NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

May 1, 2000

3:12 p.m.

REGULAR SESSION

SENATOR RAYMOND A. 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.

Will everyone present please rise and join with me in reciting 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, Sunday, April 30th, the Senate met pursuant to adjournment. The Journal of Saturday, April 29th, 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 Farley.

SENATOR FARLEY: Thank you, Mr. President.

On behalf of Senator Nozzolio, would you please remove the sponsor's star from Calendar 665.

ACTING PRESIDENT MEIER: The sponsor's star will be removed from Calendar 665.

SENATOR FARLEY: Mr. President, amendments are offered to the following Third Reading Calendar bills:

Senator LaValle, Page 7, Calendar 143, Senate Print 2050;

Senator Stafford, page 12, Calendar 296, Senate Print 6157;

Senator Marcellino, page 16, Calendar 389, Senate Print 4917B;

Senator Nozzolio, page 30, Calendar

639, Senate Print 6445A;

Senator Goodman, page 34, Calendar 694, Senate Print 7148;

And Senator Bonacic, page 40, Calendar 157, Senate Print 4579A.

And I move that these bills retain their place on the Third Reading Calendar.

ACTING PRESIDENT MEIER: The amendments are received, and all bills will retain their place on the Third Reading Calendar.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT MEIER: Senator Skelos.

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

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

SENATOR SKELOS: I believe there are some substitutions to be made.

ACTING PRESIDENT MEIER: Yes, there are.

The Secretary will read the

substitutions.

THE SECRETARY: On page 16, Senator Marcellino moves to discharge, from the Committee on Energy and Telecommunications, Assembly Bill Number 9090A and substitute it for the identical Senate Bill 4917B, Third Reading Calendar 389.

On page 34, Senator Paterson moves to discharge, from the Committee on Cities, Assembly Bill Number 4368A and substitute it for the identical Senate Bill 3473A, Third Reading Calendar 692.

And on page 36, Senator Hannon moves to discharge, from the Committee on Health, Assembly Bill Number 5100 and substitute it for the identical Senate Bill 2302, Third Reading Calendar 714.

ACTING PRESIDENT MEIER: Substitutions ordered.

Senator Skelos.

SENATOR SKELOS: Mr. President, there's a privileged resolution at the desk, 2784, by Senator Farley. This resolution was previously adopted by the Senate on January 19th. May we please have it read in

its entirety at this time.

ACTING PRESIDENT MEIER: The Secretary will read the privileged resolution in its entirety.

THE SECRETARY: By Senator Farley, Legislative Resolution Number 2784, congratulating the Union College Football Team on their outstanding season and ECAC Northwest Championship Title.

"WHEREAS, Excellence and success in competitive sports can be achieved only through strenuous practice, team play, and team spirit, nurtured by dedicated coaching and strategic planning; and

"WHEREAS, Athletic competition enhances the moral and physical development of the young people of this State, preparing them for the future by instilling in them the value of teamwork, encouraging a standard of healthy living, imparting a desire for success and developing a sense of fair play and competition; and

"WHEREAS, The Union College Football Team, lead by Head Coach John Audino, completed the 1999 regular season with a

record of 8 and 2. The team completed their winning ways by defeating Ithaca to claim the ECAC Northwest Championship Title, their first win over Ithaca in four games.

"The 1999 team ranked second in the country at the Division III level in overall defense. They were Number 1 against the pass, Number 5 against the run, and Number 10 in scoring defense.

"During the decade of the 1990s, the Union College Football Team achieved a record of 82 and 18, the tenth best among more than 200 Division III NCAA football-playing schools; and

"WHEREAS, The athletic talent displayed by this team is due in great part to the efforts of Head Coach John Audino, who is respected for his ability to develop potential into excellence.

"The hallmarks of the Union College Football Team, from the opening game of the season to participation in the ECAC Northwest Championship Title game, were a brotherhood of athletic ability and good sportsmanship.

"The team's overall record is

outstanding, and the team members were loyally and enthusiastically supported by family, fans, friends and the community at large; and

"WHEREAS, Sports competition instills the values of teamwork, pride and accomplishment, and Head Coach John Audino and his assistant coaches and their outstanding athletes have clearly made a contribution to the spirit of excellence which is a tradition of their school; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to congratulate the Union College Football Team and Head Coach John Audino on their outstanding season and overall team record; and be it further

"RESOLVED, That copies of this Resolution, suitably engrossed, be transmitted to the Union College Football Team and Head Coach John Audino."

ACTING PRESIDENT MEIER: Senator Farley.

SENATOR FARLEY: Thank you, Mr. President.

Let me just say how pleased we are

to have with us today in the gallery the football team and the coach from Union College, my neighbor.

Incidentally, also seated up there is a very distinguished Assemblyman by the name of James Tedisco, who was an All-American -- stand up, Jim.

ASSEMBLYMAN TEDISCO: I am standing.

(Laughter.)

SENATOR FARLEY: He was an All-American basketball player for Union College.

And let me just say how proud we are of the academic excellence of Union College, but also of their athletic excellence. This is a remarkable accomplishment for a Division III school. Nationally recognized. We're very, very proud of them.

And, you know, Union College not only scores well, as I said, athletically, but all of these young men are scholars which go to one of finest academic institutions in the nation.

And of course their coach, who's really done an outstanding job, is with us, John Audino.

And, Mr. President, if you would please extend the courtesies of this house and congratulations.

And I'd ask the team to stand to the applause of my colleagues, if you would.

(Applause.)

ACTING PRESIDENT MEIER: Coach and members of the team, on behalf of the Senate we extend to you the courtesies of the chamber today. And we congratulate you.

We wish you well in all your future endeavors, whether they're academic, athletic, or otherwise. Thank you for visiting us.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could take up the noncontroversial calendar.

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

THE SECRETARY: Calendar Number 185, by Senator Meier, Senate Print 6272A, an

act in relation to adjusting certain state aid payments.

SENATOR DOLLINGER: Lay it aside, please.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 187, by Senator Bonacic, Senate Print 6297A, an act in relation to adjusting.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 389, substituted earlier today by the Assembly Committee on Rules, Assembly -

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 422, by Senator Leibell, Senate Print 4529, an act to amend the Penal Law.

SENATOR LACHMAN: Lay the bill aside.

ACTING PRESIDENT MEIER: Lay the

bill aside.

THE SECRETARY: Calendar Number 486, by Senator Libous, Senate Print 6919, an act to amend the Mental Hygiene Law.

SENATOR DOLLINGER: Lay it aside.

ACTING PRESIDENT MEIER: Lay it aside.

THE SECRETARY: Calendar Number 495, by Senator Velella, Senate Print 6545A, an act to amend the Insurance Law.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 512, by Senator LaValle, Senate Print 2459, an act to amend the General Municipal Law.

SENATOR DOLLINGER: Lay the bill aside.

ACTING PRESIDENT MEIER: Lay it aside.

THE SECRETARY: Calendar Number 515, by Senator Stafford, Senate Print 4393, an act to amend the General Municipal Law.

SENATOR DOLLINGER: Lay it aside.

ACTING PRESIDENT MEIER: Lay the

bill aside.

THE WITNESS: Calendar Number 537, by Senator Padavan, Senate Print 1400, an act to amend the Penal Law.

SENATOR HEVESI: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 543, by Senator Volker, Senate Print 3993, an act to amend the Penal Law.

SENATOR HEVESI: Lay it aside, please.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 556, by Senator Morahan, Senate Print 6938A, an act to amend the Real Property Tax Law.

SENATOR DUANE: Lay it aside, please.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 560, by Senator Larkin, Senate Print 5676A -

SENATOR SKELOS: Lay it aside for the day.

ACTING PRESIDENT MEIER: Lay the bill aside for the day.

THE SECRETARY: Calendar Number 640, by Senator Kuhl, Senate Print 6740, an act to amend the Highway Law.

SENATOR MONTGOMERY: Lay that aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 675, by Senator Seward, Senate Print 6820A, an act making certain findings.

SENATOR DOLLINGER: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 698, by Senator Skelos, Senate Print 5821A, an act authorizing the assessor.

SENATOR DOLLINGER: Lay it aside, please.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 699, by Senator Volker, Senate Print 6356, an act to amend the Local Finance Law.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 700, by Senator Hannon, Senate Print 6546, an act authorizing the assessor.

SENATOR DUANE: Lay it aside, please.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 702, by Senator Balboni, Senate Print 6850, an act in relation to authorizing.

SENATOR DOLLINGER: Lay it aside, please.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 707, by Senator Trunzo, Senate Print 6869, an act to authorize Glory Zone Ministries.

SENATOR DOLLINGER: Lay it aside, please.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number

735, by Senator Bruno, Senate Print 7147, an act to authorize the Office of General Services.

SENATOR DOLLINGER: Read the last section.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT MEIER: The bill is passed.

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

SENATOR SKELOS: Thank you, Mr. President.

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

ACTING PRESIDENT MEIER: Immediate meeting of the Children and Families Committee in the Majority Conference Room.

SENATOR SKELOS: Mr. President, if we could return to reports of standing committees, I believe there's a report of the Finance Committee at the desk. I ask that it be read.

ACTING PRESIDENT MEIER: Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following bill direct to third reading:

Senate Print 7789, by the Senate Committee on Rules, an act making appropriations for the support of government.

ACTING PRESIDENT MEIER: Senator Skelos.

I'm sorry. Without objection, directly to third reading.

Senator Skelos.

SENATOR SKELOS: May we please take up Calendar Number 739, Senate 7789.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: Calendar Number 739, by the Senate Committee on Rules, Senate

Print 7789, an act making appropriations for the support of government.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: Is there a message of appropriation at the desk?

ACTING PRESIDENT MEIER: There is a message of necessity and appropriation at the desk.

SENATOR SKELOS: Move to accept.

ACTING PRESIDENT MEIER: I'm sorry. There is a message of appropriation at the desk.

