NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

April 30, 2002

3:19 p.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 bow our heads in a moment of silence, please.

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

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Monday, April 29, the Senate met pursuant to adjournment. The Journal of Sunday, April 28, 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.

The Secretary will read.

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

Senate Print 7325, by the Senate Committee on Rules, an act making appropriations for the support of government.

THE PRESIDENT: Without objection, all bills reported direct to third reading.

The Secretary will read.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following nominations.

As a member of the Board of Trustees of the State University of New York, Steven L. Alfasi, Esquire, of the Bronx.

SENATOR STAFFORD: Mr. President.

THE PRESIDENT: Senator Stafford.

SENATOR STAFFORD: Madam President, excuse me.

THE PRESIDENT: Thank you, Senator. The sound was not on.

You're now on.

SENATOR STAFFORD: Madam President, we had a delightful Finance meeting, had very fine nominees. And for the first nominee here this afternoon, I yield to Senator Velella.

SENATOR VELELLA: Thank you, Senator Stafford, Madam President. I'm pleased -

THE PRESIDENT: Senator Velella.

SENATOR VELELLA: I'm pleased to rise in support of Steven Alfasi as a member of the board of the SUNY Board of Trustees.

Steven is a good friend of mine. I've known him for many years. He's a graduate of the United States Air Force Academy. He's a graduate of St. Martin's College, where he received his master's degree in business administration, and then went on to Brooklyn Law School to receive his juris doctor's degree.

He served five years as an officer in the United States Air Force, performing many of the administrative duties and helping to govern the Republic of South Korea, where

he served for many years in an official capacity there.

He has served as the county commander of the Veteran of Foreign Wars in Bronx County, is a member of the Puerto Rican Bar Association, the Bronx County Bar Association, and presently serves as the deputy public administrator of Bronx County.

He has been active in his community services, and he speaks both English and Spanish fluently.

He brings the discipline of the military, the organization of a business major, and the compassion of a social worker to our board of SUNY trustees. I highly recommend him for this position.

THE PRESIDENT: Senator Espada.

SENATOR ESPADA: Thank you, Madam President.

I rise to second the nomination and to thank Senator Velella for making the nomination possible, for proffering it in the first instance, for all the good reasons that he mentioned. But mostly because through Senator Velella I've come to know the story of

Mr. Alfasi, his family, his commitment to the Bronx.

He's already a trustee in his role as deputy public administrator of Bronx County. He is a shining example and a real mentor to so many in Bronx County, not only in the legal profession but really a shining example for all, and will serve the SUNY system very well.

But mostly because he is a native Bronxite, a native son of the Bronx -- I should say of the Republic of the Bronx -- and we're very proud of you.

Thank you so very much.

THE PRESIDENT: The question is on the confirmation of Steven L. Alfasi, Esquire, as a member of the SUNY Board of Trustees. All in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed.

(No response.)

THE PRESIDENT: The nominee is hereby confirmed.

Senator Stavisky.

SENATOR STAVISKY: Is it too late

to explain my vote?

THE PRESIDENT: No, you may speak.

SENATOR STAVISKY: Very briefly.

Madam President, I have been troubled by the nominations for the CUNY and SUNY board. And I would hope, if the Governor happens to be listening, that we try to encourage people with an interest in public higher education for the future.

Unfortunately, at the present time, of the 14 appointees to the SUNY board, only five come from SUNY or CUNY institutions. And I would certainly hope that in the future, appointees to both the CUNY and SUNY board include people who understand the mission of SUNY and CUNY.

This is a very important issue, as far as I'm concerned, and I will be very reluctant in the future to vote to confirm anyone who does not understand the mission of SUNY and CUNY or the financial problems facing these institutions.

But I vote aye. Thank you.

THE PRESIDENT: The nominee is

hereby confirmed.

Congratulations, on behalf of the Senate. Certainly with your credentials you are a welcome and a very important addition to the SUNY Board of Trustees. Best wishes.

(Applause.)

THE PRESIDENT: The Secretary will read.

THE SECRETARY: As a member of the Board of Trustees of the State University of New York, Father John J. Cremins, of Forest Hills.

THE PRESIDENT: Senator Stafford.

SENATOR STAFFORD: Madam President, the next fine nominee, although Father Cremins is originally from the County of Kings, I yield to the Senator from Queens.

THE PRESIDENT: Senator Maltese.

SENATOR MALTESE: Thank you, Senator Stafford. Thank you, Madam President.

I am pleased today to rise in support of the confirmation of Father John Cremins to the board of SUNY. Certainly as the only sitting Majority member on the Higher Education Committee, I take my

responsibilities very seriously.

The 16-person SUNY board, which oversees the 64 campuses and over 370,000 students, have to be represented on the SUNY board by persons of integrity, moral character, and ability. Father Cremins is one such person.

Father Cremins has, in the course of his very illustrious career, served as an adjunct professor at Iona College, the chaplain at South Beach Psychiatric Center in Staten Island, an adjunct professor in undergraduate psychology at Iona in New Rochelle, director of research at the Child Study Center in New York, associate professor at St. John's University, and associate pastor at St. Rose of Lima Church in Brooklyn, psychology intern at Coney Island Hospital in Brooklyn, New York, an associate pastor at Our Lady of Angels Church in Brooklyn, New York, and clinical psychology intern at Cattaraugus Health Center.

He presently holds memberships on the board of directors of the Child Study Center of New York, advisory board member at

the Mapleton Clinic, South Beach Hospital. He serves as secretary of the retirement board for the Diocese of Brooklyn.

He is a board member of the American Association of University Professors, the American Psychological Association of Washington, D.C., and has served on the board of directors and is a founding member of the Bay Ridge Mental Health Council in Brooklyn, New York. He is a proud recipient of the Ellis Island Medal of Honor on May 15, 1995.

In short, I commend the Governor of the state, George Pataki, for submitting this knowledgeable, moral man. Certainly we in New York deserve a diversity of talents to serve on our SUNY board.

The student body of SUNY, just as the student body of CUNY, is probably among the most diversified in the world, certainly in the United States. In order to adequately serve not only the people of the state but the students, the most important factor in this equation -- the students, the future of not only our university but the future of our state and our country -- we need

diversification, we need talent, and certainly, above all, we need men of integrity and character. Such a man is Father Cremins.

I'm very pleased to appeal for the confirmation of Father Cremins at this time.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Thank you, Madam President.

It's a real pleasure to rise today and support the confirmation of Father John Cremins to the board of the State University of New York.

Representing so many students from my district from Long Island who use the state university system, we want to make sure that they continue to get a quality and affordable education. Certainly Father Cremins is the type of board member we need to continue and contribute to this mission. We are fortunate to have him joining the board.

And I'd also like to acknowledge the presence of Father Cremins' mother, Mary Cremins, and his brother Dan Cremins in the gallery, to witness this very special and proud moment.

I know that when Mrs. Cremins ventured from Ireland years ago to this country, the important role of what her son would be doing was probably not even anticipated. So the entire family should be very proud of him.

So thank you, Father John, for agreeing to serve your state. And I strongly urge his confirmation.

ACTING PRESIDENT MEIER: Senator Stavisky.

SENATOR STAVISKY: Very briefly, I want to echo what my two colleagues have said.

I think Father Cremins, with his background in higher education, will make a very positive contribution to the SUNY board, and I look forward to working with the SUNY trustees and the CUNY trustees in the days ahead.

Thank you.

ACTING PRESIDENT MEIER: Any other Senator wish to be heard on the nomination?

The question, then, is on the

confirmation of Father John Cremins as a member of the State University of New York Board of Trustees. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The nominee is confirmed.

Father Cremins is with us today in the gallery. He's accompanied by his mother, Mary Cremins, his brothers, Dan and Jerry Cremins, and by his sisters-in-law, Suzanne Cremins and Peggy Cremins.

Father, congratulations and good luck with your very important duties.

(Applause.)

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: As a member of the Public Employment Relations Board, John T. Mitchell, Esquire, of Delmar.

ACTING PRESIDENT MEIER: Senator Stafford.

SENATOR STAFFORD: Our final fine appearance today was this fine nominee.

And it's a pleasure to yield to Senator Velella.

ACTING PRESIDENT MEIER: Senator Velella.

SENATOR VELELLA: Mr. President, as chairman of the Labor Committee, it is my pleasure to recommend to the body the name of John Mitchell, of Delmar, who is a respected member of the bar in the Capital District, has served his country as a first lieutenant in Germany.

He's married, has three children, is an experienced member of the PERB board and has handled many complex matters on that board, serving as an arbitrator.

He will be an outstanding member of the Public Employment Relations Board. I submit his name for consideration.

ACTING PRESIDENT MEIER: Senator Breslin.

SENATOR BRESLIN: Thank you, Mr. President. I rise to further the comments of Senator Velella.

John Terrence Mitchell -- Terry Mitchell, as he's known in Albany -- is not only a fine lawyer, a friend of many years, but someone who is most ably qualified for this position. And I commend the Governor for making it.

I commend Terry for being involved in public service. And I know he'll continue to do as fine a job as he has in the past.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: The question is on the confirmation of John Mitchell as a member of the Public Employment Relations Board. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The nominee is confirmed.

Mr. Mitchell is with us today in the gallery.

Mr. Mitchell, congratulations, and we wish you well.

(Applause.)

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: Mr. President, if we could just return to motions and resolutions at this time.

There are a number of people here that I believe Senator Libous would like to introduce, and several resolutions.

So if we could adopt the Resolution Calendar in its entirety, with the exceptions of Resolutions 5168 and 5169.

ACTING PRESIDENT MEIER: Motions and resolutions.

The question is on adoption of the Resolution Calendar, with the exception of Resolutions 5168 and 5169. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(No response.)

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

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could take up Resolution 5169, by Senator Libous, have it read in its entirety, and move for its immediate adoption.

ACTING PRESIDENT MEIER: The Secretary will read Resolution 5169.

THE SECRETARY: By Senator Libous, Legislative Resolution Number 5169, memorializing Governor George E. Pataki to proclaim April 30, 2002, as Legislative Disabilities Awareness Day in the State of New York.

"WHEREAS, The New York State Senate Select Committee on the Disabled is sponsoring the 22nd Annual Legislative Disabilities Awareness Day in Albany, New York; and

"WHEREAS, The Commissioner of the Administration on Developmental Disabilities, Patricia A. Morrissey, Ph.D., will be the special guest at the 22nd Annual Legislative Disabilities Awareness Day; and

"WHEREAS, In addition, a technology fair will be held with exhibitors from across the state displaying their programs; and

"WHEREAS, It is the sense of this Legislative Body that persons with disabilities merit our recognition as they realize the goals of inclusion and equality in our communities and society at large; and

"WHEREAS, It is the intent of this Legislative Body to recognize persons with disabilities, accentuating, in turn, the benefit to New York State of their contributions to our economic, educational, and social growth; and

"WHEREAS, Legislative Disabilities Awareness Day so clearly labors for the positive and salutary definition of the communities of the State of New York; and

"WHEREAS, Legislative Disabilities Awareness Day provides individuals with an opportunity to acknowledge and understand the legislative process; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to memorialize Governor George E. Pataki to proclaim April 30, 2002, as Legislative Disabilities Awareness Day in the State of New York, fully confident that such procedure mirrors our

shared commitment to the efflorescence of human dignity; and be it further

"RESOLVED, That copies of this Resolution, suitably engrossed, be transmitted to the Honorable George E. Pataki, Governor of the State of New York, and selected representatives of persons with disabilities."

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: Mr. President, before you recognize Senator Libous, I would just ask if the members within my voice's range, if they could come into the chamber, because this truly is a special day.

And if we could just have a little peace and quiet in the chamber as Senator Libous speaks and as the resolutions are read.

ACTING PRESIDENT MEIER: Thank you, Senator Skelos.

Could I ask members and staff members who find it necessary to have conversations to take them outside, please. Can we have some order in the chamber.

Senator Libous.

SENATOR LIBOUS: Thank you, Mr.

President. And thank you, Senator Skelos.

Mr. President, before I speak on the resolution, I would certainly like to offer it up and ask that all members be put on the resolution as cosponsors, number one.

Number two, I would like to welcome our interpreter, Laurie Kulka, who is with us today.

Mr. President, we had probably the best Legislative Disability Awareness Day in the history of this Capitol today. Not only were we able to have exhibitors join us and have people from all over the state who help people with disabilities, but we had a number of achievers this year that were nominated by various senators, and we gave out some 22 awards today.

I first of all would like to thank my colleagues who participated. And I think they found that it was quite incredible to learn the accomplishments of people with disabilities from within their district, and that people with disabilities provide great opportunity to this great State of New York and to the communities that they live in.

I just want to share with you on the resolution a little background on some of our recipients. And, Mr. President, some of those recipients are with us today. And we're very pleased to have them here.

For instance, we had people that were founders and directors of agencies that work to improve the lives of disabled children throughout our state. We had today talented musicians that have recorded and toured with big names, nationally known performers. We have those who are professors and teachers at our universities who teach our next generation.

And I have to tell you, Mr. President, that in seeing the number of people that came this morning to our 11 o'clock ceremony, it makes me very proud of the leadership of this Majority and Senator Bruno and all of the people in this chamber for the good things that we have done over the past decade when it comes to helping people with disabilities.

But our work is not done. We must continue to let people know and to make people

aware that people with disabilities need and deserve the same opportunities of all of us - whether those opportunities be in the workplace, whether those opportunities be at educational facilities, whether they be in public places, wherever they travel. Their lives are no different than ours, and their opportunities should be no different than ours.

Mr. President, I am very pleased that this day was a great success. I look forward to further successes in the coming years. And also I look to my colleagues in this chamber to continue to work with each and every one of them on both sides of the aisle as we continue to improve lives for people with disabilities in New York State.

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

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The

resolution is unanimously adopted.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you please call up Resolution 5168, by Senator Libous, have it read in its entirety, and move for its immediate adoption.

ACTING PRESIDENT MEIER: The Secretary will read Resolution 5168.

THE SECRETARY: By Senator Libous, Legislative Resolution Number 5168, honoring Patricia A. Morrissey, Ph.D., upon the occasion of her designation as guest of honor at the 22nd Annual Legislative Disabilities Awareness Day on April 30, 2002.

"WHEREAS, The 22nd Annual Legislative Disabilities Awareness Day provides individuals with an opportunity to acknowledge and understand the needs and abilities of people with disabilities throughout New York State; and

"WHEREAS, This Legislative Body is justly proud to honor Patricia Morrissey, Ph.D., upon the occasion of her designation as Guest of Honor at the 22nd Annual Legislative Disabilities Awareness Day, April 30, 2002, in

Albany, New York; and

"WHEREAS, Patricia Morrissey was appointed Commissioner of the Administration on Developmental Disabilities effective August 27, 2001. Commissioner Morrissey oversees four major discretionary grant programs authorized by the Developmental Disabilities Assistance and Bill of Rights Act of 2000; and

"WHEREAS, Patricia Morrissey holds a Ph.D. in special education from the Pennsylvania State University. Before becoming ADD Commissioner, she was a senior associate with Booz Allen Hamilton, an international technology and management consulting firm with headquarters in McLean, Virginia. She oversaw Booz Allen Hamilton's efforts to help federal agencies make their electronic and information technology accessible to and usable by individuals with disabilities; and

"WHEREAS, During her 26 years in the Washington area, Patricia Morrissey has worked for the Senate, the House of Representatives, and President Ronald Reagan.

