NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

June 5, 2002

11:13 a.m.

REGULAR SESSION

SENATOR PATRICIA K. McGEE, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT McGEE: The Senate will come to order.

I ask all present to stand and repeat with me the Pledge of Allegiance.

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

ACTING PRESIDENT McGEE: In the absence of clergy, I would ask all to bow our heads, that we may have a moment of silence.

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

ACTING PRESIDENT McGEE: Reading of the Journal.

THE SECRETARY: In Senate, Tuesday, June 4, the Senate met pursuant to adjournment. The Journal of Monday, June 3, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Farley.

SENATOR FARLEY: Thank you, Madam President.

On behalf of Senator Stafford, Madam President, on page 36 I offer the following amendments to Calendar 814, Senate Print 3820A, and I ask that that bill retain its place on the Third Reading Calendar.

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

SENATOR FARLEY: On behalf of Senator McGee, Madam President, on page 64 I offer the following amendments to Calendar 1296, Senate Print 7351, and I ask that that bill retain its place.

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

Calendar.

SENATOR FARLEY: Madam President, on behalf of Senator Marchi, I wish to call up his bill, 4004, which was recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 60, by Senator Marchi, Senate Print 4004, an act to amend the Public Authorities Law.

SENATOR FARLEY: Madam President, I now move to reconsider the vote by which this bill passed.

ACTING PRESIDENT McGEE: Call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 44.

SENATOR FARLEY: Madam President, I now offer the following amendments.

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

Senator Skelos.

SENATOR SKELOS: Madam President,

are there any substitutions at the desk?

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: On page 63, Senator Maziarz moves to discharge, from the Committee on Finance, Assembly Bill Number 2145A and substitute it for the identical Senate Bill Number 3175A, Third Reading Calendar 1286.

And on page 64, Senator Farley moves to discharge, from the Committee on Investigations and Government Operations, Assembly Bill Number 10040A and substitute it for the identical Senate Bill Number 6707A, Third Reading Calendar 1293.

ACTING PRESIDENT McGEE: Substitutions ordered.

Senator Skelos.

SENATOR SKELOS: Madam President, Resolution 5830, by Senator Bonacic, was adopted on May 31st. If we could have it read in its entirety at this time and then recognize Senator Bonacic.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: By Senator Bonacic, Legislative Resolution Number 5830, commending the Valedictorians, Salutatorians, and honored students of the 40th Senate District, in recognition of their outstanding accomplishments, at a celebration to be held at the State Capitol on June 5, 2002.

"WHEREAS, It is the sense of this Legislative Body to act in accord with its longstanding traditions to honor the youth of today -- the leaders of tomorrow -- whose character and achievements best exemplify the ideals and values cherished by this great State and Nation; and

"WHEREAS, This Legislative Body is justly proud to recognize and commend the high achievements of these dedicated students in the 40th Senate District on the occasion of a special celebratory visit to be held at the State Capitol in Albany, New York, on Wednesday, June 5, 2002. At this time the Valedictorians, Salutatorians and honored students who have been selected by their school leadership for outstanding community service will receive special recognition from

the Senate in the Senate chamber. Lunch will be served on the third-floor terrace of the Legislative Office Building, followed by a tour of the Capitol Building; and

"WHEREAS, These Valedictorians, Salutatorians, and honored students represent the best of developed potential inherent in our most precious resource, our youth, and their achievements have brought enduring honor to their families and communities, and should be recognized and saluted; and

"WHEREAS, The Valedictorians who are being commended today for their outstanding academic performances and exemplary achievements include: Melissa Cole, Heather Muller, Ashley Hopkins, Lia Blue, Candice Hunt, Stefan Janiszewski, Matthew Matson, Jason A. White, Jing Zhao, Sarah Dickens, Erin Buel, Andria Dolce, Sophig Majeed, Katrina Charysyn, Richard T. Clausi, Rosario Lee, Jarad Bivins, Justine Allen, Michael Caravello, Erin Garry, Kaitlin Rawluk, Luisa Vesely, Timora Hartwig, Brian Ricks, Rachel Gillis, Elizabeth Blaufox, Joseph Carrubba, Dana Schildkraut, Katie M. Peletz,

