer is exactly the way I gave you, yes.

SENATOR SCHNEIDERMAN: Thank you.

If the sponsor will continue to yield.

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

SENATOR LAVALLE: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR SCHNEIDERMAN: And again, because I've reviewed many conscience clauses and I've never seen one drafted this way, a "group," meaning an employer, that is operated in connection -- operated in connection with a religious organization, could that apply to any -- an entity whose primary function was not religious study? It's not a church but something that -- an organization that works out of a church or rents space from a church?

SENATOR LAVALLE: The precise language, the IRS language says "operated, supervised or controlled by or in connection with." That is the language that is necessary to meet the IRS 501C3 test benchmark.

SENATOR SCHNEIDERMAN: Thank you. Mr. President, on the bill.

ACTING PRESIDENT MEIER: Senator

Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: Thank you.

I have to say I've reviewed a lot of conscience clauses; I've never seen one in this type of a provision that is as broadly drafted.

I don't like -- as we broaden out from religious institutions to insurance companies, I don't understand the concept of an insurance company having a conscience, I must say. I've never really encountered that in my personal dealings.

And I think that we are going down a road with this particular language in this bill that I think anyone who's concerned about this, particularly certain people in the pro-choice community, that we should not pass a bill with this broad a clause. I don't think it's necessary to include language this broad to achieve the effect of having actual religious organizations exempt from provisions they find offensive.

There's language in other bills that says "institutions whose primary purpose is religious instruction," or limit it in

other ways. I think this is far too broad.

And I think that -- I do favor the inclusion of fertility treatments as a general concept. I don't like this language in this bill. And for that reason and several others which some of my colleagues will address, I'm urging a no vote.

ACTING PRESIDENT MEIER: Senator Lachman.

SENATOR LACHMAN: The United States Supreme Court just last year, in the decision Bragdon versus Abbott, said infertility is a disease. Many people can't accept that terminology. But infertility is a disease. It is a major disease.

And in that U.S. Supreme Court decision, the U.S. Supreme Court said infertility is a disability under the Americans with Disabilities Act. Why? Because reproduction is a major life activity.

Now, I also want to commend some people in the galleries who fought for this decision, who are fighting today to get an infertility bill through both houses of this Legislature. And I'm referring, of course, to

RESOLVE, the American Infertility Association, and the largest mass orthodox Jewish organization in America, Agudath Israel of America.

And now I have to go to a Danish proverb. There is a Danish proverb that states "There is no perfection this side of heaven." We as legislators know that. We vote on bills, legislation and measures that are imperfect. I would be lying to you if I were to say this was a perfect bill. I have certain problems with certain aspects of this bill, as I have with 99.99 percent of votes on other bills as well.

However, until we have legislation dealing with infertility coverage, you will have the wealthiest people in America, who can afford drugs, having elimination of infertility. And I'm not talking about IVF. Only 2 to 5 percent would refer to that. This bill is tailor-made for working-class and middle-class people who receive no coverage whatsoever.

Under those circumstances, under a fairness issue in the broadest sense, I am

going to vote for this bill. But I also realize this is a one-house bill. There is another house in this Legislature. And this will not be legislated until both houses agree. And I'm hopeful that in the future there will be an accommodation between the Senate and the Assembly -- which will still be imperfect, but will resolve some more of the issues that many people have on this bill.

I am voting for this bill. Thank you.

ACTING PRESIDENT MEIER: Senator Oppenheimer.

SENATOR OPPENHEIMER: Well, I have to start by saying that my heart goes out to the couples that are having infertility problems. I was particularly fortunate in having four children in less than seven years, and I thank God for that.

But I'm not going to support this bill, at least not in the present form, even though I do feel very much for these couples. But I also feel very much for the 3 million people in our state who don't have health insurance. And I really feel we have to

address that issue first.

I'll tell you some of my concerns, and then I'll say why I'm not supporting the bill. I'm concerned that it's only for people who have group health insurance and that for people that have individual health insurance, they will not be covered. I'm concerned by the parameters. Why are there specific age limitations and other limitations? Another limitation would be why it does not include the people who would most need this.

SENATOR LAVALLE: Mr. President, I'm having a -

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

SENATOR OPPENHEIMER: Shall I talk louder? Oh, I'm not pointed at myself. There.