In 1999, while with the Senate, she worked with then Wisconsin Governor Thompson's office on the development and passage of the Ticket to Work and Work Incentives Improvement Act. More recently, she was a contributor to President George W. Bush's New Freedom Initiative; and

"WHEREAS, It is the sense of this Legislative Body to recognize and applaud the achievements of its citizens who would elect to challenge life with an uncommon valor and determination, demonstrating by example and purposeful action that commitment to personal goals is the wellspring of self-fulfillment and achievement; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to honor Patricia Morrissey upon the occasion of her designation as Guest of Honor at the 22nd Annual Legislative Disabilities Awareness Day, April 30, 2002; and be it further

"RESOLVED, That a copy of this Resolution, suitably engrossed, be transmitted to Patricia Morrissey, Ph.D."

ACTING PRESIDENT MEIER: Senator

Libous.

SENATOR LIBOUS: Thank you, Mr. President. Mr. President and my colleagues, over the past 11 years that I've served as chairman of the Select Committee on the Disabled we've welcomed many guests here in Albany on Legislative Disability Awareness Day.

And just like our 22 achievers today, you know, each of them has been an example of great things that individuals with disabilities can do. And today I am pleased to welcome Commissioner Morrissey, because she is no exception.

She comes to us from the nation's capital, from Washington, D.C., where she is commissioner of the U.S. Administration on Developmental Disabilities. But even before she was appointed by President Bush last August, she has had an illustrious 28-year career in Washington. She's written legislation for the United States Senate, the United States House of Representatives; she's worked in the Department of Education, for the Reagan administration. She's helped major

corporations comply with the Americans with Disabilities Act. She's even taught college and published books.

But most importantly, she's always been at the forefront of all Americans with disabilities and their policy. Her success is an inspiration to all of us. And again, it reminds us that attitude is truly the only real disability.

I'm very pleased that Commissioner Morrissey could join us today here on the Senate floor. The commissioner has had a pretty full day. She's met with a number of state officials and met with a number of you today.

I asked the commissioner earlier what she felt was one of her biggest accomplishments over her 28-year career, and she shared with me that in helping to get the Americans with Disabilities Act actually passed and pushed through both houses and also advising the president on that decision.

I think that's quite remarkable, if you think about the importance of that act, the number of years that people with

disabilities and others have worked very hard, legislators in both the U.S. Senate and House of Representatives. And for our guest to play a very instrumental part in making that happen so that all Americans with disabilities could have a fair opportunity for employment and other opportunities, it gives me great pleasure to welcome her to the chamber.

So, Commissioner, on behalf of Senator Bruno and all of my colleagues here in the chamber, I'd like to welcome you, I'd like to congratulate you.

And I want to thank you for taking time out of your schedule, coming here, and being an inspiration not only to all the recipients who won awards today but to all of us in this chamber.

Thank you.

(Applause.)

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

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The resolution is unanimously adopted.

Senator Morahan.

SENATOR MORAHAN: Mr. President, could we return to reports of standing committees and pick up the business of the Finance Committee.

ACTING PRESIDENT MEIER: Reports of standing committees.

The Secretary will continue to read the report of the Finance Committee.

THE SECRETARY: Senator Stafford, from the Committee on Finance, reports the following nominations:

As a nonvoting member of the Metropolitan Transportation Authority, Joseph Rutigliano, of Holtsville.

As a member of the Port of Oswego Authority, William F. Shannon, Jr., of Oswego.

As a member of the State Public Transportation Safety Board, Deborah A. Green, of New York City.

As a member of the Fire Fighting and Code Enforcement Personnel Standards and

Education Commission, Peter A. Caruso, of Utica.

As a member of the State Harness Racing Commission, Mark A. Edelman, of Monticello.

As a member of the Medical Advisory Committee, Steven E. Barnes, of Silver Creek.

As a member of the Mental Health Services Council, Thomas O. MacGilvray, of Setauket.

As a member of the Board of Visitors of the Binghamton Psychiatric Center, Gerald Buckley, of Binghamton.

As a member of the Board of Visitors of the Bronx Psychiatric Center, Yvonne E. Chappell, of the Bronx.

As a member of the Board of Visitors of the Buffalo Psychiatric Center, Morris Raiken, of Buffalo.

As a member of the Board of Visitors of the Capital District Developmental Disabilities Services Office, Joan D. Taylor, of Niskayuna.

As members of the Board of Visitors of the Central New York Developmental

Disabilities Services Office, Louis G. Best, of Oneida, and Doris W. Latimer, of Rome.

As a member of the Board of Visitors of the Helen Hayes Hospital, David John McConnell, M.D., of Warwick.

As a member of the Board of Visitors of the New York State Home for Veterans and their Dependents at Montrose, Mary Edith Meeks, of Garrison.

And as a member of the Board of Visitors of the South Beach Psychiatric Center, Linda Blyer, of Brooklyn.

ACTING PRESIDENT MEIER: Senator Stafford.

SENATOR STAFFORD: Move the nominations, please.

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

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The

nominees are confirmed.

Senator Morahan.

SENATOR MORAHAN: If we could take up Calendar 804, Mr. President, at this time.

ACTING PRESIDENT MEIER: The Secretary will read Calendar 804.

THE SECRETARY: In relation to Calendar Number 804, Senator Stafford moves to discharge, from the Committee on Finance, Assembly Bill Number 11228 and substitute it for the identical Senate Bill Number 7325, Third Reading Calendar 804.

ACTING PRESIDENT MEIER: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 804, by the Assembly Committee on Rules, Assembly Print Number 11228, an act making appropriations for the support of government.

ACTING PRESIDENT MEIER: Senator Morahan.

SENATOR MORAHAN: Mr. President, is there a message of necessity and appropriation at the desk?

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

SENATOR MORAHAN: Move to accept.

ACTING PRESIDENT MEIER: All those in favor of accepting the message of necessity and appropriation signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The message is accepted.

The bill is before the house.

The Secretary will read.

THE SECRETARY: Section 33. This act shall take effect immediately.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Morahan.

SENATOR MORAHAN: Mr. President, can we take up the reading of the noncontroversial calender at this time.

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

SENATOR KUHL: Mr. President, are there some substitutions at the desk?

ACTING PRESIDENT MEIER: Yes, there are, Senator Kuhl.

SENATOR KUHL: Can we take those up before we proceed with the noncontroversial reading of the calendar? Thank you.

ACTING PRESIDENT MEIER: The Secretary will read the substitutions.

THE SECRETARY: On page 18, Senator Bonacic moves to discharge, from the Committee on Health, Assembly Bill Number 11114 and substitute it for the identical Senate Bill Number 6109, Third Reading Calendar 360.

On page 22, Senator Spano moves to discharge, from the Committee on Investigations and Government Operations, Assembly Bill Number 5821A and substitute it

for the identical Senate Bill Number 4180A, Third Reading Calendar 448.

On page 23, Senator Espada moves to discharge, from the Committee on Labor, Assembly Bill Number 2329 and substitute it for the identical Senate Bill Number 6595, Third Reading Calendar 474.

On page 24, Senator Seward moves to discharge, from the Committee on Higher Education, Assembly Bill Number 10452 and substitute it for the identical Senate Bill Number 6686, Third Reading Calendar 508.

On page 29, Senator Volker moves to discharge, from the Committee on Local Government, Assembly Bill Number 2149A and substitute it for the identical Senate Bill Number 6215, Third Reading Calendar 573.

On page 42, Senator Maziarz moves to discharge, from the Committee on Transportation, Assembly Bill Number 11018 and substitute it for the identical Senate Bill Number 6781, Third Reading Calendar 736.

On page 48, Senator Saland moves to discharge, from the Committee on Judiciary, Assembly Bill Number 10662 and substitute it

for the identical Senate Bill Number 7023, Third Reading Calendar 793.

And on page 48, Senator Hoffmann moves to discharge, from the Committee on Agriculture, Assembly Bill Number 10152 and substitute it for the identical Senate Bill Number 6526, Third Reading Calendar 801.

ACTING PRESIDENT MEIER: Substitutions ordered.

Senator Morahan.

SENATOR MORAHAN: Mr. President, there will be an immediate meeting of the Civil Service and Pensions Committee in the Majority Conference Room.

ACTING PRESIDENT MEIER: Immediate meeting of the Civil Service and Pensions Committee in the Majority Conference Room.

Senator Morahan.

SENATOR MORAHAN: Mr. President, will you proceed with the reading of the noncontroversial calendar.

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

THE SECRETARY: Calendar Number 121, by Senator Skelos, Senate Print 123, an act to amend the Penal Law, in relation to establishing the Class E felony of unlawful procurement.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 221, by Senator Morahan -

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 349, by Senator Farley, Senate Print 6392, an act to amend Chapter 729 of the Laws of 1994

relating to affecting.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 435, by Senator Skelos, Senate Print 5656, an act to amend Chapter 549 of the Laws of 2000 amending the Civil Rights Law.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT MEIER: The bill

is passed.

THE SECRETARY: Calendar Number 496, by Senator DeFrancisco, Senate Print 6671A, an act to amend the Public Housing Law, in relation to creating.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 514, by Senator Marcellino, Senate Print 6567, an act to amend the Environmental Conservation Law, in relation to the authority.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 544, by Senator Seward -

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 546, by Senator Stafford -

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 633, by Senator Saland, Senate Print 3977, an act to amend the Family Court Act and the Domestic Relations Law, in relation to violations.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 90th day.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 688, by Senator lack, Senate Print 1916, an act to amend the Real Property Law, in relation to requiring.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 90th day.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 689, by Senator Alesi -

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 694, by Senator Bruno -

SENATOR PATERSON: Lay that aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 721, by Senator Leibell, Senate Print 6703, an act authorizing certain towns to implement.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 726, by Senator Bruno, Senate Print 6624, an act to amend the State Finance Law, in relation to changing the state fiscal year.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 11. This act shall take effect upon the effective date of the amendments to the Constitution contained in a concurrent resolution.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

SENATOR DUANE: Lay it aside, please.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 736, substituted earlier today by the Assembly Committee on Rules, Assembly Print Number 11018, an act to amend the Highway Law, in relation to certain trail designations.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 745, by Senator Kuhl, Senate Print 1893, an act to amend the Education Law, in relation to services.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 780, by Senator Leibell, Senate Print 7141, an act to amend the Retirement and Social Security Law, in relation to the employment of retired persons.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 782, by Senator Bruno -

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT MEIER: Lay it aside.

THE SECRETARY: Calendar Number 783, by Senator Hoffmann -

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 784, by Senator Morahan -

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number

785, by Senator Volker -

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 788, by Senator DeFrancisco, Senate Print 3339, concurrent resolution of the Senate and Assembly.

SENATOR HEVESI: Lay it aside, please.

ACTING PRESIDENT MEIER: Lay the resolution aside.

THE SECRETARY: Calendar Number 790, by Senator Morahan -

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT MEIER: Lay it aside.

THE SECRETARY: Calendar Number 794, by Senator Lack, Senate Print 7318, an act relating to prohibiting foreclosure.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 802, by Senator Bruno, Senate Print 7, an act to amend the State Finance Law, in relation to -

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT MEIER: Lay it aside.

THE SECRETARY: Calendar Number 803, by Senator Stafford, Senate Print 1585A, an act to amend the State Finance Law and the Legislative Law.

ACTING PRESIDENT MEIER: Senator Morahan.

SENATOR MORAHAN: Mr. President, is there a message of necessity at the desk?

ACTING PRESIDENT MEIER: Yes, there is.

SENATOR MORAHAN: Move to accept.

ACTING PRESIDENT MEIER: All those in favor of accepting the message of necessity signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The message is accepted.

The bill is before the house.

Read the last section.

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

SENATOR DUANE: Lay it aside, please.

ACTING PRESIDENT MEIER: Lay it aside.

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

SENATOR MORAHAN: Mr. President, can we have the controversial reading of the calendar at this time.

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

THE SECRETARY: Calendar Number 221, by Senator Morahan, Senate Print 6106, an act to amend the Volunteer Firefighters Benefit Law, in relation to enacting.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MEIER: Senator Morahan, an explanation has been requested of Calendar 221 by Senator Paterson.

SENATOR MORAHAN: Thank you, Mr. President.

This bill would limit the liability of fire departments in districts that donate surplus equipment to rural, needy volunteer fire companies, provided that the equipment still meets the original specifications for safety and use.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Mr. President, if Senator Morahan would yield for a question.

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

SENATOR MORAHAN: Yes, Mr. President.

ACTING PRESIDENT MEIER: The

sponsor yields.

SENATOR PATERSON: Mr. President, I'm wondering what Senator Morahan feels about the safety of the firefighters and any that would come in contact with this equipment. This seems obviously like a noble act to do this, but still there's got to be some remedy for individuals who might be injured because of faulty equipment.

We certainly welcome and encourage the donation of this type of equipment, and certainly there's got to be some kind of incentive we could provide for this. But to close the doors of the court in case there's any kind of injury because of some product liability, in my opinion, is transferring a harm away from one party and moving it to another.

SENATOR MORAHAN: Mr. President, I understand the question and the thrust of the question. This bill is designed to encourage the ability of rural fire companies to attract donations and those sorts of equipments they need.

First of all, as to the safety, the

equipment would have to be recertified by a certified certifier, I guess, who can attest to the condition and to the -- that the equipment meets the original specifications.

It still leaves the right for anyone to sue, especially in the case of any negligence or gross negligence that may be indicated in the donation process. It does have some exemptions. Manufacturers would still be held to the same liability standards as others.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Mr. President, on the bill.

I think Senator Morahan is trying to do a good thing, and I endorse it. But I think that perhaps, off the top of my head, some sort of tax incentives for the companies that donate equipment would be a better way to do this.

Obviously, most equipment that's used in the firehouse is certifiable. And 98, 99 percent of the time, it's fail-safe. But there are those occasions where it's not the

case. And what we don't want to do is to limit the rights of the injured, who in this case could be firefighters, from seeking a remedy. And I think nobody here would want it to come to that end.

So I can't support the bill, although I think the concept is terrific. And perhaps there's just another way to do it.

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

Debate is closed.

Read the last section.

THE SECRETARY: Section 3. This act shall take effect in 30 days.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 221 are Senators Dollinger, Duane, L. Krueger, Paterson, and Sampson. Ayes, 52. Nays, 5.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Dollinger.

SENATOR DOLLINGER: Mr.

President, could I have unanimous consent to be recorded in the negative on Calendar Number 804, please.

ACTING PRESIDENT MEIER: Without objection, Senator Dollinger will be recorded in the negative with regard to Calendar 804.

Senator Breslin.

SENATOR DOLLINGER: Thank you, Mr. President.

SENATOR BRESLIN: Yes, Mr. President, I request unanimous consent to be recorded in the negative on Calendar Number 221.

ACTING PRESIDENT MEIER: Without objection, Senator Breslin will be recorded in the negative on Calendar 221.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 544, by Senator Seward, Senate Print 6558A, an act to amend the Insurance Law, in relation to the payment of first-party benefits.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MEIER: Senator Seward, an explanation has been requested of

Calendar 544 by Senator Paterson.

SENATOR SEWARD: Certainly, Mr. President.

This legislation before us is a complement to the bill which passed earlier today, by Senator Skelos, in terms of making it a felony to act as a so-called runner. It's all directed -- Senator Skelos's bill, this particular bill -- all directed toward attacking the problem of no-fault fraud, which has grown in New York to be about a billion-dollar problem. And legitimate auto insurance policyholders are paying this extra billion dollars a year because of fraud.

