NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

March 20, 2001

11:19 a.m.

REGULAR SESSION

SENATOR JOHN R. KUHL, JR., Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT KUHL: The Senate will come to order. I ask the members to take their places, staff to find their places.

I ask everybody in the chamber to rise and join me in saying the Pledge of Allegiance to the Flag.

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

ACTING PRESIDENT KUHL: 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 KUHL: Reading of the Journal.

THE SECRETARY: In Senate, Monday, March 19, the Senate met pursuant to adjournment. The Journal of Sunday, March 18, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT KUHL: Hearing no objection, the Journal stands approved as read.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Skelos.

SENATOR SKELOS: Mr. President, I believe there's a substitution at the desk. If we could make it at this time.

ACTING PRESIDENT KUHL: There is, Senator Skelos. I'd ask the Secretary to read.

THE SECRETARY: On page 21, Senator Lack moves to discharge, from the Committee on Judiciary, Assembly Bill Number 5305 and substitute it for the identical Senate Bill Number 2967, Third Reading Calendar 250.

ACTING PRESIDENT KUHL: The substitution is ordered.

Senator Skelos.

SENATOR SKELOS: Mr. President,

there will be an immediate meeting of the Finance Committee in the Majority Conference Room.

ACTING PRESIDENT KUHL: Immediate meeting of the Finance Committee, immediate meeting of the Finance Committee in the Majority Conference Room, Room 332.

Senator Skelos.

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

ACTING PRESIDENT KUHL: The motion is to accept and adopt the Resolution Calendar on the members' desks. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT KUHL: Opposed, nay.

(No response.)

ACTING PRESIDENT KUHL: The Resolution Calendar is adopted.

Senator Skelos.

SENATOR SKELOS: Mr. President, there's a privileged resolution at the desk, 911, by Senator Maltese. May we please have

it read in its entirety and move for its immediate adoption.

ACTING PRESIDENT KUHL: The Secretary will read Privileged Resolution 911, by Senator Maltese, which is at the desk, in its entirety.

THE SECRETARY: By Senator Maltese, Legislative Resolution Number 911, commemorating the 90th Anniversary of the Triangle Shirtwaist Factory Fire on March 25, 2001, and acknowledging the efforts of UNITE!, the Union of Needletrades, Industrial and Textile Employees, to make American working conditions the safest in the world.

"WHEREAS, It is the sense of this Legislative Body to commemorate the 90th Anniversary of the Triangle Shirtwaist Factory Fire on March 25, 2001; and

"WHEREAS, It is the further intent of this Legislative Body to recognize the ongoing efforts of UNITE!, the Union of Needletrades, Industrial, and Textile Employees, in striving to make working conditions for the American people the safest in the world; and

"WHEREAS, Each year UNITE! commemorates the anniversary of the Triangle Shirtwaist Factory Fire with a wreath and speeches, and members of Ladder Company 20, the first to respond to the fire, toll their bell and raise their ladder to the sixth floor; and

"WHEREAS, The shirtwaist was the uniform of the new woman. The first women to go out to work as 'typewriters' wore it; so did the 'Gibson Girls' that Charles Dana Gibson drew playing golf or croquet. It was the first civilian garment simple and loosely fitted enough to be made in factories by the dozens, instead of custom-made one at a time by dressmakers or tailors; and

"WHEREAS, By the early 1900s, shirtwaists were being made in modern factories, at long rows of sewing machines powered by electricity. Max Blanck and Isaac Harris, owners of the million-dollar Triangle Shirtwaist Company, with operations in New York and Philadelphia, were the 'shirtwaist kings.' Their biggest factory occupied the top three floors of a new,

fireproof building a block from Washington Square in New York and employed about 600 people; and

"WHEREAS, The employees were putting on their hats and coats at quitting time on Saturday, March 25, 1911, when someone noticed smoke curling from the long rag bin under the cutting tables along the windows on the eighth floor. The month's accumulation of linen and muslin scraps caught fire, then the fabric that was laid out on the tables, then the paper patterns strung open on the wire above them, then the big wicker baskets full of bundled work that stood by each sewing machine; and

"WHEREAS, There were no sprinklers. Only three weeks before, an association of property owners had met to oppose the fire department's campaign to require them; and

"WHEREAS, In the Triangle fire, all but one of the terrified seamstresses and cutters on the eighth floor escaped, either by one of the two small elevators or down one of the building's two narrow stairways, each wide enough for only one person to descend at a

time. Somebody telephoned a warning to the executives on the 10th floor, where the fire quickly spread, and many from the offices and the pressing and shipping rooms on the 10th floor, including the shirtwaist kings themselves, caught an elevator or escaped over the roof; and

"WHEREAS, Tragically, nobody told the ninth floor. By the time they knew, they were caught between fires above and below them. Some ran for elevators, others for the doors to the stairs. One set of doors was locked to keep girls from leaving early. The doors to the other stairway opened inward, and almost immediately the crush made it impossible to open them. Soon the stairs were cut off by the fire; and

"WHEREAS, The elevator operators did their best, each making seven or eight trips through the smoke and flames, but as the fire grew, it forced one after another of the desperate, waiting crowd to leap into the open shaft, until finally the elevators could not rise because they were jammed by bodies; and

"WHEREAS, The rest of the

ninth-floor workers were forced to the windows. They stood on the ledges as long as they could, waiting for the fire ladders, but the city's longest ladder reached only to the sixth floor. And as the fire reached out the windows after them, they began to jump; and

"WHEREAS, The date of March 25th holds a special significance for all working people because of this tragic Triangle Shirtwaist Company Fire in New York City that took the lives of 146 garment workers, a tragedy that occurred on March 25, 1911, and led to the first major safety laws in the country; and

"WHEREAS, Every year UNITE!, together with the New York City Fire Department, commemorates the anniversary of the Triangle Fire with a ceremony at the original site of the tragedy; and

"WHEREAS, The death of 146 mostly young, female garment workers at the Triangle Fire started a movement to fight sweatshops which continues to this day; and

"WHEREAS, Mrs. Rose Freedman, the last survivor of the Triangle Fire, passed

away on February 15, 2001, at the age of 107; and

"WHEREAS, Upon the occasion of the 90th Anniversary of the Triangle Shirtwaist Factory Fire, it is the sense of this Legislative Body to join with UNITE! in commemoration of a tragic event of such meaningful significance to the history and purpose of the American labor movement; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to commemorate the 90th Anniversary of the Triangle Shirtwaist Factory Fire on March 25, 2001, and to acknowledge the efforts of UNITE! to make American working conditions the safest in the world; and be it further

"RESOLVED, That copies of this resolution, suitably engrossed, be transmitted to Jay Mazur, President, UNITE!; Edward W. Clark, Executive Vice President, UNITE!; David Melman, Vice President, UNITE!; Bruce Raynor, Secretary-Treasurer, UNITE!; Thomas Von Essen, New York City Fire Department Commissioner; Vincent C. Maltese, President, Triangle

Shirtwaist Factory Fire Memorial Society; the Union of Needletrades, Industrial, and Textile Employees; Acting Commissioner of Labor, Linda Angelo; and the family of the late Rose Freedman, the last survivor of the fire."

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

(Response of "Aye.")

ACTING PRESIDENT KUHL: Opposed, nay.

(No response.)

ACTING PRESIDENT KUHL: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Mr. President, there's another privileged resolution at the desk by Senator Maltese, 908. May we have it read in its entirety and move for its immediate adoption.

ACTING PRESIDENT KUHL: The Secretary will read the privileged resolution, Number 908, by Senator Maltese, in its entirety.

THE SECRETARY: By Senator

Maltese, Legislative Resolution Number 908, honoring and paying tribute to the remarkable and charmed life of Rose Freedman, last survivor of the infamous Triangle Shirtwaist Factory Fire.

"WHEREAS, It is with feelings of great sorrow and deepest regret that this Legislative Body records the passing of Rose Freedman, last survivor of the infamous Triangle Shirtwaist Factory Fire, noting the significance of the loss of a woman with an indomitable spirit; and

"WHEREAS, Rose Freedman died on Thursday, February 15, 2001, in Beverly Hills, California, at the age of 107; and

"WHEREAS, Born on March 27, 1893, in Vienna, Rose Rosenfeld came to the United States from the Austro-Hungarian Empire in 1909 aboard the steamship Mauritania; and

"WHEREAS, Shortly after her arrival, Rose went to work for the Triangle Shirtwaist Company in New York City. The historic Triangle Shirtwaist Factory Fire claimed the lives of 146 Lower Manhattan garment workers on March 25, 1911, and spawned

industrial safety reforms; and

"WHEREAS, Rose returned to Austria after the 1911 fire. Following the beginning of World War I, she returned to the United States and started a family.

"Rose Freedman became an outspoken advocate for the working class and a passionate promoter of workplace safety.

"Surviving the fire, Rose Freedman often remarked, was the first of three miracles in her life. Saving the life of an Austrian spy at the onset of World War I was the second miracle. Seeing two of her children recover from polio was the third; and

"WHEREAS, A painter and avid fan of the Los Angeles Lakers, Rose Freedman was a unique individual with an ageless personality; and

"WHEREAS, Rose Freedman is survived by her three children -- Arlene March, Robert Freedman, and Herbert Freedman -- eight grandchildren, and one great-granddaughter; and

"WHEREAS, The key to Rose Freedman's longevity was her unwavering

attitude. She lived her life with honor, dignity, character, and class; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to honor and pay tribute to the remarkable and charmed life of Rose Freedman, last survivor of the infamous Triangle Shirtwaist Factory Fire; and be it further

"RESOLVED, That a copy of this resolution, suitably engrossed, be transmitted to the family of Rose Freedman."

THE PRESIDENT: Senator Maltese.

SENATOR MALTESE: Yes, Madam President. The resolutions have been read in their entirety, and the history of the Triangle Shirtwaist Factory Fire has been memorialized many years here in this legislative chamber and at the site in Lower Manhattan where, this coming Tuesday, a memorial ceremony will be conducted by UNITE! and the survivors' memorial society, as well as Ladder Company 20, which was the responding company on that Saturday afternoon on March 25, 1911.

The resolution indicates that the majority of the workers were on the ninth floor. Unfortunately, the ladders of the time only reached to the sixth floor, when those survivors that managed to survive the first fire and smoke assembled at the windows, trying to reach the ladders.

The working conditions had been spelled out in the resolution. And these were the sweatshops of the day, sweatshops that as a matter of fact in some parts of our city survive even now and which we are attempting to do something about so that the immigrants of today will not have to suffer a similar tragedy as those immigrants in 1911.

The 146 victims were mostly women, just a few men. As was indicated, the executives on the tenth floor, most managed to escape. Most of the women were young women, ranging in age from 13 to 18, as was Rose Freedman, who was 17 at the time and the last survivor. She exemplified the spirit of many of those women of 1911 trying to earn a living.

Almost all of them were Jewish and

Italian immigrants, recent immigrants from their native lands. Most of them worked a six-day week. This was a Saturday at 4:40 when they were preparing to leave.

The tragedy was accentuated by the fact that the owners had locked the exits to prevent alleged thefts by the employees. As a result, as was indicated in the resolution, the two narrow staircases first filled up. The elevator unfortunately was unable to continue running because so many of the panicked ladies were throwing themselves into the elevator shaft.

It was a terrible tragedy, one that we should ensure never occurs again. It's a tragedy that could possibly occur again, because so many of the abuses of those days are repeated today.

My brother Vinny is the president of the memorial society. I think many times of my grandfather who, in the morning, bid goodbye to his wife and two daughters and never saw them again.

THE PRESIDENT: Senator Connor.

SENATOR CONNOR: Yes, Madam

President. I certainly want to thank Senator Maltese for bringing these resolutions to the floor. And I appreciate his family's commitment through a couple of generations, really, commemorating their personal loss as well as the loss of so many other lives.

I commend to my colleagues the segment of the documentary called "New York," which has probably a 45-minute segment on the Triangle Shirtwaist Factory Fire, has some moving, shocking pictures in that documentary, as well as a lot of eyewitness testimony, people who stood on the sidewalk and literally described how it was raining bodies as these desperate young women would jump from the ninth floor.

The Triangle Shirtwaist Factory Fire mobilized working people, working immigrants in New York City as they'd never been mobilized before. The funeral processions involved well over a hundred thousand workers, marching with the banners of their then-nascent unions that had been unsuccessful.

Indeed, the Triangle -- indeed, the

shirtwaist manufacturers had broken an organizing strike but a couple of years before the tragic fire. That was never to happen again in the garment industry in New York. The ILGWU and the Amalgamated proceeded to organize, they organized an industry on a shop basis as well as an ethnic basis, the entire industry.

This Legislature, Madam President, in the follow-up to the Triangle Shirtwaist Factory Fire, instituted what was known as the Factories Commission. And the then-boss of Tammany Hall, Silent Charlie Murphy, who had been frankly rather conservative, rather cozy with the business interests, the small business manufacturers, the garment manufacturers up until that point, in the aftermath of the fire and the huge outpouring of citizens into the streets, summoned my predecessor, as the Democratic leader of this conference, the first great Senator Robert Wagner, and the then Democratic leader in the Assembly, the great Speaker Alfred E. Smith, and said: "We're getting behind these folks."

And they came to Albany -- by the

way, Silent Charlie didn't say much more than that. That's why they called him Silent Charlie. He just said: "We're getting behind these folks."

And they came to Albany and instituted the Factory Committee, a joint commission of the Legislature that toured the entire state. And from this documentary, they commented something that's no surprise to any of us. The commission went around the state, and at various times various members accompanied the commission because not everyone could do all the trips. With one exception. Alfred E. Smith never, ever missed a single factory inspection, visit, or hearing of this commission that went on for a couple of years.

And as many of the reformers of the day described it, this man, Al Smith, that they thought was nothing more than a partisan hack who had never completed a grade beyond the fourth grade -- he went to school in my district. There's still a plaque on the school -- stood up on the floor of the Assembly day after day after day and fought

for the workers.

Laws were passed limiting hours of work for children. In one instance, visiting a factory upstate, he was assured there were no children employed there. A worker winked at him and pointed at the elevator, which was stuck mid-floors. And when they lowered it, it was crammed full of 11- and 12-year-olds who had been working in the factory, were hidden when the legislative Factory Commission showed up.

The bills passed by that Legislature under the leaderships of Senator Wagner and Speaker Al Smith were really among the first workers' rights legislation in America, limiting employment of children, limiting hours of employment for women and children, providing for sanitation facilities, providing for safety measures. Indeed, it propelled Al Smith a few years later into the governorship. More such progressive legislation came forth.

State Senator Wagner went on to become United States Senator Wagner, passed, under the leadership of President Roosevelt,

the Wagner Act, the fundamental labor relations act in the United States. And indeed, the great New Dealer, Franklin Delano Roosevelt, really copied a lot of his program from the intellectual product of Alfred E. Smith when he was governor of this state and put forth similar measures in this state.

So tragic though the Triangle Shirtwaist Factory Fire was, it became first a wake-up call for New York City, a wake-up call for New York State, and indeed a giant wake-up for the whole United States when it comes to workers' rights, workers' safety, and worker protection.

So it is fitting indeed, particularly in this legislative body, where our predecessors played such a role in the aftermath of the Triangle Shirtwaist Fire, that we commemorate and remember -- and never forget -- the reasons why it happened and the humanity of the victims who were so tragically lost.

Thank you, Madam President.

THE PRESIDENT: On the resolution, all those in favor signify by

saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, there will be an immediate meeting of the Environmental Conservation Committee in the Majority Conference Room.

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

Senator Skelos.

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

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 106, by Member of the Assembly Lentol, Assembly Print Number 1437, an act to amend the Civil Practice Law and Rules, in relation

to requiring.

SENATOR PATERSON: Explanation.

THE PRESIDENT: Senator Volker, an explanation has been requested by Senator Paterson.

Excuse me, Senator Paterson, we're on the noncontroversial calendar. We're moving ahead.

SENATOR PATERSON: Madam President, I apologize. Would you please lay -

THE PRESIDENT: I accept your apology.

SENATOR PATERSON: -- lay that bill aside. Thank you.

THE PRESIDENT: The bill is now laid aside.

THE SECRETARY: Calendar Number 167, by Senator Bruno, Senate Print Number 7, an act to amend the State Finance Law, in relation to changing.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number

177, by Senator Maziarz, Senate Print 1040, an act to amend the Election Law, in relation to deadlines.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 205, by Senator Morahan, Senate Print 1158, an act to amend the Military Law, in relation to extending.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 207, by Senator Seward, Senate Print 2133, an act to amend the Executive Law, in relation to requiring.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 227, by Senator Wright, Senate Print 2678, an act to amend the Highway Law, in relation to designating.

THE PRESIDENT: Read the last

section.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 244, by Senator Bruno, Senate Print 6, Concurrent Resolution of the Senate and Assembly.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 256, by Senator Saland, Senate Print 3398, an act to amend Chapter 705 of the Laws of 1993.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 261, by Senator Meier, Senate Print 1445, an act to amend the Social Services Law -

SENATOR SKELOS: Lay it aside for the day.

THE PRESIDENT: The bill is laid aside for the day, Senator.

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

SENATOR SKELOS: Madam President, if we could call up Calendar Number 256, by Senator Saland.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 256, by Senator Saland, Senate Print 3398, an act to amend Chapter 705 of the Laws of 1993, amending the Economic Development Law.

SENATOR PATERSON: Explanation, please.

THE PRESIDENT: Senator Saland, an explanation has been requested by Senator Paterson.

SENATOR SALAND: Thank you, Madam President.

Madam President, the Linked Deposit Act is one which permits a combination of the private and public sector to encourage small business development by way of loans at below market rates. The original legislation, which was introduced by Senator Bruno, passed in 1993.

The language of the bill provided for sunset provisions. The original bill I believe sunsetted in '95, was subsequently extended, sunsetted, I believe, in '98, and is due to sunset on April 1st of this year.

What this bill proposes to do is to permanentize the linked deposit program and also at the same time to deal with the definition of distressed areas by requiring the use of the most recent census data instead of what I believe was reference to the 1990 census in the original legislation.

The program has been successful, it's a revolving loan fund, and it's a program which provides below-market loans by banks that agree to participate and accept deposits from the state and certain state authorities similarly at below-market rates.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Madam President, if I could interrupt, there will be an immediate meetings of the Investigations, Taxation and Government Operations Committee in the Majority Conference Room.

THE PRESIDENT: There will be an

immediate meeting of the Investigations, Taxation and Government Operations Committee in the Majority Conference Room.

Senator Paterson.

SENATOR PATERSON: Thank you, Madam President. And if Senator Saland would yield for a few questions.

THE PRESIDENT: Senator Saland, do you yield?

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: You may proceed.

SENATOR PATERSON: Senator, has anybody conducted a study or prepared a report about the statewide efficiency of the linked deposit program?

SENATOR SALAND: In terms of efficiencies? Well -

SENATOR PATERSON: Madam President.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Perhaps if I continue the question.

To be more specific, what I'm getting at is that it's my feeling or just

from my experience that the program, while it's effective, has really benefited the upstate communities in a rather larger degree. And those of us who don't live there would certainly like to see this type of planning extended to include some of the five boroughs.

SENATOR SALAND: Senator, I recall, although not exactly the context in which we had a similar exchange dealing, I believe, with this subject when we expanded the program to provide for yet additional types of lenders.

The information which I have, which I believe comes from the economic development people, is that some 42 percent of the projects that had been approved have gone to what are termed targeted businesses. Those are defined as businesses in highly distressed areas, Empire Zone-certified, or minority- and women-owned business enterprises.

The numbers of projects that have been approved in New York City are some 69 projects representing some $27 million in linked deposit assistance. And the definitions again basically control those who

are eligible.

And I think it's important to note that no ineligible applicant -- let me rephrase, no eligible applicant has ever been turned down for a loan. There have been those who have been ineligible. But of some 375 applications, 318 were deemed to be eligible, and all of those 318 were granted loans.

SENATOR PATERSON: Madam President.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: If Senator Saland would continue to yield.

THE PRESIDENT: Senator, do you yield?

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: You may proceed.

SENATOR PATERSON: Senator, I apologize if I in any way implied that there was not a willingness to cooperate with some of the businesses in New York City, because that certainly was not my intention. I was just addressing the reality that my information is that only 6.8 percent of the

approved programs come from New York City.

And I was wondering if you could give any further specificity to the notion that 42 percent of minority and women business enterprises have been approved. Because with such a small percentage coming out of New York City, I was just wondering where all these businesses are.

SENATOR SALAND: If I led you to believe that 42 percent of the applications that are approved were approved for minority businesses, I apologize. That is not what I thought I had said. And let me rephrase what I said previously.

What I believe that I said was that some 42 percent of the projects that were approved were to what are called targeted businesses. And within targeted businesses are businesses defined as those in highly distressed areas. That doesn't necessarily mean that it's a minority-operated business.

Also, Empire Zone-certified or minority- and women-owned business enterprises are included within that category.

SENATOR PATERSON: Madam

President.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: If the Senator would continue to yield.

THE PRESIDENT: Senator, do you yield?

SENATOR SALAND: Yes.

THE PRESIDENT: You may proceed.

SENATOR PATERSON: Senator, I think that is exactly what you said. And I misunderstood it. I'm glad you clarified it for me.

Being that they are designated or in a sense intended for highly distressed areas, can you be more specific as to how many of these businesses are minority and women's business enterprises?

SENATOR SALAND: If you have that information, I'd be very happy to acknowledge it. I don't have it readily available.

SENATOR PATERSON: Madam President, if Senator Saland would continue to yield.

THE PRESIDENT: Senator Saland, do you yield?

SENATOR SALAND: Thank you, Madam President, I certainly would.

I would just continue to suggest, Senator Paterson, that given the data that I've received insofar as applications that have been accepted, it would seem that if there were a minority-operated business that made an application and was eligible, they received that loan.

Because again, what we're being told is all eligible applicants have had their requests accepted. Only those who were ineligible under whatever the criteria might have been were declined.

SENATOR PATERSON: Madam President.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: In answer to Senator Saland's question, I -

THE PRESIDENT: Are you on the bill, Senator? I thought you had a question. Senator Saland did yield, and then he did an explanation. But he yielded for you to ask a question.

SENATOR PATERSON: Yes. And I'm

now going to ask my question, but he inquired of some information from me.

THE PRESIDENT: All right. You may proceed with either/or.

SENATOR PATERSON: Thank you.

On that issue, I don't know what the specific numbers are, Senator Saland. I was really not asking the question to then attempt to snow you with the answer. I really don't know the answer and would be happy to work with you in trying to find it.

My question relates to the publication and the ability of a lot of these businesses to become aware of how effective the linked deposit program could be for them. And I wanted to know what action hopefully will follow this legislation in order that we make this opportunity available for more of the businesses that I'm referring to.

SENATOR SALAND: Well, Senator Paterson, certainly your point and your concern is one which has validity. If you look at the program, it's been an extremely successful program.

If in fact their message is not

resonating far enough and deeply enough throughout the corners of the state, then perhaps it's incumbent upon them to endeavor to get that message out through some type of notification or notice-type proposal, whether it be advertising or general mailings.

SENATOR PATERSON: Thank you, Senator.

Madam President, if the Senator would continue to yield.

THE PRESIDENT: Senator, do you yield?

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: You may proceed.

SENATOR PATERSON: Senator, I notice that you changed a term in the legislation. What is the current-law legal definition of a highly distressed area?

SENATOR SALAND: If you're referring to subsection 2 -

SENATOR PATERSON: Yes, I am, Senator.

SENATOR SALAND: What we have really done is merely omit reference to 1990,

that being the base year when this initial legislation was enacted in 1993, and said that the relevant data must be for the most recent year. And that will enable us to use both a higher wealth ratio, where the Comptroller is called upon to determine wealth ratios, and over in the last part of the bill, the last several lines also makes reference to the most recent census in order to get the more appropriate census data, instead of 1990 data.

So in terms of definition, nothing has changed. What we've done is to try and update the available data upon which these decisions will be made.

SENATOR PATERSON: Thank you very much, Senator.

Madam President, on the bill.

THE PRESIDENT: Go ahead, Senator.

SENATOR PATERSON: I appreciate Senator Saland's interest in trying to encourage other businesses to become eligible. I just think that -- there's nothing wrong with this legislation, but I just think that the New York City participation is way too

low. And even though there is a designation and an intent to go into highly distressed areas, and we certainly appreciate the intent, but the results, if you look at the results, they're -- I see it not acceptable.

Perhaps this legislation will be a prelude to that, and in good faith I'll vote for the legislation. And I'll work with Senator Saland on trying to identify how many MWBEs are actually involved.

I appreciated his interest and his answers and his intentions, but I guess that more than just what has been done to this point is going to have to occur for us to have what would really be a true representation with all of the small businesses and enterprises that could benefit from this legislation.

Thank you.

THE PRESIDENT: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Yes, thank you. Madam President, through you, if the Senator will yield for a question.

THE PRESIDENT: Senator, will you

yield?

SENATOR SALAND: Certainly, Madam President.

THE PRESIDENT: You may proceed.

SENATOR HASSELL-THOMPSON: Thank you, Senator. I apologize, and I realize you must have answered this question, but I'm just going to ask you to answer it again for my benefit, because I did have to step out. And I apologize for that.

But what is the present definition of highly distressed areas? And then, what is the advantage of the redefining as you see it?

SENATOR SALAND: We have done nothing to change the substance of the definition in order to use current data. And the Comptroller is a participant in defining what shall be a distressed area.

In order to use current data, we are getting away from what the original bill provided. The bill, being enacted in 1993, used 1990 data. So in terms of property, the value of property, certainly there are more current evaluation rolls than 1990. I know they're generally a year or two behind. I'm

not going to say I can tell you off the top of my head what year it is, but I have to assume it's somewhere '97, '98, '99, would be the relevant year.

And where there's census data required, we add language also in the subsection 2, which I referred to in my exchange with Senator Paterson, we add language to make reference to the most recent census.

SENATOR HASSELL-THOMPSON: Right.

SENATOR SALAND: So substantively there is no change in the definition, merely the base formulae that are being used are being adjusted to reflect the most currently available data.

THE PRESIDENT: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Madam President, if the Senator will continue to yield.

THE PRESIDENT: Senator, do you continue to yield?

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: You may proceed.

SENATOR HASSELL-THOMPSON: Thank you. Again, if you answered this, again, I apologize.

Why have you chosen to make this program permanent instead of just extending it for a two-year period?

SENATOR SALAND: Well, we have now been through three extenders. The original program, as I mentioned in my opening remarks, was enacted in '93, I believe expiring on March 31st of '95. It was extended, I believe, from '95 to '98. And its most recent form was extended from '98 to 2001.

It has apparently, by -- it is acknowledged by all that it's been a very effective program. The Governor has said that he believes that it has either created or retained some 25,000 jobs during the course of its life span to date, has resulted in hundreds of millions of dollars in loans that have also leveraged a greater amount of private capital as well. The combination of the loans and the private capital comfortably

exceed a billion dollars.

SENATOR HASSELL-THOMPSON: Okay. Thank you, Senator.

On the bill, Madam President.

THE PRESIDENT: Senator.

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

Normally when I stand here I talk mostly on issues that seem to reflect social services where, for a short period, a window of my life, I served on the former Governor's Task Force on Minority and Women Business Development and helped to write a lot of the language that now exists in 15A.

And so I am appreciative of these kinds of efforts to make this permanent, primarily because we have been -- I think we've been very successful, particularly - and your statistics help to bear out some of the belief that I have, is that we are better able to create employment opportunities through these small businesses, more so than in large businesses. And by encouraging and by doing those things necessary to make their ability to do business better and easier,

somehow we indirectly help to create and generate small business activities in our communities.

So I'm very supportive of this bill, and I congratulate you, Senator. Thank you.

THE PRESIDENT: Does any Senator wish to be heard further?

Senator Smith.

SENATOR MALCOLM SMITH: Thank you very much, Madam President. Madam President, through you, if the Senator would yield for a couple of questions.

THE PRESIDENT: Senator, do you yield?

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator M. Smith.

SENATOR MALCOLM SMITH: Thank you very much, Madam President.

THE PRESIDENT: You're welcome.

SENATOR MALCOLM SMITH: Senator, I'm just a little curious with regard to -

SENATOR SALAND: Senator, can I

ask that you just speak up a little louder?

THE PRESIDENT: That might help too. Go ahead, Senator.

SENATOR SALAND: Absolutely. Order will help.

SENATOR MALCOLM SMITH: Yes, thank you.

With regard to New York City, I note that I guess about 6 percent of the approved projects were approved down in New York City, which come to somewhere about 7 percent of the 300 and so million dollars that has been awarded to the project. Has anyone done any research or investigation as to why that number is so low, given the dollars and value that has been deposited in New York City?

SENATOR SALAND: Quite candidly, Senator, I couldn't hear all your data, but I heard your question. And your question is has anybody -

THE PRESIDENT: Senator, I'm going to ask for order again, because I think part of the reason you both are having trouble hearing is the noise in the chamber.

Go ahead, Senator Saland.

SENATOR SALAND: Thank you, Madam President.

Your question was -- well, let me ask you if would just rephrase or -

SENATOR MALCOLM SMITH: Well, basically the numbers, as it relates to projects awarded and the value of those that have been awarded in New York, seem very low. And my question simply is has anyone done any investigation as to why that is so.

SENATOR SALAND: To my knowledge, there hasn't been an investigation.

My understanding is that there's over 150 banks in New York City that participate in the program. It may well be a matter of marketing. Who's responsible for that marketing, whether it's the banks or whether it's Empire Development, certainly is an open question. But you would think that the banks would be interested in aggressively marketing this type of program because it - from all indications, it's been an extremely successful program.

SENATOR MALCOLM SMITH: Madam

President, through you, if the sponsor will continue to yield.

THE PRESIDENT: Senator, do you yield?

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: You may proceed.

SENATOR MALCOLM SMITH: This question may be a little bit -- may seem a question with some optimism, but has there been any thought given to what happens when an area is no longer distressed? And what does that mean for the program and how is it exited out of that area, or is it actually exited?

SENATOR SALAND: Well. What is distressed, for purpose of this linked deposit program, is defined in the State Finance Law. You may have heard some of the earlier discussion in which I said we're doing nothing to change the existing definition of distressed -- highly distressed areas are defined in Section 213 of the State Finance Law. And all we're doing is changing, in effect, the formulae to reflect current data.

The aim of this program is to deal

with businesses at least in part in those highly distressed areas. If in fact an area is able to succeed, whether it's in part or large part attributable to this type of a program, it certainly establishes a pattern and a growth that only augurs well, and I would assume would attract additional capital simply because it has shown that it's an area that is a growing area, that's responsive to business, that's looking to create jobs.

So I think in part the market will respond to an area that has expanded beyond the definition of highly distressed. There may be other programs that are out there. I couldn't identify those programs for you, Senator Smith. But it is -- it's a problem well worth having to deal with.