The question is on accepting the message of appropriation. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The message is accepted.

Read the last section.

THE SECRETARY: Section 46. This

act shall take effect immediately.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could now go to the controversial calendar.

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

THE SECRETARY: Calendar Number 185, by Senator Meier, Senate Print 6272A, an act in relation to adjusting certain state aid payments.

SENATOR DOLLINGER: Explanation, Mr. President.

ACTING PRESIDENT MEIER: If you'd give me a chance to change my hat.

ACTING PRESIDENT MARCELLINO: Senator Meier, an explanation has been requested. If you need a moment, just take

it, please.

SENATOR MEIER: Thank you, Mr. President.

Mr. President, this is a fairly routine piece of legislation, the like of which we frequently see here, involving the Brasher Falls School District, a small school district located in my district in St. Lawrence County.

During the 1996-'97 school year, New York State overpaid the state aid to education to that district in an amount of some $485,000. The amount was not caught until much later, as the result of an audit.

This bill will permit the school district to repay that amount over the course of a period of six years, so as to not bring about a financial hardship by paying it back in one fell swoop.

ACTING PRESIDENT MARCELLINO: Senator Dollinger.

SENATOR DOLLINGER: Will Mr. President yield to a couple of questions?

ACTING PRESIDENT MARCELLINO: Senator, do you yield?

SENATOR MEIER: Yes, I do.

ACTING PRESIDENT MARCELLINO: The Senator yields.

SENATOR DOLLINGER: What is the size of the budget -- through you, Mr. President, what is the size of the budget that this $458,000 is predicated on, the repayment? Do you know what the size of the annual operating budget is?

SENATOR MEIER: No, I don't. I haven't had the occasion to run for the school board in Brasher Falls, Mr. President.

But suffice it to say I do know that requiring the repayment of this amount in one full year, Mr. President, would occasion in itself a property tax increase of some 8 percent. By itself.

SENATOR DOLLINGER: Through you, Mr. President, if the sponsor will continue to yield for one other question.

ACTING PRESIDENT MARCELLINO: Do you continue to yield, Senator?

SENATOR MEIER: Yes, I do, Mr. President.

ACTING PRESIDENT MARCELLINO: He

yields.

SENATOR DOLLINGER: Is there interest on the amount that the school district owes to the State of New York?

Because I understand, Mr. President, that this payment was actually made at least three years ago. My question is, is the school district going to pay back interest to the State of New York as well, as any other debtor would?

SENATOR MEIER: Mr. President, my understanding is there is no interest, no.

SENATOR DOLLINGER: Okay, through you, Mr. President, on the bill.

I appreciate Senator Meier's explanation.

ACTING PRESIDENT MARCELLINO: Senator Dollinger, on the bill.

SENATOR DOLLINGER: This is a problem that has plagued the school districts of this state for some time, that the process by which, when an overpayment is made, the State Education Department demands that it be repaid within a year of the time that it's found. So a school district which has been

overpaid, just as the Brasher Falls Central School District, just as the -- same exact school district. It's happened in my district all the time, it happens in other places.

There are errors made, there are overpayments made, and the policy that we have in this state is that the state can recover that repayment in one year. But if it's vice versa, if the State of New York shortchanges the school district, like it has shortchanged, I believe, the City of New York School District -- Senator Hevesi would know the number better, but I think it's $800 million or $900 million in old claims, claims for underpayments of cash -- under those circumstances, they pay you back over the course of six years. Which is exactly what Brasher Falls would like.

I congratulate Senator Meier for doing this, because this is good government. This is a good idea. When a bank error - when there's an overpayment made to a school district, they ought to have a period of time to get it back.

But my complaint is that this

should not only be for Brasher Falls, this should be the Brighton Central School District, the Greece Central School District, the Rochester City School District, the City School District in the City of New York.

And I would just suggest that what we're doing for Brasher Falls, if it's good up there in Brasher Falls, it's even better -- it could be even better in school districts that have much larger budgets but also much larger obligations to pay back.

The six-year payback rule, a great idea. If it's good for Brasher Falls, we ought to do it elsewhere. Let's do a statewide bill that forces everybody to play by the same rules.

I'm going to vote in favor of this bill. Senator Meier's explanation is satisfactory to me. But let's do it elsewhere as well.

ACTING PRESIDENT MARCELLINO: There is a local financial impact statement at the desk.

Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 187, by Senator Bonacic, Senate Print 6297A, an act in relation to adjusting certain state aid payments.

SENATOR DOLLINGER: Explanation, please.

ACTING PRESIDENT MEIER: Senator Bonacic, an explanation has been requested of Calendar 187.

SENATOR BONACIC: Thank you, Mr. President.

This is a bill that is similar to Senator Meier's bill. This is an overpayment to a school district -- in this case, it was the Greenville Central School District -- of a building aid payment. It was made in -- I think it was '97-'98. It was an overpayment of $343,902.

Under our existing law, that school district would have to repay the state within one year and would create a burden on the taxpayers in that school district. And this legislation allows them to pay it back over a six-year period. And interest payments are not included. It's strictly the principal.

SENATOR DOLLINGER: Through you, Mr. President, if the sponsor would yield.

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

SENATOR BONACIC: I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: Senator Bonacic, isn't it true that the taxpayers in this school district got a $343,000 benefit in one year when they got this overpayment?

SENATOR BONACIC: That is true.

SENATOR DOLLINGER: Under those circumstances, applying the same logic, if they get it in one year, shouldn't they pay it back in one year? I mean, that's the current rule, statewide, is it not?

SENATOR BONACIC: That is the

present rule.

But what we're trying to do, as we have in the past, we recognize there is a hardship to school districts. The state made the error initially in sending the money out, and now all the school district wants to do is to -- well, technically they're not making the state whole, because they've had the use of the money and, you know, have not paid interest on it. But that's a break we want to give the school district.

SENATOR DOLLINGER: Okay. Through you, Mr. President, I thank Senator Bonacic for his explanation. This too touches on a point that I discussed with the previous sponsor.

And I would again point out that what's both good in Brasher Falls and good in the Greenville Central School District ought to be good across the state. And I would point out I don't think the argument is so much that there's a detriment in paying it back, because of course they already got a $343,000 benefit. And from my point of view, this calls again for statewide legislation.

Let's treat all the school districts the same.

And the one danger, through you, Mr. President, that I would just point out is that what we end up with is a group of favored school districts who have Republican Senators and Democratic Assemblypeople for which there is one rule, and then school districts which have a Democratic Senator and a Republican Assemblyman, a whole other rule.

How can that be fair to the school districts of this state when the only thing that matters whether they pay it back in one year or six years is who they happen to have elected or who their voters might have participated in electing to the New York State Senate?

This calls for statewide legislation. We ought to do it on a statewide basis, treat everybody fairly. What's good for Greenville, what's good for Brasher Falls is good for everyone else. I vote aye, Mr. President.

SENATOR HEVESI: Mr. President.

ACTING PRESIDENT MEIER: Senator Hevesi.

SENATOR HEVESI: Thank you, Mr. President. Would the sponsor yield for a question?

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

SENATOR BONACIC: I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HEVESI: Thank you.

I understand the purpose of this legislation after the fact, and I understand that the state made a mistake in this particular instance and in all the other instances -- and there have been many of them this year where this particular circumstance occurred.

My question to you is, does the Greenville School District or any other school district in the state, to your knowledge, have a mechanism by which to catch the mistake when it happens and obviate the need for this entire exercise?

SENATOR BONACIC: I think that goes to, you know, the fiscal people that they have within their school district that

monitors these things.

I don't know why these mistakes happen. But it's probably not a bad idea to treat all schools equally. And I don't know how frequently these mistakes are made. I know in my Senate district this is the first time I've been faced with this problem. And it's a small school district. There's no doubt in my mind, for them to make this up, they have to raise the tax levy.

And what we're trying to do is if we're going to raise tax levies, let's do it because we're trying to upgrade the standards and, you know, promote excellence in education, and not make them do it because of a mistake that the state made. That's what we're asking.

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

ACTING PRESIDENT MEIER: Senator Hevesi, on the bill.

SENATOR HEVESI: Just briefly. I'm a little bit concerned because many of these school districts are not -- either not catching the mistakes themselves -- and these

are $300, $400,000, $500,000, sometimes multi-million-dollar mistakes -- or they are catching them and not doing anything about them at the time when it occurs, and that creates a problem down the road.

So I would suggest that although certainly the burden is on the state to ensure that the right amount of funding due each school district is sent to each school district, there does need to be some accountability on the part of local school districts to ensure that they are in receipt of the correct amounts so that we don't have this problem in the future.

But once this happens, certainly these bills are worthy and necessary. So I vote aye.

ACTING PRESIDENT MEIER: There is a local fiscal impact note at the desk.

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.)

SENATOR MARCHI: May I explain my vote, please.

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

SENATOR MARCHI: I think that there have been some good points made here on both sides of that argument. And it may lead to some omnibus bill or corrective legislation.

But we ought to reflect on the fact that we have fiscally dependent districts, virtually all districts in the state -- except a few are fiscally independent, and perhaps not as well equipped. So I think in considering legislation in the future that we come down on that fact. The fiscally dependent districts are on a somewhat different footing. And that may be relevant in the calculation of what we ought to do by way of correction.

But I vote in favor of this bill.

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

Senator Dollinger.

SENATOR DOLLINGER: Just to

explain my vote, Mr. President, very briefly.

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

SENATOR DOLLINGER: I would just -- and it was raised both by the previous sponsor and by Senator Bonacic that this bill is designed to prevent a tax increase. My suggestion to both of the sponsors is that's not really the issue. Because if they hadn't gotten the $350,000 in the year they got it, they would have had to raise taxes then to pay their bills.

The point of this is not that it causes a tax increase. The question is an issue of fairness. And that is when the State of New York overpays a district and has to be paid back, it should be paid back over a six-year period, the same way it is now if they underpay a district. New York State ought to be a responsible debtor and a responsible creditor.

