NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

May 15, 2001

11:15 a.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will please come to order.

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

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

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

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

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Monday, May 14, the Senate met pursuant to adjournment. The Journal of Sunday, May 13, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Marcellino.

SENATOR MARCELLINO: Thank you, Madam President.

On behalf of Senator Balboni, I move to amend Senate Bill Number 3084A by striking out the amendments made on 5/8 and restoring it to its original previous print number, 3084.

THE PRESIDENT: So ordered, Senator.

SENATOR MARCELLINO: And on behalf of Senator Johnson, on page number 66 I offer the following amendments to Calendar Number 862, Senate Print Number 5066, and ask that said bill retain its place on the Third Reading Calendar.

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

SENATOR MARCELLINO: Thank you.

THE PRESIDENT: Senator Meier.

SENATOR MEIER: Thank you, Madam President.

On page number 32, I offer the following amendments to Calendar Number 504, Senator Morahan's bill, Senate Print 2791, and ask that said bill retain its place on the Third Reading Calendar.

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

SENATOR MEIER: Madam President, on behalf of Senator Morahan, on page number 48 I offer the following amendments to Calendar Number 672, Senate Print Number 1377, and ask that said bill retain its place on the Third Reading Calendar.

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

SENATOR MEIER: Thank you, Madam President.

THE PRESIDENT: You're welcome.

Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, are there any substitutions at the desk?

THE PRESIDENT: There are, Senator.

The Secretary will read.

SENATOR FUSCHILLO: Can we accept them, please.

THE SECRETARY: On page 23, Senator Seward moves to discharge, from the Committee on Rules, Assembly Bill Number 4911A, and substitute it for the identical Senate Bill Number 2406, Third Reading Calendar 374.

THE PRESIDENT: The substitution is ordered.

Senator Dollinger.

SENATOR DOLLINGER: Thank you, Madam President.

Consistent with my usual practice, I hereby give written notice, pursuant to Rule XI -

THE PRESIDENT: Excuse me, Senator.

Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, thank you. There will be an immediate meeting of the Transportation Committee in the Majority Conference Room.

Madam President, can we have some silence in the chambers as well -

THE PRESIDENT: Yes, it is - there is -

SENATOR FUSCHILLO: -- some order.

THE PRESIDENT: I request that the members take their conversations outside the chambers, please.

Senator Fuschillo, you would like me to announce a meeting?

SENATOR FUSCHILLO: 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 Dollinger, you may proceed.

SENATOR DOLLINGER: Thank you, Madam President.

I hereby give written notice, pursuant to Rule XI, that I will move to amend the Senate rules to add a new rule, XV, which relates to the ethical standard of members, officers, and employees of the New York State Senate.

I would ask that that notice be filed in the Journal.

THE PRESIDENT: The notice has been received, and it will be filed in the Journal.

Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, I believe there's a privileged resolution by Senator Marchi at the desk. Will you please have it read, the title read.

THE PRESIDENT: There is, Senator.

The Secretary will read.

THE SECRETARY: By Senator Marchi, Legislative Resolution Number 1754, commending Thomas R. Sullivan upon the occasion of his designation as recipient of the 2001 "Man of the Year" Award on May 17, 2001.

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

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, may we please have the reading of the noncontroversial calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 172, by Senator McGee, Senate Print 870, an act to amend the Vehicle and Traffic Law.

SENATOR DUANE: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 342, by Senator Goodman, Senate Print 704, an act to amend the Vehicle and Traffic Law.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 343, by Senator Trunzo, Senate Print 760, an act to amend the Vehicle and Traffic Law and the Education Law.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 344, by Senator Trunzo, Senate Print 779, an act in relation to requiring.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 345, by Senator Fuschillo, Senate Print 878, an act to amend the Vehicle and Traffic Law.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number

346, by Senator Trunzo, Senate Print 1238, an act in relation to requiring.

SENATOR PATERSON: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 347, by Senator Bruno, Senate Print 2372, an act to amend the Vehicle and Traffic Law.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside, Senator Paterson.

THE SECRETARY: Calendar Number 348, by Senator Bruno, Senate Print 2373A, an act to amend the Vehicle and Traffic Law.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 349, by Senator Fuschillo, Senate Print 2376, an act to amend the Vehicle and Traffic Law.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid

aside.

THE SECRETARY: Calendar Number 420, by Senator Trunzo, Senate Print 2594, an act authorizing the Town of Islip.

SENATOR FUSCHILLO: Lay it aside for the day.

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

THE SECRETARY: Calendar Number 422, by Senator Fuschillo, Senate Print 3098, an act authorizing the assessor of the County of Nassau.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 425, by Senator Johnson, Senate Print 3258, an act to authorize the West Babylon Church.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 426, by Senator Skelos, Senate Print 3300, an

act authorizing the assessor of the County of Nassau.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 431, by Senator Skelos, Senate Print 4064, an act authorizing the assessor of the County of Nassau.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 467, by Senator Saland, Senate Print 4233A, an act to amend the Penal Law.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 508, by Senator LaValle, Senate Print 3267, an act to amend the Town Law.

SENATOR PATERSON: Lay it aside,

please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 867, by Senator Skelos, Senate Print 398, an act to amend the Domestic Relations Law.

SENATOR PATERSON: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 881, by Senator Seward, Senate Print 4530, an act in relation to adjusting.

SENATOR DOLLINGER: Lay it aside.

THE PRESIDENT: The bill is laid aside.

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

SENATOR FUSCHILLO: Thank you, Madam President. Can we now have the reading of the controversial calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 172, by Senator McGee, Senate Print 870, an

act to amend the Vehicle and Traffic Law, in relation to requiring.

SENATOR DUANE: Explanation, please.

THE PRESIDENT: Senator McGee, an explanation has been requested.

SENATOR McGEE: Put that bill aside temporarily, please.

THE PRESIDENT: The bill is laid aside temporarily.

SENATOR McGEE: Thank you.

THE SECRETARY: Calendar Number 342, by Senator Goodman, Senate Print 704, an act to amend the Vehicle and Traffic Law, in relation to restricting.

SENATOR PATERSON: Explanation, please.

THE PRESIDENT: Senator Goodman, an explanation has been requested.

SENATOR GOODMAN: Madam President, this bill prohibits any person from operating a bus or school bus during any period of suspension or revocation resulting from a conviction of an alcohol- or drug-related motor vehicle offense that took

place either in-state or out-of-state when the driver was operating his or her personal vehicle.

We've been informed, through the Senate Investigations Committee, of instances in which drivers who obviously had no business being behind the wheel were permitted to remain there after offenses involving alcohol and drugs, and, due to the slowness of the bureaucratic removal procedures, they were permitted to continue driving buses and thus jeopardizing schoolchildren's very lives.

So that our attempt here is to close this loophole and to do so as promptly as possible.

THE PRESIDENT: Senator Duane.

SENATOR DUANE: Thank you, Madam President. If the sponsor would yield, please.

THE PRESIDENT: Senator Goodman, will you yield for a question?

SENATOR GOODMAN: Yes, Senator.

THE PRESIDENT: You may proceed with a question, Senator.

SENATOR DUANE: I'm curious, do

you know if subway -- they're not subway drivers. Subway engineers? Subway drivers.

SENATOR GOODMAN: Motormen.

SENATOR DUANE: Do they have the same restrictions?

SENATOR GOODMAN: I don't know. But if they don't, they should, Senator. I can't answer that offhand.

As a matter of fact, Senator, let me elaborate on that and say that they do, as a result of legislation which we did pass after a major accident occurred at the 14th Street subway stop in New York within the last three years.

SENATOR DUANE: And, Madam President, if the sponsor would continue to yield.

THE PRESIDENT: Senator Goodman, will you yield?

SENATOR GOODMAN: Yes, Senator.

THE PRESIDENT: You may proceed, Senator.

SENATOR DUANE: Is this bill going to change the current law that prohibits a person from driving a bus for five years

after their license has been revoked or suspended as a result of a second conviction for driving under the influence of alcohol or drugs?

SENATOR GOODMAN: No, it's not, Senator.

SENATOR DUANE: And through you, Madam President, if the sponsor would yield.

THE PRESIDENT: Senator Goodman, will you yield?

SENATOR GOODMAN: Yes, I will.

THE PRESIDENT: You may proceed, Senator Duane.

SENATOR DUANE: I'm wondering if the sponsor thinks that there should be any notice requirements in the bill.

SENATOR GOODMAN: None other than what's reflected in the present procedure, Senator.

SENATOR DUANE: And through you, Madam President, if the sponsor would continue to yield.

THE PRESIDENT: Senator Goodman, will you yield?

SENATOR GOODMAN: Yes, I will.

THE PRESIDENT: You may proceed, Senator Duane.

SENATOR DUANE: Would the court be responsible for notifying the bus company?

SENATOR GOODMAN: Say that again, Senator. I'm sorry.

SENATOR DUANE: Would the court be responsible for notifying the school bus company?

SENATOR GOODMAN: The procedure would be the same as it is for any other offense of which someone is convicted, Senator.

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

THE PRESIDENT: Senator Goodman, will you yield?

SENATOR GOODMAN: Yes, I will.

THE PRESIDENT: You may proceed, Senator Duane.

SENATOR DUANE: I'm just wondering if the sponsor could expound just a little bit on what that procedure is.

SENATOR GOODMAN: I'm not fully

familiar with it, Senator. Therefore, I can't respond adequately to your request.

SENATOR DUANE: And through you, Madam President, if the sponsor would continue to yield.

THE PRESIDENT: Senator Goodman, will you yield?

SENATOR GOODMAN: Yes, I will.

SENATOR DUANE: Is there an Assembly sponsor for the legislation?

SENATOR GOODMAN: I'm not in a position to answer that right now. I'll find out and let you know, Senator.

Excuse me, I see that -- excuse me. I beg to differ with my -- make a correction. A7575, by Assemblyman Sanders, is the Assembly companion. It's been referred to Codes on May the 1st in the Assembly.

SENATOR DUANE: Thank you.

And my final question, if the sponsor would yield.

SENATOR GOODMAN: Yes, Senator.

THE PRESIDENT: You may proceed, Senator Duane.

SENATOR DUANE: I'm just

wondering if, you know -- because we haven't really had any hearings on this since I have been here -- but if there are any studies or anything on the issue or if there's anything further -- I mean, it seems like a good bill. I would just like to see some data which justifies it. Does any data exist?

SENATOR GOODMAN: I would say that this can be readily appreciated as a matter of simple common sense, Senator, and I think the procedure that you suggest would be a waste of taxpayer money and a waste of time.

SENATOR DUANE: Then I do have one final question, Madam President.

THE PRESIDENT: Senator Goodman, will you yield for a question?

SENATOR GOODMAN: I understood the Senator to say his last question was his final question. Does he wish to amend that statement, Madam President?

SENATOR DUANE: Final, final question.

THE PRESIDENT: You may proceed with a final question.

SENATOR GOODMAN: On the

assumption that we can rely on that representation, the answer is yes, I will yield.

SENATOR DUANE: Thank you.

I'm just wondering whether the sponsor is aware of any other states that have passed this legislation or have a similar law.

SENATOR GOODMAN: No, I'm not, Senator.

SENATOR DUANE: Thank you, Madam President.

THE PRESIDENT: You're welcome.

Senator Onorato.

SENATOR ONORATO: Madam President, will the sponsor yield to a question from me?

THE PRESIDENT: Senator Goodman, will you yield?

SENATOR GOODMAN: Yes.

THE PRESIDENT: You may proceed, Senator Onorato.

SENATOR ONORATO: Senator, I'm just curious. Under the bill would a person who had an out-of-state conviction for operating a vehicle while under the influence

be prevented from driving? How would we be able to obtain that information for out-of-state convictions?

SENATOR GOODMAN: That information is, to the best of my knowledge, available through the intelligence reporting system of the State Police, Senator. And the Department of Motor Vehicles has a database that contains that information as well from other states.

SENATOR ONORATO: Thank you.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Thank you, Madam President. If Senator Goodman would yield for a question.

SENATOR McGEE: Certainly, Senator.

THE PRESIDENT: Senator Goodman yields. You may proceed, Senator Paterson.

SENATOR PATERSON: Senator, given the shortage of bus drivers -- and this is not to say that we should actually give any undue opportunity to someone who could be a danger to children. But just pragmatically looking at the situation a lot of school districts are

facing, given the shortage of bus drivers, how would we alleviate the fact that this might diminish the number -- the pool of drivers that we have?

SENATOR GOODMAN: Senator, first of all, to the best of my knowledge, there is no shortage of bus drivers. There's a waiting list for those jobs, as far as I'm aware.

And secondly, I think I can answer the question with a question. Would you want your child to be on a bus that was being driven by someone with a record of intoxication due to alcohol or drugs? I wouldn't.

And I think it's manifest that we want to take every reasonable precaution to keep such irresponsible or potentially dangerous drivers off the road, especially when it comes to conducting children to school.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Thank you, Madam President. I want to thank Senator Goodman for answering that question and speak on the bill.

THE PRESIDENT: You may proceed on the bill, Senator.

SENATOR PATERSON: Yeah, I agree with Senator Goodman, Madam President, there is -- really should be no correlation between the number of bus drivers and the possibility of impairment to a vehicle operator and therefore transferring that loss of a license to the denial of the privilege of driving our children to school. So I think his point is well taken.

Just for the record, there was a Department of Transportation memorandum that did focus on the shortage of bus drivers in the upstate region, and that's what I was actually referring to.

Coming from New York City, as I do, Senator Goodman is also right that we have so many people who are in need of jobs that we really can replace these bus drivers very easily. And I was just pointing out to Senator Goodman that there are regions of the state where they do have this shortage.

And actually, my suggestion is that perhaps a standard-of-impairment testing where

we actually test the individuals right before they're going to operate the vehicle might be a solution or something we might look at if we want to continue individuals who have a stigma attached to them because of the fact that they lost their regular driver's license due to an impairment or they were found to be bereft of faculties in a test. So I think that that's just a suggestion I have.

But in the end, Senator Goodman is correct, that in any way to allow anyone to continue driving at a time when there is certainly a red flag point pointing up that they could possibly be a danger to the children who they would be transporting to school and home is a value that we have to favor over how we replace a shortage of drivers in that particular situation.

Thank you, Madam President.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 48.

THE PRESIDENT: Senator Duane, to explain your vote.

SENATOR DUANE: Thank you, Madam President.

THE PRESIDENT: You're welcome.

SENATOR DUANE: I am going to vote yes on this legislation. But I am a little concerned that I'm voting for it in a vacuum.

As I previously mentioned, since I've been here, there hasn't been a hearing on this bill. It does look like there is a - you know, a loophole in the law that allows drivers to drive school buses, which seems like a bad idea. But I'm wondering if the history of this, if there was a reason or if there was some procedure maybe put in place that the punishment of having a driver's license for personal use was revoked but it was less so so a bus driver could make a living.

That's the only reason I can think that they might have done this in the old days, unless it was just a mistake. And I

don't really know. It would be interesting to see if other states had anything similar to the way the law would be without this legislation having been passed.

I'm also a little concerned about how it is that bus companies would get notice of this, who's responsible for, after a -- you know, a conviction of telling the employer that this had happened.

And, you know, in the absence of having any real idea of what those procedures are, I'm concerned that, as sometimes happens here, we would be passing a bill which is basically unenforceable, and so even if a driver or a bus company was breaking the law, nobody would know. I mean, there's not much point in passing a law if it's not going to actually accomplish what it sets out to do.

So on the basis of it's being, you know, something which seems common sense and, sadly, lacking any knowledge to the contrary, I am going to vote in the affirmative on it, Madam President. Thank you.

THE PRESIDENT: Senator Duane, you will be recorded as voting in the

affirmative on this bill.

The bill is passed.

Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, there will be an immediate meeting of the Local Government Committee in the Majority Conference Room.

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

Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, will you kindly call up Calendar Number 172, please.

THE PRESIDENT: The Secretary will read Calendar 172.

THE SECRETARY: Calendar Number 172, by Senator McGee, Senate Print 870, an act to amend the Vehicle and Traffic Law, in relation to requiring.

SENATOR DUANE: Explanation, please.

THE PRESIDENT: Senator McGee, an explanation has been requested.

SENATOR McGEE: Thank you, Madam

President.

This is a part of the package of our school bus safety program, and I'm really proud to talk about this bill. This legislation strengthens the law concerning breath tests for DWI administered to motor vehicle operators when there has been a personal injury accident involving a school bus.

THE PRESIDENT: Senator Duane.

SENATOR DUANE: Thank you. If the sponsor would yield, Madam President.

THE PRESIDENT: Senator McGee, will you yield?

SENATOR McGEE: Yes, I will.

SENATOR DUANE: Cannot a police officer or a state trooper already require a school bus driver to submit to a breath test?

SENATOR McGEE: Current law requires motor vehicle operators who are involved in an accident who are violating traffic laws to submit to a breath test when requested to do so by the police officer.

This bill requires that in a situation in which there has been an accident

involving a school bus engaged in transporting pupils and the accident results in a death or serious physical injury, the school bus driver and all other operators of the motor vehicles involved must submit to a breath test administered by a police officer.

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

THE PRESIDENT: Senator McGee, will you yield?

SENATOR McGEE: Yes, I will.

THE PRESIDENT: You may proceed, Senator Duane.

SENATOR DUANE: It seems to me that if a school bus driver can already be required to take a breath test, that if we pass this bill we would be saying that police officers and state troopers, et cetera, are not doing their jobs by checking, you know, an obvious potential cause of an accident by administering a breath test.

So isn't this kind of a slap in the face of our law enforcement people that they are unable or we don't trust them to do their

jobs?

SENATOR McGEE: I guess he wants me to respond.

Through you, Mr. President, I'm not clear that we're slapping anybody in the face. I didn't understand -- or perhaps you didn't understand what I said.

Presently the present law says it can be requested to be done so by the police officer. This bill mandates, if you will, the term of requiring them to have a breath test.

Now, many, many times, Senator Duane -- I don't know if you've been at an accident scene ever before, but many, many times accident scenes are very chaotic, and particularly those involving a school bus.

And in most cases, the police would make such a request. But under some certain circumstances, a -- it's -- whether a breath test or not is administered should not be dependent upon the request of the police officer, it should in fact be mandated.

And so I think that I've answered your question. It's not a slap in the face to anybody. I think it's the law enforcement

agent at the scene of the crime to be able to -- or the tragedy to determine whether a breath test is needed or not. This bill says that we'll take that right out of their determination. This bill says there will be a breath test taken at the scene.

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

ACTING PRESIDENT MORAHAN: Does the Senator yield?

SENATOR McGEE: Certainly.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR DUANE: I understand that the legislation -- the way the law is now is that a law enforcement personnel can request of a school bus driver that they submit to a test. And I understand that what this bill says is that the driver must submit to a Breathalyzer test.

However, there is no way that I can think of that you can actually force the driver to take the Breathalyzer test. So the difference between an officer asking the

driver to take a Breathalyzer test, as compared to saying the driver has to take a Breathalyzer test, really is just more forcefully shifting the burden onto the law enforcement people and in fact saying we don't really believe that you are following procedures and asking the driver to take the test.

So I'm wondering if what we're doing is not just sort of piling on in a situation where I believe a law enforcement officer would want to do the right thing and ask the driver to take a Breathalyzer test - although no one in that situation has control of whether the driver actually submits to the test, whether the law says so or not.

SENATOR McGEE: I didn't find a question in that whole diatribe. Would you like to narrow that down to a question?

ACTING PRESIDENT MORAHAN: The Senator did not recognize a question. Would you restate your question in a question form?

SENATOR DUANE: Yes, Mr. President.

ACTING PRESIDENT MORAHAN: Thank

you.

SENATOR DUANE: Although "diatribe" is a stretch. I'm not saying I'm not guilty of diatribes, but let me try to rephrase the question.

SENATOR McGEE: Thank you.

SENATOR DUANE: The question is, how is it that this bill forces a driver to take the Breathalyzer test?

SENATOR McGEE: Through you, Mr. President, I certainly think that one of the most important things that we can do is to safeguard the safety of our children. And by requiring a school bus driver to take a Breathalyzer test, that is a step forward.

Present law says that they are only required to do so if requested by the police officer. If the driver refuses to take the Breathalyzer test, then I believe that is admission toward a DWI felony count.

So I'm suspecting that perhaps even the driver himself or herself, if you will, since we will be gender-neutral, at this point would want to take the Breathalyzer test to substantiate the fact that they were not a DWI

test.

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

ACTING PRESIDENT MORAHAN: Does the sponsor continue to yield?

SENATOR McGEE: Certainly.

SENATOR DUANE: Under current law, if a law enforcement person asks a driver to take a Breathalyzer test and they refuse, what happens?

SENATOR McGEE: I think I just said that, Senator Duane. If a driver refuses to take a DWI test, they are in fact open for a charge of -- pardon me, if they refuse to take a Breathalyzer test, they are in fact open for a charge of DWI.

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

ACTING PRESIDENT MORAHAN: Does the sponsor continue to yield?

SENATOR McGEE: Absolutely.

ACTING PRESIDENT MORAHAN: The sponsor yields.

SENATOR DUANE: And as I understand it, in this bill, if the driver refuses to take a Breathalyzer test, they can be charged with driving under the influence?

SENATOR McGEE: That's the way the present law stands.

SENATOR DUANE: And so through you, Mr. President, if the sponsor would continue to yield.

ACTING PRESIDENT MORAHAN: Does the sponsor continue to yield?

SENATOR McGEE: Absolutely.

ACTING PRESIDENT MORAHAN: Absolutely, she says.

SENATOR DUANE: So then both the way the law is now and under the proposed legislation it's really the same thing, that if the driver refuses to undergo a Breathalyzer test, they could be charged with a DUI?

SENATOR McGEE: Through you, Mr. President, I don't think that this bill says anything about whether they refuse to take it or not. This bill says -- quite plainly, I believe -- that present law states that a

school bus is not required to take a Breathalyzer test unless requested to do so by the police officer. This bill states it is mandatory, there will be a Breathalyzer test taken at the time, any time a school bus is in operation and there is a personal injury to the driver, the students, et cetera, et cetera.

This is saying they must do it. The present law says it's only requested by the police officer. It has absolutely nothing to do with whether they refuse to take it or not. That's another law, and perhaps we'll review that sometime.

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

ACTING PRESIDENT MORAHAN: Does the sponsor continue to yield?

SENATOR McGEE: Certainly.

SENATOR DUANE: Then it is the sponsor's concern that police officers are not asking bus drivers to take the breath test?

SENATOR McGEE: Through you, Mr. President, I don't have any idea where the

Senator is coming up with that suggestion.

I would say that at the scene of an accident it quite frequently is chaotic. I would suggest that the law officer at the scene of the accident would be in a much wiser position to make a request as to whether they should or should not. As the law stands right now.

I am saying we are going to take that responsibility away from the law officer and say, Mr. Law Officer, if there's an accident with a school bus and there's a personal injury involved, the school bus driver is required -- required, mandated -- to take the test now.

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

ACTING PRESIDENT MORAHAN: Does the sponsor continue to yield?

SENATOR McGEE: I certainly will.

SENATOR DUANE: Do we have any statistics available on how many bus drivers have undertaken Breathalyzer tests?

SENATOR McGEE: Through you, Mr.

President, no, I'm sorry, I don't.

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

ACTING PRESIDENT MORAHAN: Does the sponsor continue to yield?

SENATOR McGEE: Certainly.

SENATOR DUANE: Have district attorneys or law enforcement people weighed in on this bill or have a position on this bill?

SENATOR McGEE: We have not heard from them. However, the bill is in fact supported by the New York State School Boards Association and the Medical Society.

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

ACTING PRESIDENT MORAHAN: Does the sponsor continue to yield?

SENATOR McGEE: Yes, sir.

SENATOR DUANE: I'm wondering why this bill is only limited to school bus drivers and why not all accidents where there's personal injury.

SENATOR McGEE: Well, at the

present moment, Senator Duane, that's certainly something that I can look at. But at this present moment, we're working on school bus safety, and this is a bill that pertains particular to school bus safety and school bus drivers.

ACTING PRESIDENT MORAHAN: Will you suffer an interruption, please.

Senator Fuschillo, why do you rise?

SENATOR FUSCHILLO: Mr. President, thank you. There will be an immediate meeting of the Environmental Conservation Committee in the Majority Conference Room.

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

Senator Duane.

SENATOR DUANE: Thank you.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Senator Lachman.

SENATOR LACHMAN: Yes, through you, Mr. President, will the sponsor of the

measure accept a question and yield?

ACTING PRESIDENT MORAHAN: Will the Senator yield?

SENATOR McGEE: For my learned colleague, absolutely.

SENATOR LACHMAN: Okay. Would your bill, Senator McGee, make this standard for school bus drivers the same as the standards that exist for train operators throughout the State of New York?

SENATOR McGEE: Train operators?

SENATOR LACHMAN: Yes, New York State train operators, transit.

SENATOR McGEE: Crane or train?

SENATOR LACHMAN: T-R-A-I-N.

SENATOR McGEE: Train, okay.

I'm told that train operators fall under the federal statute rather than state statute.

SENATOR LACHMAN: Okay. Now, Mr. President, on the bill.

ACTING PRESIDENT MORAHAN: Senator Lachman, on the bill.

SENATOR LACHMAN: We have historically in the State of New York held bus

drivers, pilots of airplanes, and train operators to higher standards than others. And I must commend Senator McGee for now allowing school bus drivers to reach a higher plateau of standard in this area.

I will support this bill. Thank you.

ACTING PRESIDENT MORAHAN: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Mr. President. If the Senator would yield for a couple of questions.

ACTING PRESIDENT MORAHAN: Senator, do you yield?

SENATOR McGEE: Absolutely.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR HASSELL-THOMPSON: Thank you.

I will try not to make this a diatribe, but what I would like to do is set the scenario for the question that I will ask.

SENATOR McGEE: Sure.

SENATOR HASSELL-THOMPSON: Thank you. Through you, Mr. President, in looking

at a lot of the statistics that MADD and some others have created, one of the things that disturbs me about the bill is that there is a lot of weight put on the accuracy of the blood alcohol content when this Breathalyzer or the breath test is taken at the scene of an accident.

Because of the variables, which include breath ratios, breath temperatures, many factors within the way the testing is even applied from person to person, what is it that this bill will do as a follow-up to those inaccuracies to ensure that, when a person is arrested because the Breathalyzer has an inaccurate high ratio, to ensure that the cause of the accident is related to the alcohol content?

SENATOR McGEE: Through you, Mr. President. The equipment that's used, the Breathalyzer equipment that's used is calibrated as to the right degree. And that's tested every -- very frequently. I'm not exactly sure exactly how often it's tested.