SENATOR MALCOLM SMITH: Madam President, if the sponsor will continue to yield.

THE PRESIDENT: Senator, do you continue to yield?

SENATOR SALAND: Yes.

THE PRESIDENT: You may proceed.

SENATOR MALCOLM SMITH: I also

noted in the bill itself, the last section you talk about -- let's go to Section 2(b), I guess it's line number 5. But they talk about the Empire Zones not being considered distressed areas. And can you explain why that is so and what's the disadvantages?

SENATOR SALAND: Well, the Empire Zones are already benefiting by certain public policy decisions that have been made to provide tax credits, whether they be local tax credits by way of property tax, wage credits. There's a host of benefits that are focused on Empire Zones. And they too, certainly in many instances, have proven to be a very, very strong barometer of success in terms of economic development.

So what we're looking to do with the linked deposit program is to try and assist those areas who don't already have all of those public benefits that have been provided by way of policy when the Empire Zones were created, expanded over the course of this past decade or more.

SENATOR MALCOLM SMITH: Madam President -

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Senator Smith, if I could just interrupt, there will be an immediate meeting of the Labor Committee in the Majority Conference Room.

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

Senator Smith.

SENATOR MALCOLM SMITH: Yes, Madam President, if the sponsor would yield for one other question.

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

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Smith.

SENATOR MALCOLM SMITH: If in fact there is a, quote, unquote, small business, minority business that is in the zone and given -

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

SENATOR MALCOLM SMITH: If in

fact there is a small business, a minority business, woman-owned business that is in the Empire Zone, however, they don't meet the standards by which they can benefit from some of the benefits that the Zone offers and a linked program could be beneficial to them to get them to that level where they can now take advantage of the Empire Zone benefits, is there a way in which a business can still take advantage of that, or would this bill preclude them from doing so?

SENATOR SALAND: Senator Smith, let me stand corrected. Under the State Finance Law that I referred to before, Section 213, under the definition of eligible projects, which is subsection 12, under subsection (c) of that subsection, it provides for certified businesses located in economic development zones and for retail business located in highly distressed areas, projects that will create or retain full-time, permanent jobs within the economic development zone or highly distressed area, as the case may be, would be defined as an eligible project.

SENATOR MALCOLM SMITH: All right. On the bill.

THE PRESIDENT: Go ahead, Senator.

SENATOR MALCOLM SMITH: Senator Saland, first of all, let me thank you for that latter definition. Specifically in New York City where Empire Zones exist, sometimes we have some overlapping where some of these businesses that are a little bit less fortunate, they don't have the standards necessary to meet the Empire Zone benefit threshold. I myself am very concerned about that, and I'm glad to hear that there is a potential for them to still be a part of that.

What I do have some more concern about, and I'm hoping through the bill and maybe through some further discussion perhaps Senator Saland and myself can have, is the marketing aspect of this particular program. It just sort of boggles my mind that in New York City you can have 150 banks, as you said, that are involved with the program and only 6 percent of the projects approved actually are in downstate. And of that

$306 million I believe that was actually approved for funding, only 7 percent went to New York City businesses.

And clearly one of the things that I think is important to the existence of any program is you have to spend your money. And there's no sense in coming back for more if you can't spend what you already have. And I think New York City can not only be helpful in that regard, but the need is there.

So my hope is that there is at least some discussion, and I would offer my help in any great degree to make sure that the marketing of this program is one that will assure that these numbers adjust proportionately, so that when we come back and do the further enactment for another two years that perhaps -- or it's permanent, I should say, that New York City will be represented in terms of the amount of dollars that it has actually benefitted through the program.

Thank you.

THE PRESIDENT: Senator Brown was next.

SENATOR BROWN: Thank you, Madam

President. Through you, would Senator Saland yield for several questions.

THE PRESIDENT: Senator, will you yield for a few questions?

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: You may proceed with a few questions, Senator Brown.

SENATOR BROWN: Thank you.

Senator Saland, I just listened to some of the statistics on the linked deposit program in the year 2000, indicating that there were 878 projects approved for a total of 306 million. And I see how little the New York City area -

SENATOR SALAND: Would you suffer an interruption, or point of order, if I may.

SENATOR BROWN: Sure.

SENATOR SALAND: I didn't present that data.

SENATOR BROWN: No, I understand.

SENATOR SALAND: Oh, okay. I haven't seen that data. Okay?

SENATOR BROWN: Yeah, I understand. I understand. It's actually in

the annual report, Senator Saland, which breaks out the success of the program.

And in the annual report, just from looking at which areas received money, I was able to see an amount for New York City. But I'm wondering, do you know how well the upstate region -- Buffalo, the City of Niagara Falls -- has done in terms of receiving some of these loan funds?

SENATOR SALAND: I do have a table. Let me see if I can identify it.

Your question is dealing with the most recent year, the year 2000?

SENATOR BROWN: Yes, Senator.

I believe the total amount approved was $306 million. And it looks like the percentage to New York City is low. I'm hoping equally the percentage received by the upstate region, cities like Buffalo and Niagara Falls, is not as low as the percentage received in New York City.

SENATOR SALAND: Perhaps, if we could, so that we're on the same page, could you tell me whether you're looking at the linked deposit report or the small business

development center report? Because if it's the small business development center, linked deposit is only a portion of that.

SENATOR BROWN: It's information that was taken out of the linked deposit program annual report.

But perhaps you don't have that data, Senator, in front of you. So if I may, let me ask another question.

Madam President, through you, may I -- with Senator Saland's -

THE PRESIDENT: You may proceed with another question. You had authorization for a few.

SENATOR BROWN: Thank you very much.

Senator, are there certain businesses that are not eligible to -- small businesses that are not eligible to participate in the linked deposit program in certain categories?

SENATOR SALAND: Generally there are limitations on retail, loans to retail businesses. They have to meet certain criteria, including being in a highly

distressed area. And I believe there are certain job growth criteria that they have to meet also.

There are limitations. They don't have blanket authority to be in the program.

SENATOR BROWN: Then, Senator, basically what your legislation is doing is just updating the census data?

SENATOR SALAND: It's doing two things. That is one of the two things that it's doing. It's providing for most recent data, both property valuation and census data -- that's one component. And the other is taking a program that has sunset twice previously, and is due to sunset by the end of this month, and permanentizing it.

SENATOR BROWN: And, Senator, I know that you have spoken to this. In my community, I'm not aware of it being well-known or well-utilized. And also, I'm concerned about how it works for minority- and women-owned businesses. Do you have any data for the upstate region at all?

SENATOR SALAND: I have some breakouts. And you may have heard me earlier

respond to Senator Paterson regarding projects. Nothing that I show on the table that I have corresponds to any of the information that you just gave me.

So, you know, I can -- there's a host of regions, 10 to 12 regions that are listed, and it shows projects on those regions. As I've said previously, certainly this is in part -- I think in part your concerns have to deal with marketing. I don't believe they have to deal with the substance of the bill. I'm not aware of anybody who would claim that this is not an effective program.

And I don't know if you were in the chamber at the time, perhaps. In my opening remarks, I mentioned that there has never been, apparently, an application for which the applicant was eligible to receive the loan that didn't receive the loan, although there are a number of ineligible applicants who were declined.

And it's a revolving loan program. The loans are of short duration. That may influence the decisions of some as to whether

or not to get into the program. Because the loans are generally of a duration of a couple of years. So people may decide that's not a long enough term for them to try and participate in this type of a program.

But the program has been, by any standard, a success. And I can only suggest to you that if the marketing has been inadequate in your area or your district, you may want to at least participate in making it better known by working through your local chambers or chambers of commerce or trying to work with perhaps your local media to highlight the success of it.

SENATOR BROWN: Thank you, Senator.

Madam President, if I may, on the bill.

THE PRESIDENT: Senator Brown, you may proceed.

SENATOR BROWN: Thank you. I want to thank Senator Saland for responding to my questions.

I just recently received some information on the program from Mr. Gargano

and was interested in receiving the information and reading about the program and learning about the kind of services that it provides to small businesses. Upon reading about the program, though, I was struck because during my tenure as a City Council member in the city of Buffalo, I had not heard a lot about the program.

And as a council member, of course I'm always approached by small businesses, minority-owned businesses, and women-owned businesses looking for ways to access resources. And this did not appear to me to be a program that the business community in the area that I now represent as a State Senator -- Buffalo, Niagara Falls -- and I'll be looking more into this, had a lot of information about or was accessing, and I'm a little bit concerned about that.

Particularly in Buffalo and Niagara Falls, the urban areas where a large percentage of minority businesses are located are tremendously distressed, with a very high unemployment rate. And this certainly sounds like a program that those types of businesses

could benefit from.

So, Senator Saland, I will be following your suggestion to reach out to the regional Empire State Development Corporation Office and try to get some data on the program and how it's operated in the upstate region and see what service that I can be in trying to get this information about the linked deposit program to businesses in my region so they can take advantage of it.

Just recently, as probably you all know, the census data was released, and Niagara Falls lost about 10 percent of its population and the City of Buffalo lost about 10 percent of its population. And I think that this can be attributed directly to the poor economy in those areas. And certainly anything that can be done to energize those economies and help businesses to grow and create jobs is important to the health of those communities and their citizens.

So I do support this legislation and will be working to try to bring this linked deposit program to the attention of businesses in my district.

Thank you.

THE PRESIDENT: Senator Oppenheimer.

SENATOR OPPENHEIMER: I'm very supportive of moving to the current census figures, because that will definitely benefit my area.

I have one small question, if the Senator would yield for a question. It probably takes one word in response.

THE PRESIDENT: Senator, do you yield?

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: You may proceed.

SENATOR OPPENHEIMER: You might have answered this. Are there any plans to expand priority lending beyond just government contracts to the women- and minority-owned-business program?

SENATOR SALAND: There's nothing -- I might not be the appropriate person to answer your question, Senator. There's nothing substantively that changes in the program. We're permanentizing a program

that's due to sunset, and we're providing more current data in order to help make decisions with regard to highly distressed areas.

There may be initiatives that do what you have just alluded to, but I can't tell you that I'm personally familiar with them. You might want to contact Empire Development and check that out with them.

SENATOR OPPENHEIMER: Thank you very much, Senator Saland.

On the bill. It's a pleasure to see us using current statistics. It doesn't happen all that often in state government. And I think that will be beneficial to downstate.

And I think we do have to address the issue of having a better outreach downstate than we have had, because we really ought to be accessing a whole lot more than 6 to 7 percent of the funds.

But in the case of my county, we - there are two reasons that really make me appreciate this bill. One is that we view small business as being what we call big business in Westchester. Because our big

business, we have had many large corporations downsize in our county. I mean, some of the Fortune 500 companies. And when they downsize, it's many, many thousands and thousands of jobs that get taken away. And we have had -- many people have decided to stay in Westchester and start small businesses.

So I think that this can be more beneficial to us in the future, particularly in light of the new census figures. Because the new census figures show us as having an enormous increase in the amount of immigrants in our county, and they are looking to starting small businesses.

So while we have not utilized these funds too much in the past, I am hopeful with the new census figures that my county will be able to access some of this linked deposit money and benefit some of our newest residents in the county, the immigrants that have come in in the last decade.

So thank you, Senator Saland.

THE PRESIDENT: Does any Senator wish to be heard further?

Then the debate is closed. Read

the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

THE PRESIDENT: The bill is passed.

Senator Skelos.

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

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

Senator Skelos.

SENATOR SKELOS: Madam President, would you call up Calendar Number 106, by Senator Volker.

THE PRESIDENT: The Secretary will read Calendar 106.

THE SECRETARY: Calendar Number 106, by Member of the Assembly Lentol, Assembly Print Number 1437, an act to amend

the Civil Practice Law and Rules, in relation to requiring.

SENATOR PATERSON: Explanation.

THE PRESIDENT: Senator Volker, Senator Paterson has requested an explanation.

SENATOR VOLKER: Madam President, this is one of our early session success stories, I hope. This is a bill that came initially from the New York City Bar Association. And it has been adopted by the New York State Bar Association -- what is it, trust and estates section, I guess -- in an attempt to straighten out some court cases and law relating to the waiver of professional privileges.

It tries to set up a uniform procedure for the waiver of professional privileges when the person, the communicant has died or is incapacitated or disabled. There have been various statutes and, in addition to that, there are some court cases that have left this area in some cases in limbo.

What it means is that -- what this bill attempts to do is to provide the ability

to, for instance, a representative, an executor, an administrator, or in some cases trustee or whatever, to be able to get around the so-called waiver that we used to call the dead man's statute waiver in these cases, and allow a court to deal with all the facts in the case.

It does have a procedure to refuse to disclose if it would disgrace the memory or reputation of the communicant and so forth, which -- and there are some protections in it to try and make sure of that.

The bill, as you heard, has already passed the Assembly. Joe Lentol and I have having working on this for a number of years. And a lot of lawyers have told us that this is something that could be extremely useful.

ACTING PRESIDENT KUHL: Senator Paterson, why do you rise?

SENATOR PATERSON: Mr. President, if Senator Volker would yield for a few questions.

ACTING PRESIDENT KUHL: Senator Volker, do you yield to a question from Senator Paterson?

SENATOR VOLKER: Certainly. Sure.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR PATERSON: Senator, I'd assume that since the Bar Association is in support that there would not be any cases - and this is my fear, that there would be cases where the disclosure of information would be forced upon a professional even though there had been an express desire on the part of the communicant, as is described in Section 103 of the Surrogate's Court Procedure Act, that there would be an express desire not to have this information revealed. Is that correct?

SENATOR VOLKER: Right, I think the thing -- yeah, that's correct.

What they're really looking for here, or what the bar has suggested, is that in reality sometimes the lack of a waiver actually works in reverse. That is, it works against the best interests of the person who the person involved is representing. And in effect what happens is that the person is virtually barred from making certain

representations because of the present statute.

By the way, there was opposition initially, just to put it all on the record. Initially the New York State Psychological Association, I think, objected back in '96. They've withdrawn their objection now since we made some amendments to this bill.

As far as we know, there are no objections by anybody.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, if Senator Volker would yield.

ACTING PRESIDENT KUHL: Senator Volker, do you continue to yield?

SENATOR VOLKER: Certainly. Sure.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR PATERSON: I want to start with your last point, Senator. And that related to the objection of many who work in the psychology field toward this legislation. And I think what their objection was, and I'm

just going to raise it with you -- and perhaps not only can you persuade me, but you might even let me know how the psychologists were persuaded.

I think that their objection was that it appeared that the court would be making the determination of what was incapacity and that the court would be making the determination of at what point we would want the professional to speak on behalf of the communicant.

Is that what their objection was?

SENATOR VOLKER: Senator, to be perfectly honest with you, I really am not exactly sure what their objection was, since it hasn't been made since '96. But I think you're right. I'm pretty sure that -- my recollection is that they were concerned.

You and I know that the problem, I think, is that we have to have somebody who is an arbitrator. And in our system, we set up a system where in effect the arbitrator is the judge. And it's designed to be in the best interests of the person who is involved, obviously within reason.

I think that the reason that the psychologists withdrew their objections is that the assumption, if there was some sort of objection on the terms -- in terms of something that the psychologists could offer, the judge -- that an attorney could clearly bring in a person to testify to that, and that they would be able to make their point. And so someone would have to decide; in this case, it would be a judge.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, if Senator Volker would continue to yield.

ACTING PRESIDENT KUHL: Senator Volker, do you continue to yield?

SENATOR VOLKER: In fact, Senator, maybe I could -- my learned counsel here has just informed me that the language added to deal with the psychologists -- and since my son is about to get his doctoral in clinical psychology, I suppose it's something I'm a little sensitive to. It says: "The guardian of a person under disability is defined in Section 103 of the Surrogate's

Court Procedure. And if and to the extent that the order appoints such guardian, the Mental Hygiene Law or subsequent order expressly provides the guardian is to be the personal representative of the person under this" -- for purposes of this section, and it goes on to tell how this would work and so forth, and -- in an attempt to deal with some of the issues that they were concerned about.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Thank you, Senator. If the Senator would continue to yield.

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR PATERSON: Senator, if the person who was holding the privileged communication happened to be the spouse, is there any conflict based on the -- in other words, which values are favored by the court, the spousal rights or what would be the new standards that we're setting for communication of a decedent or incapacitated individual's

confidential communication?

SENATOR VOLKER: I think the way that this is structured is that the -- if you are a representative, the main interest would have to be the person who is represented by that -- is represented to the court. So the main interest would be that of the decedent or the disabled person or whatever.

But the court also would have to consider the interest of a spouse, whether it be whatever. But I think the main interest, if you look at the way that this is structured, would have to be the interests of the person that is represented.

SENATOR PATERSON: And just one other question -

SENATOR VOLKER: Sure. Yup.

SENATOR PATERSON: -- before I get to my point on this, Senator. And that relates to how this is effected in other states. Is this something where we are going into a new area, or is this something that the -- I'm just trying to get an idea of where we stand with relevance to the rest of the country on this.

SENATOR VOLKER: It's a very good question. I suspect strongly that we probably are moving ahead of other states in this area. I'm reading a memo here of the New York State Bar Association, and it really obviously is talking primarily about this state. But I strongly suspect that we probably may be ahead of many other states in trying to develop uniform rules in a disclosure area. I really don't have any information as far as other states are concerned.

SENATOR PATERSON: Okay. And if Senator Volker would yield for another question.

ACTING PRESIDENT KUHL: Senator Volker, do you yield for another question?

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR PATERSON: Senator, I'm just curious about the point at which the court instructs the lawyer to divulge the - what was previously privileged information. In a civil case, is the law that we're passing protecting this new communication from an

allegation from the other side that it's actually hearsay information?

In other words, because we've opened the door to allow this to happen, could we get a challenge as a hearsay exception from the adversarial party in a civil case, is my real question.

SENATOR VOLKER: You know, this is designed -- it's designed really to protect the person who is deceased or disabled or whatever, primarily. So that when you're talking about this -- and I'm just reading here another section that relates to physicians, psychiatrists, and so forth. And it talks about how the privilege -- how this privilege would be set up.

The privilege in effect would have to be invoked or waived, as I understand it, by the person who is, depending on the situation, the person who is the representative. So that it would be the best interests, in effect, of that person who is the representative to be able to waive this privilege.

If not, why, then, that person

would presumably be opposing, for one reason or another -- would probably oppose it, and the judge would then be in the situation where the waiver could be -- wouldn't actually happen.

SENATOR PATERSON: It would be challenged.

SENATOR VOLKER: It would be challenged, right. Exactly.

SENATOR PATERSON: So therefore, Senator, what is really happening in this situation -- and I guess this is what takes it out of the hearsay rule, is the fact that - and this is my next question, if the Senator would yield.

ACTING PRESIDENT KUHL: Senator Volker, do you yield to another question?

SENATOR VOLKER: Yup.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR PATERSON: That for want of a better comparison, this would in a sense exact on the representative a kind of power of attorney, almost not only literally but figuratively, that this person, who is an

attorney but sometimes is not in these proceedings, is given the power to speak for this individual and therefore, since it's been agreed to, then it really wouldn't qualify as hearsay.

That's my interpretation. I'm just wondering what you thought of it.

SENATOR VOLKER: Yeah, that's right, Senator. I think it's almost like the health care proxy extended -- it may be a bad analogy here.

If the person who -- the representative sort of stands in the stead of the person who has died or is disabled or whatever. And, you're right, not -- that would negate, in a sense, the hearsay rule, depending on whether it would have benefited him or didn't benefit him. And that person would stand in the same stead as the person who is deceased or disabled.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: Mr. President, a final question for Senator Volker.

ACTING PRESIDENT KUHL: Senator

Volker, do you continue to yield?

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR PATERSON: Senator, what I'd like to do is to just kind of reflect on the bill myself and just get your reaction to it. I don't see any problem with it, particularly with the number of organizations that support it.

I was wondering if you would just state what the confusion has actually been. Because my original premise, my original thought when I read this bill is wouldn't the person's representative be really the better judge of what the wishes of the decedent or the incapacitated person is, or wouldn't the representative be better able to assess what would disgrace the reputation or memory of the decedent in these types of cases.

Why would we turn it over to the court, who presumably is rendering a judgment without all of the information, as the person's legal or otherwise representative has?

SENATOR VOLKER: Well, Senator, I think that the reason for this legislation, more than anything, relates to the fact that there are privileges that are held by different individuals -- that is, different areas: physicians, for instance, lawyers, all that sort of thing. And what is trying to be done here is to develop a uniform procedure.

The judge -- the job of the judge really is to deal with the issue of the person who is the representative making his or her contention, assuming to waive, based on the basis of what's in the best interests and what evidence there of what that person indicated or whatever, in the best interests of the person who is being represented.

So I guess the answer is it would become pretty obvious to any judge that if something that would be allowed in would clearly disgrace the person, that representative would be absolutely -- their charge would be to uphold that. And if for some reason that person doesn't do that, then I guess it would be the judge's -- someone even other than that representative could make

that contention.

But it would be presumed to be the individual who is the representative who would make the contention, and the judge would just rule in the favor of the person that that evidence couldn't come in because it would disgrace that person or create a problem, you know, after the person's death -- the memory or the reputation and so forth.

ACTING PRESIDENT KUHL: Senator Paterson.

SENATOR PATERSON: I want to thank Senator Volker very much for his answers.

Mr. President, on the bill.

ACTING PRESIDENT KUHL: Senator Paterson, on the bill.

SENATOR PATERSON: In spite of my anxiety over the court making the final determination when the court could not have had the requisite information that I think would be needed to make that determination, when that would actually lie with the representative, and we also have the tricky issue of people who are incapacitated who at

times may not be incapacitated -- they may be in full possession of their faculties at certain periods and may have changed a will or a codicil or something -- and this behavior and conduct would be best apprised by the person's representative at some proceeding.

It does seem that this is going on a lot. And what the Bar Association wanted to do was to codify it, because the laws are too strict on this right now. And rather than just working around the law and making the law void for its vagueness, they have tried to really write it into our current law, and I commend them for that.

And in spite of the fact that I just have that apprehension, I would be willing to look at the fact that they've been through this and researched this, and certainly Senator Volker is up on that, and for now I'll defer to their judgment and vote for the bill.

Thank you, Mr. President.

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

SENATOR DOLLINGER: Mr.

President, will the sponsor yield to a couple of questions, please.

ACTING PRESIDENT KUHL: Senator Volker, do you yield to a question from Senator Dollinger?

SENATOR VOLKER: Yes.

ACTING PRESIDENT KUHL: He yields.

SENATOR DOLLINGER: Senator, as always, these bills that come from you have tremendous thought behind them. I'm encouraged by the fact that this bill may become law. But there are a couple of things I just want to clarify for the record and make sure I understand.

Through you, Mr. President, the first question. The bill only applies to actions brought under either the Surrogate's Court Procedure Act or the Estates, Powers and Trusts Law. Why isn't it applicable to all civil actions under the CPLR?

SENATOR VOLKER: Senator, my counsel, in typical fashion, gave me the answer -- which I was pretty sure was the answer -- and it's one reason why this bill is

now before us from the Assembly, because the Assembly wouldn't go along with anything else. A very good legal reason.

SENATOR DOLLINGER: The old Assembly-won't-go-along-with-it answer, Senator? I can appreciate that.

SENATOR VOLKER: I mean, this bill has been here since '96, and we've been trying to get an agreement. And very honestly, we've been negotiating it. And that's really the reason that it's restricted as it is.

And if you kind of read the memo, the memo actually talks about a little bit broader bill.

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

ACTING PRESIDENT KUHL: Senator Volker, do you continue to yield?

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR DOLLINGER: Senator, I'm just trying to make sure I understand how this

progresses. Because there are different waivers triggered by the different sections under different circumstances.

As I understand, Section 3 says that the personal representative shall have the ability to waive or decline the waiver of the privilege under almost any circumstance.

SENATOR VOLKER: Yeah, that's pretty well true. And then remember here that the judge doesn't get involved, essentially, unless there is a dispute. I think that's one thing that should be understood here.

Basically, the -- one of the issues here is that if somebody has to raise an objection or whatever, it is -- by the way, it is presumed that the representative, under the law, is supposed to be acting in the best interests of the person represented, under present law. So when a person either waives or doesn't waive, it is presumed that that person is acting in the best interests, because under the present law, the Surrogate's Procedure Act and Estates Powers, the person is mandated to do that.

SENATOR DOLLINGER: Right.

Through you, Mr. President, if Senator Volker will continue to yield.

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: Senator Volker, do you yield to another question from Senator Dollinger?

SENATOR VOLKER: Yes, I do.

ACTING PRESIDENT KUHL: The Senator yields.

SENATOR DOLLINGER: Your answer, Senator Volker, leads to the exact reason for my question. Oftentimes, as you know, the beneficiary of an act by the testator, either a gift just before death or a gift in the will itself, is also the personal representative. And so as a consequence -- and as you know, very well know, since you do a bunch of Surrogate Court work, the privilege can be used both as a sword and as a shield.

And my question is, if the personal representative is the beneficiary of that gift, are they permitted to use the -- to assert the privilege as a shield to protect the nature of their own gift?

As you know, I know, Senator, that

gift would be presumed to be valid because it was made by a testator who was aware of his faculties and conscious and able to make their own judgment. And then a contestant, a brother or sister who's left out of the will and finds there's nothing left in the will walks in and says: Wait a second, I want you, Mr. Attorney, to testify about the conversation that you had with my dad about a gift that he gave to my brother -- who happens to be the executor -- and the executor says, Wait a second. I'm not going to allow that. I'm going to assert that and silence the attorney not to disclose that.

SENATOR VOLKER: Well, as you know, the situation essentially is that now we really don't change that. But that would set up a situation, by the way, that if somebody was contesting, then that would set up a situation where whatever the decision of that representative is would be something that the judge would then look at.

As you and I both know now, the bar and actually the Court of Appeals has set up some really much more stringent guidelines on

what has to be done if you draw a will and you are the executor, and especially if you're a beneficiary, there are certain procedures that you have to go through. In fact, a lot of attorneys have gotten very nervous about that, as I think they should on these kinds of proceedings, just because of that.

So we don't change any of that, any of that additional. And I would think if an attorney, for instance, who was also an executor and a beneficiary were in this kind of situation, it would probably be virtually an automatic question for the judge of whether his waiver of something might be in his best interest.

I think the only argument is always the argument, and the question is presently, if no one objects, it is true, then, it's really the surrogate just makes a decision based on whatever facts he has there.

Our surrogate, when he sees something like this, by the way, irrespective of this waiver or not, really tends to be very, very cautious, because he knows that these are the kinds of things that can be

very, very touchy and have led to huge criticism.

But this really doesn't change that situation as far as the attorney-executor-beneficiary situation.

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

ACTING PRESIDENT KUHL: Senator Volker, do you continue to yield?

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR DOLLINGER: In Section 4 of the bill, Senator, you set up a provision under which the privilege could be waived by any party in interest. And my question is, just to clarify this, does this mean that if the -- a representative asserts the privilege, if it involves one of the various types of transfers that's talked about in this bill - gratuitous transfers, pretestamentary transfers -- is the suggestion that any party in interest can force the waiver by the personal executor, or -- I don't understand

how that works with the seeming reservation of the right of the personal representative to either waive or decline to waive it in the previous section.

SENATOR VOLKER: I think what they're saying here is that if there is a continuation that the waiver would be -- you know, the waiver by the representative would cause irreparable harm, for instance, to a surviving spouse or distributee or whatever, and there's something that is not in the best interests -- for instance, could be not in the best interests of either the person represented or the surviving spouse, that then they could make an objection and at least put in whatever continuation they had, whatever evidence they had.

That doesn't mean, by the way, that the waiver would occur. It just means that there is the ability to at least make your argument before a judge. And remember, by the way, that's one of the things -- this limitation to Surrogate's Court now is essentially what we're talking about. And I suppose that might be more of a problem. I

think that's probably one of the reasons the Assembly was nervous, if you allowed this outside of Surrogate's Court.

SENATOR DOLLINGER: Through you, Mr. President, I have just one other question on this bill, if Senator Volker will continue to yield.

ACTING PRESIDENT KUHL: Senator Volker, do you continue to yield?

SENATOR VOLKER: Yes.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR DOLLINGER: Senator, you use as a term of art in this bill, which is the test for a court order granting access to look beyond the privilege, and you talk about if it would tend to disgrace the memory or it would cause substantial and identifiable harm to others.

Could you just give an example of what you intend by that? And again, the reason why I ask this question is because clearly, if someone walked in and said, The testator gave me a million-dollar gift before he died and therefore it doesn't go to his

son, it goes to me instead, I mean, there's a serious question as to what that identifiable -- substantial and identifiable harm.

I know we use those terms a lot. But what do you envision as meeting that test?

SENATOR VOLKER: Well, you can envision, I guess, a number of things. But, for instance, the hidden lover -

SENATOR DOLLINGER: Paternity question or -

SENATOR VOLKER: Right. There's a number of things that may come to mind that if it were -- if it became common knowledge or, you know, was allowed to -- could in fact not only embarrass the dead person or whatever, or the disabled, but also the family, the surviving spouse, a series of things.

I think that's what was really envisioned there. Whether it's the attorney's affair or the affair of the person who is represented.

SENATOR DOLLINGER: Through you, Mr. President, just briefly on the bill.

ACTING PRESIDENT KUHL: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I commend Senator Volker for his persistence. This bill, which the Assembly has passed, ought to become a law.

But like many other bills, this is one that's going to have an interesting round through the courts. I think that people will look at it and suggest -- and I understand the Assembly wasn't willing to pass the civil practice portion of this. But it's a shame we're not doing this in civil practice as well, because this very issue -- that is, the exercise of a privilege on behalf of a deceased -- comes up in real property transfers, it comes up in gift transfers, it can come up in corporate stock disputes.

There are a whole gamut of potential instances in which the assertion of the dead man's privilege or the assertion of a privilege between, as this bill affects, lawyers, doctors, psychologists, and social workers, where those assertion of privileges can really stimy a litigant at finding out the

truth.

Two other quick points, and I'll address the one I -- the last one I addressed with Senator Volker. The most interesting thing about the phrase "substantial and identifiable harm to others" -- Senator Volker properly points out what could it be, the paternity question, things that involve moral judgment. The only problem with that, Senator Volker, is that those are the hotly contested cases.

Those are cases where an unaffiliated child shows up and claims paternity, or there are people outside the family chain who are beneficiaries in a will. And those are the kind of hotly contested issues in which the privilege is directly implicated.

And so I just think the courts are going to be searching for some test of that, not -- remember, we're not talking about in this section of the bill the harm to the individual, we're talking about the harm to others. And I think it will be interesting to see how the courts try to fashion a test for

what that really means.