We have seen information which leads us to conclude that approximately $124 per auto insurance policy is added on as extra expense because of the fraud problem. And that's going to grow to an estimated $300 if no action is taken. And this legislation is the type of action which is needed to fight the fraud problem that we have seen.

Now, specifically, the bill does a number of things. It enhances the opportunity to challenge fraud in terms of recent court

decision. Insurers must now pay or deny a claim within 30 days of receipt, and they may not use fraud as a defense for not paying the bill unless alleged within that 30-day time period. This bill would allow insurers to raise the defense after this 30-day period.

Now, I am as concerned as anyone to make sure that legitimate claims are paid. And the law calls for a penalty of 2 percent interest per month, as well as attorney's fees, for securing payment for overdue claims should they be legitimate.

The bill also would decertify health-care providers who have been involved in fraud, and it would allow the Superintendent of Insurance, in consultation with the Commissioner of Health as well as Education, to come up with regulations to oversee this process.

But basically, we would conclude that health-care providers should not be allowed to be paid through the no-fault program if there has been professional misconduct or incompetency, knowingly making false statements on medical reports in

conjunction with no-fault claims, and refusing to appear before the commissioners to answer these charges.

All of these types of activities could lead a health-care provider to be decertified, and so they would not be paid under the no-fault program.

The bill also would increase the penalties for insurance fraud. We're hoping here to, in the law, by increasing the penalties, to make the statement that we are no longer going to tolerate insurance fraud because it's costing everyone. We're going to increase the penalties, hoping that that will help entice the interest of prosecutors and law enforcement officials in pursuing these cases.

Two other provisions, Mr. President. The bill would create a temporary panel on medical care and treatment under no-fault to study the issue further and to come up with ways to further improve the system by not only reducing fraud and abuse but also eliminating disputes and speeding up payments of legitimate claims.

And also, and finally, Mr. President, the bill specifically states that any of the savings that are derived from the provisions in this bill by fighting fraud would be required to be passed on to the consumer, saving the auto insurance policyholders of our state some money when they go to purchase auto insurance policies.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: I yield to Senator Gentile.

ACTING PRESIDENT MEIER: Senator Gentile.

SENATOR GENTILE: Thank you, Mr. President. Thank you, Senator Dollinger.

I want to commend Senator Seward on this bill and his attempts to address the growing problem of auto insurance fraud. Certainly this bill does address those issues, with expanding insurers' ability to challenge fraud, increasing penalties for fraud, and prohibiting no-fault payments to health-care providers who engage in fraud.

However, I believe that we can do

better and have a more comprehensive bill, and for that reason, Mr. President, I believe I have an amendment at the desk.

ACTING PRESIDENT MEIER: Yes, you have an amendment at the desk. Would you like to explain your amendment?

SENATOR GENTILE: I ask that we waive the reading and that I be allowed to explain my amendment.

ACTING PRESIDENT MEIER: Reading is waived. Go ahead and explain your amendment, Senator.

SENATOR GENTILE: Thank you, Mr. President.

This amendment to the bill would provide a more comprehensive approach to the issue of fraud, not only from the perspective of the industry of the insurers, but also from the perspective of consumers and having consumers benefit more from a stepped-up approach on the fraud issue.

For example, my amendment does include some of the same provisions as Senator Seward's bill, which would allow insurers to challenge claims beyond the 30-day limit. It

also prevents no-fault payments to health-care providers that have been shown to be guilty of medical misconduct and fraudulent activities. Those are provisions that are in the main bill.

But my amendment goes further, in that -- much as Senator Skelos's bill does, earlier in the calendar today -- this amendment would make it a crime to act as a runner in auto insurance cases. And certainly that is something that we have on the calendar today through Senator Skelos's bill.

But also this amendment adds insurance fraud as a designated offense that would warrant eavesdropping or wiretapping. That is a very important law enforcement tool in the area of insurance fraud. And this amendment would make insurance fraud a designated offense that would allow for wiretapping as a law enforcement tool for our police and investigators.

But the amendment goes further because it offers the following provisions to protect consumers. Indeed, in the city of New York, motorists pay five times more than

upstate motorists in terms of insurance. Many times New York City motorists are paying more in insurance than they are in their own car payments -- for example, in Brooklyn and in Staten Island.

In Staten Island, a 28-year-old male driver in the state's assigned-risk pool could pay anywhere between $2100 and $6800 a month. In Brooklyn, a 20-year-old male driver in the risk pool could pay anywhere from $3100 to $11,000 in premiums.

Certainly, even if you're 35 years old, a 35-year-old Brooklyn driver in an assigned-risk pool can still pay anywhere between $2100 and $8100 a year just for auto insurance premiums.

Those same drivers in the city of Buffalo, the state's second largest city, can pay somewhere between $1400 and $4600. In Rochester, New York, our third largest city, that 35-year-old driver in Brooklyn, who is paying now somewhere between $2100 and $8100, in Rochester, New York, would pay anywhere from $535 to $2,000.

So you see that the motorists in

the city of New York especially need some relief.

So I think that if we're working on the fraud issue, fairness demands that if a fraud claim is made by an insurer and an independent medical examination is required, that those examinations be performed by qualified and neutral medical parties. That would be part of this amendment.

Right now we don't have that. This amendment calls for a pool of doctors appointed by the superintendent, and those doctors would be just assigned without -- in rotation. So I think that that would truly make this a neutral medical examination, and that would protect consumers, rather than have medical exams directed by the insurance company.

Also, this amendment provides for an independent audit of auto insurance profits and would revise the formula for determining the excess profits that insurance companies are now making.

Under current law, an industrywide average of over 20 percent is now necessary to

trigger a declaration of excess profits. That's outrageous. Twenty percent is an outrageous amount to trigger the excess profit.

This bill would have an independent audit -- this amendment would establish an independent audit of insurance profits so that we can bring that percentage down before we trigger the excess profit rule.

It would also establish an office of an insurance consumer advocate. The insurance consumer advocate would be the people's representative at rate increase hearings and would be the people's representative in terms of being an ombudsman for people when they have auto insurance problems. That is an important aspect of this amendment.

The amendment also provides no-fault premium reductions for consumers who take advantage of utilizing managed care.

And finally, this amendment would also provide no-fault premium reductions for those motorists who might be retired or disabled and therefore do not need to be

paying a premium for loss of earnings from work. That premium should not be charged to motorists who are either retired or are totally disabled and are not working. So therefore, this amendment would reflect and require that that portion of the premium not be charged to those types of motorists.

In effect, what this amendment does is to round out Senator Seward's bill so that not only are the insurers protected, but consumers are protected and certainly protected in ways that they will be ensured that their premiums will come down when fraud is brought under control in this state.

I think this is a bill that every senator representing the city of New York, it would be almost imperative to vote on this amendment. And certainly for the good of the whole state, every member of this chamber should vote on this amendment. But particularly those members from the city of New York, I think this is imperative.

So I offer this bill, Mr. President, and I ask for a yes vote from each member.

ACTING PRESIDENT MEIER: Those senators in agreement with the amendment please raise your hands.

THE SECRETARY: Those recorded in agreement are Senators Andrews, Breslin, Brown, Connor, Dollinger, Duane, Gentile, Hassell-Thompson, Hevesi, L. Krueger, Lachman, Montgomery, Onorato, Oppenheimer, Paterson, Sampson, M. Smith, Stachowski, and Stavisky.

ACTING PRESIDENT MEIER: The amendment is defeated.

Senator Dollinger, why do you rise?

SENATOR DOLLINGER: Mr. President, will Senator Seward yield to a question?

ACTING PRESIDENT MEIER: Senator Seward, do you yield for a question from Senator Dollinger?

SENATOR SEWARD: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: Senator, the first portion of the bill that is amended says that the payment of the interest penalty and

reasonable attorney's fees is the exclusive remedy for an insurer's failure to pay no-fault benefits within 30 days; is that correct?

SENATOR SEWARD: Yes.

SENATOR DOLLINGER: What current remedies are available beyond the payment of the reasonable attorney's fees and the interest penalty that we are now precluding people from obtaining?

SENATOR SEWARD: Mr. President, since this involved a recent court decision, I'm seeking the advice of counsel.

SENATOR DOLLINGER: I think I know the decision. That's why I'm asking.

SENATOR SEWARD: Mr. President, the answer is that the ability to raise the defense after the 30-day period in terms of the fraud, possible fraud.

SENATOR DOLLINGER: But through you, Mr. President, if Senator Seward will continue to yield.

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

SENATOR SEWARD: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: In that case that you're referencing, Senator Seward, and in other cases, hasn't it actually been the case that there are other forms of damages that could be assessed against insurers for willful, intentional, and deliberate failure to promptly pay the no-fault insurance benefits, either the medical claims or the lost wage component?

And don't those damages -- can't they, under New York law, include punitive damages in some cases?

SENATOR SEWARD: Mr. President, I do not believe so.

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

ACTING PRESIDENT MEIER: Senator Seward, do you yield?

SENATOR SEWARD: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: Well, Senator

Seward, then I'm curious as to why we're making it an exclusive remedy, which seems to suggest that we're cutting off some other remedy that currently exists under state law.

Why would we need this amendment? If the statute now provides that interest and reasonable attorney's fees are available as a damage award, why are we now saying that they're exclusive?

I assume because a court somewhere has assessed some other form of damage against insurers who deliberately, intentionally, and willfully fail to pay within 30 days.

SENATOR SEWARD: Mr. President, the -- we're playing a bit with words here. The other form of defense would be the fact that the insurer was unable to raise the defense of fraud after the 30-day period.

Now, we are saying now that the - that that is possible to be done after the 30-day period. However, should that not be the case, that there are penalties to the insurer, that being the 2 percent per month interest, as well as attorney's fees, for any claim not paid within -- any legitimate claim

not paid within the 30-day period.

And that is directed toward making sure that only those cases and those claims where there's really fraud involved are the ones that go beyond the 30-day period.

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

ACTING PRESIDENT MEIER: Senator Seward, do you yield?

SENATOR SEWARD: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: I'm just confused. I understand the assertion of the fraud defense, and I understand that your bill says that the current law, which provides that it must be asserted within 30 days, is now being extended to say that at some point after the 30 days they would still have the right to raise the fraud defense.

But that isn't quite the focus of my question, Senator Seward. What I'm trying to find out is, under current law, you can get reasonable attorney's fees and the 2 percent

per month payment penalty. There is no language under the current law that says that's an exclusive remedy.

I assume that the reason why you're putting the exclusive language in this bill now is because some court has imposed other remedies against insurers who fail to pay on time.

Is it your intention to cut off punitive or other damage claims against insurers by virtue of this amendment?

SENATOR SEWARD: Mr. President, it is certainly not our intent, nor does this language cut off any of the other available punitive damages.

Our intent here is to respond to the court decision, which said that the claim had to be paid or denied within a 30-day period, even though many times the claims were 180 days old, when it came to the medical claims.

And this change that we are suggesting here is merely to respond to the court decision and put the language back and the process back as it existed prior to the

court decision. Which, since the court decision, I might add, fraud has been increasing. It's one of those circumstances which I believe has contributed to more fraud.

And we are intending to just go back to the way it was prior to the court decision, to have legitimate claims paid and, where there is fraud involved, or alleged fraud, to give the insurers more time to root out the fraud, gather the facts, and make a determination.

SENATOR DOLLINGER: Through you, Mr. President, if Senator Seward will yield just to one other question.

ACTING PRESIDENT MEIER: Senator Seward, do you yield for one more question?

SENATOR SEWARD: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DOLLINGER: Senator, your bill says that the failure of an insurer to make a timely payment after a proof of claim has been filed shall not preclude such insured -- and I'm dealing with lines 2 and 3 on page 2 -- shall not preclude such insurer

from issuing a denial or asserting a defense after the 30-day period has elapsed.

Is it your intention that the only defense that could be alleged after the 30-day period is a defense based on fraud? Because this suggests that any defense or any denial is possible after the 30-day period.

The way I understand your response to the questions, you're saying that if they find out that there's fraud after the 30-day period, they shouldn't be precluded from attempting to cut off the benefits, which I agree with.

But this language suggests that it's any defense or any reason for a denial, not just fraud. And that's what I'm trying to find out. Are you specifically making it exclusive just to fraud as a basis for denial after 30 days, or any reason for denial?

SENATOR SEWARD: Well, Mr. President, obviously because the fraud issue is the large one, the language would suggest that obviously fraud is the big one. However, the language would not preclude other defenses.

For example, if it became known that the claimant was no longer a policyholder, for example, that coverage had been dropped, for some reason that became known after the 30-day period, those types of other circumstances could be used as a defense, not exclusively a fraud.

However, obviously, fraud is the big one.

SENATOR DOLLINGER: Just a final question, Mr. President, if Senator Seward will yield.

SENATOR SEWARD: One more final question, Mr. President.

ACTING PRESIDENT MEIER: Senator Seward yields.

SENATOR DOLLINGER: The answers always prompt another one, Senator Seward.

If there's a payment that is made and an insurer subsequently issues a denial or a contest of the payment, does this bill authorize the insurer to go back and recover that payment from the recipient of the no-fault benefits?

SENATOR SEWARD: Mr. President,

the insurer would then be able, under those circumstances, would then be able to seek repayment if in fact the claim was paid inappropriately.

In other words, if fraud or some other circumstance arose that would have led to the facts -- would point to the fact that the claim was not legitimately paid. Or appropriately paid, I should say.

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

ACTING PRESIDENT MEIER: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I appreciate Senator Seward's responses to my questions. And I'll explain my concern.

And frankly, even as I stand here right now, I'm still not sure how I'm going to vote.

But I'm always nervous, Mr. President, when we tinker with the no-fault insurance law. And the reason for that is, as many people -- certainly those who were here, Senator Marchi, Senator Stafford, who were here when we struck the compromise on the

no-fault statute in the mid-1970s, what we agreed was that the people of the State of New York would give up their right to sue for certain small claims, certain -- the old whiplash injury, which, as Mr. President knows, was sort of one of the common claims that seemed to clutter our courtrooms.

What we did is we reached a compromise. We said you can't sue unless you stain a serious physical injury. But irrespective of whether you've been seriously injured or not, we will guarantee prompt payment of your lost wages, with certain limitations, and all of your medical bills that stem from the automobile collision.

That was the compromise that we reached in order to encourage insurers to make sure that the payments were promptly made. Since they've given up their right to sue, they could no longer get pain and suffering, we guaranteed them that they'd get their medical payments and their income subsidies as quickly as possible within 30 days.

This bill -- and I should add, in order to require prompt payment, we said, as a

matter of state policy, to make that promise of quick payments for medical expenses and income loss, we said they've got to pay it in 30 days and, if they don't, they can sue for attorney's fees and a 2 percent per month interest payment.

At that time we concluded that that was the incentive. Let people sue for attorney's fees and interest -- that will keep the insurers honest -- and make sure that they promptly pay or deny.

What this bill now seeks to do - and it's troubling, Mr. President -- is, number one, it suggests that the 2 percent penalty and reasonable attorney's fees have become the exclusive remedy for someone in that situation.

My guess is that that language stems from the fact that somewhere a jury has sat down and concluded, wait a second, the irresponsible conduct of an insurance company was so intentional, so deliberate, caused such harm to the plaintiff that we've decided we're not only going to give them reasonable attorney's fees, we're not only give them the

2 percent penalty, we're going to give them some form of punitive damages.

And my guess is that somewhere in this state an insurance company was hit with punitive damages for deliberate and intentional, if not reckless, disregard of their obligations under the no-fault law. My guess is that this language is designed to eliminate any future penalties in terms of punitive damages for breach of the insurance contract.