As a matter of fact, we even have, I believe, some legislation in that's moving

that testing from the Health Department to the DCJS, the Division of Criminal Justice, so that those calibrations can actually be done very, very well.

I know the State Police do them. And I'm not sure exactly what you're talking about as to whether you're saying the equipment itself may be off.

But the idea of doing the Breathalyzer test at the scene of the accident, what this is really doing is saying to that law officer: You probably have enough to do right now at the scene of an accident where there is a personal injury, et cetera, et cetera. It's saying to the police officer, You don't have to make a decision as to whether this individual should or should not take a Breathalyzer test.

This is saying to the law officer that the individual must take a Breathalyzer test so the determination can be made at the scene.

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

ACTING PRESIDENT MORAHAN: Yes,

Senator.

Will you continue to yield, Senator?

SENATOR McGEE: Absolutely.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR HASSELL-THOMPSON: The way in which you phrased your answer is acceptable, but it still does not respond to the concern raised in my question.

And that is, there is the assumption being made that when the Breathalyzer test is in fact administered, that every person taking it within the calibrated range is going to be accurate.

And what I have stated to you is that there are many inaccuracies in the testing -- not only of the equipment, but from person to person there is a variation. There's a variation from white males to black males. There are other variations that can change the calibration.

So that my concern, the concern that I'm raising, with that inaccuracy, what is the follow-up, what will then happen

subsequently to be sure that the assessment that is being made will support the inaccuracy of the testing?

SENATOR McGEE: Well, I'm told that this test, and I understand that to be the truth, that the Breathalyzer test that is being required here to be given to the school bus driver is the same type of Breathalyzer test that is given to any individual when they do a Breathalyzer test in a suspected DWI test. And that would be a separate issue at this point.

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

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

SENATOR McGEE: Certainly.

SENATOR HASSELL-THOMPSON: It's just kind of important -

ACTING PRESIDENT MORAHAN: The Senator continues to yield.

SENATOR HASSELL-THOMPSON: Thank you, Mr. President, through you. It's just kind of important that the sponsor understand the nature of the concern -

SENATOR McGEE: I understand.

SENATOR HASSELL-THOMPSON: - that I'm raising. I am certainly in support of the bill. But I want all bills to be as good as they can possibly be.

And while I am completely aware of the statement that you just made, that's all the more reason why, as we begin to apply this test in a broader capacity, we need to take into consideration that there are already some errors inherent in that testing process. So as we then apply it to bus drivers, then to moms who pick up kids, or whomever we may expand this to include, the Breathalyzer in and of itself is given a lot of weight.

But due to its inaccuracies, my concern is what else are we going to do as a follow-up to ensure that we give credibility to the possible inaccuracies and make sure that when we add the penalties -- particularly because, as I begin to hear us talking about taking it out of the Health Department, putting it into the penal department -- it becomes a part of the penal law, criminal law, then it then becomes a criminal act.

And with each criminal act, therefore, there are penalties. When we get to penalties, we're very happy about putting additional penalties on the criminal act. But we're not really looking at how are we assuring that we're achieving the accuracy before we get to that point.

And that's all I'm asking your bill to do, since it is hinged upon a Breathalyzer exam that already has some fallacies in it.

SENATOR McGEE: Through you, Mr. President, just to comment on what you're suggesting.

I think the standards for Breathalyzer tests are in fact in place right now and something that may or may not have to be looked at. Certainly moving, I think, the Breathalyzer test from the Health Department to the DCJS does indicate that it's going from a -- into a penal, judicial area. And I think we would all agree that a DWI, if you're charged with a DWI, is in fact a criminal act, I would think.

But the Breathalyzer test is in fact a standard that's already set and maybe

something that would be looked at in another issue.

SENATOR HASSELL-THOMPSON: Through you, Mr. President, just on the bill. Let's do this on the bill.

ACTING PRESIDENT MORAHAN: Senator, on the bill.

SENATOR HASSELL-THOMPSON: I certainly am never going to be one who is going to stand here and not support a bill that looks at and supports the safety of our children, whatever manner in which they're being conveyed.

But I also want us to be prudent and judicious in the way in which we look at bills. If we're going to be the instrument for expanding on the categories and the numbers of people who are going to be captured in a net, then I think that we have a responsibility to be sure that the information that we have as it goes forward and is carried as a part of that bill has accuracy.

And I think that there are some inaccuracies in a process that is already being used. And as we continue to apply it, I

think that we need to help to address those inaccuracies, particularly as we begin to make these criminal laws.

And also, to the Senator, I will share with your staff the statistical information that I have which I think they may not be privy to. And I think that being the responsible Senator that I know that you are, you would want your information to be as fluent as perhaps mine, if not better, as the sponsor of this bill.

And so while I will support the bill, I have to tell you that those are some of the concerns and weaknesses that I think that the bill demonstrates for me.

Thank you. Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Senator Brown.

SENATOR BROWN: Thank you, Mr. President. Will Senator McGee yield for a question?

ACTING PRESIDENT MORAHAN: Senator McGee, do you yield?

SENATOR McGEE: Yes, I will.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR BROWN: Senator, I too certainly am concerned about the safety of our children driving on school buses. But I'm wondering what the genesis of this legislation is.

I mean, have we seen a pattern in accidents with school buses, when there are either fatalities or serious injuries, that the driver is often intoxicated or under the influence of drugs?

SENATOR McGEE: Through you, Mr. President, throughout the years there have been cases -- and I'm not going to be able to recite them for you -- where the school bus driver has in fact had some alcohol imbibement, if you will. And I think that no matter -- I'm not going to be able to tell you how many there is. But let's put it this way. Even one is too many.

And I think that really what this does is not only does it say that we're looking out for the safety of our children as they ride on school buses, but we're also

saying that the law officer is not going to have to make a split-minute decision as to whether he has to request a Breathalyzer test, but that he is required to do it at that point.

So I think that takes that responsibility off of him. And there have been cases, as I say, where there has been alcohol involved. And even one case is too many.

SENATOR BROWN: Thank you, Senator.

Mr. President, would Senator McGee continue to yield?

ACTING PRESIDENT MORAHAN: Senator McGee, do you continue to yield?

SENATOR McGEE: Yes, I certainly will.

ACTING PRESIDENT MORAHAN: Senator McGee continues to yield.

SENATOR BROWN: Senator, does this legislation contain any provision for drivers to be screened for drugs on a periodic basis?

I think that potentially if we did

something of that nature, it might weed out problems before they began to develop, so we catch a situation, catch somebody that is using drugs or maybe abusing alcohol before they get into a serious accident, you know, which results in a fatality or a serious injury.

SENATOR McGEE: I think that periodic screening is in fact mandated by federal law.

SENATOR BROWN: So that is mandated presently?

SENATOR McGEE: By federal law, yes. There is periodic screening done for school bus drivers.

SENATOR BROWN: Thank you.

SENATOR McGEE: You're welcome.

SENATOR BROWN: On the bill, Mr. President.

ACTING PRESIDENT MORAHAN: Senator Brown, on the bill.

SENATOR BROWN: Certainly as the parent of a school-age child who is concerned about all of our children, as Senator McGee indicated, I think anything that we can do to

make sure that we protect the safety of our children riding on school buses is important.

So even if one accident is prevented or even if one driver who is involved in the use of alcohol or drugs is removed from the road -- unfortunately, after their behavior results in an accident -- I think it's an important measure to protect the safety of children.

So I will be supporting this legislation, and I will be voting in the affirmative.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Does any other member wish to be heard on this bill?

Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

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

SENATOR DUANE: Thank you, Mr. President.

I still have not gotten the difference between mandating a police officer submitting a Breathalyzer test and a police officer, because a police officer is doing their job, asking someone to take a Breathalyzer test. I mean, the difference here is that this law says that a police officer must do it. But you know what? I think police officers already do that. And if they don't, putting into law that they're mandated to do it is not going to change that. Training is what would change that.

You know, it seems like, well, you know, how -- this law makes it sound as if police officers are not asking school bus drivers to take a Breathalyzer test, which I just don't believe is true. And if it is true, as I say, this law is not going to change anything on that.

I mean, you know, this bill -- you know, it may make people feel better but it's actually not going to do anything different to change what happens at the scene of an

accident. Chaotic though an accident scene may be, a police officer is not going to say oh, you know, ooh, I have to remember that mandate that I have to apply a Breathalyzer test. I mean, the police officer is going to do that if he or she thinks there's any chance that alcohol was involved anyway.

So I just -- you know, I don't think that we should be putting these kinds of bills on the floor which actually don't make any difference. And I'm going to vote no on this.

Thank you, Mr. President.

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

The Secretary will announce the results.

THE SECRETARY: Ayes, 53. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT MORAHAN: The bill is passed.

SENATOR FUSCHILLO: Mr. President.

ACTING PRESIDENT MORAHAN:

Senator Fuschillo, why do you rise?

SENATOR FUSCHILLO: There will be an immediate meeting of the Tourism, Recreation and Sports Development Committee in the Majority Conference Room.

ACTING PRESIDENT MORAHAN: There will be an immediate meeting of the Tourism, Recreation and Sports Development Committee in the Majority Conference Room.

SENATOR FUSCHILLO: Thank you.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

The Secretary will read.

THE SECRETARY: Calendar Number 343, by Senator Trunzo, Senate Print 760, an act to amend the Vehicle and Traffic Law and the Education Law, in relation to instruction.

SENATOR LACHMAN: Explanation.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT MORAHAN: Senator Trunzo, an explanation has been requested.

SENATOR TRUNZO: Mr. President, this bill amends the Vehicle and Traffic Law

to provide that every school bus driver in the state shall complete a course of instruction on school bus safety practices, including those employed by private and parochial schools if they're not covered.

ACTING PRESIDENT MORAHAN: Senator Lachman.

SENATOR LACHMAN: Yes. Will the Senator yield for a question or two?

SENATOR TRUNZO: Yes.

ACTING PRESIDENT MORAHAN: Senator Trunzo, do you yield?

SENATOR TRUNZO: Yes.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR LACHMAN: Senator, if the school bus driver completes the course after he or she has already been disqualified from the Commissioner of Motor Vehicles, can he or she be reinstated?

SENATOR TRUNZO: No. Technically, she cannot be reinstated.

SENATOR LACHMAN: So that the bus driver cannot be reinstated?

SENATOR TRUNZO: No.

SENATOR LACHMAN: Okay.

Does the current funding allocation in the Executive Budget for the school bus drivers' training program apply currently to private and parochial schools, or will this be a precedent in that area?

SENATOR TRUNZO: This will be a precedent in that area, because now we will include the private school and parochial school bus drivers. They must take that course to be qualified.

SENATOR LACHMAN: Through you, Mr. President, will the sponsor continue to yield?

ACTING PRESIDENT MORAHAN: Senator Trunzo, do you continue to yield?

SENATOR TRUNZO: Yes.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR LACHMAN: Do you have any information, Senator Trunzo, to use this as a precedent for other changes in the law in terms of applicability to parochial or private schools, or is this simply on this bill?

SENATOR TRUNZO: No, right now

it's on this bill. Because there is already law that requires the Comprehensive School Bus Safety Council to create these instructions so that all drivers would have to pass it.

And from what I understand, it's a two-hour continuing course that they have to take as well as -- which has to be twice a year. And, you know, so they -- and the course itself has to be done within 18 months or within one year of approval of the appointment.

SENATOR LACHMAN: Mr. President, will the sponsor continue to yield?

ACTING PRESIDENT MORAHAN: Senator Trunzo, do you continue to yield?

SENATOR TRUNZO: Yes.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR LACHMAN: As you've mentioned, Senator, the bill requires every school bus driver to receive two hours of refresher training at least twice a year.

SENATOR TRUNZO: Correct.

SENATOR LACHMAN: In your opinion, is this adequate for school bus

drivers who are in charge of the safety of our children? Should not the training be more than just two hours?

SENATOR TRUNZO: Well, the two-hour training course, which is twice a year, I guess would give them all the coverage that they would need in order to qualify as a school bus driver.

I think it's adequate enough, unless the council feels that it's not and then requests further changes.

SENATOR LACHMAN: Mr. President, on the bill. Mr. President.

ACTING PRESIDENT MORAHAN: On the bill, Senator Lachman.

SENATOR LACHMAN: Yeah. I would prefer to see this bill for more than two years.

I look upon this bill -- and maybe I'm wrong -- as a continuation of legislation that your predecessor twice removed, one of the outstanding members of this chamber, had sponsored about five years ago, and that's the late Norman Levy. And I was in favor of the bill at that time.

I know there have been tragedies in Long Island, there have been similar tragedies in the City of New York, in my district and other districts throughout the state. And I think we must do everything possible to avoid these tragedies involving school bus drivers.

So though I'd like the penalties and the requirements to be strengthened, I heartily endorse this bill and endorse it also in the memory of its original sponsor, Senator Norman Levy.

Thank you.

ACTING PRESIDENT MORAHAN: Senator Gentile.

SENATOR GENTILE: Thank you, Mr. President. If Senator Trunzo would yield.

ACTING PRESIDENT MORAHAN: Senator Trunzo, do you yield?

SENATOR TRUNZO: Yes.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR GENTILE: Senator - through you, Mr. President -- I'm just confused on the wording of the bill and wonder whether or not a bus driver must not only take

this course but pass some type of examination at the end of this course to either be employed as a bus driver or to continue to be employed as a bus driver.

SENATOR TRUNZO: I don't believe there's an examination at this point.

SENATOR GENTILE: Through you again, Mr. President.

ACTING PRESIDENT MORAHAN: Senator, do you yield?

SENATOR TRUNZO: Yes.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR GENTILE: So that if there is no examination or no testing after the course itself, there's no measure by which can be taken as to whether or not this individual, or any individual, successfully, successfully completed a training course, other than just being there for the course.

SENATOR TRUNZO: It's an informational course, Senator, that they would have to apply for.

SENATOR GENTILE: Informational only.

SENATOR TRUNZO: Yes.

SENATOR GENTILE: Through you, Mr. President. Then so it has nothing to do with the operation of the bus or the actual running of the route? I'm curious as to what we're talking about here.

SENATOR TRUNZO: Not in the part of the legislation that we're doing today.

SENATOR GENTILE: I'm sorry?

SENATOR TRUNZO: I said not in this part of the legislation that's being done today.

SENATOR GENTILE: I see. So - but in any case, if -

ACTING PRESIDENT MORAHAN: Senator -- Senator, will -

SENATOR GENTILE: Will the Senator yield?

ACTING PRESIDENT MORAHAN: Senator Trunzo, do you continue to yield?

SENATOR TRUNZO: Yes.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR GENTILE: Thank you. Through you, Mr. President. So if I were a

bus driver, just the fact of sitting through a course would qualify me to continue in that realm?

SENATOR TRUNZO: You'd have to be licensed as a bus driver in order to qualify.

SENATOR GENTILE: Which brings up another point, Mr. President. If I can just quickly ask a question here.

ACTING PRESIDENT MORAHAN: Senator Trunzo, do you continue to yield?

SENATOR TRUNZO: Yes.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR GENTILE: So, Senator, a bus driver need not take this course in order to become employed as a bus driver?

SENATOR TRUNZO: Within 18 months they have to take the test. Or within one year of actually being employed.

SENATOR GENTILE: And, Senator, just one quick question.

ACTING PRESIDENT MORAHAN: Senator Trunzo, one more quick question. Do you yield?

SENATOR TRUNZO: Okay, I'll

yield.

SENATOR GENTILE: Because of the incidents we heard of, does this course include instruction on how to survey the bus to make sure there are no children sleeping on that bus?

SENATOR TRUNZO: Our legislation requires that they also check the bus at the end of a trip that no child is left on the bus. It's all in there.

SENATOR GENTILE: Thank you, Senator. Thank you.

Just quickly on the bill.

ACTING PRESIDENT MORAHAN: Senator Gentile, on the bill.

SENATOR GENTILE: I believe it's a good bill. I hope to see that there would be a mandatory examination at the end of that time. But given the fact that we have what we have, I will support the bill.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator Gentile.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you.

Mr. President, if the sponsor would yield for a few brief questions.

ACTING PRESIDENT MORAHAN: Senator Trunzo, do you yield for a few brief questions?

SENATOR TRUNZO: Yes.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR SCHNEIDERMAN: Thank you.

Is there any additional allocation of funds for the implementation of this program provided for in this bill?

SENATOR TRUNZO: It's funded through the budget system. I don't think there's any additional funds there, no. It's part of the budget operation that we have now. They get their money through that.

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

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

SENATOR TRUNZO: Yes.

ACTING PRESIDENT MORAHAN: The Senator continues to yield.

SENATOR SCHNEIDERMAN: Thank you.

I note that the bill memo states that there are no fiscal implications to the state. And my question is, has any assessment been made of the actual cost of this program?

We're talking about a program for thousands of people to be supplemented by additional miniprograms, two hours of continuing instruction twice each calendar year. And it seems to me that this will have a significant fiscal impact. Has any study been done or cost estimate calculated on this?

SENATOR TRUNZO: It's all part of the appropriation that has been allocated to that council during the course of the year. And they should be able to do it within the framework of the money that they already have. That's why there's no additional cost.

SENATOR SCHNEIDERMAN: Will the Senator -

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

SENATOR TRUNZO: Yes.

SENATOR SCHNEIDERMAN: Through you, Mr. President. We're speaking of the Comprehensive School Bus Driver Safety

Training Council. I must admit that it's not an entity in this state that is a household name. What other duties does this council undertake with the money that we currently allocate to it?

SENATOR TRUNZO: According to the law, they have all kinds of driver safety programs. The commissioner, consulting with the state Comprehensive School Bus Drivers Safety Training Council, they develop uniform comprehensive school bus driver safety training programs for school bus drivers transporting students to and from school by school buses, including instructions to such school bus drivers -- I'm reading the law right now -- concerning the latest safety techniques used.

It includes within the safety training program development of curriculum and training materials included in the school bus drivers safety manual. Develop and conduct professional development school bus safety training seminars statewide. Establish and maintain database containing the data relative to school bus accidents or fatalities reported

within the state. Engage the services of consultants on a current -- on a contract basis for rendering professional and technical assistance.

Those five items are in the law right now as to the duties of the council.

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

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

SENATOR TRUNZO: Yes.

SENATOR SCHNEIDERMAN: Then if I understand correctly, there are existing requirements for getting a license to drive a bus in New York State. And it occurred to me, looking at this bill, and I think everyone - I assume that everyone in this house agrees with the purpose of the bill and the intentions. But it strikes me that we're creating a whole second layer of training programs that may result in additional expense.

Has any consideration been given to the idea of including this training program in the process by which you get a bus driver's

license? That's to say if you have any intention of driving a school bus, you have an opportunity at that time to complete a program. We already have the applicants together, and that we have a system for instruction and testing set up that might be much more efficient than creating a whole new system.

SENATOR TRUNZO: There are programs in order for them to start. But this is a continuing education type of program that we're trying to do now in this legislation. And we're standardizing the entire program so that in the future all bus drivers would have to -- be able to apply. Otherwise, they'd be disqualified if they do not pass the various tests that are being presented by the council.

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

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

SENATOR TRUNZO: It's been more than a few, but I will.

ACTING PRESIDENT MORAHAN: The

Senator continues to yield.

SENATOR SCHNEIDERMAN: Thank you.

I guess it's -- I want to try and make my point a different way. Are there instructions specific to school bus safety now in the test to get a bus driver's license in New York State?

SENATOR TRUNZO: Yes, there are.

SENATOR SCHNEIDERMAN: So then -

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

SENATOR TRUNZO: Yes.

ACTING PRESIDENT MORAHAN: The Senator continues to yield.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

Then is there any need to develop a new curriculum, or are we simply taking the curriculum that already exists and providing for additional training through a continuing education program?

SENATOR TRUNZO: The items that are in the law regarding the training that's required, this would guarantee that they must take it. Because there have been incidents

where evidently school bus drivers or school bus companies did not take care of their drivers or did not qualify and still made them school bus drivers.

And also the fact that the parochial and private schools, their bus drivers didn't have to take any tests, and now they do, in order to be able to qualify as drivers. So that now this puts it into law that they must do it right from the beginning.

SENATOR SCHNEIDERMAN: Thank you, Mr. President. Thank the sponsor for his answers.

On the bill.

ACTING PRESIDENT MORAHAN: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: I think this is a well-intentioned bill, but it strikes me that this is probably not the most efficient way to ensure that school bus drivers are well trained and qualified in safety standards and safety techniques.

One of the things that -- I believe this is to be the case -- that there is not currently a requirement just to get a regular

bus driver's license that you be trained in school bus driver safety. Otherwise, all the people who are driving buses for parochial and private schools would have to complete that course.

And I would suggest we would be better off ensuring that anyone who is going to operate any type of bus, whether they're driving for a private or parochial school or for a public school or for some other purpose, have to take a class in school bus safety at that time. And that that would meet Senator Gentile's concern about not having an examination, because you obviously have to pass an examination to get your license.

I think the idea of having ongoing, continuing instruction is a fine idea. I do think it is -- it's either going to be a very costly undertaking or it's going to be something that is offered in a way that is pretty inconvenient, since you have tens of thousands of people scattered around the state who are going to have to take this class.

So I do have a concern about the fiscal impact. But all in all, I hope that

those things can be worked out as we move forward with the training council. And I will vote for the bill.

But I would urge the sponsor that we perhaps should take a look at an effort to expand the training in school bus safety that goes on at the time someone applies for a bus driver's license.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator Schneiderman.

Senator Oppenheim.

SENATOR SCHNEIDERMAN: Er.

SENATOR ONORATO: Er.

SENATOR ADA SMITH: Oppenheimer.

ACTING PRESIDENT MORAHAN: Senator Oppenheimer.

SENATOR OPPENHEIMER: Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Why do you rise?

SENATOR OPPENHEIMER: To correct you.

(Laughter.)

ACTING PRESIDENT MORAHAN:

Touche.

SENATOR OPPENHEIMER: No, I guess I have a question. Which maybe I should have been listening up and I would have had it answered. But if the sponsor would yield.

ACTING PRESIDENT MORAHAN: Senator Trunzo, would you yield for a question?

SENATOR TRUNZO: Yes, Mr. President.

ACTING PRESIDENT MORAHAN: Senator, the sponsor yields.

SENATOR FUSCHILLO: Mr. President.

ACTING PRESIDENT MORAHAN: Senator Fuschillo.

SENATOR FUSCHILLO: I request an immediate meeting of the Civil Service and Pension Committee in the Majority Conference Room.

ACTING PRESIDENT MORAHAN: There will be an immediate meeting of the Civil Service and Pensions Committee in the Majority Conference Room.

Continue, Senator.

SENATOR OPPENHEIMER: Senator Trunzo, this does not apply to private and parochial schools, this bus training, the -

SENATOR TRUNZO: It will apply now to private and parochial schools.

SENATOR OPPENHEIMER: I see. So this would make it apply.

SENATOR TRUNZO: Yes.

SENATOR OPPENHEIMER: Okay. That was one question.

And then I can see -- if the Senator would yield again.

ACTING PRESIDENT MORAHAN: Senator Trunzo, do you continue to yield?

SENATOR TRUNZO: Yes.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR OPPENHEIMER: As I understand, it's a two-hour refresher training course every two years?

SENATOR TRUNZO: Twice a year.

SENATOR OPPENHEIMER: Twice?

SENATOR TRUNZO: Two times a year, yes.

SENATOR OPPENHEIMER: Oh. Oh, so

it's twice a year.

SENATOR TRUNZO: This is - that's continuing education on top of the actual course itself.

SENATOR OPPENHEIMER: I see.

ACTING PRESIDENT MORAHAN: Senator Trunzo, do you continue to yield?

SENATOR TRUNZO: Yes.

SENATOR OPPENHEIMER: Well, I just wanted to respond. I was reading it the wrong way. I was about to say is that sufficient training. But two times in one year -- well, but it's an hour each time?

SENATOR TRUNZO: Two hours each time.

SENATOR OPPENHEIMER: Oh, excellent. Excellent. That was another question. And -

ACTING PRESIDENT MORAHAN: Do you wish the Senator to yield for another question?

SENATOR OPPENHEIMER: Yes, okay, now I do have one more question.

ACTING PRESIDENT MORAHAN: Senator Trunzo, do you continue to yield?

SENATOR TRUNZO: One more question, yes.

ACTING PRESIDENT MORAHAN: The Senator continues to yield.

SENATOR OPPENHEIMER: And did this program just start in 1997 when they started -

SENATOR TRUNZO: Yes, this started in 1997, yes.

SENATOR OPPENHEIMER: The requirement?

SENATOR TRUNZO: Yes.

SENATOR OPPENHEIMER: Okay. Well, thank you very much, Senator.

On the bill.

ACTING PRESIDENT MORAHAN: Senator Oppenheimer, on the bill.

SENATOR OPPENHEIMER: And I'm not sure -- I mean, I would guess that driver safety would include things like where you drop off students, that it must be where there is a sidewalk and not at certain corners where there is no safe place for children to walk.

I mean, we have had in my Senate district, sadly, a number of children that

have lost their lives because of either a cord on their parka or their jacket getting caught in a door and getting dragged, or children being dropped off in the wrong place and not at a sidewalk.

And I just hope this is all a part of the training program, that it not just be keep your eye on the road and make sure that there's, you know, a fair degree of sanity on the bus so that children are not running around.

And, I mean, there's so many components to this. And I just hope the program will address the whole variety of issues which come up around children's safety and how they board and exit a bus, just a variety of elements.

So I'm going to support it. It's a good bill.

ACTING PRESIDENT MORAHAN: Any other Senator wish to be heard on this bill?

Read the last section.

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

ACTING PRESIDENT MORAHAN: Call

the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 344, by Senator Trunzo, Senate Print 779, an act in relation to requiring the commissioners of motor vehicles.

SENATOR DOLLINGER: Explanation, please, Mr. President.

ACTING PRESIDENT MORAHAN: Senator Trunzo, an explanation has been requested.

SENATOR TRUNZO: Yes. Mr. President, this bill requires the Commissioners of Education, Transportation and Motor Vehicles to develop a uniform definition of school and school bus and to report to the Governor and Legislature no later than December 31, 2002, so there can be a definite definition as to what a school bus is in these various different parts of the law at this point, which evidently there are different connotations to that.

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

ACTING PRESIDENT MORAHAN: Senator Trunzo, do you yield to Senator Dollinger?

SENATOR TRUNZO: Yes.

SENATOR DOLLINGER: Senator Trunzo, I understand that this proposal came out of the report from the Commission on Critical Transportation Choice; isn't that correct?

SENATOR TRUNZO: Yes.

SENATOR DOLLINGER: And that report -

ACTING PRESIDENT MORAHAN: Does the Senator continue to yield?