Jonathan Becker, Christopher Justus, Matthew Pomes, Sandra Jude C. Calkiris, Colleen Krom, Colleen Fowler, Duncan McLechlen, Corrina Partridge, Ben Morgenstein, and Jordan Woods; and

"WHEREAS, The Salutatorians who are being commended today for their outstanding academic performances and exemplary achievements include: Jessica DeVita, Kristin Skelly, Gillian Wheat, Crystal MacClintock, Thomas Russo, Daniel Rochmis, Sean Greggory, Janice E. Brodmerkel, Jessica Green, Austin Daniel, Heather Hamalainen, Jennifer Ryan, Victoria Joyce, Alison Nixon, Karen E. Corey, Alan Knack, Ashley Hoag, Ariel Ammirato, Jason Thelamy, David Lu, Karen Kinnaman, Stephanie Hunt, Jonathan Vosper, Katie Harris, Cindy Springman, Bridget Mayer, Caitlin Graham, Darcie J. Rich, Stacey Benge, Jason White, Megan Gorzynski, Jonah Christopher DiPane, Emily Moore, Rebecca Darling, Courtney Stanton and Celeste Larsen; and

"WHEREAS, The honored students who are being commended today and who have been selected by their school leadership for

outstanding community service include: Tracey Brown, Rachele Hall, Diane Rider, Krista Hall, Matt Maxey, Michael J. Swope, Corey Huber, Johanna Powell, Kelly Gardner, Shanon M. Hart, Jaycob Burns, Kaitlin Schleiermacher, Maria Yearwood, Michael Staub, Sean Cunningham, Jessica Lake, Susan Cuttita, John Cichon, Michael Sellitti, Kristen A. Tucker, Sarahjo Bell, Rhina Saravia, Kevin McCarthy, Robert Leslie, Anthony Wayne, Jean Ellen Dymond and Elizabeth Breese; and

"WHEREAS, These Valedictorians, Salutatorians and honored students may now stand with pride as they assess their achievements, experience the satisfaction of their labors and the joy of their accomplishments, eager to face the new experiences of a challenging world; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to commend the Valedictorians, Salutatorians and honored students of the 40th Senate District, in recognition of their outstanding accomplishments, at a celebration to be held

at the State Capitol on June 5, 2002; and be it further

"RESOLVED, that copies of this resolution, suitably engrossed, be transmitted to the aforementioned Valedictorians, Salutatorians and honored students."

ACTING PRESIDENT McGEE: Senator Bonacic.

SENATOR BONACIC: Thank you, Madam President.

I would ask my colleagues on both sides of the aisle to welcome 101 students today from 37 school districts that are our valedictorians, salutatorians, and honored students. And that honored student is someone who has been picked who's made a major contribution to either the school or the community. They're joined by parents, teachers, and friends, 215 of them.

The youth that are here today represent the best of the best in our Senate district. And we are hopeful and we expect them to be the leaders and role models of the next generation.

Mostly all of them are going to

college, and we wish them well. And we thank them for coming today and sharing their time in this day which is dedicated to you.

Thank you very much, Madam President.

ACTING PRESIDENT McGEE: On behalf of the New York State Senate, we join Senator Bonacic in saying congratulations to our future leaders of New York State and America. Congratulations.

(Applause.)

ACTING PRESIDENT McGEE: Senator Marcellino.

SENATOR MARCELLINO: Madam President, I believe there's another privileged resolution by Senator Bruno. Can we have the title read and move for its immediate adoption.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: By Senator Bruno, legislative resolution paying tribute to the life and accomplishments of Daniel X. Campbell, dedicated spokesperson for the Capital Region CSEA members for nearly 30

years.

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

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The resolution is adopted.

Senator Marcellino.

SENATOR MARCELLINO: Madam President, there is another privileged resolution, Number 5940, by Senator Stafford. Can we have the title read and move for its immediate adoption.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: By Senator Stafford, Legislative Resolution Number 5940, congratulating the Clinton County Youth Bureau upon the occasion of the 50th Anniversary of the Clinton County Baseball Program.

ACTING PRESIDENT McGEE: The question is on the resolution. All in favor

will signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The resolution is adopted.

Senator Marcellino.

SENATOR MARCELLINO: Madam President, there is another privileged resolution, Number 5941, by Senator Leibell. We'd like to have the title read and move for its immediate adoption.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: By Senator Leibell, Legislative Resolution Number 5941, honoring Reverend Ted Nace upon the occasion of his designation as recipient of the Founder's Award by the Mizzentop Day School.