I don't know -- Senator Seward said he wasn't necessarily aware of that, but my guess is that somewhere someone got socked with punitive damages because they did something outrageous, and this bill will now eliminate the risk or liability for punitive damages.

The other concern I have, Mr. President -- again, I'm still not quite sure what that means and how it works -- Senator Seward said that we weren't going to eliminate punitive damages. I hope that's the case. I'm not so sure that that's what this says.

My second concern, Mr. President,

is that I believe an insurer should have the right to raise the fraud defense at any time. If you're aware, even after the 30 days, that someone has committed fraud, you shouldn't be making their medical payments and you shouldn't be precluded from raising that defense.

I'm concerned, however, that this seems to suggest that any denial and any defense can occur at any time and you don't even have to allege fraud, you can just say the bills weren't presented on time or some other basis for a defense or denial.

Again, Senator Seward has suggested that that's not the intention, that the intention is to focus on fraud. I'm not quite clear in my own mind that that's the case.

This bill has other things to commend it, and I'm always reluctant to take two little pieces up and vote against it. But I'm concerned that we're in essence backtracking on the agreement we made with the people of this state when we passed the no-fault law to promise them quick payment of their medical expenses, quick payment of their

lost income, and that what we're doing is suggesting to the insurance industry: Well, we required you to do it in 1974 when we passed the no-fault law, but here we are thirty years later, we've decided we weren't really as serious about prompt payment as we subjected we might have been in 1974.

Reluctantly, Mr. President, I'm probably going to vote against this.

ACTING PRESIDENT MEIER: Senator Hevesi.

SENATOR HEVESI: Thank you, Mr. President. Would the sponsor please yield?

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

SENATOR SEWARD: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HEVESI: Thank you, Mr. President.

I'm interested to know -- in the sponsor's bill we are creating a new classification of a crime, aggravated insurance fraud in the first and second

degree -- if the sponsor could indicate what are the current penalties for the four degrees of insurance fraud under current law and what does his legislation increase that to.

SENATOR SEWARD: Mr. President, the legislation would cut in half the value of the property obtained through a fraudulent insurance act in order to be convicted of insurance fraud. So in terms of the penalties involved, you can refer to existing law.

The change that we make here is by -- for example, insurance fraud in the fourth degree, which is a Class E felony, the value would be reduced from $1,000 down to $500, and so on up through the various degrees and classes of felony. The value of the property involved that is obtained through a fraudulent act is cut in half. That's what this bill does.

And of course the corresponding penalties which are currently in the law would be -- would apply as well.

SENATOR HEVESI: Mr. President, would the sponsor continue to yield?

ACTING PRESIDENT MEIER: Senator

Seward, do you continue to yield?

SENATOR SEWARD: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HEVESI: Thank you, Mr. President.

I understand that. I'm curious to know -- you have attempted here, apparently, to crack down on recidivists in the area of insurance fraud by creating this aggravated category for those who have committed this crime over a certain monetary threshold at least once in the last five years. My question to you is, what is the current penalty? It is an A misdemeanor? Is it an E felony? And what do you move it to by creating this aggravated condition?

SENATOR SEWARD: There is currently one degree of aggravated insurance fraud, and we would add two more, a C and a B. For the C and the B felony.

SENATOR HEVESI: Mr. President, would the sponsor continue to yield?

ACTING PRESIDENT MEIER: Senator Seward, do you yield?

SENATOR SEWARD: Certainly.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HEVESI: We're moving a C felony for insurance fraud in the first degree -- if the individual now is convicted of aggravated insurance fraud in the first degree, it moves to a B felony?

SENATOR SEWARD: I wonder if the Senator could repeat the question. What specifically is the question involved?

SENATOR HEVESI: Mr. President, I am trying to determine -- and there is a point to this, because I am sure some percentage of that billion dollars -

ACTING PRESIDENT MEIER: Excuse me, Senator Hevesi.

If you have a conversation that is necessary, please take it outside the chamber.

Senator Hevesi.

SENATOR HEVESI: Thank you, Mr. President.

I am trying to determine, because of the billion-dollar a year insurance fraud issue that we're discussing now -- and I'm not

sure how we get to that billion-dollar figure -- some very large percentage of that dollar figure of insurance fraud is committed by repeat offenders.

Senator Seward, I believe, has appropriately attempted to tackle that issue of recidivism in this area, and I'm looking to see whether his increased penalties for this will have a deterrent effect.

But in order to do that, I need to know first what are the current penalties for insurance fraud in the first degree, second degree, third degree, and fourth degree, and what happens if somebody is a recidivist and is convicted under Senator Seward's new aggravated insurance fraud in the first and second degrees. That's my question.

SENATOR SEWARD: Well, Mr. President, the penalties would obviously go up as the degree of insurance fraud is increased, as long as there are two occurrences within five years.

SENATOR HEVESI: Okay. Let me move on, Mr. President, to one other area, if the sponsor would continue to yield. And I'll

check the print before I vote on this.

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

SENATOR SEWARD: Yes, I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HEVESI: Thank you.

Through you, Mr. President, Senator Gentile's amendment I thought had a number of good provisions, one in particular, which was the provision where the 20 percent allowable profit for insurance companies will be examined by an independent auditor and hopefully reduced.

My question to you is the following, Senator Seward. If your bill is wildly successful beyond our imaginations, beyond our wildest imaginations, how will we know that there will be a commensurate reduction in auto insurance rates?

And the reason I pose this question -- well, you know, let me just ask the question. How do we know we're going to see a reduction in insurance rates if we are successful with your bill cracking down on

insurance fraud?

SENATOR SEWARD: Mr. President, our bill states that any of the savings derived from this act will be required to be passed on to the consumer in the form of savings. And obviously that is the responsibility of the Insurance Superintendent to calculate the savings and then to require them to be passed on to the consumer.

On the issue of excess profits, I would say this. The -- that really is not an issue at this particular time. I am -- no one is suggesting that the increase in the auto insurance premiums have been the result of excess profits on the part of the insurance companies in this particular cycle.

But we do have, in place now, excess profit legislation. And I think that it's -- obviously that's something that we would continue to look at should that be an issue. It currently is not.

And that is the responsibility of the Insurance Superintendent, to make sure that the savings that are derived from this legislation or Senator Skelos' runner bill

that we passed or the other activities on the part of the Insurance Department -- fraud is being fought on a number of fronts. They've just changed the Regulation 68, which is a fraud-fighting administrative piece that they have done.

All of these initiatives I think are positive and go to the heart of trying to save money for the consumer. And it's the responsibility of the Insurance Superintendent, clearly stated under our legislation, to pass on those savings to the consumer. As well as, in the area of excess profits, for them to review those as well.

I'm open to discussing that, you know, under different circumstances, but that really is not the issue in terms of high auto insurance rates at this time.

SENATOR HEVESI: Mr. President, one final question for the sponsor. I was going to end there, but based on his question, one final question.

ACTING PRESIDENT MEIER: Senator Seward, do you yield?

SENATOR SEWARD: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR HEVESI: Thank you, Mr. President.

Do you know how much -- what was the profit level of auto insurance carriers in New York State over the past two or three years, what was it, and which way it's been trending? Because I do believe it is a most important issue, and it relates directly to this.

SENATOR SEWARD: Mr. President, I could not quote, you know, the profit margin for various companies. But I will say this. Most of the companies actually lost money last year. And believe me, if -- on their auto business. And that's why you've seen a contraction and hardening of the market here in New York.

And so obviously, if that was a factor at this time, we would be open to address it. It is not a factor in terms of what we're attempting to do under this bill, which is to address the real issue at this time, and that is fraud.

SENATOR HEVESI: Thank you.

On the bill, Mr. President.

ACTING PRESIDENT MEIER: Senator Hevesi, on the bill.

SENATOR HEVESI: Thank you, Mr. President.

Maybe I'm speaking out of turn here. But if Senator Gentile's information is correct, and I've always known it to be, if insurance companies are -- notwithstanding this bill, if insurance companies are allowed to make a profit of 20 percent irrespective the gains that we make -- again, I said notwithstanding this bill, the provisions of this bill -- even if you drive down, for example, auto theft rates, even if you drive down fraud, there still could be allowable increases in insurance premiums up to that 20 percent.

And in fact, Mr. President, I believe that is exactly what has happened over the past ten years. And the example of this that I would offer is that in the early 1990s, when insurance premiums in New York State were exceptionally high, we weren't hearing what

we're hearing today. I don't mean today on this day, I mean generally now. Today we're hearing that it's because of insurance fraud, the billion dollars a year, that's why premiums are so high.

What did we hear ten years ago? Auto theft. That's what we heard ten years ago. And what happened, Mr. President? Auto theft was driven down unbelievably. In my own Senate district, in the five or six police precincts, auto theft is down 55 to 60 percent. And we did not see a commensurate reduction in premiums. We didn't see it.

And I suspect that it's because of this issue that Senator Gentile has articulated that absolutely needs to be examined, that was in his amendment but is not in this bill.

And in terms of the benefits of Senator Seward's potential reductions, if he is successful -- we are successful, because I'm going to vote for this -- in cracking down on insurance fraud, that money is supposed to be filtered back into reductions in premiums, I -- to be honest, I think that's terrific; I

don't know how you could possibly quantify that.

If one of the criminal penalties that we have increased here results in somebody going to jail for a longer period of time, what's the dollar figure that will reduce my auto insurance premium on that? I don't understand.

And to be honest with you -- and maybe somebody can correct me. I am no expert on this -- but the billion-dollar-a-year figure that we keep hearing, I don't understand this. If we know exactly how much it is and we know exactly where it's coming from, and there are penalties right now in the law that, although not sufficient, could be increased for recidivism, but in Senator Seward's bill we don't increase, I believe, anywhere from a first-time offense -- then why is it, Mr. President, that we have not seen any reductions, and why is it that everybody just accepts this billion-dollar figure about insurance fraud? And, by extension, allows the premiums just to continue upwards and upwards and upwards?

I don't believe it, is what I'm saying, Mr. President. I don't believe it.

And this situation we have now where a 20 percent profit is allowed - listen, if this was Time Warner/AOL, if this was some other big company, fantastic. Go get yourself 80 percent profits, 150 percent profits. But when the State of New York mandates that people have to have this coverage and if they don't have it they can't drive, and if they can't drive they can't take their kids to school or get to work, then we're going to be the ones who need to determine whether or not they should be achieving profits that are hurting people badly. And I believe they are now.

So I'm not disputing the fact that there's insurance fraud. There is. I'm not disputing the fact that we need to drive it down. We do.

What I'm disputing here and suggesting that we have not addressed -- pand Senator Gentile tried to address it -- is we need to take a close look, a close-scrutiny examination of the profits of insurance

companies at the same time we're looking at this issue of insurance fraud. Because these issues are linked, inextricably linked.

And the fact that auto theft is down in New York City, dramatically, and comprehensive coverage is not down tells me that this is an insurance industry that says: It's costing us less now because we're paying out less claims on auto theft -- but we are allowed to make a certain profit and we're nowhere near that profit, so we're going to increase the amount of money that we're charging in premiums.

If there's some other explanation for it, Mr. President, I'd like to hear it. But I'm going to support Senator Seward's bill. I support Senator Gentile's very well thought out and comprehensive amendment. Something needs to be done here, because this is a tremendous problem.

Thank you.

ACTING PRESIDENT MEIER: Senator DeFrancisco.

SENATOR DeFRANCISCO: You know, insurance is an absolute necessity for most

people. It's definitely a necessity if you want to drive. And there's no question that there's insurance fraud that's committed by individuals who actually purchase insurance policies. There's no question about that.

There is no way, as Senator Hevesi says -- and I agree 100 percent -- that anyone can quantify the number at $1 billion, $10 billion or whatever billion dollars. It's a number that gets people's attention so that certain relief that carriers want will happen. It's as simple as that.

The fact of the matter is what bothers me is not only the concept about auto theft ten years ago, but if anyone was around -- many of you were obviously around when we repealed Doe versus Dow because of all this high cost of workers' compensation. And this case, insurance companies were telling us, is the real reason workers' compensation rates are going off the wall.

Well, we bought it, and workers' compensation rates went down for a while. Now they're creeping up all over again. It obviously wasn't that case that did it.

Secondly, we're all inundated by contractors right now, with the cost of insurance for contractors because of these terrible bills, 240 and 241 of the Labor Law. And we're told that, coincidentally, every insurance carrier in the state, starting last year and coming on to this year, has to raise their rates an identical amount or not even provide insurance.

It gets people's attention. Contractors are beating all of us up on the theory that it's this law that's causing insurance rates to go up.

Well, I've done some research in other states where these things have happened as well, and there's some research that I didn't bring with me -- I was going to -- that basically shows there's an incredible correlation between when the stock market goes down and the insurance industry's investments aren't as terrific as they used to be, then all of a sudden there's fraud, there's needs to increase policy limits beyond imagination.

And it just so happens we went through one of the downers of the stock

market.

We're not obligated to make sure that insurance companies invest properly. We're not bailing anybody else out who lost money in the market and their profits are down. And we've got to look at these bills very, very carefully.

And what also bothers me about this bill an awful lot is if you look at the definition of "fraudulent insurance act" in the Penal Law, it talks only about policyholders who act in a fraudulent fashion. Nothing is said about the fact where an insurance company willfully, intentionally denies coverage, knowing that they're entitled to coverage, whether it be auto insurance or whether it be fire insurance or whatever insurance policy.

In other words, we are to presume that businesses always operate in good faith and there's no remedy if they don't. And the remedy against insurers if they don't pay under this bill is a remedy that simply says that you pay interest plus attorney's fees only. Even if they're acting intentionally or

wrongfully. That's the exclusive remedy.

How is that a balanced approach to the consumer or to anybody this in state?

How can you vote against a bill that wants to cut back fraud? Well, I wasn't intending to do it, but I'm going to vote against it today for those reasons. Because I think this is not a balanced bill, I don't think the numbers are accurate, nor can anyone come out with numbers unless you know what fraud is already happening. And how can you quantify that if you haven't caught these people?

And secondly, I think it's -- the major reason for all of these insurance crises right now are loss of profits. Not from fraud, not from theft, not from this, not from that, not from an increase in claims all of a sudden under 240 and 241 of the Labor Law. We've had that bill in effect forever. Why this year? It's following a stock market decline, a big-time decline, and insurance companies' profits are down.

Well, get somebody better to manage your investments. Don't ask us to keep

raising premiums or to make penalties on consumers when consumers are the ones that buy policies for a reason, and the reason is for protection. Not to be given more and more rules that make it more and more difficult to get your coverage and then later on you have no defenses except a minor defense. When, if you're wrong and you're doing something wrong, there's big-time offenses now -- B, C felonies.

So there's got to be some balance in the system. There's got to be some realization that there's a correlation between things other than fraud and increased rates.

And I am going to vote no for that reason, until we get balanced bills or until we get another bill that correspondingly finds that there's such a thing in the state of New York as insurance fraud by companies intentionally and wrongfully withholding payments from their claimants.

And when we get a balanced bill, then everybody should be involved with being -- everybody should be punished for fraud, no matter what side of the issue you're

on.

Thank you.

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

Debate is closed, then.

Read the last section.

THE SECRETARY: Section 12. This act shall take effect immediately.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

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

SENATOR BRESLIN: Thank you, Mr. President.

I applaud Senator Seward and his staff as well as Senator DeFrancisco and Senator Hevesi and Senator Dollinger for raising serious and valid questions concerning the legislation, and particularly Senator Gentile for his amendments.