SENATOR DOLLINGER: Yes, Mr. President, thank you, if Senator Trunzo will continue to yield.

SENATOR TRUNZO: Yes.

SENATOR DOLLINGER: And what was the date of that report?

SENATOR TRUNZO: I don't recall. Sorry.

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

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

SENATOR TRUNZO: Yes.

ACTING PRESIDENT MORAHAN: The sponsor yields.

SENATOR DOLLINGER: It's my recollection that that report was actually dated in the early '90s, sometime -- Senator Levy was here. He was the chair of the Commission on Critical Transportation Choices. I think I was a member of it at the time. And we published that report.

And my question is why -- and I know this bill has passed the Senate, I think six years running. Why is it that we can't get the Assembly to do something which seems to be as elemental as agreeing to have these commissioners work together to develop a definition of what a school bus is, those big yellow things that carry kids?

SENATOR TRUNZO: I can't understand why. Because Assemblyman Steve

Sanders is the Assembly sponsor of this bill, and he's highly regarded in the Assembly. I know that. I've worked with Steve on many occasions in other areas. And why they don't let it out of committee or why Gantt won't let it out, I have no idea.

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

ACTING PRESIDENT MORAHAN: Senator Trunzo, do you continue to yield?

SENATOR TRUNZO: Yes.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR DOLLINGER: Is it possible, Senator Trunzo, that the confusion that existed in the early '90s has been cleared up and that we're no longer as confused as we once were?

That confusion existed seven or eight years ago. We've had a governor for seven or eight years, we've had commissioners for seven or eight years who have known -- as I think this report properly points out and the bill properly points out -- that there are

different definitions of school bus in all these various laws. Is it possible that the confusion is now gone or been lifted?

SENATOR TRUNZO: No, probably not, because there are three definite definitions in the law right now. And that's what we're trying to do, to get these three commissioners -- to get them to come up with one definition so all three laws can eventually be adjusted to have that type of language, whatever it's supposed to be.

SENATOR DOLLINGER: Through you, Mr. President, if Senator Trunzo would continue to yield.

SENATOR DUANE: Senator, do you continue to yield?

SENATOR TRUNZO: Yes.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR DOLLINGER: Senator Trunzo, isn't this something that could be done by the Governor by himself? He doesn't need us to tell him to do this. He could simply say to his Commissioner of Transportation, his Commissioner of -- let's

see who else is in the bill here. It's Transportation, Motor Vehicles and Education -- and simply say, do this school bus -- reconcile these different definitions of school bus. He could do that, couldn't he?

SENATOR TRUNZO: Well, the Governor can't do it because it is in statute and has to be changed in statute, which can only be done by legislation.

SENATOR DOLLINGER: Well, through you, Mr. President, if Senator Trunzo would continue to yield.

ACTING PRESIDENT MORAHAN: Senator Trunzo, do you continue to yield?

SENATOR TRUNZO: Yes.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR DOLLINGER: The Governor could do exactly what your bill is now telling him to do. That is, he could convene the Commissioner of Motor Vehicles, of the Department of Transportation, and Education, and say, Take a look at all these definitions of school buses and make a recommendation to the Legislature to put them into uniform -

SENATOR TRUNZO: But the Governor would have to make that recommendation to the Legislature. We still would have to do a bill.

SENATOR DOLLINGER: Correct. So through you, Mr. President, if Senator Trunzo will continue to yield.

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

SENATOR TRUNZO: Yes.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR DOLLINGER: So if the Governor were so inclined, we wouldn't need your bill, would we?

SENATOR TRUNZO: Well, evidently past Governors weren't inclined either, so.

(Laughter.)

SENATOR DOLLINGER: Through you, Mr. President, I'll address the bill for just a minute or two.

ACTING PRESIDENT MORAHAN: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I understand this is something that came out of an

important piece of work, when Senator Levy brought forth the report from the Commission on Critical Transportation Choices about transportation of children with disabilities.

And the question was at that time, as I best recall it, that we had children with disabilities that were being transported in, quote, buses, what were referred to as school buses, but they were under differing levels of regulation depending on which department granted the license for the bus, whether it was Transportation or Education or the Department of Motor Vehicles.

And I understand that there was a lot of confusion among supervisors about which set of rules and regulations they had to comply with.

What strikes me as so unusual is that, as I recall that report, it suggested that this was a critical problem, that this problem was something that should be done quickly. And I guess I'm disappointed that the Governor has chosen not to do it by himself.

This is the kind of bill that, in

essence, we begin to micromanage the Executive branch. We tell them that we want to see them do something that we think is evident in that it should be done.

This is something that should have been done; the report, I think, was widely disseminated. I think it may have actually been drafted when the current governor was a member of this body, so he knew what the problem was. And I guess I'm just extremely disappointed.

One, I'm disappointed in my Assembly colleagues, because this bill should have gone through the Assembly. In fact, it should have gone through the Assembly in 1995, and maybe we would have those changes in regulation in place now and not be waiting for them.

But I also have to acknowledge I'm disappointed that the Executive branch has chosen not to do. It seems to me this is just the kind of bill that the Executive ought to say to us: Gee, Senator Trunzo, it's a great idea, I'm either going to steal your idea or borrow it, whichever you prefer, but I'm going

to take the initiative and solve the problem of inconsistencies in our school bus regulation. I'm going to do that myself. I don't need the State Legislature or the chairman of the Transportation Committee in the Senate to author a bill to tell me something that needs to be done.

And, Senator Trunzo, I'm going to vote in favor of this bill to send a message to the Governor that it ought to be done. And I hope that whoever is listening to the voicebox down on the second floor is listening careful, not just to my pleas, Senator Trunzo. As you know, the Second Floor hasn't always been listening to the voice of the Senator from the 54th Senate district.

But what I would like it to hear is the voice of the Senator from Suffolk County and the voice of the members in this chamber who repeatedly say this is a good idea, do it, do it yourself.

It seems to me that the goal that was articulated by Senator Levy six years ago is still a good goal. The problem is still a problem. I don't know why the Governor

doesn't take it upon himself to just issue one of those things. It doesn't even have to be an Executive order. Just a nice little memo to the three chairs of the Education Department, Commissioner Mills, the Department -- Commissioner Boardman and Commissioner DeFrancisco -- a little memo that says here's an idea from Senator Trunzo, it's backed by Assemblyman Sanders, for some reason unknown to me and unfathomable to me, the Assembly doesn't want to go along with a study of buses and school buses.

And the Governor should send that memo out tomorrow. Let's not wait any longer. Let's not even wait for our Assembly colleagues to be dragged reluctantly along, Senator Trunzo. Let's just have the Governor do this the right way, which is to handle this as the Executive problem that it is.

And I would call on him to do it. It's not necessary for us to, frankly, spend our time putting the bill through the Senate, getting our Assembly colleagues for some unfathomable reason to come along with us and join with us, and then to wait for another two

years for the report to be done.

The report wouldn't be needed until December 31st, 2002, which will be at least eight years after the report was issued and called this a critically important problem for the transportation of children. We shouldn't have had to wait that long. I appreciate you bringing the bill forward. But this is really an Executive problem. Let's not micromanage the Second Floor. Let's have the Second Floor do it by itself because it's the right thing to do.

If anybody is listening on the second floor, I would be glad to send my kudos down there to the Executive doing this all by its little old self and not waiting for us to pass this bill.

ACTING PRESIDENT MORAHAN: Senator Onorato.

SENATOR ONORATO: Mr. President, will the sponsor yield to a question.

ACTING PRESIDENT MORAHAN: Senator Trunzo, will you yield for a question?

SENATOR TRUNZO: Yes.

SENATOR ONORATO: Senator Trunzo,

under the current funding allocation by the Executive budget for school bus driver training, does it apply to private and parochial schools as well?

SENATOR TRUNZO: Not now it doesn't. Under this bill, under our bill it would apply to private and parochial schools. But right now it doesn't.

SENATOR ONORATO: Thank you, Senator.

ACTING PRESIDENT MORAHAN: Does any other Senator wish to be heard on this bill?

Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT MORAHAN: The bill is passed.

The Secretary will read.

THE SECRETARY: Calendar Number 345, by Senator Fuschillo, Senate Print 878, an act to amend the Vehicle and Traffic Law, in relation to requiring.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MORAHAN: Senator Fuschillo, an explanation has been requested.

SENATOR FUSCHILLO: Thank you, Mr. President.

The legislation before the house would require certain information on disabled children to be maintained on a school bus transporting them. The purpose of this is to enhance the safety of these children.

In summary, the provision would require the student's name, address, telephone number, the nature of the child's medical disability, emergency health care information, contact information in case of an emergency, and any other information deemed necessary by the local school district.

ACTING PRESIDENT MORAHAN: Senator Paterson.

SENATOR PATERSON: Mr. President,

if Senator Fuschillo would yield for a question.

ACTING PRESIDENT MORAHAN: Senator Fuschillo, would you yield to Senator Paterson?

SENATOR FUSCHILLO: Yes, I will.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR PATERSON: Senator, would you please inform our colleagues as to where the information is kept?

My concern in asking the question is that sometimes we have fulfilled the spirit of the law, in the sense that the information is kept, but quite often we've found in certain situations that it might not be made available to the people who actually need it.

SENATOR FUSCHILLO: Senator, the rules and regulations would be determined by the local school district.

In speaking to some of my school districts in my senatorial district who do this currently, they provide it in a binder that is in a school bus in a manner where the school bus driver is the only one who knows

about it and, in the case of emergency, will notify the appropriate authorities of where the book is and what is in the book, in case they need it to respond to an emergency for a child who is on the bus.

SENATOR PATERSON: Mr. President, if Senator Fuschillo would yield for another question.

ACTING PRESIDENT MORAHAN: Senator Fuschillo, will you yield for another question?

SENATOR FUSCHILLO: Yes, I will.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR PATERSON: Senator, what is your advice to the school districts in terms of a different type of information that would be herein contained that might create a stigma about the individual -- in other words, certain types of medications that they might take or that sort of thing -- which perhaps the child and the family would want kept relatively confidential?

SENATOR FUSCHILLO: Senator, I don't see how that would apply to this. And

it's certainly not to create a stigma to any child.

The intent of it is to merely in case of an emergency, if there was an accident and an EMT or an AMT responded, or a police officer, and there's an individual on the bus who cannot speak and has a physical disability, it is appropriate and it would help the emergency personnel to go to the book. It's used for that purposes only. It's not used for any other purposes, Senator.

SENATOR PATERSON: Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Senator Onorato.

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

ACTING PRESIDENT MORAHAN: Senator Fuschillo, will you yield for another question?

SENATOR FUSCHILLO: I will yield.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR ONORATO: Senator, I agree with the intent of the bill.

I'd like some clarification on Section 1, subdivisions 8 and 9 of the bill. According to the bill, if a child requires emergency care for an acute medical condition, the driver is mandated to provide immediate attention.

Will this establish some liability concerns for the school district, since bus drivers are not licensed EMTs?

SENATOR FUSCHILLO: No, Senator, it doesn't say they're mandated, it just says they may require the driver's attention.

And the intent of that is if there's a situation, we would hope that the driver would pull over, call the appropriate authorities, and when the authorities come to the scene, advise them that there is the medical information on the bus that's available to them prior to going to the child.

Now, there was a case a few years ago, an incident on Long Island, on the Northern State Parkway, of a bus transporting children from an autistic school, and a child, because of his disability through autism, was acting up in the back of the bus. The driver

knew that he was transporting autistic children but didn't know how to deal with the situation. He pulled over, made a phone call, what I see as an appropriate phone call to the school district, who notified the family and the emergency services who were coming.

But the driver walked out of the bus and didn't know about any type of medical condition that may affect the child, left the child there, and the child subsequently died on the bus.

But having the information would allow the driver to more appropriately act when contacting the authorities to advise them that there is something going on on the bus, the child has this condition, to better prepare them when they come to the scene.

But in no way, Senator, does the intent of the legislation require the driver to do anything other than notify the appropriate authorities.

SENATOR ONORATO: Through you, Mr. President, just for a little clarity.

ACTING PRESIDENT MORAHAN: Are you asking Senator Fuschillo to yield for

another question?

SENATOR ONORATO: Yes, if the Senator would yield.

SENATOR FUSCHILLO: I will.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR ONORATO: Assuming that the bus driver does provide some emergency assistance to the child, would he be covered under the Good Samaritan Act? Would that cover him?

SENATOR FUSCHILLO: I don't know. He may, Senator. But that's certainly not the intent, for him to provide any medical advice or provide any medical care. It's just the intent to have them pull over, contact the authorities, advise the authorities of any disability, so they can better prepare when they reach the situation.

SENATOR ONORATO: Through you, are the parents not required by law to provide his or her medical records to the school currently?

SENATOR FUSCHILLO: They may be to the school, but they're not currently -

it's not currently required to be maintained on the bus.

SENATOR ONORATO: In other words, they are going to be -- each bus driver will have a list of their particular students that are on that bus, all of their medical records?

SENATOR FUSCHILLO: It's not necessarily all of their medical records. The provisions of the law require the nature of a child's medical disability, any information that could better help and prepare emergency personnel that attend.

There's only two states in the country that currently require this when they transport disabled children.

SENATOR ONORATO: One last question, through you, Mr. President.

ACTING PRESIDENT MORAHAN: Senator Fuschillo, do you yield to one more question?

SENATOR FUSCHILLO: Yes, I do.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR FUSCHILLO: And, Senator, the legislation, just a footnote, is supported

by the United Cerebral Palsy, the Council of School Superintendents throughout the state, the Association of Students with Down Syndrome, and other schools and organizations that have children with disabilities.

SENATOR ONORATO: Currently, are the teachers, school bus drivers, or attendants required by law to do evacuation exercises in cases of medical emergencies?

SENATOR FUSCHILLO: I don't know. I don't know the answer to that.

SENATOR ONORATO: Thank you.

ACTING PRESIDENT MORAHAN: Any other Senator wish to be heard on the bill?

Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 180th day.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

Senator Paterson, why do you rise?

SENATOR PATERSON: To explain my vote, Mr. President.

ACTING PRESIDENT MORAHAN: Senator Paterson, to explain his vote.

SENATOR PATERSON: This is a very good bill, there's no doubt about it.

And there's no need to make this part of the debate. It's just important, I think, to point out that inasmuch as this is really a benevolent gesture, particularly in terms of health care and emergency health care, the most information that can be provided as possible is necessary. And particularly if you are trying to evacuate a bus and you want to determine who goes first and that type of thing.

But I just wanted to point out that I don't know if it's a good idea to require the parents of a child to disclose information sometimes that might be subjective as to exactly what the inherent disability of the child is; that it could, in some instances, create a situation where there is misunderstanding or confusion as to actually what the disability is.

And so I just -- it's not really related to this bill, but it came up in the

conversation between Senator Onorato and Senator Fuschillo that some of these cases are not really as clear. And to put the family of the child in a position of having to render a specific judgment about that individual might cause the family some difficulty.

ACTING PRESIDENT MORAHAN: Thank you, Senator Paterson.

Anyone else wish to be heard on the bill?

Announce the results.

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 346, by Senator Trunzo, Senate Print 1238, an act in relation to requiring the Governor's Traffic Safety Committee.

SENATOR BROWN: Explanation.

SENATOR OPPENHEIMER: Explanation.

ACTING PRESIDENT MORAHAN: Senator Trunzo, an explanation has been asked for.

SENATOR TRUNZO: Okay. This bill

requires the Governor's Traffic Safety Committee to study the effects of mandating the use of seat belts on school buses as part of school bus safety.

ACTING PRESIDENT MORAHAN: Senator Oppenheimer.

SENATOR OPPENHEIMER: If Senator Trunzo would please yield for a few questions.

SENATOR TRUNZO: Yes.

ACTING PRESIDENT MORAHAN: Senator Trunzo, will you yield for few questions?

SENATOR TRUNZO: Yes.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR OPPENHEIMER: You know, Senator Trunzo, we've been looking at this issue for like a hundred years now. And we have passed a law saying that in the large school buses that there has to be a seat restraint, and yet we've left it up to each individual school district, because there's a lot of different feeling on the issue.

In this case, we would mandate the use of both the lap and the side or just the

lap?

SENATOR TRUNZO: This is merely a study at this point to see whether or not we should mandate that the safety belts, both types, would be mandated to all school districts, not leave it to their own option.

As you said, Senator, there are certain feelings that some people want school bus seat belts, which is either type, at this point, which we evidently did pass legislation years ago to permit that or to mandate that, provided -- giving them the option of whether they want to use them or not.

This would make it -- mandate it - this would make a study that the traffic safety committee has to study and make a report on the feasibility of using them and mandating them statewide on all school buses.

So it's a stronger bill than what originally was passed, which allowed the school districts to make their own decision as to whether they wanted, you know, the safety belts or not.

SENATOR OPPENHEIMER: If Senator Trunzo would yield for another question.

ACTING PRESIDENT MORAHAN: Senator Trunzo, will you continue to yield?

SENATOR TRUNZO: Yes.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR OPPENHEIMER: It just seems to me that we have spent a lot of time studying this. There's the report out from the NHTSA of three summers ago that they continuously monitored and evaluated bus crashes, and the data and research validated the effectiveness of the existing restraint system.

Then you had another report -- I mean, we have a lot of reports before us, we did have. We looked at this several years ago.

Then there was another study of the Transportation Safety Board, the national one, that stated that seat belts would not have prevented most of the serious injuries and the fatalities that occurred.

And then we had another study of the National Academy of Sciences that concluded that the potential benefits on the

large school buses were too small to justify a federal requirement.

It just seems that we have had a lot of studies done. And do you think that we can come to a conclusion relatively quickly on this new study?

SENATOR TRUNZO: I'd like to see that it would become a very quick solution. Because with all those other studies that were done, there was no definitive answer as to whether or not we should mandate them. You know, they say they should be on the bus but not mandate that it must be on all buses.

And what we're looking for is a definitive answer to this particular question and hoping that the study that we would have done by this legislation will come up with such an answer saying yes or no.

SENATOR OPPENHEIMER: If Senator Trunzo will yield again.

ACTING PRESIDENT MORAHAN: Senator Trunzo, will you continue to yield?

SENATOR TRUNZO: Yes.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR OPPENHEIMER: There are large constituencies that say different compartmentalization is preferable, relating perhaps to the height of the seat, the padding in front.

Are these things that will be examined as well as the question of the seat belt? Because it is felt that there are other methods that would better protect our children in the school buses.

SENATOR TRUNZO: Well, that's what we hope that this legislation will do, that we'd look at all forms of seat belts, you know, and the feasibility of using them that way, just as you're pointing out. I hope that -- that's all part of this study that we're asking them to do.

SENATOR OPPENHEIMER: And if the Senator will continue to yield.

ACTING PRESIDENT MORAHAN: Senator Trunzo, will you continue to yield?

SENATOR TRUNZO: Yes.

ACTING PRESIDENT MORAHAN: Senator Trunzo yields.

SENATOR OPPENHEIMER: Thank you.

When do you think this study might be concluded? Is there a termination time?

SENATOR TRUNZO: Well, the bill says that the act shall take effect immediately. But unfortunately, in part of the memo, the report must be filed no later than December 1, 2002. But they must start on this immediately so that we can get an answer before that time.

SENATOR OPPENHEIMER: Excellent. And through you, Mr. President.

ACTING PRESIDENT MORAHAN: Senator, will you continue to yield?

SENATOR TRUNZO: Yes.

SENATOR OPPENHEIMER: Will we be talking just about putting these restraints, whatever they are, in just new buses? Of course, our large new buses do have the belts in them. But would we be talking about retrofitting, or would we just be talking about new purchase?

SENATOR TRUNZO: Well, I think it all depends on how the report findings are as to the restraining factors that would be necessary in all types of buses.

SENATOR OPPENHEIMER: I couldn't hear the beginning.

SENATOR TRUNZO: Actually, for them, the commission, that's what they're going to be studying, to let us know just what you're asking.

SENATOR OPPENHEIMER: I see. So they'll have some idea what the costs would be.

SENATOR TRUNZO: There's so much conflict in the matter of the general public regarding seat belts, the utilization of them or their nonutilization, that even the national group, their report also couldn't come up with a definite answer because there's so much conflict around decisions regarding seat belts.

Even though we have a law in the state of New York regarding seat belts in your car, you'll see many times people driving without utilizing seat belts.

SENATOR OPPENHEIMER: Thank you, Senator Trunzo. We have been -

ACTING PRESIDENT MORAHAN: Is this on the bill, Senator?

SENATOR OPPENHEIMER: I'll be on the bill now.

ACTING PRESIDENT MORAHAN: Senator Oppenheimer, on the bill.

SENATOR OPPENHEIMER: This is something that we have been studying, looking at, thinking about, I think for the 17 years I've been in the Senate. And there is a lot of discrepancy in the results of these various studies that have been made.

Some studies say that if the impact is in a certain direction, that then the belts don't help and can be more damaging. It depends on how the crash occurs. The impact of the crash, is it a train or is it just a small car that -- there seem to be a whole lot of variables.

And I'm not certain that after all these studies that we have had, and they have been very inconclusive, I'm not sure that we're going to come up with anything that is conclusive. But I think, on the other hand, to sort of let this hang in limbo for all the years that I've been here is a bit foolish. We really should resolve, at least for our

state, the direction that we want to go.

And so I think this is what we have to do. And I support it, and I hope we do come out with something conclusive, because this issue has been hanging out there just forever, and it's time we resolved it.

So I'll be voting yes.

ACTING PRESIDENT MORAHAN: Any other Senator wish to be heard on the bill?

Senator Brown.

SENATOR BROWN: Yes, Mr. President. Mr. President, will Senator Trunzo yield for a few questions?

ACTING PRESIDENT MORAHAN: Senator Trunzo, will you yield for a few questions from Senator Brown?

SENATOR TRUNZO: Depends what "a few" is.

(Laughter.)

ACTING PRESIDENT MORAHAN: The Senator yields for quite a few.

SENATOR BROWN: Thank you, Senator Trunzo.

Senator, I'm looking at the bill memorandum of support, and it indicates that

the fiscal implication of this will be approximately $100,000. With some of the past work and the data that's available, why is it estimated that the cost of conducting this study will be in the neighborhood of about $100,000?

SENATOR TRUNZO: You say that's in the memo?

SENATOR BROWN: Yes, Senator, it's in the introducer's memorandum of support.

SENATOR TRUNZO: I don't -- the memorandum, I'm reading it. I don't see any fiscal impact of a hundred thousand.

SENATOR BROWN: It's not -

ACTING PRESIDENT MORAHAN: Yes, Senator?

SENATOR BROWN: Yes, if I may.

Senator Trunzo, I apologize. It's not -

SENATOR TRUNZO: There is no fiscal impact on this memo.

ACTING PRESIDENT MORAHAN: Excuse me. Excuse me. Will you address it through the chair, please.

SENATOR BROWN: Yes, Mr. President, I'm trying to ask a question.

In the bill itself, it does not indicate any fiscal impact. But in the memorandum in support, which outlines the purpose and the summary of provisions, existing law, justification, it lists a fiscal impact of approximately $100,000.

ACTING PRESIDENT MORAHAN: Senator Trunzo.

SENATOR TRUNZO: I didn't quite understand what your question is. That it would cost a hundred thousand, or do I agree?

SENATOR BROWN: I'm wondering why is it estimated that it will cost a hundred thousand to conduct this study -

SENATOR TRUNZO: If I might ask you a question.

SENATOR BROWN: Certainly.

ACTING PRESIDENT MORAHAN: Senator Brown, do you yield for a question from Senator Trunzo?

SENATOR BROWN: Yes, I certainly will yield for a question.

SENATOR TRUNZO: Who made the

estimate that it's going to cost a hundred thousand dollars? It's not in the legislation.

SENATOR BROWN: I think probably the staff that's put it together, that's done the work, has estimated that to conduct the research properly it will cost about a hundred thousand dollars. But I'm just trying to ascertain where that assessment comes from.

SENATOR TRUNZO: I just got a new copy of the memo. Increased cost, approximately a hundred thousand to the Department of Motor Vehicles.

My memo didn't have anything about that. They just handed me a copy of the memo by Senate staff which indicated a hundred thousand dollars. Sorry.

I think it's -- whatever it costs to do, I think it's necessary to find out whether or not the utilization of mandating these seat belts in whatever form they decide it should be done should be done in order for the safety of the children.

SENATOR BROWN: Thank you, Senator.

Mr. President, on the bill.

ACTING PRESIDENT MORAHAN: Senator Brown, on the bill.

SENATOR BROWN: Let me just take a moment to thank Senator Trunzo for responding to our questions.

And I agree with Senator Trunzo. I think certainly $100,000, if it can get a definitive answer as to whether or not seat belts will make it safer for our children that ride on school buses throughout the State of New York, then it is a $100,000 that's well spent.

You know, again, as I said before when I spoke on Senator McGee's bill, I'm the parent of a 10-year-old son and certainly deeply care about my own child, but certainly all of the children of the state of New York. And there are conflicting schools of thought as to whether or not seat belts and the wearing of seat belts on school buses will make our children safer.

There's some that feel strongly that the wearing of seat belts will make children safer, and other experts, to my

surprise, that feel with school buses and vehicles of that size, potentially, depending on the type of accident, perhaps the seat belt can do more harm than it does do good.

So through your legislation, Senator Trunzo, if it does help us to reach some kind of definitive answer that will help make our children more safe and enable us to reach a decision to the use of the seat belts, then I certainly support that, will support this legislation, and commend you and thank you for introducing it.

ACTING PRESIDENT MORAHAN: Any other Senator wish to be heard on this bill?

Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 347, by Senator Bruno, Senate Print 2372, an act to amend the Vehicle and Traffic Law, in relation to the disqualification of a bus driver.

SENATOR MONTGOMERY: Explanation.

ACTING PRESIDENT MORAHAN: Senator Fuschillo, an explanation has been requested.

SENATOR FUSCHILLO: Thank you, Mr. President.

This bill amends the VTL in relation to the disqualification of school bus drivers. Under present law in New York State, school bus drivers who fail the alcohol or drug test face a maximum fine of only $250.

This legislation would require the mandatory revocation of a school bus driver's license for drivers who have tested positive for drugs and alcohol.

ACTING PRESIDENT MORAHAN: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President, if Senator Fuschillo would yield.

ACTING PRESIDENT MORAHAN:

Senator Fuschillo, do you yield?

SENATOR FUSCHILLO: Yes, I do.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR MONTGOMERY: Senator, where in the legislation, Part 382 of Title 49, does it explain the procedure for testing the specimen? And where is the 72-hour regulation in this section?

SENATOR FUSCHILLO: Senator, I could read this to you, but it would be under the mandate of the federal law. If you'd like, I could provide you with a copy of it.

SENATOR MONTGOMERY: It's the controlled substances and alcohol use testing?