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

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed,

nay.

(No response.)

ACTING PRESIDENT McGEE: The resolution is adopted.

Senator Marcellino.

SENATOR MARCELLINO: Madam President, there is still another privileged resolution, Number 5942, by Senator Leibell. I ask for its title to be read and move for its immediate adoption.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: By Senator Leibell, Legislative Resolution Number 5942, honoring Mae Greene upon the occasion of her designation as recipient of the Community Service Award by Mizzentop Day School.

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

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The

resolution is adopted.

Senator Marcellino.

SENATOR MARCELLINO: Madam President, at this time may we have the noncontroversial reading of the calendar.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 251, by Member of the Assembly Robach, Assembly Print Number 906A, an act to amend the Vehicle and Traffic Law, in relation to regulating the use of motorcycles.

ACTING PRESIDENT McGEE: Read the last section.

SENATOR HEVESI: Lay it aside, please.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 309, by Member of the Assembly Morelle, Assembly Print Number 2130A, an act to amend the Real Property Tax Law, in relation to authorizing counties.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1039, by Senator Bruno, Senate Print 2372 -

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 1257, by Senator DeFrancisco, Senate Print -

SENATOR MARCELLINO: Madam President, excuse me. Could you lay Calendar Number 1257 aside for the day.

ACTING PRESIDENT McGEE: 1257 will be laid aside for the day.

THE SECRETARY: Calendar Number 1278, by Senator Stafford, Senate Print 7408, an act to amend the Racing, Pari-Mutuel Wagering and Breeding Law, in relation to payment.

ACTING PRESIDENT McGEE: Read the last section.

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 1283, by Senator McGee, Senate Print 870, an act to amend the Vehicle and Traffic Law, in relation to requiring school bus.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

SENATOR DUANE: Lay it aside, please.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 1284, by Senator McGee, Senate Print 1167, an act to amend the Vehicle and Traffic Law, in relation to providing.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 3. This act -

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT McGEE: The bill is laid aside.

THE SECRETARY: Calendar Number 1285, by Senator Wright, Senate Print 1328A, an act to amend the Tax Law, in relation to the definition of residential purposes.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1286, substituted earlier today by Member of the Assembly Robach, Assembly Print Number 2145A, an act to amend the Executive Law, in

relation to the duties of the State Workforce Investment Board.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1287, by Senator McGee, Senate Print 4068, an act to amend the Vehicle and Traffic Law and others, in relation to standards.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the first day of November.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1288, by Senator Leibell, Senate Print 5603A, an act to amend the Retirement and Social Security Law, in relation to service.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1289, by Senator Brown, Senate Print 5780, an act to amend the Highway Law, in relation to designating a portion of the state highway system.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Senator Brown.

SENATOR BROWN: Thank you, Madam President.

I just wanted to take a moment to speak on the bill and thank my colleagues in advance for their support of this piece of legislation.

Reverend Dr. Bennett W. Smith was the pastor of St. John Baptist Church. He passed away a little over a year ago. But he was a towering figure in the Buffalo/Niagara region.

He was active in many community projects. He built housing in the community. He fed hungry people in the community. And he built one of the strongest religious organizations in the Buffalo/Niagara region. He kind of established faith-based organizations before we even coined the term "faith-based organization."

He is someone that our community sorely misses. And by this Legislature honoring his memory today, it gives the people of the Buffalo/Niagara region cause to say

thank you very much for this honor of Reverend Dr. Bennett W. Smith. Thank you.

ACTING PRESIDENT McGEE: Thank you, Senator Brown.

Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1290, by Senator Maziarz, Senate Print 6024A, an act to amend the General Municipal Law, in relation to paid leave.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1291, by Senator McGee, Senate Print 6339, an act to amend Chapter 558 of the Laws of 1999, relating to establishing.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1292, by Senator Bonacic, Senate Print 6503, an act to change the jurisdiction of the Civil Service Commission.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1293, substituted earlier today by Member of the Assembly Destito, Assembly Print Number 10040A, an act to amend the Public Officers Law, in relation to limiting.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1294, by Senator Spano, Senate Print 6793, an act to amend the Executive Law, in relation to relation to the appointment.