And the thing to do is to create fairness. And I would strongly suggest that what needs to be done is all the school districts in this state should get the same

benefit that Senator Bonacic wants to give to Greenville, Senator Meier wants to give to Brasher Falls. Let's give everybody the same fair deal.

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

The Secretary will announce the results.

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 389, substituted earlier today by the Assembly Committee on Rules, Assembly Print Number 9090A, an act to amend the Public Service Law, the Environmental Conservation Law, the State Finance Law, and the Public Authorities Law.

SENATOR DOLLINGER: Explanation.

ACTING PRESIDENT MEIER: Senator Marcellino, an explanation has been requested of Calendar 389.

SENATOR MARCELLINO: Thank you, Mr. President.

I'm pleased to get up and explain this particular bill, because this particular

bill is to prevent or stop or help to prevent a problem that has occurred in New York State, not necessarily totally of our doing, but partly of our doing. And that's called acid rain.

There are things called pollution credits which are given to utilities by the federal government which tells them how much pollution they're allowed to emit to qualify and fulfill their requirements within the federal Clean Air Act.

Many utilities in New York State have become very efficient and have cleaned up their act so that they do not have use all their pollution credits, they can keep some in reserve. As a by-product of this process, they're allowed to sell these pollution credits to other utilities that might not be able to meet their requirements, or cannot, for whatever reason.

The problem that we have, though, is when we sell our pollution credits in New York State that are generated by our clean utilities to out-of-state utilities in some Midwestern states -- and we've identified 14

of those states in the legislation. When they burn high-sulfur fuel, the emissions from their stacks, because of the direction the wind blows, it literally doesn't land on them, it lands on us.

So our utilities are spending money to clean up their sites and their processing. They then sell the benefits of that -- by the way, passing the costs on to the ratepayer - they then sell those credits in some cases to these Midwestern utilities that burn cheaper fuel, high-sulfur burning fuel, which emits greater pollution into the atmosphere, which then blows back and lands back on us. We get the negative result of acid rain.

That negative result has cost certain -- several mountains -- certain lakes and rivers in the Adirondacks, and certain mountainsides, and literally forests to be just taken down. Because of the acidity, these lakes and rivers do not and cannot foster and support life as a result, which is a negative impact on those areas. You cannot use these rivers.

We on Long Island drink the

groundwater beneath our feet. When this stuff lands on the ground, percolates its way through as the water is recharging, this fouls our water and causes our aquifers to become problematic and less capable of supporting our drinking water needs on Long Island.

This is a problem for all of us. It's time, as the guy said in the movie, that we stand up and basically say we're mad as heck and we're not going to take it anymore.

The federal government, frankly, should be doing something about this. They have not. There is a bill in Washington, the Moynihan-Boehlert-Sweeney legislation, supported by every member of our federal delegation. If that bill were to pass, the federal government would take the proper corrective actions on these Midwestern utilities and require them to meet clean air standards that would protect us in their downwind areas. The federal government has not acted. Why, anybody can guess. There's probably a host of reasons. They have not.

New York has taken the lead. Governor Pataki has negotiated a deal with

then LILCO, now LIPA, to voluntarily do this sort of thing, voluntarily sign a covenant and a contract with us not to sell their pollution credits to these out-of-state areas, these upwind locations.

We had hoped at the time that other utilities would do this and join us in this action. They have not to date. So New York State is taking its action. The Attorney General is suing these areas. The Governor has imposed harsher standards.

We are now taking a step in order to protect ourselves, the last step that New York can take to protect ourselves. We are urging other states in the region -- we've gotten positive contact from other states in the Northeast, basically along the same lines, to take this legislation, use it as a model, pass it to protect themselves so that we do not have this problem of acid rain anymore.

Some have suggested problems with this, that it could cause all kinds of dire things such as negative financial incentives and so forth. We don't see any of the negativity in this thing. We see only

positive moves in this particular piece of legislation.

If this is passed, we will be protecting ourselves. Ladies and gentlemen, my colleagues, even the Hatfields knew enough not to sell their extra bullets to the McCoys. By doing this, we will stop the unnecessary burden on our people, on New York.

We would prefer and we hope that the federal government will go do the right thing, pass the bill that's out there now and protect all the states in the region and make these Midwestern utilities behave, clean up their act, burn cleaner fuel, and put them on an even playing field with our Northeastern utilities.

Because by being able to burn cheaper fuel, they have lesser costs. They have not engendered the costs that our utilities have. So therefore, selling energy in those utilities is cheaper. They have an unfair advantage on our utilities in selling power. We want to put that on an even playing field and keep that positive effect.

So we want to encourage clean

utilities, we want to encourage clean air, and we want to discourage the burning of high-sulfur fuel and the dumping, literally dumping of this rain of death on the citizens of New York State.

ACTING PRESIDENT MEIER: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Mr. President, through you, if the sponsor will yield to a few questions.

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

SENATOR MARCELLINO: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR SCHNEIDERMAN: Thank you.

The Senate has already acted, I believe, on this issue and passed a bill similar to this but not exactly the same as it. I would request if the sponsor could explain the difference between this bill and the bill we've already passed on this issue.

SENATOR MARCELLINO: Last year or last session we passed legislation that is probably 99 percent the same as the bill we're

looking at. The difference is there was a date of 2003 in the previous legislation when the bill would take effect. That bill was amended to 2001, at one point in time. You'll notice there are multiple versions on this.

We've been in contact with the Assembly on this. We've been negotiating almost by amendment along these lines. The Assembly, after we matched our bill to their bill with the 2001 deadline, a few days later changed it by striking the date clause out entirely, thereby allowing us to capture credits that go back to 1995 when these were initially enacted, when this act was initially produced. We can, by that act, take into consideration some 300,000 -- I'm sorry, some 600,000 tons of outstanding pollution credits.

We had our attorneys look at this. Counsel reported back that we could do this legally, that we were able to handle this particular piece. So now we have taken the Assembly's bill -- which is our bill, in effect -- and substituted it so we're going to pass it so there is unanimity, and hopefully get law.

SENATOR SCHNEIDERMAN: Thank you. Through you, Mr. President.

So am I correct, then, in my understanding that this bill improves on the bill we passed last year, because this will enable us to prevent the sale of these credits to utilities that might use the credits to further pollute our air, the credits that are in the bank right now? Not just we don't have to wait to some point in the future, but there are credits in the bank right now, we can start today preventing this excess pollution coming from the Midwest and blowing into New York State?

SENATOR MARCELLINO: You're absolutely correct, Senator.

And you also have to recognize that each and every year from now forth, more credits are issued to these utilities. This will prevent literally millions of tons, potentially millions of tons of pollution from coming back to us in New York State. Of our own making.

SENATOR SCHNEIDERMAN: Thank you.

Through you, Mr. President, one

additional question.

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

SENATOR MARCELLINO: I'll be pleased to.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR SCHNEIDERMAN: One of the issues that's concerned some of us is that we're taking this action unilaterally in New York. There is some concern that some of these Midwestern utilities may just buy pollution credits from other states.

And I'm wondering if any consideration has been given to attempting to impose some sort of requirement on utilities that do business in New York but also have credits available from their operations in other states that would also prohibit them from using those credits.

SENATOR MARCELLINO: Senator, as you know, this law would put a covenant restriction on the existing pollution credits to prevent them from ever being sold to one of these 14 states specifically identified in the

bill. It would be like a covenant on a piece of land, a restriction that will travel with that land forever.

This will travel with that credit until that particular credit is either used or retired. As long as it was being traded, it could not be traded in any way to one of those states. If it ever was, this state would have action, by virtue of the contract law, to enforce that contract and make sure that they recovered the amount of money that was acquired by that particular company from the sale of this particular pollution credit or group of pollution credits.

Your question relating to other - you can't even go -- this would prevent you from going through a third party and trying to circumvent our rules.

The idea of taking action against these utilities, quite frankly, Senator, that's where the Clinton administration has to -- Clinton-Gore administration has to step up to the plate. They have to take action to make this a cleaner nation with respect to this trading.

We have a system that was designed with the best of intentions, to encourage utilities to clean up their act. Unfortunately, it hasn't worked the way it was intended to work. It needs some adjusting. In some parts of the country, this has been very good. There has been an overall improvement in air quality. But not everywhere. And we're one of those areas that is negatively impacted.

What we're saying is tweak the law, change it a little bit so that we don't get dumped on. We're not second-class citizens here in the Northeast to the rest of this nation. And we're just saying to the federal government, Fix it, don't destroy it. It's a good program, this trading business. But make it work for everybody in a positive way.

We think this is the way to go. We think the federal legislation which is out there and should be passed if put to the floor is the way to go. If the Clinton and Gore administration would get on board on that, we'd be happy to help them.

SENATOR SCHNEIDERMAN: Thank you,

Mr. President. On the bill.

ACTING PRESIDENT MEIER: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: I thank the sponsor for the detailed explanation of what I think is an excellent piece of legislation.

And I realize that in a situation when something good is about to happen, there's always efforts of anyone who was involved at all to claim credit. And we had a bill and the Assembly changed the bill, now we have something that's like their bill. I would like to claim credit too. I think I was in a bar with Mr. Brodsky three or four years ago and I had this idea.

(Laughter.)

SENATOR SCHNEIDERMAN: But, look, when you get good work done, there's enough credit to go around. Clearly the Senate moved first on this. We passed a bill last year. This bill is better than the bill we passed last year. And I think that -- I don't know who the Hatfields and McCoys are, but I know that the Crips are smart enough not to sell

the Bloods their used razor blades.

So I am in agreement with Senator Marcellino on the basic principle involved here. And I think that we will look forward to further improvements in the federal system once we elect the finest environmentalist ever to run for the Presidency this fall.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Onorato.

SENATOR ONORATO: Mr. President, will the sponsor yield?