ACTING PRESIDENT MORAHAN: Senator Fuschillo, do you yield to Senator Montgomery?

SENATOR FUSCHILLO: Yes, I do.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR MONTGOMERY: Senator, you said that you don't have that.

SENATOR FUSCHILLO: No, I said I have it in front of me. It's mandated under

the federal law.

SENATOR MONTGOMERY: Oh, okay. Yes, I would like to -

SENATOR FUSCHILLO: I could provide you with a copy of it if you would like.

SENATOR MONTGOMERY: Okay. What section is it? Can you tell me?

ACTING PRESIDENT MORAHAN: Senator Fuschillo, do you continue to yield?

SENATOR FUSCHILLO: Yes.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR FUSCHILLO: Page 583, subsection B of Section 40.25. Specimen collection procedures.

SENATOR MONTGOMERY: Oh, that's a different section than I have.

SENATOR FUSCHILLO: Senator, I'll be happy to provide a copy of it to you for your review.

SENATOR MONTGOMERY: All right. Thank you.

Mr. President, if the Senator will continue to yield.

ACTING PRESIDENT MORAHAN: Senator, will you continue to yield?

SENATOR FUSCHILLO: Yes, I do.

SENATOR MONTGOMERY: Senator, I have a memo from NYSUT, and they say that they feel it is inappropriate for the state to permanently preclude someone from employment based on one test. Would you tell me what your response to that concern is? And I have a similar concern.

SENATOR FUSCHILLO: I disagree.

SENATOR MONTGOMERY: You disagree.

SENATOR FUSCHILLO: You know, Senator, we entrust the lives of school bus drivers to transport more than 2 million children to and from school every single day in this state. Give them a second chance if they're found to be driving with alcohol and drugs? I couldn't disagree more with NYSUT than that.

SENATOR MONTGOMERY: Mr. President, if Senator Fuschillo would continue to yield.

SENATOR FUSCHILLO: Yes, Mr.

President.

ACTING PRESIDENT MORAHAN: The Senator continues to yield.

SENATOR MONTGOMERY: Thank you.

Senator, I do have some concerns, as have been raised regarding other pieces of legislation before us, that there are some instances where false positives come up from testing. What in the legislation protects a person who might present a false positive for various reasons? I.e., some people, African-Americans, test positive, or people who test positive because they've had other kinds of medication that's not really an illegal substance.

SENATOR FUSCHILLO: That I think was a concern of Senator Bruno's as well, but the state follows the federal testing.

And, Senator, what I will provide you in response to your question before about the testing procedures under federal law, this includes it as well. I believe the specimen is split twice and sent to two different laboratories to avoid false positives.

SENATOR MONTGOMERY: All right.

Thank you, Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Senator.

ACTING PRESIDENT MARCELLINO: Senator Lachman.

SENATOR LACHMAN: Yes, Mr. President, through you, will the sponsor yield?

ACTING PRESIDENT MARCELLINO: Senator Fuschillo, do you yield?

SENATOR FUSCHILLO: Yes, Senator.

ACTING PRESIDENT MARCELLINO: The Senator yields.

SENATOR LACHMAN: Is this the same background check that is currently used for other school employees such as paraprofessionals or security guards, or is it a different type of background check?

And I have a reason for raising that. When I was president of the Board of Education, we began the fingerprinting of security guards. And even though I was very actively involved in civil liberties groups, others felt it was an infringement on their basic civil liberties. But after some

security guards were found abusing children, this was extended to the national FBI 50-state analysis, because there could be security guards coming in from Michigan and California and people would not know their previous history in other states other than New York.

Now, does this bill, dealing, obviously, with schoolchildren in terms of school bus attendants, is it comparable to other measures that deal with schoolchildren in other areas such as paraprofessionals, security guards and other people as well? Or is it a distinct, unique bill?

SENATOR FUSCHILLO: Senator, you've jumped ahead two bills on the calendar.

And I'll be happy to answer the question. It's the same criminal background check that deals with school bus drivers currently in New York State, but we are currently on, and I am responding on behalf of Senator Bruno, on legislation that deals specifically with the permanent revocation of the driver's license for school bus drivers.

SENATOR LACHMAN: And just the driver's license for school bus drivers?

SENATOR FUSCHILLO: Yes, sir.

SENATOR LACHMAN: On the bill, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Lachman, on the bill.

SENATOR LACHMAN: When one has a conflict between the theory of what should exist and the reality on the ground and the dangers that that reality poses, I would favor this bill, because there is a reality throughout the school systems in the state of New York that endangers minors and endangers children and this will in some way, some small way, attempt to correct that.

And I therefore am in favor of the legislation.

ACTING PRESIDENT MARCELLINO: Any other Senator wishing to be heard on this bill?

Senator Paterson, why do you rise?

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT MARCELLINO: Yes, sir.

SENATOR PATERSON: Would Senator Fuschillo yield for a question?

ACTING PRESIDENT MARCELLINO: Senator Fuschillo, do you yield?

SENATOR FUSCHILLO: Yes, I do.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR PATERSON: I'm sorry, Mr. President, the light wasn't on, so I wasn't sure if you could hear me.

SENATOR FUSCHILLO: Yes.

SENATOR PATERSON: Senator, I was looking at the transcript -

SENATOR FUSCHILLO: Which transcript are you referring to?

SENATOR PATERSON: From last year. And I'm looking at the conversation between Senator Bruno -- I'm not looking at it right now, I'm thinking about it -- between Senator Bruno and Senator Schneiderman. And they were talking about the federal regulations implemented by the Department of Transportation.

And under the Federal Highway Law, Senator Bruno quoted Title 49, Section 382. That was the one that I went and looked at between last year's debate and this year's,

because that was supposedly the section that demonstrated what the actual procedures were.

SENATOR FUSCHILLO: Right.

SENATOR PATERSON: Now, just in your discussion with Senator Montgomery, you have a new section that you're citing. Because you would be right, it's not in Section 382. And yours is under Title 49, Section 40; is that correct?

Would you explain to me what the federal procedures are with respect to the second test of a specimen where on the first test the individual is found to have tested positive?

SENATOR FUSCHILLO: Senator, just let me look through the federal statute.

SENATOR PATERSON: No problem.

SENATOR FUSCHILLO: I'll give you back your notes as well.

Senator, in trying to quickly give myself some knowledge of the testing itself through this, I'll refer to your own notes that I briefly looked at. I believe they have 72 hours for the test, and the second test will go to a separate place for a review and

analysis of it.

SENATOR PATERSON: Well, Mr. President.

ACTING PRESIDENT MARCELLINO: Yes, Senator Paterson.

SENATOR PATERSON: That's very helpful.

And, Mr. President, we put Senator Fuschillo in a difficult position because the Senator was not the person who was debating Senator Schneiderman last year. Senator Bruno was.

SENATOR FUSCHILLO: And I'm sure Senator Bruno did an outstanding job debating Senator Schneiderman.

ACTING PRESIDENT MARCELLINO: Senator Fuschillo, would you please -- through the chair.

SENATOR FUSCHILLO: I'm sure Senator Bruno did an outstanding job debating Senator Schneiderman last year.

ACTING PRESIDENT MARCELLINO: I thought I heard you say that. I just wanted to clarify it for the record.

SENATOR FUSCHILLO: Would you

like me to say it a third time?

(Laughter.)

ACTING PRESIDENT MARCELLINO: Senator Paterson, will you mercifully put this to an end.

SENATOR FUSCHILLO: In reading these notes, Senator, just to give you a further answer, the omnibus act under federal law requires that the drug testing procedures for the commercial motor vehicle drivers include splitting the specimen procedures, which you know in your asking me the question. Each is divided into two bottles, labeled "primary" and a "split" specimen, and both are sent to the laboratories for the testing.

SENATOR PATERSON: Thank you, Mr. President. If Senator Fuschillo would yield for another question.

ACTING PRESIDENT MARCELLINO: The Senator yields.

SENATOR FUSCHILLO: Yes, I do.

SENATOR PATERSON: First of all, I want to lend my voice to those who thought that Senator Bruno's debate last year was dynamic, articulate, quite perceptive, from my

vantage point, and just ask if it would be - if the issue, the chemical components that created what could have been a false test in the first place would be automatically cured by having a second place just because you're using an independent laboratory.

In other words, there was an incident some years ago where a former senator was tested for substances, and poppy seeds from, I believe, a bagel created a false positive test in that case. And so it's likely that even an independent laboratory, being as objective as possible, could be triggered to induce a false positive test.

So my question is, isn't it a little -- isn't it, you know, a rather harsh punishment for this one test to create a permanent revocation of a license when, in fact, we're not even -- we're using just one specimen to conduct the test, we're just dividing it into two different, separate tests?

SENATOR FUSCHILLO: Senator, I believe there's a procedure under the federal law that will allow for the clinic or the

medical examiner to talk to the employer to determine if there's any medical reasons that the test may come back in a false manner and may be subjected to providing some other information.

Senator, is it strict? Is it serious? Absolutely. As you and I know, my children, your children mean the world to us, and we entrust them to individuals like school bus drivers. And I think that parents should have a comfort level knowing that a school bus driver is not on alcohol, is not on drugs.

And if they are on alcohol or they are on drugs and they're found to be while transporting the more than 2 million children to and from school in this state of ours, then they should lose the right of their commercial driver's license to transport a child.

You know, we transport millions and millions of cargo throughout this state on daily basis. There's nothing more precious than the life of our children. And it is serious, and it should be taken serious. And this would send a serious message to individuals who would even think of attempting

to put themselves in a situation to drive while under the influence of drugs or alcohol.

SENATOR PATERSON: Mr. President, I couldn't agree with Senator Fuschillo more. If he would continue to yield for a question.

ACTING PRESIDENT MARCELLINO: Senator, would you yield?

SENATOR FUSCHILLO: Yes.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR PATERSON: One of the reasons that Senator Bruno's bill is -- that I was voting against this bill and then eventually voted for it last year is exactly the point that Senator Fuschillo made, that this is an extraordinary situation where you're dealing with the lives of children. And if you're going to err at all, you want to err in the direction of the highest degree of protection for them. And again, it was well stated by Senator Fuschillo.

But just to compare, we had Senate Bill 704 earlier today, sponsored by Senator Goodman. Now, here there is at least a six-month mandatory revocation where a person

is actually convicted of driving under the influence of alcohol or substances. So here you actually have a conviction where there is a likelihood of appeal, if the defendant deems necessary, the guilty party.

All I'm saying in this situation, just as a matter of law, is we have this one test, this one specimen which for some reason is giving a false positive -- might be giving a false positive. And what I'm just concerned about is that a person now is permanently revoked.

In other words, if we want to have six testings within a year, as we have now - Assemblyman Gantt has a piece of legislation where he wants to have six testings up to five years. And I think that the one out of three recidivism rate for people who have drug or alcohol problems is a factor. And so if we want to have special rules just for these individuals, I think we should actually do that.

But I'm just saying that the appeal process in the one test is just the second test from the same specimen. And I don't

think that that meets the threshold of what I would call an appeal. Here, this person hasn't even been convicted of anything.

So my question to Senator Fuschillo would be, aren't there other ways that we could accomplish the same goal as Senator Bruno has set forth in this bill without, for the rest of a person's life, banning them from driving a school bus or losing a commercial license to drive any vehicle?

SENATOR FUSCHILLO: Senator, I appreciate your concerns. I always respect your opinion.

But I think there are measures under the federal law with the two testing and the splitting of the test and the opportunity for the employer to provide any necessary information.

You know, I'll go back to my original statement, Senator. We are transporting children. And though it is a serious penalty for it, no second chances. You drive drunk, you drive under the influence of drugs while transporting children to and from schools, you don't deserve a second

chance.

And again, I appreciate your concerns. And that's something that, maybe during negotiations with the other house as this goes forward, could be raised.

But again, Senator -- I mean, I want to express to you the seriousness of this, and I know you appreciate that. As I have stated, I think Senator Bruno's legislation correctly addresses an offense that can be very serious and life-threatening to the children that are on those buses.

SENATOR PATERSON: Mr. President, on the bill.

ACTING PRESIDENT MARCELLINO: Senator Paterson, on the bill.

SENATOR PATERSON: I think that Senator Fuschillo was an excellent replacement for Senator Bruno in this situation. If I keep saying things like that, I may kill him off over there. But I think that he was as convincing as the Majority Leader was last year.

The Majority Leader and I have debated this bill for five years. And I

finally did decide to favor the value of the added protection over what I think is somewhat of a misnomer in the legislation, which is I don't think that there are two tests. It's the same specimen.

So if you're testing something a second time, you want to use some other specimen other than the one that might have created a false positive in the first place.

And just as there is a high degree of recidivism in people who have drug and alcohol problems, there's a very high degree of false positives that are set off in these tests, sometimes for chemical reasons unknown to the individual who is tested positive.

And to eliminate that, I could think of some suggestions. The one I raised before, which is the test that's given randomly right before the person operates the vehicle, known as the impairment test. In other words, I think there are ways beyond a certain time to keep track of these types of individuals.

But in the end, the merit of the bill is unquestioned. And it's a situation

that we often run into in the law where it's difficult to have a black-and-white reading of the law when the lives of children are in jeopardy. And there have been a number of situations where school bus operators were impaired by excessive use of alcohol or substances.

But I just think it's important to recognize that that so-called second test is just a readaptation of a chemical test that was used in a first instance with a specimen where the second specimen is coming -- was extracted from the individual at the exact same time. And I don't think that that's a second test.

But I do understand why the legislation is as important as it is.

ACTING PRESIDENT MARCELLINO: Senator Stavisky.

SENATOR STAVISKY: If the sponsor would yield to just a couple of questions, or the sponsor's surrogate.

ACTING PRESIDENT MARCELLINO: Senator Fuschillo, do you yield?

SENATOR FUSCHILLO: Yes, I do.

ACTING PRESIDENT MARCELLINO: Senator Fuschillo, the surrogate for Senator Bruno, yields.

SENATOR STAVISKY: I have a question about the language on the first page. The legislation talks about, on line 11, "shall revoke the license to drive a bus." Is this limited to school buses, or does it include private bus lines, buses that have contracts to carry other than children?

SENATOR FUSCHILLO: School buses, Senator, I've been advised. Just school buses.

SENATOR STAVISKY: Even though the language talks about a license to drive a bus -

SENATOR FUSCHILLO: Yes.

SENATOR STAVISKY: -- and doesn't specify school buses?

SENATOR FUSCHILLO: The intent is school buses.

SENATOR STAVISKY: The intent is school buses.

If the Senator would continue to yield.

ACTING PRESIDENT MARCELLINO: Senator, do you yield?

SENATOR FUSCHILLO: Yes, Mr. President.

ACTING PRESIDENT MARCELLINO: The Senator yields.

SENATOR STAVISKY: This presumably would apply to the City of New York as well, where they contract out these bus operations?

SENATOR FUSCHILLO: Throughout New York State, yes.

SENATOR STAVISKY: Throughout New York State.

And my last question, if the Senator would yield.

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

ACTING PRESIDENT MARCELLINO: The Senator yields. Proceed.

SENATOR STAVISKY: If we believe in the ability to -

ACTING PRESIDENT MARCELLINO: Excuse me, Senator. Can we have some order in the house, please. It's very difficult to

hear.

I'm sorry, Senator. Proceed.

SENATOR STAVISKY: If we believe in the ability to rehabilitate individuals, isn't it unreasonable to -- well, this bill, doesn't this bill make the assumption that people cannot be rehabilitated?

SENATOR FUSCHILLO: No. No, it does not.

SENATOR STAVISKY: All right. On the bill, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Stavisky, on the bill.

SENATOR STAVISKY: That's the area where I have a problem, Mr. President. And that's in the lack of faith in our programs to resolve these drug cases.

It seems to me that making this a one-strike-you're-out is unfair, the permanency of the restriction is unfair. And I intend to vote no on this bill for that reason.

Thank you.

ACTING PRESIDENT MARCELLINO: Any other Senator wishing to be heard on this

bill?

Seeing none, the debate is closed.

Read the last section, please.

THE SECRETARY: Section 4. This act shall take effect immediately.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MARCELLINO: Senator Montgomery, to explain her vote.

SENATOR MONTGOMERY: Yes, Mr. President, thank you. I want to explain my vote on this.

I'm voting no on this legislation. I think that there are two -- at least two very serious and important areas that trouble me. One of them is the permanency of this legislation.

The other is the fact that we do have -- I have received on many occasions complaints from constituents who have been deemed to have a positive test result when in fact they were not on drugs, were not smoking marijuana, were not doing any of the things, but their urine tested positive for other

reasons. It could also be that people on medication -- many medications also yield a positive test for urine.

So I am going to vote no because I think that this is a very drastic step to take, to revoke someone's license permanently. And I'm not convinced that this does not cover any person with a commercial license to drive any bus in our state.

So I'm voting no.

ACTING PRESIDENT MARCELLINO: Senator Montgomery, you will be recorded in the negative.

Announce the results, please.

THE SECRETARY: Those recorded in the negative on Calendar Number 347 are Senators Duane, Markowitz, Montgomery, Santiago, Schneiderman, and Stavisky.

Ayes, 51. Nays, 6.

ACTING PRESIDENT MARCELLINO: The bill is passed.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 348, by Senator Bruno, Senate Print 2373A, an

act to amend the Vehicle and Traffic Law, in relation to the drivers of small school buses.

SENATOR OPPENHEIMER: Explanation.

SENATOR ONORATO: Explanation.

ACTING PRESIDENT MARCELLINO: Senator Fuschillo, an explanation has been asked.

SENATOR FUSCHILLO: Thank you, Mr. President.

Existing school bus driver qualifications do not apply to drivers of vehicles with a seating capacity of ten or fewer passengers. This legislation will close a loophole in the current law whereby drivers of small school buses and other small vehicles are not subjected to the same standards as drivers of larger buses.

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

SENATOR OPPENHEIMER: If the sponsor would yield for a couple of questions.

ACTING PRESIDENT MARCELLINO: Senator Fuschillo, will you yield?

SENATOR FUSCHILLO: Yes, Mr.

President.

ACTING PRESIDENT MARCELLINO: I believe he yields, Senator.

SENATOR OPPENHEIMER: Article 19-A doesn't apply to drivers of vehicles with less than ten.

SENATOR FUSCHILLO: Right. Senator Bruno's legislation will require that, Senator. It will amend Article 19-A to require exactly what is -

SENATOR OPPENHEIMER: That it would cover -

SENATOR FUSCHILLO: Would cover that.

SENATOR OPPENHEIMER: Okay. Now, if the Senator would yield again.

ACTING PRESIDENT MARCELLINO: The Senator yields.

SENATOR FUSCHILLO: Yes, Mr. President.

SENATOR OPPENHEIMER: If the drivers are exempt from holding the commercial license, then how would the federal testing standards for alcohol and drug abuse apply? Because as I understand it, the drug -- it's

the drug testing that's done under the commercial license.

SENATOR FUSCHILLO: You're correct, Senator, in stating that.

But I believe this legislation will put them in the category as school bus drivers and the laws that are applicable to school bus drivers of buses over ten.

SENATOR OPPENHEIMER: Uh-huh. What are the requirements that they're going to have to meet under 19-A?

SENATOR FUSCHILLO: Well, I don't have a compete listing, but there are some training procedures, there is criminal background checks. Drivers of small school buses are exempt from certain safety requirements under 19-A, such as periodic driving tests and exams that are required as regular procedures for school bus drivers.

So there are certain requirements that they're currently exempt for. By passing this legislation and ultimately becoming law, they would be subjected to the same as the school bus drivers.

SENATOR OPPENHEIMER: And if the

Senator would yield again.

SENATOR FUSCHILLO: Yes.

ACTING PRESIDENT MARCELLINO: Senator Fuschillo, do you yield?

SENATOR FUSCHILLO: Yes.

ACTING PRESIDENT MARCELLINO: Might I ask both Senators to just -- Senator Fuschillo, when you turn your face away from the microphones, it's very difficult for people to hear.

SENATOR FUSCHILLO: I would rather address Senator Oppenheimer than you, Mr. President.

(Laughter.)

ACTING PRESIDENT MARCELLINO: I understand that. But the record must be maintained, Senator.

SENATOR OPPENHEIMER: No more questions.

(Laughter.)

ACTING PRESIDENT MARCELLINO: Seeing no more Senators wishing to be heard -

(Laughter.)

SENATOR OPPENHEIMER: Senator Fuschillo, would they then put the requirement

for drug testing into the 19-A regulation?

SENATOR FUSCHILLO: Counsel advises me, Senator, that we wouldn't have the authority under the federal law, because it's only applicable to CDLs.

SENATOR OPPENHEIMER: Then back to the first question.

SENATOR FUSCHILLO: Back to the first question, in looking at this, although it requires certain provisions of school bus drivers to now be the same and applicable for individuals for hire that are driving it, the smaller vehicles, I believe there's no requirement under the state law of the CDL license for that type of vehicle.

SENATOR OPPENHEIMER: That's something that will need attention.

SENATOR FUSCHILLO: It's something that we're probably going to have to visit later and, as you said, give attention to, absolutely.

Sorry, Mr. President, that I wasn't directing it to you.

SENATOR OPPENHEIMER: Oh, yes, Mr. President, through you, if I could ask

another question of the Senator.

ACTING PRESIDENT MARCELLINO: Thank you, Senator Oppenheimer, for your courteousness.

Will the Senator yield to the courteous Senator?

SENATOR FUSCHILLO: Yes, Mr. President.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR OPPENHEIMER: I'll talk through my ear.

It is now believed that with small children, preschoolers, that the safety restraints are appropriate. We still seem to be in the dark or undecided for older children.

Would that be considered a part of the small vehicle operation, for the preschoolers?

SENATOR FUSCHILLO: No.

SENATOR OPPENHEIMER: That's not a part of this.

SENATOR FUSCHILLO: Correct.

SENATOR OPPENHEIMER: But it

might be a part of something to be visited later.

SENATOR FUSCHILLO: Yes, absolutely.

SENATOR OPPENHEIMER: Okay, I - on the bill.

Thank you, Senator.

ACTING PRESIDENT MARCELLINO: Senator Oppenheimer, on the bill.

SENATOR OPPENHEIMER: I think that now that we're visiting the smaller school bus issue for the preschoolers, I think there's a variety of issues that we have to address.

One of them might be at some point some way to amend this bill in order to require drug testing of our bus operators, which is not available under this.

Another would be to visit the buses themselves to see that these preschoolers are restrained in the safest way possible. And it now appears that seat belt restraints are valid and protective of small children as they are in our family cars. That information seems to be somewhat cloudy as far as older

children. But the smallest children should be restrained by seat belts, because it is seen to be the safest for them.

There are issues which we discussed which I think might well be addressed in future legislation. But this is a good bill, and I certainly will be supporting it.

ACTING PRESIDENT MARCELLINO: Any other Senator wish to be heard?

Senator Paterson.

SENATOR PATERSON: Mr. President, is Senator Fuschillo standing in for the Majority Leader on this bill?

ACTING PRESIDENT MARCELLINO: I believe the Senator is sitting in for the Majority Leader. Now standing in for the Majority Leader.

SENATOR PATERSON: Oh, good. Oh, then I have a whole different set of questions for him.

But on the bill, if the Senator would be willing to yield.

ACTING PRESIDENT MARCELLINO: Senator, would you yield for a question?

SENATOR FUSCHILLO: Yes, Mr.

President.

ACTING PRESIDENT MARCELLINO: I believe he yields.

SENATOR PATERSON: Senator, for the life of me I'm confused by a comparison of the last bill that we passed, Calendar Number 347, and this one, in that if we're not going to require the commercial driver's license, then -- and I understand what we're going to do about convicted individuals. But how are we going to stop the same people who we were trying to stop in the last bill in this bill?

Because Section 19-A of the Vehicle and Traffic Law is not going to provide that same protection that you've set up for the large vehicle drivers in the last legislation.

SENATOR FUSCHILLO: Senator, you raise an issue that we should address at a later date. And I'll be happy to discuss it with you and, if need be, if we come up with legislation to address your concerns, I'll be happy to introduce it in the Senate.

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT MARCELLINO: Yes, sir.

SENATOR PATERSON: If Senator Fuschillo would yield for a question.

ACTING PRESIDENT MARCELLINO: I'm sure the Senator would yield for a question.

SENATOR FUSCHILLO: Mr. President, it's nice to know that I can make Senator Paterson speechless.

I'll be happy to yield for another question.

SENATOR PATERSON: Then I'm not exactly sure what we're accomplishing by passing this bill, because the same people who we just stopped from driving the large vehicles are going to go down the block and get in the small vehicles and drive the same kids.

In other words, I don't mind talking about it, I don't mind addressing it in legislation later, but I want to say we're really opening the door of the school bus to the same people who have alcohol and substance abuse problems that you persuaded me to vote for the last time.

And so what I'm saying is I guess my question, simply enough, is what are we

accomplishing other than stopping convicted felons from operating the small school buses with less than ten seats?

SENATOR FUSCHILLO: Well, Senator, other than allowing convicted felons to operate this -- it's a serious "other than." So you're accomplishing a lot. And since we've enacted the criminal background check for school bus drivers -- I think it was dating back to 1985 -- more than a thousand school bus drivers have been disqualified.

But as I was explaining in one of my answers to Senator Oppenheimer, it's requiring some other safety requirements, instructional classes and exams that are currently required for school buses of the larger buses as well.

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

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

SENATOR FUSCHILLO: Yes, Mr. President.

ACTING PRESIDENT MARCELLINO: The Senator continues to yield.

SENATOR PATERSON: This is a very serious subject, and I don't mean to minimize the gravity of the impact this bill would have on convicted felons. Senator Fuschillo was right. I think I'm just saying it's so serious that there's got to be a reason why we just don't amend the bill right now and include the commercial driver's license.

And I guess I just wondered if you or your counsel were aware of why we're not doing it. Perhaps it's because we are trying to increase the availability of drivers, particularly in these small buses.

Perhaps it's an issue of just trying to get as much passed as we can right now to satisfy the Assembly and then to come back with this later on so we can at least knock out the issue of the convicted felon.

So in other words, I'm just trying to find out why are we not, as serious as this situation is, addressing it right here at this moment or just laying this bill aside and putting it in and passing it tomorrow. Because in spite of the fact that I have the same concern as I articulated in the previous

bill, I would vote for the bill.

SENATOR FUSCHILLO: Then I see no reason to -

SENATOR PATERSON: Ah, amendments coming through.

SENATOR FUSCHILLO: That's the school bus drivers. They want to talk to you.

-- to lay the bill aside. You raise an issue and it's an issue, as I said to you, we will address. And it's specifically for for-hire for the smaller buses.