SENATOR LAVALLE: Thank you.

SENATOR OPPENHEIMER: So sorry.

I'm telling you some of my concerns with the bill right now.

SENATOR LAVALLE: Okay.

SENATOR OPPENHEIMER: And one is that it covers only groups and not individual

insurance.

Also, I'm concerned by certain limitations, limitations on age, limitations on Medicaid recipients. I think it is those people, the poor people, who most need assistance. I know of many instances, certainly in my county, where people that have the means have been able to acquire the necessary services. So to limit it only to middle-income people and not to the poor people who certainly could not avail themselves of this service were they not assisted.

But most specifically, I am voting against this primarily because of the American College of Obstetricians and Gynecologists, ACOG. They have withdrawn their support of this B version, and they have done it for very specific and very important reasons.

There are mentioned in the bill - not in the bill, but by supporters that there are guidelines that have been developed by ACOG. But ACOG knows nothing of these guidelines. They say they are nonexistent. And therefore, they are very concerned that

there are nonexistent guidelines.

The other thing that is of very serious concern to all doctors in this field is the coverage is contingent, and I'll quote, on a reasonable expectation that treatment will result in a healthy baby, unquote.

Boy, that's a tough one. How can we assure that a baby is going to be born healthy? With the very best care available, there are many children that are born severely disabled. And gynecologists and obstetricians would be at great risk of liability lawsuits if a baby is born with health problems. And there is no one that can assure that there won't be health problems.

So I think until there is considerably more attention and study and discussion about this bill, there is really no way that I could be voting favorably. I'll be voting in the no.

ACTING PRESIDENT MEIER: Senator Connor.

SENATOR CONNOR: Thank you, Mr. President.

I have a number of concerns and

have had with this legislation over the years. I have a concern that particularly focuses on in vitro fertilization, that in the past the bishops of this state have had problems with that, for reasons that relate to the destruction of embryos that aren't used or aren't implanted. And I understand their concerns.

The Assembly bill as a measure I think is far, far preferable to this bill. For example, the age restriction. This bill says women between 25 and 44. Well, that makes a judgment that may relate to the average American today, and a lot of women are having children primarily between those ages of 25 and 44. But it doesn't apply to all, nor should it. And we shouldn't inflict some kind of judgment.

There are many, many men and women who marry much younger. In fact, it's a tradition in some parts of our state for men and women to marry much younger. And I don't see why -- what the difference between a married 20-year-old woman and a married 25-year-old woman is. Why exclude the younger

woman?

First of all, leave aside the woman for a minute. The case of urgency, in the case of a big age difference between a man and his wife. You know, the man could be much older and be very desirous of starting a family with his 20-year-old wife as quickly as possible, because he may want to ensure some possibility of him being around -- and I speak as a 54-year-old man with young children. You know, you want to be around to see them grow up.

And so I don't think we ought to make any judgment about married couples who desire to have a family. If they're 18 years old and married and we're providing this for older couples, why not a young couple that's experiencing real infertility problems? I don't see why that judgment is being made by this Majority here.

Go with Shelly Silver's bill. He understands the problem better, he understands the need better. And let's not put this artificial age limitation in there.

And I even suggest that, as Senator

Oppenheimer suggested, a concern with this definition concerning healthy children. Of course we wish upon all couples in New York State healthy children, that gift from God. But we also know that sometimes children are born who aren't completely healthy. And many believe that that's a different kind of gift to those parents, a different kind of responsibility for those parents, that children like that perhaps hopefully are given to parents who can provide for them. Certainly their life has value.

And so -- but to in effect build into a bill a prediction of that, only God can predict that. And we really can't question His ways. So I can share the concern of the professional doctors that they don't want to be liable for somehow guaranteeing something that no one can guarantee.

So this bill is seriously flawed in that respect. The fact that it doesn't cover people who have individual insurance policies excludes a whole range of people who really could benefit and need this infertility treatment. And I know others -- and I -- you

know, this was -- if you talk about Medicaid, there's a public fiscal question involved. But some would question, then, why the poorest families, who may rely on Medicaid, do they not have as much right -- do not couples in that situation have as much right as anyone else to have a family, to have treatment so they can have a family? I think the answer is yes.