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

SENATOR MARCELLINO: It will be my pleasure to yield to Senator Onorato.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR ONORATO: Senator Marcellino, would you explain to me, under the current law can a utility or a polluter in the State of New York currently sell some of their tax credits to existing utility plants that are operating in the state of New York who do not meet the Clean Air/Clean Water Act because

they were grandfathered in when they passed that law?

SENATOR MARCELLINO: It's my understanding under existing law that that would be true. You could even sell to one of your own sub -- one of your own portions of your own company. So that's true. Under the law as it is today.

SENATOR ONORATO: Again, through you, Mr. President, if the sponsor will continue to yield.

ACTING PRESIDENT MEIER: Do you continue to yield, Senator Marcellino?

SENATOR MARCELLINO: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR ONORATO: Last year we passed the deregulation for siting new power plants. Currently there is contemplation and applications in, especially down in the City of New York, for an additional seven power plants adjacent to current power plants which have been identified as some of the worst polluting plants in the State of New York; namely, the New York Power Authority's Poletti

plant located in Astoria.

There are two plants now being contemplated being built right alongside of those existing plants who do not meet the current standards. How will this legislation affect them? And if it doesn't, what can we do to bring them up to compliance within our own state?

SENATOR MARCELLINO: I don't believe this legislation will impact the siting of any particular power plant at all. What we can do -- because it's not aimed at that at all. It's aimed at the credits and the trading of credits with out-of-state markets or any other group.

What we produce in this state blows to some other state. If I lived in New Hampshire, I would be very upset if my company -- my utility was selling pollution credits to a New York State utility, because it would end up on me. So it behooves New Hampshire, which is downwind of New York State, to go along with legislation like this.

With respect to siting, now we come up to federal regulations and state

regulations as to siting. Every utility that's put up has to meet those clean air standards, must be given -- they're given limited numbers of these pollution credits each year by the federal EPA. If they're not in compliance, they have to be closed or they have to come down on them.

Our problem in this state is power. Our problem is power. We do need it. There are locations that are browned out routinely. The city of New York is one of them. There's a severe power shortage at certain points in time as the demand -- you need peak power, and you've got to supply it. We've got places on Long Island that cannot meet the needs during peak seasons when power is in demand. Those needs have to be met; we have to supply them.

We need conservation, which must be encouraged and is encouraged. We need programs like this which restrict the kind of pollution that dumps on us. And we need very strict enforcement of the rules.

If a plant is not meeting its goals, if it's not meeting its rules and it's through negligence, through not caring,

through not performing what they're supposed to do, then the force of government should go on top and lean on them and make them produce the way they're supposed to, make them clean up their act, so to speak. I have no problem with that, Senator.

SENATOR ONORATO: Again, on the bill.

ACTING PRESIDENT MEIER: Senator Onorato, on the bill.

SENATOR ONORATO: Basically, I'm completely in favor of this here. But I would really love for us to go a step further, again, in view of the fact that there are additional plants coming on line, which will be coming on line. And there's no question in my mind that the newer plants will be in much better condition to service our community in a much cleaner fashion.

But the problem exists that they will -- they're still going to be emitting pollution. And my greatest problem is that they're adding to the pollution that's currently being produced by the plants that they're going to be located right next to,

adding more pollution to the air. And they would be in a position to sell credits to the polluters that are located right next door to them, without them cleaning up their act. So basically we'll result in a plus no matter how you look at it.

So I'd really like to see legislation -- I am introducing legislation which is very, very simple in its content. It basically says that when a new plant comes on line in the city of New York which has a population of over one million, that before that plant can go on line, the adjacent plant must come up to the government's federal Clean Air Act or shut down.

Because we cannot afford some of our areas -- especially in New York City, which has not met the Clean Air and Clean Water Attainment Act. So you're going to be adding on more pollution to the city of New York, which has almost 8 million inhabitants and is currently suffering from the worst scenario of lung-related diseases in the entire United States.

So I hope that we'll see the light

of day and allow that particular bill to come onto this floor for a vote. Thank you.

ACTING PRESIDENT MEIER: Senator Oppenheimer.

SENATOR OPPENHEIMER: If the sponsor would yield to a -

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

SENATOR MARCELLINO: Yes, I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR OPPENHEIMER: Well, I have two questions.

SENATOR MARCELLINO: I yield twice, Senator.

SENATOR OPPENHEIMER: What was that, Carl?

SENATOR MARCELLINO: I said I yield twice.

SENATOR OPPENHEIMER: Oh, thank you. Okay.

The first one is, you know, I've never appreciated sulfur dioxide credits. And so if you would just give a -- I'll ask both questions together -- give me a philosophic

reason why you support them. Because I can't see why, if you're cleaning up your act here, you should -- I mean, I never understood this from the very beginning -- why you should be able to sell it to someone else so that they can dirty up their atmosphere and then blow it back at you. That's the first question.

The second question relates more to what Senator Onorato just questioned, which was if you have an older plant prior to, what is it, 1974, and it hasn't -- I forget the date, but something like that -- and it is not meeting the standards, then this wouldn't apply anyway, because it isn't under any mandate to improve to meet the current standards and so there would be no need for it to purchase the tax credits.

So one is just straightening up a confusion, and the other is questioning a philosophy.

SENATOR MARCELLINO: The philosophy, Senator, is simply designed that this -- this program was designed to encourage utilities all over the country to clean up their act and to give them a financial

incentive for doing so. The negative impact was not foreseen, in effect. A good program was set up with the best of intentions, to clean the air and to encourage utilities to clean up their sites.

Unfortunately, certain parts of the country don't necessarily benefit, because of the way nature works. The wind blows in our direction, and this stuff comes here.

What we're saying, by this legislation, to the federal government is make them clean up their act. Make them burn the same -- or make them come under the same requirements as the Northeastern utilities, because they're adding to our problem. And you've got to stop treating us as second-class citizens.

The federal government understands what we're saying. The EPA gives us lip service. They tell us we're absolutely correct. Study after study after study after study has shown that we're absolutely correct, we're not making this acid rain business up. It's perfectly true. Yet we can't get federal action.

Now, we're trying to put pressure on the feds. We're hoping that the Northeastern states -- and as I said before, I've circulated this legislation to other legislators in our neighboring states. New Hampshire is looking at it. Maine is looking at it. Others will take a look at it and hopefully pass it, so that regionally we will tell the federal government, this is where we stand on this. We don't want this stuff anymore. We're going to deny these people as many credits as we can deny them.

Currently this bill will deny them 600,000 credits that have been amassed under New York State utilities since 1995 that have not been sold, that are being held. If we can deny them those credits plus the exponentially increasing numbers that the federal government keeps on adding on each and every year, we will protect ourselves and regionally protect the entire region by literally millions of tons of potential pollution which we can prevent.

That's less asthma. That's less health effects and less respiratory problems,

less problems all over the place. Less water problems, less problems in our lakes, rivers and streams.

So that's the reasoning behind this. I do think that the concept, the idea of pollution credits, is a good one. I do believe that we should encourage these. We need a financial incentive to get people to move under any circumstances. We tried the hammer for many years, and that doesn't seem to work. They can always avoid it. They can put up shields. They have expensive attorneys that can defend them in the courts. This incentive has worked. There has been a general drop in air pollution nationwide.

What we're suggesting, what we're saying is we in this region, we in this state in particular, have not gotten the full benefit of the program. We feel it has to be adjusted so that we get the full benefit of that program. That's why we're doing what we're doing here today.

And I congratulate our colleagues in the Assembly for doing the right thing, for coming up and passing the bill and sending it

to the Senate -- and the Senate has passed it earlier this year -- so we can pass it at this point in time, and we'll hopefully get law on that basis.

With respect to older plants being grandfathered in other situations, you're in a catch-22, Senator. I heard from Senator Onorato you want to close down some plants if they don't meet the standards. That's good to say. But if half of Queens blacks out one night, tell them that that's because we shut that plant down, if they black out.

So you've got to find a mechanism to get those plants to clean up their act. If it's legislative, that's one thing. If it's the federal government has to come in and do it, if it's the Public Service Commission that has to come in and do it, if it's the DEC or the EPA, I don't really care. I don't think any of us do. We would like to see their act cleaned up and force them to do the right thing and clean up their act, whether they were grandfathered or not.

The new plants coming on line will have to meet very stringent standards, very

stringent standards. And they will not add, you know, tremendously or deal with totally - you know, in a terrible way to our air problems. But we do have in this state and in this region an energy problem. We have a lot of people -- we have 8 million in the city of New York, we've got almost 3 million on Long Island. We've got power shortage concerns and power needs.

Conservation goes so far. We need to supply power. Otherwise, you know, it stops. And the job creation stops and industries stop and businesses stop and economically we grind to a halt. Energy is the root of it all. So clean energy is the preference, obviously.

We're taking one small step in this legislation towards that goal. There's many other steps in the process.

SENATOR OPPENHEIMER: If I could just have clarification of something, through you, Mr. President.

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

SENATOR MARCELLINO: Sure.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR MARCELLINO: I don't guarantee to clarify.

SENATOR OPPENHEIMER: You usually do.

The question is, there would be no need for these grandfathered power plants to buy the pollution tax -- the credits because they're already grandfathered, so they don't need to purchase the credits. Is that not correct?

SENATOR MARCELLINO: Right, you're correct. They wouldn't necessarily need it.

SENATOR OPPENHEIMER: Thank you, and I appreciate your answer.

I am very supportive of the bill. I'm on the bill now. I'm very supportive of this bill. It's just that I think years ago, when the feds decided to do this, I felt that it was something that was more appropriately handled through some kind of subsidy. Not a stick, because the stick hadn't worked, but a carrot, some kind of financial assistance to

those power plants that were cleaning up their act.