I know that in certain situations, Senator -- last year I remember this issue came up about individuals driving for camps and other drivers that had raised a concern of getting a CDL for them in a timely fashion, so as not to disrupt any of the operation of any businesses. And I don't know, Senator, if that's the particular reason for this. I'm just recollecting some conversations that may have taken place.

But you raise a concern, and it's a concern that I will be happy to address.

SENATOR PATERSON: All right, Mr. President. I'm satisfied. I just have one

last question, if Senator Fuschillo would be willing to yield.

ACTING PRESIDENT MARCELLINO: Senator, will you yield for a last question?

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

ACTING PRESIDENT MARCELLINO: He yields, Senator.

SENATOR PATERSON: And the question is, because of those situations where we are bringing operators in to transport children to camp and that type of thing, where it's kind of an ephemeral situation that we're going to try to ameliorate in this fashion, do we have a standard now for the training of the operators of these vehicles since we're not using the commercial driver's license?

Do we have at least a threshold by which perhaps the person doesn't have a license but we want them to certainly know how to operate the vehicle in a little more of an extraordinary fashion than just somebody who jumps in a van and drives children around?

SENATOR FUSCHILLO: Senator, are you referring to what we just talked about,

the camp counselors in this situation?

SENATOR PATERSON: Yeah.

SENATOR FUSCHILLO: To the best of my knowledge, no. But again, that is something, an issue that we raised in this debate that we should look at and, if need be, introduce further legislation to maybe require some training similar to 19-A.

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

SENATOR OPPENHEIMER: Thank you. Just one elucidation, if the Senator will yield.

ACTING PRESIDENT MARCELLINO: Before we do that, Senator, is Senator Paterson yielding the floor? Are you finished, Senator?

SENATOR OPPENHEIMER: When you're finished, Senator.

SENATOR PATERSON: Yes, I am, Mr. President. And Senator Oppenheimer. And anyone else who is concerned.

ACTING PRESIDENT MARCELLINO: Thank you, Senator.

Senator Fuschillo, do you yield to

Senator Oppenheimer?

SENATOR FUSCHILLO: Yes, Mr. President.

ACTING PRESIDENT MARCELLINO: He yields, Senator.

SENATOR OPPENHEIMER: You know, we're making a lot of suppositions on why we're not requiring the commercial driver's license. Would you be good enough to explain why we are not going to be requiring the commercial driver's license, why we are doing this? I mean, several of us have made suppositions.

SENATOR FUSCHILLO: Senator Paterson has come over to answer your question.

SENATOR OPPENHEIMER: And who was on the phone?

SENATOR FUSCHILLO: Senator, the legislation did not focus on that, as you know. But the intent of it was the training aspect and to require the safety procedures and focus primarily on that, not on the application of a CDL.

As I explained to Senator Paterson,

that is something that I will -- I am not the sponsor of this legislation, as you know, but that is something that in my overall and the Majority's overall school bus safety package, which most of the legislation is on the calendar today, that is something that I personally will review.

But again, the focus of Senator Bruno's legislation dealt primarily with providing for the necessary safety requirements and training for these individuals.

SENATOR OPPENHEIMER: If Senator Fuschillo will yield again.

ACTING PRESIDENT MARCELLINO: Senator, do you yield?

SENATOR FUSCHILLO: Yes, Mr. President.

ACTING PRESIDENT MARCELLINO: I believe he yields.

SENATOR OPPENHEIMER: Senator, I understand that. But why couldn't we maintain the commercial driver's license requirement and go ahead with our state program as well?

Why are we giving up the CDL? I'm

just not understanding why we're giving up the CDL. It isn't in conflict with what we want done.

SENATOR FUSCHILLO: Senator, I am not in agreement with you.

Again, this legislation primarily focused that requiring the smaller vehicles and the drivers -- and the focus was not on the actual license itself, but dealt primarily with the safety training. But that is something that, again, we will review and, if need be, introduce legislation to address that issue of the CDL for the small bus drivers as well.

SENATOR OPPENHEIMER: Okay. Thank you.

I just want to say that -

ACTING PRESIDENT MARCELLINO: Senator Oppenheimer, on the bill.

SENATOR OPPENHEIMER: On the bill.

I just want to say that I don't see these two as being incompatible. I think both can be required of the small bus driver. I was assuming, like Senator Paterson, that we

were trying to attract a larger cadre of potential drivers, because there are many needed for these small buses. But I don't see why we can't require both Article 19-A and the commercial driver's licensing program required for our small bus drivers also.

So I'd be happy to work with Senator Fuschillo on this. I think school bus safety has been an issue that has been of vital importance to me, and I just want to keep working on it.

ACTING PRESIDENT MARCELLINO: any other Senator wishing to be heard on the bill?

Seeing none, then the debate is closed.

Read the last section.

THE SECRETARY: Section 2. This act shall take effect 180 days.

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 349, by Senator Fuschillo, Senate Print 2376, an act to amend the Vehicle and Traffic Law, in relation to criminal history checks.

SENATOR MONTGOMERY: Explanation.

ACTING PRESIDENT MARCELLINO: Senator Fuschillo, an explanation has been asked for.

SENATOR FUSCHILLO: Thank you, Mr. President. This bill would require criminal history checks on school bus attendants. It would be similar to what's under state law required for school bus drivers.

As previously stated in another debate, the school bus driver law, the criminal background check, has been effective since 1985. It has been very effective. More than 1,000 school bus drivers have been disqualified due to New York State convictions, and about a hundred have been disqualified due to out-of-state convictions.

We are just trying to strengthen the law, weed out those who shouldn't be on the buses, and move forward with the intent of

protecting the children on the school buses. And in most cases, school bus attendants have a closer contact with children who are riding on the bus.

ACTING PRESIDENT MARCELLINO: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President. I would like to ask Senator Fuschillo a couple of questions about this legislation.

ACTING PRESIDENT MARCELLINO: Senator Fuschillo, will you yield for a question or two?

SENATOR FUSCHILLO: Yes, Mr. President.

ACTING PRESIDENT MARCELLINO: He yields, Senator.

SENATOR MONTGOMERY: Thank you. Through you, Mr. President. I would like to know, of these 1,000 cases that have been disqualified, on what basis are the disqualifications made? And in other words, I would like to know if there are any specific criminal charges that are within this category to disqualify a person, or does this cover any

possible charge that a person may have had.

And related to that, I would like to know if it covers any infraction that comes up on a person's record at any age. If a person has been charged with something at 14 and they are now 50 and they are looking to apply to be an attendant, would that person also be disqualified?

So I'm trying to find out what is encompassed in the area of disqualification and is there any statute of limitations in terms of time or age when one may have committed such an offense.

SENATOR FUSCHILLO: You've asked me many questions, and I'll to answer them to the best of my recollection of your statement.

Our information, Senator, just applies -- and I can look into it further - from DCJS that these thousand or so have been disqualified due to prior convictions. I don't know exactly the specific convictions that they have incurred.

The legislation as far as the hiring and the determination is at the discretion of whether the applicant is

suitable for the qualifications, and that is made based on the criminal background check.

Any information provided by the criminal background check to the school and the motor carrier is done through DCJS. So any information -- Mr. President, through you -- Senator, that is provided to them is afforded them the opportunity to make the determination whether or not they are suitable for the qualification.

SENATOR MONTGOMERY: Mr. President, if I may ask the second part of my question again.

ACTING PRESIDENT MARCELLINO: Senator Fuschillo, will you yield again?

SENATOR FUSCHILLO: Yes, Mr. President.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR MONTGOMERY: So does that mean that there is no age limit either but it's just based on the judgment of -- and whose judgment is involved in determining whether the applicant is suitable? Whose judgment, who makes that judgment?

Mr. President, that's my question. Who makes that judgment?

SENATOR FUSCHILLO: You mean the judgment on whether to hire the applicant or not?

SENATOR MONTGOMERY: Exactly, yes.

SENATOR FUSCHILLO: It would be either the motor carrier or the school district.

And again, it's discretionary, Senator. And I'll repeat what I said. They receive the criminal reports of the background from DCJS. So it's at their discretion to make the determination based on what is in the report, the criminal report from DCJS, and it's at their discretion.

SENATOR MONTGOMERY: Thank you.

Mr. President, if I may ask another question. Senator, if you would yield.

ACTING PRESIDENT MARCELLINO: Senator, do you yield?

SENATOR FUSCHILLO: Yes, Mr. President.

ACTING PRESIDENT MARCELLINO: He

yields. Proceed, please.

SENATOR MONTGOMERY: Thank you.

Mr. President, I'd like to know - I'm not exactly clear as to who pays and how much, based on this. It says that the applicant shall be -- no more than $5 over the cost -- the fee paid shall be no more than $5 over the cost of the school district for the criminal history check. And I'm not quite sure what that means. What is the fee?

SENATOR FUSCHILLO: Senator, the current fee I believe is approximately $79. For school bus drivers, I believe the fee is aidable under the state law.

Currently -- and let me just go back to why we put that provision in there. That's just to prohibit, Senator -- through you, Mr. President -- any school district from charging any potential applicant an exorbitant amount for the background check.

Currently, in our research of some school districts in my district and throughout the state that require criminal background checks for school bus attendants, in most cases, the majority of the cases, if the

applicant successfully completes a probationary period, they are reimbursed for the money that they had laid out for the background check.

SENATOR MONTGOMERY: Just one last question that I have, Mr. President.

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

SENATOR FUSCHILLO: Yes, Mr. President.

ACTING PRESIDENT MARCELLINO: The Senator yields.

SENATOR MONTGOMERY: Senator Fuschillo, do we have any idea -- your memo talks about 1,000 people who have been eliminated or disqualified based on prior convictions. How many people -- what percent of our applicants does that represent? Is that a fairly large number? Or is that just a few, based on a hundred thousand people who apply for these jobs?

SENATOR FUSCHILLO: Senator, I do not know the percentages of that.

SENATOR MONTGOMERY: Nor do we have the information on attendants either?

SENATOR FUSCHILLO: No, we don't.

But through the state, maybe the Department of Transportation or DCJS, I'm sure you can find out how many applicants have applied since 1985 and figure out the percentage of -- and I believe it's a little bit more than a thousand now.

But I don't have -- I don't have the percentages for you.

SENATOR MONTGOMERY: One more question, I promise. I swear this is my last one.

ACTING PRESIDENT MARCELLINO: Senator, will you yield for one more last question?

SENATOR FUSCHILLO: Yes, Mr. President.

ACTING PRESIDENT MARCELLINO: He yields, Senator. Proceed, please.

SENATOR MONTGOMERY: Okay, thank you.

I'm just wondering, Senator Fuschillo, what is the impetus for this legislation? Is it solely based on the fact that you have disqualified 1,000 people who

are applying for bus driver, or is there some incident or number of incidents that have occurred that leaves you with the urgency to do this legislation?

SENATOR FUSCHILLO: Senator, I believe that this will close what I perceive as a loophole. Why school bus attendants were never included in 1985, I don't know. I wasn't around in the Legislature then. But there have been incidences of sexual abuse on the part of school bus attendants.

But these individuals have the closest contact to children. And I think that parents should have a comfort level while their child is riding on the bus, if there is a school bus attendant, that they know that there's no prior criminal history associated with that individual.

SENATOR MONTGOMERY: All right. Thank you. Thank you, Mr. President.

SENATOR FUSCHILLO: Thank you.

SENATOR MONTGOMERY: On the bill, Mr. President, just briefly.

ACTING PRESIDENT MARCELLINO: Senator Montgomery, on the bill.

SENATOR MONTGOMERY: I have a problem with the legislation, in that I'm not sure -- and I don't have the answer, either from the sponsor or from legislation or parts of the law that may cover this, so I'm not sure just how far back this goes in terms of a person having been convicted of some offense. I don't know which offenses are covered under here. It's very, very broad.

And it's problematic because we're talking about employment that people apply to do who are not at the top of the food chain, as they say, as it relates to employment. And so here we are eliminating a very substantial number of people, and I'm not sure that they either are afforded a fair hearing and opportunity to defend themselves or that there is any limitation on just how far this goes in keeping people from work.

So I'm voting no, not because I don't want to see children protected, but I think we have to begin to look at just how, to what extent we are eliminating these kinds of jobs for large numbers of people, many of whom may do fine in that job if they just would

have an opportunity to defend whatever they have done.

Maybe they did it at a time when they were particularly youthful, without appropriate discretion. And maybe now they're at a point in their lives where they really want to work, they would never think of doing something like they did at 14 or 15 or 16, and we still would eliminate them from work.

So I'm going to vote no on this legislation. Thank you.

ACTING PRESIDENT MARCELLINO: Senator Duane.

SENATOR DUANE: Thank you, Mr. President. If the sponsor would yield.

ACTING PRESIDENT MARCELLINO: Senator Fuschillo, will you yield?

SENATOR FUSCHILLO: Yes, Mr. President.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR DUANE: Thank you.

I'm wondering if the sponsor could tell me what exactly bus attendants do, what their responsibilities are.

SENATOR FUSCHILLO: Mr. President, through you, to the best of my knowledge, Senator Duane, they assist the school bus driver with maintaining an orderly conduct and fashion on the bus, provide any assistance to putting a child on the bus, if they require the use of seat belts.

But I would say just merely in a capacity to be the eyes behind the school bus driver.

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

ACTING PRESIDENT MARCELLINO: Sponsor, do you continue to yield?

SENATOR FUSCHILLO: Yes, Mr. President.

ACTING PRESIDENT MARCELLINO: The sponsor yields.

SENATOR DUANE: Are there any statistics on how many crimes bus attendants have committed on school buses in the past year or past three, four, five years?

SENATOR FUSCHILLO: Mr. President, through you. Senator, I believe

that there has not, because there have been no records kept as far as criminal background checks. We don't know any prior convictions. I have not seen any statistics, although they may exist from DCJS or the Transportation Safety Board or the School Boards Association in the state. I have not seen any.

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

ACTING PRESIDENT MARCELLINO: Senator Fuschillo, do you continue to yield?

SENATOR FUSCHILLO: Yes, Mr. President.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR DUANE: Why is it that the state doesn't pay for the background checks rather than having the person being checked have to pay for the background check?

SENATOR FUSCHILLO: I'm sorry, Senator, I didn't hear your question.

SENATOR DUANE: Through you again, Mr. President, I'm wondering why the state is not required to pay the cost or just

swallow the cost of the background checks, rather than having the bus attendant pay for the background check.

SENATOR FUSCHILLO: Mr. President, through you, similar to the school bus drivers, we try to mirror that legislation where they're required to pay. Although for the school bus drivers -- Mr. President, through you -- Senator, it is aidable.

In case of a disqualification, the school districts may not feel it's appropriate for them to pay. Plus it's a mandate that I just did not want to put on the school districts.

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

ACTING PRESIDENT MARCELLINO: Does the sponsor continue to yield?

SENATOR FUSCHILLO: Yes, Mr. President.

ACTING PRESIDENT MARCELLINO: The sponsor yields.

SENATOR DUANE: I may not have heard the whole thing, but it's not the school

district that I think should incur the cost, but the state, through DCJS. Since they're doing the background check anyway, why do they need to be reimbursed for it at all by the bus attendant?

SENATOR FUSCHILLO: Mr. President, through you. Senator, just a little point of clarification. Why does who have to be reimbursed?

SENATOR DUANE: Why doesn't the state just swallow the cost of doing the background check?

SENATOR FUSCHILLO: Mr. President, through you, I thought it was the right move and the right way to go to require the applicant who was seeking the job to pay for the fee for the application.

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

ACTING PRESIDENT MARCELLINO: Senator Fuschillo, do you yield?

SENATOR FUSCHILLO: Yes, Mr. President.

ACTING PRESIDENT MARCELLINO: The

Senator yields.

SENATOR DUANE: I'm wondering if the sponsor knows the salary range for a bus attendant.

SENATOR FUSCHILLO: Mr. President, through you, we have seen -- I have seen, Senator, salaries that are hourly wages and salaried positions. And I have seen variations from minimum wage up to -- I believe the last figure, and this was last year, Senator, so it's a year old, in the $20,000 range.

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

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

SENATOR FUSCHILLO: Yes, Mr. President.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR DUANE: Just for clarification, is that $20,000 for working during a school year or is it $20,000 that you get for the whole year? In other words, are

you paid like teachers are paid? Or are they paid only during the times that they're actually working on the buses, which would probably mean not as much during the summer?

SENATOR FUSCHILLO: Mr. President, through you, I believe it was for the time that they actually worked.

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

ACTING PRESIDENT MARCELLINO: Senator Fuschillo, do you yield?

SENATOR FUSCHILLO: Yes, Mr. President.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR DUANE: Are principals in the State of New York required to undergo background checks?

SENATOR FUSCHILLO: Mr. President, is the Senator asking me are principals of schools required? Mr. President, this bill strictly deals with school bus attendants on school buses, not with principals in schools.

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

SENATOR FUSCHILLO: Yes.

ACTING PRESIDENT MARCELLINO: The sponsor yields.

SENATOR DUANE: I understand the bill has to do with attendants, bus attendants. But I'm just curious as to who in the education system is going to be required or is now required to undergo background checks.

So I'm just -- if the sponsor doesn't know the answer, that's fine. But I'm wondering whether or not he knows whether or not -- because I don't know the answer - whether principals have to undergo background checks.

SENATOR FUSCHILLO: Mr. President, unrelated to the legislation before the house, through you -- Senator, Senator Saland had -- and I believe you were in the house last year, this house passed legislation that would require, I think, and it's under that legislation, principals, effective

July 1st of this year, to have criminal background checks. And that was signed into law.

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

ACTING PRESIDENT MARCELLINO: Senator Fuschillo, do you continue to yield?

SENATOR FUSCHILLO: Yes, Mr. President.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR DUANE: I'm wondering if coaches are required to undergo background checks.

SENATOR FUSCHILLO: Mr. President, getting off the topic -- I don't know the answer to that. But I don't -

ACTING PRESIDENT MARCELLINO: Yes, I was going to -- Senator Fuschillo, if I could.

Senator, the bill does deal with school bus attendants. And I think we should be -- you know, we can go down this road of every individual job in the school system, but

I don't think that's relevant to this particular bill. If you want that information, I'm sure staff can find it for you.

SENATOR DUANE: Through you, Mr. President, are you speaking on the bill or are you talking about -

ACTING PRESIDENT MARCELLINO: No, I'm saying your question is out of the - beyond the realm of this particular bill. And I would prefer you would go back to the topic at hand.

SENATOR DUANE: Could you an little more specific in what you're saying?

ACTING PRESIDENT MARCELLINO: I don't think I have to be, Senator. I think you understand my statement full well.

Please ask the question relevant to the bill at hand.

Senator Dollinger, why do you rise?

SENATOR DOLLINGER: Point of order, Mr. President. What is the ruling on the floor?

ACTING PRESIDENT MARCELLINO: The ruling on the floor is the question was not

germane to the bill.

SENATOR DOLLINGER: Can we proceed at that point, then, Mr. President?

ACTING PRESIDENT MARCELLINO: I have asked him to proceed twice.

SENATOR DOLLINGER: If you'd simply ask Senator Duane to repeat the question, perhaps we could clarify it.

ACTING PRESIDENT MARCELLINO: No, the question was ruled out of order. It was not germane to the bill.

We're asking the Senator, if he wishes any more questions, that they be germane to the bill. Which is the procedure of this house.

SENATOR DOLLINGER: Well, Mr. President, just to be heard on that issue, I think that the issue is was there a point of order made about whether the question was in order. Then I think that ruling him out of order is one thing.

But as I understand Senator Fuschillo, he raised the question of whether the question was germane. And I think the advice to Senator Duane was if the question is

germane, he may continue to proceed. So -

ACTING PRESIDENT MARCELLINO: No, that was not my advice. That was not my advice, Senator. My advice was that the question was not germane to the bill. And that I would suggest that he go on with questions relative to the bill at hand.

SENATOR DOLLINGER: Fine, Your Honor. Or fine, Mr. President.

ACTING PRESIDENT MARCELLINO: Thank you.

Senator?

SENATOR DUANE: Mr. President, I'm challenging your ruling.

He answered the question about principals. I'm not sure why he drew the line at coaches. It's the same line of questioning and all of these personnel work with the children in the schools or on the buses. They all have to do with protecting the children of the State of New York. I don't understand why this question is not germane.

I am absolutely following a line of questioning, and the line makes a tremendous amount of sense, starting with discussing why

the sponsor believes that school bus attendants should be given background checks. And then I asked the question about the principals, and the sponsor answered that question. And I have questions about some other personnel in the schools as to whether or not they undergo background checks.

Without tipping off what my argument was going to be, I think it's a perfectly appropriate line of questioning. If the question is about protecting the safety of the children of the state of New York, then the question is appropriate as to whether or not school bus attendants should have background checks.

ACTING PRESIDENT MARCELLINO: Senator. Senator Duane -

SENATOR DUANE: But then so too is the question of who else.

ACTING PRESIDENT MARCELLINO: Senator Duane. Senator Duane, I believe - well, I don't understand what we're going on to right now. But if the question is should the ruling of the chair be overruled, I will put that before the house, we'll have a vote,

and we'll proceed.

SENATOR DUANE: I'm allowed to speak on the question.

ACTING PRESIDENT MARCELLINO: Until we put it before the house, we haven't done anything yet.

SENATOR DOLLINGER: Mr. President, I believe that Senator Duane has appealed the ruling of the chair, and he hasn't -

ACTING PRESIDENT MARCELLINO: And we haven't even put that before the house yet, Senator. So let me do that, and then let him appeal the ruling and he can speak on it and then we'll go from there.

SENATOR DOLLINGER: That's fine.

ACTING PRESIDENT MARCELLINO: The question is before the house should the opinion of the chair be overruled. All in favor signify by saying aye.

SENATOR DOLLINGER: I believe Senator Duane would like to be heard on the motion.

ACTING PRESIDENT MARCELLINO: Senator Duane, to be heard on the motion.

SENATOR DUANE: I don't understand why my question was ruled out of order.

We're talking about background checks, and so I would think that virtually any question on the issue of background checks would be appropriate. I don't think that we should pass this bill in a vacuum of a discussion about who in the state of New York now is required to undergo a background check. I think that's a perfectly legitimate discussion. I don't know why we would want to hide who is and who is not liable to have a background check. I think that's something people would probably want to know.

I bet if we went around this house and asked people who was liable to a background check, most of the people - although there's not a lot of people here, but the people who are here, I bet they wouldn't know who is supposed to get a background check and who's not supposed to get a background check.

So I'm trying to frame for the body who it is that we believe in the Senate in the

State of New York, of those working with children -- or, for that matter, working anywhere -- who have to undergo a background check.

In addition to that, I think that it's perfectly appropriate to go through the various people who work in the schools who now undergo background checks to find out whether or not everybody should undergo background checks or just some people should undergo background checks or whether we think just low-income people should have to undergo background checks. Because there's some thought that people who don't make much money are more liable to attack children.

I mean, what is the thinking behind this legislation? That's why I'm wondering what is good for a bus attendant is not good for a coach or good for a teacher or good for a lunchroom attendant or good for someone else that comes into the school to make a presentation, whether teacher's aides should undergo this. I'm trying to frame the issue to find out why it is that this bill has even come to the floor.

And because it has to do with the children of the state of New York -- and believe me, I feel very strongly about keeping children safe -- I think we need to find out why it is that we're going to require some people to undergo background checks but not other people to undergo background checks.

I could see that we wanted people who are alone with children in an unsupervised way to have background checks, but I don't know whether school attendants fall into that category. That's why I asked the question about their duties. Are they ever alone with children, or are they always with the school bus driver and the parents when the children are getting on and off the bus? If there's one child on the bus, does that ever happen that a school bus attendant is alone with the child on the bus? I don't know the answers to these questions.

I mean, if that's the case, then perhaps they should undergo a background check. But if it's not part of their duties to be alone with a child, then maybe they don't need to.

But what is our rationale for background checks in general? That's what I'm trying to get at. I don't really know what that is. Why is it that some professions and some workers have to undergo background checks and why is it that some don't?

So I believe that my question was germane. If it's germane to ask why bus attendants should have to undergo a background check, I think it's fair to ask about principals and coaches and others.

SENATOR DOLLINGER: Mr. President, just briefly on the motion -

ACTING PRESIDENT MARCELLINO: Senator Dollinger.

SENATOR DOLLINGER: -- on the floor, which is to overturn the ruling of the chair.

I agree with Senator Duane. I think that in order to properly frame the issue in this debate, to talk about why we're attaching these responsibilities to school bus attendants, I think Senator Duane's point is a perfectly pertinent one. That is, what's the difference between a principal, a coach,

people who because of their employment come into direct contact with children?

Which raises the danger that Senator Bruno's bill is designed to prevent, which is having someone with a prior criminal history, someone who may have prior criminal adjudications, at least the employer should know those circumstances prior to putting that individual into contact with small children, potentially alone with small children.

I think Senator Fuschillo has answered the question with respect to principals. If the answer to the question is, as Senator Duane says, "I don't know," it seems to me that's an appropriate answer based on Senator Fuschillo's knowledge. But it seems to me that the question of who is covered by this provision, who are we now - we are now going to single out school bus attendants. I think it's perfectly pertinent and germane to ask whether people who are similarly situated are treated the same so Senator Duane and, frankly, the rest of the members who are going to vote on this issue can figure out whether they're being singled

out or whether they're being treated somewhat consistently with other people that have responsibilities with children in the public schools.

So, Mr. President, with all due respect, I think the question is appropriate. If the answer from Senator Fuschillo to any one of these inquiries is he doesn't know, I think that's something that Senator Duane will be bound by that answer. But I think asking the question is still germane to this debate.

I urge the membership to vote in favor of overturning the chair on this question of germaneness.

ACTING PRESIDENT MARCELLINO: Does any other Senator wish to be heard?

A positive vote would overrule the motion of the chair; a negative vote would support the motion of the chair. All in favor of overruling the chair please indicate.

SENATOR PATERSON: Party vote in the affirmative.

SENATOR FUSCHILLO: Party vote in the negative.

ACTING PRESIDENT MARCELLINO: The

Secretary will call the roll on party vote.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 24. Nays, 34. Party vote.

ACTING PRESIDENT MARCELLINO: The motion is lost. The chair is sustained.

Senator Duane.

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

ACTING PRESIDENT MARCELLINO: Senator Fuschillo, would you continue to yield?

SENATOR FUSCHILLO: Yes, Mr. President.

ACTING PRESIDENT MARCELLINO: He yields, Senator.

SENATOR DUANE: Were there any public hearings on this bill?

SENATOR FUSCHILLO: No.

SENATOR DUANE: Do we have any idea how much money would be needed by DCJS to implement this bill?

SENATOR FUSCHILLO: The applicant is -- will be required to pay for the criminal

background check.