So the bill is in many respects flawed. It's watered down from the Assembly version. In one respect, I'm glad this house is doing something to get this process rolling. But it's certainly going to have to result in negotiations with the Speaker, perhaps in conference committees or through the conference committee vehicle. And I want my vote here to let everyone know clearly where I stand on this issue. I think it should be negotiated with the Speaker.

I like a lot of the features of the Speaker's bill far more than I like the features in this bill. I think that a serious attempt to satisfy some of the moral and religious concerns that have been expressed in

quarters of this state need to be addressed in a way not with a narrow exemption, but in a realistic, substantive way. And I look forward to that.

But I'm not ready to change my position and go for this bill with all of its serious, serious flaws. I don't want to go back to my district in Brooklyn and have to face young married couples there -- and in some communities, couples marry at 18, 17 years old -- and say "You've got to wait six or seven years before you start your family." That's just not fair.

I intend to vote no.

ACTING PRESIDENT MEIER: Senator Bruno, to close the debate.

SENATOR BRUNO: Thank you, Mr. President.

And I have been listening very intently on the speaker in the office and then here. And, Mr. President, my colleagues, the issue before us can be considered controversial, and that's why it's on the floor.

And there are always reasons for

people who would not like to have something happen legislatively that they can espouse. Senator Connor, very learned, very articulate, has an excuse on why he shouldn't vote for this bill: Younger people ought to be included. Your excuse can be just as good.

The bottom line is this is what is on the floor. This has been deliberated over for months and months and months. We have invited the Assembly, we have invited others that are part of this process to join so that we can see a bill become law.

We advocate, we think this is the right thing to do. It's not an easy thing to do, we recognize that. And we also recognize there are differences of opinion. We have differences of opinion on many things that we discuss, and there is validity. And when I say "excuse," I don't mean that in a disparaging way. There are reasons that people have for not wanting to support a particular issue, a particular bill.

But the fact of the matter is that we feel that this is the time to advance this issue, to have it become law, and to allow

people who need this special help and who truly cannot afford it to have help available to them so that they can start their own families, develop their own families, and enjoy a quality of life that they would relate to here in this state.

So I intend to fully support this. And I encourage my colleagues on both sides of the aisle to support it.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 4. This act shall take effect July 1, 2000.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEIER: I'm sorry. Senator LaValle.

SENATOR LAVALLE: To explain my vote.

ACTING PRESIDENT MEIER: Senator LaValle, to explain his vote.

SENATOR LAVALLE: Just briefly, Mr. President, I just want to reiterate on

some of the points that were brought up on the conscience clause.

Again, this bill -- under this bill, only those organizations which meet the IRS standard would be allowed the option of choosing not to provide coverage for the diagnosis of infertility.

On the issue of Medicaid, I would say this body better look back, because this body, during the budget in 1995, took out infertility treatment. We did that, this Legislature.

ACOG, of course, would like the most expansive provision. That's why they supported the original bill. But I think there are many things that they are fine with with this bill.

Senator Oppenheimer brought up the expectation, reasonable expectation of a healthy child. That provision was put in there to protect people, because insurance companies, based on a record of a success rate of maybe 25 percent, would say it's not reasonable. And we -- the intention of this bill is to leave that decision between -- for

the course of treatment between the patient and the medical experts, and not with the insurance companies, based on some sort of provision.

This bill is a real bill that has been negotiated with all the stakeholders. The Assembly bill is back in a point in time 10 months ago, 10 months ago, when it seems that there was no input on these so many issues.

So I think this house has met with, as Senator Bruno said, deliberated with. We did not have, to the best of my knowledge, a partnership in framing out these issues.

So again, the cost issue, we look at Idaho that has the fewest mandates and the highest premiums, and Minnesota and Pennsylvania, with the highest number of mandates and lowest premiums. So we have to look at New York and what the cost effect is. That's why that study is so important.

I vote in the affirmative, Mr. President.

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

Senator Marcellino. Senator Onorato, I had him first, then we'll go to you.

Senator Marcellino.

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

ACTING PRESIDENT MEIER: Senator Marcellino, to explain his vote.

SENATOR MARCELLINO: My colleague Senator LaValle was very generous before in issuing kudos and congratulations and assigning it to those who assisted in the performance of this bill. And let me add to that list and add Senator LaValle's name at the front of it.