Because it -- I found it sort of working against our goals to be able to sell the pollution credits to another power facility that was polluting more than it should. It wasn't in general, in total, cleaning up the entire environment; it was simply selling what was bad in one area to another area. And philosophically, that bothered me, and I thought there might have been another way.

But I agree with you, it has improved the environment, the air in most of our nation. And so I think your bill is an excellent one, Carl.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Mr. President, will the sponsor yield to a couple of questions?

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

SENATOR MARCELLINO: Yes, I will.

ACTING PRESIDENT MEIER: The

sponsor yields.

SENATOR DOLLINGER: Through you, Mr. President.

Senator, how did you get the definition of the acid precipitation source states? And I'll cut right to the chase. Why is it that there are only states that are east of the Mississippi on the list when you can build a power plant on the western shore of the Mississippi River in Iowa or Missouri and have the exact same effect on acid rain in New York State?

SENATOR MARCELLINO: Basically, the program comes from the scientists who tell us where the predominant amount of emissions are coming from.

They are in fact coming from the states that we've identified in the legislation. If they're east of the Mississippi, so be it. But that's where 90 percent of our acid rain is coming from.

SENATOR DOLLINGER: Okay. Again, through you, Mr. President, just so I understand it.

If you build a plant in Missouri,

across the river from Illinois, they're not affected by this. But if you build one on the eastern shore of the Mississippi River, which is in Illinois, they'd be within the precipitation area.

SENATOR MARCELLINO: All I can say is repeat the same answer, Senator. These scientists and those who have studied the issue have identified this. It's been consistent over and over again, the same states are mentioned. They're mentioned in the federal legislation as well as our legislation, that most if not all of that pollution that emanates comes from probably five major states in core, but there are others that we can bring into it.

The total comes to about 14 states, both south and east of us, where the prevailing winds bring the pollution. And those are the states that generate the most emissions.

If the state has minimal population with a minimal utility, a small utility that is not going to dump that much on us, it's not going to have that big an impact, so it might

not record.

But in this situation, these are - these are Ohio, Pennsylvania, Michigan, Illinois. These are heavy production states, industrial states. And one would expect their emissions to be much more intense and greater in the older plants, because those were built many, many years ago.

SENATOR DOLLINGER: Through you, Mr. President, if the sponsor will again yield to a question.

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

SENATOR MARCELLINO: Certainly.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: Your comment, Senator, leads me to the question that I'm most interested in.

What about the state of Texas, which is one of those big industrial states? Which, according to a lot of commentary, in view of the presidential campaign that's going on, where lots of the people have said that Texas is the dirtiest air polluting state in

the nation. In fact, it has the city of Houston, which has the worst air quality in the nation.

Why shouldn't Texas be included in this list if it's one of those big industrial states that could get into our airwaves and pump acid rain into our state?

SENATOR MARCELLINO: Senator, my colleague Senator Schneiderman said that once the election in November is settled and the greatest environmentalist that will take office in the history of this nation -- that will namely be George W. Bush. This is the governor of the state of Texas that has cleaned up that state more than any other governor in the history of that state.

That being said, the wind just doesn't blow on New York State from Texas. It lands in other places, perhaps, but it doesn't blow on us. I represent the people of New York State and the people specifically of the 5th Senate District. That's my primary concern. I am not on the federal level, I'm on the local -- I'm a state senator.

So I'm trying to protect my

constituency and my state against what happens in other states where I can impact. If a state does not impact us, then this legislation won't impact them.

SENATOR DOLLINGER: Through you, Mr. President, if Senator Marcellino will continue to yield.

ACTING PRESIDENT MEIER: Senator Marcellino, do you yield to yield?

SENATOR MARCELLINO: Sure.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: That raises the other question that I had.

If we don't want acid rain from anywhere, be it from Texas, a state like Texas, a big industrial state, it's had pollution problems, and we don't want it from Ohio, which is a big industrial state that burns too much fossil fuels and has too much sulfur dioxide in the air -- if that's the case, that we don't want any of that pollution, why doesn't New York State do the real responsible thing and buy the credits itself and retire the credits so that no one

in this state has to face the additional acid rain obligation or threat to health that I think you so accurately described?

SENATOR MARCELLINO: Well, Senator, in fact that was a consideration that we had at one point in time in the workings of this bill.

However, like all things, there's a certain amount of money involved. It would be ideal if we could buy up all the credits and retire them, but they keep coming back each and every year. New ones.

So we couldn't -- this is not a one-shot deal. If we bought up the 600,000 credits which we know are out there, that would be fine. 600,000 -- you do the math: 600,000 times 150. Nice piece of change. If we did that, one shot, what happens the next year when -- when hundreds of thousands more are added to the mix, and the following year after that? Is the State of New York prepared to carry that off in perpetuity? I don't think so.

So therefore, we take the next best action. Ideally, it would be great. If we

could afford it, I would say do it. I don't think we can responsibly afford that burden on the taxpayers of this state.

However, that being said, this act costs us nothing.

SENATOR DOLLINGER: Again, through you, Mr. President.

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

SENATOR MARCELLINO: Certainly.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: That leads to my next question. Obviously there is a cost -

SENATOR MARCELLINO: You've got to give me a question that doesn't lead to the next one, Senator, so I'll figure out the answer to that.

SENATOR DOLLINGER: I appreciate your answers. They segued into my questions.

My question is, obviously, if the State of New York doesn't want to pay for these, we're willing to mandate that ratepayers pay for them by giving up a

valuable asset; isn't that correct?

SENATOR MARCELLINO: Senator - Senator, the ratepayers are paying for it right now. Let's not fool ourselves. Every time a utility upgrades and spends money, you don't think, out of the goodness of the stockholders, that they keep this thing to themselves. That gets passed directly on to you.

Every time somebody develops asthma and has a medical problem, the ratepayers pay for that. We pay for the medical bills, we pay for the increased electric costs, we pay for the cost of repainting our homes more frequently than we would otherwise because this acid rain is eating away at the finish on our houses.

We pay for the infrastructure that this acid rain is destroying. We pay for the statuary which is being corroded and literally dissolved away by this acid rain. We pay for the forests that are being destroyed constantly by the trees that are being denuded.

There is an increase in tree death

in this area that has been directly related to acid rain, and we can verify that and that's been shown. Talk to the members of the Adirondack Council. Talk to the people who live in this area, the sportspeople who can't go in certain areas, the fishermen who can't fish certain lakes, rivers and streams because they're dead of life because of this stuff.

What's the economic cost to this state? It's untold, uncountable, billions the way it is now. I would rather spend a few bucks cleaning up a couple of utilities and reduce the cost of asthma and respiratory diseases on the people of this state. I think you would too, Senator.

SENATOR DOLLINGER: I couldn't agree with you more.

On the bill, Mr. President. I'll be brief.

ACTING PRESIDENT MEIER: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I appreciate Senator Marcellino's passion about the issues and the consequences of acid rain and environmental problems. And I do agree with

Senator Marcellino.

My only question is, isn't the right thing to do to solve this problem to take the enormous cost of acid rain -- be it asthma, be it degradation of the environment, whatever that cost is -- and it is enormous, Senator, I don't deny that. But wouldn't it make better sense for State of New York to just buy these credits, retire them forever, and ensure that it's not -- we're not just exporting our acid rain problem but we're actually getting rid of it?

I would suggest, Senator Marcellino -- I'm going to vote in favor of this bill, because I think it's a good step. But the better thing to do is put our money where our mouth is. Buy these credits ourselves so that no one in this state, in this nation, on this planet has to run into the kind of problem that you describe.

Your description is, it's perfectly okay for somebody else to get it if we sell these credits to California or Wyoming or Washington. It's okay if there's acid rain in the Rockies, but we shouldn't have it here.

I would just suggest that the real responsible thing to do is buy these credits ourselves -- if it costs 900 million, if it costs 90 million, if it costs 150 million, whatever that cost is.

Senator Marcellino, I agree with you. Reduction in asthma, an improvement in health care, reviving the quality of our forests up in the Adirondacks, all those things would be well worth that cost. Let's do the right thing next time around.

ACTING PRESIDENT MEIER: Senator Marcellino.

SENATOR MARCELLINO: Mr. President, to close, hopefully, on this issue.

I agree with the Senator's comments. It would be great and it would be fine to do all that. We can get all that. But we need the federal government to step up to the plate. We need the Clinton-Gore administration to step up to the plate and do the right thing.

They haven't done the right thing on acid rain. They didn't do the right thing on MTBE. We had to pass that legislation in

this house and in this state to protect ourselves because the federal government wouldn't do what they were supposed to do, and that's protect us overall.

So in that case, we'll be happy - I'm glad that this is going to move, and hopefully when we pass this bill it will be signed into law and New York State will have done the right thing.

And I thank my colleagues for their support. And I also would like to thank the Governor of this state, because he negotiated and started this process which is the image of this bill and the mirror for this particular bill. That was the voluntary deal with LILCO.

And I would like to thank Senator Bruno for his encouragement and his willingness to put this bill on the floor and on the table because he recognizes the import to the people of this state.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the

roll.

(The Secretary called the roll.)

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

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

I disagree with Senator Marcellino about one aspect of this, which is he said earlier that this is a very small step. I don't think this is a small step. I think this is a big step. And I see another big step, shaking hands with Assemblyman Brodsky on the way out, which is also good.

This is -- and I want to mention, in response to comments made by Senator Dollinger, the five biggest importers of these credits are all states that will be covered under this legislation: Illinois, Indiana, Ohio, Pennsylvania, Kentucky.

This is a huge step. It will potentially protect us from 6 million tons of pollution over the next twenty years. And I think, in addition to everyone else who's already been thanked, we have to acknowledge the work of the Attorney General, Eliot

Spitzer, on this, who brought a lawsuit about it.

And I'm very pleased that we were able to take action on this important issue. This is, in my view, one of our finest accomplishments this year. Congratulations.

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

The Secretary will announce the results.