We've set the bar pretty high. We've set it as it has to be substantial and it has to be identifiable. But I just think if we had the ability to go back and perhaps refine that definition or give the courts a little bit of guidance, it would be well-advised. I understand that the Assembly, somewhat being dragged along on this bill, may not want to do that. But I think that will be a source of some uncertainty in the courts.

And the final conclusion, Mr. President -- although I'm going to vote in favor of this bill, because I think it does a good thing in providing a general blueprint for the courts to deal with. But I think that the question of the contested waiver that suggests that any party in interest may push the waiver in the circumstances described in paragraph 4, I think the courts are going to look at that and say that is going to be somewhat in conflict with the provision in paragraph 3 which says that the personal representative alone can decide whether to waive or assert the privilege.

And I think that there's going to be some confusion in the courts there. My sense, based on what Senator Volker has told us, is that the Section 3 says that the waiver or the ability to waive rests solely in the personal representative except in those instances in which there's a gratuitous transfer or other instances, and then under those circumstances, because of the truth-finding requirement in the court, we're going to allow anyone who objects or any party to open up the conversations between the decedent and their professional so that we can find out what really happened. And all the parties with objection to a will or other contest will be able to get that information.

I think this bill advances our common law. I think it's a good amendment to clarify this notion of what happens when someone who's a critical player in a family or a corporation dies. I only regret that it's not applying to all civil actions so that we could finally clarify this whole question of what to do when a critical player -- the father of a family or the leading stockholder

of a corporation -- what to do when they die and they've made disclosures to all their professionals about what they intended, what they wanted to do, and what the scope of their bequests would be.

So I'm going to vote in favor, Mr. President. I again commend Senator Volker.

ACTING PRESIDENT KUHL: Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time temporarily lay this bill aside. And I would ask that we return to the reports of standing committees.

I believe there's a report from the Finance Committee at the desk. I would ask that it be read at this time.

ACTING PRESIDENT KUHL: We will lay aside the bill temporarily and move on to reports of standing committees.

And I ask the Secretary to read the report of the Finance Committee which is at the desk.

THE SECRETARY: By Senator Bruno, Concurrent Resolution Number 946, adopting a budget resolution proposing amendments to the

2001-2002 Executive budget submission.

ACTING PRESIDENT KUHL: Senator Bruno.

SENATOR BRUNO: Move the resolution, Mr. President.

SENATOR CONNOR: Explanation.

SENATOR BRUNO: Mr. President, by way of explanation, this is our budget resolution that hopefully will move us towards negotiating a budget with the State Assembly.

And this resolution, when fully implemented, will total about $84.1 billion. But the resolution really is focused on economic development, job creation, doing all the kinds of things that have been important to the people of this state over these last six years.

So we have been proud of our record here in this house in partnering with the Governor and moving our economy forward. So the essence of this financial plan is a $1.8 billion tax-cut package that returns money to businesses, keeps money with businesses, keeps money in people's possession where they can go out and spend it on things

that they believe are important to their own families and their own lifestyle.

The essence of that $1.8 billion is a $500 million Ge-NY-sis package, that we call Ge-NY-sis, generating jobs through science, relating more to biotech, biomed research, job creation, technology development. We believe that will just project New York forward in an area that's critically important to everyone.

There's $625 million in this resolution for roads and for bridges to go out this year.

And we are expanding the Empire Zones here in this state. There are 52. They encompass two miles. We're expanding those to four miles. There are six additional that qualify by law. We are recommending strongly that we add 14 applicants for those six. We're suggesting that all 14 be included. And that includes about $325 million of that tax cut package.

There's $925 million in school aid. We know how critically important that is. That has always been a priority of the Senate, educating our young people. And we are

following on three years of record increases in school aid here in this state.

Health care, critically important. About $210 million is included in this resolution for that.

We have $79 million over the next several years in revenue sharing, $70 million for agricultural assistance, $20 million for what we call the road to recovery, to help people who are addicted to alcohol or drugs.

We have also, which will follow this resolution, our budget reform package. Because when we don't have a budget for the people of this state, everyone hurts and suffers. They suffer in many ways. They suffer financially, and dollars are literally wasted.

But we think that this plan that we present is comprehensive, it's reasonable, it's realistic, and it sets $4.4 billion aside for whatever uncertainties that may exist next year, with our economy being questionable as to how robust it will be. We think it's prudent that we keep a reserve.

And we think we are being realistic

when we add about $1.2 billion overall to the Governor's spending plan that he submitted to us in January.

So I would submit this to my colleagues here and ask for your support.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator Connor, why do you rise?

SENATOR CONNOR: Yes, Mr. President, on the resolution.

ACTING PRESIDENT KUHL: Senator Connor, on the resolution.

SENATOR CONNOR: Thank you, Mr. President.

I certainly appreciate the many good things in the Majority's budget resolution, some restorations that were made to proposals that the Governor made that would really have made, in my opinion, some unwise cuts.

I also share Senator Bruno's concern that we need to be prudent. I too have been worried about the Bush economy, having seen the last Bush economy. And I do worry at that in the future year we may need

to keep significant reserves in anticipation of an adverse economic downturn.

But I think we can spend more. I think we should spend more in a couple of key areas. Number one is education. Because it is our state's future, it's the future of our economy. And because we need only read the Supreme Court justice's decision in the CFE case to understand how we have not provided sufficient funds to many of our children, not just in New York City but in many areas of the state, for a lot of historical reasons. It's not a blame-casting exercise. But it's time now to focus on where these needs are.

So we will be offering an amendment to provide sufficient funds to take that first step toward ensuring a sound, basic education. Yes, we've put more money into school aid over the past years, unprecedented amounts. But it's clear it hasn't been enough. The future of this state is based on education. The future of our children depends on a quality education. We must provide a sound, basic education in the rural areas of this state, the urban areas of this state, and every other

area of the state.

So the amendment we will offer will not deprive a single school district in this state of a penny. A mere handful will stay at the same level, and every school district in the state will get increased school aid - some more than others, based on special needs -- but every school district will get more money than it would under the Majority resolution. Which I recognize is better than the Governor's proposal.

A big step forward from the Governor's proposal by the Majority. We say let's go that next step and address the need to provide a sound, basic education in all of our school districts, so that we don't pit district against district. Every school district represented by every member of this Senate virtually will get an increase, with the exception, I think, of six or seven districts that will stay the same.

We will also offer amendments to deal with what we call EPIC COPE, an enhancement of the EPIC program. I will propose a measure that I think as an

amendment, because it does involve funding, we ought to do to address a significant problem that I think everybody has identified with respect to how we conduct elections and manage elections in this state.

We will have an amendment that we call "Budget for the Future" that will address issues from pre-K to high-tech incubators; yes, the Medicaid takeover from the county's share, which I think our counties need. And we will of course have an amendment dealing with what we view as a need for even greater expenditures in the area of Medicaid for nursing homes, greater than the Majority has proposed.

We think it's prudent because at the end of the day, if you do all our numbers, we'd still have in excess of $3 billion in reserves. And we think that's prudent.

In terms of the tax cut -- and I've said on this floor, year after year after year, I've never met a tax cut I didn't like. I think I voted for all of them. I think you've heard this conference propose even different and what we thought were better tax

cut on occasions. Sometimes in the next years we come back and the Majority has embraced them, and that's good.

I am concerned now that at this stage, anticipating, for lack of a better word, I guess it's the Bush economy, that we still have out-year costs of $5 billion based on tax cuts we've already enacted. In other words, we haven't paid for $5 billion of the tax cuts we've already enacted. So I am concerned to once again see a proposal by the Majority for a tax cut of $1.8 billion, but we're only putting a $259 million down payment on it this year.

I didn't mind voting for that four or five years ago. I was confident in the Clinton economy. And we were right, the revenues poured in. And we covered those out-year costs.

But, Mr. President, I caution my colleagues now, we still have a $5 billion tab in future years. And I don't think we ought to incur another $1.6 billion future tab on tax cuts given the uncertainty of the economy, given what many of us feel is a lack of

confidence in our economic prospects over the next three or four years.

And I don't want to see us hit years -- and I don't want to make predictions, but in a year or two, if we're standing on this floor trying to cover a $4 billion deficit in the state budget, I will say, Mr. President, I told you so.

So that said, Mr. President, I would urge all of my colleagues to listen carefully to the amendments we propose. They are suggestions in this process. We've done them every other year. You actually liked some of them, the Majority actually liked some of them, Mr. President, and adopted them in past years. So in that spirit, these amendments are offered.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator Oppenheimer, why do you rise?

SENATOR OPPENHEIMER: I believe you have at the desk the amendment that I'm going to propose. It's called Extraordinary Needs Aid. I'd like to explain -

ACTING PRESIDENT KUHL: The

amendment is at the desk, Senator Oppenheimer. Are you asking that we waive its reading and you be given an opportunity to explain it at this time?

SENATOR OPPENHEIMER: Yes, if I may.

ACTING PRESIDENT KUHL: The reading of the amendment is waived, and you are now afforded the opportunity to explain the amendment.

SENATOR OPPENHEIMER: Thank you, Mr. President.

This is called the Extraordinary Needs Aid. And it is something that we have to face up to because of the DeGrasse decision in the case that was brought by the Campaign for Fiscal Equity that says that in our constitution we have to provide a sound and basic education to all children in our state.

And the present system is simply not delivering the kind of funding that is required. We have in our school aid formulas maybe 50 different formulas. I doubt whether there are a handful of people in Albany that know and understand all these formulas. I've

been following education now for 28 years, and I can say it's extraordinarily confusing and seems to have no rational basis. And Lord knows where it comes from, some of these formulae.

But we do know certain facts, and we do know that minority students have been harmed and that many of our students come from areas where there has been actual cultural deprivation or their family has not been able or interested in accessing those pieces necessary so that a child is able to grow and to learn in our established education environment.

We have to focus in on the very foundation of skills. And we have to do this for our own sake, for the sake of our state and for every citizen in this state. Because these people that we are educating now are the people who we hope will be the productive citizens of the future. And if we do not provide them with a sound, fundamental education, we are not going to have these people working within our economic structure.

We have to create a fair and new

funding system that will assess what are the actual costs of providing this adequate education to all of our students in the state. And it has to be a formula that the people of our state can understand. Because I can tell you now, very, very few people in our state - almost no one understands how we fund education.

Judge DeGrasse named seven essential resources. And they include having a sufficient number of qualified teachers. Right now we know there are so many teachers -- particularly in New York City, almost one-third -- who are not even certified to teach. And very often they're teaching out of areas which they are certified in and they're teaching subject matter which they are really not competent in.

We have to have appropriate class size. In the lower grades it's going to be essential to reduce the number of students in the classrooms, because we know from all the information that has come out of our federal studies that children between the ages of - well, actually birth and maybe up to age 7, 8,

are just like sponges and have the capacity to learn, but they can only learn in environments that are conducive to that.

We have to put in additional resources for our at-risk students, because they need it and we are hoping that they will be able to streamline -- to become part of the mainstream within our academic system if provided sufficient resources.

We have to have facilities that are sound. They cannot have water pouring in on the students or have students in rooms that were not intended to be classrooms but rather intended to be closets or to be gym facilities.

And the state has to fund this, because this cannot happen by itself. We have done a great deal with standards in our state. And indeed, when the assessment of all schools in the 50 states was done, it was determined that New York State actually got an A for the quality of our standards, our academic standards. But when it came to implementation, we got an F. And that's because we have not provided adequate

resources. And the budget that has been presented to us today certainly is a beginning, but we feel a lot more would have to be added.

This amendment calls for a three-year phase-in of a remedy to the court case, the DeGrasse court case. And we believe this amendment will start in the three-year process of offering a sound, basic education. It will drive an additional $1.1 billion in extraordinary needs aid for the coming school year; that is, 2001-2002. And additional aid would be phased in over the next couple of years, so that by the school year 2003-2004, all of the necessary resources would be in place.

I commend this to you and hope you will seriously consider it, because there is little doubt in my mind that we are going to have to meet the needs of the New York City court case. And also, it is the right thing to do.

I know several of my colleagues will probably want to speak on this, so I will finish now.

ACTING PRESIDENT KUHL: Senator Stavisky, did you wish to be recognized on the amendment?

SENATOR STAVISKY: I'm sorry, I can't hear you.

ACTING PRESIDENT KUHL: Did you wish to be recognized on the amendment?

SENATOR STAVISKY: Yes, on the amendment, Mr. President.

ACTING PRESIDENT KUHL: Senator Stavisky, on the amendment.

SENATOR STAVISKY: Yes. The amendment is called Extraordinary Needs Aid. And it seems to me, as a former high school teacher in the City of New York and as someone who graduated from the public schools and whose son went through the public schools, Judge DeGrasse gave us an extraordinary opportunity to remedy some of the problems that we face.

The amendment being offered by Senator Oppenheimer gives us a three-year phase-in of the Campaign for Fiscal Equity remedy. It's important, I think, to recognize that Judge DeGrasse's decision will have to be

implemented, and it should not be implemented by the judge but by the Legislature. The New York State Constitution, in Article 11, is very clear. It says that the Legislature shall provide for a system of free common schools wherein all of the children of the state may be educated.

This amendment being offered today takes another step toward implementing Judge DeGrasse's decision. But at the same time, Judge DeGrasse did outline the seven basic steps toward a sound, basic education. But he also suggested that we have accountability along with the expenditures of funds. And this amendment being offered by our side of the aisle I think addresses some of these needs and certainly some of the issues that Judge DeGrasse outlined.

It will provide an additional $1.1 billion in extraordinary need so that we can provide a sound, basic education for all of the children in this state. And, Mr. President, I would urge everyone to support our amendment.

Thank you.

ACTING PRESIDENT KUHL: Senator Espada, you wish to be recognized on the amendment?

SENATOR ESPADA: Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator Espada, on the amendment.

SENATOR ESPADA: On the amendment.

Not since Brown versus the Board of Education, almost 47 years ago, has the subject of education, the nature of education and how it is administered, how it is funded, the issue of whether or not our children - that is, all of our children in the state, but primarily those children in African-American and Latino communities throughout the state - are getting a sound basic education, are getting their fair share of the education dollar.

There is a floodlight on all of us. The recent court decision allowed for this. But clearly, as a public educator -- I taught the elementary school and secondary level, and I can assure you that this matter of inequity,

this issue of the savage inequalities that have visited many generations of poor children in our communities has been with us for a long, long, long time.

I commend Senator Oppenheimer for the amendment. It's clear, it's simple, it adheres to the basic tenets of the DeGrasse decision. It is prudent and fiscally responsible in its phased-in approach. But it speaks very clearly to the fact that somehow there is this kind of zero-sum mentality going around that somehow New York City and its poor children can only gain if some other districts and their children lose.

And clearly this amendment indicates that we can all win, that all of our children, as our Senate Democratic conference leader indicated, are not only statutorily entitled to a basic, sound education, but we owe it to them. It is our job. We have no nobler mission than to provide that. And that's why I encourage and urge the adoption of this amendment.

Thank you so much.

ACTING PRESIDENT KUHL: Senator

Schneiderman, did you wish to be heard on the amendment?

SENATOR SCHNEIDERMAN: Yes, thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator Schneiderman, on the amendment.

SENATOR SCHNEIDERMAN: I would urge my colleagues that the Campaign for Fiscal Equity decision does not leave us an option to pass the budget resolution presented today in its current form. It does not address the needs of the children in this state. And I would suggest that we're in a situation where it looks as though our house will be dragged kicking and screaming into providing a decent education for all of our children.

The analysis of the education budget performed by the Majority in this house is actually quite disparaging of Justice DeGrasse's opinion. It takes him to task and criticizes him for factual inaccuracies, which I find unsupported by the record in the case, which I have followed closely for a long time.

We have to provide a decent

education for all our children. This is not just about funding. This is not just about funding. We have responsibility for the entire structure. The defense of the State of New York in this case, which I think was disgraceful, was: Oh, we created the Board of Education, all these agencies, then we give them money, they waste it, so we're not liable. That's a disgrace. That was the defense of the State of New York.

We have the authority to make structural reforms if they're needed, but we have to provide the resources. We will have to do it one way or the other. I don't see any reason why this house should be at the end of the train dragging our feet. We should embrace the decision and get to the hard job of structural reform and providing the resources so that all the children of our state can have a decent education.

I would urge that there is nothing more shortsighted than a budget which purports to address the problem and the need for economic growth that does not provide the education for the workforce that will fuel and

support that economic growth. I urge everyone to vote in favor of this amendment.

ACTING PRESIDENT KUHL: Senator Dollinger, did you wish to be heard on the amendment?

SENATOR DOLLINGER: Very briefly, Mr. President.

ACTING PRESIDENT KUHL: Senator Dollinger, on the amendment.

SENATOR DOLLINGER: I join with my colleague Senator Espada, who made reference to Brown against the Board of Education and the importance of us embarking down the road to quality and educational opportunity in this state.

I honestly believe that the judicial opinion which was been referenced by a number of my colleagues simply tells us what we already knew. There's no secret in that opinion. We know what the factors are that influence education. We know what works. And what this amendment seeks to do is to say to the people in this chamber we're going to fund what works.

We know that reducing class size,

creating greater expectations will drive educational opportunity in areas that have historically had tremendous difficulty in complying with standards and meeting the goals of adequate educational opportunity.

If you look at where this money will go, we make no bones about it. A major portion of the resources in this extra billion dollars will go to areas which have suffered the scourge of chronic poverty, which has extracted an enormous toll on student growth and expectation. About two-thirds of it ends up there. But it also goes to places of rural poverty, where although it isn't concentrated, it is more spread out, it still has a devastating impact on our children and their expectations.

And I would just suggest that any state that has as its symbol a woman standing at the door with a golden lamp, it isn't enough just to welcome them into the front foyer of the family of New York, we need to bring them into the living room so that they can participate in all the benefits of a New York family. We can't to that without turning

on the lights in our house. And the golden lamp that brought them here and that brings them to our door does not fulfill our promise to them unless we can welcome them into our family.

The only way to do that is to give them the expectation that they will get a reasonable education in our public schools and that they can sit at the table with all of us.

We have tolerated failure for too long in our high-needs public schools. We can no longer tolerate it. Let's give the school districts that need extraordinary aid, let's give it to them now. Let's tell them that if they don't meet the standards at some point, there will be some punishment, there will be some consequence.

Let's require that we turn on the lights in New York for everyone. If we don't put this money aside and don't show them a place at the table, too many New Yorkers who have already been left behind will be left behind again, and the promise and hope for our children will end up as a misguided promise that produced nothing.

It's time we ended the tolerance of failure and gave every child in this state the one hope for the one thing we know they need, a quality public education. I'll be voting in favor of the amendment, Mr. President.

ACTING PRESIDENT KUHL: Senator Gentile, did you wish to be heard on the amendment?

SENATOR GENTILE: Yes, I would like to be heard, Mr. President.

ACTING PRESIDENT KUHL: Senator Gentile, on the amendment.

SENATOR GENTILE: Thank you, Mr. President.

Senator Dollinger and my other colleagues are so right in what they say. We over the last many years, at least the few years that I've been here, have debated this issue of school funding over and over again on one side or the other. The fact is, up until now it's been a political debate, a political debate of whether schools were funded adequately, whether we as a Legislature were meeting our obligations to educate all the students in the State of New York.

That's been a political debate that has been ongoing. And to the credit of this Legislature and the other house and the Governor, we have tried to bridge the gap in the funding for New York City schools.

However, now we go from a political debate and add another aspect to it. And the other aspect now is the court decision. We now have a court decision that assists us and mandates that we act at this point. We are told now by the judge, Judge DeGrasse, that we have not, we have not -- he has answered the question and said we have not provided a sound, basic education to the students throughout our state. And by answering that question, by answering that question and saying we have not provided a sound, basic education to all the students in this state, he has told us something else.

And what he has told us and what he has concluded is that this house, the Assembly, and the Governor have violated the constitution of the State of New York. By not funding, as we should have been funding, the school system throughout the state in a fair

and equitable way, the court has said we, the Legislature, the Governor have violated the constitution of the State of New York. We now stand in violation of that constitution.

Senator Oppenheimer's amendment to this resolution brings us to the point where we can present to the judge a very credible argument that we are no longer, with the adoption of this resolution, in violation of the constitution of the State of New York.

So in a practical term, Mr. President, the court has given us till September to come up with a fair funding formula. In a practical term, Mr. President, I suggest that we have a fair and practical funding formula with the adoption of Senator Oppenheimer's amendment.

And so I suggest that we do now, today, what we must do by September. Let's not wait till September to have to do this. Let's do this today and add this to the document that is being presented today as a budget resolution in this house.

I congratulate Senator Oppenheimer, and I will be voting for the amendment.

ACTING PRESIDENT KUHL: Senator Lachman, did you wish to speak on the amendment?

SENATOR LACHMAN: Yes.

There's no question in my mind that the budget resolution in front of us is an improvement over the Executive budget. At the same time, there is no question in my mind that Senator Oppenheimer's amendment on extraordinary needs aid is an improvement on the budget resolution that faces us today.

I'm not going to echo my colleagues. I'll be very brief in stating that I think, to fulfill Judge DeGrasse's decision across the state, in eliminating the divisions between urban, rural, suburban, white/black poverty, this is the way to go. And this meaning the amendment.

Now, in this well-lit chamber, Senator Dollinger, I'd like to say something that Andrew Carnegie mentioned in the 19th century. And with this, I'll close. He said that America rests upon three major pillars, and if any of these pillars were destroyed, the greatness of America would also be

compromised. And he named these three pillars as one, education; two, education; three, education.

I think the Executive budget consists of one pillar. I think that the Senate one-house budget resolution consists of two pillars. And that the amendment that Senator Oppenheimer has offered to us will give us the three pillars that Andrew Carnegie mentioned to fulfill the dreams and aspirations of all the citizens of New York State and maintain the greatness in this land.

ACTING PRESIDENT KUHL: Senator Sampson, did you wish to speak on the amendment?

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

First, I want to rise in support of the amendment by my colleague, Ms. Oppenheimer. But second of all, I want to commend the Majority on the first step as to what we consider to be an adequate education, especially for our children in New York City.

But when I think of education, there's a direct correlation between crime and

education. Because those individuals who are not adequately educated seem to be go into the criminal element of society. We always tell our children -- when I was young, my parents always told me to go to school, get a decent education and make something of your life.

Every year in this chamber we talk about education and the importance of education and how we need to educate our children in order to become productive individuals in society. But we don't give them the adequate resources so they can become productive individuals in society. And I'm tired especially of seeing children in my neck of the woods wind up in prisons upstate.

And, you know, we need to basically do something about that. And this amendment is a second step in order to equalize, to make a level playing field for those kids out there in our community which we say, year in and year out, go to school and become educated individuals. Let's give them that opportunity. Let's give them those resources.

And that's why I rise in support of this amendment, Mr. President.

ACTING PRESIDENT KUHL: Senator Malcolm Smith, do you wish to speak on the amendment?

SENATOR MALCOLM SMITH: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator Smith, on the amendment.

SENATOR MALCOLM SMITH: Let me offer my congratulations and support to Senator Oppenheimer for her insight and understanding of what the young adults and young children of our state need.

Mr. President, for those who follow the biblical text, there is a text in the Bible that discusses a chapter regarding a gentleman by the name of Ezekiel. And the particular chapter talks about rising up from the valley of dry bones. And the dry bones seem to represent individuals who have not gotten or have not achieved what they need to achieve in society.

But what is interesting about that passage, Mr. President, is it also talks about there are certain quakes that occur in society along a linear path in our lives. I believe

in 1964 and '65 we had a quake when the Voting Rights Act came to pass as well, as the Civil Rights Act. This particular year is the year 2001. I believe we have now also experienced another quake. That quake is the decision that Judge DeGrasse has made with regards to the CFE campaign.

I believe we have an opportunity, I believe we have an obligation as individuals to make sure that we respond to that particular quake. If we do not -- and I say that if we do not, what we will be doing is what has happened in our society over the last several years, a couple of things. One, we will sit here and talk about we want to reform the Rockefeller Drug Laws. However, if that reform occurs, and you do not support educating the children, they will essentially go right back into the criminal justice enterprise. Therefore, the Rockefeller drug reform will be a farce.

You have many upstate neighborhoods. Their biggest problem today, Mr. President, is that they cannot sustain the businesses that are up there. Why they can't

sustain those businesses is because there is not an adequate workforce, so they are leaving the state. We have to make sure, in order for our state to compete with other states and maintain what we consider to be a good business atmosphere, there has to be an educated workforce, and we do not have that.

We can't sit here and talk about making budget reforms, making budget allocations to areas such as biotech, such as having an expanded Empire Zone area, if in fact the individual businesses that want to take advantage of that particular support cannot do so because you do not have the kind of workforce that can be a part of it.

My hope, Mr. President, is that we don't feel guilty about what is going on here today. My hope is that we recognize that this is not only something whose time has come, but it is a necessity. We're not asking for anything extra. We're not asking for you to do anything extra. All that we are asking for is that you do what is necessary to make sure that everybody can play on a level playing field.

It is a simple allocation. We have enough money there. $4 billion in terms of a surplus is more than enough money not to have -- more than enough money that we don't have to worry about what will happen when we have a problem come the out-years where this particular recession, as everyone is beginning to talk about, occurs.

My hope, Mr. President, is that we will adopt this amendment, we will take it just in the spirit that it is offered, and that is not to embarrass, not to challenge, but only to make it equitable so that every citizen of this state, every young person of this state has a decent education and can go on with their lives productively in this society.

Thank you.

ACTING PRESIDENT KUHL: Senator Onorato, did you wish to speak on the amendment?

SENATOR ONORATO: On the amendment, Mr. President.

ACTING PRESIDENT KUHL: Senator Onorato, on the amendment.

SENATOR ONORATO: I rise to support the amendment. I'm not going to belabor the point. It's been made very, very adequately by my colleagues.

But I would like to remind this body that we've been advocating for many, many years -- I'm here 18 years, and for 18 years we've been asking for equality in the education system for those who have the greatest needs. It's a shame that it had to go into the courts to prove that what we were advocating for the past 18 years has come to pass, only to have it appealed by the Governor of this state, wasting additional funds, fighting what is justifiable in the eyes of the court, who are bipartisan and nonpartisan regarding the needs of the children of our state of New York.

This is the extraordinary needs program. And what extraordinary measures must we meet to meet the obligations that have been thrust upon us by the courts? I don't think that it's fair of this legislative body that we have to rely upon the courts to do what we have been elected to do for ourselves.

So I urge you to right the wrongs that have been committed over the past years and vote for this amendment to make things right again.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on the amendment?

The Secretary will now canvass the members. Those in agreement, please raise your hand.

Announce the results.

THE SECRETARY: Those recorded in agreement are Senators Breslin, Brown, Connor, Dollinger, Duane, Espada, Gentile, Markowitz, Onorato, Oppenheimer, Paterson, Sampson, M. Smith, A. Smith, Stachowski, and Senator Stavisky.

ACTING PRESIDENT KUHL: The amendment fails.

We're now on debate on the bill.

Senator Gentile, do you wish to be heard?

SENATOR GENTILE: Yes, Mr. President. I believe there's an amendment at the desk. I'd ask that the reading be waived

and allow me to explain.

ACTING PRESIDENT KUHL: Let me just take a look here, Senator Gentile.

Senator Gentile, the chair recognizes that the amendment is before the house. The reading of it is waived, and you're afforded the opportunity to in fact explain the amendment.

SENATOR GENTILE: I appreciate the opportunity, Mr. President.

As we all know and as we have been dealing with, the cost of prescription drugs in this state continues to soar. And although my colleague from Staten Island just left the chamber, I have to say that he has been one of the -- in the forefront in part of this fight, in fighting the rising cost of prescription drugs.

Indeed, all one needs to understand is the figure that in the last six years, spending in America on prescription drugs has risen by -

ACTING PRESIDENT KUHL: Senator Gentile, excuse the interruption. It seems to be a little noisy in here. I see we have a

conference right next to you. I don't know how your members or colleagues can hear the debate that you're presenting on this amendment, or understand it, if in fact they're not listening to you.

So if we could just have a little order in the house. The members, in fact, if they have a conversation, please take that out of the chamber.

Pardon the interruption, Senator Gentile.

SENATOR GENTILE: Thank you, Mr. President.

Spending by Americans on presentation drugs over the last six years has risen by 116.4 percent, a 116.4 percent increase in spending by Americans just on prescription drugs. We all know the story here in the state of New York and the cost of prescription drugs. The prospects are that that trend will continue.

And so we as a house, we as a house came together last year, based on a Democratic initiative, but then in a bipartisan show this house came together and we passed, along with

the Assembly, an EPIC reform legislation, signed by the Governor, and that took effect January 1st, whereby the EPIC, the Elderly Pharmaceutical Insurance Coverage program run by the State of New York for senior citizens and covering them for prescription drugs, expanded, based on our bipartisan action last year. And that law took effect January 1st.

Based on our action, now almost 200,000 more seniors are eligible to be covered under the state prescription drug program. And incomes have gone up, eligibility has gone up to $35,000 if you're a single individual 65 or older and $50,000 if you're a married couple 65 and older. So we have greatly expanded that program, and that is to the credit of this Senate and to the credit of the other house and to the Governor.

We have begun that program January 1st of this year. I believe now we have to take another step. And that other step that we need to take is to expand -- is to make the program more affordable for senior citizens. We have expanded the eligibility; now we must increase the affordability.

And how are we going to do that? We're going to do that by the amendment that I'm proposing right now which I am titling EPIC COPE. COPE is the acronym for Cap Out-of-Pocket Expenses. C-O-P-E, EPIC COPE. And what this amendment to the resolution will do is add to the EPIC program by limiting the out-of-pocket expenses that seniors in the program will be required to pay to 5 percent of a senior's income. Five percent of a senior's income would be the maximum that they would pay as a participant in the EPIC program.

As it stands now, Mr. President, we have done, and my staff and Senator Connor's staff has done an analysis of what the out-of-pocket expenses are under the current program, under the current EPIC program. And we define out-of-pocket expenses as those expenses for the fee for the EPIC program, the expenses for the deductible that has to be met in certain cases under the program, and the copayments that have to be made under the EPIC program. All those three factors are taken together and grouped under out-of-pocket

expenses.

If you look at the current out-of-pocket expenses for seniors in the program at different income levels, the out-of-pocket expenses under the current program can go as high as 15 percent of a senior's income, almost 15 percent. Just some numbers. For example, someone making $20,000 in the EPIC program would have out-of-pocket expenses of $1,390. Someone making $35,000 would have out-of-pocket expenses of almost $3,000. And someone on the high end, making $50,000 and still eligible for the EPIC program because of our good work last year, would still be required to spend $7,430 of their own money before being covered by the EPIC program.

This limits, my colleagues, the ability of seniors to participate in this program. We've expanded it. We need to make it more affordable. The way to make it more affordable is to cap the out-of-pocket expenses at 5 percent of a senior's income. By capping the out-of-pocket expenses at 5 percent, you realize significant savings.