This is a start. We're talking about an element of insurance, fraud. Is this the final answer? Absolutely not. Do we need the other house? Yes. Should this debate go

on to include all of the other elements of car insurance and auto insurance? It really should, because, as you know, we now approach New Jersey as the highest state. And this shouldn't be -- this shouldn't be -- or - you're smiling. We may even have exceeded New Jersey over the last 24 hours.

This should be something that we quickly get together on, to not only do the piecemeal approach to fraud but to come together to have a full package on auto insurance.

But because it's a start, I'll vote yes on this piece of legislation.

Thank you, Mr. President.

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

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 544 are Senators Andrews, Brown, Connor, DeFrancisco, Dollinger, Duane, Hassell-Thompson, Montgomery, Onorato, Paterson, Sampson, Schneiderman, A. Smith, M. Smith, Stavisky. Also Senator L. Krueger.

Ayes, 43. Nays, 16.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Malcolm Smith.

SENATOR MALCOLM SMITH: Yes, Mr. President. I request unanimous consent to be recorded in the negative on Calendar 221.

ACTING PRESIDENT MEIER: Without objection, Senator Malcolm Smith will be recorded in the negative on Calendar 221.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Yes, Mr. President. I would also request unanimous consent to be recorded in the negative on Calendar 221, Senate 6106.

ACTING PRESIDENT MEIER: Without objection, Senator Schneiderman will be recorded in the negative on Calendar 221.

Senator Stavisky.

SENATOR STAVISKY: Mr. President, I too wish to be recorded in the negative on Calendar 221, Senate 6106.

ACTING PRESIDENT MEIER: Without objection, Senator Stavisky will be recorded in the negative on Calendar 221.

Senator Farley.

SENATOR FARLEY: Thank you, Mr. President.

On behalf of Senator Larkin, I wish to place a sponsor's star on Calendar 741.

ACTING PRESIDENT MEIER: So ordered.

SENATOR FARLEY: On behalf of Senator Marcellino, Mr. President, on page 45 I offer the following amendments to Calendar 767, Senate Print 7091. That's on behalf of Senator Marcellino.

ACTING PRESIDENT MEIER: The amendments are received and adopted.

SENATOR FARLEY: On behalf of Senator Hoffmann, on page 34 I offer the following amendments to Calendar 659, Senate Print 4089A, and I ask that that bill retain its place.

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

SENATOR FARLEY: On behalf of Senator LaValle, on page 28 I offer the

following amendments to Calendar 561, Senate Print 3636, and I ask that that bill retain its place.

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

The Secretary will continue to read.

THE SECRETARY: Calendar Number 546, by Senator Stafford, Senate Print 6577, an act to amend the Public Officers Law, in relation to permitting.

SENATOR DOLLINGER: Explanation, please.

SENATOR STAFFORD: Mr. President, many of us have thought long and hard about this bill. This bill was introduced at the request of the Ethics Commission.

Now, what this bill will do, it will make it possible for individuals to contract with the state in the event of an emergency. But they would not be able to do this without this legislation.

Now, I again, like others here in

the chamber, have contemplated this legislation. And of course it would only go in effect or be in effect if the Governor determined a state of emergency. And all of us in this day and age understand a state of emergency, especially after this last fall.

Also, those of us who live in the North Country understand when it is necessary to have services where this bill might kick in: the ice storm. And before last weekend this memo was written, and it must have had something in mind, because it includes an earthquake. We had an earthquake, 5.1.

Now, I remember the earthquake of 1941, where chimneys were knocked down. I remember the earthquake in 1983 which was strong enough so that you couldn't leisurely get out of bed, it actually held you, the way it was pushing you. But this one, it seemed to come right from under Lake Champlain and go right into the mountains. And ladies and gentlemen, you took note. You took note.

There have been a number of problems since then, millions of dollars of damage. Fortunately, no one was -- we hope -

so far we know of no one who was hurt. We have a rural area, and sometimes it takes time to get the entire area covered. However, some of you might have seen one of the roads that was buckled. And in other words, very, very serious.

So I explain to you that in a case of emergency I would suggest that a commissioner, after an emergency is declared by the Governor, should have this opportunity. Because time is of the essence, and we all have experienced what emergencies are all about.

Thank you very much.

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

Senator Dollinger.

SENATOR DOLLINGER: Mr. President, I'll yield to Senator Paterson.

ACTING PRESIDENT MEIER: Senator Paterson.

SENATOR PATERSON: Mr. President, now that I have able counsel over here, I have some good questions I want to ask.

First, I'd like to thank Senator

Stafford for clearing up that disturbance about ten days ago. He said it was an earthquake, 5.1 on the Richter scale. I thought it was the implementation of the Governor's new reapportionment plan.

(Laughter.)

SENATOR PATERSON: But if the Senator would yield for a question.

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

SENATOR STAFFORD: Yes, I will.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR PATERSON: Senator, the -- a state of emergency such as the one that we in had in the state eight and a half months ago, would -- were there any circumstances in the last few months that created the notion that on September 11th that this occasion -- has this presented itself such that we were unable to utilize some needed resources that were denied us as a result of this last attack on our state and on New York City?

SENATOR STAFFORD: Yes, Mr.

President, you're going to think that I just set Senator Paterson up to throw me these softballs. It's almost embarrassing.

We found out during the ice storm, the ice storm, when there were people living in various areas in rural areas and it was impossible to get to them, that we needed an electrical contractor or a person to do some electrical work that evening, and it was impossible for him to be hired by the state to do it.

So you -- I'm explaining exactly why that was necessary. And thank you for the question.

SENATOR PATERSON: You're welcome, Senator.

If the Senator would continue to yield.

SENATOR STAFFORD: Yes.

SENATOR PATERSON: Senator, the powers granted the commissioner through the Governor's execution of this order declaring that it's an emergency situation, to me they seem overbroad. There isn't any limitation to them. There's no time period, there's not

even any mention of its relationship to the actual event.

So theoretically, couldn't this open the door for a kind of continued relationship where once the tragedy abated itself, such an ice storm, perhaps, there wouldn't be that emergency situation that would necessitate that kind of extraordinary resource?

SENATOR STAFFORD: Thank you. Mr. President, again to reply to Senator Paterson, the very essence of this is to allow flexibility. And therefore, to have any type of restrictions really defeats what we're attempting to do here.

Now, when you use the word "flexibility," or the "reasonable man" -- of course, one man's ceiling is another man's floor.

SENATOR PATERSON: I've just hit the ceiling.

(Laughter.)

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Just on the

bill, Mr. President.

ACTING PRESIDENT MEIER: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I want Senator Stafford to know that I woke up that morning of the earthquake and figured that his dream had come true: the epicenter of New York State was in Plattsburgh. I thought Ron Stafford must be happy. Even though there's an earthquake going on, somebody said the epicenter is in Plattsburgh. I figured that Senator Stafford's dream had come true and now the Battle of Plattsburgh would have its place in the nation's folklore.

Mr. President, I'm going to vote against this bill, just as I voted against the amendment we did for the Y2K problem. In the year 2000, or actually I think it was 1999, there was an amendment proposed by the State Ethics Commission at that time to allow a deviation from our very strict rules with respect to conflicts of interest when former state employees are selling their services back to the state on projects with which they had been involved.

And let me suggest, Mr. President, that this bill has more flexibility -- Senator Stafford said there was need for flexibility. This bill is not flexible, Mr. President, it is completely elastic. It is like chewing gum. It can be blown up into a bubble that surpasses our reasonable expectations.

Because this bill says that the Governor declares an emergency and then the head of the agency simply says that the former officer or employee's services are, quote, required. Required. That's all it has to say, is that they're required.

In 1999, when we created the exception for Y2K problems, we said that in order to use the services of a former state employee to deal with the Y2K problem, you had to show that they had unique or outstanding capabilities. Not that they were just required, but that there was a unique quality to that employee.

In other words, someone leaves, retires, goes to work for a consultant -- if they have some absolutely unique capability that we can't duplicate elsewhere, then we

will waive the prohibitions in our conflict of interest rules.

This law, this proposal, says that the state agency head -- not the Governor, not the Attorney General, but the state agency head -- can simply certify that they're, quote, required. Not that they're unique, not that they are indispensable, not that they can't be found elsewhere in the marketplace, but that they're simply required.

I would suggest that that's far too low a bar when we determine our rules for conflicts of interest.

Secondly, this bill has no limitation on time. This bill says that if there's a disaster declared and eight months later, long after the disaster has passed, long -- it doesn't put any limitation -- long after the disaster has passed, a state agency head can say: I need the services of this former employee, I'm going to file this form, and I'm going to waive the conflict of interest rules.

There's no interest on how long after the disaster is declared that the former

state employee can, in essence, violate our current ethics rules. I would suggest, Mr. President, that this bill has more flexibility than it needs.

And I would also suggest, Mr. President, that if there's one thing we've learned, it's whenever the danger of a conflict of interest arises, it is most acute and the public focuses its view most intently when a disaster or an emergency occurs. That's the moment when we're spending lots of government money when, quite frankly, we ought to be absolutely, totally scrupulous in who we hire.

It will not look and it will not smell good. It will not look good if at times of emergency we suddenly say: Oh, services are required, let's bring back the old team, let's all put them back on the state payroll, everybody will make a fortune. Aren't these emergencies declared by the Governor wonderful things, because all the former state employees can come back to work and make money at the taxpayers' expense.

Mr. President, there is a way to

draft this bill. I believe the State Ethics Commission has not drafted it properly. It's far too broad. Put a limitation as to time. Only in the case of emergency, only when the emergency exists should it be waived. And require that there be a finding that they're absolutely essential, they're services that can't be duplicated elsewhere in the marketplace.

When you do that, Mr. President, I'll vote for this bill. Thank you.

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

Debate is closed, then.

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 546 are Senators Andrews, Dollinger, Duane, Hassell-Thompson, and Paterson. Ayes, 55. Nays, 5.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Morahan.

SENATOR MORAHAN: Yes, Mr. President. With the consent of the Minority -- please recognize Senator Andrews.

ACTING PRESIDENT MEIER: Senator Andrews.

SENATOR ANDREWS: Yes, Mr. President. I request unanimous consent to be recorded in the negative on Calendar 221, Senate 6106.

ACTING PRESIDENT MEIER: Without objection, Senator Andrews will be recorded in the negative on Calendar 221.

Senator Morahan.

SENATOR MORAHAN: Yes, Mr. President. With the consent of the Minority, we'd like to call several bills out of order by Senator Bruno, starting with Calendar 694.

ACTING PRESIDENT MEIER: Without objection, the Secretary will read Calendar 694.

THE SECRETARY: Calendar Number 694, by Senator Bruno, Senate Print 6623A,

concurrent resolution of the Senate and Assembly proposing amendments to Article 7 of the Constitution.

ACTING PRESIDENT MEIER: The Secretary will call the roll on the resolution.

(The Secretary called the roll.)

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

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

We're about to see, I think, a whole slew of budget reform bills. Although it strikes me that this is just a matter of everybody getting to have a bill which they can put in their newsletter as saying that, you know, they introduced and got passed in the Senate.

I mean, if we were truly serious about this, then I think we would just - perhaps the Majority could sort of moosh all these bills together and make one bill. I mean, it just seems strange to me that the Majority can't even decide among themselves which one of these bills they think or which

combination of these bills should be part of their reform package.

So if they can't decide among themselves, I'm not really sure how it is that they're going to negotiate with the Assembly about it.

You know, the other thing is I don't really understand how passing any of these bills will make any difference. We already have a Constitution. We already have laws. We can't follow those laws now. So I don't know why we would pass more bills which we wouldn't follow anyway. If we were so concerned about passing bills and making them into law, we would be following the laws that we presently have on the books.

I just -- again, it just flies in the face of the seriousness of whether or not we really want to reform the way the budget is being done by having before us today several different bills -- one, two, three, four, five, six, seven budget reform bills, some of which are at odds with each other.

So I would say maybe the best way to do real budget reform would, first of all,

be to try and follow the laws which we already have on the books. If that doesn't work, then call in the majority and the minority of both houses, good government groups, other constituencies around the state, and pass a comprehensive bill.

ACTING PRESIDENT MEIER: Senator Duane, your two minutes has expired. How do you vote?

SENATOR DUANE: Um -- no.

(Laughter.)

ACTING PRESIDENT MEIER: I thought so, but I wanted to check.

Senator Duane will be recorded in the negative.

Senator Stachowski, to explain his vote.

SENATOR STACHOWSKI: I don't plan on taking the two minutes.

I just want to briefly point out that I have a problem with any reform package that uses the Governor's new budget as the in-place package while there's a disagreement. It begs the question of if the Governor - whichever governor it is. Could be the

current governor, could be a future governor, could be a past governor.

If you're using the budget he submitted as the basis to carry on while you're trying to come to an agreement, why on earth would he negotiate anything? And if he's not negotiating, he's just sitting back waiting to veto anything that is above and beyond anything that's in his package.

So it seems to me a bad point of start to use the Governor's submitted budget. I kind of like the one, further up, which we'll get to, where it says current services budget. That's not bad. Because then he's got something of interest.

But if you're using his budget as your point, why would he bother doing anything except sit back, wait to maybe do another pile of 1300 veto messages.

So because of that reason, and I think it's a flawed reform system using that submission, I'm going to vote no.

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

The Secretary will announce the

results.

THE SECRETARY: Those recorded in the negative on Calendar 694 are Senators Andrews, Breslin, Connor, Duane, Hassell-Thompson, Hevesi, Onorato, Oppenheimer, Paterson, Sampson, Schneiderman, Stachowski, and Stavisky. Ayes, 47. Nays, 13.

ACTING PRESIDENT MEIER: The resolution is adopted.

Senator Morahan.

SENATOR MORAHAN: Yes, Mr. President. Can we now call up Calendar 726.

ACTING PRESIDENT MEIER: The Secretary will read Calendar 726.

THE SECRETARY: Calendar Number 726, by Senator Bruno, Senate Print 6624, an act to amend the State Finance Law, in relation to changing the date of the state fiscal year.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 11. This act shall take effect upon the effective date of the amendments to the Constitution.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

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

SENATOR DUANE: Thank you, Mr. President.

A wonderful unintended impact of having so many of these budget reform bills is that I can speak for two minutes on all of them. And so even if I was unable to finish my remarks on the first one, I will have ample opportunity to continue to explain why I'm opposing these budget bills today.

As I was saying, instead of practically -- well, I shouldn't say practically every member of the Majority, but a good, healthy portion of them have their own bill, which I'm sure will look beautiful in their newsletters.

I just want to suggest what might make an even better picture, and that would be a picture of all of us together at a hearing on budget reform. I for one would like to put that picture with a lovely caption:

Bipartisan group of Senators meeting together on budget reform.

I hope that that's not going to be a pie-in-the-sky dream but in fact a dream which can be achieved and provide a photo opportunity in my newsletter.

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

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

Announce the results.

THE SECRETARY: Ayes, 58. Nays, 2. Senators Duane and Paterson recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Morahan.

SENATOR MORAHAN: Mr. President, will you please call up Calendar 782.

ACTING PRESIDENT MEIER: The Secretary will read Calendar 782.

THE SECRETARY: Calendar Number 782, by Senator Bruno, Senate Print 6, concurrent resolution of the Senate and Assembly proposing amendments to Article 7 of

the Constitution.

ACTING PRESIDENT MEIER: Senator Hevesi.

SENATOR HEVESI: On the bill, Mr. President.