Our colleague has taken on a very difficult issue. He's taken it on with all his energy, and that's boundless. He's taken it on with care. And he's tried to address everybody's concerns and everybody's wishes.

This, as I said before, is a very difficult bill and a very difficult issue for many people. But I think Senator LaValle deserves all the credit for bringing the issue out and working very hard to bring all sides

together and try to reach an accommodation for this particular piece of legislation. For that, I congratulate him.

I also vote aye on this bill.

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

Senator Onorato.

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

I am in agreement conceptually with the idea of assisting infertile couples. But many, many valid reasons were presented here today as to why they shouldn't be voting for it.

Another glaring omission in this bill -- I don't know if anyone has picked it up as yet -- it does not limit the procedure to married couples. Now, this could lead to further encouragement to single-women pregnancies where they can ill afford to raise a family -- perhaps multiple births. I think there should be further amendments and visitations of this to make sure that we are talking about married couples.

I vote no.

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

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 231 are Senators Breslin, Connor, Duane, Gentile, Gonzalez, Hevesi, Kuhl, Maltese, McGee, Montgomery, Onorato, Oppenheimer, Paterson, Rosado, Sampson, Schneiderman, Seabrook, Seward, Smith, Stachowski, and Stavisky.

Ayes, 37. Nays, 21.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we ask for an immediate meeting of the Higher Education Committee in the Majority Conference Room.

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

Senator Bruno.

SENATOR BRUNO: And can we at

this time take up the noncontroversial calendar.

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

THE SECRETARY: Calendar Number 117, by Senator Wright, Senate Print 2422, an act to amend the Public Service Law, in relation to the elimination of the mandate.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT MEIER: Can we have some order in the chamber.

If you're going to a committee meeting, could you please make your departure. Staff, take your seats. Take your conversations outside.

The Secretary will continue to

read.

THE SECRETARY: Calendar Number 128, by Senator Meier, Senate Print 925B, an act to amend the General Business Law, in relation to the use of the designations.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 2. This act shall take effect January 1, 2001.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 149, by Senator Marcellino, Senate Print 5404, an act to amend the Environmental Conservation Law, in relation to the definition of a long bow.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 165, by Senator Volker, Senate Print 111A, an act to amend the Criminal Procedure Law, in relation to criminal actions terminated in favor of the accused.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56. Nays, 2. Senators Duane and Montgomery recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number

182, by Senator Farley, Senate Print 4650A, an act to amend the Education Law, in relation to the calculation of average daily attendance.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 190, by Senator Seward, Senate Print 4072, an act to amend the Town Law, in relation to permitting town boards.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 197, by Senator Hannon, Senate Print 1524 -

SENATOR DUANE: Lay it aside, please.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 199, by Senator Libous, Senate Print 2197, an act to amend the Public Health Law, in relation to requiring consent for visual observation.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MEIER: The bill is passed.

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

SENATOR BRUNO: Mr. President, can we at this time take up the controversial calendar.

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

THE SECRETARY: Calendar Number 197, by Senator Hannon, Senate Print 1524, an act to amend the Public Health Law, in relation to reimbursement.

ACTING PRESIDENT MEIER: Senator Duane.

SENATOR DUANE: Would the sponsor yield to some questions, please.

ACTING PRESIDENT MEIER: Senator Hannon, do you yield to some questions from Senator Duane?

SENATOR HANNON: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Thank you very much. Through you, Mr. President.

Under this bill, since an inmate at a local correctional facility can use their own insurance, I'm wondering if that also

means that they can use whatever health-care provider they want that is covered under their plan.

SENATOR HANNON: I think that would depend on what the rules -- I think that would depend on the rules for that municipality and the insurance plan.

SENATOR DUANE: Through you, Mr. President, if I may follow up on that.

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

SENATOR HANNON: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: I'm wondering if the sponsor could tell me just as sort of an array of what the different rules are that the different municipalities have for incarcerating people using their own health-care providers when they're covered by a health insurance plan.

SENATOR HANNON: Senator, I would not have that information, and -- so I'm not in a position to be able to respond to you at all on that.

I believe that each municipality sets forth their own provisions for health care of their incarcerated individuals, and this bill only kicks in after all that is done. So that in the event there is third-party insurance which does cover that, the municipality is entitled to reimbursement.