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

ACTING PRESIDENT MARCELLINO: Does the sponsor continue to yield?

SENATOR FUSCHILLO: Yes, Mr. President.

ACTING PRESIDENT MARCELLINO: The Senator yields.

SENATOR DUANE: And the sponsor is contending that that cost would completely and totally cover all the administrative costs of this?

SENATOR FUSCHILLO: I'm sorry, Mr. President. Senator, I didn't hear your question.

SENATOR DUANE: Is the Senator contending that the background check fee would cover completely and totally the entire cost of the administration of the background check?

SENATOR FUSCHILLO: Mr. President, through you, the fee is set by the Division of Criminal Justice Services to cover their costs for the review.

SENATOR DUANE: Thank you, Mr. President.

On the bill.

ACTING PRESIDENT MARCELLINO: Senator Duane, on the bill.

SENATOR DUANE: I'm, you know, saddened, and this may actually engender the diatribe that I was accused of going into earlier today on the floor.

Here we are -- first of all, I can't understand why anybody would not want to answer questions about who it is in the schools who are presently subjected to background checks. It seems to me potentially, if we had enough information - but I'd have to think that there was some embarrassment that we were going to subject school bus attendants to a background check, and the embarrassment, I think, was proven in the unwillingness to discuss who else had to undergo background checks.

I think we've heard many, many, many more stories, for instance, of coaches doing inappropriate things with children than we have about school bus attendants doing

inappropriate things with children.

And by the way, I don't think anyone could doubt that most of the abusive things that happen to children happen in the home or with people that they know, as opposed to people who work with children. I'm not saying it never happens, but it certainly is as likely to happen with a coach or a camp counselor or a janitor or a custodian or a secretary in a school or an assistant principal as it would be for a school bus attendant. It just seems to me that school bus attendants probably are not as empowered to be able to hold their own on an issue like this.

I think that this issue needs a discussion. I think the issue of who should be entitled to and not entitled to a background check is worthy of a full discussion. I'm sorry that -- in fact, I don't think that anything that has to do with, you know, germaneness where it applies to the schools and children and how schools are treated -- I mean, I don't understand why it is that we wouldn't want to talk about that.

I really -- you know, I think it's outrageous that someone would think it's appropriate to ask whether a principal undergoes a background check but it's not appropriate to ask whether a coach has to go through a background check or whether a school bus attendant has to go through a background check. It just -- the difference seems to be -- well, I don't understand what the difference is. I don't understand why it is that we choose some and that we don't choose others.

I mean, we're voting on this not knowing -- there's been no needs assessment about whether or not this is necessary. There was no opportunity for DCJS to come before us and say whether or not they thought this was a good idea. We don't have any idea about what other states have put into effect this background check for school bus attendants. We don't know, in the schools where that's happened, whether or not, in the states where this kind of law might or might not exist, who else undergoes background checks.

As you know, most places now share

their statistics with the FBI. I'd be interested to see whether the FBI has any statistics on whether or not school bus attendants are more likely to abuse children and therefore should have to undergo a background check.

It's just unconscionable to me that we would single out school bus attendants for a background check and to do that in a vacuum. And, I mean, school bus attendants tend to be working hand in hand with school bus drivers. And as I say, a lot of the time school bus attendants are in close contact with the parents when the children are getting on the bus or getting off the bus. I don't know the number of times that a child is alone on a bus with a bus attendant.

So, you know, as I think more and more about this bill that, you know, we didn't really want to more thoroughly assess the need for, it seems, you know, just not very responsible for us. I think that the children of the state of New York need the greatest amount of protection. But is this the investment we want to make? Is doing

background checks more important than, well, than making sure that we have enough school bus attendants?

Maybe what we should be focusing on is not background checks for school bus attendants, but in fact what we should be checking on is whether or not there are enough school bus attendants.

Maybe one of the things that we should provide for school bus attendances, if this bill is going to pass, is to find out whether or not they should have their fee paid for to have the background check. I mean, DCJS already has the capability to do background checks. And so I don't understand why it is that we couldn't just let them incur the cost.

I mean, I understand that the sponsor doesn't want to do an unfunded mandate to a school district. But it seems to me that what we're doing here is an unfunded mandate to a worker that's not getting a particularly large amount of money to do their job. I actually think that most school bus attendances probably are making closer to the

minimum wage per hour than they are making the $20,000 a year.

But I'd like to see -- and actually, the question I didn't get to ask, because my line of questioning was cut off, was are principals required to pay for their own background checks or do schools pay for the principal's background checks. Who is it that pays for the background checks of principals or, for that matter, other people who work with children? Does that differ from county to county, from city to city, or is there a statewide policy on these?

I think these are questions that we need to know. And frankly, if we had a public hearing or a committee hearing on this, I could ask these questions to my heart's content to experts in the field. But that wasn't the case here. And so I find myself only able to ask these questions on the floor of the Senate.

And I think that, you know, the children certainly deserve this kind of attention. And I also think our policies in general as it applies to -- our policies as it

applies to background checks certainly bears this kind of scrutiny. There are often discussions and policies made about daycare centers or childcare centers, about other people who work with children. But, you know, there I've been part of the discussions about whether or not it's the directors of daycare centers or the daycare center workers, who it is that has to undergo a background check.

And so I think it's perfectly legitimate to really have a fuller discussion about where we're going in this state on the issue of background checks. I don't think a hearing in a committee would be complete without a discussion of how the New York Civil Liberties Union feels about background checks. I have gotten a lot of information from them on that issue, but there really hasn't been a public forum in the Senate where they could come and testify before the members so that we could hear what their concerns are about background checks.

You know, background checks are a fairly intrusive thing to happen to a person. A mistake can be made. I'd like to know what

the record is for DCJS when they do these background checks. Are there mistakes made? I mean, how often is it with the Motor Vehicles Bureau that there's a mix-up with names? We saw what happened in Florida on the voting when a lot of people were not allowed to vote because it was alleged that they were convicts or ex-offenders and they are weren't.

And so what happens with the background checks? You know, the job of being a school bus attendant is certainly not a great job, but it's better than no job at all. Do we really want to block people's access to being able to get this job? In these days of welfare-to-work, don't we want to encourage people to go into the workforce?

I know that in the city of New York they do either fingerprinting or finger-imaging for people. And I would think that if there were people who had been convicted of a crime, it would be captured there as well.

And so maybe there's a way when we move people from welfare to work that we could use whatever it is that was discovered while

they were on a public benefit to find out whether or not these people were eligible to be a driver or not.

I mean, there also seems to me, you know, an age issue here as well. You know, it's more likely, I suppose, that someone - well, maybe I shouldn't say that there would be an age issue having to do with this. I would really have to think that through. And actually, I'd like to ask, as you go up through the ages, whether or not, you know, a background check, what it turns up.

And, you know, just because you do a background check on someone -- say someone committed a crime at the age of 18 but they were 50 years old and they wanted to be a bus attendant. Is there a statute of limitations on when this would -- where would -- you know, a statute of limitations on where and when this would kick in or not?

So really, I would say there's lots of food for thought. But unfortunately, that's all it's going to be here today, is just food for thought. Because we're not really going to get the answers to all of the

questions that we wanted to ask.

And as I say, when it comes to background checks and the children of the state of New York, I really think virtually every question we could think of would be germane.

Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Hassell-Thompson. I believe the Senator has requested the time, Senator.

SENATOR HASSELL-THOMPSON: Just on the bill, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Hassell-Thompson, on the bill.

SENATOR HASSELL-THOMPSON: I have listened to the discussion, and I think each of you has some indication that because this is a -- my husband is a bus driver, and we have discussed over the years -- he's a school bus driver, actually -

ACTING PRESIDENT MARCELLINO: Excuse me, Senator. Senator, excuse me.

SENATOR HASSELL-THOMPSON: - having retired from the MTA in New York City, and he is now currently a bus driver.

But one of the things that disturbs me about the bill is not the need for -- to have background checks on bus drivers or attendants. I think that the bill in and of itself is discriminatory, because it discriminates against the lowest-paid on the rung of people who work with children.

In a school in my district last week, we had a schoolteacher who was accused of sodomizing children and was apparently unattended and had been allowed to be unattended with children, even in the face of having apparently no history of having abused children, and yet this incident happened. And several cases like it have happened.

For those who may not know, there are many times when bus attendants as well as bus drivers are alone with children, particularly when you get down to the last child and the bus driver may not be on the bus and the bus attendant is the only person who is alone with the child.

So the question as to whether or not we should be requiring background checks on people is not really what our issue is.

But we should take a look at why would we require a bus attendant -- who, as I've said, is the lowest-paid on the rung of all of the people who probably will have contact with schoolchildren -- should be asked to pay a fee.

And no legislation that I have seen come before these chambers have required that anyone else be responsible for paying for the cost of a mandatory criminal background history. And I think that that's the weakness in this bill, and I think that it is discriminatory in its nature.

ACTING PRESIDENT MARCELLINO: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President. Just on the bill briefly.

ACTING PRESIDENT MARCELLINO: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I think that the whole issue of fingerprints and background checks for employees of our public schools needs a rethinking, Mr. President.

I know last year, with much fanfare, we did a bill that requires school

district employees to submit their fingerprints prior to being employed. I have been approached by several school districts in my district who have suggested that that provision is going to be extremely onerous on them because it's going to create an automatic delay in their ability to hire. And, two, it creates another hurdle for people trying to get into the school district and find a job and go to work.

I would just point out the example that was pointed out to me, which is a junior in high school who happens to be an audiovisual whiz. He's apparently, according to the principal of this high school, the best audiovisual person they've ever seen, regardless of age or skill level. But he's a junior in the high school. So they've hired him to work for the summer doing audiovisual programs for the school district. He will be the first person at Brighton High School to be fingerprinted in order to be able to be employed for the summer.

It seems to me that that is not what we intended to do when we passed that

bill last year.

And in addition, what we ought to do is rethink the idea of what fingerprints mean. And it seems to me that one of the things to do is to go back and to revise that law to provide that you can be hired for 90 days provisionally until the fingerprints are actually delivered to DCJS and then brought back to the school district as part of a criminal background check.

I also agree with Senator Duane that what we seem to be doing is creating a one standard for people who make small amounts of money -- $7 an hour, $8 an hour, $9 an hour. They will work for school districts, and they will be fingerprinted and subject to background checks. School superintendents, who come in who make $125,000 a year, will not be subject to the same restrictions. And it seems to me that the internal consistency that Senator Duane was looking for remains elusive in this chamber and in this state.

The last thing I would suggest - Senator Duane mentioned the FBI and other organizations, about the ability to provide

accurate information and accurate reports. I would suggest, Senator Duane, that the activity of the FBI in the last week has raised severe doubts about its ability to provide accurate information about anything, much less the most highly publicized death penalty case in America's history.

So we look to our government agencies, whether it be the FBI at the federal level or the DCJS at the state level, to provide us with accurate information so that we can assess people's past as a prologue to their current employment and their future employment.

And I think Senator Duane raises a good point when he says who's going to be watching the watchdogs, who is going to be carefully observing the people who are performing these audits, these evaluations, which are going to be happening by the hundreds, by the thousands when school districts hire school bus attendants in the fall.

My sense is that we are going to overwhelm DCJS, we're going to overwhelm the

school districts. We're creating mammoth, and I believe they are mammoth, logistical problems with respect to the hiring of people to work with our children.

It's critically important that we find the right people. It's critically important that we screen out those who have criminal pasts. I would suggest, however, that doing it in the somewhat ritualistic fashion under which this bill and the bill we enacted last year, I think the practicality of watching these bills work is demonstrating to us that we need to rethink this issue and rethink the process by which we disqualify people on the basis of background criminal checks.

I think the other points with respect to the costs of these services are well taken. We're going to take people who are going to make $7 an hour as school bus attendants, and the very first thing we're going to do is say you've got to pay $80 in order to be apply to apply. There goes the first week's employment check. I think those points are well taken.

But I would just urge this house to take another look at the fingerprinting process. It may be a good idea, I think it a good idea for those who work with our children. But the very tight straitjacket that we placed school districts in last year in the bill we enacted I think will turn out to be impractical and illogical, and we ought to rethink it.

I'm going to vote in favor of the concept here, Mr. President. My hope is that before this bill becomes law, we will go back -- maybe even hold hearings, as Senator Duane has suggested -- so that we can figure out the best way to do this to make it work, to reach the beneficial purpose that Senator Fuschillo would like to get to and not run into the shoals and the landmines that I think Senator Duane properly predicts.

ACTING PRESIDENT MARCELLINO: Any other Senator wishing to be heard on the bill?

Seeing none, debate is closed.

Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 90th day.

SENATOR PATERSON: Slow roll call.

ACTING PRESIDENT MARCELLINO: Do I see five Senators rise?

Seeing five Senators rise, a slow roll call has been called.

The Secretary will ring the bells and call the roll slowly.

THE SECRETARY: Senator Alesi.

SENATOR ALESI: To explain my vote, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Alesi, to explain his vote.

SENATOR ALESI: There are times when the voice of opposition offers us some opportunity to reasonably ponder the nature of that opposition, especially when it is spread across a broad spectrum of argument as it pertains to other topics that are related to directly or indirectly to the legislation at hand.

And after considering the possibility that some of those broader arguments might apply to this particular legislation, I am convinced that even though

others might consider that they might, that they most likely do not.

And under the circumstances, at least as it pertains directly to this legislation, I would have to feel that the safety of those students who are riding our school buses should be first and foremost in our minds when we are determining what is relevant to a piece of legislation and what is too broad for interpretation as relates to background checks and other things that are absolutely necessary for consideration but not necessarily determined to the direct focus of conclusion when it comes to background checks for people on our school buses.

And keeping that in mind, and keeping in mind my general tendencies to try to keep a very narrow focus on the bill at hand, I appreciate the concerns and the evidents of the author of this legislation to keep narrowly focused on background checks for those people operating school buses. And that is the essence of this legislation.

And with that in mind, I would continue in my own personal embracement of

what is necessary to protect our children by providing background checks, that I will fully support the efforts of the author of this legislation to make available through legislation those background checks and whatever other necessary methods are incorporated in the legislation to assure that the safety of our children is manifested through this bill.

ACTING PRESIDENT MARCELLINO: Senator Alesi, how do you vote?

SENATOR ALESI: I think I vote yes.

ACTING PRESIDENT MARCELLINO: The Secretary will record Senator Alesi as aye and continue the roll call.

THE SECRETARY: Senator Balboni.

(No response.)

THE SECRETARY: Senator Bonacic.

(No response.)

THE SECRETARY: Senator Breslin.

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

SENATOR BRESLIN: Thank you, Mr. President.

I will be voting in the affirmative on this bill because I think anyone who deals in a fiduciary capacity with children or in a trust relationship with children or a vulnerability situation with children should be totally free of any background that would disqualify them to be placed in that position.

But I hope that the sponsor would continue to look at the entire area to include all those people who fit that definition of contact with children and to make it consistent, to make it nondiscriminatory in terms of who pays for the test, and that we bring a unity and consistency to the whole process.

And I vote in the affirmative.

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

The Secretary will continue to read the roll.

THE SECRETARY: Senator Brown.

ACTING PRESIDENT MARCELLINO: Senator Brown -

SENATOR BROWN: To explain my

vote, Mr. President.

ACTING PRESIDENT MARCELLINO: -

to explain his vote.

However, would you please take your regular seat, Senator, as our rules require.

SENATOR BROWN: Sorry, Mr. President.

ACTING PRESIDENT MARCELLINO: That's okay. We've got time.

(Laughter.)

SENATOR BROWN: I too will be voting in the affirmative on this bill.

Like Senator Breslin, I agree that people that come into contact with our children on school buses and school settings, it's important, with some of the things that are going on now, to have background checks for those individuals.

And while I have heard my colleagues' concerns about potentially the employees having to pay for their background checks and perhaps some other employees in school settings not having to do so being discriminatory, I've also listened to Senator DeFrancisco [sic] in talking about looking

narrowly at the bill and what the bill contains and what the bill is attempting to do.

And based on my belief that school bus drivers and people that work with our children, we should know what their background contains, I will be voting in the affirmative.

Thank you Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Brown will be recorded in the affirmative.

Continue to call the roll.

THE SECRETARY: Senator Bonacic.

SENATOR BONACIC: Yes.

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.

SENATOR DeFRANCISCO: Yes.

THE SECRETARY: Senator Dollinger.

SENATOR DOLLINGER: To explain my vote, Mr. President.

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

SENATOR DOLLINGER: Mr. President, I'm going to vote in favor of this bill. But I still believe that the debate and the issues that were raised by Senator Duane and others about the pertinence of those who we fingerprint and provide criminal justice background checks, and whether we are singling out a certain class of employees who may make less than $8 to $10 an hour I think are pertinent to the debate about this issue.

And I stand by my earlier comment. My hope is that Senator Fuschillo, in discussions with the Assembly if this bill gets that far, will raise the issue of our prior commitment to fingerprinting and background checks and test that against the reality of what school districts are encountering this year as they attempt to comply with the bill we passed last year.

I think this is an area that's critically important to public safety. But I

think that there are important issues of equity and fairness as well as practical implementation that require us to take a more serious look at this issue and hopefully give second thoughts to the bill we enacted last year and include in that bill a provision that says a school district may hire on a provisional basis for 90 days while awaiting the background check and the fingerprinting.

But I will nonetheless vote aye, Mr. President.

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

Continue to call the roll.

THE SECRETARY: Senator Duane.

SENATOR DUANE: No.

THE SECRETARY: Senator Espada.

(No response.)

THE SECRETARY: Senator Farley.

(No response.)

THE SECRETARY: Senator Fuschillo.

SENATOR FUSCHILLO: Thank you. Mr. President. Just to briefly explain my

vote.

ACTING PRESIDENT MARCELLINO: Senator Fuschillo, to explain his vote.

SENATOR FUSCHILLO: This was a spirited discussion, but I think the intention should not be lost. As a parent, when a child gets on the school bus, we should know and we should have peace of mind that before a school bus attendant, similar to a school bus driver, steps on that bus, they should not have a criminal background.

We entrust school bus drivers and school bus attendants with more than 2 million children on an annual basis. This is an important piece of legislation to protect the health and welfare and safety of children. I vote aye.

ACTING PRESIDENT MARCELLINO: Senator Fuschillo will be recorded in the affirmative.

THE SECRETARY: Senator Gentile.

SENATOR GENTILE: Aye.

THE SECRETARY: Senator Gonzalez.

(No response.)

THE SECRETARY: Senator Goodman.

SENATOR GOODMAN: Aye.

THE SECRETARY: Senator Hannon.

SENATOR HANNON: Aye.

THE SECRETARY: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: To explain my vote.

ACTING PRESIDENT MARCELLINO: Senator Hassell-Thompson, to explain her vote.

SENATOR HASSELL-THOMPSON: Thank you.

I too am going to vote on this bill with a tremendous sense of reluctance. And the reluctance is the point that I made when I spoke on the bill. And that is that I feel that the only weakness in this bill is the fact that we are asking people who are the lowest-rung-paid to pay for a criminal background check when no other area of people who work with children, with schoolchildren, are asked to make the same decision.

I am voting yes. I said I was voting for it reluctantly.

ACTING PRESIDENT MARCELLINO: You are voting in the affirmative?

Senator Hassell-Thompson, in the affirmative.

THE SECRETARY: Senator Hevesi.

SENATOR HEVESI: Aye.

THE SECRETARY: Senator Hoffmann.

(No response.)

THE SECRETARY: Senator Johnson.

SENATOR JOHNSON: Aye.

THE SECRETARY: Senator Kruger.

SENATOR KRUGER: Yes.

THE SECRETARY: Senator Kuhl.

(No response.)

THE SECRETARY: Senator Lachman.

SENATOR LACHMAN: On the bill, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Lachman, to explain his vote.

SENATOR LACHMAN: There are very few bills that we pass in this chamber on any issue that are always perfect. But there are some bills that we vote on in this chamber that are absolutely essential. This bill is absolutely essential.

Throughout the state of New York, there are background checks on

superintendents, deputy superintendents, teachers, paraprofessionals, security guards, bus attendants. These are essential in the real world outside of this chamber. That I can say logically.

Emotionally, I can add that 15 years ago a child that was part of my extended family was killed by a bus driver and an attendant driving that bus who would not be permitted, with the background check that we're voting on today, to be either driving or assisting or helping. That child would now be in her early twenties. She died at the age of six.

I strongly urge my colleagues on both sides of the aisle to reenter the real world and support this bill. Thank you.

ACTING PRESIDENT MARCELLINO: Senator Lachman will be recorded in the affirmative.

Continue the roll call.

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.

(No response.)

THE SECRETARY: Senator Maltese.

SENATOR MALTESE: Aye.

THE SECRETARY: Senator Marcellino.

SENATOR MARCELLINO: Aye.

THE SECRETARY: Senator Marchi.

SENATOR MARCHI: Aye.

THE SECRETARY: Senator Markowitz.

(No response.)

THE SECRETARY: Senator Maziarz.

SENATOR MAZIARZ: Yes.

THE SECRETARY: Senator Markowitz.

SENATOR MARKOWITZ: No.

THE SECRETARY: Senator McGee.

SENATOR McGEE: Yes.

THE SECRETARY: Senator Meier.

SENATOR MEIER: Aye.

THE SECRETARY: Senator Mendez, excused.

Senator Montgomery.

SENATOR MONTGOMERY: Mr. President -

ACTING PRESIDENT MARCELLINO: Senator Montgomery, to explain her vote.

SENATOR MONTGOMERY: -- to explain my vote. Thank you.

Just briefly, as I said when I made comments on the bill, I have some problems with this legislation. I think it is not clear just to what extent we are excluding people by disqualifying them when in fact it may have been a charge that was totally unrelated to a job as a bus attendant.

It is my understanding that a large percent of these jobs are held by women who accompany the driver and the children. They are paid minimum wage, which is less than $6 an hour. We're asking them to pay for a criminal background check.

And it just seems to me that it is all out of proportion to either the job itself or the consideration of the types of people

who may in fact be applying and who may in fact be perfectly good people as it relates to their employment, notwithstanding an earlier infraction. It doesn't say when it may have occurred, under what circumstances, whether or not it was in any way related.

So I'm going to oppose this. It is not in any way to have a negative vote on whether or not I am concerned about the safety of children. But I certainly am concerned about the process whereby we exclude a large number of people who really need this job despite the fact that it is such a low-wage job.

So I'm going to vote no on this bill.

ACTING PRESIDENT MARCELLINO: Senator Montgomery will be recorded in the negative.

THE SECRETARY: Senator Markowitz.

SENATOR MARKOWITZ: I'm sorry, I meant to vote yes on that bill. I apologize. Thank you.

ACTING PRESIDENT MARCELLINO:

Senator Markowitz's vote will be recorded in the affirmative.

Please continue to call the roll.

THE SECRETARY: Senator Morahan.

ACTING PRESIDENT MARCELLINO: Senator Morahan, to explain his vote.

SENATOR MORAHAN: Yes, Mr. President. What we're doing here today on bus safety and what we've done in the past on bus safety and school safety and school civility is all to protect our youngsters going to school.

And I know no bill is perfect. It's been my experience here, no matter what bill we pass in this house or we create into law, there's always some imperfection, something that will make us revisit it, something that will make us take a second look.

However, in this particular case I believe it's imperative that we push forward with this legislation. I stand in support of it. It ties into the school safety bill that we passed last year, one that protects ours young children, one that gives the parents of

our children much solace and comfort.

And I think we have to start considering the school bus as an extension of the classroom, that school starts the moment that a child steps on the bus. And I believe the attendant who has access to those children, as well as the driver, we must feel secure in that that person is one suitable and qualified to monitor the activity and the safety of our children.

So therefore I believe that I want to commend the sponsor, Senator Fuschillo, for his activity and for his promoting this bill and authoring this legislation. I know he is a parent, also has the same concern as all others. And therefore, I'm going to vote in the affirmative.

Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Thank you, Senator.

Senator Morahan will be recorded in the affirmative.

Continue to call the roll, please.

THE SECRETARY: Senator Nozzolio.

(No response.)

THE SECRETARY: Senator Onorato.

ACTING PRESIDENT MARCELLINO: Senator Onorato, to explain his vote.

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

Mr. President, I'm complimenting Senator Fuschillo on this piece of legislation. I know we don't have an agreement yet with the Assembly. And I would hope that when they get together on it, that they would address the two problems that we did find with it.

Number one was that they be required to pay for their own background check for such a low-paying job. I think we should revisit that and waive that fee completely. And perhaps if we spell out what it is on the criminal background check that would eliminate them from the job.

I vote yes.

ACTING PRESIDENT MARCELLINO: 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 MARCELLINO: Senator Paterson, to explain his vote.

SENATOR PATERSON: Thank you, Mr. President.

I think that the issue of school safety has impinged upon the concept of this actual bill. We all agree about school safety. I voted for all the school safety bills.

But Senator Montgomery pointed it out, this is an economic issue. Do we need to have this type of testing? Absolutely. But to ask people who are trying to get this job that pays very little to suffer that type of cost is really putting the onus of responsibility on them when we, the society, need to take it ourselves. That would really amplify the seriousness with which all of my colleagues have spoken on this subject.

I vote no, Mr. President. But I do think the test should exist. And I think that

we as a society should step up and administer it. People should not be discriminated against because they can't afford to take the test and all they want is a job. But the test should exist. We should pay for it.

I vote no.

ACTING PRESIDENT MARCELLINO: Senator Paterson will be recorded in the negative.

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.

SENATOR SCHNEIDERMAN: Aye.

THE SECRETARY: Senator Seward.

SENATOR SEWARD: Yes.

THE SECRETARY: Senator Skelos.

(No response.)

THE SECRETARY: Senator A. Smith.

ACTING PRESIDENT MARCELLINO: Senator Smith, to explain her vote.

SENATOR ADA SMITH: Thank you, Mr. President.

After close consultation with Senator Lachman and Senator Smith, and coming to the realization that our children are the most important things in our lives, I've decided that this year I will be voting in the affirmative.

ACTING PRESIDENT MARCELLINO: Senator A. Smith will be recorded in the affirmative.

THE SECRETARY: Senator M. Smith.

SENATOR MALCOLM SMITH: Aye.

THE SECRETARY: Senator Spano.

SENATOR SPANO: Aye.

THE SECRETARY: Senator Stachowski.

SENATOR STACHOWSKI: Mr. President, briefly to explain my vote.

ACTING PRESIDENT MARCELLINO: Senator Stachowski, to explain his vote.

SENATOR STACHOWSKI: I'm going to support this legislation.

I think it has a couple of problems. I think maybe someone else other than these poor people on minimum wage should be paying for the test. But that being said, I think the children should be protected.