ACTING PRESIDENT McGEE: Read the

last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1295, by Senator Wright, Senate Print 7139A, an act to amend the Vehicle and Traffic Law, in relation to the issuance.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number

1297, by Senator Trunzo, Senate Print 7415A, an act to amend the Uniform District Court Act, in relation to allowing.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT McGEE: The bill is passed.

THE SECRETARY: Calendar Number 1298, by Senator Saland, Senate Print -

SENATOR MARCELLINO: Lay it aside for the day.

ACTING PRESIDENT McGEE: The bill is laid aside for the day.

THE SECRETARY: Calendar Number 1299, by Senator Saland, Senate Print 7442, an act to amend the Penal Law, in relation to obstructing.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT McGEE: The bill is passed.

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

SENATOR MARCELLINO: Madam President, may we have the controversial reading of the calendar.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 251, by Member of the Assembly Robach, Assembly Print Number 906A, an act to amend the Vehicle and Traffic Law, in relation to regulating the use of motorcycles.

SENATOR HEVESI: Explanation.

ACTING PRESIDENT McGEE: Senator Kuhl, an explanation has been requested by Senator Hevesi.

SENATOR KUHL: Madam President,

could I ask who asked for that?

ACTING PRESIDENT McGEE: Senator Hevesi.

SENATOR KUHL: Senator Hevesi asked for the explanation, okay.

Senator Hevesi, this is a bill that's just very simple in its intent. It's intended to prohibit the enactment of local laws that might discriminate against motorcycles and motorcyclists.

What we're finding is that there's an increased usage of this mode of transportation now, to the point that there are millions of people across this country who are using this as a mode of transportation. And if local ordinances are allowed to exist to prohibit their usage in the normal transition, then in fact they've eliminated a mode of transportation for a growing segment of our society.

You will note, however, that in fact this bill does not limit localities from prohibiting certain types of ordinances that would deal with things like noise. So that it's not a total prohibition on that, it's

just meant to say, hey, here's a means of transportation, in fact like a car or a bicycle or whatever. Don't try to limit their usage of the highways, because they should be as accessible to the men and women who are using these today as any other mode of transportation.

And I should say one thing further, Senator. There is federal legislation that this is meant to actually follow. So what we're doing is just putting federal legislation in place for this state and prohibit ordinances in localities at the state level from doing anything that would discriminate against this mode of transportation.

ACTING PRESIDENT McGEE: Senator Hevesi, why do you rise?

SENATOR HEVESI: Madam President, would the sponsor please yield?

ACTING PRESIDENT McGEE: Senator Kuhl, will you yield?

SENATOR KUHL: I'd be happy to.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR HEVESI: Thank you.

Could you expand on the last comment? What are the federal regulations that we need to be in compliance with?

SENATOR KUHL: I'm not saying that we need to be in compliance with. I'm just saying this monitors or mirrors federal accessibility legislation.

There is, as I understand it, a discrimination statute on the books on the federal level, but it doesn't necessarily apply to local villages, towns, and cities. So what we're doing is just mirroring that kind of nondiscriminatory language that already exists at the federal level.

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

ACTING PRESIDENT McGEE: Senator Kuhl, will you continue to yield?

SENATOR KUHL: Yes.

ACTING PRESIDENT McGEE: The Senator continues to yield, Senator Hevesi.

SENATOR HEVESI: Thank you, Madam President. Just to be clear -- and I may wind up supporting this, let me preface my

comments -- but there is currently, under federal law, a prohibition on restricting motorcycle use on roadways that receive federal funding in any capacity?

SENATOR KUHL: That prohibits?

SENATOR HEVESI: Yeah. Is there a federal regulation right now, existing under current law, that would do what your bill does but do it for federally financed roadways?

In other words, is there a law right now that says you cannot prohibit just motorcycle use on any roadway that utilizes federal funding?

SENATOR KUHL: That's my understanding, Senator. I'm not so sure it's totally tied to these federally supported - or federally funded highways. That I don't have in my knowledge.

I've been told by counsel that in fact this mirrors federal legislation.

ACTING PRESIDENT McGEE: Senator Hevesi.

SENATOR HEVESI: Madam President, will the sponsor continue to yield?

ACTING PRESIDENT McGEE: Senator

Kuhl, will you continue to yield?