We seek not to set rules nor to impose any conditions, but simply to tap into an existing revenue stream that might be used to offset the care of health for those prisoners.

SENATOR DUANE: Through you, Mr. President.

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

SENATOR HANNON: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: If that is the case, that then, as it seems to be, that an inmate could use their own health-care provider, has outreach been done to various -

SENATOR HANNON: I didn't say

that. I didn't say that, Senator. Please. I said the rules of the municipality would govern that. And we seek not to deal with that, and nothing in the legislation deals with that.

And that's what I said. So you can't say it appears that.

SENATOR DUANE: Through you, Mr. President.

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

SENATOR HANNON: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: I'm wondering then if the sponsor would think that this is an important element and one that we should actually talk to HMOs about before we pass this legislation, in that it may have an impact on them.

SENATOR HANNON: No. Because, once again, it seeks not to enter into that relationship before there's service or before there's a determination by the municipality as to how the health care shall be provided, but

seeks only, after all of the events have taken place, to allow for the claim for reimbursement.

SENATOR DUANE: Through you, Mr. President.

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

SENATOR HANNON: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: If an inmate is dissatisfied with the health care they've been provided under their insurance, would they then have redress -- or maybe they would have the same redress which is inadequate for most New Yorkers. But would they be entitled to the same inadequate redress that New Yorkers are now provided with in terms of dissatisfaction with the service of their HMO?

SENATOR HANNON: There would be so many different ways to answer that, because it would depend on their status as to why they're in the prison and what their relationship is to their HMO.

SENATOR DUANE: Through you, Mr.

President.

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

SENATOR HANNON: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: In the context of -- I think we would all agree that in order for an inmate to be covered by insurance, they would have to have been paying their premiums. And therefore, as a paying customer of an HMO, they are entitled to satisfactory service; is that correct?

SENATOR HANNON: Well, in general. I just -- there's a whole body - there's a whole Insurance Law, a set of regulations, Patient's Bill of Rights that you're referencing. And whatever that -- is set forth there, yes.

But just the word "satisfaction," I -- by that I mean reference to that body of law.

SENATOR DUANE: Through you, Mr. President.

ACTING PRESIDENT MEIER: Does the

sponsor continue to yield?

SENATOR HANNON: Yes.

ACTING PRESIDENT MEIER: Yes, the sponsor yields.

SENATOR DUANE: I agree we could quote the entire insurance regulation. But I think what our goal is that those who are insured get satisfaction from the coverage and the benefits that they get from their insurance company. So I may have simplified what it is, but I think we all agree that's what the goal is.

But because the inmate is paying their premium, should not they be the ones reimbursed by the -- for treatment?

SENATOR HANNON: Not if the cost of the treatment was paid for by the municipality.

SENATOR DUANE: Well, through you, Mr. President.

SENATOR HANNON: That's the whole point of the bill. If the municipality has borne the expense of providing the medical care -- which, by the way, they have the responsibility, if there's somebody in their

custody against their will, so they have the responsibility of paying for the medical care, then they should get reimbursement for that.

Now, if they didn't pay, then you would have an argument. But that's not the case. The whole premise of the bill is that people who are wealthy enough to have health insurance, become incarcerated, they became ill, the municipality paid for the health insurance, and therefore -- and there's an existing policy out there, and we then say the municipality can get reimbursement. Simple as that.

I don't see the real implications you're trying to add on.

SENATOR DUANE: Through you, Mr. President.

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

The sponsor yields.

SENATOR HANNON: One last question, Mr. President.

SENATOR DUANE: Mr. President, if the sponsor doesn't have time to continue to debate it, we can put it off for another day.

I have more than one question.

SENATOR HANNON: I'd like to move the bill, Mr. President.

ACTING PRESIDENT MEIER: Well, Senator Duane, the sponsor, Senator Hannon, has the floor. And he's entitled to yield his time as he wishes.

Do you have a question?

SENATOR DUANE: Through you, Mr. President. I'm trying to be as courteous as possible. If he's rushed, we can take it up another day.

ACTING PRESIDENT MEIER: Well, Senator, the sponsor has yielded for the purpose of a question. Do you have a question?

SENATOR DUANE: Through you, Mr. President, I'd like to convey to the sponsor that I have more than one question.