ACTING PRESIDENT MEIER: Senator Hevesi, on the resolution.

SENATOR HEVESI: Thank you, Mr. President.

First of all, I'd like to remind Senator Duane that we have two hours of discussion on each one of these bills if we so desire. So let me take this opportunity to get into a discussion of some of the issues that he has brought up, because he has not fully covered them because of those time constraints.

I'm going to be voting against this bill and all of the constitutional amendments that seem to want to take us in a direction that would facilitate an on-time budget. I believe that that's the premise of these bills.

I actually think that these bills, amending the Constitution to provide default

budgets or that we move, in the case of an untimely budget, to what the Governor has proposed in his Executive Budget, all of these things, not only are they in acquiescence of the failures of the legislative process here, but I actually think they will have the reverse impact and lead to greater problems down the road.

I do not believe that they will facilitate a more rapid resolution of the budget problem, they will make matters worse. Here is the reason why, Mr. President.

Every one of the bills that calls for a default budget or last year's budget or the Governor's proposed budget does the following, in practice. What it does is it says to whichever party to the budget discussion doesn't want to stray far from the last budget that's been passed: You don't have to negotiate.

Okay, what does that mean? That means -- and the pattern of the last few years, Mr. President, has been that the Executive proposes a budget with a certain dollar amount, and the Legislature seeks to,

by claiming that there are going to be additional revenues or what have you, it seeks to increase the expenditures.

If you do any one of these bills, which simply says that if there's no agreement and the budget is late, you go to last year's budget, then the Governor, in this case -- it could be somebody else -- the Governor says: I don't negotiate. Not interested. And what does he get? He gets last year's budget. It is an obstacle, this is an obstacle to reform.

Forgetting the fact, absolutely forgetting the fact that you could wind up in a situation where the Governor intentionally creates a budget that he knows is objectionable to the Legislature in his executive proposal.

Under the Morahan bill -- I'm sorry, under Senator Volker's bill, Calendar 785, where it's the Governor's budget submission that is called up if the budget is late, if the Governor really wants to be slick about it, he can do things in that executive proposal that he knows would never fly in the Legislature and simply refuse to negotiate.

And bang, his Executive Budget submission becomes law.

I mean, I'm not making this up. This is logical. If somebody wants to debate me on this, let's -- let's do it. This is a bad idea. These bills are really not a good idea.

Now, I'm all for a budget reform such that we have a more realistic picture of the state's fiscal finances, changing the fiscal year. By the way, let me point out one other deficiency with almost every one of these bills. If you rely on last year's budget, you are, by definition, not taking into account the latest revenue projections.

If you are relying on the Governor's proposed Executive Budget in January -- and what we have seen over the last few days, Mr. President, is the most acute example of why this is problematic. What we've seen in the last few days is, as the April 15th tax numbers came in, we realized, and we were evidently -- we? Three people. The legislative leaders were in a situation where a budget agreement was almost reached,

and then it was realized after this April deadline that the revenues that the state had been projecting are going to be a billion to a billion-three less than what they were.

Think about what would happen if you automatically had to then kick back to a default budget or the Governor's proposed budget. And this is not the way to go about things. This is really, really wrong.

You want the solution? Because it would be really wrong of me to stand up here and just denounce every one of these bills. I have the solution. I've spoken about it before. This would take an act of tremendous courage on the part of this Legislature. One constitutional amendment, Mr. President, that bans emergency appropriation bills. Never have a late budget after that. I'm -- I'm not kidding. That would do it. You would never have a late budget after that.

Because what we have done in this state -- and, you know, essentially we don't need to do any of this. The voters have said nah, we don't really care about late state budgets. And the state has become so

proficient at emergency spending bills that it really doesn't cost the state any money.

I don't know whether you could make the argument that our bond rating suffers as a result, but the state doesn't really lose any money with these late budgets. There really is no practical difference.

The editorial boards scream at us, they scream at us because they want to blame us for being here and not doing our jobs. Which I repudiate, because that's more a problem with the legislative process.

But we have made it painless for the taxpayers of this state to have late budgets. So to be honest with you, none of this is terribly essential. It really is not.

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

SENATOR DUANE: Thank you, Mr. President. If the Senator would yield.

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

SENATOR HEVESI: Most certainly, Mr. President.

THE PRESIDENT: Senator Hevesi

yields.

SENATOR DUANE: Senator Hevesi, do you think that we could agree among ourselves and not need a constitutional amendment to decide not to make any emergency appropriations? Do you think that that would also be an effective tool?

SENATOR HEVESI: I think if this Legislature decided that it wanted to go that route, it would be an act of courage. I would be shocked if the Legislature chose to do it. But yeah, we could go ahead and do that.

And if we did that, when whoever really presented an obstacle, in the public's eye, to a budget passing would be held responsible for a state shutdown in government analogous to the shutdown of the federal government that was -- the responsibility for which was largely attributed to Newt Gingrich, and he paid the most severe price for it.

So I don't believe you would have a situation where you would have anybody not willing to negotiate, to hold out, to hold out, to hold out. You'd have real negotiations, because the political price

would be too high to pay.

I don't think this Legislature has the courage to pass laws banning emergency appropriations, though that would have the impact.

SENATOR DUANE: And if the sponsor would -- I'm sorry, the Senator would continue to yield.

ACTING PRESIDENT MEIER: Senator Hevesi, do you yield?

SENATOR HEVESI: I do, Mr. President.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR DUANE: I'm wondering if you would be interested or perhaps some of our colleagues would be interested if we had a hearing on this particular constitutional amendment which you raised, or a voluntary pledge, if you will, on the part of the Legislature -- as well as on other items in various budget bills which are coming before us today. Do you think that our colleagues would be interested in hearing what the public had to say about them in a public hearing

format?

SENATOR HEVESI: Well, to be honest with you -- and it's a good question, Senator Duane -- I think there is a real desire to avoid public discourse on a slew of issues up here in Albany.

And I'll point to a finance committee meeting that we had last week where we had the acting commissioner of the Division of Human Rights, where we called for a hearing because of deficiencies in the performance of that agency -- specifically, a backlog of cases going back years and years -- and we asked that the nomination be tabled in consideration of holding a public hearing before that. And we were told essentially we should go ahead with the nomination, we can do public hearings after that.

We're not going to have that public hearing, and it's why Senator Dollinger and myself voiced our displeasure with that.

In addition, yesterday Senator Maltese brought forth a constitutional amendment on initiative and referenda, and I raised the objection that under his

legislation, once somebody circulates a petition, there is no mandatory hearing process before or after that, and so there is no public discourse that can influence the process after that initiative or referendum has been drafted.

We don't, Mr. President, hold hearings up here. I don't know why. I suspect it is because there is an atmosphere here where dissension is intolerable. And that why go ahead and hold the public hearing when you could potentially hold yourself up, or the operation of this house, or a particular public policy or a particular proposal, to scrutiny that has no potential upside for you.

I think that's why we don't, Senator Duane, hold hearings here. And I think it's a huge problem. If we had more public hearings, we'd have better public policy. That's absolutely clear.

Thank you, Mr. President. If I can continue on the bill.

One of the things that aggrieves me the most about the bills that we see before us

today is that we see eight or nine different bills that are in conflict with each other.

Now, the only way I would actually excuse this, if there was a new mechanism here to include everybody in this process where every single senator could bring to the floor the legislation that that senator wanted to. Because what you have here is you have eight or nine different legislators who have competing proposals that conflict with each other.

And two years ago, two years ago Senator Padavan put in two different bills on the calendar that had nothing to do with each other per se but happened to amend the same section of law, such that if both of those bills wound up becoming law, there would have been a true problem in how the courts interpreted it.

And my questions to the sponsor at that time resulted in the answer that the bill that was first signed by the Governor would be the one that took precedence.

And that's the type of somewhat sloppy legislative process that we have up

here that I think really doesn't do anybody a service.

By the way, I would add that one of the constitutional amendments, if we're looking to amend the Constitution, is to allow legislators, majority and minority, to be in a position where they can bring one or two or three or more pieces of legislation to the floor of this house every year.

Why don't we do that? Why is there a complete dictatorial control over the flow of legislation? Why is that? Is that -- is there a monopoly on common sense? Is there a monopoly on good ideas? Is somebody going to suggest that I can't have a good idea?

In fact, Mr. President, I think the realization that that's not true is supported by the fact that I can't get a bill on this floor. Can't get a bill on this floor. You know why? Because I think that the notion is -- and this is true for my colleagues, too -- we've got some good ideas, Mr. President. And if we put those ideas to a veto, it would be very difficult for members of the other party to vote against it. They'd

be held responsible by their constituents.

And so if we want to go and amend the Constitution of the state, let's amend it to allow a more free flow of legislation in this house. Because what we have here today, nine different bills amending the Constitution -- all of which, if passed, would throw into disarray what we would wind up doing with the Constitution -- that's just bad government. It's another form of bad government.

Now, Senator Duane suggests that the reason we have this is so that every single legislator who has a bill on the calendar today can go back to their constituents and say "I tried to reform the process. It's my bill, I passed my bill, the other house wouldn't do it."

And I suggest to you that if we want real leadership in this house, let's have a full discussion, let's have a hearing, let's have a conference committee with the Assembly and all come to agreement with a certain reform, whether it is amending the Constitution of the state or simply amending

the laws of this state, to facilitate a more timely budget. That's the way to go about it, Mr. President.

But for all the reasons that I articulated earlier, most notably that these bills, all of them -- particularly the one we're talking about right now -- that these bills would have a detrimental effect on the budget process. They will lead to less timely budgets than we already have. For those reasons and others, I'm opposing this bill.

Thank you.

ACTING PRESIDENT MEIER: Any other Senator wish to be heard on the resolution?

Debate is closed.

The Secretary will call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 782 are Senators Andrews, Breslin, Brown, Connor, Duane, Hassell-Thompson, Hevesi, L. Krueger, Oppenheimer, Paterson, Schneiderman, A. Smith, M. Smith, Stachowski, and Stavisky.

Ayes, 45. Nays, 15.

ACTING PRESIDENT MEIER: The resolution is adopted.

THE SECRETARY: In relation to Calendar 782, also Senator Montgomery in the negative. Ayes, 44. Nays, 16.

Also Senator Sampson in the negative. Ayes, 43. Nays, 17.

ACTING PRESIDENT MEIER: The resolution is adopted.

Senator Moynihan -- Morahan. I was waxing nostalgic.

(Laughter.)

SENATOR MORAHAN: We both have white hair, but that's where it sends.

(Laughter.)

SENATOR MORAHAN: Mr. President, I'd ask you to call up Calendar 802 at this time.

I'm sorry. Before we do that, could we please recognize Senator Smith, Ada Smith.

ACTING PRESIDENT MEIER: Senator Ada Smith.

SENATOR ADA SMITH: Thank you, Mr. President. I request unanimous consent to

be recorded in the negative on Calendars 694 and 782.

ACTING PRESIDENT MEIER: Without objection, Senator Ada Smith will be recorded in the negative on Calendars 694 and 782.

SENATOR ADA SMITH: Thank you.

ACTING PRESIDENT MEIER: Senator Morahan.

SENATOR MORAHAN: Can you recognize Senator Montgomery, please.

ACTING PRESIDENT MEIER: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President. I would like unanimous consent to be recorded in the negative on Calendars 694 and 782.

ACTING PRESIDENT MEIER: Without objection, Senator Montgomery will be recorded in the negative on Calendar 694 and Calendar 782.

SENATOR MORAHAN: Recognize Senator Brown, please.

ACTING PRESIDENT MEIER: Senator Brown.

SENATOR BROWN: Mr. President, I

request unanimous consent to be recorded in the negative on Calendar 694.

ACTING PRESIDENT MEIER: Without objection, Senator Brown will be recorded in the negative on Calendar 694.

SENATOR BROWN: Thank you.

ACTING PRESIDENT MEIER: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Mr. President. I too rise to request unanimous consent to be recorded in the negative on Calendar 782 and Calendar 802.

ACTING PRESIDENT MEIER: Without objection, Senator Hassell-Thompson will be recorded in the negative on 782.

And, Senator, Calendar 802 has been laid aside and not voted on yet.

SENATOR MORAHAN: Mr. President, can we recognize Senator Krueger.

ACTING PRESIDENT MEIER: Senator Liz Krueger.

SENATOR LIZ KRUEGER: I also would like unanimous consent to be recorded in the negative on Calendar 694 and 782.

ACTING PRESIDENT MEIER: Without

objection, Senator Krueger will be recorded in the negative on Calendar 694 and 782.

Senator Morahan.

SENATOR MORAHAN: Mr. President, could we please take up Calendar 802 at this time.

ACTING PRESIDENT MEIER: Senator Krueger, a point of clarification for the desk. You said you wanted to change your vote. The Secretary had you recorded in the negative on Calendar 782. Do you wish to vote in the negative?

SENATOR LIZ KRUEGER: I'm sorry, I wish to vote against 782. Thank you.

ACTING PRESIDENT MEIER: Okay. You will be recorded in the negative, then, on Calendar 782.

Senator Schneiderman, why do you rise?

SENATOR SCHNEIDERMAN: Yes, Mr. President, I would request unanimous consent to be recorded in the negative on Calendar 802.

ACTING PRESIDENT MEIER: We haven't voted on 802 yet, Senator.

SENATOR SCHNEIDERMAN: Thank you. Withdrawn, Your Honor.

(Laughter.)

ACTING PRESIDENT MEIER: The Secretary will read Calendar Number 802.

THE SECRETARY: Calendar Number 802, by Senator Bruno, Senate Print 7, an act to amend the State Finance Law, in relation to changing the state fiscal year.

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

SENATOR DOLLINGER: Mr. President, just to be heard on the bill. Is 802 before the house?

ACTING PRESIDENT MEIER: Yes, it is.

SENATOR DOLLINGER: Could I be heard on the bill, Mr. President? And I think we'd waive the explanation.

ACTING PRESIDENT MEIER: Wait a second. Give me a second.

Senator Stafford.

SENATOR STAFFORD: Mr. President, I was just criticized outside, and I think the criticism is valid. A friend of mine just

said I remind him of Calvin Coolidge, and I was very appreciative. I admired Calvin Coolidge. He had a summer White House at Paul Smiths, New York, up in our area.

But he said that when the president passed on -- President Coolidge -- someone announced that "President Coolidge has passed on," and someone else said: "How do you know?" He was a man of few words.

I think possibly I have not said enough here. I would -- I have been a person of too few words.

It was brought up by my friend and colleague a few minutes ago -- and he's scowling, and I don't blame him, but he's not scowling anymore. He wanted to know why we were bringing up these various bills, some a bit different than others.

And I would explain that we decided to provide a menu. You know when you have a menu, you decide what you want from the menu and you can then act accordingly. So we are passing these various bills, and they will be sent on to -- they will be sent on. And possibly there can be choices from the menus.

And then possibly we would have some good legislation sent on to the Governor.

With that, Mr. President, the final bill we're doing here in this group of bills, it's a companion legislation to S6. Which is S -- well, anyway, you all know numbers. You know, when you get out in your district and they mention numbers to you, you know: "Now, S4823, we want you to really look at that." And I say, "Yes, we will."

And -- but it's Senate 6. And that changes the state fiscal year to May 1st. And in the absence of an agreed-upon revenue consensus, the bill requires the Comptroller -- is it controller or comptroller? Comptroller? I always thought it was controller -- the Comptroller to establish a revenue forecast that will be binding on all parties and formalizes a budget conference committee process based upon the agreed-to or binding revenue forecast.