For example, the person at $20,000 would actually save $390 of out-of-pocket expenses under this resolution. Someone making $35,000 would save $1,230 under this resolution. Someone making $26,000, married, would save $1,600 of out-of-pocket expenses under this resolution. And someone again on the high end, the $50,000 end, married, making $50,000 but still eligible for this program, would save $4,930 of out-of-pocket expenses under this program.

This certainly will help those seniors who are still, even under this program, at a point where they have to make a decision between buying food or paying for their prescription drugs. Because remember, in most cases there is either a fee or a deductible that has to be met before the EPIC program takes effect. And that is where most seniors have the problem in coping with these out-of-pocket expenses.

So, Mr. President, in total we estimate that this amendment to the budget resolution, when adopted and when passed, will save seniors as much as $170 million. That's

$170 million back into the pockets of the senior citizens of the state of New York. $170 million that seniors can take put in their pockets and, instead of spending it on drugs or spending it on the EPIC program, can go out and buy food, buy coats, buy shoes, buy other things that will help the economy in other ways, but also provide for their basic necessities. $170 million savings to senior citizens in the State of New York.

This, I think, will be our shining moment, as an addition to what we did last year as a bipartisan act to help seniors across this state. We made it more -- we've expanded the eligibility. Now it is our responsibility to help seniors by making it more affordable. The EPIC program is a great program. We need to make it more affordable so more seniors will be encouraged to be covered under it.

So, Mr. President, I think that this amendment to the resolution is an appropriate amendment, an amendment that we can vote on and all of us, every single one of us can walk out of this room, out of this

chamber today with our heads high, saying that we really did something tremendous for the seniors that live in your district, in your district, in your district, in everybody's district. We will do a sweeping savings for the seniors in the State of New York.

We have the surplus. We have the money. The time to do something for seniors to make it more affordable is now, Mr. President. And therefore I offer this amendment and ask my colleagues, not only my colleagues on this side of the aisle but the colleagues throughout this house, to continue to make this a bipartisan effort so that we all can walk out of here with our heads high and realize these savings for the seniors of the state of New York.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on the amendment?

Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President.

I just want to congratulate Senator Gentile, who I worked with many years ago

before I came to the Senate, and who has really put a lot of effort in, along with the staff of Senator Connor and Senator Connor himself, on what I think is a huge cost savings for seniors. And you don't always get a second chance to create this kind of savings.

And it is certainly, I think, of all the amendments we're offering, the one that is, in my opinion, just the most straightforward, the most explicitly helpful. And I certainly hope that we'll see fit either to pass it right now or at some time to come back to the issues that it raised.

Thank you.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on the amendment?

Senator Espada, on the amendment.

SENATOR ESPADA: Thank you, Mr. President.

I think that not only the legislation I'm familiar with but this particular amendment is of landmark status. I mean, clearly, we're all elected officials.

We all understand that of all the demographic groups, the reason why most of us are here is because senior citizens put us here. Senior citizens elected us to this body, for the most part.

And the fact of the matter is that every budget has its core values. Every budget has certain assumptions and priorities embedded in it. And if we have $1.8 billion in tax cuts for business, why should seniors come in last in that line?

You know, we have a situation here where Senator Gentile has indicated very clearly $170 million. What other investment that we can think of would directly impact on the pocketbooks of the most vulnerable population? Not only the most vulnerable population that we serve, but people who have paid their dues -- our grandparents, our mothers, our fathers. Why should our mothers, grandparents, and others of that age have to choose between eating and staying healthy?

And so hats off to Senator Gentile as the chief architect of this plan that would tear down the walls of desperation for so many

seniors out there that unfortunately have to make that decision day in and day out between eating and staying healthy.

I support this and encourage, obviously, members of the other side of the aisle to support this as well. Thank you so much.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on the amendment?

The Secretary will now canvass the members. Those in agreement please raise your hands. For the benefit of the Secretary, please keep them raised.

Senator Markowitz, two crutches won't work. Just one.

(Laughter.)

ACTING PRESIDENT KUHL: Announce the results.

THE SECRETARY: Those recorded in agreement are Senators Breslin, Brown, Connor, Dollinger, Duane, Espada, Gentile, Hassell-Thompson, Kruger, Lachman, Markowitz, Onorato, Oppenheimer, Paterson, Sampson, Schneiderman, A. Smith, M. Smith, Stachowski,

and Senator Stavisky.

ACTING PRESIDENT KUHL: The amendment has failed.

Senator Hassell-Thompson, why do you rise?

SENATOR HASSELL-THOMPSON: Thank you, Mr. President. I rise to request unanimous consent of the house to be recorded in the affirmative on the canvass agreement on the first amendment.

ACTING PRESIDENT KUHL: Well, Senator Thompson, we generally do any kind of unanimous consents at the end of the action that we're currently for -- that's under review or discussion. And there is a concurrent resolution on the floor.

So if you want to preserve that request until that time, then I'll make a ruling on whether or not you're entitled or able to do that.

SENATOR HASSELL-THOMPSON: Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator Connor, did you have an amendment at the desk that you wished to address?

SENATOR CONNOR: Yes, I did, Mr. President. Thank you.

ACTING PRESIDENT KUHL: Is this Number 3, Senator Connor?

SENATOR CONNOR: Yes, it is.

ACTING PRESIDENT KUHL: Okay. Are you asking permission to have the reading waived and -

SENATOR CONNOR: Please waive the reading of the amendment and -

ACTING PRESIDENT KUHL: Reading of the amendment is waived, and you're now afforded an opportunity to discuss the amendment.

SENATOR CONNOR: Thank you, Mr. President.

This amendment deals with elections, something I've spent a lot of time involved with these past 28 years in one capacity or another. Over those years, I used to have a standing joke that I would tell all my colleagues and adversaries, particularly when we were dealing with disputed or recounted elections. Indeed, in 1998 I remember, as we took a break, telling

Republican and Democratic lawyers involved in the Attorney General election or postelection in New York, I used to say: You know, some day a presidential election is going to come down to a handful of votes in a couple of counties in one state. Is the public and press ever going to get an education then?

Because, frankly, nothing that the nation saw or heard or learned in Florida was of any news to the handful of professionals in each of the states who have dealt over the years with closely contested local elections, legislative elections, statewide elections in a few cases.

Indeed, in 1986 I served on a bipartisan state commission dealing with the issue of voting machines and voting machine technology. It was chaired by three people, an Assemblyman -- just a regular Assemblyman, Sheldon Silver, at the time; the late, great colleague of ours, Senator Eugene Levy -- and I mean that, he was a dear friend to all of us and a respected member of this house and had served in the other -- and Fabian Palamino. Three cochairs. A number of distinguished

citizens and elections officials from around the state, people from both parties, served on it. And we held hearings, and we looked at voting machines.

I understand some of my colleagues on the other side of the aisle have recently been having these little demonstrations. We looked at all those machines, the touch types and the stylus types and the bells and whistles and lights go off.

One conclusion of that commission that I proudly pointed the press to last November and December was we recommended that New York never, ever use a punch-card system for any election. Now, I know we have three counties that use them for absentees, but we said for the election, never use them.

And I remember questioning a witness who was advocating this. We had - among our witnesses were people who made, sold and manufactured these machines. And I remember cross-examining him and saying, "Well, how accurate is it?" "Oh, it's accurate to within 2 percent." And I said, "Well, what about elections that are closer

than that?" "Oh, we have a statistic here, 98 percent of American elections are decided by more than 8 or 10 percent." I said, "Yeah, but that's not my question. What about the one that isn't?" "Well, it's very rare." Oh, it's very rare.

You know, the whole point, my colleagues, Mr. President, is we want our elections to be fair and as accurate as humanly possible when they are that rare occasion when it's too close to call. Who cares about the other elections? I'm sure nothing was discovered in Florida that hadn't happened before and before and before, and nobody paid attention. Because when it's the normal 98 percent of American elections, somebody wins by a big, healthy margin, the loser calls 45 minutes after the polls close and congratulates the winner, and they all go home. It's when it's close.

And then we also, in that commission, set standards. And in fact, I remember further up with that one witness on the punch cards, I said, "Well, if New York City were into it, it's a big city." "Oh, Los

Angeles uses it. Los Angeles uses it, no problems." I said, "Well, what would happen if we had a mayoral election and a couple of million people voted in New York City and at the end of the day you found out somebody won by 900 votes?"

You see, because if you understand math, if anybody here understands math, it's just as likely that an election will end up with a two-vote margin as a 2,000-vote margin. I mean, it's just as likely. The only difference is it's going to happen one in so many thousand times for each number. And most of the numbers are going to fall, I forget what the term is, on the median on the high side. What's really the difference whether you win an election by, you know 103,000 or 103,001? So most of the time it's not going to be an issue.

But the law of numbers tells you it's just as likely it can come out to be a one-vote margin over time. And it's just like a casino. Over time, in a million plays, you're going to end up with any given result, any possible result.

So I said, "What if you had that election?" "Well, you'd run the punch cards through the machines again." I said, "Right, and you'd come back and say, oh, it wasn't 900 votes, it was 898. Well, what do you do?" And he lowered his voice and kind of mumbled: "You count them by hand." I said, "Excuse me?" "You count them by hand." Oh, just like they did in 1860. You would count 2 million votes by hand.

Now, what drove all those jurisdictions in the '60s that adopted punch cards? The press drove it. It was the need to know the results within an hour of the polls closing. It had nothing to do with accuracy, nothing to do with security, nothing to do with reliability. The press didn't like waiting to find out till the next morning how Los Angeles voted so they knew how California went so they learned who won president or whatever.

And various jurisdictions that went into that, the thing they kept saying is, We can get the results quickly. Notice they never said, We can get the results more

accurately. They said, We can get the results more quickly.

And I think what we all have to learn, and I saw editorials -- and Senator Goodman isn't here. He won a resounding victory. He won. And everybody involved in that at the end of the day knew he won. And the press wrote editorials saying how the system was broken because it took weeks. Well, he won. He won in plenty of time to take his seat. Everybody is comfortable that he was the choice of the people of his district.

And I suggest to you, yes, there were some mistakes. Not that many. Not as many as the press had billed or were feared. There were the usual amount of random mistakes across the district, in that district, but basically, at the end of the day, everyone involved was comfortable that he won. Because we took the time to do it accurately.

Now, I understand that the press, in some editorials, that said New York's election system is broken because it took five or six weeks. That's why we have elections in

early November for terms that begin on January 1st. That's why the people who wrote U.S. Constitution provided such a lag time between Inaugural Day -- remember, they didn't provide November 5th or 6th to January 20th. The original, the original language of the Constitution gave you till March 4th to figure out who the president was. And there was a reason. Accurate tabulation of very close elections takes time.

So the thrust of what I'm about to go into isn't about can we get it done quicker. My concern with a lot of the technology is there's no audit trail. Just no audit trail. Can't use punch cards. I don't think I have to explain why now. I don't have to explain why we were right in 1986.

But a lot of the computer systems don't allow the reliability that the old mechanical machine does. That is reliable. That is virtually tamper-proof. At 950 pounds, those machines are virtually theft-proof. No one has ever stolen one. And I'm not suggesting we go into a new generation of thousand-pound machines with new technology

in terms of metallurgy that's available. But we're clearly going to have to go somewhere, and there are federal proposals to put money into states to acquire voting machines.

And now we're to the crux of my amendment. We have a statewide election system. The county boards and the New York City boards of elections are creatures of the state, not local governments. Their makeup, their bipartisan makeup is mandated by the State Constitution, and they have functioned basically as elements of the State Board of Elections. But they're an unfunded mandate on the counties and the city of New York that has to pay the expenses of those county boards of elections. Number one.

Number two, when it comes to voting machines, in the cities, the cities own the machines. For New York City, that means warehouses, it means thousands of machines. And in some of the larger counties, the counties own the machines. But generally in this state, the towns have to purchase and maintain the machines. That creates two problems. In smaller towns, it's an enormous

expense, especially when we're going to go into a new generation of machines. To mandate on your small towns that have only two or three machines that they have to go buy some $8,000 -- three of them -- machines is a big hit on the town. And a lot of town governments will be tempted, absent a mandate as to what machine they have to buy, to use cheaper technology.

Secondly, if the case of Bush against Gore meant anything to American jurisprudence -- and that debate will rage for years more. Some people say it meant there were five of them and four of us. And some people said, Read what they said. Maybe it means something.

But what they did is, they said that this, in effect, disparate methods of voting and counting votes within a state is a denial of due process, equal protection. Looking forward, it seems to me that unless a state comes up with a uniform method of voting -- and, by the way, no method, Mr. President, is foolproof. They all have mistakes. The mechanical lever machine had an

average error of 0.2 percent. That's ballots spoiled, people lose votes, whatever. We saw that punch cards can go up to an astronomical rate, approaching, in some precincts, 10 percent to 12 percent of spoiled ballots, which as everyone agrees is unacceptable.

So you're going to have opt for the same method of voting throughout the state. And presumably, lest we be fools, we'll opt for one of the more reliable systems that has the least amount of people losing their votes, that has an audit trail and is secure and tamper-proof.

And earlier in this year, or perhaps at the end of December, I read in the paper that the president of Cal Tech had gotten together with the president of MIT and decided technology will solve these problems, and they had a committee. They set up a committee of experts. And in reading the Times quote from Dr. Baltimore, the president of Cal Tech, I saw that he was setting forth, postulating to the press that any machine should do a number of things. One thing any machine should do is give the voter a receipt

on how they voted, just like an ATM.

And I called him in California, and he was kind enough to return my call. And I introduced myself, and I said, "Doctor, before you get your scientists going in the voting area, talk to some people who deal with elections." "Well, what's wrong with a receipt?" I said, "It's a ward heeler's dream, it's a vote buyer's dream. The voter walks out and they've got a receipt showing who they voted for. We have laws against removing materials from polling places because, in the century before last, particularly, there were lots of vote-buying incidences, and we don't let people remove sample ballots or ballots or anything else, because we don't have want to -- we want to thwart any kind of vote-buying scheme."

He said, "Oh, I never thought of that. Well, we're going to use technology."

Well, they acted expeditiously. And the interesting thing is from these two universities' technicians, technical people came forth a report that said, You know, we looked at all kinds of computers, we looked at

all the kinds of machines -- such as Senator Spano's committee has looked at -- and we conclude that the most reliable form of voting is the old-fashioned mechanical lever machine. This is what our great engineers tell us.

I knew that. I've counted elections under both kinds of systems.

So presumably, I think someone in America is going to build one of these new machines, and maybe it will have a computer backup as well, as an audit. That would be great. But it's going to cost money. It's going to cost a lot of money, Mr. President. The public wants some action now.

I appreciate that the Majority has put $25 million in for machines that don't yet exist. But I think the way to go here is let's pay for the whole state election system. A lot of the problems that the press and public have identified don't relate to the machines, they relate to the way registration list are compiled and kept.

We should have a statewide system of keeping track of voters. New registrants, moveds, and so on -- it can all be done by

computer. It costs money. And it requires county boards, under present law, to spend money. My amendment would pick up those costs and centralize them.

You'd still have your county boards of elections, they'd still be local people selected pursuant to the constitutional method of bipartisanship. But we'd pay the expenses for them.

And let me, Mr. President - another salient effect of that is I have seen local boards of elections that are supposed to be independent of the elected officials in the county or city -- they're set up that way - turn themselves, in effect, and I've seen it in New York City, into a mayoral agency. I've heard, over the years, people running the City Board of Elections say, "Well, the mayor wants this." And I've said, "But the Election Law says" -- "No, no, the mayor wants that and the mayor wants this."

I say, "You don't work for the mayor. You're a state agency established by state law." "Yeah, but we got to go to him for our budget. And if the mayor wants it,

he's getting it, or else he's going to cut our budget."

That's wrong. That compromises the independence of the board of elections that's set up by the constitution. You know, there's an old rule, he who pays the freight calls the tune. I've seen that time and time again.

And the other problem that I see is -- I've seen it in the City Board of Elections, I suspect it may be true in other counties, depending on local circumstances - every four years, the city budget office and the mayor get really concerned with the board of elections: Do you have enough staff, do you have enough this, do you have enough that, can we give more money, we want a nice, smooth election, the mayor is running for reelection. Next three years, they starve them: Cut back, cut your budget. You know, no important elections, the mayoral election is over.

No important elections? Presidential elections, U.S. Senate elections, school board elections -- every election is important. The integrity of every election is important. The reliability of the results

are, and the quality of the job the board of elections do.

I say, let's remove our county boards of elections and the city board of elections from that cycle of influence, that recurring cycle of feast or famine, of neglect and then largesse that compromises their independence and compromises and makes impossible any semblance of a professional job. They can't do their job as professionals if we don't pay people enough, if we don't guarantee pay lines in what are regarded as big election years as well as the so-called small election years.

You know, it's a small election unless you're running for something in it. Then it's the world's biggest election.

And in terms of reliability, I said to a colleague earlier today: Whenever you look at these machines, forget about everything they're telling you and imagine you're running for election and you just lost by three votes. What would you want to know? What would you want that machine to do? What kind of safeguards would you want? How would

you reassure yourself, I lost by three?

And that's what you have to do, and that's what a lot of the computer machines won't let you do. And obviously punch cards won't, unless you count them by hand. And we all know where that leads, falling chads and all sorts of other issues.

So we have to do something about this. The way to start is, I believe -- well, there are a variety of issues all the county boards have to deal with. They have to deal with training, recruitment, they have to deal with the level of payment of inspectors, the training of those Election Day workers.

They have to do -- many counties are stuck between a rock and a hard place. They have to have handicapped-accessible polling places. Very often their response to a court order to deal with that is to move the polling place miles away from where the voters live, because they don't have the funds, sometimes. If they had a little money, it would be better for the voters if they just spent some money making the old polling place accessible. But it costs money. We mandate

these things, but we don't pay for them. We stick the county or city with that.

So the fact of the matter is, at my request my staff has done a survey of all the boards of elections, the current county and city boards. We've got a number of calculations based on a knowledge of the election process. And what we calculated is for $120 million annually, the state can assume the costs of all of our county boards of elections, as well as the responsibility from the towns of buying and maintaining voting machines.

And let me tell you what that - think about that. Some of the problem with machines is just poor maintenance. A town that has two voting machines, they tend to pull it out in the town hall or the firehouse, they hold an election, they shove it back in the closet until the next election. It's a charge on them to constantly keep these machines maintained. It's difficult to do. It's not like in the big -- in Nassau County or New York City where you have warehouses full and you can have technicians just keep

busy year-round maintaining it.

So this would subsume all that. And by the way, no new bureaucracy, no new agency would be required. The State Board of Elections would continue to do what it does now: supervise, advise, and instruct the county boards to follow the law. It would have a little more teeth, though.

You know, in New York City they've just lost a couple of significant court decisions that may absolutely throw out the window the machines they've been using because they can't accommodate the requirements of the court orders. We had a real problem in New York City. We may have a problem in a few months there. They've been ordered by one court to permit, in a primary, write-in votes for offices.

You may say, Well, that's the law. That's the law. Nah, back in the late '50s, early '60s, they saw a problem with accommodating that and some mayor told them, ah, you don't have to do it, and they didn't do it. They've been told by the State Board of Elections: You have to do it. They

ignored it, you know. Well, do they work for the State Board of Elections? Yeah. But who pays for them? No, the mayor.

So there's a problem there. And the fact is there's often a problem in various counties when the State Board of Elections calls them and says, You're supposed to do this under the law, and the county elections commissioners say, We're not going to do it. Sometimes they say they're not going to do it because they say, We're not going to do it, we don't have the money. The county legislature didn't give us the money. The mayor didn't give us the money. The county exec won't give us the money. We're not going to do it.

So we, we are responsible. We have set up this statewide election system, and we haven't made it work because of the lack of financial responsibility and accountability that we've built into it. You know? We tell the state board: You tell those county boards to follow the law. So we have a system where the county boards can say, We're not going to do that, that costs too much money and nobody gave us the money.

Let's put our money where our mouths are. If we're serious about making New York's elections work, if we're serious about the next generation of reliable, up-to-date, virtually foolproof voting machines, then we have to put up the money and put in place the mechanism for state uniformity. And we can't wait.

Oh, I know there are those who think, and probably so, we're all talking a lot about election reform but it will all blow over. Florida will be forgotten in a few years. But the fact is, Mr. President, there are a million Floridas sitting out there waiting to happen. They have happened in every single county in this state. They have happened in every single Senate district we represent. And 99.9 percent of the time, it didn't matter because the election wasn't close. But when it's close, these things do matter.

And at the end of the day, Mr. President, it's like everything else. You get what you pay for. If you try and do elections on the cheap and you look at them, county

boards of elections, as necessary evils, give them as little as you can -- you know, there's a thing, oh, they only work one day a year or three days a year, which is not true -- then you're going to get the kinds of problems that we've encountered.

Which are just nothing, nothing compared to the kind of problems you can have if on that pendulum, that numbers pendulum, an election is suddenly decided by one vote. You know, one vote. And all the time and care in the world leaves the winner and the loser walking away thinking, It was one vote, but I don't think it was reliable.

You know, we are fortunate that in the close elections we've had, Attorney General statewide, my dear colleague Senator Goodman, everybody walked away confident that it took a while but we knew who the legitimate winner was. We knew who won. Let's make sure we can always do that, Mr. President, in every single election, whether it's for a school board job or the governor of this state.

I urge my amendment. I urge we accept our legislative responsibility, our

state responsibility for making sure that elections are fair and uniform and reliable throughout New York State. To do that, we have to pay for it. We just can't mandate a whole lot of things in legislation in the coming months and think that they're going to get down to the county boards and actually be followed.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on the amendment?

Senator Paterson. Senator Espada, you're on the list.

Senator Paterson, on the amendment.

SENATOR PATERSON: Thank you, Mr. President.

That was really quite an historical lesson that Senator Connor gave us. And what I come away from it is just a lot of sympathy for the supervision of elections. It's a process that occurs once a year. We in a sense almost have to set up a bit of a clearinghouse for the vote of our citizens around the state. And yet because it's only

once a year, or twice a year, if you include primaries, or a few times a year, there's a tendency to think that it doesn't matter.

But I think that it is important, not necessarily to blame some of our governments for not thinking it doesn't matter as much as to remind them that that's what separates us from other countries, and that's what separates this state from other entities of government. That we can make those guarantees that we're holding free elections and not see some of the calamities that we see happening all around other parts of the world.

But we have to back that up. And we're going to have to back that up with resources. I think that is the point of Senator Connor's amendment. I think it's as important as anything we could be discussing here today. And I certainly urge its passage.

ACTING PRESIDENT KUHL: Senator Espada, you wish to speak on the amendment?

SENATOR ESPADA: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator Espada, on the amendment.

SENATOR ESPADA: You know, Mr. President, every day I look forward to the one moment when we are truly one in these chambers. And that is at the start of session, when we all look up at the flag and we all pledge allegiance. And there is almost virtual silence in this room, such is the respect, as it ought to be.

But have we taken this matter of our franchise for granted? Now, we've just heard the benefits of the amendment. The amendment will, of course, be defeated because of who is sponsoring it. I'd like to think we haven't totally taken our franchise for granted and indeed that we've -- it's fell victim to competing priorities and that perhaps because of Florida and the presidential election, we can now turn our attention to this matter.

That, indeed, the issue of fair and accurate elections is not just lip service. It's not something that this State Legislature will tell our localities: It's your business to promulgate democracy on your tab. And that indeed, we will all lift the franchise to the

lofty status that it deserves.

And maybe it was errors of omission before. But today it can only be a devastating error of commission and total neglect if we do not pass this amendment. Its benefits have been clearly delineated by Senator Connor: no new bureaucracy, getting rid of antiquated machines that make a mockery of our franchise, getting trained inspectors who no longer hopefully will have to work 18-hour days for below-minimum-wage pay, making the franchise easily accessible to the handicapped and physically challenged.

And I don't really know, after giving this matter much thought, where it is in our budget that we can't afford this. And so in the name of democracy, our forefathers, I ask that we give this deep consideration and vote in favor of this amendment.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator Dollinger, do you wish to speak on the amendment?

SENATOR DOLLINGER: Just briefly, Mr. President.

Three quick things. First of all, Senator Connor emphasized this is mandate relief. We're using state dollars to take over an obligation of the counties. We've had a lot of debates in this chamber in the course of the last three or four years about mandate relief. Here's a chance to put mandate relief in effect. Take off this burden from local property taxpayers and put it on the state. We've got the revenues, we collect broad-based taxes, this is the right thing to do.

Two, Senator Connor talked about the implications of Gore against Bush or Bush against Gore. And I would just suggest, I remember a day, Senator Connor, two years ago, just about two years and a couple of months ago, I sat in the Monroe County Board of Elections because there was a state race that depended on affidavit ballots. And the ballots were in a huge bin. And they'd pick out the ballot, and the ballot would be partially sealed, and you would stand there and someone would grab ahold of the seal to see whether the seal could be broken.

And I can remember a lawyer from

the Republican Party looking at me and saying, "Hey, do you think they're going to count that kind of a ballot down in the Bronx?" And we'd chuckle between ourselves and say, "Oh, no, they probably either counted it or they'll never count it." And we'd laugh among ourselves because of the disparity between what we might be doing in Monroe County and what they might be doing in the Bronx or other places.

I would suggest to you that if that Supreme Court decision becomes law in this state, that if our due process and equal protection clauses are interpreted the same, it will be unconstitutional to deal with one ballot in Rochester one way and another ballot another way in the Bronx or Manhattan or in Hamilton County.

And I would suggest that the state setting, taking control of elections will decrease the possibility that some candidate in a close election -- remember how close that election was -- would be denied due process or equal protection because of the inconsistencies in the method of counting

ballots at those little tables.

Finally, Mr. President, I'll conclude on one other note. Senator Connor's amendment will do one thing. In my judgment, it will continue to support our faith in the most important thing we do. Unfortunately, in this country in the last six months a whole bunch of people have gone to bed at night and said, Do you think they really counted my vote? How do I know that they counted my vote?

I would suggest to you that the one great faith in our democracy is to know that when they gave me my vote total last year, I sat there and said, Great. Out of those X thousands of people who voted for me, I was one of them.

I would suggest our experience in Florida and the experience that Senator Connor's amendment will make less likely in the future is that anybody will have to say at the end of the election, I'm not sure my vote counted. Every vote should count. We tell people their vote counts. Pass Senator Connor's amendment and we will make it more

likely that everyone will know and have confidence that their vote counts.

ACTING PRESIDENT KUHL: Senator Schneiderman, did you wish to be recognized to speak on the amendment?

SENATOR SCHNEIDERMAN: Yes, thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator Schneiderman, on the amendment.

SENATOR SCHNEIDERMAN: I think there is no area in which the gap between our rhetoric as members of the New York State Legislature and our actions is greater than in the area of election reform, campaign finance reform. The public's cynicism about our work in this area probably is at an all-time high. And it would be a great shame if we end this year's legislative session with another round of reports, commissions, finger pointing by the two houses, and no concrete action.

This is a proposal that I respectfully submit is up for adoption by the Majority Senator who wants to take it and do something good for this entire state. I was in the Elections Committee as Senator Maltese

was sponsoring a bill and we had gone through discussion about the lack of pay for election inspectors, the problem all over the state. This is something both sides of the aisle recognize. This is something we should not neglect, we must not neglect. It is not a partisan issue. I urge everyone to vote yes.

But I also urge that, in the unlikely event that this excellent amendment is defeated, that this is an issue we take up later in the session and actually do something about.

Thank you.

ACTING PRESIDENT KUHL: Any other Senator -- Senator Brown, do you wish to speak on the amendment?

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

ACTING PRESIDENT KUHL: Senator Brown, on the amendment.

SENATOR BROWN: I want to commend Senator Connor for this comprehensive election reform proposal. We say that one of our values in this country and in this state and in this Legislature is to have an election

process that is fair and open and accurate. I think this comprehensive proposal for the state to take over elections put forth by Senator Connor will give us the ability to do that in the state of New York.

One of the things that Senator Schneiderman touched on when he spoke on the amendment that struck me is the need for training and to increase the pay to election inspectors that this amendment also covers.

Earlier on, we heard an amendment by Senator Gentile, the EPIC COPE amendment, and we talked about the needs of our vulnerable senior citizens. Well, we all know that in many communities around the state the people that serve as election inspectors are senior citizens. And I can say in my communities of Buffalo and Niagara Falls and Grand Island in the city of Tonawanda, senior citizens have come to me and have indicated that they would like to see the pay for working that 18 hours during an election increased. That the compensation for what they do, the important role that they play, just isn't great enough.

Well, this is one of the things that this amendment brought forth by Senator Connor addresses.

I think the other thing that it addresses is the need to train inspectors. I have been in election booths where there have been some inspectors that don't know how to remove the election results from the machine. Clearly, a training issue. Clearly, when things like that occur, there is the potential to wonder whether the results of the election are being accurately recorded.

I think this would remove that kind of concern that voters and observers have on Election Days. I think this is a proposal that is comprehensive, that reflects Senator Connor's 28 years of experience in dealing with Election Law matters. And I certainly urge all of my colleagues, both Democrat and Republican, to support this excellent amendment.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator Lachman, did you wish to be recognized to speak on the amendment?

SENATOR LACHMAN: Yes, very briefly.

ACTING PRESIDENT KUHL: Senator Lachman, on the amendment.

SENATOR LACHMAN: I strongly support, Mr. President, Senator Connor's all-encompassing amendment here. This past summer I was put into a very difficult situation in part of my district, which includes the largest number of Russian immigrants to the United States, when, on Primary Day, there was a major conflict between election inspectors and prospective voters who were citizens. The election inspectors did not know how to handle the situation. They did not know what was the right thing to do at a time when we told these individuals, once they become citizens, they would partake of the American dream.

This was in Brooklyn. But there are similar cases in Wisconsin, New Mexico, not just Florida, as Senator Connor has said.

So I strongly urge support for this amendment.

ACTING PRESIDENT KUHL: Any other

member wishing to speak on the amendment?

The Secretary will now canvass the members. Those in agreement, please raise your hands and keep them up until we have the announcement of results, please.

THE SECRETARY: Those recorded in agreement are Senators Breslin, Brown, Connor, Dollinger, Espada, Gentile, Hassell-Thompson, Kruger, Lachman, Markowitz, Mendez, Montgomery, Onorato, Oppenheimer, Paterson, Schneiderman, A. Smith, M. Smith, Stachowski, Stavisky, and also Senator Duane.

ACTING PRESIDENT KUHL: The amendment fails.

SENATOR DOLLINGER: Mr. President, point of order.

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

SENATOR DOLLINGER: Just as a point of order, Mr. President, what was the vote on the amendment -- or what was the vote on the canvass?

ACTING PRESIDENT KUHL: It is not a vote, Senator. There's a canvass of the members to see if there is an agreement to

support the amendment. That is the way the rules read. And there is not a majority of the members who agree to support the amendment.