SENATOR HANNON: I've said, Mr. President, I'll yield to a question.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Through you, Mr. President.

Actually, our side has more than one question. Some of the other members have questions as well. Is the sponsor only willing to take one question from me or one question from everyone?

SENATOR HANNON: Well, that's not a question.

ACTING PRESIDENT MEIER: Senator Hannon.

SENATOR HANNON: That's not a question, then.

SENATOR DUANE: I didn't hear that, Mr. President, I'm sorry.

ACTING PRESIDENT MEIER: Senator Duane, under the rules, the sponsor -- Senator Hannon has the floor. You've asked him if he'll yield for a question. He's indicated yes. And so you have the privilege of asking a question at this time under the rules.

SENATOR DUANE: Well, through you, Mr. President, I think I'll wait and ask my question after my colleagues have had a chance to ask their questions.

ACTING PRESIDENT MEIER: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President. Would the sponsor yield to a couple of questions from me, perhaps?

ACTING PRESIDENT MEIER: Senator Hannon, do you yield to Senator Montgomery for a question?

SENATOR HANNON: Yes, I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR MONTGOMERY: Thank you.

Senator Hannon, the bill indicates that the local county or city jail facility, corrections facility, would be able to be reimbursed from a third party. Does this mean, then, that Medicaid coverage is exempted? Or would they then also be able to receive reimbursement through Medicaid?

SENATOR HANNON: As the bill says, it's the third-party medical insurance coverage, which would not -- since that doesn't refer to Social Services Law, would only be private insurance.

SENATOR MONTGOMERY: All right, Mr. President. If Senator Hannon would continue to yield, I have another.

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

SENATOR HANNON: That I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR MONTGOMERY: Senator Hannon, the Commissioner of Corrections informed us at the hearing before the Finance Committee that the Department of Corrections received reimbursement from telephone calls made by prisoners to their families. Essentially, it's a kickback from the telephone company of $21 million, which is used primarily to cover health-care costs of inmates.

My question to you is, is there a similar revenue that local facilities receive that they also use for the same purpose?

SENATOR HANNON: Senator, I have no idea. I simply had not heard about anything like that before, till you said it. And I would have no idea as to what the arrangements between jails are with telephone companies.

SENATOR MONTGOMERY: All right.

Just one last question, Mr. President.

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

SENATOR HANNON: Yes, I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR MONTGOMERY: Senator Hannon, the -- I had a visit to Bedford Hills last week. And I was informed by the superintendent there that there are some almost 200 state-ready inmates in Riker's Island in the city.

Would your legislation -- how would your legislation treat those inmates who are in local facilities waiting to -- for, you know, placement in the state facility, in the state system?

SENATOR HANNON: I believe -- it would simply be -- it's -- the technical answer is what's in the bill in lines 8 and 9. Medical services to any person incarcerated in a local correctional facility is defined in Section 2 of the Correction Law.

I believe that while their status may be state-ready, they would still fulfill

that definition and therefore come under the provisions of this proposed statute.

SENATOR MONTGOMERY: All right. Thank you.

Mr. President, briefly, on the legislation.

ACTING PRESIDENT MEIER: Senator Montgomery, on the bill.

SENATOR MONTGOMERY: Yes. I note that Senator Hannon uses the example of Tupac Shakur. So I'm surprised that it's not the "Tupac Shakur Bill," as we tend to label our bills by someone.

But nonetheless, I want to just make a -- I want to say that this bill, I think, is very far-reaching in terms of looking to receive some reimbursement based on the incarceration of people. And there are some questions that we need to answer, I think, before we try to do this legislation.

And especially in light of the fact that we have almost 300,000 people who would be governed by this particular legislation, we need to really know what the impact would be, both in terms of local as well as our state

correctional system, and to really figure out if this is necessary.

I don't believe it is. I believe that we do have a stream of revenue that is specifically established to cover these issues. And I don't believe that we should be looking to further tax the insurance system so that we have one more reason why we create a larger pool of uninsured people in our state.

So, Mr. President, I'll be voting no on this legislation.

ACTING PRESIDENT MEIER: Senator Duane.

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

ACTING PRESIDENT MEIER: Senator Duane, on the bill.