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill is passed.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 422, by Senator Leibell, Senate Print 4529, an act to amend the Penal Law, in relation to unlawful defilement.

SENATOR LACHMAN: Explanation.

ACTING PRESIDENT MEIER: Senator Leibell, an explanation has been requested of Calendar 422 by Senator Lachman.

SENATOR LEIBELL: Yes, Mr.

President. This bill would establish a new article of -- 270.08 of the Penal Law, to create a new crime of unlawful defilement of a water supply.

Pursuant to this bill, a person would be guilty of this new crime if he intentionally introduces, places, or causes to be introduced or placed into the water supply a defiling agent, with the intent to cause sickness, physical injury, severe disfigurement or death of another human being, or with the reckless disregard of causing the sickness, physical injury, severe disfigurement or death of another human being, or with the intent to cause irreparable harm to such water supply or to disturb the public peace.

ACTING PRESIDENT MEIER: Senator Lachman.

SENATOR LACHMAN: Mr. President, through you, will the distinguished sponsor of the legislation yield for a question?

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

SENATOR LEIBELL: Yes, I

certainly do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR LACHMAN: The explanation was quite clear. Except the title of the legislation is a little unclear in terms of its language. How does one differentiate the crime of unlawful defilement of the water supply to the crime of lawful defilement of the water supply?

SENATOR LEIBELL: Well, the use of the terminology "unlawful defilement" is to emphasize that it would be an unlawful act. It's conceivable that you could have something that would in some way defile the water supply that might not be unlawful; for instance, fluoridation.

So in order that there be no inconsistencies, and to make sure it's as clear as possible, that was the reason for the use of the terminology there. It might seem redundant, but it was felt to be necessary.

ACTING PRESIDENT MEIER: Senator Stavisky.

SENATOR STAVISKY: Mr. President,

if the sponsor would yield for a question.

SENATOR LEIBELL: Yes.

ACTING PRESIDENT MEIER: Senator Leibell, do you yield for a question from Senator Stavisky?

SENATOR LEIBELL: Yes, Mr. President.

SENATOR STAVISKY: Through you, Mr. President. Is it now permitted for an individual to defile our water supply?

SENATOR LEIBELL: No, it certainly would not be.

What we are attempting to do here is to bring this crime up to a level of public safety, where it should be.

SENATOR STAVISKY: In other words, if I were to go -- Mr. President, if the sponsor would continue to yield.

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

SENATOR LEIBELL: Yes.

SENATOR STAVISKY: If I were to go to Croton, for example, and dump some PCBs or whatever into the water supply, I would not be prosecuted?

SENATOR LEIBELL: It might be a criminal tampering, which would be a D felony. This is a B felony.

So yes, it would still be a criminal act, but this raises it.

SENATOR STAVISKY: Mr. President, one more question.

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

SENATOR LEIBELL: Yes.

SENATOR STAVISKY: Would this be a violent felony?

SENATOR LEIBELL: No, it would be a crime against property.

SENATOR STAVISKY: Thank you, Mr. President.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 486, by Senator Libous, Senate Print 6919, an act to amend the Mental Hygiene Law, in relation to including persons.

SENATOR DOLLINGER: Explanation, please.

SENATOR SKELOS: Lay it aside temporarily.

ACTING PRESIDENT MEIER: Lay the bill aside temporarily.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 495, by Senator Velella, Senate Print 6545A, an act to amend the Insurance Law, in relation to health insurance coverage.

SENATOR LACHMAN: Explanation.

ACTING PRESIDENT MEIER: Senator Velella, an explanation has been requested of Calendar 495 by Senator Lachman.

SENATOR VELELLA: Yes, Mr. President. This is a follow-up bill to a bill that we did last year which was signed into

law that provides for the -- in the event that a student who is presently enrolled under their parents' plan, like a member of the Legislature may have a student who has continued on with their health benefits, that they withdraw from school because of an illness -- should they withdraw and they be over the age limit that they normally would have been covered, they're only being covered because they're a student, a full-time student, if they withdrew because of illness, they would be dropped from your policy.

Last year we changed that so that if it was medically necessary that they withdraw from school, they would be continued for one year.

As a result of that bill, some questions were raised as to interpretation. And there are several areas that this bill clarifies. And the purpose of this bill is merely to supplement what we did last year and clarify the situation.

ACTING PRESIDENT MEIER: Senator Lachman.

SENATOR LACHMAN: Mr. President,

will the distinguished Senator yield for a question?

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

SENATOR VELELLA: I will begin to, not continue. I was asked to explain. And if I'm asked for a question, yes, I'll yield.

ACTING PRESIDENT MEIER: Senator Velella will yield for a question.

SENATOR LACHMAN: I believe that this bill does clarify the provisions of Chapter 574 of the Laws of 1999 in a positive sense.

The question I have is, does this bill clarify the rate charge for the continuing coverage of a medically dependent full-time students at all levels of his or her university career?

Should I explain my -- let me explain my question.

SENATOR VELELLA: I'm not sure what the question is.

SENATOR LACHMAN: Let me explain my question.

In community college and as an undergraduate, students attend college on a full-time basis or a part-time basis. But when you attend, for example, Stony Brook or Binghamton or Albany or the Graduate Center of CUNY, you have doctoral students who are working on their Ph.D. degrees or E.D. degrees on a permanent basis and are considered, to all intents and purposes, of being full-time students, even though they do not take the credits of undergraduate students.

Will this important measure also include these doctoral students who will be, in the future, important members of our society and contributors to the growth of our economy?

SENATOR VELELLA: That's a very good question. And let me say that this bill does not get into the issue of who will be covered at what point in their academic career.

What this bill says is that if you are covered as a full-time student and have to leave because of an illness, you will be continued coverage for one year. And whether

or not you initially get that coverage will be dependent on the particular policy circumstances and facts -- if you're not a full-time student, if it's not an accredited college. Each different policy, each different program will determine whether or not you're eligible.

However, if you are eligible and you get sick and you lose your status as a full-time student simply because of the illness, when your doctor gives you a note you will then be covered for one year.

So we don't go back to ab initio, the very beginning of the policy, and renegotiate the policy. What we do do is say that if you are covered, you won't lose that coverage, because of the fact that you happen to be ill and can't attend school, for one year.

ACTING PRESIDENT MEIER: Senator Lachman.

SENATOR LACHMAN: Through you, Mr. President, will the Senator continue to yield to another question in this area?

ACTING PRESIDENT MEIER: Senator

Velella, do you yield for another question?

SENATOR VELELLA: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR LACHMAN: Fine. What I was referring to were the different tiers of college or university education. And there's a distinct demarcation from those students who are working on their doctorates, in whatever area, as against those students who are undergraduates and who are community college students or undergraduate, four-year-college students.

I was happy to hear the candor of my distinguished colleague that he wasn't sure, I gather, that this would cover doctoral students who might not be attending on a full-time basis.

If it does not, can we further clarify this and improve this important piece of legislation in the future to include all levels or all tiers of university education?

SENATOR VELELLA: Yes.

SENATOR LACHMAN: Thank you.

ACTING PRESIDENT MEIER: Senator

Duane.

SENATOR DUANE: If the sponsor would continue to yield, Mr. President.

ACTING PRESIDENT MEIER: Senator Velella, do you yield for a question from Senator Duane?

SENATOR VELELLA: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Thank you. Under this bill, there's a provision that you can still age out of the policy; isn't that correct?

SENATOR VELELLA: I'm sorry, what?

SENATOR DUANE: This bill contains a provision that would make it so a student could still age out of a policy; is that not correct?

SENATOR VELELLA: Yes. If they would have aged out before, they would still age out now.

As I said to Senator Lachman, the only provision is that this will now prevent someone from being dropped from a policy

simply because they got sick and were not a full-time student, not able to attend because of that very illness that you're insuring them for. It doesn't make sense.

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

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

SENATOR VELELLA: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: I'm wondering if the sponsor thinks, though, that it's not good public policy that a student could lose their insurance if they age out, even if they're in the middle of a serious illness like cancer.

In other words, they might be covered for the first half of treatment for their disease but, because they turn 21, lose coverage and have to pay for the rest of their treatment out-of-pocket.

SENATOR VELELLA: What is the question? Do I think that's a good thing?

SENATOR DUANE: Good public

policy.

SENATOR VELELLA: No, I think it's a terrible thing when that happens.

SENATOR DUANE: Through you, Mr. President, then.

ACTING PRESIDENT MEIER: You want Senator Velella to continue to yield?

SENATOR DUANE: Please.

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

SENATOR VELELLA: Yes, I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DUANE: Then I'm hoping that the sponsor would be willing to look at making it so that a person who does have a catastrophic or serious illness, that they could keep their insurance if their treatment had started while they were insured, even if their treatment was not completed at the time that they aged out.

SENATOR VELELLA: Is the question would I look at that? Yes, I will.

SENATOR DUANE: Thank you, Mr. President.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the same date as Chapter 574 of the Laws of 1999.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 512, by Senator LaValle, Senate Print 2459, an act to amend the General Municipal Law, in relation to granting.

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

SENATOR DOLLINGER: Will Senator LaValle yield to just one question, brief.

SENATOR LAVALLE: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: Senator, could you describe how this extra points program affects the municipal obligation to

provide funds into the benefit program and, if so, what the anticipated cost of this program might be to local communities?

SENATOR LAVALLE: The -- first of all, we should start by saying, so that everyone is aware, that in 1988 we established a service award program for volunteer firefighters. In that program we indicated that each local community would make a decision whether they would enter such a program, a service award program.

We established under that legislation that each active firefighter had to earn 50 credits. And in the legislation we put specific activities in order to earn those 50 credits, such as answering alarms, fighting fires, marching in parades, doing various things around the firehouse and so forth.

And here, we are adding teaching fire prevention classes that would be requested by the fire district or the fire house or the chief, and that they could only accumulate up to five points.