SENATOR DOLLINGER: Well, then, what was the number that failed -

ACTING PRESIDENT KUHL: Senator, I don't hear your point of order. It sounds like it's a mixed blessing of what you're trying to inquire. That's certainly out of order. You know the rules. I know that you've been reading them.

And other than Senator Onorato looking spiffy and Senator Gentile looking very spiffy with a red rose, I note that you are out of order.

SENATOR DOLLINGER: I'll retire, Mr. President.

ACTING PRESIDENT KUHL: I thought probably you would, Senator. Thank you.

(Laughter.)

ACTING PRESIDENT KUHL: I would, just for the benefit of the members, note that in fact the debate on the concurrent resolution started at 1:01. So there's

approximately -- less than twenty minutes left for the proposal of two additional amendments.

Senator Stachowski, do you rise for the purpose of offering an amendment?

SENATOR STACHOWSKI: Yes, I do, Mr. President. And -

ACTING PRESIDENT KUHL: You ask that the reading of it be waived and you have an opportunity to explain it?

SENATOR STACHOWSKI: Yes, Mr. President.

ACTING PRESIDENT KUHL: The reading of it is waived, and you're afforded an opportunity to explain the amendment.

Senator Stachowski.

SENATOR STACHOWSKI: Not being as big an amendment -- obviously, this was the biggest one that we have, and I'll try to go through it as fast as possible.

And if other members want to speak on it, I would advise that they try to be as concise as possible on the area that they're going to address, because there may be some members that would like to speak on the resolution itself after the amendments are

finished.

But having said that, I'd like to say that our amendment would be a good step forward for not only this budget but for future budgets. And it covers a myriad of areas. And just briefly going over them, there's a piece that would take pre-K from being folded in and add some additional money -- folded into Flex-aid, that is, and have some additional funding for that, roughly $150 million. A Medicaid buy-in for HIV would be included. Medicaid takeover for long-term care would be included. High-tech incubators and student fees would have an additional amount of money. Equal business -- equal business and women/minority business restoration would have a piece. Economic development zones, which would have a little twist in that current and inner-city businesses would have a special amount of money added in an economic development zone.

A guarantee of the EITC. A consolidation of the motor fuel tax; that is, that right now there's three separate taxes. This would eliminate one, roll the other two

together, and make sure that we would never gain more than 5 percent on the state tax on motor fuels. So that there would be no windfall when we have a situation, as we had this past winter, where all the fuel costs went way up and as a result of the steady tax the state got a windfall that it probably didn't want from the people that pay for those heavy costs. And that's something that this piece would make sure we didn't get in the future.

We also have a piece in this amendment that would index pension exclusion and dependent exemption. And by that I mean that private and federal pensions would be addressed so that in the future they would be worth what they're worth and the increases wouldn't be taxed, so that we're not taking money away from pensioners. As you know, the state pensioners don't face that problem, because their money's not taxable. And we've done so much for them, it's time we should do something for the other pensioners in our state and try to treat them a little bit more equally.

And finally, the sales tax on clothing and necessities would be eliminated altogether, and that also has a cost.

That basically is the amendment. I could be more specific if people would want. But in the sake of time, since we are getting so close to the close of the debate time allotted, I did it as fast as possible, as concise as possible. And as you know, I usually like to speak much longer. But that's all I need to say.

And I am sure other members are going to get up to speak about additional pieces of this particular amendment.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator Breslin, did you wish to be recognized on the amendment?

SENATOR BRESLIN: Thank you very much, Mr. President.

ACTING PRESIDENT KUHL: Senator Breslin, on the amendment.

SENATOR BRESLIN: I'd like to speak to a portion of the amendment dealing with the Medicaid takeover of nursing home and

home care costs. As I'm sure many of you recall because you were here, the local portion was reduced to 10 percent back in 1983. And then this body saw fit, along with the Assembly, to reduce it another 1 percent in the early 1990s. But the localities still pay 9 percent of those nursing home costs.

From that perspective, it's an unfunded mandate. And we routinely speak about local burdens of taxes which prevent the development of industry and business in our local communities and counties. But now we have the opportunity, with these surpluses, to do away with that 9 percent, do away with that unfunded mandate. And if we do that, we will realize an $806 million savings to the localities, which includes $466 million to New York City and $340 million to the remaining counties.

We argued in years past that we couldn't do it because of the difficult times that we experienced here in the state of New York. Now we have the opportunity to be not disingenuous but to be sincere in our efforts to reduce those burdens on the

localities.

And I urge the passage of this amendment, and I urge the passage of this part included in that amendment.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator Duane, why do you rise?

SENATOR DUANE: Thank you, Mr. President, to speak on the amendment.

ACTING PRESIDENT KUHL: Senator Duane, on the amendment.

SENATOR DUANE: Thank you very much.

One of the most important parts of this amendment includes Medicaid buy-in for persons with HIV or AIDS. What this amendment would do is to add an additional $7 million to the Medicaid appropriation to cover the additional cost of including HIV-positive individuals in the Medicaid buy-in program.

The reason this is so important is because a person with HIV disease is stuck between a rock and a hard place. In order to stop, in many cases, the progression to AIDS, a person needs to take protease inhibitors.

They are very expensive drugs. And so for a person to not be able to participate in a Medicaid buy-in so that they can continue to afford their medication makes it impossible for them to go back to work on a part-time or a full-time basis.

I have many, many people in my district who have HIV disease or AIDS and in fact are taking protease inhibitors and are able to work. But they can't go to work because they are unable to afford the drugs that will keep them from getting sick.

I know that my district is not the only place in New York State where this is the case. It actually is happening throughout New York State. You probably don't know everybody who this impacts. Because of the medications we have today, you can't really tell who may or may not have AIDS or HIV disease.

But the drugs that make it possible for people to live independent, working lives are very, very expensive. And that's why we need to add the $7.2 million to allow for these people to buy into Medicaid.

We'll be bringing language along with this to show how it is that people would be able to buy in for it. But for now, it's really important for many people throughout New York State who are impacted by HIV/AIDS to be able to participate in the Medicaid buy-in. It's $7.2 million. It's money well spent. And I encourage my colleagues to vote for the amendment language to allow people to have this independent life.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator Stavisky, why do you rise?

SENATOR STAVISKY: On the amendment, Mr. President.

ACTING PRESIDENT KUHL: Senator Stavisky, on the amendment.

SENATOR STAVISKY: The amendment restores some of the Governor's budget cuts that have not been replaced by the Majority in their budget resolution. And for this and for many other reasons -- we ought to be restoring some of the higher education cuts -- I urge support for the amendment.

Thank you.

ACTING PRESIDENT KUHL: Is there any other member wishing to speak on the amendment?

Senator Gentile.

SENATOR GENTILE: Yes, Mr. President, on the amendment.

As part of this amendment that Senator Stachowski has brought forth, it includes taking the funding for pre-kindergarten and making it a separate budget item, not putting it into the so-called Flex-aid, as the Governor has suggested.

I think this is important enough to point out on this floor. Because as we all know, pre-kindergarten funding has, for the last several years, under universal pre-K, been a separate funded item. And certainly from experience in this house, pre-kindergarten funding prior to universal pre-K in many instances had been a discretionary member item funding. And under discretionary member item funding, sometimes some Senators would get discretionary funding for pre-K; other times, other Senators wouldn't get discretionary funding for pre-K.

And who suffered when that occurred? The people who suffered are the four-year-olds who are in the district where, in the wisdom of the Senate, certain members got funding for pre-kindergarten programs and other members did not. That all came to an end, that all came to an end when we passed universal pre-K and made it mandatory in the state budget. It was no longer subject to the whims of a particular house.

I think under Flex-aid, we go back, we take a step back by making it up to the whims of the local districts whether to offer pre-kindergarten funding. It has been proven pre-kindergarten programs are effective and help the four-year-olds get started and socialize. We need to continue, under the present universal pre-kindergarten funding, making it a separate aspect of the budget.

One other item that's in Senator Stachowski's amendment is the repeal of the sales tax on clothing and necessities. That is, the complete repeal of the sales tax on clothing and necessities. We have in this state again come together, taken a large step

forward by repealing the sales tax a year ago, up to $110 per item on clothing and footwear.

We now must take the second step, as Senator Stachowski has suggested, and repeal the sales tax on clothing, shoes, and other necessities completely so that those who have the opportunity -- those of us in New York who have the opportunity to travel to other states surrounding us -- New Jersey, Pennsylvania, other states where there are lower sales taxes or no sales tax -- will no longer have that incentive to do it because New York State will have repealed its sales tax on clothing, shoes, and other necessities.

The time is now. And the budget implications are not that much more significant now that we've taken the step to $110. We need to follow Senator Stachowski's advice and proposal to eliminate and repeal the sales tax completely on clothing, shoes, and other necessities.

So, Senator Stachowski, I will be voting along with you on this amendment.

ACTING PRESIDENT KUHL: Senator Schneiderman, why do you rise?

SENATOR SCHNEIDERMAN: Mr. President, to be heard on the amendment.

ACTING PRESIDENT KUHL: Senator Schneiderman, on the amendment.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

I think this is a tremendously important set of additions to the budget resolution. I would urge in particular that something that characterizes many of the elements of Senator Stachowski's amendment is an effort to make this year's budget somewhat more progressive.

We have a problem in the State of New York that over the last ten years we've become the state with the largest gap between rich and poor in the United States. It is increasing every year. The proposed budget would make that worse.

One provision that I think really belongs in this budget, and I don't think there's any reasonable argument against it, is a guarantee of the earned income tax cut. We're big on tax cuts here that benefit the wealthy. This is the key tax cut for working

families in this state. There is no excuse for not making this a guaranteed tax cut. There's no excuse for discriminating against working families in terms of our tax code.

Many other elements in this amendment also seek to make our state somewhat more progressive. New York led the country in laws for working people decades ago. I'm sorry that over the last 10 to 15 years we have moved so radically in the wrong direction. I urge a vote yes on this amendment to take a step to redress that problem.

Thank you, Mr. President.

ACTING PRESIDENT KUHL: Is there any other Senator wishing to speak on this amendment?

The Secretary will now canvass the members. All those members who are in agreement, please raise your hand.

Announce the names of those in agreement.

THE SECRETARY: Those recorded in agreement are Senators Breslin, Brown, Connor, Dollinger, Duane, Espada, Gentile,

Hassell-Thompson, Kruger, Lachman, Markowitz, Mendez, Montgomery, Onorato, Oppenheimer, Paterson, Schneiderman, A. Smith, M. Smith, Stachowski, and Senator Stavisky.

ACTING PRESIDENT KUHL: The amendment fails.

The concurrent resolution is before the house.

Senator Dollinger, why do you rise?

SENATOR DOLLINGER: Mr. President, I believe there's an amendment at the desk. I'd waive its reading and ask that I be heard by the house just briefly.

ACTING PRESIDENT KUHL: Senator Dollinger, the amendment reading is waived. You're now afforded the opportunity in a very short time to explain the amendment.

SENATOR DOLLINGER: Thank you, Mr. President.

This is a very simple amendment. It does three things that the budget resolution before the house does not do. First of all, it provides $50 million for workforce incentives in the healthcare industry. Everyone knows that the number of

nurses and home healthcare aides and others in the nursing home and hospital industry in this state, that we are starved for people to do the work. We need to get into putting an incentive in the system so that more people will choose these professions. And the way we have to do it is to increase their pay, reduce the payback of their loans, and encourage them to make this their professional work. Because it's critically important to our nursing home and hospitals.

The second piece is an increase in payments to nursing homes. I know that the Senate Majority has about a $220 million boost to nursing homes in New York State. This is an extra $100 million, which in turn will draw down $100 million federal dollars, putting $200 million more into our hard-pressed nursing home industry. They are squeezed by too-low reimbursement rates from Medicaid. They are experiencing all the problems attendant to the financial squeeze. They're unable to keep employees, they're unable to pay them a reasonable rate, and unfortunately there's a rising incidence of mistakes because

those employees are overburdened in their daily work.

As many of you know, this is oftentimes a gateway to getting out of poverty. And we are taking these citizens of New York, we're stressing them by putting lots of responsibility and too little pay. The hundred million dollars that we put in the state budget will draw down a hundred million dollars in federal funds, for $200 million in boosted aid to the nursing home industry.

And the final piece, Mr. President, is a $5 million appropriation for home healthcare. That's designed to do the same kind of thing in the home healthcare industry, so that we encourage people to make this a reasonable profession and we do what we all know we need to do to encourage the people to get involved, to encourage people to make it a profession they can depend on. And that is to give them the one bit of respect that everyone in this state understands, which is to pay them more so that they can make that leap.

All three of these things in this amendment will benefit the quality of

long-term care in this state. With rising numbers of populations who need it, we should be guaranteeing that they get the best quality care, Mr. President.

I move the amendment.

ACTING PRESIDENT KUHL: The Secretary will now canvass the members. Those in agreement, please raise your hand.

Announce the names of those members in agreement.

THE SECRETARY: Those recorded in agreement are Senators Breslin, Brown, Connor, Dollinger, Duane, Espada, Gentile, Hassell-Thompson, Kruger, Lachman, Markowitz, Mendez, Montgomery, Onorato, Oppenheimer, Paterson, Schneiderman, A. Smith, M. Smith, Stachowski, and Senator Stavisky.

ACTING PRESIDENT KUHL: The amendment fails.

The question is on the resolution.

The Secretary will call the roll.

SENATOR DOLLINGER: Slow roll call, Mr. President.

ACTING PRESIDENT KUHL: A slow roll call has been requested. Are there five

member in the chamber that will stand and request it?

There are five members standing.

A slow roll call will be recorded by the Secretary. The Secretary will ring the bells.

THE SECRETARY: Senator Alesi.

SENATOR ALESI: Yes.

THE SECRETARY: Senator Balboni.

SENATOR BALBONI: Aye.

THE SECRETARY: Senator Bonacic.

SENATOR BONACIC: Yes.

THE SECRETARY: Senator Breslin.

ACTING PRESIDENT KUHL: Senator Breslin, to explain your vote?

SENATOR BRESLIN: Yes, Mr. President.

ACTING PRESIDENT KUHL: Senator Breslin, to explain his vote.

SENATOR BRESLIN: It is my intention to vote for this budget. It has some needed items in it over and above the Governor's budget. But I also have some doubts as well, and those doubts were outlined in the five amendments which were defeated.

We had the opportunity to increase pharmaceutical care for our elderly. We're not doing it. We had an opportunity to stop pre-K from being folded into Flex-aid. We're not doing it. We had an opportunity for a Medicaid buy-in for HIV patients. We're not doing it. Medicaid takeover, we're not doing it. We had an opportunity, with all the problems with our healthcare workers, to put $50 million into some incentive programs. We're not doing it. We had the opportunity now, and particularly now, for the state takeover of elections when it's so desperately needed. No, we're not doing that either.

And for those reasons and other reasons, I think we have a lost opportunity here.

But having said that, there have been some add-ons for education which are critically important to the state of New York. And I grudgingly vote in the affirmative on this resolution.

ACTING PRESIDENT KUHL: Senator Breslin will be recorded in the affirmative.

THE SECRETARY: Senator Brown.

ACTING PRESIDENT KUHL: Senator Brown, to explain his vote.

SENATOR BROWN: Yes, to explain my vote, Mr. President.

Like Senator Breslin before me, I too am going to grudgingly vote in the affirmative on this budget. It does some things that are a step in the right direction and an improvement over the Governor's budget. But in many ways, it doesn't go far enough.

And there are two areas that are particularly disappointing to me that I want to highlight. One is the proposal on the Empire Zones, to increase to 14 and to extend these benefits to other communities. Now, what this does is moves drastically away from the initial intent of the Empire Zone program, which was to encourage development of urban brownfields and abandoned and dilapidated areas characterized by high poverty and high unemployment. This completely moves away from that.

A proposal that would have been better, which was in the budget amendments that unfortunately failed that didn't get

consideration by some of our members, was the proposal for the urban tax credits.

The other area where I think this budget is very disappointing is in the area of the Superfund. The Governor proposed $138.3 million in his budget, and this budget proposes $119 million. This budget doesn't go far enough to fund the state Superfund to protect our environment, and it doesn't go far enough to help the economy of some of our communities that are most depressed, most in need.

ACTING PRESIDENT KUHL: Senator Brown -- Senator Brown, how do you vote?

SENATOR BROWN: In the affirmative.

ACTING PRESIDENT KUHL: Senator Bruno will be recorded in the affirmative.

Continue to call the roll.

THE SECRETARY: Senator Bruno.

(Senator Bruno was indicated as voting in the affirmative.)

THE SECRETARY: Senator Connor.

ACTING PRESIDENT KUHL: Senator Connor, to explain his vote.

SENATOR CONNOR: Thank you, Mr. President.

The Majority proposal certainly makes improvements over the Governor's submitted budget. But frankly, Mr. President, as I said in my opening statement, it just doesn't go far enough.

And I'm not voting for any proposal, resolution, or later budget that doesn't make an important first start toward funding education so that we can guarantee to the youth of this state, wherever they live - upstate, downstate, in the suburbs, rural, urban, it really doesn't matter. We have to provide, it's our constitutional duty to provide sound, basic education. And if we don't do it, we're foolish. The future of our state depends on it.

While the Majority does spend more than the Governor proposed on education, a significant amount more, it just doesn't go far enough. It doesn't go far enough. We need that other $1.1 billion over a school year that our amendment proposed, with a fiscal impact in this year of about

$750 million or so. We need that done now. We need to make that the priority. The public expects it's a priority for the state.

And until I see that in a resolution or a budget, my vote, Mr. President, is no.

ACTING PRESIDENT KUHL: Senator Connor will be recorded in the negative.

THE SECRETARY: Senator DeFrancisco, excused.

Senator Dollinger.

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

SENATOR DOLLINGER: Thank you, Mr. President.

I join with Senator Connor. He couldn't have said it better. We have a problem of unequal opportunity in our educational system. And what this budget does is this uses a formula that we've used for twenty years that we know has perpetuated the inequality in opportunity and simply takes hundreds of millions of additional dollars but puts it through the same system.

The whole point that we made in our

first canvass of agreement -- I'm not sure it's an amendment. I don't understand it. I think it's foolish and silly. But be that as it may, we did it. We followed the rules, Mr. President. But nonetheless, we said take a billion dollars and put it where you know it needs to be put, in areas where educational opportunity is not a reality.

I couldn't agree with Senator Connor more. I will not vote to follow a twenty- or thirty-year trend of putting our money into a school system and a school formula that we know creates unequal education in this state. It's that simple. Until that changes, I will vote no, I will vote no -- I will vote yes on canvasses of agreement, I will keep pushing for canvasses of agreement. And someday somebody will explain to me what happens when somebody doesn't vote to canvass an agreement. Does that presume that they are canvassing those who are in disagreement?

Quite frankly, we've bent the English language out of all reasonable proportion. I'm not sure what we did today. I'm not sure what half the house would say

they did today. I'm not sure why we even went through the exercise of this canvass of agreement. Whatever happened to simple yes and nos?

I'll give you a simple no, Mr. President. My simple no is I vote no until we change the opportunity to create equal educational opportunity in this state. It will be no now and no tomorrow and no when this budget is passed, whenever it is passed this year.

Please record me in the negative.

ACTING PRESIDENT KUHL: Senator Dollinger will be recorded in the negative.

Continue to call the roll.

THE SECRETARY: Senator Duane.

ACTING PRESIDENT KUHL: Senator Duane, to explain his vote.

SENATOR DUANE: Thank you, Mr. President.

I can't possibly vote for this budget amendment as presented to us. First and foremost, to not include a Medicaid buy-in for people with HIV and AIDS is just unconscionable, that we would make it more

difficult for people who, because of recent improvements in medication -- though they are expensive -- are able to work, that we would stop them from going to work is frankly unconscionable.

It's not a tremendous amount of money. It's $7.2 million. Surely we could allow the tens of thousands of New Yorkers who want to work to be able to go to work by allowing them to buy into Medicaid and continue to take medications which will keep them alive.

We haven't had a thorough discussion in this body on the issue of Flex-aid. To try to fold pre-K into Flex-aid makes no sense at all. I think that Flex-aid has a tremendous amount of problems with it anyway, not just folding in pre-K but other issues -- special education, a whole host of other issues as well. Before we can possibly vote on this, we would have to look at what the impact of Flex-aid would be on the education that's provided in this state.

The fairest tax cut of all is to provide an earned income tax credit to the

hardest-hit New Yorkers, people who really do need to have a little bit more money in their pockets. I don't know why it is that so many of my colleagues here don't seem to care about those people who could benefit from the earned income tax credit. To me, it's a no-brainer. I don't know why it is that we're taxing these people to the extent we are anyway, but surely we can give them the earned income tax credit.

ACTING PRESIDENT KUHL: How do you vote, Senator Duane?

SENATOR DUANE: I'm voting no.

ACTING PRESIDENT KUHL: Senator Duane will be recorded in the negative.

Continue to call the roll.

THE SECRETARY: Senator Espada.

ACTING PRESIDENT KUHL: Senator Espada, to explain his vote.

SENATOR ESPADA: Thank you, Mr. President.

This is a proud day for the staff and the members of our Democratic conference. We stand here in adherence and in compliance with Judge DeGrasse's decision. This side of the aisle is in compliance with the New York

State Constitution.

We stood here today and proffered budget amendments that would have made prescription cost reductions possible for our seniors, the demographic group that for the most part sends us here. We stood tall in a respect for democracy and fair and accurate elections, and a host of other budget amendments, Mr. President, that would have truly brought our economy to the 21st century.

Unfortunately, these budget amendments were defeated. And the budget resolution that we're voting on is therefore lacking, and I will be voting in the negative.

ACTING PRESIDENT KUHL: Senator Espada will be recorded in the negative.

Continue to call the roll.

THE SECRETARY: Senator Farley.

SENATOR FARLEY: Aye.

THE SECRETARY: Senator Fuschillo.

SENATOR FUSCHILLO: To explain my vote, Mr. President.

ACTING PRESIDENT KUHL: Senator Fuschillo, to explain his vote.

SENATOR FUSCHILLO: I listened to the other side of the aisle, and you would think we're going downwards. But when you take a look at this resolution -- $1.8 billion in new tax cuts, $4 billion in reserves to protect those tax cuts, more than $500 million for the Ge-NY-sis and biotech development. We expand all the Empire Zones throughout this state. $1.8 billion in tax cuts over the next six years. Over $900 million -- and I see the schoolkids up there -- over $900 million more than last year for school aid.

Pretty good. It sounds good. It sounds reasonable. This state has certainly been moving forward in the last six years. This budget continues on that progression.

I proudly vote aye on this.

ACTING PRESIDENT KUHL: Senator Fuschillo will be recorded in the affirmative.

Continue to call the roll.

THE SECRETARY: Senator Gentile.

SENATOR GENTILE: Yes.

THE SECRETARY: Senator Gonzalez.

(No response.)

THE SECRETARY: Senator Goodman.

SENATOR GOODMAN: Aye.

THE SECRETARY: Senator Hannon.

(No response.)

THE SECRETARY: Senator Hassell-Thompson.

ACTING PRESIDENT KUHL: Senator Hassell-Thompson, to explain her vote.

SENATOR HASSELL-THOMPSON: Thank you, Mr. President.

We have come today to represent a group of people for whom we have been elected who are the voiceless. Earlier today, 15 youngsters came who were children of mothers who are incarcerated in prison. And they came to beg us for help and support as we look at this budget.

And as we came back in and began to vote on each of these amendments, it made me very sad to know that I was not able to promise then, and I cannot assure them now, that there will be a bipartisan vote on issues that are of great importance to them.

And some of those issues certainly are universal pre-K. But more so, the whole education budget. And while I agree that we

have put more into this budget, and I congratulate us, so much more is needed. You saw, as I did, the report cards on our schools in New York City. And many of the children that I represent in the 33rd Senatorial district are represented in those statistics of children who are failing.

And so it's my responsibility to make sure that when I vote on the budget, that that budget includes those items and those things that will make the quality of their lives better. I don't feel that in voting for this budget in this manner will do that successfully.

Therefore, I'd like to be recorded in the negative.

ACTING PRESIDENT KUHL: Senator Hassell-Thompson will be recorded in the negative.

Continue to call the roll.

THE SECRETARY: Senator Hevesi.

(No response.)

THE SECRETARY: Senator Hoffmann.

SENATOR HOFFMANN: Aye.

THE SECRETARY: Senator Johnson.

SENATOR JOHNSON: Aye.

THE SECRETARY: Senator Kruger.

SENATOR KRUGER: Yes.

THE SECRETARY: Senator Kuhl.

SENATOR KUHL: Aye.

THE SECRETARY: Senator Lachman.

ACTING PRESIDENT KUHL: Senator Lachman, to explain his vote.

SENATOR LACHMAN: Yes. After supporting all the amendments and the canvasses of agreement, this is a very difficult vote for me. I see the pros and I see the cons.

This has been a major improvement on the Executive budget in terms of the $938 million for education. I would have preferred to see a $1.1 billion increase for education.

There has been a major improvement here in terms of restoring full-time faculty lines to where it was last year. I would like to decrease those full-time faculty lines.

There has been some improvement with the SUNY hospitals -- Downstate, Syracuse, Binghamton, and in Stony Brook. I

would like to see greater improvement.

In terms of transportation, there has been an increase, but a minuscule increase in terms of what is needed in the capital program and the ongoing needs of transportation in New York State.

Having weighed that all together, and lacking the wisdom of Solomon, I therefore will vote for the resolution.

ACTING PRESIDENT KUHL: Senator Lachman will be recorded in the affirmative.

Continue to call the roll.

THE SECRETARY: Senator Lack.

SENATOR LACK: Aye.

THE SECRETARY: Senator Larkin.

SENATOR LARKIN: Aye.

THE SECRETARY: Senator LaValle.

SENATOR LAVALLE: Aye.

THE SECRETARY: Senator Leibell.

SENATOR LEIBELL: Aye.

THE SECRETARY: Senator Libous.

SENATOR LIBOUS: Yes.

THE SECRETARY: Senator Maltese.

(No response.)

THE SECRETARY: Senator

Marcellino.

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

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

SENATOR MARCELLINO: Mr. President, I'm going to vote aye on this budget amendment. I think it's a good one. I'm going to resist the temptation to spend more and more and more and more -- on good projects, on good concepts and good ideas. I will not knock anything that's been done here today. All good ideas.

But you have to live within your pocketbook. And we have to look to the future. And that's our problem. This state went $5 billion in deficits some years back by going through the policy of spending, spending, spending, spending without any look to the future. We're not going to go back there again.

Partnering with the leadership in this house and this Governor, this state is back on sound fiscal footing. We're going to keep it that way by maintaining sound fiscal

policies so we don't go crazy but we're going to maintain our needs and support everyone who needs to be supported.

I vote aye.

ACTING PRESIDENT KUHL: Senator Marcellino, in the affirmative.

Continue to call the roll.

THE SECRETARY: Senator Marchi.

SENATOR MARCHI: Aye.

THE SECRETARY: Senator Markowitz.

SENATOR MARKOWITZ: To explain my vote.

ACTING PRESIDENT KUHL: Senator Markowitz, to explain his vote.

SENATOR MARKOWITZ: The reason why I'm going to vote no is that I know we can do more. We can do more for Brooklyn, we can do more for the State of New York. I don't know how many years in the future we will be faced with the amount of resources that we currently have. Now is the time to move forward.

You're right, Senator Marcellino, we should look forward. And the forward

movement is that this is the year that we really can impact in a major way many of the needs that residents of the state have at this time. So now is the time to do it.

And I understand where the Governor and where the Senate Majority is at at this moment. We disagree, because we know the needs are out there. You heard the arguments a little while ago from many of our members, particularly in regards to education, healthcare, many other needs.

And so the reason why I'm voting no is that the people of Brooklyn and the people of New York State deserve more, need more, and this does not meet those needs, in my opinion.

I vote no.

ACTING PRESIDENT KUHL: Senator Markowitz will be recorded in the negative.

THE SECRETARY: Senator Maziarz.

SENATOR MAZIARZ: Yes.

THE SECRETARY: Senator McGee.

SENATOR McGEE: Yes.

THE SECRETARY: Senator Meier.

SENATOR MEIER: To explain my vote, Mr. President.

ACTING PRESIDENT KUHL: Senator Meier, to explain his vote.

SENATOR MEIER: I'm just very proudly going to vote aye, because those resources that we're talking about happen to be dollars that are earned by people who go to work everyday. They belong to them, not to us. They expect us to exercise prudence over how we spend them.

I proudly vote aye.

ACTING PRESIDENT KUHL: Senator Meier will be recorded in the affirmative.

THE SECRETARY: Senator Mendez.

SENATOR MENDEZ: Yes.

THE SECRETARY: Senator Montgomery.

SENATOR MONTGOMERY: No.

THE SECRETARY: Senator Morahan.

SENATOR MORAHAN: Yes.

THE SECRETARY: Senator Nozzolio.

(No response.)

THE SECRETARY: Senator Onorato.

ACTING PRESIDENT KUHL: Senator Onorato, to explain his vote.

SENATOR ONORATO: To explain my

vote, Mr. President.

Mr. President, I heard all the debates here over the past 2½ hours. And I think that the amendments that were offered today by this side of the aisle were prudent and right on target.

While the resolution proposed by Senator Bruno was certainly a great deal of improvement over the Governor's original proposal, I think the amendments and the discussion that took place earlier gave us all an opportunity, because we know that the resolution that's going to pass today is not going to be the final document of this 2001 budget.

So I hope that all of the discussion that took place today was listened to by not only the opposite side of the aisle, but by the Assembly, and perhaps they'll incorporate some of the suggestions that we did make here today.

While again there were improvements in the Governor's proposal, I am hopeful that we will be given the opportunity to improve it even further. So I do reluctantly vote yes on

the budget.

ACTING PRESIDENT KUHL: Senator Onorato will be recorded in the affirmative.

THE SECRETARY: Senator Oppenheimer.

SENATOR OPPENHEIMER: Yes.

THE SECRETARY: Senator Padavan.

SENATOR PADAVAN: Yes.

THE SECRETARY: Senator Paterson.

ACTING PRESIDENT KUHL: Senator Paterson, to explain his vote.

SENATOR PATERSON: Mr. President, "prudent and right on target." Those were the words that Senator Onorato used to describe five amendments that this conference offered which we feel would improve the package - which we think is already an improvement over the original budget proposal by the Governor -- as offered today by the Majority. These needed expenditures fall well within the perimeters of what our economy can afford this particular year.

Now, in criticizing it, the Majority suggests that they have a better solution, to enact a tax cut graduated in next

year and the year after, at times we have no idea where the economy will be. And the least part of the tax cut is this year, when we actually could generally forecast whether or not our economy can absorb it.