SENATOR KUHL: Yes.

ACTING PRESIDENT McGEE: The Senator continues to yield.

SENATOR HEVESI: Thank you, Madam President.

I'm not trying to split hairs here. In fact, I wasn't even going to pursue this line of questioning, but now you've got me curious.

If it's not limited to highways and roadways that use federal funding, it would seem to be that would have to then apply to state roadways or local roadways too, which would seem to make this legislation unnecessary. So can you just clarify that for me?

SENATOR KUHL: Well, I'm told that this legislation is necessary, Senator. I just didn't want to tell you something that I didn't know to be factually correct.

You may be factually correct in the statement that you made. I just don't know that.

SENATOR HEVESI: Okay. Madam

President -- Mr. President, will the sponsor continue to yield?

ACTING PRESIDENT BONACIC: Senator Kuhl, do you continue to yield?

SENATOR KUHL: Yes, Mr. President.

SENATOR HEVESI: Let me make sure I understand exactly what you're doing here correctly.

If I'm a locality or if I'm the head of a locality, am I allowed to ban motorcycle use if this bill becomes law? Can I ban motorcycle use on a state-funded roadway because I deem it to be a noise problem for a local community?

SENATOR KUHL: You cannot prohibit the use of a vehicle on that type of highway, no. What you can do is restrain the use of any vehicle that would exceed, say, a noise level.

So I assume that if a motorcycle per se was set up so that it exceeded a decibel-level noise, then you would effectively prohibit the usage of that particular vehicle. But you cannot

generically prohibit the use of motorcycles because you think a small percentage of them may be louder than the noise level that you want to set.

So what this law does is prohibits municipalities from prohibiting usage to a class of transportation. But it does not limit a municipality's ability to be able to control the noise levels.

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

ACTING PRESIDENT BONACIC: Senator Kuhl, do you continue to yield?

SENATOR KUHL: Yes.

SENATOR HEVESI: The purpose of this legislation, it's just intuitively we must be facing a situation here that you're trying to correct where some localities are in fact banning motorcycle use on state-funded roadways. What is the reason why those municipalities are doing that? What is their stated purpose of doing it? Is it a safety issue that we should be concerned about?

SENATOR KUHL: No, I don't think it's that at all, Senator. I think,

unfortunately, there's a stereotype that occurred years ago, prior to your actual birth, a grouping of people called the Hell's Angels, who really were notorious back in the '40s, '50s, and '60s.

The people who ride motorcycles today are not the people who were then the Hell's Angels. You have people like the sponsor of this piece of legislation in the Assembly, Assemblyman Joseph Robach, who owns a motorcycle.

I happen to own a Harley myself and like to ride. Okay? And I have a Harley leather jacket. Now, certainly I don't think I fit the type of a Hell's Angel.

But there are some communities who in fact view people who ride motorcycles still today as being awful people and people that they don't want to have coming into their community.

Now, certainly the community of Lake George, just a short hour from here, which is hosting an event called Americade, where they expect 50,000 motorcyclists to come into that community, they certainly would not

enact legislation that would prohibit the use of this, because they're estimating that that's a multi-million-dollar investment into that economy.

And that's the point of this legislation, is don't allow any community to stereotype a mode of transportation because of some past experience decades ago. And that's why we're passing this bill, and that's why we think it's necessary.

But we're not trying to, again, eliminate the concerns that a community might have relative to the noise that this mode of transportation might create a problem in that community.

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

ACTING PRESIDENT BONACIC: Senator Kuhl, do you continue to yield?

SENATOR KUHL: Yes, I'd be happy to.

SENATOR HEVESI: Thank you.

I'd be comfortable voting for this legislation if I were satisfied that there is no municipality or locality in New York State

that has banned motorcycle use on state-funded roadways for safety reasons.

Is it not possible or conceivable that there could be a particular road that is too dangerous for a motorcycle to navigate in some way? Is that not possible?

SENATOR KUHL: I don't believe so, Senator.

I can tell you, it's interesting - and I would offer to you this is an experience that you should really undertake. The State of New York, several years ago, adopted a policy of providing motorcycle training. It's a policy that they're joined in by the American Motorcycle Association. And actually the former commissioner of transportation actually went through this program, as did I.

It's a training program that's developed that you spend 20 hours learning how to ride a motorcycle, whether you have ridden before or whether you haven't. And it's a shortcut, if you will, to getting your license.