So in other words, within the context of the 50 points, we are now saying

there is another activity that you could do within the 50 points to achieve that, and that is teaching classes in fire prevention.

Each fire district handles -- now, to answer with specificity your question, each fire district -- or, as you had indicated, it could be a municipality -- takes out and funds the service award program in a different way. But it's basically an annuity or an annuity with a specific benefit plan. So that an individual knows that if they put in 10 years, they will get so much per month from the service award.

So the cost to the municipality does not change. Whatever that cost is today, it would continue. This bill merely adds another activity to qualify for the 50 points in order to secure the award.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President.

As I understand it -- and I appreciate Senator LaValle's very accurate and detailed explanation -- this simply

accelerates the process by which they get to award the bonus program based on their teaching fire safety or other classes.

I think it's a great idea. I'll vote in favor.

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, 59.

ACTING PRESIDENT MEIER: The bill is passed.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 515, by Senator Stafford, Senate Print 4393, an act to amend the General Municipal Law, in relation to provisions.

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

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

President?

ACTING PRESIDENT MEIER: Senator Stafford, will you -

SENATOR STAFFORD: I will.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: Through you, Mr. President, this concept of allowing fire districts to privately contract with ambulances is something we've discussed on a statewide basis. Is there anything particular about Clinton County that makes it appropriate there?

And why shouldn't we do it on a statewide basis when I know there are other counties that have the same demographic and geographic aspects that Clinton County does? Shouldn't we do this on a statewide basis?

SENATOR STAFFORD: I think that's a very, very good point, and I'd be glad to work with you on that. There is legislation that's been suggested.

SENATOR DOLLINGER: Through you, Mr. President, I appreciate Senator Stafford's explanation. This too is an issue that we've

debated on a statewide basis.

With the declining number of volunteers and greater pressure on our volunteer ambulance corps, the question of whether we should allow them, the fire districts, to contract with private ambulance services is, I think, a critically important one.

I understand the exigencies of Clinton County, how it drives you to do this. But I think this bill ought to be done on a statewide basis, or at least have a statewide debate about it, whether rural communities need it and urban communities don't.

I think that should be a part of our discussion, and I hope Senator Stafford will lead the charge in making this happen, or at least considering it on a statewide basis.

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

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, 59.

ACTING PRESIDENT MEIER: The bill is passed.

The Secretary will read Calendar 486.

THE SECRETARY: Calendar Number 486, by Senator Libous, Senate Print 6919, an act to amend the Mental Hygiene Law, in relation to including persons who are developmentally disabled.

SENATOR DOLLINGER: May I just have a brief explanation, Mr. President?

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

SENATOR LIBOUS: Thank you, Mr. President. I knew when I introduced this bill that it would be extremely controversial and that someone of Senator Dollinger's character might ask for an explanation. I'd be happy to give it to him.

Basically, Mr. President, this is a bill that adds a provision to Article 15 of the Mental Hygiene Law to clarify that Article

15 refers not only to persons who are mentally retarded -- and I apologize for the hesitation, I have a bit of a sore throat and laryngitis -- but also to persons who are developmentally disabled.

And that's basically what we're doing here, Mr. President.

ACTING PRESIDENT MEIER: Senator Dollinger.

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

ACTING PRESIDENT MEIER: Senator Libous, will you yield for a question?

SENATOR LIBOUS: Absolutely, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: There's a reference in the bill memo to the settling of a class action, a federal class action. Would you just explain to me how this bill will affect the settlement of that action or accommodate that action?

SENATOR LIBOUS: Learned counsel

here, Mr. President, tells me without the authority in statute that the judge will not let them proceed with the referral.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Mr. President, if the sponsor will just continue to yield.

Is it the passage of this legislation -

ACTING PRESIDENT MEIER: Whoa, whoa. Wait. Senator Libous, do you yield for a question?

SENATOR LIBOUS: Absolutely.

ACTING PRESIDENT MEIER: Now, Senator Dollinger.

SENATOR DOLLINGER: Is the passage of this legislation an ingredient, a condition of that settlement of that class action lawsuit that we're given the power to make those referrals?

SENATOR LIBOUS: I don't believe so.

But at the same time, this definition needs to be included in the law.

Because if you look at the definition, Mr. President, of mental retardation and developmental disability, that it's important that this clarification be in there for just total clarification of this particular article. But it would also help in that particular class action suit.

SENATOR DOLLINGER: Explanation satisfactory, Mr. President.

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, 59.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 537, by Senator Padavan, Senate Print 1400, an act to amend the Penal Law, in relation to possession of gambling devices.

SENATOR HEVESI: Explanation.

ACTING PRESIDENT MEIER: Senator

Padavan, an explanation has been requested of Calendar 537 by Senator Hevesi.

SENATOR PADAVAN: Mr. President, thank you. I'm going to read the memorandum in support from the City of New York which describes the bill in detail.

"This bill would amend Penal Law Article 225 to impose realistic penalties upon those who profit from unlawful gambling activity. It would create two degrees of the crime of possession of gambling devices, with the top charge constituting a Class E felony where five or more devices are possessed.

"The bill would also amend the Penal Law with respect to the crime of promoting gambling, by making it a Class E felony to profit from gambling activities, such as casino-type gambling, where the take is more than $5,000 in any one day.

"Penal Law 225.32, possession of a gambling device, would be amended to reflect the creation of the new crime. The bill would also make two conforming amendments to the Real Property Law and to the Real Property Actions and Proceedings Law, to add the newly

created crime of possession of a gambling device in the first degree to the list of crimes which are deemed presumptive evidence that illegal activities are occurring in a leased building or apartment, which form the basis for legal proceedings to evict the tenants conducting such activities.

"At present, notwithstanding how many gambling devices a person possesses or how much cash is received through running an illegal gambling casino, the top charges available are misdemeanors. This bill would remedy that anomaly by making a degree of charge reflective of the degree to which a person profits from illegal activity.

"In the case of possessing slot machines or coin-operated gambling devices, a person could presently possess 1,000 such devices and he or she would still only be guilty of a misdemeanor. An enhanced penalty for possession of five or more reasonably addresses the aggravated nature of the offense and should have a salutary deterrent effect."

SENATOR HEVESI: Mr. President.

ACTING PRESIDENT MEIER: Senator

Hevesi.

SENATOR HEVESI: Would the sponsor yield to a few questions, please?

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

SENATOR PADAVAN: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HEVESI: Mr. President, I was wondering if Senator Padavan could tell us whether the bill that we're looking at is an amended print or Print 1400 not amended.

SENATOR PADAVAN: This is 1400 not amended.

SENATOR HEVESI: Thank you.

Through you, Mr. President, if the sponsor would continue to yield.

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

SENATOR PADAVAN: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HEVESI: Senator Padavan, I don't see where the Real Property Law is amended in this print. Could you point that

out, please?

SENATOR PADAVAN: Bear with me just a moment.

Well, Senator, I'm not sure what part you're looking for, but the bill stands as it is. The memo that I read is based on Senate 1400, the memo in support from the City of New York. Maybe you could be more specific as to what part of the bill before us you have a question on.

SENATOR HEVESI: Mr. President, the conforming sections that involve the Real Property Tax Law, as stated in the sponsor's memo and the city's memo, I don't see where the legislation amends that section of law.

And if we're going to be asked to vote on it, I would just like to have it pointed out to me, if you would, where it does that. Or if the memos are indeed flawed. And then we can move on.

SENATOR PADAVAN: The memo must be flawed. The bill is as you see it.

SENATOR HEVESI: Okay, thank you.

Mr. President, would the sponsor continue to yield?

SENATOR PADAVAN: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HEVESI: Senator Padavan, I believe that this is -- I like the direction in which this legislation moves.

My question for you is, in creating two different offenses for possession of a gambling device, one in the second degree and a more stringent penalty in the first degree if the individual possesses more than five gambling devices, my question to you is if someone continues to possess -- is convicted of more than one misdemeanor offense in the second degree, are there escalating penalties for that individual?

SENATOR PADAVAN: Not to my knowledge. Not in this bill.

SENATOR HEVESI: Okay. Mr. President, would the sponsor yield to another question, please?

SENATOR PADAVAN: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HEVESI: If I can turn

your attention to Section 4 of your bill, which amends Section 225.10 of the Penal Law, your -- let me also draw to your attention the next bill that is coming up on calendar, which is Senator Volker's legislation.

There is a fundamental conflict between your legislation and Senator Volker's legislation, in that Senator Volker's legislation would amend Subsection 1 and 2 of Section 225.10, which you then address. But -

SENATOR PADAVAN: Since he comes after me, you'd better address that to him. Right now we're dealing with this bill.

SENATOR HEVESI: Well, Senator, you and he both add a Subsection 3 of the same section.

SENATOR PADAVAN: Well, then, you'll have to discuss that with him. Ask me about this bill.

SENATOR HEVESI: Okay, let me ask you about this bill.

SENATOR PADAVAN: Okay.

SENATOR HEVESI: Presuming that Senator Volker's bill passes -

SENATOR PADAVAN: I will make no such presumption, Senator. Ask me about this bill.

SENATOR HEVESI: Okay. Your Subsection 3 that you choose to add would provide a qualifying offense or circumstance under which somebody is guilty of promoting gambling in the first degree if they receive from any unlawful gambling activities more than $5,000 in any one day; is that correct?

SENATOR PADAVAN: Right.

SENATOR HEVESI: Okay. Senator Volker's bill, Senator Padavan, reduces the threshold for Subsection 1 of 225.10 down to $2,500 and Subsection 2 from 500 to $250.

I believe that we should enact the more stringent threshold, the lower threshold. Your bill fails to do that.

And in the event that Senator Volker's bill passes, there will be an inconsistency within the same section where the legislation you have just added, Subsection 3, is much less stringent than Senator Volker's. And my question to you is, is that the situation that you had intended?