And to put it in our terminology, we have help establishing our avails. That's a word that we all use here in our work.

I would say, Mr. President, that it

certainly is necessary, it certainly is necessary that we do have legislation in this field. And with May 1st -- now I'm winging it. But if my counsel corrects me, then I'll stand corrected. But May 1st certainly makes sense because you know more of what is going on in that year.

July 1st is I think -- or April 1st, excuse me. Isn't it amazing how all these dates go together? But April 1st I think is a bit early, and I think May does make more sense.

It's interesting how you learn in this field. Because a few years ago when May 1st was first suggested, I didn't think that maybe it really was that meaningful. I think that it is, and I think it's a good bill.

ACTING PRESIDENT MEIER: Senator LaValle.

SENATOR LAVALLE: Mr. President, on the bill.

This bill really is such a commonsense bill, by extending the date, allowing the Comptroller to weigh in with

binding forecast, set up the budget committees, as Senator Stafford so eloquently described.

When we look at the process as it exists today, the April 1st process, I think we have to look at the Legislature in a historic way of the past, when the Legislature really began to wrap up its business in the month of March. You could look at, historically, in days when the budget process was not very complex, when the Governor, when the Executive really set out the budget in detail and the Legislature basically went along with the budget.

It wasn't until really the 1960s when the Legislature developed a professional staff, and a staff that was able to do budget analysis, that really provided a tension point between the Legislature and the Executive. And at that point in time, the Legislature itself began very, very slowly to become a more full-time legislative body and one that did not have to go back home in the month of March to tend to the family business or the family farm.

And so it's really -- this legislation is more in tune with where we should be in the year 2002.

And so of all the bills, this one should be embraced by both parties, both sides of the aisle, both houses. And we should move forward into this century, really, with a date that better fits the Legislature and with a process that can be embraced by all parties.

I would hope that everyone could find their way in voting for this measure, because I think you would be hard-pressed not to support something that is such common sense and really good government.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Thank you, Mr. President.

I want to thank Senator Stafford for his explanation. And you used the phrase, Senator Stafford, "menu." I think one of the difficulties over here on this side of the aisle is we can't figure out what's the steak and what's the plate garnish in this potpourri of potential budget reform pieces.

I think Senator LaValle on this bill, however, does properly say that this is something that reflects where we are today and what changes are necessary to bring our state into the 21st century.

I'm going to vote in favor of all these bills. I think we argued about a bunch of them. I quibbled over some of the issues in budget reform proposals last year. I'm now convinced, as we head into our 18th year, that the time for quibbling is over. Let's put this big potpourri of plans on the table, let's see which one -- to complete the metaphor of menus, Senator Stafford, let's see which ones the Assembly bite on and see whether we can get something that we can work through.

But I would remind everybody in this chamber that the solution to our budget lies right in this house. It's very, very simple. And unfortunately, the tyranny of the majority is what prevents us from getting there.

There's no reason why the Majority in this house cannot come to the Democrats on

this side of the aisle, negotiate a budget deal, get 41 votes to guarantee that budget, present it to the Governor, along with 101 members from the State Assembly, in which the Democratic conference there would come up with a budget favored by their Republican colleagues, and the second any Governor puts a veto pen on that bill, this Legislature says to him: "Fine, Mr. Governor, you are now irrelevant. We are going to set the spending chart for this state."

He gets a chance to give us the budget. Let's work together. But no, no, there's an unwritten rule somewhere in the State Constitution -- I've never been able to find it. Maybe it's in statute. I can't find it. Maybe it's in the Senate rules. But what it say is the Majority of this house will not work with their Democratic colleagues to set a reasonable spending plan for the people of this state.

You want that power all to yourself and your 36 votes? Take it. But the reason why this budget is late is because the tyranny of both houses prevents them from working with

their colleagues to form veto-proof majorities to take over the spending priorities in this state.

I have confidence that 41 people in this chamber can do a budget that will serve the interests of the people of this state. And the day that we in this chamber decide we're going to do it and our colleagues across the hall decide that they're going to do it, we don't need three men in a room. We can have 211 people in two rooms that will decide the future of this state in its spending. We can cut the Governor out of the equation. He's already got way too much power in this process.

My suggestion is, you want a solution to the budget delay? You want budget reform? Let's work together to get 41 votes. We can put together a coalition that will be bipartisan, that will reflect the needs of education, that will reflect the needs of health care, that will provide for the people of this state. Send it to the second floor and say: Go ahead, use as much ink as you want, I don't care what you veto, you will not

put it into law because we will override you.

The day we recognize that the tyranny of the Majority in this house is not enough to solve the problems of the people of this state is the day we will have an on-time budget. We'll deliver it to him on the 20th of March. The day he puts his pen to it, we'll overturn those vetoes. We will set the chart for the future of spending in this state.

That's the way to do it, Mr. President. The power rests with coalition-building between the parties, not the absolute tyranny of one party in one house.

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

Read the last section.

THE SECRETARY: Section 11. This act shall take effect upon the effective date of the amendments to the Constitution.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in

the negative on Calendar Number 802 are Senators Brown, Dollinger, Duane, and Paterson.

SENATOR DOLLINGER: I believe I should be recorded in the affirmative.

ACTING PRESIDENT MEIER: Hold on one second.

SENATOR SCHNEIDERMAN: I will make up for that.

(Laughter.)

THE SECRETARY: In relation to Calendar Number 802, those recorded in the negative are Senators Duane, Paterson, and Schneiderman. Ayes, 57. Nays, 3.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Onorato, why do you rise?

SENATOR ONORATO: Mr. President, may I have unanimous consent to be recorded in the negative on Calendar 782, Bill Number S6.

ACTING PRESIDENT MEIER: Without objection, Senator Onorato will be recorded in the negative on Calendar 782.

Senator Brown, why do you rise?

SENATOR BROWN: Thank you, Mr.

President. I request unanimous consent to be recorded in the negative on Calendar Number 221.

ACTING PRESIDENT MEIER: Without objection, Senator Brown will be recorded in the negative on Calendar 221.

Senator Morahan.

SENATOR MORAHAN: Yes, Mr. President. Can we return to the reading of the controversial calendar, starting with 689.

ACTING PRESIDENT MEIER: The Secretary will read Calendar 689.

THE SECRETARY: Calendar Number 689, by Senator Alesi, Senate Print 3000A, an act to amend the General Business Law and the Civil Practice Law and Rules, in relation to the Uniform Trade Secrets Act.

ACTING PRESIDENT MEIER: Read the last section.

SENATOR PATERSON: Explanation.

SENATOR DOLLINGER: Explanation, Mr. President.

ACTING PRESIDENT MEIER: Senator Alesi, Senator Paterson has requested an explanation of Calendar 689.

SENATOR ALESI: Thank you, Mr. President.

I was almost disappointed, Senator Dollinger.

This is the third year now that we've had this bill in the Senate. This is the bill to enact the Uniform Trade Secrets Act in order to provide improved trade-secret protection for industry in New York State.

ACTING PRESIDENT MEIER: Senator Dollinger.

SENATOR DOLLINGER: Just briefly on the bill, Mr. President.

ACTING PRESIDENT MEIER: Senator Dollinger, on the bill.

SENATOR DOLLINGER: I've voted against this bill in the past, and I'm going to vote against it in the future. I think Senator Alesi and I have had a colloquy about the bill and what it does and why I've been opposed to it.

I continue to believe that the effect of this bill will be to stifle a lot of the entrepreneurial activity that oftentimes happens with inventors, engineers, and others

who work on projects for a company and then are later slapped with a trade secret. It can easily prevent the kind of synergy that occurs between people working for different employers.

I understand the need to protect true trade secrets. But at least in my experience as a lawyer, that label has been slapped willy-nilly on things that don't qualify. And quite frankly, I'm concerned that this bill could actually inhibit rather than encourage economic activity in the state.

We've discussed it before, I've made this point before, but I'm going to vote against this bill. I just think it's too broad and would lead to abuses.

SENATOR ALESI: Mr. President.

ACTING PRESIDENT MEIER: Senator Alesi.

SENATOR ALESI: On the bill.

With respect to my colleague's voice of opposition, I think that I view it to the contrary. And that is that 41 other states and the District of Columbia have unified their Trade Secrets Act.

And because New York State has not, New York State business, especially its high-tech business, is in jeopardy of seeing some of those high-tech businesses which rely on trade secrets during their developmental stages, seeing some of those businesses either not locate here, not expand here, or leave New York State altogether.

So I think that in view of the fact that nearly every other state in the union has a Uniform Trade Secrets Act, that it would make sense for New York State, if for other reason than the reasons I just gave, to join.

So I would urge my colleagues to vote yes on this bill.

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

Debate is closed.

Read the last section.

THE SECRETARY: Section 3. This act shall take effect 180 days.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in

the negative on Calendar Number 689 are Senators Andrews, Breslin, Connor, Dollinger, Duane, Hassell-Thompson, L. Krueger, Montgomery, Onorato, Paterson, Schneiderman, M. Smith, and Stavisky. Ayes, 47. Nays, 13.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Morahan.

SENATOR MORAHAN: Yes, Mr. President. May we go to Calendar 803, please, by Senator Stafford.

ACTING PRESIDENT MEIER: The Secretary will read Calendar 803.

THE SECRETARY: Calendar Number 803, by Senator Stafford, Senate Print 1585A, an act to amend the State Finance Law and the Legislative Law, in relation to legislative action on the budget.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

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

SENATOR DUANE: Thank you, Mr. President.

I understand that there's a message of necessity for this bill. But I just am very concerned that we're getting a little bit sloppy with our messages of necessity. I don't really see -- you know, sometimes there doesn't really seem to be that kind of a necessity, a message of necessity. And the definition of necessity is like you gotta do it. Which I don't see is the case.

So I just think we need to be more careful about when it is that these pieces of legislation are passed with a message of necessity. And I'm going to vote no.

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

Announce the results.

THE SECRETARY: Ayes, 59.

Nays -

ACTING PRESIDENT MEIER: Could I ask the nos to raise your hand again. We've got people going off in multiple directions.

So one more time, the vote is on Calendar 803. May I ask members who are voting no to raise their hands, please.

THE SECRETARY: Those recorded in the negative on Calendar Number 803 are Senators Duane and Schneiderman. Ayes, 58. Nays, 2.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Morahan.

SENATOR MORAHAN: Yes, Mr. President. May we go to Calendar 783 at this time.

ACTING PRESIDENT MEIER: The Secretary will read Calendar 783.

THE SECRETARY: Calendar Number 783, by Senator Hoffmann, Senate Print 535A, concurrent resolution of the Senate and Assembly proposing an amendment to Section 4 of Article 7 of the Constitution.

ACTING PRESIDENT MEIER: On the resolution, the Secretary will call the roll.

(The Secretary called the roll.)

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

SENATOR DUANE: Thank you, Mr. President. You know, I just -- I think, you know, we're getting a little punchy. It's 6:00 o'clock now. But, I mean, it just shows the futility of us passing bills on something that we could just do, you know, on our own.

I'm certainly not for making the Governor's budget law. So I'm going to vote against this. But I mean, it's such a mix and match combination of bills. And I mean, you know, just the absurdity of us going through this whole exercise of looking at these bills individually when, you know, some of them, as I say, are at odds with each other.

I'm going to vote no on this because I just think if we really were serious about this we would bring in the public and the good government groups and find out how to do a real budget. So I'm going to vote no, Mr. President.

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

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 783 are

Senators Andrews, Breslin, Connor, Duane, Hassell-Thompson, Montgomery, Onorato, Oppenheimer, Paterson, Sampson, Schneiderman, A. Smith, M. Smith, Stachowski, Stavisky, and Senator Brown. Also Senator L. Krueger. Also Senator Hevesi. Ayes, 42. Nays, 18.

ACTING PRESIDENT MEIER: The resolution is adopted.

Senator Schneiderman, why do you rise?

SENATOR SCHNEIDERMAN: Yes, Mr. President. I would request unanimous consent to be recorded in the negative on Calendar 694, Senate 6623A.

ACTING PRESIDENT MEIER: Without objection, Senator Schneiderman will be recorded in the negative on Calendar 694.

Senator Brown, why do you rise?

SENATOR BROWN: Mr. President, I request unanimous consent to be recorded in the negative on Calendar 689, Senate Print 3000A.

ACTING PRESIDENT MEIER: Without objection, Senator Brown will be recorded in the negative on Calendar 689.

Senator Morahan.

SENATOR MORAHAN: Yes, can we go to Calendar 790, please.

ACTING PRESIDENT MEIER: The Secretary will read Calendar -- I'm sorry, Senator Morahan, what calendar number?

SENATOR MORAHAN: 790.

ACTING PRESIDENT MEIER: The Secretary will read Calendar 790.

THE SECRETARY: Calendar Number 790, by Senator Morahan, Senate Print 6181, concurrent resolution of the Senate and Assembly proposing amendments to Section 13, 14 and 16 of Article 3.

ACTING PRESIDENT MEIER: On the resolution, the Secretary will call the roll.

(The Secretary called the roll.)

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

SENATOR PATERSON: Especially because this bill, compared to the others, really is not promoting an agenda and just theoretically, if there was no budget agreement, would provide the same services with an assessment of what would be the

inflationary rate and some other issues that would need to be added on -- perhaps cost of living for employees and that type of thing.

I want to vote for this bill, and I'm especially delighted that Senator Morahan is here to see me do it.

SENATOR MORAHAN: Thank you for the explanation.

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

THE SECRETARY: Those recorded in the negative on Calendar Number 790 are Senators Breslin, Connor, Duane, Hevesi, Montgomery, Onorato, Oppenheimer, Schneiderman, Stachowski, and Stavisky. Also Senator L. Krueger.

SENATOR OPPENHEIMER: Mr. President -

ACTING PRESIDENT MEIER: Just a minute. We're on the roll call.

THE SECRETARY: Ayes, 49. Nays, 11.

SENATOR OPPENHEIMER: Mr. President.

ACTING PRESIDENT MEIER: The

resolution is adopted.

SENATOR OPPENHEIMER: You had me wrong. I'm voting in favor of this.

This is the Morahan bill, is it not? So I'll be in favor. It's sponsored by Sandy Galef in the Assembly -

ACTING PRESIDENT MEIER: All right, Senator, we have your vote.

THE SECRETARY: Those recorded in the negative on Calendar Number 790 are Senators Breslin, Connor, Duane, Hevesi, L. Krueger, Montgomery, Onorato, Schneiderman, Stachowski, and Stavisky.

Ayes, 50. Nays, 10.

ACTING PRESIDENT MEIER: The bill is passed.

Could the chair ask members, as we're going through the calendar, particularly when sometimes the order of business requires that we take bills out of order, to try to keep track of what calendar number we're on.

We have members who are voting on bills and then rising later asking to be recorded, having already voted. It makes it very difficult for the Secretary to keep a

clear record.

So we please ask members' cooperation as we go through the calendar.

Senator Morahan.

SENATOR MORAHAN: Well, then, I would ask the Secretary to stay -- start with Senate 784 and continue in order.

ACTING PRESIDENT MEIER: The Secretary will continue to read in regular order.

THE SECRETARY: Calendar Number 784, by Senator Morahan, Senate Print 834, concurrent resolution of the Senate and Assembly proposing amendments to Section 13, 14, and 16 of Article 3.

ACTING PRESIDENT MEIER: On the resolution, the Secretary will call the roll.

(The Secretary called the roll.)

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

SENATOR STACHOWSKI: Amid all this confusion, I just thought I'd make a quick explanation.