Now, one of the most offensive aspects of the tax cut, to me, is the fact that we have an earned income tax credit that only exists if the TANF, the Temporary Assistance for Needy Families money comes from the federal government. In other words, if for some reason that money doesn't come, and it's in all likelihood that it will, we are not going to allow for that earned income tax credit. Which is, in a sense, a tax cut for those low-income people around this state who badly need it.

So I think that the plan right now is misprioritized, its value is not timely or seasonable. I'm going to vote against it. My vote is no, with the hope that as we go into conference committees and we negotiate it, perhaps we'll have a better plan and I'll take a look at that when we come back to vote for the budget approved by both the Senate and the

Assembly.

So I vote no, Mr. President. Thank you.

ACTING PRESIDENT KUHL: Senator Paterson is recorded in the negative.

Continue to call the roll.

THE SECRETARY: Senator Rath.

SENATOR RATH: Aye.

THE SECRETARY: Senator Saland.

SENATOR SALAND: Aye.

THE SECRETARY: Senator Sampson.

(No response.)

THE SECRETARY: Senator Santiago.

(No response.)

THE SECRETARY: Senator Schneiderman.

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

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

I also will be voting against the budget resolution, and there are several reasons for that. I agree with many of my colleagues who have spoken about the issue of education funding. There is not really any

way that this budget resolution can be viewed as moving forward to provide the sound, basic education all the children of our state are entitled to. We shouldn't have had to have a judge tell us that. It is something we know. It is our responsibility morally as well as our constitutional responsibility as a legislature to address this. I will hope we will return to it later this session. But that is one major deficiency.

Two other issues I wish to address very briefly. One is in addition to inadequate funding of the school system, I must say that that problem pales in comparison to the absolutely disgraceful treatment of our mass transit system in this budget. The buses and subways of the New York City Transit Authority have been systematically defunded over the last six years. We now receive less money in real state dollars than we received a decade ago. They're floating bonds backed by farebox receipts for operating revenues. You know? And even Mr. Lackman is laughing at that, because it makes no sense.

I mean, this is something that we

will pay the price for very, very soon. The annual ridership on the subways and buses of New York has been up 35 percent in the last five years. We're not getting service increases because they don't have the money. And we will most certainly, sometime in the year 2002 or perhaps the beginning of 2003, be faced with a fare increase. We have to invest.

And if there's one theme that underlies, I believe, all of our amendments today -- and the words have been spoken more articulately than I can by my colleagues - this is not a budget of investment.

ACTING PRESIDENT KUHL: Senator Schneiderman, how do you vote?

SENATOR SCHNEIDERMAN: Yes, I think we should invest -

ACTING PRESIDENT KUHL: Is that a yes?

SENATOR SCHNEIDERMAN: -- and I vote no.

ACTING PRESIDENT KUHL: Senator Schneiderman will be recorded in the negative.

The Secretary will continue to call

the roll.

THE SECRETARY: Senator Seward.

SENATOR SEWARD: Yes.

THE SECRETARY: Senator Skelos.

SENATOR SKELOS: Yes.

THE SECRETARY: Senator A. Smith.

ACTING PRESIDENT KUHL: Senator Smith.

SENATOR ADA SMITH: Thank you, Mr. President.

I would like to commend the Majority for their Senate one-house budget resolution. It clearly surpasses that of the Executive budget. And I want to agree with Senator Meier when he stated that the funds which we are about to expend belong to the people.

But the people of the 12th Senatorial district believe that we need to invest more in education. The children of the city of New York are not getting the education that they so rightly deserve. The courts have spoken, the people are speaking. And they speak through us.

And on behalf of the children, I

vote no.

ACTING PRESIDENT KUHL: Senator Smith will be recorded in the negative.

Continue to call the roll.

THE SECRETARY: Senator M. Smith.

ACTING PRESIDENT KUHL: Senator M. Smith, to explain his vote.

SENATOR MALCOLM SMITH: Thank you very much, Mr. President.

I would have loved to have seen the amendments that we put forward voted upon in the affirmative. However, there are some things that I believe this particular resolution falls short on.

And one -- or a couple of them are I noticed that the Urban Communities Development program was dropped off by $3 million, the minority/women-owned business program was dropped off by $3 million. In addition to the fact there was no discussion around debt reform modification. And also one area I think is going to be very important to us is identity theft on the criminal justice side, where high-tech theft devices are being utilized.

However, as one who is an advocate for veterans, I was very pleased to see there was a million dollars more for veterans services, $3 million for a blind vet annuity program. I also noted that they were restoring nursing homes by $130 million. I would have liked to have had the $100 million on our side.

And what I do see that is also missing there is some assistance to other big cities where they would have the ability to establish their own authorities, like we do in New York City.

However, I believe this is a good start. I hope through some negotiations, as we go into conference, we'll make some changes as I suggested. But I will be voting aye.

ACTING PRESIDENT KUHL: Senator Smith will be recorded in the affirmative.

Continue to call the roll.

THE SECRETARY: Senator Spano.

SENATOR SPANO: Aye.

THE SECRETARY: Senator Stachowski.

ACTING PRESIDENT KUHL: Senator

Stachowski, to explain his vote.

SENATOR STACHOWSKI: Mr. President, briefly to explain my vote.

There are some good parts to this resolution, some increases over the Executive's proposal that, as much as there's parts that this budget resolution falls short, I can't ignore some of the increases. Getting the SUNY positions back, helping community colleges out, putting a large increase in education, although it's not enough to give everybody an equal opportunity.

I'll probably support this. I do have to mention, though, and it would be remiss on my part if I didn't, that the continuation of putting tax cuts into the future and only taking a small bite out of the cost of them in the first year is just - we've been very fortunate so far. It's just not a good practice. I wish we would do more.

I don't mind doing the tax cuts. I think they're a good idea when we have the extra money. It is the people's money. But we should be more honest with them and give them the money right away, not hope that in

five years we have enough of a surplus that we can afford to continue the tax cut.

I don't want to see us end up in a situation, as we did in the past, where suddenly the economy dropped off -- and there's no reason to think that couldn't happen in the future -- and we have to withhold that tax cut and suspend it for a year or two or three. And I don't want to go through that again.

But hopefully in the conference committees that will come forward after the other house passes theirs and we finally agree upon avails -- even though that date that we were supposed to do that by law has passed - then maybe we'll come up with just a little bit better package than this.

But I'll support this one for now and vote aye.

ACTING PRESIDENT KUHL: Senator Stachowski will be recorded in the affirmative.

Continue to call the roll.

THE SECRETARY: Senator Stafford.

SENATOR STAFFORD: Aye.

THE SECRETARY: Senator Stavisky.

ACTING PRESIDENT KUHL: Senator Stavisky, to explain her vote.

SENATOR STAVISKY: To explain my vote.

I wish this were a budget where we could pick and choose the parts that we like and reject the parts that we don't. There are many good things in the budget, obviously. But the reductions in the SUNY and CUNY budget, the elimination of the supplemental TAP, the elimination or the cuts in the adjunct positions in the colleges I think are not a good harbinger for the future.

The fact that it restores some of the Bundy aid I think is good. But you're also forgetting some of the student programs that are important to so many youngsters in New York City. And I'm referring specifically to the STEP and the HEOP and the EOP and all of the other acronyms representing programs that are so important to the students in the state of New York.

The expansion of the community college base aid by only $25 I think is

insufficient. The restoration of the child care is good; again, insufficient. The need for full-time faculty is extremely important.

And lastly, the question of Flex-aid. They've given it a nice euphemistic name, but to me it's still the same old block grant. And the elimination of the universal pre-K as part of that I think is a very, very unfortunate omission.

The fact that we recommended $1.1 billion for extraordinary aid is I think something which should come to pass -- perhaps not in this budget, but in the future.

And for all of these reasons, Mr. President, I vote no.

ACTING PRESIDENT KUHL: Senator Stavisky will be recorded in the negative.

Continue to call the roll.

THE SECRETARY: Senator Trunzo.

SENATOR TRUNZO: Yes.

THE SECRETARY: Senator Velella.

(No response.)

SENATOR VELELLA: Senator Volker.

SENATOR VOLKER: Yes.

THE SECRETARY: Senator Wright,

excused.

ACTING PRESIDENT KUHL: The Secretary will call the absentees.

THE SECRETARY: Senator Gonzalez.

(No response.)

THE SECRETARY: Senator Hannon.

SENATOR HANNON: Yes.

THE SECRETARY: Senator Hevesi.

(No response.)

THE SECRETARY: Senator Maltese.

SENATOR MALTESE: Aye.

THE SECRETARY: Senator Nozzolio.

SENATOR NOZZOLIO: Aye.

THE SECRETARY: Senator Sampson.

(No response.)

THE SECRETARY: Senator Santiago.

(No response.)

THE SECRETARY: Senator Velella.

SENATOR VELELLA: Yes.

ACTING PRESIDENT KUHL: Announce the results.

THE SECRETARY: Ayes, 44. Nays, 11.

ACTING PRESIDENT KUHL: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Mr. President, I believe there are a couple of nominations right now, if we could do them.

ACTING PRESIDENT KUHL: We will return to the order of reports of standing committees.

There is a report coming from the Finance Committee at the desk. I'll ask the Secretary to read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following nominations:

As director of the Municipal Bond Bank Agency, F. Michael Stapleton, of Cortland.

SENATOR SKELOS: Move the nomination.

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

(Response of "Aye.")

ACTING PRESIDENT KUHL: Opposed, nay.

(No response.)

ACTING PRESIDENT KUHL: The nominee is confirmed.

The Secretary will continue to read.

THE SECRETARY: As a member of the Niagara Frontier Transportation Authority, Henry M. Sloma, of Lewiston.

SENATOR SKELOS: Move the nomination.

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

(Response of "Aye.")

ACTING PRESIDENT KUHL: Opposed, nay.

(No response.)

ACTING PRESIDENT KUHL: The nominee is confirmed.

Senator Skelos.

SENATOR SKELOS: Mr. President, there were two resolutions adopted today, 908 and 911, sponsored by Senator Maltese. He would like to open them up for sponsorship. If anybody wishes not to be on the resolutions, they should indicate at the desk.

ACTING PRESIDENT KUHL: For the benefit of the members, we'll put all members' names on Resolution 911 and 908 unless they notify the desk that they don't wish to be on the resolutions. Otherwise, all members will be included on Senator Maltese's resolutions which were adopted earlier today.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could return now to Senator Volker's bill, Calendar Number 106.

ACTING PRESIDENT KUHL: The Secretary will read.

THE SECRETARY: Calendar Number 106, by Member of the Assembly Lentol, Assembly Print Number 1437, an act to amend the Civil Practice Law and Rules, in relation to requiring.

ACTING PRESIDENT KUHL: The question is before the house.

Senator Schneiderman, why do you rise?

SENATOR SCHNEIDERMAN: If the sponsor would yield for a few questions.

ACTING PRESIDENT KUHL: Senator

Volker, do you yield to a question from Senator Schneiderman?

SENATOR VOLKER: I was standing before him, so -

ACTING PRESIDENT KUHL: Before that, Senator Skelos, why do you rise?

SENATOR SKELOS: Yes, Mr. President, if I could just interrupt, there will be an immediate meeting of the Local Governments Committee in the Majority Conference Room.

ACTING PRESIDENT KUHL: Immediate meeting of the meeting of the Local Governments Committee, immediate meeting of the Local Governments Committee in Room 332, Senate Majority Conference Room.

Senator Volker, do you yield to a question from Senator Schneiderman?

SENATOR VOLKER: Why, sure. As I was saying before I was so rudely interrupted by the Majority Leader -- no, no, no, I was kidding.

ACTING PRESIDENT KUHL: Senator Volker, I have a phone call up here for you.

(Laughter.)

SENATOR VOLKER: Yes, I know. I'm well aware. I'm well aware.

ACTING PRESIDENT KUHL: Senator Schneiderman, the Senator yields.

SENATOR SCHNEIDERMAN: Mr. President, I'm happy to address my question either to Senator Volker or to the incoming chair of the Codes Committee.

(Laughter.)

SENATOR VOLKER: Yes, I know. I'm well aware.

SENATOR SCHNEIDERMAN: The question, through you, Mr. President, is I understand, I think, the operation of the proposed statute as to decedents, people who pass away. I'm concerned, though, about the issue of a person under disability. This would provide a personal representative the ability to waive privileges. In some cases, and I note under subsection 4, it requires any party -- it enables any party in interest to waive a privilege.

And if I'm reading correctly, the definition of person under disability, these people who could lose their rights to exercise

their privilege, defined in Section 103 of the Surrogate's Court Procedure Act, states as following: "Any person who is (a) an infant; (b) an incompetent; (c) an incapacitated person; (d) unknown or whose whereabouts are unknown; or (e) confined as a prisoner who fails to appear under circumstances which the court finds are due to confinement in a penal institution."

There are a lot of people there who may very well, shortly after this procedure is invoked, be able to exercise for themselves the decision-making process about the privilege. Is there some reason why we don't limit further the persons under disability for the purposes of this section?

SENATOR VOLKER: Yeah. Because I think the thing -- what you're trying to do here is primarily to provide a way to mitigate these proceedings. And a person who represents the people that you just talked about is in effect supposed to represent the best interests of those people; that is, the very people who clearly are disabled or incompetent or whatever. And under the law,

they're supposed to do that.

So what we're trying to do here is provide the possibility of a waiver which theoretically, technically, and under the law should aid them.

In other words, this is not a - should not be a proceeding where their interests would not be looked after. Because under the present law, which will continue, the person who is making these decisions has a statutory charge to make sure that their best interests are looked after. So that any kind of waiver that would be made by that person on behalf of a disabled person, an incompetent, should theoretically, certainly, and under law should be in their best interests.

So whether you make the waiver or you don't, the decision should be, in effect, by a person who is trying to look at the best interests of those -- of the people that he or she is representing.

So someone could challenge that, and I guess that's what the possibility of the waiver is. But then the judge of course would intervene in the best interests of that

incompetent or whatever person.

ACTING PRESIDENT KUHL: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Through you, Mr. President, what -

ACTING PRESIDENT KUHL: Senator Volker, do you continue to yield?

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR SCHNEIDERMAN: What would be the purpose of having such a statute for a person who is a prisoner? Under the circumstance when that person is due to be released from confinement soon, wouldn't it be more advantageous to delay a determination on the waiver until the person can speak up for themselves?

SENATOR VOLKER: I think that that possibility -- and the personal representative could make that argument. It would seem to me that depending on the type of proceeding -- and remember, this is only in Surrogate's Court, which probably is one reason -- and Senator Dollinger and I had an

exchange about why this was limited by the Assembly. It probably is, frankly, and we zeroed in on these last -- this -- the third and fourth one you're dealing with -- it's probably why the Assembly was concerned. Thinking, probably in the same terms you are, as to what kind of proceeding it would be.

In other words, that argument would be an argument in which, if the person who represents that -- for instance, that inmate might argue, Well, the inmate is going to be out in another month, could we delay this proceeding. And the judge, of course, could either accept it one way or another, I suppose. But this would give that representative the ability to provide a waiver, assuming it would be in the best interests still of that inmate.

And I think it would rarely ever happen in Surrogate's Court. I mean, I can only think of -- it could be a family relative or something, but it does not happen very often. But I suppose that guardian or person could actually say, The inmate is going to be out in two weeks, let's delay the proceeding

and let him appear himself. I don't see why you couldn't make that argument to the judge.

SENATOR SCHNEIDERMAN: Through you, Mr. President, I -

ACTING PRESIDENT KUHL: Senator Volker, do you continue to yield?

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR SCHNEIDERMAN: I guess I almost feel as though I'm sort of taking a position in favor of the rights of the individual against a big, bureaucratic state system with guardians making decisions for them, which is not necessarily my posture here. I don't necessarily mind big bureaucratic state systems in many cases.

But I don't really see why we shouldn't have some sort of statutory circuit breaker to allow someone to come back and deal with the situation if, for whatever reason, the guardian doesn't adequately represent their interests or maybe intends to represent their interests and just does something the person disagrees with.

Someone who gets out of prison and finds out a month ago his rights were waived, I think that it would probably be prudent to give that person some rights. And I'm wondering if that's something that could possibly be addressed.

SENATOR VOLKER: Well, if you assume that the law -- and I assume what the law is, when you are the representative of a person, you are by law mandated to represent the best interests of that person. And if for some reason you don't represent the best interests of that person, I think you are liable. And I think you could be both financially and -- certainly financially liable.

So I guess the argument would be - and you and I know that there are occasions when certainly lawyers are held financially liable. And in the case of a trustee, for instance, if a trustee operates in a trust and does something on behalf of a person who is somebody that is to receive something and that person says, That trustee didn't operate in my best interests, you could actually challenge

that decision.

And I think the problem, though, is what the Bar Association is trying to do here, what this is trying to do is develop a process, a universal process that avoids the kinds of delays and the kinds of different rules that fit certain people and certain situations.

I think what you're saying is you're talking about a very -- a pretty unusual situation which could happen. But keeping in mind that that representative is - by law is supposed to represent the best interests of that person, whether that person is actually there or not.

SENATOR SCHNEIDERMAN: Thank you. Through you, Mr. President, one final question.

ACTING PRESIDENT KUHL: Senator Volker, do you continue to yield?

SENATOR VOLKER: Sure.

ACTING PRESIDENT KUHL: The Senator continues to yield.

SENATOR SCHNEIDERMAN: How would this statute operate in a situation where

their legal conflict was actually between the professional and the personal representative?

SENATOR VOLKER: I think that - that is, of course, one of the decisions that would have to be made by the judge. In fact, that's the -- I think that's the crux and the nuts of the real problem that the Bar Association was really looking at.

In other words, the person who has the privilege which is being asked to be waived, for instance, by the personal representative, maybe, is then going to have to make their contention made to the judge. And the judge would then decide what's in the best interests of the person involved, and also decide in certain cases whether the person who is declaring that they should not have to waive is in a position, is in an equitable position to do that.

I would think that would be a situation, for instance, where there's an attorney, as an example, who maybe doesn't want to divulge something, and the personal representative says, I need that attorney, it's important to my client's or my ward's

best interests that that attorney divulge his interest. The attorney could then say, No, I don't believe it is in his best interests, and it's certainly not in my interest, and so forth.

SENATOR SCHNEIDERMAN: And under those circumstances it would just go to the court with those two -

SENATOR VOLKER: Exactly. And the court then would decide whether -- if it is in the best interests of everybody and whether that waiver should be provided.

SENATOR SCHNEIDERMAN: Okay. Thank you, Mr. President. Thank the sponsor for his answers.

ACTING PRESIDENT KUHL: Any other member wishing to speak on the bill?

The Secretary will read the last section.

THE SECRETARY: Section 3. This act shall take effect in 60 days.

ACTING PRESIDENT KUHL: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT KUHL: Announce

the results.

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT KUHL: The bill is passed.

Senator Hassell-Thompson, why do you rise?

SENATOR HASSELL-THOMPSON: Thank you, Mr. Chairman -- Mr. President. I rise to ask unanimous consent to be recorded in the affirmative on the canvass agreement on Senator Oppenheimer's motion to amend Senate Resolution 946.

ACTING PRESIDENT KUHL: Senator, if you would so like, the record will reflect that in fact had you been in the chamber when a canvass of the members was taken, that you would have been in agreement with those who were signifying such.

SENATOR HASSELL-THOMPSON: Yes.

ACTING PRESIDENT KUHL: The record will so reflect.

SENATOR HASSELL-THOMPSON: Thank you.

ACTING PRESIDENT KUHL: Senator Montgomery, why do you rise?

SENATOR MONTGOMERY: Yes, Mr. President. I would like to also have the record reflect that had I been in the chamber, I would have voted yes on the amendments that were presented by Senator Oppenheimer and Senator Gentile. Thank you.

ACTING PRESIDENT KUHL: Senator Oppenheimer and Senator Gentile, those two proposed amendments?

SENATOR MONTGOMERY: Yes, that's correct.

ACTING PRESIDENT KUHL: Okay. The record will reflect that had you been in the chamber when the members were canvassed, that in fact you would have been in agreement with those amendments.

SENATOR MONTGOMERY: Yes, thank you.

ACTING PRESIDENT KUHL: Senator Hevesi, why do you rise?

SENATOR HEVESI: Thank you, Mr. President. I rise to request unanimous consent that the record reflect that had I been in the chamber, I would have voted in the affirmative on the canvass of agreement on

Senator Oppenheimer's motion, Senator Gentile's motion, Senator Connor's motion, Senator Stachowski's motion, and Senator Dollinger's motion to amend Senate Resolution 946.

And in addition, Mr. President, I would like the record to reflect that had I been in the chamber two minutes before I actually arrived in the chamber, I would have voted in the affirmative on Senate Budget Resolution 946.

ACTING PRESIDENT KUHL: The record will reflect, Senator Hevesi, that had you been in the chamber when the slow roll call on the budget resolution -- I believe it's 946 -- was taken, that you would have voted in the affirmative.

With regard to the amendments which were proposed, the record will reflect that had you been in the chamber when the members were canvassed, that in fact you would have been in agreement with those amendments.

Senator Schneiderman, why do you rise?

SENATOR SCHNEIDERMAN: Yes, thank

you, Mr. President. I would also request unanimous consent to have it noted in the record that had I been present, I would have voted in favor of Senator Oppenheimer's amendment to Resolution 946.

ACTING PRESIDENT KUHL: Senator Schneiderman, the record will reflect that had you been in the chamber when members were canvassed for an agreement on the amendment that was proposed by Senator Oppenheimer, that you would have been in agreement.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator Lachman, why do you rise?

SENATOR LACHMAN: I rise, Mr. President, to follow my colleagues. Had I been in the chamber when the Oppenheimer amendment had been voted on, I would have, under the consensus of agreement, been in favor of that amendment, as I spoke out in favor of the amendment when I was in the chamber five minutes before.

ACTING PRESIDENT KUHL: Senator Lachman, the record will reflect that had you

been in the chamber when Senator Oppenheimer's amendment was canvassed, you would have been in agreement.

Senator Mendez, why do you rise?

SENATOR MENDEZ: Yes, Mr. President. I also wish the record to show that if I would have been in the chamber, I would have voted for the Gentile as well as the Oppenheimer amendments.

With this statement, the canvass will be completed.

ACTING PRESIDENT KUHL: Senator Mendez, the record will reflect that had you been in the chamber when the members were canvassed on Amendments 1 and 2, presented by Senators Oppenheimer and Gentile, that you would have been in agreement.

Senator Duane, why do you rise?

SENATOR DUANE: Thank you, Mr. President. I was hoping to get unanimous consent to -- well, let me start with that - unanimous consent to vote no on Senate Number 1083. Calendar Number 106, excuse me.

ACTING PRESIDENT KUHL: Without objection, hearing no objection, Senator

Duane, you will be recorded in the negative on Calendar Number 106.

SENATOR DUANE: Thank you. And, Mr. President, in addition, had I been in the chamber, I would somewhere voted yes on Senator Oppenheimer's amendment to the budget resolution.

But in my own defense, I must say it was my first canvass, and I wasn't absolutely clear how it would work. So now I'm just absolutely sure how it works. But I am pleased you're going to allow me the indulgence to say that, since it was my first canvass.

ACTING PRESIDENT KUHL: Well, it was not a vote, Senator. But on the canvass, the record will reflect that had you been in the chamber when it was taken, that you would have been in agreement on that particular amendment.

SENATOR DUANE: And I can't say that I enjoyed my first canvass, but I do think I've gotten the hang of it. Thank you, Mr. President.

ACTING PRESIDENT KUHL: Senator

Fuschillo.

SENATOR FUSCHILLO: Thank you, Mr. President. I'm going to relinquish my chair to the Majority Leader.

ACTING PRESIDENT KUHL: Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time call up Calendar Number 244.

ACTING PRESIDENT KUHL: The Secretary will read Calendar Number 244.

THE SECRETARY: Calendar Number 244, by Senator Bruno, Senate Print Number 6, Concurrent Resolution of the Senate and Assembly proposing amendments to Article 7 of the Constitution.

SENATOR DOLLINGER: Explanation, Mr. President.

ACTING PRESIDENT KUHL: Senator Bruno, an explanation on Calendar Number 244 has been requested by Senator Dollinger.

SENATOR BRUNO: Thank you, Mr. President.

This proposal before this house we have seen in this chamber before. It is a

budget reform proposal. And if this were to become law, we would have an on-time budget next year for the first time in 17 years in this state.

We have continually late budgets. And when we have late budgets, all of us know it affects localities, it affects school districts, it affects business, it affects people in their places of employment. It is not a good thing. It is disruptive, dysfunctional, and expensive.

So this proposal that we have passed three years in a row doesn't pass the Assembly, for whatever reasons. And we don't even see a responsible bill that deals with budget reform that we could then take to conference committees.

So since we have in our wisdom in this house passed this several times, with support from both sides of the aisle, I'm not going into great detail. But what we basically do is start the budget process earlier, in October, with hearings, with public input. And we go through the process of revenue projections in November, instead of

late in February.

The Governor sends a budget by the middle of January, January 15th. We try and reconcile our differences on avails. And if we can't, the Comptroller will be the arbitrator on March 1st.

And that would be the number we would then use to go into the public discussion, through conference committees, of the budget process, after each house, using the avails number that has been agreed on, we will pass our resolutions or budgets by March 16th.

It's March 16th? We start -- is it April 16th? We are moving one month back. And I'm corrected in that it is not March 16th. If we can't reconcile, we will start on April 16th.

And if we don't do a budget together in both houses that goes to the Governor by May 1st, the budget that we had voted on in the previous year becomes the budget of the state until we put another budget in place.

Now, that just makes sense. It's

common sense. We spent a lot of time discussing last year's budget. That's the budget that's in place today. So if we can't agree by May 1st, after going through an enlightened early process, the people of this state would have a budget.

Now, we would still have a compulsion to get a budget done for the present year, because whatever we're advocating for in both houses, and from the Governor, would not be in the budget unless we do a new budget.

So we think it's common sense, it's practical, and it's timely. Because, Mr. President, I believe this year we may break all records in late budgets. And that is not going to hold the people of this state in good stead. And we're saying it early. We are saying it now in the third week in March. And we're unfortunately, I'm afraid, going to be saying it in April and in May and in June and in July.

And it is of no consequence for me to remind members that we don't get paid. Nobody gets paid. Now, I know that's of no

consequence because nobody in the room needs the money, and that's not a factor. That's supposed to be funny, just to lighten things up. Okay?

(Laughter.)

SENATOR BRUNO: Oh, it hurts to laugh? Okay, and I understand that.

But that is a matter of fact. We in our wisdom have put into law that until we get a budget, circumstances are as described. So common sense would dictate, I would think, that we do a reform package, send it over to the other house, if they would pass it -- or if they have another version, let them pass it and we'll go to conference committees. Hopefully, we'll reconcile our differences.

The Governor had announced, when we proposed this two years ago, his support for this budget reform package. We need the support of the Assembly, and we need the support of the people in this chamber.

Thank you, Mr. President.

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

SENATOR DOLLINGER: Just on the

bill. I know that -- I believe we've done this before. Senator Bruno has explained this bill.

ACTING PRESIDENT KUHL: Senator Dollinger, on the resolution.

SENATOR DOLLINGER: I'm concerned about a number of aspects of this bill that I think may be unintentionally created by Senator Bruno's pitch for reform. And what we're really doing is giving the Governor of this state an enormous power in the legislative process of creating budgets.

What drives us to this point is really nothing that is outside our control. We have a perfectly acceptable system in place constitutionally to handle the budget. All the Legislature has to do is the Senate passes a version, as we've sent a resolution over, convene a conference committee, get the budget done, and give it to the Governor by April 1st. We can do that. I don't think there's any impediment to do that.

The problem has been -- and I think Senator Bruno, who's been here a lot longer than I have, understands what politically has

happened. What's politically happened is we have a budget that gives line-item authority to our Governor, so he can go through and line it out. He can take out things that we want to see in that budget. He can do it by himself. And as a consequence, he can send back to the Legislature -- we have the power to override the use of the line-item veto.

There's only one problem, Mr. President, with the use of an override of a line-item veto. And that is that would require everyone in the house to participate. In essence, the majority power, the ability of the Majority in either house to drive the budget all by itself, would be imperiled because, in order to keep legislative adds in the budget, you'd have to bring the budget back to this house and you would have to reach across the aisle to get the 41 votes necessary to override the Governor's veto.

In essence, for the Legislature to stand up and say we think these are the important principles that ought to govern the operation of this state, constitutionally the Majority in this house and the Majority in the

other house would have to jump over the partisan divide and come together to agree on what the Legislature thinks should be in that budget.

I would suggest to Senator Bruno, as I would suggest to Speaker Silver, if you look at the history of budgets that have been passed, they have been passed with veto-proof majorities. And there is a veto-proof majority in this house for a vision of this state that will put perhaps more money to work in the education that the Governor would want. It would put more money in healthcare than the Governor wants.

But we have a constitutionally acceptable system that would work like a charm if one thing happened. And that is that if the majorities in both houses were willing to bring the minorities in as active participants in the budget-setting process.

That isn't the way it works. That isn't the way it's worked for all the time I've been here. My guess is it hasn't worked that way for an awful long time. My guess is the last time it worked was when both houses

were dominated by Republicans in the '50s and '60s and there were Democratic Governors, and then there may actually have been something called an override of a veto.

With all due respect, Mr. President, this bill is a constitutional solution to a political problem. The political problem is very simple. We simply pass a budget, we get both houses together, we deliver the budget on March 30th to the Governor of this state. We tell him, Veto whatever you want, take whatever you want out of it, any of the adds that Senator Bruno has put in on behalf of the Majority in this house, any of the adds that have been put into his budget by the Assembly, put it all in. Tell the Governor of this state you have the constitutional right to line-item any one of those items out.

And then, if the Legislature in this state is willing to put together two-thirds majorities in both houses, we override every one of those vetoes. And we tell the Governor of this state, who already has too much power, this bill, this concurrent

resolution will give him more power.

I suggest that if you believe that the Legislature is a coequal branch of government, let's exercise our coequal power by joining together to override any veto that the Governor dares put in effect. Let's get the budget done by March 30th. I think that, Senator Bruno, you and Assemblyman Silver could sit in the same room and put together a budget. We don't need the Governor for deliberate purposes. Tell him that he can use his veto power.

And I guarantee one thing, Senator Bruno. When you bring it back to this house and you look over at this side of the aisle and say, I need more money for education, because the Governor doesn't want to give it, you'll get it. You will look over on this side of the aisle and say, We need more money for healthcare than what the Governor wants, you'll get it. When you say you want more money for the development of technology and jobs and you look to this side of the aisle, you'll get it.

We have the political solution

right here. We don't need this. Let the constitutional process run its course. Bring us into the process. Let the Legislature as a body stand up and say to the Governor, We don't need any concurrent resolutions, we've got the power in ourselves. We can tell this Governor, we can tell a Democratic Governor, we can tell an Independent Governor that if two-thirds of us agree, guess what -- we'll decide the spending priorities of this state, and we don't need any reform to change it.