SENATOR PADAVAN: Senator, I will answer the question again. We are dealing with the current bill before us. I am not in a position to comment on the efficacy of a bill to follow, with due respect to my esteemed colleague Senator Volker, chairman of the Codes Committee, wherever he is.

Let us deal with this bill. Now, the penalty of $5,000 is obviously a subjective one. You could make it ten, you could make it twenty. We think $5,000 is a deterrent, and a reasonable deterrent, and one that could be enforced. And the City of New York and the New York City Police Department feels it's an appropriate level to be at.

SENATOR HEVESI: On the bill, Mr. President.

ACTING PRESIDENT MEIER: Senator Hevesi, on the bill.

SENATOR HEVESI: Mr. President, I appreciate the efforts to combat illegal gamble and crack down in this area. But it's quite obvious -- and I have the highest respect for Senator Padavan and Senator Volker -- that they never discussed the

legislation that they have both introduced, that are both active today, and that are absolutely contradictory.

And I believe, since I know both of them to be firm believers in creating a more stringent environment to create a greater deterrent to criminal activity, that this inconsistency is one which was unintended by both sponsors.

And just in the questions that I have posed to Senator Padavan, there are three technical problems to this legislation. And I don't know -- I'm very loath to support or to vote in favor of flawed legislation.

And I understand Senator Padavan doesn't want to get into the specifics of Senator Volker's bill. But the fact is, every bill that's come active this year that has not been laid aside for the day has passed. And so I have every expectation that Senator Volker's bill will pass this house and Senator Padavan's bill will pass this house.

And Senator Padavan I disagree with in a number of areas on his legislation, because of Senator Volker's bill, because

Senator Padavan's bill will be less stringent. I believe that the threshold should not be $5,000, it should be $2,500 -- even lower, perhaps. Particularly if we're amending the same sections of the same law creating for lower thresholds.

In addition, there are other sections of this legislation that I think need strengthening, particularly dividing the offense of possessing five or more gaming devices to a first and a second degree, making the first degree more stringent. That's terrific. But it doesn't address the underlying fact that if you traffic in under five gaming machines, you can do it 10, 15, 20 times and only get hit with misdemeanor offenses. It's lenient.

And I would suggest that we amend Senator Padavan's legislation to include another category for possession of gaming devices in the first degree, the E felony degree, if someone has committed possession in the second degree and commits it and has committed the same offense, possession in the second degree, within the past five years.

So, frankly, I think Senator Padavan's legislation is weak. Not tough on crime, weak. And I would prefer a more stringent measure.

However, I don't know which of these two measures, if they both pass, will become law. And since both of them on their own are acceptable, I'm going to vote in favor, but understanding that I have reservations.

Because if both of these were to become law, I don't know what would occur. Aside from the fact that we would have an inconsistent section of the Penal Law, particularly as it pertains to the creation of two Subsections 3s of Section 225.10 that are completely different. And I don't even know as a matter of law what happens in that circumstance.

So I will vote yes on this individual piece of legislation with those reservations.

ACTING PRESIDENT MEIER: Senator Malcolm Smith.

SENATOR MALCOLM SMITH: Thank

you, Mr. President. Will the sponsor yield for a question?

ACTING PRESIDENT MEIER: Senator Padavan, do you yield?

SENATOR PADAVAN: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR MALCOLM SMITH: Senator Padavan, if you can explain what -

SENATOR PADAVAN: I'm sorry, Senator Smith, you'll have to speak louder. I'm having trouble hearing.

SENATOR MALCOLM SMITH: I seem to have a problem with this mike here.

SENATOR PADAVAN: I know. That's why you have to speak louder.

SENATOR MALCOLM SMITH: I understand my predecessor had the same problem. So I'll do the best I can.

In the legislation, it talks about devices. Could you please explain what devices you're talking about? What does that mean?

SENATOR PADAVAN: What kind of devices? Slot machines, Joker Poker machines,

that sort of thing.

SENATOR MALCOLM SMITH: Is it specifically -- Mr. President, through you.

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

SENATOR PADAVAN: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR MALCOLM SMITH: Are we specifically talking about mechanical devices only, Mr. President?

SENATOR PADAVAN: I'm sorry, would you repeat that?

SENATOR MALCOLM SMITH: Are we talking about mechanical devices only?

SENATOR PADAVAN: Well, it says here, right on -- if you take a look at the bill, beginning on line 9, "a slot machine or any other gambling device, believing that the same is to be used in the advancement of unlawful gambling activity. A coin-operated gambling device with intent to use such device in the advancement of unlawful gambling activity."

SENATOR MALCOLM SMITH: Mr.

President -

SENATOR PADAVAN: That is the definition, the categorization of the kinds of devices we're talking about.

SENATOR MALCOLM SMITH: Mr. President, through you.

ACTING PRESIDENT MEIER: Does the sponsor continue to yield?

SENATOR PADAVAN: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR MALCOLM SMITH: Does it only refer to these two or these three items and no other kind of device?

SENATOR PADAVAN: It refers - this bill before us refers only to the definition of devices as defined in this bill.

SENATOR MALCOLM SMITH: On the bill, Mr. President.

ACTING PRESIDENT MEIER: Senator Malcolm Smith, on the bill.

SENATOR MALCOLM SMITH: I also believe that the bill itself, while its intentions are good for specific neighborhoods, such as myself, we do not -- I

would not have a problem if the bill was a little stronger. In that there are other devices that are not mechanical in nature but that also provide and proliferate illegal gambling, such as dice, such as 3-card monte.

And while that might not be a major concern of the Senator from the standpoint of the actual proprietary stores that I think he's concerned about, I would hope that at some point down the future the bill also could be a little tougher. While it does have some toughness on crime, there are in some areas - in particular, in my district -- that that type of activity goes on and we do need some help in terms of getting that stuff off the street.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Montgomery.

SENATOR MONTGOMERY: Mr. President, will the sponsor yield for -

SENATOR PADAVAN: Of course. Of course.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR MONTGOMERY: Yes. I'm just -- in line with Senator Smith's question, I just want to make sure that we're not talking about the people who have their little -- their little dice game going -

SENATOR PADAVAN: Little dice game? How would you know about that, Senator?

(Laughter.)

SENATOR MONTGOMERY: And the dominos. You know, there's a lot of people who play a little dominos in -

SENATOR PADAVAN: Oh, dominos.

SENATOR MONTGOMERY: -- and little tabletop games that they may -- they may, you know -

SENATOR PADAVAN: No, no, we're not interfering with those folks at all.

SENATOR MONTGOMERY: They're not big-time gamblers, they're just people in the park.

SENATOR PADAVAN: No, we're not interested in those kinds of people -

SENATOR MONTGOMERY: No, we're not talking about those people.

SENATOR PADAVAN: -- or those

activities at all, Senator.

SENATOR MONTGOMERY: Okay. I just -- Mr. President, I'm supporting this legislation based on the fact that Senator Padavan is on the record that he is not meaning to come into my district and sweep up the little-domino-game people, et cetera, and haul them off to upstate, to Senator Volker's district.

(Laughter.)

SENATOR MONTGOMERY: Thank you.

ACTING PRESIDENT MEIER: Thank you, Senator Montgomery.

Read the last section.

THE SECRETARY: Section 5. 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, 59.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 543, by Senator Volker, Senate Print 3993, an

act to amend the Penal Law, in relation to gambling.

SENATOR CONNOR: Read the last section.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 8. 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, 59.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 556, by Senator Morahan, Senate Print 6938A, an act to amend the Real Property Tax Law, in relation to making Gold Star Parents eligible.

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, 59.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 640, by Senator Kuhl, Senate Print 6740, an act to amend the Highway Law, in relation to designating.

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, 59.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 675, by Senator Seward, Senate Print 6820A, an act making certain findings and determinations with respect to certain bond anticipation notes.

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

SENATOR CONNOR: Read the last section.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 698, by Senator Skelos, Senate Print 5821A, an act authorizing the assessor of the County of Nassau.

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, 59. Nays, 1. Senator Dollinger recorded in the

negative.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 699, by Senator Volker, Senate Print 6356, an act to amend the Local Finance Law, in relation to the sale of municipal obligations.

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

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, 59.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 700, by Senator Hannon, Senate Print 6546, an act authorizing the assessor of -

SENATOR DUANE: Lay it aside, please.

ACTING PRESIDENT MEIER: Lay the bill aside.

SENATOR MARCELLINO: Lay it aside for the day.

ACTING PRESIDENT MEIER: Lay the bill aside for the day.

THE SECRETARY: Calendar Number 702, by Senator Balboni, Senate Print 6850, an act in relation to authorizing.

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. Nays, 1. Senator Dollinger recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 707, by Senator Trunzo, Senate Print 6869, an act to authorize Glory Zone Ministries.

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. Nays, 1. Senator Dollinger recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

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

SENATOR MARCELLINO: Thank you, Mr. President.

Is there any housekeeping at the desk?

ACTING PRESIDENT MEIER: Yes, there is.

SENATOR MARCELLINO: Take care of it, please.

ACTING PRESIDENT MEIER: Senator McGee.

SENATOR McGEE: Thank you, Mr. President.

On behalf of Senator Bonacic, please place a sponsor star on Calendar Number

686.

On behalf of Senator Fuschillo, please place a sponsor star on Calendar Number 503.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: So ordered, with regard to both bills.

Senator Alesi.

SENATOR ALESI: Mr. President, on page 30 I offer the following amendments to Calendar Number 636, Senate Print 4117A, and ask that said bill retain its place on the Third Reading Calendar.

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

The desk is clean, Senator Marcellino.

SENATOR MARCELLINO: Thank you, Mr. President.

There being no further business to come before the Senate, I move we adjourn until Tuesday, May 2nd, at 3:00 p.m. sharp.

ACTING PRESIDENT MEIER: On

motion, the Senate stands adjourned until Tuesday, May 2nd, at 3:00 p.m.

(Whereupon, at 5:00 p.m., the Senate adjourned.)