SENATOR DUANE: I would have thought that particularly in light of the terrible situation that happened in the Nassau County jail, where an inmate was basically murdered by correctional officers, that we would take more care in terms of how it is that we treat incarcerated people who are - who need health care. I think Nassau County

shows up a lot of the problems that we have in jails, and rather than to give them more control over the health care and really the life-and-death situation of incarcerated people, we would take more care.

Tragically, this bill is exactly the same as last year. Legitimate concerns that were raised last year were not addressed in the bill. I'm not sure why it is that we're so careless with our legislation which we bring before this body. And I come from a place where debate and actual public hearings on legislation leads to better legislation. Apparently that's not how things are done here.

And in fact, I'm led to believe that there must be a lot of things in this bill that are indefensible, in that debate is being cut off, basically, on some of the great shortfalls in this legislation.

I can only imagine a world where incarcerated people carry their insurance cards around with them at all times. Are they also to be given telephone cards so they can call their insurance carriers to make sure

that they'll be covered by their HMOs when they're in prison?

I think there's a lot of things that have not been addressed in this bill. I think it's a real tragedy, regarding the arrogance of this body, that people are unwilling to discuss shortfalls in legislation. Because isn't what we're supposed to be doing is making legislation that in fact will benefit the people of the state of New York? And shouldn't we all make sure that we commit ourselves to listening to information on all these bills before we actually vote on them?

I'll be voting no on this bill, because this bill needs to be fixed. It's not in good shape. And it's a tragedy that the sponsor of the legislation doesn't want to listen to what's wrong with the bill.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Hannon.

SENATOR HANNON: One of the difficulties in dealing with legislation is trying to set the boundaries. And I think

I've pretty well sufficiently outlined what this bill is intended to do: the limited purposes and how well it achieves those limited purposes.

When I explained all of that two years ago and when I explained it last year to Senator Duane on this floor, I thought I was sufficiently convincing because I received no communication, written or oral, in the intervening time as to what were the real problems with the bill.

And I've just outlined what I believe to be the merits of this in terms of assisting the municipality. And I would point out that there have been some real problems at the Nassau County jail, and there's no excuse for those. And there's a whole procedure that's going on to deal with it. But this legislation was introduced far prior to those coming to light or even occurring.

And I would point out that by putting this into effect in the system, a revenue stream, that the incentives will be for the prison system to get better health care. Because there won't be the limits of a

budget appropriation, there will be the ability to tap existing health insurance. So we would see a better system. And if there are 300,000 eligible for this, as Senator Montgomery says, well, won't that assist those individuals for which concern has been raised?

So I would think that there's several different points of merit to this, and it ought to be repassed again.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56. Nays, 2. Senators Duane and Montgomery recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

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

SENATOR KUHL: Yes, Mr. President.

Before we adjourn, we would like to announce that there will be a Majority Conference, a short Majority Conference in the Majority Conference Room, Room 332, immediately after conclusion of session.

ACTING PRESIDENT MEIER: There will be a meeting of the Majority Conference immediately after session in the Majority Conference Room.

Senator Kuhl.

SENATOR KUHL: And can we return to the order of standing committees. And I believe there's a report up there of a couple of committees. Could we ask that they be read, please.

ACTING PRESIDENT MEIER: Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Saland, from the Committee on Children and Families, reports:

Senate Print 674A, by Senator Rath, an act to amend the Family Court Act;

2722, by Senator Saland, an act to amend the Family Court Act;

2724, by Senator Saland, an act to amend the Family Court Act;

3987, by Senator Saland, an act to amend the Family Court Act and the Criminal Procedure Law;

4439A, by Senator Skelos, an act to amend the Social Services Law;

And 4857, by Senator Saland, an act to amend the Family Court Act and the Executive Law.

All bills ordered direct to third reading.

ACTING PRESIDENT MEIER: Without objection, all bills directly to Third Reading.

Senator Kuhl.

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

ACTING PRESIDENT MEIER: The desk is clean, Senator.

SENATOR KUHL: All right. There being no further business to come before the Senate, I move we adjourn until February 14, Valentine's Day, at 3:00 p.m., intervening days to be legislative days.

ACTING PRESIDENT MEIER: On motion, the Senate stands adjourned until Monday, February 14th, at 3:00 p.m. Intervening days will be legislative days.

(Whereupon, at 12:35 p.m., the Senate adjourned.)