Let's do the political reform thing, join hands so that the Legislature stands up as a coequal branch of government for the first time I've been in this state, and let's act like we're responsible legislators controlling the process and standing up to the already-too-powerful Governor.

This concurrent resolution gives him more power than he's already got. He's got way too much. It's not against George Pataki, it's the institution. Let's stand up for the institution of the Legislature, use our two-thirds power to control the budgeting

process.

That's the way to do it, Mr. President. I'll be voting in the negative.

ACTING PRESIDENT KUHL: Senator Bruno.

SENATOR BRUNO: Mr. President, since this is so important an issue, I'll just take a couple more minutes to clarify a point.

Senator Dollinger makes an excellent point. It is really constitutionally the Legislature's responsibility to negotiate a budget that the Governor proposes to us in January. As he has done. The Governor has discharged his responsibilities. And it is now our responsibility to negotiate a budget between the two houses and send it back to the Governor.

And you are absolutely right. If the Governor were to veto, it is within the power of the Legislature to override a veto. And we have done that before with previous governors and with this Governor on issues.

One problem. Totally partisan. Your colleague, the Speaker in the Assembly,

refuses to engage in budget negotiations unless the Governor gives up his constitutional right of veto. The Speaker will not get engaged unless the Governor guarantees a veto-proof budget. The Governor is not prepared to do that. And constitutionally, this house can't send a budget to the Governor. We need the Assembly as a partner.

So, Mr. President, we are here as one-half of a partnership, prepared to negotiate, in public, avails and the budget. The Speaker refuses, on behalf of the Assembly, to do that.

So, Senator Dollinger, I will ask you a rhetorical question. In deference to time of my colleagues, you don't have to answer. I don't know how you get into a negotiation when the Speaker says he won't negotiate unless the budget is veto-proof. And the Governor says: I am not guaranteeing anything today or tomorrow or next month or July or August.

So I'm going to suggest, unless we face reality and stop posturing, that people

better settle into these comfortable chairs. Because we are going to be here for a long, long time trying to get the people's work done.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Farley.

SENATOR FARLEY: Thank you, Mr. President.

There's been nothing more embarrassing or shameful to me as a Senator over the years that I have served here than these late budgets year after year after year. And actually, you know, it's kind of strange, this house runs on time in recent years. Thing start on time in recent years. We have passed, if you will, budget resolutions on time. Actually, in reality, the budget that the Senate has come up with has in essence been the final budget that was adopted months and months later.

There's a lot of things in this budget reform resolution which are needed. For instance, the window is too short. We're talking about billions of dollars. It was

just only a few years ago, literally a few years ago that we reached a billion-dollar budget. I believe it was under Governor Rockefeller. So, you know, we do need a little bit more time. This does allow for that.

You know, how can you negotiate a budget when you haven't even agreed on how much money we've got to spend? You know, it's terrible, we're looking at one of the longest delays ever in even agreeing on how much we've got to spend. This budget reform package is needed. Its time has come. It's one that both houses should adopt.

It is ridiculous. I know that the late budget is very significant in this area, in certain areas upstate, and it's not very significant to a lot of our colleagues. But it is a total, complete embarrassment to this house and to the entire Legislature. You can't blame it on the Governor. It's got to be -- the blame has to be put on the Legislature. And from my perspective, it is not the Senate that is holding up these budgets.

We've got to get on with this. This is a resolution, it's a constitutional amendment whose time has come. It's not going to resolve it tomorrow or next year, but -- we have to pass it in two different Legislatures. But its time has come. We need a longer window. We need somebody to really put finality to these negotiations.

And I think this resolution can do it.

ACTING PRESIDENT MEIER: Senator Stavisky.

SENATOR STAVISKY: Mr. President, I rise because I am somewhat of an expert on vetoes. Some of you may remember approximately 25 years ago when the first override of a Governor's veto occurred. It was the first one in 104 years, if my memory is correct.

Unfortunately, Senator Goodman is not in the chamber, and his memory I'm sure is far better than mine. But he was one of the leaders in the Senate, as was Senator Marchi, if my memory is correct. My husband led it in the Assembly. And what was unique about that

veto was the fact that it was a bipartisan effort.

And it seems to me that that's what's lacking right here. That was a time when people were able to converse with civility. People were able to work together on these bipartisan issues. And I'm afraid that that is the missing ingredient right now.

I would agree with Senator Dollinger, it would make the Legislature an equal partner in government with the Governor. It would make the people, it seems to me, have more confidence in their elected officials and in their government. And I rise, Mr. President, to agree with what Senator Dollinger said. That, to me, is the solution, and not this legislation.

ACTING PRESIDENT MEIER: Senator Balboni.

SENATOR BALBONI: Mr. President, I rise to speak on this issue because I have an opportunity to have a perspective that I'm surprised that more people do not adopt. The only person in this Legislature who has any credibility on the issue of being on time and

on the issue of orderliness and of performing the duties of government more like a business is Joe Bruno.

I can recall sitting in this Legislature in 1994 when everybody was lamenting back and forth as to whether or not we could do any steps that would change the way we do government. The advent of Governor Pataki has changed things dramatically, but so has the arrival of Joe Bruno.

But more importantly than the efforts here to try and have a budget system in place where we can have a on-time budget or a functioning government is the stabilization reserve fund that is contained within the same legislation.

Now, people don't talk about that, but I can recall the debates in the early '90s that said there's no way we can put aside monies because there's too much money that has to be spent. Similar to the debate we had today. Spend it all now, don't worry about the future. Well, that whole culture has changed, mainly because of the leadership of Joe Bruno.

This is a bill that some would say causes us to abdicate our responsibilities to adopt an on-time budget. My response is that there have been many things that have tried to get us off the mark, including taking away our pay. Nothing has worked.

So we're not abdicating the responsibilities. What we are really doing here is recognizing the political realities, where it is oftentimes much simpler and much more politically expedient to fold your arms and stare at somebody across a negotiating table and not get the job done.

We can fix many things, and we have fixed many things in this state in terms of our credit rating, in terms of our reserve funds, in terms of the budget surplus as opposed to budget deficits. But the one thing we cannot change is our credibility when it comes time to adopt an on-time budget.

Mr. President, this measure is something that is overdue, because we have not been able to get past the partisan politics. I strongly urge its adoption.

ACTING PRESIDENT MEIER: Senator

Hevesi, you'll have the floor next, but the stenographer needs a moment to adjust her equipment. And then the floor is yours.

Senator Hevesi.

SENATOR HEVESI: Thank you, Mr. President. And I want to say thank you to the stenographer, whose efforts don't go as appreciated as they should day in and day out.

Mr. President, I rise in opposition to the resolution that's before us. Notwithstanding the fact that the purpose and intention here is good, my disagreement with what's in this resolution is that I don't think it's going to do what it's designed to do. It's going to have an impact, but it's going to have a different impact than we think it's going to have.

And let me begin with the statement of what this will do is not lead to the adoption of new budgets that reflect the changing political climate, the changing needs -- social, criminal justice, and otherwise -- in the state of New York. What this is going to do is it's going to reflect the process which will have built into it

disincentives to adoption by whomever is dissatisfied with the new proposal.

And let me expand on that so everyone can understand exactly what I'm talking about.

The analogy here is the legislation that was foolishly passed a few years ago which tied legislators' pay to adoption of the budget. Which everybody assumed would provide an incentive for a more timely adoption of the budget. In fact, it had the opposite effect, some speculate because individuals who work in this Legislature and over in the Assembly didn't want to be seen as having sold out their constituents or the individuals they were fighting for to adopt an earlier budget, because they would get attacked that they were doing it because they didn't have money coming into their pocketbooks. So I believe that that bill that we passed had a negative impact.

What this legislation will do, what it will do, it says the following. If the Governor, for example, proposes a budget where there are funding reductions in certain policy

areas, if the Assembly or the Senate doesn't like those funding reductions and they believe that the Governor, for example, is going to be absolutely firm and never cave on it, whoever doesn't want the reductions in those areas, there's their incentive to do nothing. Not to negotiate.

If the Governor increased spending in his Executive requests in a certain area, and either this house or the other house didn't want to act on it, didn't want those increases, there's their incentive to do nothing.

So there's a built-in incentive here for whomever is the most dissatisfied with the Executive budget proposal not to negotiate.

So what this is going to wind up doing is creating for us a default budget, which is last year's budget, which very likely will be the budget that is championed by whomever is most dissatisfied with what new changes are being proposed.

And at a time when we have such pressing needs -- and this year everybody will

agree, I think, that education is our most fundamental and pressing need -- whomever is proposing changes for additional funding in high-needs areas to reduce the student-teacher ratio, to fund universal pre-K, whomever doesn't want new money coming into a certain area, is dissatisfied with the way the negotiations are going, whoever is most pleased or least displeased with the new ideas does nothing. And they don't pay a political price for doing that, because they're more than happy to have whatever's in place right now remain in place.

This is not going to work. I agree with Senator Bruno, with his legislation that I hope we adopt today, Calendar 167, which opens up the window and calls for an earlier Executive request and lengthens the amount of time before we hit the beginning of the fiscal year and has all kind of changes intended to facilitate a more timely adoption of the budget. I support all of that. Those are good ideas.

But this is, like the legislation that was passed a couple of years ago, going

to have a negative impact. Yeah, if you want law and order in your process, an ironclad process where we never have a late budget, this is the constitutional amendment that will achieve that. But a late budget is better than a budget that doesn't reflect the growing changes in our society that annual budgets are designed to reflect.

That's what we're doing here. Every year we meet, we discuss priorities, we debate new needs and proposals, policy changes. And we're supposed to come together in agreement. Okay? That's how this process is supposed to work. There's a reason we have that process. That's democracy. It's representative government.

This flies in the face of it, because it creates an obstacle instead of removing barriers to progress. So we will have budgets in place. That's what this will do, but they won't be budgets that reflect the changing needs of the citizens of the State of New York.

And I know that we have all kinds of finger-pointing and blame as to who's

responsible for our embarrassing budget process here in New York. And I heard Senator Bruno's comments before in reference to the Speaker of the Assembly refusing to negotiate unless he has an agreement.

And I remember I believe what Senator Bruno is talking about, and my recollection is that there was an agreement that year and that after that agreement was reached, the Governor went in and made a series of vetoes that violated the agreement that the Speaker of the Assembly believed were in place. And as a result, he adopted the position that the negotiations between all the parties would have to take place and be ironclad before both houses of the Legislature adopted their budget. To avoid a repeat of the situation where he had an agreement and he believed that the agreement was broken.

So this is a difficult situation where the process -- you know, we can detail how this process should play out to some extent. But at some point there has to be a coming together. There really has to be a better understanding of the need to adopt an

end product that reflects the greater constituency. And you know what that means? That means not having three people negotiate a budget. That means having 61 members of this house and 150 members of the other house negotiate a budget. It's real conference committee processes. That's what it is.

You want a more timely adoption of a budget? Start the process earlier and really get everybody involved. Not everyone is involved. In fact, most people in this Legislature are not involved at all in this process. Not just members of the Minority in both houses, but a lot of the members of the Majority. That's the problem. That's the fundamental problem. We're not going to cure it with this legislation or Calendar 167.

I think I have the solution to that. It's a constitutional change that can only be brought about through a constitutional convention where we have fundamental reform to break the partisan barriers as they exist in the Legislature. And I've spoken on the floor of this house before, what needs to be done in this house -- and we can even do it in the

Assembly -- but in this house is to have the New York State Senate reflect the procedural prerogative of the United States Senate, where 40 percent of that body can filibuster and effectively block any legislation from passing.

And what that does -- and I'll remind everybody that this house is split more than 60/40, so it would apply here -- it requires bipartisanship. It demands bipartisanship. And the House of Representatives doesn't have it, and that's why that is a much less bipartisan body. That's why everybody looks to the Senate. That's why there's compromise. That's why even Minority members of the United States Senate have a play in the process. They participate. And as a result, the views, the policy ideals, all of the needs of everybody in the United States Senate are reflected in the end product.

It doesn't happen here. And one of the negative results of it not happening here is that you have three people, by and large, negotiating a budget. And if one of them

says, I'm drawing a line in the sand on this issue, that's it. Nobody can break them from that.

This is the most partisan legislature, I believe, in the United States. It is a tremendous problem. That's what the problem is with the budget process. You want to see if we can adopt the budget in a timely fashion? Open this process up. Let the public view it. Bring cameras into this Legislature. Have a real conference committee process. Because the public wouldn't tolerate the nonsense where nobody discusses the budget at all for months and months.

And I'm not ascribing blame to any one person or any one participant in this process. I'm ascribing it to everybody. And I'm ascribing it to the process. This process is rotten to the core.

And this bill before us, this resolution, is not going to have a positive impact. It will further delay adoption of a budget that does something -- not just last year's budget, but that meets new challenges. That's what this will do, or that's what this

will not do.

So we need reform. I'm spoken about this God knows how many times on the floor of this house. And yes, Senator Bruno points out a few moments ago, we're going to have a very late budget. Why? I can expound on the reasons why. One of the primary reasons is this is not an election year. You want to bring politics into it, it's not an election year.

So I guess it's okay if it's not an election year that we can continue with this frivolousness where nobody has to really sit down and negotiate, where everybody can be as obstinate and as stubborn as they possibly want.

And the public doesn't really seem to care, interestingly. They don't. Editorial boards will slam the Legislature, they'll call us do-nothings. They supported the bill that denies everybody, even if they don't have a say in this process, denies them a real role, that denies them their paychecks. Everybody supports that. And the public says, Yeah, the Legislature is not doing its job.

But they don't really care about this when it comes election time. They really don't. I don't think they're focused on it. Because we as an institution have denied them the ability to focus on it. We're secretive in that in this day and age, in New York City, the New York City Council has, on Channel 74, constant viewing of its proceedings. There is C-Span in Congress.

Senator Dollinger brought the novel idea of having televised debates in this house, and it hasn't gone anywhere. It can easily go somewhere if there's no impediment to do that. That's where we need to head.

And if you do that, you open up this process, then you're going to have a situation whereby we can't, all of us, get away with what we've all been getting away with. And we could talk about this till we're blue in the face, but this is not going to change.

And if this is another ridiculously late year and it negatively impacts our credit rating and makes us a laughingstock because we can't get our act together, then I say this to

the people of New York. Next time the opportunity prevents itself, let's have a constitutional convention and let's really open this process. Democratize it. Conference committees. A more bipartisan Legislature. Better budget process.

This is wrong. This is rotten. And the resolution before us will do the exact opposite of what it's designed to do. It is not designed to have budgets that are good budgets. What it's designed to do is make sure that there is a budget in place. That is not the goal or should not be the goal of this Legislature.

And for that reason, Mr. President, I vote no on this resolution and urge my colleagues to vote no on it and join me, join Senator Dollinger, join everyone else in reforming this process at its core, not tinkering around the edges with something that we know -- because logically and fundamentally it doesn't make sense -- that is something that is not going to work.

I vote no.

ACTING PRESIDENT MEIER: Senator

Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President. On the resolution.

I agree with what Senator Hevesi just said. And I really do not see how it can be argued that this legislation will create a positive incentive for us to do what we're supposed to do, which is to promptly and efficiently pass a current budget.

The problem with this resolution is that I believe it creates a strong disincentive for us to move ahead to do that. We don't want to be operating with last year's budget. We want a budget that reflects revenues this year, our most up-to-date estimates. There have been tremendous fluctuations. And the last few years, fortunately, there have been fluctuations above what we projected, but that's certainly not always been true and it's certainly not always going to be the case.

We also need to have a current budget to address this year's needs. We need to be able to deal with what the people of our districts need this year. The notion that it

is okay to go along with last year's budget I really respectfully submit is an abdication of our responsibility to pass a current budget.

I think that the added problem is that -- and I really would love for someone to explain to me why this is not true - whichever party is unhappy with proposed changes to update the budget, whichever party is in favor of the status quo of the last year's budget will have no incentive to negotiate.

What we have here is a failure of government to move forward, to negotiate and pass a current budget. This bill moves us in the opposite direction. It would create an incentive for one of the three parties not to act at all.

At least under the current situation, we have to keep going back, passing bills, reporting to our constituents: We don't have a budget, we don't have a budget, we're sorry, we don't have a budget, it's the other house's fault, it's the Governor's fault, I could solve this problem if you would just listen to me -- all this other nonsense

that we all put out every year.

The problem is, this would take a lot of that away. We'd go back to our constituents and say: Oh, no, there's a budget, we're still operating on last year's budget. And I think it would just reduce the incentive now, which is obviously not great enough to overcome this governmental problem, significantly.

So I do think this resolution moves us in the wrong direction. I think it will produce later and later budgets, I think it will produce worse budgets for the people of the state. And think about the cities and towns whose needs increase and who are going to be stuck with last year's budget into who knows when -- September, October, November.

This is a solution that makes the problem it attempts to address even worse. And I would urge everyone to vote no.

SENATOR MEIER: Any other Senator wish to be heard?

Senator Brown.

SENATOR BROWN: Yes, Mr. President, I'd like to speak on the bill.

Let me commend Senator Bruno for his interest in passing a budget on time. Unfortunately, I don't feel that I can support this, because I don't feel that it will really accomplish Senator Bruno's intent of having the state budget passed on time.

Today I met with some school boards from my district that talked to me about critical need to have the state budget passed on time. And they said, "Senator Brown, we want your commitment that you will support the state budget being passed on time." And I said to those school board officials: "You have my commitment. I support the state budget being passed on time. But unfortunately, and sadly, there's nothing that I as a Senator can do to make sure that the state budget is passed on time."

Because if I was brought into the process, if I truly had involvement in the process, if I truly had a voice in the process, I would make sure that the state budget was passed on time.

I think this bill gives enormous power to the Governor. And, like Senator

Dollinger said, I'm not referring to Governor Pataki but to any person that might occupy the Executive seat. And I don't think that is necessarily a good thing.

In addition, as Senator Schneiderman and Senator Duane have said, I think the minority parties need to be brought into the process. I think we need to utilize the conference committee system more than it's being utilized now. And we need to bring more people into the process of making the budget decision.

I think if we do that, then we would go a long way towards getting a budget passed on time. Clearly -- I mean, it's been said many times, there's been editorials from papers across the state expressing concern about the three-people-in-a-room process and the fact that for the last 17 years, that process has not worked in terms of getting a budget passed on time in this state.

So while I commend Senator Bruno for his interest and concern in getting the state budget passed on time, and I certainly support that concern, I don't think this piece

of legislation will accomplish that. So I will be voting in the negative.

ACTING PRESIDENT MEIER: Senator Volker.

SENATOR VOLKER: Thank you, Mr. President. And I will be brief.

Senator Hevesi, I have to tell you, as I was sitting in the room in there listening to you, and I closed my eyes for a minute, and I thought I was listening to your father.

I heard that same speech from your father in the Assembly about 25 years ago. I hesitate to tell you, his might have been a little bit better. But yours was good.

(Laughter.)

SENATOR VOLKER: And he was in the Minority. And I must tell you -- and you were very good. And I say that to you.

You know, a couple of things I'd just like to say. And I guess I've been around here, Senator Stafford and myself and a few people are the only people that have been around, I guess, as long, it seems like. And Senator Goodman. And Senator Velella and I

came from the Assembly also. Senator Velella was there when your father was there. And Senator Marchi was here, well, before we all were here.

But what I was going to say is, you know, there's one thing I have to tell you. And I've traveled -- in my younger days, I used to travel quite a bit. If you think this is the most partisan legislature in the United States of America, I got to tell you, you are absolutely wrong. You can't believe many of the legislatures in this country operate, particularly in the South and West, in many cases. And in some cases the roles are reversed, and that is that the Republicans are all in the cities and the Democrats are all in the rural areas.

You must remember, what brought on conference committees in Washington was there's 435 people in the House of Representatives. So that it would be difficult for many of those people, unless they had ten to twenty years' seniority, to have any kind of say at all.

Now, I know the three men in the

room nonsense that we have here. As I've told many of my constituents many times, If that were really true, I wouldn't be here if I had no say about what's going on. And I understand, it's tough to be in the Minority. It really is. And I understand that in many ways.

But I want to tell you something. Senator Bruno -- and I've known Joe for a long time -- you can tell how irritated he is because this budget process is not moving. And you can do all the things you want to do and you can say that he can take care of this and all that, but it doesn't work like that.

And you can try conference committees and all that, but conference committees or no conference committees, if the decision is made by one of the leaders in this day and age -- and by the way, it isn't as if in 17 years we have been way over. I mean, there was one year we were about to pass the budget four days early when two courts came in and blindsided us. One was our own Court of Appeals that made a decision to change all the rules in 50, 75 years. And when I asked one

of the Court of Appeals people, I said, "Didn't you realize what you were doing?" they said, "Oh, we never thought of it." And that's why we were late by three weeks that year, and it took us two years to finish, literally, that budget.

And the reason I point it out is, there's been many factors. And most of the budgets have been a matter of days late. The truth is, you can talk all you want -- and I understand we have a Republican Governor now, so that's especially a problem when you're Democrats. It was a problem for us when we had Mario Cuomo as the Governor, because the theory is it that gives you an advantage. And I understand all that.

But this is a logical step, one that I -- I don't like to take. But I'll tell you what really bothers us upstaters, as long as we're all telling the truth here what bothers us. I tell my constituents no one east of Albany really gives a damn -- you'll excuse me, and I shouldn't use that language -- really cares whether the budget passes on time or not. It's our constituents

upstate that really care. They're the ones that care.

The media will talk about it occasionally in New York City. So when a New York City problem comes up, it's really - all our budget delays for the -- virtually have been New York City problems. And we know that. I mean, this is a problem.

It's a political problem with the school decision. I mean, an interesting decision. It says the school district is in terrible shape, there's bad leadership, bad teachers, all the bad things, but if we just give them some more money, everything will be fine. And the City of New York, of course, doesn't have any money. I mean, that's what that decision says if you read it literally. It's a scary decision in many ways because it also points out some things that a lot of us didn't realize.

The reason I'm pointing this out is -- and I know the media is going to report a lot of what you say. The three men in a room stuff is all very nice, and it would be nice if some other things could be done. But

let's not kid ourselves. The real world presses upon us. And the real world is that this is very serious business.

Joe Bruno, the Majority Leader of this house, is trying to find a way to get this budget process moving, and he's very frustrated. And he believes that this is the best way to do it short of everybody, you know, finding some way to get together in a world, by the way, where the vast majority of New Yorkers pay no attention. We haven't elected a Governor here in 40 years by a majority of the people. You were right about that. Nobody is paying attention. And the media has all their own agendas. We know that.

I mean -- so I only say this, that I understand and sense your frustration and I understand you're in the Minority. But I got to tell you a thing. And one thing in defense of Joe, he truly believes, in frustration, that the bill that he has put forth here under the circumstances is the only way he sees the real possibility of getting around the situation that we have ourselves in today.

ACTING PRESIDENT MEIER: Senator Duane.

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

I have to say at least when the Majority Leader is frustrated, he puts a bill on the floor. We can't even put a bill or a motion to discharge or amendment on the floor. I feel his frustration. But it would be good if everybody else here felt the frustration of other members as well.

I might have a lot of plans for making the budget process more functional. Not only might I, I do. So maybe what I should do is get some bills on the floor. But how will I do that? How will I do that?

Oh, well, maybe I could do a motion to -- no, I can't do a motion to discharge. Or maybe I could amend -- oh, no, I can't get an amendment on this. You know, how am I going to deal with my frustration?

Well, you know, every other state in the nation doesn't have this problem. They don't have to fix their budget problems with constitutional amendments. They just do it.

They just do it. If we had the political will, it would get done. I can't believe all the acknowledgement that goes on here about three men in a room. Well, we should change that. Let's put a few more men, maybe even a few women, in the room. That would probably go a long way towards solving the problem here of our budget.

I'm frustrated too. I'm frustrated. But you know what? There's very little I can do about it. And actually, the way I would deal with the frustration is not by putting another one-house bill on the floor here. I mean, that -- come on. These one-house bills, they don't really make us look too good. Right? Am I right? Do one-house bills look good? I don't think so. Do you think anyone's fooled by one-house bills? No, I don't think so.

So here we have the thing that's supposed to fix all of our budget problems is a one-house bill? I don't think so. I mean, who are we kidding? If we wanted to fix the budget process, we could just fix the budget process. But maybe that's where the will

isn't. Maybe if the three men in the room opened up the doors and let some light in, we'd get more work done and we'd have a budget coming in closer to on time.

That's really the way to do it. We don't have to pass one-house constitutional amendment bills to try to make believe we're forcing ourselves to get a budget done. We can just get the budget done. Lots of people who are in this body were in other bodies before that got budgets done on time. I came from a place that every year that I was there, our budgets happened on time. Lots of people here are county legislators, they're former council people. All did their budgets on time. What's wrong with us?

I'm feeling frustrated, and I'd like to do something about it, but I can't get a bill on the floor because we can't do motions to discharge. So instead of that, let's just open up that room with those three guys in it. Let's lower the testosterone a little bit in there. Let's let some fresh air in, and let's pass a budget on time.

Thank you.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Well.

(Laughter.)

SENATOR PATERSON: I concur with Senator Duane. And I think that one of the grave mistakes that we would be making by passing this resolution would be to actually legislate what is an agenda, what is a point of view. It is a point of view that's valid to those who have advanced it, but it really conflicts with a few notions.

Number one, how could we ever presume that there be a cut in appropriations based on the last year's budget priorities when we would have no idea what the budget priorities would be for the year in which we're deciding on a budget?

Secondly, I think we would really limit the notion of any type of real system around here of any checks and balances, because we've now given the Executive a weapon -- and by the way, the Executive's name is not always going to be George Pataki. One of the worst things that could happen to the

Majority Leader is if this bill passed and things don't go his way in an election one day, and he might live to rue the day.

So I think I'm going to do him a favor by voting against this legislation to protect the Majority from themselves, because this is putting an inordinate amount of power in one arm of government without any real understanding of what it could mean if that arm of government is adversarial to your cause.

So I think that Senators Dollinger and Hevesi and Brown and particularly Senator Duane have pretty much stated how I feel, but I just wanted to put that in.

And I do understand what Senator Volker is saying, although I really was surprised with Senator Volker. He of all people should know that the sons have always outperformed their fathers here in the Legislature.

And so with all respect to Senator Hevesi, I think his speech was far greater than his father, who I admire. But after all, he is younger, smarter, more handsome, more

determined, perceptive and courageous.

Senator Balboni is a little jealous because we're not talking about him for one or two minutes here in the Legislature.

And with that, Mr. President, that concludes my statement for the day, and I thank you for listening.

(Laughter.)

ACTING PRESIDENT MEIER: Always a pleasure, Senator Paterson.

Senator Stafford.

SENATOR STAFFORD: Mr. President, it's very seldom I rise, but I would suggest to both Senator Paterson and Senator Hevesi it's a matter of physics. The river never rises higher than its source.

I know you'll have to think about that. You'll have to think.

(Laughter.)

SENATOR STAFFORD: And I would only conclude by emphasizing what's been said so well on this side of the aisle. I too remember -- or not too, but I do remember - again, as Senator Marchi does, Senator Volker -- he spoke and he left -- and some

others here, Senator Velella, remember when, yes, the budget was passed on time.

And that's because those in the Assembly and those in the Senate were willing to sit down and hammer out on the anvil of discussion and get the job done.

But if people refuse to sit down and to take part and have a way, as far as they are concerned, that will push the date past the date that we want to pass a budget and do that for an agenda, we won't have a budget on time.

And I would suggest, as has been emphasized on this side of the aisle, we are willing to sit down and negotiate and hammer out the issues on the anvil of not only discussion but the anvil of reason.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Onorato.

SENATOR ONORATO: On the bill.

We're just hearing about how cooperation could be helpful in getting a budget passed on time. You know, the budget happens to be one of the most important things

that this legislative body does. And yet we have never applied the private industries' way of settling contract negotiations and disputes. You lock yourselves in a room until you get something done.

You don't go in and negotiate for a half an hour, get a little bit mad at one another, walk out of the room, leave your staff again to negotiate. To negotiate what? How can your staff renegotiate what the three men in a room couldn't agree upon? It doesn't make any sense at all.

But if they continue to hammer away at it day and night, without these constant recesses -- going down to cut a ribbon in New York City or up in Buffalo or up in Niagara -- if the three men remained in that room, we'd get a budget on time.

And those of us in this chamber and in the Assembly chamber would not be penalized and castigated by the public for not passing the budget on time, because we don't have the input that we should have in the budget process.

We make motions to discharge. We

just had a series of it today on what we thought would be beneficial to the budget process. But when was the last time that we had -- here it is it's March, March the 20th. We've got 11 more days of time to pass a budget. Have we had any joint meetings between the Senate and the Assembly to try to resolve whatever differences we've had? No.

And this particular bill doesn't accomplish that. It doesn't make any rhyme or reason. So I would urge my colleagues to vote against it.

ACTING PRESIDENT MEIER: Senator Connor.

SENATOR CONNOR: Thank you, Mr. President.

I'm going to vote against this because I think the problem with the default provision is that all of last year's deals and negotiations just get locked in, and needs change. The needs of constituents change, the state's financial circumstances change. And it's an abnegation, an automatic default is an abnegation of our legislative responsibilities.

That said, I was here -- came here in February 1978. So we go into the budget within a matter of weeks then, because in those days people anticipated, expected, and presented a budget by -- not by April 1st, that's what you did the last week of March.

And I remember when a member whom I respected enormously, Senator Donovan, presented an amendment on Medicaid abortion and it passed on the floor. Which meant the budget then as amended had to age, not even addressing the issue that it didn't agree with the Assembly budget. And all the members of this house were in a panic, because it was obvious we weren't going to -- even if we resolved that, we weren't going to have a budget until April 2nd or 3rd.

The state was in panic, headlines blared, glaring headlines. A late budget was just inconceivable to the leadership in both houses, the Governor, or whatever.

The problem is when you get used to something, you always push the edge. There were those who worried back then, ah, you know, we went till April 3rd, we're going to

regret this. The Capitol didn't collapse. And there were times a year or two or three later when we went over a week or two, but the Comptroller issued scrip and the state went on.

Now we've lost all sense of crisis until sometime in midsummer, it seems to me.

And it really is a matter of political will. As Senator Stafford said, when they wanted to get it done, they went in a room and they did it, they worked at it.

Senator Onorato pointed out, you know, when you're doing collective bargaining, you don't set up a system like this where you negotiate, negotiate, negotiate but if you don't get a new contract, the old contract sets in. That gives too much advantage to one side. It gives all the advantage to one side, and all the reasons to one side not to negotiate, not to come to a conclusion.