But mainly I stood up to compliment Senator Fuschillo on all the extra work he's being doing today and congratulate him on that effort.

I vote aye.

ACTING PRESIDENT MARCELLINO: Senator Stachowski will be recorded in the affirmative.

THE SECRETARY: Senator Stafford, excused.

Senator Stavisky.

ACTING PRESIDENT MARCELLINO: Senator Stavisky, to explain her vote.

SENATOR STAVISKY: Yes. I concur with everything that Senator Stachowski said, including his comments about Senator Fuschillo, with one exception. And that's his final vote.

I vote no, Mr. President, because while obviously children's safety is of

primary concern -- the most important concern -- I suspect that many of the bus drivers are very similar to the people who live in the 16th Senate district. And they're the ones who are going to have to bear the brunt of the cost of this background check.

And until such time as they are relieved of this excessive burden, I'm afraid I just have to vote no. I'm very reluctant to do so, but I vote no.

ACTING PRESIDENT MARCELLINO: 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.

THE SECRETARY: Senator Wright.

(No response.)

ACTING PRESIDENT MARCELLINO: Call the absentees, please.

THE SECRETARY: Senator Balboni.

(No response.)

THE SECRETARY: Senator Espada.

SENATOR ESPADA: No.

THE SECRETARY: Senator Farley.

(No response.)

THE SECRETARY: Senator Gonzalez.

(No response.)

THE SECRETARY: Senator Hoffmann.

(No response.)

THE SECRETARY: Senator Kuhl.

(No response.)

THE SECRETARY: Senator Nozzolio.

(No response.)

THE SECRETARY: Senator Sampson.

(No response.)

THE SECRETARY: Senator Santiago.

(No response.)

THE SECRETARY: Senator Skelos.

(No response.)

THE SECRETARY: Senator Wright.

(No response.)

ACTING PRESIDENT MARCELLINO: Please announce the results when they're tabulated.

THE SECRETARY: Ayes, 43. Nays, 6.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 422, by Senator Fuschillo, Senate Print 3098, an act authorizing the assessor of the County of Nassau.

SENATOR PATERSON: Explanation.

SENATOR DOLLINGER: Explanation.

ACTING PRESIDENT MARCELLINO: Senator Fuschillo, an explanation has been asked for.

SENATOR FUSCHILLO: Thank you, Mr. President.

The legislation authorizes the assessor of the County of Nassau to accept an application for exemption from real property taxes for the Bellmore-Merrick E.M.S., which is located in my district, in Bellmore, in the Town of Hempstead, the County of Nassau.

The property was purchased in March of 2000, after the filing date for that year.

As you know, this body has put forth many of these bills which have been passed by the Senate. Thank you.

ACTING PRESIDENT MARCELLINO:

Senator Dollinger.

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

SENATOR FUSCHILLO: Yes, I do.

ACTING PRESIDENT MARCELLINO: The sponsor yields, Senator.

SENATOR DOLLINGER: Senator Fuschillo, what was the date of the actual transfer of this property? Do you know the -

SENATOR FUSCHILLO: I believe it was acquired, Senator, in March of 2000. I don't know the exact date of that month, but it was in March of 2000.

SENATOR DOLLINGER: Through you, Mr. President, as I understand -- if Senator Fuschillo will continue to yield.

SENATOR FUSCHILLO: Yes.

ACTING PRESIDENT MARCELLINO: He continues to yield.

SENATOR DOLLINGER: As I understand it, this is to seek an exemption from the real property taxes due throughout the remainder of the year 2000?

SENATOR FUSCHILLO: No, this is

to allow the assessor's department to accept an application for the exemption.

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

ACTING PRESIDENT MARCELLINO: Senator Fuschillo?

SENATOR FUSCHILLO: Yes, Mr. President.

ACTING PRESIDENT MARCELLINO: He continues to yield.

SENATOR DOLLINGER: The amount of real property taxes that the assessor could abate if this bill were granted is approximately how much?

SENATOR FUSCHILLO: Senator, I don't have the exact amount, but we were advised that it was minimal. And I know you will ask the next question, what is minimal. I do not have that.

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

SENATOR FUSCHILLO: Yes.

ACTING PRESIDENT MARCELLINO: The

sponsor continues to yield.

SENATOR DOLLINGER: Does the County of Nassau, county legislature, are they prepared to abate the taxes, to grant the property tax exemption and therefore reimburse Bellmore-Merrick the amount that they paid?

SENATOR FUSCHILLO: Mr. President, I'm not a member of that body. I can't answer that question.

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

ACTING PRESIDENT MARCELLINO: Senator Fuschillo, do you yield?

SENATOR FUSCHILLO: Yes, Mr. President.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR DOLLINGER: Is there a home rule message attached to this bill? Through you, Mr. President.

ACTING PRESIDENT MARCELLINO: I don't believe there is one. I don't believe we've been -- one is required, apparently.

SENATOR FUSCHILLO: Are you

asking me?

SENATOR DOLLINGER: Yes, that was my next question.

ACTING PRESIDENT MARCELLINO: There is none at the desk.

SENATOR FUSCHILLO: No, there is not.

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

ACTING PRESIDENT MARCELLINO: Does the sponsor continue to yield?

SENATOR FUSCHILLO: Yes, Mr. President.

SENATOR DOLLINGER: This bill authorizes the Nassau County Legislature, upon the filing of the application, to grant the exemption. Is that correct?

SENATOR FUSCHILLO: No. It authorizes the assessor to accept an application for review purposes.

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

ACTING PRESIDENT MARCELLINO:

Senator Fuschillo, do you yield?

SENATOR FUSCHILLO: Yes, Mr. President.

ACTING PRESIDENT MARCELLINO: The Senator yields.

SENATOR DOLLINGER: The bill in line 20 through 22 talks about the assessor accepting the application, and then it says that the Nassau County Legislature may grant the exemption, beginning from the date of acquisition and taking such forward.

SENATOR FUSCHILLO: That's correct. But if you look further up, to 9-11, if accepted, the application shall be reviewed.

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

SENATOR FUSCHILLO: I think the key word there was "may".

SENATOR DOLLINGER: Correct.

SENATOR FUSCHILLO: Yes, I will continue to yield, Mr. President.

ACTING PRESIDENT MARCELLINO: He continues to yield, Senator.

SENATOR DOLLINGER: Mr. President, we're giving the Nassau County Legislature the ability to grant the property tax exemption. I believe, with all the other bills that we've done, we allow the assessor to accept it and we give the Nassau County Legislature the ability to abate the property taxes.

My question is, why wouldn't we just pass a single uniform bill that gives the Nassau County Legislature, which seems to be the only county -- well, perhaps with the exclusion of Suffolk, which occasionally rolls in. But whatever problem exists in Nassau County, why not just create a bill that says if the county legislature wants to pay this money back, they can do it without our approval, without our authority? Let's give them the authority to abate these property taxes all by themselves.

SENATOR FUSCHILLO: Mr. President, through you, I know from previous debates on the floor where Senator Dollinger has raised this issue, and just through his debates, that Senator Hannon had a bill

previously in this house which would do exactly that. I am not opposed to that at all.

SENATOR DOLLINGER: Okay. Through you, Mr. President, I'll just speak on the will. I appreciate Senator Fuschillo's patience and understanding.

ACTING PRESIDENT MARCELLINO: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I would point out that Senator Hannon did have a bill and it was in the house last year, but the bill hasn't come back to the house this year. And I would strongly suggest that Senator Hannon or -- my guess is you could make this a Nassau County delegation bill, since this seems to be a particular form of real property tax mistake that most often manifests itself in Nassau County.

What have this bill does -- and again, I come back to it. I will continue to rail against these bills and vote against these bills so long as we refuse to solve the problem. Let's give to the Nassau County Legislature, if that's the only place the

problem exists -- it's a big county, they can make up their own mind as to whether these are properly adjudicated property tax exemptions. They're big boys. They can figure out -- now, mind you, they have had some financial problems recently that would suggest that maybe they're not as big a group of boys and girls as we once thought, but they're big boys and big girls. They can make up their own mind. Let them decide whether to give these partial property tax exemptions.

I find it anomalous that the New York State Legislature has to put its time and effort into, in essence, obviating the problems of the Bellmore-Merrick E.M.S., Inc., which seems to be a charitable organization. They qualify for a property tax exemption. At the time they closed this deal, I'm amazed that one lawyer didn't say, Oh, by the way, what are we going to do with the property taxes that are still owed and that will continue to accrue until the next taxable status date, when we can then change the property tax status from a taxable property to an exempt property?

But for some reason the lawyers in Nassau County, the bar in Nassau County seems to be asleep, because these deals close and suddenly a not-for-profit entity gets a tax bill, and that tax bill says: You owe us real property taxes. They go back to their lawyer and say, Wait a second, we're tax-exempt, we shouldn't be paying this bill.

And the lawyer has to admit, Oh, by the way, I forgot to tell you at the time of closing that the real property tax exemption that you're entitled to isn't triggered until you file an application and therefore is not effective until the next taxable status day.

Mr. President, I'm going to vote against this bill. I have a feeling that the bills from Senator Johnson, which I'll ask a couple of questions about, Senator Skelos, he's got a couple -- that the continuing problems of Nassau County and Suffolk County, which for some reason don't seem to be manifest many other places in this state, but nonetheless this is a home rule problem we ought to create a home rule solution for.

I would just urge Senator

Fuschillo, Senator Hannon, Senator Skelos, Senator Balboni, Senator Marcellino, Mr. President -- we've talked about this bill before. I would just urge the Nassau County delegation, let's do ourselves a favor. Let's pass a bill that gives Nassau County the ability to, on its own, like the big boys and big girls that they are, let them make this choice as to whether an applicant has laid the proper foundation for a partial property tax exemption. If they can establish it to the satisfaction of Nassau County, we don't need these bills to be here. Let's pass a countywide solution.

I would suggest the Hannon bill, which I believe Assemblyman Abbate carries in the other house, that bill will solve the problem. Instead, we continue to go through this, much like a broken record. I hate sounding like one. But something is broken in Nassau County. It needs a permanent fix. Let's pass a permanent fix.

I'll be voting in the negative, Mr. President.

ACTING PRESIDENT MARCELLINO:

Any other Senator wishing to be heard?

Seeing none, debate is closed.

Please read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT MARCELLINO: The bill is passed.

The Secretary will read.

THE SECRETARY: Calendar Number 425, by Senator Johnson, Senate Print 3258 -

SENATOR JOHNSON: Lay it aside for the day, please.

SENATOR FUSCHILLO: Lay it aside for the day.

ACTING PRESIDENT MARCELLINO: The bill is laid aside for the day.

THE SECRETARY: Calendar Number 426, by Senator Skelos, Senate Print 3300, an act authorizing the assessor of the County of

Nassau.

SENATOR DOLLINGER: Explanation, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Fuschillo, why do you rise?

SENATOR FUSCHILLO: This legislation would authorize the Nassau County assessor to accept an application for exemption from real property taxes for the Baldwin Fire District.

SENATOR DOLLINGER: Mr. President, the explanation is sufficient. I'll simply address the bill.

ACTING PRESIDENT MARCELLINO: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I appreciate Senator Fuschillo, who has been doing yeoman's service on behalf of several personages who have not been in the house. I will report favorably back to Senator Bruno and to Senator Skelos, Senator Fuschillo.

This bill highlights to what I believe is almost an absolute absurd degree of the problem that I've been addressing in Nassau County. Here's a member from Monroe

County, 300 miles away from Nassau County, who continues to rail about wasting the time of the New York State Senate on doing bills to cure problems with the property tax assessment rolls and the apparent difficulty of people in Nassau County recognizing that they're entitled to a real property tax exemption.

Here is the absolute folly of what we're doing. We are saying to a taxing entity, the Baldwin Fire District -- it's another level of government. They bought a piece of property. One level of government is going to pay over taxes to another level of government. This is the anomalous situation where someone who represented a government closed a real property tax deal and forgot to ask, Oh, by the way, is the property tax-exempt so we don't have to pay property taxes?

That's like the State of New York paying property taxes to the City of New York, or the City of Rochester paying property taxes to the County of Monroe.

I mean, someone in Nassau County, whoever represents this fire district,

committed what in my opinion is an absolute legal boo-boo. This is a mistake. And here we are spending the time in the New York State Senate to obviate a mistake made by counsel in Nassau County.

We continue to have these problems. My views on it are well known. I know that I sound worse than a broken record, since I'm doing it for the second time today. But why can't Nassau County figure out a solution to this problem? Why is it so difficult?

Is it such a difficult thing that we don't get to go back to our friendly neighborhood fire district and say, Oh, by the way, I saved you $20,000 that you shouldn't have had to pay. If you had a good lawyer, you would never have paid it. But instead, we have to go back to our school districts, our fire districts, and say that we saved them $20,000 that they mistakenly paid.

I will continue to vote against these bills, I will continue to talk against these bills. I apologize to my colleagues for the perhaps somewhat monotonous nature of what I continue to say. But until I see a

solution, I'm going to continue to vote against these and talk against these bills.

And who knows, maybe I will continue to try the patience of my colleagues from Nassau County to such a level that when they do come up with a solution, maybe the name "Dollinger" might appear in the list of its sponsors. Maybe pure monotony, pure repetition would drive some of my Republican colleagues to that desperate, truly desperate measure.

Mr. President, I'm going to vote against this bill. I just think that we have to send a message, and the best message to send is to give to the Nassau County Legislature the power to tell its assessor to take late-filed applications and then to abate the taxes as needed. It's a simple bill. It can be simply drafted. Senator Hannon carried it last year. The Nassau County delegation should warmly embrace it this year.

ACTING PRESIDENT MARCELLINO: Senator Breslin.

SENATOR BRESLIN: Would the surrogate sponsor yield to a question or two?

ACTING PRESIDENT MARCELLINO: Senator Fuschillo, do you yield?

SENATOR FUSCHILLO: Yes, Mr. President.

SENATOR BRESLIN: Through you, Mr. President, are there any financial implications for this bill?

SENATOR FUSCHILLO: I'm looking through my paperwork, Senator. Just give me a minute.

Senator, about $5,000.

SENATOR BRESLIN: Mr. President, if the sponsor would continue to yield.

ACTING PRESIDENT MARCELLINO: Will you continue to yield?

SENATOR FUSCHILLO: Yes, Mr. President.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR BRESLIN: Were there any reasons given for the failure to file timely?

SENATOR FUSCHILLO: Senator, I believe the property was purchased at a time after the filing date, because you have to file for the previous year. So that was the

reason why.

I believe it was acquired on May 15th of 2000, and they missed that filing period for the taxable year.

SENATOR BRESLIN: On the bill, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Breslin, on the bill.

SENATOR BRESLIN: I would just echo the remarks made by Senator Dollinger that we continue to see bills that correct situations, particularly in Nassau County and also in Suffolk, and that there ought to be some uniform bill passed or a local law passed that would enable us to stop taking an inordinate amount of time up on these local bills that should have been done properly in the first place.

However, deferring to legislators on their local issues, I will vote in the affirmative on this bill. Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Any other Senator wishing to be heard on the bill?

Seeing none, debate is closed.

Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

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

SENATOR DOLLINGER: Just briefly, Mr. President.

I just would remind my colleagues from Nassau County that there is a benefit to doing a statewide bill -- or, for that matter, a Nassau County-wide bill -- and that is, you could implement the both-ways doctrine.

That is, you could grant partial property tax exemptions to not-for-profit organizations and religious organizations that buy properties in the middle of a tax status year, which would give them the benefit of the property tax exemption for a partial year.

But you could also implement a provision that says that if a for-profit entity buys a piece of property from a not-for-profit entity, that it would be taxed

for the second half of the year.

I would strongly suggest -- and I don't know whether the Hannon bill is a - what I would call a both-ways bill, but that is clearly the way to do it. If we're going to grant partial exemptions, we should equally demand that there are partial assessments. That during the period of time that a for-profit entity owns the property during the year, it would be subject to real property taxation.

I strongly urge my colleagues from Nassau County, if for no other reason than to perhaps silence the member from Monroe County, do a bill that solves this problem.

ACTING PRESIDENT MARCELLINO: Very tempting offer, Senator.

Senator Dollinger will recorded in the negative.

Announce the results, please.

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

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 431, by Senator Skelos, Senate Print 4064, an act authorizing the assessor of the County of Nassau.

ACTING PRESIDENT MARCELLINO: Senator Dollinger.

SENATOR DOLLINGER: On the bill, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I'll waive the explanation. I think I discern a pattern here.

The only point I would make about this bill, Mr. President -- and it bears a striking resemblance to the prior bill that we just did, which is a bill in which we said to one level of government you don't have to pay real property taxes to another level of government, in the fire district bill.

This is a bill that says -- here's a village that buys a piece of property, it buys a piece of property during the taxable status year, and sure enough, it has to pay real property taxes. Probably becoming one of

the few villages in New York State ever to pay property taxes to another entity.

Why does that happen? That happens because they acquired the property during the period of time when its taxable status required that it be subject to real property taxation. I would point out that this bill covers a two-year period. This covers 1998 and '99, the '99-2000 school year, the '98 - and the general tax of 1999 and 2000. It took the village two years to figure out that they were paying property taxes to another government entity.

I just -- I find it almost astounding that whoever is doing the legal work for this village sat there, got a property tax bill for two consecutive years, and never bothered to call and find out why are we being subjected to real property taxation, why don't we file an exemption. And I would point out that this isn't even an exemption for a not-for-profit organization, this is an exemption for government. It isn't supposed to pay property taxes.

What we have done is we have

created a system under which, if you run into this anomaly in Nassau County, you can sit on your rights for a couple of years. And lo and behold, Senator Skelos or one of the other members from Nassau County will come in riding on the white horse of a special bill to obviate the need to pay real property taxes.

Mr. President, I will vote against this bill, I will continue to vote against these bills. I would strongly suggest that there's no reason why Nassau County can't do this all by itself. And again, I would strongly suggest that whoever represents the Village of Mill Stream or the Village of Valley Stream, they ought to get a new lawyer and they ought to wake up when they get a property tax bill that says you owe property taxes to Nassau County, someone ought to sit down and say, Why are we paying property taxes? We're a government. We don't have to do that.

That happened in this case, but only after a couple of years. And I just think that Nassau County should be given the power to grant these exemptions.

As I said before, Mr. President, I don't even need to be the chief sponsor of this bill, but perhaps for the price of silence my name somewhere on the bill from Monroe County as kind of an honorary member of the Nassau County delegation, because this is a problem we ought to leave in Nassau County and not bring even to our attention again.

I'll vote in the negative, Mr. President.

ACTING PRESIDENT MARCELLINO: Any other Senator wishing to be heard?

Seeing none, read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 467, by Senator Saland, Senate Print 4233A -

SENATOR BRESLIN: Explanation.

THE SECRETARY: -- an act to amend the Penal Law, in relation to the crime of aggravated harassment.

ACTING PRESIDENT MARCELLINO: Senator Saland, an explanation has been requested of your bill.

SENATOR SALAND: Thank you, Mr. President.

Mr. President, this bill is an attempt to deal with the situation that has occurred by way of the interpretation in several courts of Section 240-30 of the Penal Law dealing with the subject of aggravated harassment.

Unfortunately, what has happened is that while the law is pretty clear, the statute is pretty clear with respect to the initiation of a telephone call by one party to another, harassing that person in the course of that conversation, what is unclear and what the courts have defined as unclear and in fact have dismissed complaints is where the person being harassed in fact may have initiated the phone call.

So that person, for instance, may have gotten a phone call from a significant other or some third party, wasn't there, the call perhaps was picked up by voicemail or an answering machine, the party returns the phone call, and that person to whom the call is returned then engages in a course of conduct that would otherwise be considered aggravated harassment -- only to find out that because the call was not initiated by the person who engaged in that conduct or misconduct, but by in fact the innocent person himself or herself, that the grounds to prosecute that person under the Penal Law does not exist.

This bill would correct that by making it clear that it is the communication, not the initiation of the communication, that in effect is the predicate to enable you to successfully prosecute such a person.

ACTING PRESIDENT MARCELLINO: Senator Breslin.

SENATOR BRESLIN: Mr. President, would the sponsor yield to a question or two?

ACTING PRESIDENT MARCELLINO: Senator Saland, do you yield?

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT MARCELLINO: The Senator yields.

SENATOR BRESLIN: Through you, Mr. President, have there been any reported cases that have interpreted the prior statute that we could see?

SENATOR SALAND: Yes, there have, Senator. The one that is the most recent that we're aware of is People versus Monroe. And that's reported in 183 miscellaneous 2nd, 374. That's a 2000 case. And I believe there have been other cases, whether reported or not reported, that have similarly dismissed such actions.

SENATOR BRESLIN: Again through you, Mr. President, have there been any - besides miscellaneous cases, have any of these cases been taken to an appeals court for an interpretation of the existing statute?

SENATOR SALAND: I am not aware of anything to that effect, any cases that have gone up on appeal.

But what we are being advised is

that the practice now among prosecutors, in light of these miscellaneous cases, is not to attempt to advance prosecutions where the complainant would have initiated the phone call, such as in the example that I gave you earlier.

SENATOR BRESLIN: Again, through you, Mr. President, if the sponsor would continue to yield.

ACTING PRESIDENT MARCELLINO: Does the sponsor yield?

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT MARCELLINO: The sponsor yields.

SENATOR BRESLIN: How does the text of this bill differ from the prior bill?

SENATOR SALAND: Well, if you take a look at the bill, Senator, what we've done is we've taken a section of the law that I believe went back to the late 1960s, the intent of which was to deal with telemarketers, people who would bombard you with phone calls, which there was a great desire to bring an end to. And that

effectively was, by way of definition, made into the crime of aggravated harassment.

We removed that from subsection 1, made it into parts A and B, dropped B in its entirety to the language dealing with the telemarketers. And then we amended, as I mentioned earlier, the language in the original bill or the existing law that talks in terms of initiating a communication so it talks purely in terms of "communicates."

So that whether you place the call yourself or you receive the call, if the other party or any party engages in conduct that would constitute aggravated harassment, the fact that you may have been the party who placed or initiated the call will not be a defense that could be used against you resulting in the dismissal of what would otherwise be a criminal case.

SENATOR BRESLIN: Again, one clarification question through you, Mr. President.

Then what you're saying is you are taking out the initiation of the phone call as any part of the prospective statute?

SENATOR SALAND: Correct. So that, again, the easiest example is you return somebody's call, get thoroughly harassed or abused over the telephone, to the extent to which it would otherwise be aggravated harassment; it will no longer be a defense that you returned the call.

SENATOR BRESLIN: Mr. President, on the bill.

ACTING PRESIDENT MARCELLINO: Senator Breslin, on the bill.

SENATOR BRESLIN: I think it was a very good example of having what I believe to be legitimate questions and having Senator Saland have the background, the ability, and the research on this statute to present and give me information sufficient to vote in the affirmative.

Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President. Would the sponsor answer a question or two?

ACTING PRESIDENT MARCELLINO:

Senator Saland, will you yield?

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT MARCELLINO: The Senator yields.

SENATOR MONTGOMERY: Senator Saland -- through you, Mr. President, Senator Saland, I was just wondering if this bill would include people who received the call, the communication, rather than just the person who initiated it. Is that correct?

SENATOR SALAND: What's intended by this bill, Senator Montgomery, is to make the conduct of either threatening or obscene-type phone calls that would otherwise constitute aggravated harassment into being the basis to proceed in criminal court against somebody and not base it upon who initiated the process.

If I place a phone call to someone in response to a call that person made to me -- perhaps they left a telephone message for me, perhaps they left a verbal message on my answering machine or voicemail -- and that person proceeds to engage in vile and abusive

language to me, that person should not be able to have as a defense "I didn't place the call, Senator Saland placed the call, he effectively opened himself up for this type of misconduct."

We don't want that to happen. We want the conduct itself to be what is punished and not to have some technical defense of "I didn't initiate the call." Under the language in the existing bill, that word "initiates" or "initiation" is there, and that's what causes the problem.

SENATOR MONTGOMERY: Okay. To continue my question to Senator Saland.

ACTING PRESIDENT MARCELLINO: Senator Saland, will you continue to yield?

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT MARCELLINO: The Senator continues to yield.

SENATOR MONTGOMERY: So therefore, to use an example, you mentioned the calls that are made by telemarketers. If a telemarketer calls me and puts pressure on me and I -

SENATOR SALAND: If I can interrupt you, we're doing nothing to change that. All we've done is shift the existing language from where it is in the bill today to another section. If that telemarketer calls you and engages in repeat phone calls and you just don't want to be bothered and they continue and persist, there's nothing that could have been prosecuted yesterday that couldn't be prosecuted tomorrow if this law is enacted.

The real issue that we're attempting to deal with here is the abusive call by one individual to another, due to the fact that we've had some reported court cases in which courts have dismissed criminal complaints because of the technicality that the person who was the victim of the nasty, abusive phone call initiated the call.

SENATOR MONTGOMERY: If I may pursue my question to understand, Mr. President.

So if the person calls me and I feel sufficiently harassed and I use abusive language back on them, is it not so on your

bill that I'm now -- I can be prosecuted or I would be charged with an A misdemeanor or aggravated harassment by that person who called to harass me?

SENATOR SALAND: Nothing changes. If you are the recipient of the phone call and you respond in kind, I will leave it to the district attorney to determine how he or she would wish to handle that.

What we're trying to do is just avoid a situation in which, by reasons of process, you never reach what I'll term the merits of whether in fact you've had an instance of aggravated harassment. You can't get through the door under the existing law to have your day in court, so to speak, if you place the phone call.

And generally we're talking about cases in which the individual who places the call is obviously responding to either a telephone message or a telephone call and then is subjected to some rather ugly, grotesque language which would rise to the level of aggravated harassment had they not placed the phone call.

SENATOR MONTGOMERY: All right. Thank you, Senator Saland.

On the bill, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Montgomery, on the bill.

SENATOR MONTGOMERY: I'm just not clear that this legislation, as it is written by the sponsor, will not in fact be used against a person who is simply being defensive of -- based on the fact that someone has called or contacted them with a harassing language and dialogue or whatever and the person responds in kind, you are now being placed in a position, because you have defended yourself, vis-a-vis this bill, you will be -- you could be dragged into court, charged with a misdemeanor and dealt with as if you in fact initiated this harassment rather than responding to it because someone else has called you and harassed you.

SENATOR SALAND: Mr. President, on the bill.

ACTING PRESIDENT MARCELLINO: Senator Saland, on the bill.

SENATOR SALAND: I probably am at

a distinct advantage in terms of the product that I have in front of me, and perhaps -- I wouldn't expect that Senator Montgomery would have the full text of Section 240-30 in front of her.