Earlier I had said I was going to vote for that one we just voted no on,

concurrent services, because I thought, well, since it's a menu -- and I'm going back to Senator Stafford's comments that all of this is a menu.

Unfortunately, if it was a menu from an Italian restaurant, I would probably vote for all of them. He chose to put a menu from an Indian restaurant on the calendar, and I don't really like Indian food, so -- it doesn't agree with me. I've got to vote no on it.

(Laughter.)

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

THE SECRETARY: Those recorded in the negative on Calendar Number 784 are Senators Breslin, Brown, Connor, Duane, Hassell-Thompson, Hevesi, L. Krueger, Montgomery, Onorato, Oppenheimer, Paterson, Sampson, Schneiderman, Stachowski, and Stavisky. Ayes, 45. Nays, 15.

ACTING PRESIDENT MEIER: The resolution is adopted.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 785, by Senator Volker, Senate Print 2817, concurrent resolution of the Senate and Assembly proposing an amendment to Sections 2, 3, and 4 of Article 7.

ACTING PRESIDENT MEIER: On the resolution, the Secretary will call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEIER: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 785 are Senators Breslin, Connor, Duane, Hassell-Thompson, Hevesi, L. Krueger, Montgomery, Onorato, Paterson, Sampson, Stachowski, and Stavisky.

Ayes, 48. Nays, 12.

ACTING PRESIDENT MEIER: The resolution is adopted.

THE SECRETARY: Calendar Number 788, by Senator DeFrancisco, Senate Print 3339, concurrent resolution of the Senate and Assembly proposing amendments to Section 13, 14, and 16 of Article 3.

ACTING PRESIDENT MEIER: On the

resolution, the Secretary will call the roll.

(The Secretary called the roll.)

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

SENATOR DeFRANCISCO: We've gone through many budget reform bills here today, and some are better than the others. But the fact of the matter is something has to happen. There has to be a bill, a law that makes us get done when we're supposed to get done so there's a penalty.

There's been some comment that all we have to do, for example, is get together with the Assembly, send up a veto-proof bill. But what happens if we don't reach agreement with the Assembly?

There's been other suggestions as to how we can truly do what we're supposed to be on April 1. But as long as there's not a penalty, a penalty even that people don't want, we're never going to get budgets on time.

The penalty here is simply go to last year's budget. I don't want to go to last year's budget, nor does anyone else here.

Some want tax cuts, some want more programs, some want something else. But the fact of the matter is the fact that it hurts and nobody wants it is what we really need in order to get us to pass a budget in a timely fashion.

So hopefully the Assembly will take one or more of these bills, the ones they like, so we can finally stop this embarrassing process that is so destructive to the other legislative work we do here in Albany.

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

THE SECRETARY: Those recorded in the negative on Calendar Number 788 are Senators Breslin, Brown, Connor, Duane, Hassell-Thompson, Hevesi, L. Krueger, Montgomery, Onorato, Paterson, Sampson, Schneiderman, Stachowski, and Stavisky.

Ayes, 46. Nays, 14.

ACTING PRESIDENT MEIER: The resolution is adopted.

Senator Oppenheimer, why do you rise?

SENATOR OPPENHEIMER: I would

like to be recorded in the negative, with unanimous consent, for Calendar 785, S2817.

ACTING PRESIDENT MEIER: Without objection, Senator Oppenheimer will be recorded in the negative on Calendar 785.

Senator Liz Krueger, why do you rise?

SENATOR LIZ KRUEGER: I rise to explain my vote.

ACTING PRESIDENT MEIER: Senator, we've completed the roll call.

SENATOR LIZ KRUEGER: Okay. Thank you.

ACTING PRESIDENT MEIER: Senator Krueger, with unanimous consent, without objection, you can explain your vote on the previous legislation.

SENATOR LIZ KRUEGER: Thank you very much.

I had waited, I had thought I had timed myself to the end of this series of bills to explain the fact that I've voted no now on seven constitutional amendments, and three related companion bills I voted yes on.

I think it relates to yesterday's

discussion where I found myself voting with many of my colleagues on the Republican side in support of initiative and referendum, in the belief that a motivator to get this Legislature to do our job was to broaden the universe and allow the public to take our role away from us by having the opportunity, through I&R, to make the decisions through votes.

Today I voted against constitutional amendments which also would have given opportunities to the voters to make decisions for themselves because, frankly, my own confusion over my timing of when I could stand up and speak on the bill I think would easily be the beginning of the tip of the iceberg if we were to imagine bringing this menu that's been associated as an Italian restaurant menu, or an Indian restaurant menu, but more likely is the traditional Chinese restaurant menu of X from Column A and Y from Column B.

This is no way to do government. And I think all of us know that. And I don't accept the argument that was made here today

that we need laws changed in order for us to do our jobs on the budget. These bills are complementary to each other, are redundant with each other and in direct conflict with each other.

And yet my understanding is we could be doing all of these things, absent constitutional amendment, to move a budget forward, to explain to voters why we are making the decisions we are making, and to get a budget done on time.

Frankly, I've been here for nine weeks, we are late in our budget again, and I am waiting to have one chance to actually debate the budget on the floor of the Senate. As far as I know, we don't even explore discussion of the budget, but we'll spend several hours this afternoon voting for or against constitutional amendments that we know will never go anywhere that are in direct conflict with each other or redundant with each other, to yet again avoid doing the business of the people, which is what we should have been doing all these weeks, debating the budget.

So I thank you very much for the opportunity to explain my vote, to explain my confusion on some of the bills today, and to argue that in fact if we are confused about what we are doing today and are failing to do our jobs, imagine the public's confusion when we try to go and explain all of this to them.

Thank you.

ACTING PRESIDENT MEIER: Senator Morahan.

SENATOR MORAHAN: Yes, Mr. President. Would you recognize Senator Andrews at this time.

ACTING PRESIDENT MEIER: Senator Andrews.

SENATOR ANDREWS: Yes, Mr. President. I request unanimous consent to be recorded in the negative on Calendar 784, 785, and 788.

ACTING PRESIDENT MEIER: Without objection, Senator Andrews will be recorded in the negative on Calendars 784, 785, and 788.

Senator Morahan.

SENATOR MORAHAN: Yes, Mr. President. Will you return to reports of

standing committees, and I ask that those reports be read.

ACTING PRESIDENT MEIER: Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Leibell, from the Committee on Civil Service and Pensions, reports:

Senate Print 1236A, by Senator Trunzo, an act to amend the Retirement and Social Security Law;

1355A, by Senator Farley, an act in relation to allowing;

1420, by Senator LaValle, an act to amend the General Municipal Law;

2490A, by Senator Farley, an act granting;

3380A, by Senator Rath, an act to authorize;

3649A, by Senator Rath, an act to allow;

3681A, by Senator Alesi, an act in relation;

3817, by Senator LaValle, an act authorizing;

4949A, by Senator Volker, an act in relation;

6173, by Senator Farley, an act to authorize;

6240, by Senator Volker, an act in relation;

6355, by Senator Larkin, an act to amend;

6289, by Senator Leibell, an act to amend the Administrative Code of the City of New York;

6402, by Senator Rath, an act to cancel;

6430, by Senator Rath, an act to allow;

6497, by Senator Larkin, an act to provide;

6603, by Senator Balboni, an act authorizing;

6998, by Senator Spano, an act to authorize;

7035, by Senator Spano, an act to grant;

7075, by Senator Larkin, an act to authorize;

7178, by Senator Alesi, an act to allow;

7213, by Senator Leibell, an act permitting;

7214, by Senator Leibell, an act allowing;

And Senate Print 7267, by Senator Morahan, an act to amend.

Senator Espada, from the Committee on Alcoholism and Drug Abuse, reports:

Senate Print 377, by Senator DeFrancisco, an act to amend the Navigation Law;

1367, by Senator Johnson, an act to amend the Vehicle and Traffic Law;

1401, by Senator Kuhl, an act to amend the Alcoholic Beverage Control Law;

1769A, by Senator McGee, an act to amend the Alcoholic Beverage Control Law;

And 6711, by Senator Espada, an act to amend the Mental Hygiene Law.

Senator Rath, from the Committee on Local Government, reports:

Senate Print 1038, by Senator Larkin, an act to amend the Real Property Tax

Law;

2161, by Senator Farley, an act to amend the Real Property Tax Law;

3088C, by Senator Leibell, an act to amend Chapter 443 of the laws of 1985;

3819, by Senator Rath, an act to amend the General Municipal Law;

3820, by Senator Stafford, an act in relation;

4113, by Senator Volker, an act to amend;

4510A, by Senator Hannon, an act in relation;

5787, by Senator Wright, an act to amend the General Municipal Law;

6171, by Senator Balboni, an act to authorize;

6201, by Senator Bonacic, an act making certain findings;

6271, by Senator Velella, an act authorizing;

6365, by Senator Balboni, an act in relation;

6382, by Senator Skelos, an act authorizing;

6383, by Senator Skelos, an act authorizing;

6386, by Senator Skelos, an act authorizing;

6416, by Senator Trunzo, an act authorizing;

6531A, by Senator Bruno, an act to authorize;

6586, by Senator Volker, an act in relation to legalizing;

6587A, by Senator Trunzo, an act to amend the Real Property Tax Law;

6721, by Senator Maziarz, an act to convey;

6733, by Senator LaValle, an act in relation;

6764, by Senator Larkin, an act to amend the General Municipal Law;

And 7284, by Senator Libous, an act to amend the County Law.

Senator Volker, from the Committee on Codes, reports:

Senate Print 136A, by Senator Volker, an act to amend the Penal Law;

437, by Senator DeFrancisco, an act

to amend the Penal Law;

1130A, by Senator Alesi, an act to amend the Penal Law;

1138, by Senator Alesi, an act to amend the Penal Law;

1173, by Senator Onorato, an act to amend the Penal Law;

1227, by Senator Maziarz, an act to amend the Penal Law;

1478, by Senator Paterson, an act to amend the Criminal Procedure Law;

2279, by Senator Bonacic, an act to amend the Penal Law;

2302, by Senator Volker, an act to amend the Penal Law;

2782, by Senator Saland, an act to amend the Penal Law;

3124, by Senator Padavan, an act to amend the Criminal Procedure Law;

3279, by Senator Maziarz, an act to amend the Penal Law;

3746, by Senator Johnson, an act to amend the Penal Law;

3937, by Senator Volker, an act to amend the Penal Law;

4048, by Senator Volker, an act to amend the Penal Law;

6105A, by Senator Spano, an act to amend the Penal Law;

6248, with amendments, by Senator DeFrancisco, an act to amend the Penal Law;

6456, by Senator Fuschillo, an act to amend the Penal Law;

6658, by Senator Skelos, an act to amend the Civil Practice Law and Rules.

And 6705, with amendments, by Senator LaValle, an act to amend the Penal Law.

Senator Trunzo, from the Committee on Transportation, reports:

Senate Print 762, by Senator Trunzo, an act to amend the Vehicle and Traffic Law;

878, by Senator Fuschillo, an act to amend the Vehicle and Traffic Law;

1766B, by Senator LaValle, an act to amend the Vehicle and Traffic Law;

2373A, by Senator Bruno, an act to amend the Vehicle and Traffic Law;

2836A, by Senator Marcellino, an

act to amend the Vehicle and Traffic Law;

5644, by Senator Trunzo, an act to amend the Vehicle and Traffic Law;

6083A, by Senator Trunzo, an act to amend the Vehicle and Traffic Law;

6182B, by Senator Morahan, an act to amend the Transportation Law;

6389, by Senator Volker, an act to amend the Highway Law;

6399A, by Senator Saland, an act to amend the Highway Law;

6652, by Senator Johnson, an act to amend the Vehicle and Traffic Law;

6814, by Senator Trunzo, an act to amend the Vehicle and Traffic Law;

6815, by Senator Trunzo, an act to amend the Railroad Law;

6816, by Senator Trunzo, an act to amend the Railroad Law;

6852, by Senator Seward, an act to amend the Highway Law;

7011, by Senator Trunzo, an act to amend the Vehicle and Traffic Law;

7012, by Senator Trunzo, an act to amend the Vehicle and Traffic Law;

7029, by Senator Trunzo, an act to amend the Vehicle and Traffic Law;

7076, by Senator Trunzo, an act to amend the Public Authorities Law;

7195, by Senator Nozzolio, an act to amend the Highway Law;

7280, by Senator Trunzo, an act to amend the Canal Law;

And Senate Print 7312, by Senator Trunzo, an act to amend the Vehicle and Traffic Law.

Senator Kuhl, from the Committee on Education, reports:

Senate Print 5318A, by Senator Padavan, an act in relation to establishing;

6831, by Senator Skelos, an act to amend the Education Law;

6940, by Senator Meier, an act relating to adjusting;

6942, by Senator Meier, an act to adjust;

7000, by Senator Stafford, an act to amend Chapter 698 of the Laws of 1996;

And 7080, by Senator Hannon, an act to amend Chapter 403 of the Laws of 1977.

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

Senate Print 396B, by Senator Saland, an act to amend the Social Services Law;

2777A, by Senator Lack, an act to amend the Social Services Law;

3430A, by Senator Saland, an act to amend the Family Court Act;

7124, by Senator Saland, an act to amend Chapter 505 of the Laws of 1985;

7126, by Senator Saland, an act to amend the Domestic Relations Law;

And 7172, by Senator DeFrancisco, an act to amend the Executive Law.

Senator DeFrancisco, from the Committee on Tourism, Recreation and Sports Development, reports:

Senate Print 2312A, by Senator Kuhl, an act to amend the Parks, Recreation and Historic Preservation Law;

And 6947, by Senator Marcellino, an act to amend the Navigation Law.

Senator Nozzolio, from the Committee on Crime Victims, Crime and

Correction, reports:

1301A, by Senator Meier, an act to amend the Executive Law;

3703, by Senator Nozzolio, an act to amend the Executive Law;

3775, by Senator Nozzolio, an act to amend the Executive Law;

4376, by Senator Saland, an act to amend the Correct Law;

4524, by Senator Nozzolio, an act to amend the Executive Law;

6189, by Senator Skelos, an act to amend the Correction Law;

6770, by Senator Nozzolio, an act to amend the Correction Law;

And 7240, by Senator Spano, an act to amend the Executive Law.

Senator Meier, from the Committee on Social Services, reports:

Senate Print 4704, by Senator Maziarz, an act to amend the Social Services Law;

6571, by Senator Alesi, an act to amend the Social Services Law;

6875, by Senator Maziarz, an act to

amend;

7100, by Senator Maziarz, an act to amend;

And 7137, by Senator Meier, an act to amend the Welfare Reform Act of 1997.

All bills ordered direct to third reading.

ACTING PRESIDENT MEIER: Without objection, all bills directly to third reading.

Senator Morahan.

SENATOR MORAHAN: Yes, Mr. President, is there any housekeeping at the desk?

ACTING PRESIDENT MEIER: No, there is not.

SENATOR MORAHAN: I'd like to announce a conference of the Majority at 9:45 tomorrow morning -- tomorrow being Wednesday, May 1st -- in the Majority Conference Room.

ACTING PRESIDENT MEIER: Conference of the Majority tomorrow morning at 9:45.

SENATOR MORAHAN: There being no further business before the house, or the

Senate, I would make a move to adjourn.

ACTING PRESIDENT MEIER: On motion, the Senate stands adjourned until Wednesday, May 1st, at 11:00 a.m.

(Whereupon, at 6:30 p.m., the Senate adjourned.)