So I understand Senator Bruno offering this. It's an attempt to deal with a problem that he's experienced, this Legislature has experienced. I've thought of different solutions. You know, Senator

Onorato, Mr. President, mentioned collective bargaining.

I remember before -- and I'm called to mind of this because Cardinal Egan was here last week. I remember before Pope Paul changed the constitution on the election of a pope, under the old rules that prevailed - and they may have been changed before that, too, by John XXIII. But before that, the rules that been in effect for a couple of centuries involved the College of Cardinals, when there was a sede vacante, the seat was vacant, being locked in the Sistine Chapel and adjoining buildings, bricked in, with a slot for passing food and drink through. They were each in there, they could bring one assistant with them. They were sworn to secrecy. And if they didn't, by two-thirds plus one vote, elect a pope within 30 days, they cut off the food going through the food slots.

That hadn't happened in modern times, but it in fact happened in past centuries, where the way they finally resolved their differences was they were locked in there and they cut off the food. Usually they

elected a pope within a day or two of that.

Maybe we -- they won't like it, but maybe we ought to lock the three men in a room and give them 24 or 48 hours or three days and then cut off the food and just pass in water. Somehow or other if we could do that -- and I know it's an anachronistic approach, I suppose. But I can't help thinking it would be efficacious in resolving this.

The answer really isn't willpower here, the answer is also -- and it's a more subtle answer -- in member expectations, legislators', in both houses, in both parties, expectations. Other states deal with partisan differences. Other states deal with a governor of one party, a legislature of another, or a divided legislature, and seem to get their job done on time.

For all the progress we've made in the last couple of years, I certainly hope this year isn't a big giant step backwards in getting a relatively on-time budget.

I appreciate the good intentions behind this suggested resolution. I just think it's a total abnegation of legislative

responsibility, and it will actually result in repeated budgets. It would just be much easier for one of the three players to let the old default budget kick in rather than deal with a new budget, particularly if one of the three players senses an advantage in that.

So I'm going to vote no.

ACTING PRESIDENT MEIER: Senator Stachowski.

SENATOR STACHOWSKI: Very briefly, Mr. President.

I would like to support this reform bill if I thought it were real. But I really -- I have a little bit of a problem thinking it's a real bill when during the explanation the Leader talks about how obstinate and uncooperative is the Speaker is. I doubt if he would have said that if he thought they were going to pass the same resolution and that would be the solution.

Actually, there's a lot of parts of this I like. The default budget I don't. And I happen to agree with Senator Connor that you can't use last year's overall package and expect it to be a continuing situation. We

don't know that the revenues will be the same. We don't know that the communities need the same thing they needed. We don't know if some of the programs work. Maybe there was a program that was funded that's just absolutely terrible, and we're still funding it. It doesn't make sense.

There seems to be a piece that goes with it where the Governor then can take out the parts he don't like. Well, if they don't want to sit down and talk because he wants a veto-proof budget, I don't think he's passing a bill that says, yeah, we'll let the Governor take out whatever he wants and we'll go with what's left.

So I just have a little trouble with this. I don't mind voting sometimes for one-house bills if I think they send a great message. I'm not sure that this one entirely does. Again, I think parts of it are great, I just don't know that all of it's so good.

And I heard some people referring to historical things. Well, you know, we had our economic forecast meeting and there's no commitment by anybody to veto-proof avails.

But we still haven't had the avails announced, and there's no reason we couldn't do that. Everybody put their forecasts out. There's no reason we couldn't have an agreement on that and be a little bit closer. But we haven't even paid attention to that in years. And you think we'd at least be working towards that, but we're not.

And why does the Speaker feel so strongly about the veto part of the Governor's constitutional right, and why does he want to take that away from him, so to speak? Maybe because a couple of years ago, as long as we're speaking in historical terms, they had a deal. Both houses sent their budget over, the Governor vetoed a large number of items, and we could all live with that. Unfortunately, though, somewhere down later in the year the Governor decided to start putting some of those items back in. And the only ones he put back in were from members of his own party.

And that was a little troublesome to everybody, because before when the Governor decided to put things back in and spend money that wasn't in the budget, we used to have to

pass chapters to do that. But we didn't bother doing chapters, we just let the Governor take the parts that he had vetoed out and decided either he vetoed them out by mistake or he just found out that it was some friend's of his piece. He put those pieces back in on his own, and we didn't even bother with chapters.

So that was a major problem, not only for the Speaker but for a lot of people here. Mainly the institutional people were somewhat horrified because the Legislature had given up part of its authority in the process by having to pass chapter amendments when the Governor was going to spend a piece that he had vetoed out.

However, maybe that makes an explanation for people listening that aren't familiar with the history, and maybe to make people understand a little bit -- not that you all understand everything they do in the other house -- but maybe understand a little bit why maybe the Speaker is a little gun-shy about just going on people's word. Because in this business, your word is everything.

And hopefully we can get by those kind of things, get everybody pushing in the same direction, get the members pushing on all their leadership, get us sitting down. I remember when Senator Anderson was here, we used to stay here, kind of in the way Senator Onorato referred to. We'd be staying here on weekends. Nobody was happy. You'd leave home, you didn't know if you were leaving for four days or two weeks. But it seemed like things got moving after a while.

But when everybody stays two or three days and goes home, there's no push to get this thing done. Maybe we should go back to the days when we'd stay here all weekend and we'd do sessions while people negotiated or we'd just do sessions until people finally beseeched their leadership so strongly that they'd say, We've got to get a deal here, we just can't keep doing this.

Whatever it takes, we got to do it ourselves. We shouldn't have to pass legislation to make us do the job that we're paid for. We should be able to do that on our own. That's what we're elected to do. And

hopefully that's what we will start to do.

I'll probably be opposing this also. Thank you.

ACTING PRESIDENT MEIER: The question is on the resolution.

The Secretary will call the roll.

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT MEIER: Senator Paterson, are you asking to be recognized?

SENATOR PATERSON: Mr. President, may we have a slow roll call on that resolution?

ACTING PRESIDENT MEIER: The Secretary will call the roll.

SENATOR VELELLA: Mr. President, can the Secretary call the members into the house and have the bells rung so that we can bring our members into the chamber.

ACTING PRESIDENT MEIER: The Secretary will ring the bells.

THE SECRETARY: Senator Alesi.

SENATOR ALESI: Aye.

SENATOR BROWN: Senator Balboni.

SENATOR BALBONI: Yes.

THE SECRETARY: Senator Bonacic.

SENATOR BONACIC: Yes.

THE SECRETARY: Senator Breslin.

SENATOR BRESLIN: No.

THE SECRETARY: Senator Brown.

SENATOR BROWN: No.

THE SECRETARY: Senator Bruno.

(Senator Bruno was indicated as voting in the affirmative.)

THE SECRETARY: Senator Connor.

(Senator Connor was indicated as voting in the negative.)

THE SECRETARY: Senator DeFrancisco, excused.

Senator Dollinger.

SENATOR DOLLINGER: To explain my vote, Mr. President.

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

SENATOR DOLLINGER: Just for the sake of the record, Mr. President, I think we had a discussion yesterday about ending debate and the consistency of the rules. I would just suggest that we continue to abide by those rules when we're ending the debate both on resolutions and on bills.

But more importantly, Mr. President, I don't understand, have never understood, and will never understand why the Majority of this house, having the political power of the Legislature, is so willing to give it away to a Governor. I don't understand it. We fought like hell last November to try to get it away from you. The voters gave it back to you, and you are about to cede that power to the Governor through this bill.

I don't understand it. I would just suggest, Mr. President, that had there been a different outcome last November, I certainly would never stand before this body and say: Oh, you know, it's okay, if we can't agree on a budget, we'll have a default and let the Governor run the state without us for as much as a year without our input.

I would never want to be in that position. I would never give away the political power. I would never give away the power of this Legislature. And for the life of me, I could never understand why a majority in this house would ever agree to do anything

like that.

I would suggest this is a bad idea. It's a bad idea for the Legislature. It's a bad idea for this house. It's a bad idea for the people of the State of New York. It should be put in the dustbin with other bad ideas. My hope is my negative vote gets it there quicker.

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

The Secretary will continue to call the roll.

THE SECRETARY: Senator Duane.

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

SENATOR DUANE: Thank you, Mr. President. But I really think is the only thing I can say is -

ACTING PRESIDENT MEIER: Can we have some order in the chamber so we can get through the roll call, please.

Can I ask people to stop their conversations until we complete the roll call, please.

Senator Duane, to explain his vote.

SENATOR DUANE: I was just going to say what more can I say, Mr. President. I think I said it all. I vote no.

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

THE SECRETARY: Senator Espada.

SENATOR ESPADA: No.

THE SECRETARY: Senator Farley.

SENATOR FARLEY: Aye.

THE SECRETARY: Senator Fuschillo.

SENATOR FUSCHILLO: Yes.

THE SECRETARY: Senator Gentile.

SENATOR GENTILE: No.

THE SECRETARY: Senator Gonzalez.

SENATOR GONZALEZ: No.

THE SECRETARY: Senator Goodman.

(No response.)

THE SECRETARY: Senator Hannon.

SENATOR HANNON: Yes.

THE SECRETARY: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: No.

THE SECRETARY: Senator Hevesi.

SENATOR HEVESI: To explain my

vote.

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

SENATOR HEVESI: Thank you, Mr. President, very briefly.

As I stated before, this resolution provides an incentive for whichever party to the budget process is most dissatisfied with the new request. It provides an incentive for that party to stall, to not negotiate, and thus be an impediment to the budget process.

And no one has addressed that on the other side of the aisle, whether or not that statement, which many of my colleagues have embraced, is flawed in any way logically. Because if it is not flawed, this is a bad bill. If it is flawed, please point it out.

In the absence of that explanation, I vote no on this very bad piece of legislation.

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

THE SECRETARY: Senator Goodman.

SENATOR GOODMAN: Aye.

THE SECRETARY: Senator Hoffmann.

SENATOR HOFFMANN: Aye.

THE SECRETARY: Senator Johnson.

SENATOR JOHNSON: Aye.

THE SECRETARY: Senator Kruger.

SENATOR KRUGER: No.

SENATOR BROWN: Senator Kuhl.

SENATOR KUHL: Yes.

THE SECRETARY: Senator Lachman.

SENATOR LACHMAN: No.

THE SECRETARY: Senator Lack.

SENATOR LACK: Aye.

THE SECRETARY: Senator Larkin.

(No response.)

THE SECRETARY: Senator LaValle.

SENATOR LAVALLE: Aye.

THE SECRETARY: Senator Leibell.

SENATOR LEIBELL: Aye.

THE SECRETARY: Senator Libous.

SENATOR LIBOUS: Aye.

THE SECRETARY: Senator Maltese.

SENATOR MALTESE: Aye.

THE SECRETARY: Senator Marcellino.

SENATOR MARCELLINO: Aye.

SENATOR MEIER: Senator Marchi.

SENATOR MARCHI: Aye.

THE SECRETARY: Senator Markowitz.

SENATOR MARKOWITZ: No.

THE SECRETARY: Senator Maziarz.

(No response.)

THE SECRETARY: Senator McGee.

SENATOR McGEE: Yes.

THE SECRETARY: Senator Meier.

SENATOR MEIER: Aye.

THE SECRETARY: Senator Mendez.

SENATOR MENDEZ: No.

THE SECRETARY: Senator Montgomery.

SENATOR MONTGOMERY: No.

THE SECRETARY: Senator Morahan.

SENATOR MORAHAN: Yes.

THE SECRETARY: Senator Nozzolio.

SENATOR NOZZOLIO: Aye.

THE SECRETARY: Senator Onorato.

SENATOR ONORATO: No.

THE SECRETARY: Senator Oppenheimer.

ACTING PRESIDENT MEIER: Senator Oppenheimer, to explain her vote.

SENATOR OPPENHEIMER: I'll be voting no, because I don't understand how, if we use last year's budget in the coming year, how do we pay the contracts that we've signed with our employees that might have a 2 percent increase? I mean, if we're not going to increase the budget to pay our bills, how are we -- I mean, we're going to be in a deficit position big time.

I have often felt that the only thing that is really needed in this Capitol to pass a budget is the will to get the budget passed. And I think if all of us demanded that we have an on-time budget, we would have an on-time budget.

So I think we have to somehow reach deep within ourselves and say why have we not demanded that we get an on-time budget, because those of us that have small school districts know what it's like for them to try and throw together a budget without a clue as to what the state is providing them. It really is very improper, and there has to be some way for all of us to come together and say this cannot be tolerated any longer.

Thank you. I'll be voting no.

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

THE SECRETARY: Senator Padavan.

SENATOR PADAVAN: Aye.

THE SECRETARY: Senator Paterson.

SENATOR PATERSON: No.

THE SECRETARY: Senator Rath.

SENATOR RATH: Yes.

THE SECRETARY: Senator Saland.

SENATOR SALAND: Aye.

THE SECRETARY: Senator Sampson.

(No response.)

THE SECRETARY: Senator Santiago.

(No response.)

THE SECRETARY: Senator Schneiderman.

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

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

SENATOR SCHNEIDERMAN: I'm also going to be voting no.

I think that I'd just like to follow up on the comment that Senator

Oppenheimer made. This is a bill that would put our budget of localities throughout the state, of all of the agencies, private and public and quasipublic that depend on the state budget, out of sync with their current needs.

It doesn't make any sense. It is, as Senator Dollinger has argued, a transfer of power to a Governor who I believe has too much power. I don't see how this would improve the process. I think this will make for longer budgets. I have not heard any arguments to rebut any of the discussion on this side of the aisle.

And I would urge everyone to vote no, and let's come up with a real budget reform package this year.

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

SENATOR BROWN: Senator Seward.

SENATOR SEWARD: Yes.

THE SECRETARY: Senator Skelos.

SENATOR SKELOS: Yes.

THE SECRETARY: Senator A. Smith.

SENATOR ADA SMITH: No.

THE SECRETARY: Senator M. Smith.

SENATOR MALCOLM SMITH: No.

THE SECRETARY: Senator Spano.

SENATOR SPANO: Aye.

THE SECRETARY: Senator Stachowski.

SENATOR STACHOWSKI: No.

THE SECRETARY: Senator Stafford.

SENATOR STAFFORD: Aye.

THE SECRETARY: Senator Stavisky.

ACTING PRESIDENT MEIER: Senator Stavisky, to explain her vote.

SENATOR STAVISKY: Mr. President, it seems to me that with the budget resolution that passed here earlier, and with the tax cuts that have been recommended for the out-year progression, it seems to me it would make it all the more difficult if this legislation were to be enacted.

It's hard for me to go back to the people in Queens County and say that a bad budget but a timely budget is better. For that reason -- it is not better. And for that reason, I vote no.

ACTING PRESIDENT MEIER: Senator

Stavisky will be recorded in the negative.

THE SECRETARY: Senator Trunzo.

SENATOR TRUNZO: Yes.

THE SECRETARY: Senator Velella.

SENATOR VELELLA: Yes.

THE SECRETARY: Senator Volker.

SENATOR VOLKER: Yes.

SENATOR BROWN: Senator Wright, excused.

ACTING PRESIDENT MEIER: The Secretary will call the absentees.

THE SECRETARY: Senator Larkin.

SENATOR LARKIN: Aye.

THE SECRETARY: Senator Maziarz.

SENATOR MAZIARZ: Aye.

THE SECRETARY: Senator Sampson.

(No response.)

THE SECRETARY: Senator Santiago.

(No response.)

THE SECRETARY: Ayes, 34. Nays, 23.

ACTING PRESIDENT MEIER: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Mr. President,

would you please call up Calendar Number 167.

ACTING PRESIDENT MEIER: The Secretary will read Calendar 167.

THE SECRETARY: Calendar Number 167, by Senator Bruno, Senate Print 7, an act to amend the State Finance Law, in relation to changing the state fiscal year.

SENATOR PATERSON: Explanation.

SENATOR ADA SMITH: Explanation.

ACTING PRESIDENT MEIER: Senator Stafford.

SENATOR STAFFORD: Mr. President, I will do my best to be clear, concise, and brief. And I think we can get the job done here.

Now, I would just say to my friend Senator Stachowski -- who I certainly get along with, we've been friends since he got here. And he was talking about how it was different a number of years ago. It was different because we never got into session to do anything.

(Laughter.)

SENATOR STAFFORD: So now at least we get into session, and we get work

done.

This bill also will really reform the way we do business here as far as a budget is concerned. And this bill will provide a jump start, if you will -- can you people hear me there? Yeah, because I can hear you.

(Laughter.)

SENATOR STAFFORD: I'll start over.

(Laughter.)

SENATOR STAFFORD: There we are. Now we'll see how this goes. But -

ACTING PRESIDENT MEIER: Senator Stafford, you've just done more to secure order than I ever could have.

SENATOR STAFFORD: I know this is really interesting and everyone is hanging on the side of their seat. And I am. But this is serious.

This will give us a jump start, and we will have a revenue forecast of the Medicaid public assistance caseload, and also the school aid assessment. And that will be by December 1 of each year. Also in this bill we'll have a consensus revenue forecast

provided for. And this consensus revenue forecast between the legislative and executive will be required by March 1.

Now, if no consensus is reached - I'm sure everyone will be interested on both sides of the aisle, and maybe on each side of the aisle, and maybe more on one side of the aisle -- but if no consensus is reached, the State Comptroller will make the decision and will provide a binding forecast.

Also, it provides for general conference committees, which are very, very important. Both houses pass respective budget resolutions after the issuance of a binding revenue forecast, which either comes from the Legislature or from the Comptroller. And ten general conference committees decide overall avails and assign targets to individual conference committees. Which I think is an excellent provision.

Now, did I mention that we change the fiscal year? All right, then I'll mention it. We change the fiscal year. And it goes, rather than April 1, to May 1. Which I think many people are of the opinion will be

helpful, because we gain two months. Which I myself think will be helpful.

And the final point I will make is that there is also a requirement of a multiyear financial analysis of any changes to the Executive budget by individual conference committees.

So I think these are really the mechanics of what we need. I think it will help us get the job done. And I think it's a good bill.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Thank you, Mr. President. If Senator Stafford would yield to a question.

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

SENATOR STAFFORD: By all means.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR PATERSON: Senator, there's been a discussion on the last piece of legislation about really what is the -- I think it was Senator Connor who brought it

up -- the deterioration of responsibility, that there were times when if we were even approximating the budget deadline that there would be most haste taken to try to complete the business on time. There was some historical discussion of how they even would stop the clock here in the chamber to make sure that the budget was recorded as having passed on March 31st.

Now, because, as Senator Connor pointed out, we've gone further and further into the year, as late as even August 5th - which would have seemed unimaginable to some of our predecessors, and would probably confirm what you, Senator Stafford, said about the river never rising as high as its source, because in some ways we really disgraced the memory of this chamber and the other legislature here, because we really haven't had that responsibility or found the ways, as Senator Onorato discussed, about coming every day or having a session every day or locking down the chamber until the budget is passed.

And certainly during the impeachment hearings which both parties wanted

to get over a couple of years ago, that's what they did. And they got the impeachment done in a matter of weeks. This is the federal impeachment.

But my question is, don't you have an apprehension about moving the fiscal year back to May 1st and in a sense triggering almost a greater disregard and noncompliance with regulations than the one we have now, and perhaps we'll be looking at September, October, we'll be coming up to the point where the budget for the succeeding year should have been issued and haven't passed a budget for the year at hand. Is that a concern of yours?

SENATOR STAFFORD: Mr. President, first I would suggest to Senator Paterson, remember, I said it's physics. The river never rises higher than its source. It can rise as high as its source. You said that it could. And I think that it can't go higher.

And of course Alan and Basil will attest to that. But now, I will suggest - Alan Senior.

Now, you know, as far as apprehension, all we have to do is study the

legislatures in the various states. Many of you have gone to conferences where various representatives are there from various states, and you learn from other states. I've learned, when you people come back and tell me about it, we have one of the shortest periods from when the budget is presented to when the budget passes.

So as far as apprehension, I don't have any apprehension, concern as far as that issue is concerned.

SENATOR PATERSON: Well, Mr. President -

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: In honor of physics, this being the first day of spring, the vernal equinox, when the earth is actually closer to the sun than it is at other times of the year, but it's colder because of the earth's slant, I will accept that explanation from Senator Stafford and hope that whatever changes we make, that we do pass the budget on time one of these seasons.

ACTING PRESIDENT MEIER: Senator

Dollinger.

SENATOR DOLLINGER: Mr. President, will Senator Stafford yield just for one question.

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

SENATOR STAFFORD: Yes.

ACTING PRESIDENT MEIER: Senator Stafford yields.

SENATOR DOLLINGER: This, as I understand it, is an amendment to the State Finance Law. Why is this law contingent upon the passage of the amendment that we just approved in this house over the objection of the Democratic Minority?

Why not make this bill freestanding, eliminate any references to that constitutional amendment? Why don't we just take these reforms that you talk about, and properly praise joint conference committees, bumping back the date. Let's put it into law now. Why wait for the people to pass a constitutional amendment which may not pass and this law might never take effect?

SENATOR STAFFORD: I'm advised,

of course, this is our package. I was going to say this is our loaf. And you never want a half a loaf. We think that both are necessary.

We think this -- this is serious, and I don't mean to be light here, because this is very serious. It's something I'm very concerned about. Because when I get home, back in my area, people go right to me and explain that it's their position that this type of legislation, this type of resolution is needed and we have to get a mechanism whereby we get a timely budget.

So I think both are necessary.

SENATOR DOLLINGER: Thank you, Mr. President. On the bill briefly.

ACTING PRESIDENT MEIER: Senator Dollinger, on the bill.

SENATOR DOLLINGER: Senator Stafford's comment that this is part of a package is, in my opinion, an unnecessary bundling of two concepts together. We have the bill that we just did a minute ago, the concurrent resolution, which is a constitutional amendment which many of us say

will radically alter the balance of power between the legislative branch and the Executive branch. In my judgment, unfortunately so, if not devastatingly so for this Legislature.

But this bill, which contains a couple of good ingredients, is nonetheless packaged hand in glove with that bill. Because what it says is this bill will never become law unless we pair it with a constitutional amendment that, in my judgment, denudes the legislative power, just takes it right away from us.

My personal opinion is, Mr. President, that this bill has merits as a freestanding bill. It talks about changing the -- bumping back the date of the budget passage. I think that's a good idea. Senator Stafford is correct. The interval between January 27th, when the Governor makes his formal presentation to the Legislature, and the date we adopt the bill is among the shortest in the states. We could use the extra time.

But even though that's a good

benefit, and even though the conference committees could be put into law, the problem with this bill is it won't go into effect until a constitutional amendment, which would radically alter the balance of power between the Legislature and the Executive, is adopted by the voters.

I for one, Mr. President, will be out vigorously opposing that amendment if it ever gets to the ballot and trying to convince people that taking away our power given to us by the people in this State Constitution is a bad idea for us to give it away to a Governor.

So for that reason, Mr. President -- and I've voted for this a number of times -- I'm going to vote against it, because it shouldn't be linked to a constitutional amendment which I don't think will ever become law, and therefore the changes, the reforms in this bill will not become law.

If you want these reforms to become law, if you want the good ideas contained in this bill law, I would suggest to its sponsor, Senator Bruno, come forth with an amendment,

we'll waive the rules so that the amendment doesn't require an agreement of consent or a canvass of agreement, we'll waive the rules and we'll allow a thumbs-up vote to strike the enacting clause, make it effective 90 days after it's passed by this house, 90 days after it's passed by the other house and approved by the Governor.

We don't need the people's concurrence to cure our problems. As I explained earlier, political solutions are available. Embracing a full participation of the Legislature will solve the problem of late budgets. Passing this bill into law without a constitutional amendment will make sure that we abide by our promises.

We're going down the right path. This is the wrong vehicle to get there. I urge you to vote in the negative.

ACTING PRESIDENT MEIER: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President. If the sponsor would just yield for one question.

ACTING PRESIDENT MEIER: Senator

Stafford, do you yield for a question?

SENATOR STAFFORD: By all means.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR SCHNEIDERMAN: Thank you.

I agree with Senator Dollinger that there are a lot of provisions in this resolution that we would welcome if they were in the form of a bill. I'm curious as to how you would expect the conference committees to function in terms of estimates and revenue forecasts. Because you would, I gather, be requiring people from different houses and different parties to agree on something as to which there have been very serious disputes year after year.

SENATOR STAFFORD: I of course understand your question. And you remember, I'm sure, on the banks of the Charles you learned about the reasonable man. Do you remember torts when -

SENATOR SCHNEIDERMAN: I have a reliable recollection of the reasonable man. It's faded since I've been here.

SENATOR STAFFORD: I've noticed

that.

(Laughter.)

SENATOR STAFFORD: Now, let me point out that when you have a reasonable man -- reasonable person, excuse me. And I'm sure in law school now it's taught as a reasonable person, and there's a debate on what a reasonable person is and what are the parameters. It takes a reasonable group of people in the Assembly and in the Senate to sit down -- and remember what I said about hammering out decisions on the anvil of discussion and reason. That has to be done. It has to be done in this legislation.

And if someone will not sit down and discuss, in order for us to use that anvil, then it is very difficult. We are willing to sit down here in the Majority, here in the Senate.

SENATOR SCHNEIDERMAN: Through you, Mr. President, I just have a follow-up.

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

SENATOR STAFFORD: Oh, yes.

ACTING PRESIDENT MEIER: The

Senator yields.

SENATOR SCHNEIDERMAN: I guess my concern is, wouldn't you just be transferring this period of gridlock or unreasonableness or posturing or whatever you choose to call it - and it sounds as though we're all in agreement on the principles, that we may have differences as to their application.

But wouldn't you just be transferring that difficulty into this conference committee? Wouldn't the same gridlock be possible but at the level now of the conference committee?

SENATOR STAFFORD: I would suggest, as has been the case here a number of times in the last few weeks, you answered your question within your question. Because you used the word "unreasonable."

If you have reasonable people who will sit down and discuss, then this legislation will work, no question about it.

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

ACTING PRESIDENT MEIER: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: I thank the Senator for his responses, his guidance, the loaf, the anvil, the river and its source. And I certainly would urge him that there are stand-up clubs in my district that you would really blow out should you choose to pursue that sort of a career.

I think that the difficulty I have with this legislation is that given what we perceive to be political differences or unreasonableness or however we define them, I'm not sure that this provides the necessary incentive to force those who may be unreasonable to become more reasonable. And I do think it probably represents an improvement over the current situation, but I think the fundamental problem still is a political problem, that we are only as reasonable as the voters make us.

And that's why opening the process, televising the proceedings, letting in some sunshine to this process is essential for us all. And I commend the Senator for a good piece of legislation, were it a bill. I have to concur in Senator Dollinger's comment that

tying this to a resolution that will never pass I think is unfortunate, and I hope that it will get a fresh look and that, if we're serious about these reforms in this house, that we will try it as a bill.

Because that way we may be able to get a portion of the loaf from the other house. And a portion of a loaf is not as good as a whole loaf, but it's certainly something for us to snack on as the summer winds into the fall and we're lounging on the banks of the river that cannot rise, waiting for a budget.

SENATOR STAFFORD: Thank you. Mr. President.

ACTING PRESIDENT MEIER: Senator Stafford.

SENATOR STAFFORD: Speaking of stand-up clubs, we don't have those where I come from. We have sit-down clubs. But you're welcome to come anytime.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Malcolm Smith.

SENATOR MALCOLM SMITH: Mr. President, through you, would the sponsor yield for one question?

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

SENATOR STAFFORD: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR MALCOLM SMITH: Thank you, Mr. President.

Senator Stafford, the bill talks about, in absence of a forecast by the legislative branch by a particular date, that the Comptroller will then be the one to provide that forecast.

SENATOR STAFFORD: Right.

SENATOR MALCOLM SMITH: Would the Comptroller himself be the only one, and his staff, involved in that process, or would he involve any of the legislative staff in terms of providing that forecast?

SENATOR STAFFORD: Well, I'm sure that the Comptroller and his staff would take into consideration what both the Assembly and Senate had suggested. But to make a final

determination, the Comptroller -- in this legislation, the buck would stop there, and he would make -- he or she, excuse me, would make the decision.

SENATOR MALCOLM SMITH: Thank you very much, Mr. President. On the bill.

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

SENATOR MALCOLM SMITH: Notwithstanding any comments about the bill being attached to an amendment, I think this is a particular resolution in the right direction. I believe that moving the bill back is a start.

From a business standpoint, you're absolutely right in your analogy as to how high and how far and the limits thereof. And notwithstanding the fact that if we have difficulty in getting to a point that you now involve the Comptroller, clearly that means you're bringing a third party in, or a fourth party in, and that's opening up the process. And I think that's a direction in which we want to head.

I would urge my colleagues,

notwithstanding, again, Senator Dollinger's reference to the attachment to an amendment, but it is a step in the right direction. And perhaps if we can pass this and perhaps maybe send it over to the other side, we can begin to lobby them as well and start the process of opening the entire process up so we can get to a point where all is involved, conference committee notwithstanding, to get to an appropriate budget at an appropriate time.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 11. This act shall take effect -

SENATOR DOLLINGER: Mr. President.

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

SENATOR DOLLINGER: With all due respect, Mr. President, I mean, we had talked about this yesterday with respect to the end of the debate.

ACTING PRESIDENT MEIER: Do you have a point of order to make, Senator?

SENATOR DOLLINGER: Yes, I do,

Mr. President. I'd simply -

ACTING PRESIDENT MEIER: Would you like me to ask if any other Senator would like to be recognized on the bill? Because I'm willing to do that, Senator.

SENATOR DOLLINGER: Thank you, Mr. President.

ACTING PRESIDENT MEIER: Could we settle it that way? Deal.

Okay. Does any other Senator wish to be heard on this bill? Going once, twice.

Hearing none, read the last section.

THE SECRETARY: Section 11. This act shall take effect upon the effective date of the amendments to the constitution contained in a concurrent resolution.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 167 are Senators Dollinger, Duane, Espada, Gonzalez, Hassell-Thompson, Montgomery, and Schneiderman. Ayes, 52. Nays, 7.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Skelos.

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 be it read.

ACTING PRESIDENT MEIER: Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following bills:

Senate Print 3631, by Senator Alesi, an act in relation to redistributing; 3711, by Senator Leibell, an act to amend the Executive Law and the State Finance Law; 3712, by Senator Leibell, an act to amend the Executive Law and the State Finance Law; and 3713, by Senator Leibell, an act to amend the Executive Law.

All bills ordered direct to third reading.

ACTING PRESIDENT MEIER: All

bills ordered directly to third reading.

Senator Skelos.

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

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

SENATOR SKELOS: There being no further business, I move we adjourn until Wednesday, March 21st, at 11 a.m.

ACTING PRESIDENT MEIER: On motion, the Senate stands adjourned until Wednesday, March 21st, at 11:00 a.m.

(Whereupon, at 5:45 p.m., the Senate adjourned.)