And were you to look at the bill print that's currently before us, you would have no reason to know, unless you were familiar with the criminal law, that the paragraph that precedes this numbered paragraph and several other numbered paragraphs reads as follows: "A person is guilty of aggravated harassment in the second degree when, with intent" -- with intent, and that's the key word -- "with intent to harass, annoy, threaten or alarm another person, he or she" -- and then you would go to this language about communication.

So in the example that you gave, I would tend to think that if a district attorney was presented with cross-complaints, the likelihood would be that were you responding in kind -- and I know you're too ladylike to do that -- but were you responding in kind to that type of a call, the likelihood

would be that the prosecutor I would think would say that Senator Montgomery may have been responding in kind in a manner of speaking defending herself, but she did not intend to harass, annoy, threaten or alarm that other person.

So I think you have to look at the prefatory language, and unfortunately that is not in the bill print that you were looking at.

ACTING PRESIDENT MARCELLINO: Any other Senator wishing to be heard?

Senator Paterson.

SENATOR PATERSON: Mr. President, if Senator Saland would yield for a question.

ACTING PRESIDENT MARCELLINO: Senator, will you yield?

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR PATERSON: Senator, I want to go back to what Senator Breslin was talking about with you, Section 240-30, subdivision 1. What you've done is you've

taken what was in the original law the complete sentence, separated by "or," "a communication or causes a communication," and you've put it into two subsections, I guess A and B.

And what I'm saying is, from Senator Breslin and Senator Montgomery, it seems to me that in the overwhelming cases that the judges read the law correctly, it was just in some -- you described one right here -- that there were those who chose to look very ambiguously at what that section of the law meant. It seems to be clear to you and it seems to be clear to me, but other people read it in a way that is not helpful to what you would be trying to do in a prosecution under that statute.

My question relates to the fact that since I think that the new law is just as ambiguous as the old one, aren't we going to have that mistake made again by someone who is ruling on this type of issue that's going to go right back and do exactly the same thing as they did in the example that you cited?

Because in my opinion, we're just

not clearly delineating that the cause of communication could be a return phone call or response to an initial communication.

SENATOR SALAND: Thank you, Senator Paterson. I would respectfully disagree with you.

Again, going to the existing language, the existing language in what is currently Section 1 talks about "communicates or causes a communication to be initiated."

We've made clear that we're dealing with initiation only with telemarketers by dropping that down into a new subsection B. That seems to be the language that the courts have relied upon where they have dismissed these complaints where a phone call was initiated by the person who was the complainant.

I can't tell you that there may not be an instance in which some court may cry out for greater clarity. I think we will accomplish that by doing the amendment that we're proposing and discussing right here today.

And I would certainly think that

the intent of this Legislature, as would be found in the bill jacket, would certainly be clear. Otherwise, there would be little or no reason to even propose this amendment.

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

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

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT MARCELLINO: He continues to yield.

SENATOR PATERSON: Facetiously, Senator, I'm dying to ask you, were the printers charging by the word?

Because -- in other words, I'm just saying I just think you need the slightest bit added language. You have the exact same language in the amended proposal than in the original bill. And I just like the concept, I like what you're doing, and I'm just afraid that we might have to come back here.

I will rely on your research and what you feel was the dicta of the courts in cases where they dismissed the complaints.

But I just want to ask you, how can the court rule differently if the language is just the same but the positioning of the complaint is a little different?

Other than that, I'll -- you know, I'll go with what you think.

SENATOR SALAND: Well, I thank you for that, I think, vote of confidence, but I'm not absolutely sure that it was.

This represents the end product of some negotiations with our friends in the Assembly. I think the consensus arrived at was that this addresses a problem that is viewed as being a real problem.

I certainly would be more than happy, Senator Paterson, should its application or experience dictate otherwise, to apologize to you, here in this chamber, acknowledge your wisdom, and try and do it yet again.

But I do believe that this will do the trick, and I don't expect to have to revisit it.

SENATOR PATERSON: Thank you, Senator.

ACTING PRESIDENT MARCELLINO: Any other Senator wishing to be heard?

Seeing none, debate is closed.

Please read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 508, by Senator LaValle, Senate Print 3267, an act to amend Town Law, in relation to exemption.

SENATOR STAVISKY: Explanation, please.

ACTING PRESIDENT MARCELLINO: Senator LaValle, an explanation has been requested by Senator Stavisky.

SENATOR LAVALLE: Yes. Senator Stavisky, you will recall that last week we passed a bill in this chamber, 58 to nothing,

that would exempt the cost of leased telephone lines in order to maintain an adequate fire alarm system from fire district spending.

As you will recall from that debate, the Town Law places spending limits upon fire districts. And fire districts may, without the adoption of a proposition, expend annually for fire district purposes up to $2,000.

You will recall in last week's debate I talked about that there were 14 separate exemptions and that we were, by the recommended amendment, adding number 15 to subdivision 18 of Section 176 of the Town Law. And what we are merely doing is adding to that the cost of fuel for fire district emergency vehicles and also fuel tax carryovers.

And that specifically, Senator Stavisky, means sales tax, motor fuel tax, and petroleum business tax. That's what we mean by those carryover taxes.

And I had mentioned this very precisely in last week's debate on the exemption of the leased telephone lines to maintain an adequate alarm system. And I had

indicated that, certainly with the cost of motor fuel, that fire districts would be pushing beyond their limits and would have to go to a proposition.

So this merely is a mirror of last week's bill. It substitutes leased telephone lines for alarm systems for motor fuel oil and carryover taxes.

ACTING PRESIDENT MARCELLINO: Senator Stavisky.

SENATOR STAVISKY: If the sponsor would yield to a number of questions.

SENATOR LAVALLE: Yes.

ACTING PRESIDENT MARCELLINO: The Senator yields.

SENATOR STAVISKY: Senator LaValle -- through you, Mr. President -- how many fire districts are there in the state of New York?

SENATOR LAVALLE: Many.

SENATOR STAVISKY: Many. And presumably they're spread -- through you, Mr. President -- throughout the state of New York?

SENATOR LAVALLE: Yes.

SENATOR STAVISKY: We have many,

many fire districts.

SENATOR LAVALLE: Yes, Senator Stavisky.

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

ACTING PRESIDENT MARCELLINO: Senator LaValle?

SENATOR LAVALLE: Yes.

ACTING PRESIDENT MARCELLINO: The sponsor yields.

SENATOR STAVISKY: You mentioned the 14 exemptions. Aside from the telephone lines that we spoke about last week, most of these exemptions are for reserve funds for bond payments, workers' comp, other sort of fixed costs.

SENATOR LAVALLE: Yes.

SENATOR STAVISKY: Why, then, are we including the fuel as that type of exemption?

SENATOR LAVALLE: I think, if you will recall, Senator Dollinger brought up in the debate that the changes in the law, we really haven't kept up, and why are we, you know, doing this in a piecemeal system.

And we took that very seriously, his comments and so forth, and really for another day are looking at doing something that really meets the 21st century and what our fire districts are going through in terms of items like maintaining an adequate alarm system by leasing telephone lines.

That was something, years back when this section of law was created or limitations were created, the $2,000 limit was fine, putting up propositions were a rare thing. But today we're finding that fire districts need a little more latitude than we give them under current law.

But what I had said to Senator Dollinger when he said why don't we just completely lift this, I think even the fire districts, members who are commissioners on the fire districts, really, while they want more flexibility and would like to come to the Legislature from time to time, really don't want a carte blanche system because it is something that they themselves might run up the bill.

So they'd really like a

check-and-balance system on one hand, but not so tight as to have to come to the Legislature all the time.

SENATOR STAVISKY: Mr. President, I assume, then, that's why the repair reserve fund can cover the repairs, as an example, that do not occur annually. And that repair fund is exempt from that constitutional - that so-called -- in a sense, the debt limit that we have throughout governmental entities.

SENATOR LAVALLE: Yes. Yes.

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

SENATOR LAVALLE: Yes.

ACTING PRESIDENT MARCELLINO: The Senator continues to yield.

SENATOR STAVISKY: You mentioned that the administrators of the fire district, the commissioners, who are, I believe, appointed -

SENATOR LAVALLE: No, no, they're elected, Senator. Fire district commissioners are elected by the people in their fire districts.

SENATOR STAVISKY: All right. I

accept your correction.

But they don't want to be tempted to become extravagant in their expenditures. But if this legislation passes, aren't we going to see an increase in the property tax as it affects the local property taxpayer?

SENATOR LAVALLE: Certainly that could happen. But we're doing it -- the answer is that could always happen. It could happen when we allow an additional exemption for leasing of telephone lines to maintain alarm systems. It could certainly happen if we allow an exemption for motor fuel.

But, Senator, as a matter of public policy, we as a Legislature are carefully weighing, putting on a scale the equities of should we allow this to move forward in terms of an exemption for motor fuel in light of where gasoline prices are today, and, on the other side, would it affect in some way, if we didn't pass this legislation, fire emergency services to our constituents.

So as I had answered Senator Dollinger last week, I myself as a legislator am always leery when we go around a process

that does not include the people to vote on a proposition, which is what is current law.

SENATOR STAVISKY: That's correct.

SENATOR LAVALLE: Which is current law.

SENATOR STAVISKY: That's the way it was explained to me.

I have a couple of other questions, if the Senator will yield.

SENATOR LAVALLE: Yes.

ACTING PRESIDENT MARCELLINO: The Senator yields.

SENATOR STAVISKY: How many of these fire districts are at their spending limit? In other words, how many fire districts would be affected by this legislation?

SENATOR LAVALLE: Senator, I don't know that. You know, I couldn't give you a number.

But what I do know is that this legislation is -- and we've spoken to the statewide Fire District Association, and this is something that is supported, that there is

a general problem across the state. And I couldn't quantify it by giving you a number, but that's why we have the legislation before us.

SENATOR STAVISKY: I thank you. And I just want to be sure that the property taxpayers in Nassau County in particular are not unnecessarily overburdened by this legislation.

And my last question, if the Senator will yield -

SENATOR LAVALLE: Yes.

SENATOR STAVISKY: -- presumably, or at least hopefully, at some point, gas prices will go down. Will you then move to reduce the sort of enforced spending that this section of the Town Law requires?

SENATOR LAVALLE: Senator, this legislation has been introduced and has been requested beyond 2001, in previous sessions. So this has been a problem that has existed but certainly is exacerbated by what is currently happening.

I would also like to just comment, because you made a comment about Nassau

County, I don't think any area can be or should be singled out. Because I think that our fire district commissioners, who are elected, try and do a good job in holding down expenses.

On the other hand, they have a responsibility, because they take the same kind of oath that we do. I'm sure that, you know, many of us who represent districts outside of the City of New York, outside of the urban centers, where we have volunteer departments, I mean, we attend many of the functions where the commissioners are sworn in and so forth. And so they have an oath to protect our constituents from harm, and also they have an obligation to the people who elected them.

So I believe that this legislation -- you know, we talked theoretically -- could, you know, increase taxes. But chances are that it would be, if anything, quite, quite small.

Very few fire district budgets, Senator, are voted down, because people understand the billions of dollars that are

saved to the taxpayers by the volunteer fire service. And the commissioners, the commissioners do not receive compensation.

SENATOR STAVISKY: Mr. President, on the bill.

ACTING PRESIDENT MARCELLINO: Senator Stavisky, on the bill.

SENATOR STAVISKY: I thank Senator LaValle for his explanation and for his discourse on the need for this legislation. I know it's very similar to the bill last week that dealt with the leased telephone lines.

And I certainly intend to support this legislation. And again, I thank the Senator.

ACTING PRESIDENT MARCELLINO: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you. Through you, Mr. President, if the sponsor would yield for a few questions.

SENATOR LAVALLE: Yes.

SENATOR SCHNEIDERMAN: When I heard the earlier debate, I believe it was stated that the spending limit for fire

districts is $2,000. My understanding is that in fact there's a variable factor there above $2,000 based on some other factors of the size of the district. Is that correct?

SENATOR LAVALLE: The only other factor is if a district, I believe, Senator, is at full market value in terms of property, then there's a formula that allows an additional leeway.

And then, as Senator Stavisky brought up, there are certain exempt categories. And even the law has 14 exempt categories that they can be exempt from having to go to a proposition.

SENATOR SCHNEIDERMAN: Thank you. Through you, Mr. President. Has there been any attention paid -- and I realize that, you know, we work on things as they come before us in situations like this from requests from local governments. Has there ever been an effort, as we keep adding exemptions, to take a look at the formula itself, which may in fact be too low?

A formula that has too many exemptions reminds me of the Ptolemaic theory

of how they explained that the sun goes around the earth by constantly making corrections over five hundred years. And it still works, but it wasn't right.

SENATOR LAVALLE: Last week's debate, again, Senator Schneiderman, Senator Dollinger brought up an issue that I on the floor said, you know, he made a good point in terms of we keep adding exemptions.

And what we've set into progress is to, off session, bring parties together to look at this section of law to see how we can balance, as I had indicated, giving an additional room to accommodate some of these things of the leased telephone lines, the motor fuel oil, but at the same time not opening the floodgates where the taxpayer would not be protected, and try and balance that.

And we're going to have a dialogue with the stakeholders who are involved in this kind of legislation. So hopefully at another time we might have an additional approach to solving this problem, and have a formula. I said to my counsel that we might look at this

very point of lifting the cap to a higher, more acceptable limit and look at some other things.

So I think your point is well taken.

SENATOR SCHNEIDERMAN: Thank you. Thank the sponsor for his answers.

Through you, Mr. President, on the bill.

ACTING PRESIDENT MARCELLINO: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: You know, I think this is a -- what Senator LaValle just described is a perfect approach to this kind of situation. I hope we will be able to revisit the formula.

And I just want to mention that one of the things that concerns me about the operation of the existing formula is that it appears -- my understanding of it is that there is -- additional funds over the $2,000 limit are made available based on the amount of the property valuation in a district. And what I think that means is that if you're in a wealthier district, you may be getting better

emergency services than if you are in a less wealthy district.

The additional funds are not available based on need, as far as I can tell -- population, complexity, size, distance that has to be covered. And I would just urge that in looking at the formula we take a look at the equities involved in this.

I think there are some things that should be available to all the people of the state of New York on an equal basis. And I think we have a judge who's just told us that public schools fit into that category. Well, I can't think of anything that should be something that is available equally that is more -- you know, an argument that is more compelling than for emergency services.

So I would urge that when we're looking at the formula, we also make an effort to deal with the fact and take a look at the fact -- the facts relating to the provision of these services in different types of communities. I would hate to see a situation where we're not paying attention and we wake up all of a sudden, as we've done with schools

and with some other areas of the state, and say, well, you know, if you're poor you're much more likely not to get emergency services effectively if you live in the wrong community.

Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Any other Senator wishing to be heard?

Seeing none, debate is closed.

Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

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

SENATOR DOLLINGER: Thank you, Mr. President, just briefly.

I appreciate Senator LaValle's comments in response to Senator Schneiderman's questions with respect to the future of this cap on the spending for fire districts. As I said last time when we debated another bill to

add an exemption for other costs, it seems to me that the cap on fire district expense is an artificial one that's been placed there by us in an attempt to control those expenditures.

But in an era of home rule, with growing sophistication on the part of these fire districts, it seems to me it's time to reevaluate do we need a cap, first of all, and, secondly, what should be the cap be.

And I appreciate it. I think that one of the good things about the process of legislating this year is because of additional dialogue on some of these bills. I hope we come up with other ideas. And I hope that this conference has expressed a willingness on the part of our Republican colleagues to support a reexamination of the caps so that we can end up with a system in which fire districts have the necessary flexibility to make their own minds up on what are appropriate expenditures for their constituents.

I appreciate Senator LaValle's willingness to do that. I wish him success. And I am certainly, I think, speaking on

behalf of Senator Connor if I would suggest that members of the Minority would be very happy, willing, able, and might have something to contribute in the process of coming to that conclusion. We'd welcome the chance to participate.

I vote aye, Mr. President.

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

Senator Oppenheimer, to explain her vote.

SENATOR OPPENHEIMER: No, just - thank you. I just want to second what Senator Dollinger has said.

Costs have gone up so much in the price of the wagons we buy, the ladders we buy. To have caps that date back to God knows when still in existence makes no sense at all. To either we have to elevate the cap considerably, or we have to get rid of it.

After all, each fire district knows perfectly well what its needs are. And its needs now are much more costly than they were years ago.

I'll be voting yes.

ACTING PRESIDENT MARCELLINO: Senator Oppenheimer also in the affirmative.

Announce the results, please.

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 867, by Senator Skelos -

SENATOR MORAHAN: Lay it aside for the day.

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

THE SECRETARY: Calendar Number 881, by Senator Seward, Senate Print 4530, an act in relation to adjusting certain state aid payments.

SENATOR DOLLINGER: Explanation, please.

ACTING PRESIDENT MARCELLINO: Senator Seward, an explanation has been requested.

SENATOR SEWARD: Yes, Mr. President.

This bill would allow repayments

for a $126,488 overpayment which was made to the Cincinnatus school district, which is in Cortland County and western Chenango County, during the 1998-1999 school year, to be distributed over a six-year period so as to alleviate the impact of this repayment on this small, rural school district.

ACTING PRESIDENT MARCELLINO: Senator Dollinger.

SENATOR DOLLINGER: Mr. President, will the sponsor yield for a question?

ACTING PRESIDENT MARCELLINO: Senator Seward, do you yield?

SENATOR SEWARD: Certainly.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR DOLLINGER: Through you, Mr. President, what was the amount of the annual budget for the Cincinnatus school district this year, for the year 2000-2001?

SENATOR SEWARD: Mr. President, I don't have that information with me. I would estimate, however, that it would be in the neighborhood of $5 million.

SENATOR DOLLINGER: Mr. President, I just didn't hear the answer, if Senator Seward would indulge me.

SENATOR SEWARD: Mr. President, I would repeat my answer. I do not have that exact information. I could only give you an estimate based on the size of the school district. I would say it would be in the $5 million to $6 million range.

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

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

SENATOR SEWARD: Yes.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR DOLLINGER: If the Cincinnatus school district were to borrow the $126,000 and repay that over ten years, do you know what effect that that would have on the property taxes charged by the school district?

SENATOR SEWARD: I have -- Mr. President, I have not computed that number, those numbers, and I do not have that

information before me.

SENATOR DOLLINGER: Well, through you, Mr. President, if Senator Seward will continue to yield.

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

SENATOR SEWARD: Certainly.

ACTING PRESIDENT MARCELLINO: He yields.

SENATOR DOLLINGER: If the $126,000 were paid back over a ten-year period, through a bond -- through a bond - then the cost would be about $12,000 a year, throw some interest on the top -- I'm sure, as the chairman of the Insurance Committee, you probably can do those interest calculations much quicker than I. But my guess is it's something like $15,000 to $17,000 a year.

And my question to you is, is that a significant amount of money under a $5 million or $6 million annual budget?

SENATOR SEWARD: Well, Mr. President, I would answer by saying yes, it would be, in my estimation and in the view of the local school district and the school

board.

We're talking about a district that is hard-pressed to offer an education to the young people there. It's a small, rural district. I do not have details in terms of the per-capita income of the people in that area, but I can assure you, Mr. President and Senator Dollinger, that it is well below the statewide average in terms of per-capita income.

And even though $12,000 per year, or whatever the number Senator Dollinger may want to use, may not be a lot of money in suburban Monroe County, it is a greet deal of money in this small, rural school district. It's half a teaching position. It is two teacher's aides. It's significant in a district like this.

We have a process in place that has been used for many, many districts to stretch out the repayments to alleviate the financial burden on districts. I believe that that process is in place to serve people. And that's all we're trying to do under this legislation, is to serve the people and, more

importantly, the children of Cincinnatus.

SENATOR DOLLINGER: Through you, Mr. President, I want to thank Senator Seward for his -- I think his proper comment about what this bill is designed to do. I certainly -- Senator, I've said this, I think, to all the members -

ACTING PRESIDENT MARCELLINO: Senator Dollinger, are you speaking on the bill?

SENATOR DOLLINGER: Yes, I am, Mr. President. I apologize.

ACTING PRESIDENT MARCELLINO: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I've said this to all the members who have carried these kinds of bills in the past. I would point out a couple of things.

One, however, is that the people of this school district in essence got $126,000 tax benefit. Because in the year that they were given this overpayment of $126,000, the Cincinnatus school board did not have to raise property taxes by $126,000 to pay for it. So in essence, they got a benefit from us to

which they were not entitled. That is, they got an overpayment. So in essence, they've already saved $126,000, because the school board didn't have to tax for it to pay for this.

Now the question becomes, how do we pay that money back? And I would suggest, as I have suggested before, that I'm not opposed to the notion of this bill. But it seems to me that what we need is an evenhanded approach to school districts that are either paid more money and have to pay it back and to the school districts that are owed money by the State of New York, like my friends in the City of New York who are owed to the tune of about $900 million -- which I would suggest is a lot of teachers, rather than just a partial portion of a teacher's salary, or $126,000.

It seems to me that we need to come up with a plan under which the school districts that are owed money will be paid that money and, when those districts owe us money, what's a fair way to make it paid back.

Senator Seward, I am going to suggest exactly what I've suggested to Senator

LaValle on the fire district bill, that I suggested to the chair and to my colleagues from Nassau County: Let's do a statewide bill. Let's eliminate the temptation that we would end up in a system in which certain communities -- certain benefits would be extended in Nassau County or certain favorable payback schemes would be extended to districts which happen to be in Majority Senators' districts. Let's come up with a plan under which every school district, when it gets the benefit of an overpayment, can have a six-year repayment period.

I agree with you, Senator, the problem we have now is that if we overpay a school district and they have to pay us back, we require that they do it in a single year. But if we short them payments, if we underpay them and we owe them money, for most school districts in this state the state gets six years to make the payments back to the community.

That's not fair. Let's have a both-ways rule. If they owe us money, they can take six years to pay it back. If we owe

them money, we should take six years to pay them. But my colleagues from the City of New York I'm sure would say it's unconscionable that they wait for ten years to be paid what they're owed.

Senator, I'm going to vote in favor of this bill. I don't mean to discourage your advocacy on behalf of this district. I understand that this is fair and just and especially in small school districts what may seem like a small number to most of us, that 126,000, can be a big bite.

But let's solve this problem for everybody. Let's come up with a fair and evenhanded rule for every school district, a both-ways rule, that whichever way the state wants to have it -- six year payback? Fine. You pay us back in six years. If we underpay you, we'll pay you in six years.

Let's come up with a both-ways rule that applies across the state so we don't end up with this notion or this sense that only favored districts in particular areas in particular Senators' districts or Assemblymen's districts will end up with this

fair treatment, Senator Seward.

I think it's fair and evenhanded. I'm going to vote in favor of it. But let's come up with a better way to make it statewide for everyone.

ACTING PRESIDENT MARCELLINO: Senator Stavisky.

SENATOR STAVISKY: I have one question, if the sponsor would yield.

ACTING PRESIDENT MARCELLINO: Senator Seward, will you yield to a question?

SENATOR STAVISKY: One question.

SENATOR SEWARD: Certainly, Mr. President.

ACTING PRESIDENT MARCELLINO: He yields, Senator.

SENATOR STAVISKY: Senator Seward, I was listening very carefully to Senator Dollinger just now, and I could have sworn I heard the same comments when Senator Bonacic had a bill involving the school district of Delhi.

Can you tell me how this legislation differs from the one we passed, and I believe I voted no on, involving the

Delhi school district? Do you remember that bill?

SENATOR SEWARD: I remember the issue, Mr. President, but I haven't -- I know the general concept was similar in terms of this bill before us today. But without some research, I could not elaborate in terms of what the similarities or differences are in terms of the bills.

SENATOR STAVISKY: Thank you.

ACTING PRESIDENT MARCELLINO: Any other Senator wishing to be heard?

Seeing none, debate is closed.

There is a local fiscal impact statement at the desk.

Please read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator, that completes the

controversial calendar.

SENATOR MORAHAN: Thank you, Mr. President. May we please return to the Resolution Calendar, please, with the exceptions of Resolutions 1755, 1756, and 1821.

ACTING PRESIDENT MARCELLINO: The motion is to adopt the Resolution Calendar, with the exceptions as mentioned. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MARCELLINO: Opposed, nay.

(No response.)

ACTING PRESIDENT MARCELLINO: The Resolution Calendar is adopted.

SENATOR MORAHAN: Mr. President, I believe there's a privileged resolution at the desk by Senator Connor and Senator Maltese.

ACTING PRESIDENT MARCELLINO: The Secretary will read.

THE SECRETARY: By Senators Connor and Maltese, Legislative Resolution Number 1833, honoring the memory of the late

Martin P. Soucie.

ACTING PRESIDENT MARCELLINO: All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MARCELLINO: Opposed, nay.

(No response.)

ACTING PRESIDENT MARCELLINO: The ayes have it. The resolution is adopted.

SENATOR MORAHAN: Mr. President, is there any housekeeping at the desk?

ACTING PRESIDENT MARCELLINO: Senator Farley.

SENATOR FARLEY: Thank you, Mr. President. On behalf of Senator Libous, would you please remove the sponsor's star from Calendar 309.

ACTING PRESIDENT MARCELLINO: It will be done.

SENATOR FARLEY: On behalf of Senator Rath, Mr. President, I wish to call up her bill, Senate Print 1811, which was recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT MARCELLINO: The

Secretary will read.

THE SECRETARY: Calendar Number 194, by Senator Rath, Senate Print 1811, an act to amend the Real Property Tax Law.

SENATOR FARLEY: Mr. President, I now move to reconsider the vote by which this bill was passed.

ACTING PRESIDENT MARCELLINO: Call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

SENATOR FARLEY: I now offer the following amendments.

ACTING PRESIDENT MARCELLINO: The amendments are received.

SENATOR FARLEY: Also on behalf of Senator Rath, Mr. President, on page 40 I offer the following amendments to Calendar 596, Print Number 3423, and I ask that this bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT MARCELLINO: The bill will retain its place on the Third Reading Calendar.

SENATOR FARLEY: On behalf of

Senator Rath, on page 73 I offer the following amendments to Calendar Number 136, Senate Print 1456, and I ask that this bill retain its place on the Third Reading Calendar.

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

SENATOR FARLEY: On behalf of myself, on page 51 I offer the following amendments to Calendar Number 704, Senate Print 4634, and I ask that that bill retain its place on the Third Reading Calendar.

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

Senator Morahan, the house is clean.

SENATOR MORAHAN: Thank you, Mr. President.

There being no further business, I move we adjourn until Wednesday, May 16th, at 11:00 a.m.

ACTING PRESIDENT MARCELLINO: On

motion, there being no further business, we adjourn until Wednesday, May 16th, at 11:00 a.m.

(Whereupon, at 4:15 p.m., the Senate adjourned.)