And what you will find out very quickly is that the whole basis of this

program is to teach safety. It's aimed at statistical information, like half of the motorcycle accidents that occur in this state occur because the person that you have the accident with, or the other vehicle, never sees you. So always be on the defensive.

They teach you how to go over railroad tracks, they teach you how to go through power slides. They teach you every way of operation. But nowhere in that training program is there any indication that there's any highway over which a car travels over which a motorcycle cannot travel.

So my point to you, very simply, is there's no highway in this state that is unsafe for a motor vehicle to travel.

As a matter of fact, I like to ride on highways that other vehicles don't like to ride on, because it's more serene, it's quieter, it's more peaceful, and usually it's much more entertaining and relaxing to me. And I think you would find the same thing were you to entertain that new mode of transportation.

SENATOR HEVESI: Mr. President,

would the sponsor continue to yield?

ACTING PRESIDENT BONACIC: Senator Kuhl, do you continue to yield?

SENATOR KUHL: I'd be happy to.

SENATOR HEVESI: Thank you, Mr. President.

Correct me if I'm wrong, but I recall in the debate that you and I had that you had stated that you did not believe that the use of helmets were in any way more likely to prevent injury in individuals who were riding motorcycles. I'm just curious, is the transportation safety program that you just cited, do they subscribe to that thought also?

SENATOR KUHL: They subscribe totally to compliance with the law, Senator. And the law in this state requires a safety-approved helmet.

I wear a helmet, coincidentally, just for your information.

So, yes, they recommend that you use that because of compliance with the law. Also that in fact in some cases it may save a head injury.

SENATOR HEVESI: Mr. President,

one final question, if the sponsor would continue to yield.

ACTING PRESIDENT BONACIC: Senator Kuhl, do you continue to yield? You're being most gracious. Do you continue to be gracious?

SENATOR KUHL: Yes.

ACTING PRESIDENT BONACIC: Senator Hevesi.

SENATOR HEVESI: Are my questions so painful that his responses -

SENATOR KUHL: I didn't think so, Senator.

(Laughter.)

SENATOR HEVESI: Just to clarify one final time, and that will be that.

To your knowledge, there are no municipalities in New York State that have banned motorcycle use on state-funded roads for safety purposes?

SENATOR KUHL: Not to my knowledge, no.

SENATOR HEVESI: Thank you.

Mr. President, on the bill.

ACTING PRESIDENT BONACIC:

Senator Hevesi, on the bill.

SENATOR HEVESI: Thank you. I am very satisfied with the sponsor's answers. I will be supporting this bill.

ACTING PRESIDENT BONACIC: Thank you.

Any other Senator wishing to speak?

Senator Krueger.

SENATOR LIZ KRUEGER: Thank you, Mr. President. If the sponsor would yield to a question.

ACTING PRESIDENT BONACIC: Senator Kuhl, will you yield to a question?

SENATOR KUHL: Yes.

SENATOR LIZ KRUEGER: I listened to the dialogue and the debate, and I guess I have an additional question, and I'm confused.

If there is no municipality that is currently outlawing the use of motorcycles for safety purposes, what are the laws that municipalities have on the books now that specifically discriminate against motorcycle riders? What is this bill attempting to redress at the state level?

SENATOR KUHL: Senator, what I

said in response to Senator Hevesi's question was my knowledge is that there is no municipality in this state who has tried to eliminate the use of motorcycles for safety reasons. Okay? And that is to the best of my knowledge.

I cannot tell you what laws in fact are in place in every municipality across the state. I can tell you that one of the concerns certainly was how is that group known as the New York State Association of Localities, or whatever it happens to be - what was their opinion. And they don't oppose the bill.

I mean, obviously, this might be considered to have a definite impact on what their authorities and responsibilities were. But they don't oppose the bill because they don't see anything detrimental to this, because there is that exception. If there is a noise problem with certain types of cycles that maybe exceed certain levels of that noise, they can still prohibit that usage.

But they are recognizing, I think, as a society, as an association, that in fact

this is a new mode of transportation.

It's a very cheap mode of transportation, too, when you think about the cost of one of these being anywhere from, say, 3 figures -- five, six, seven, $800, up to the very high-end motorcycles, twenty, thirty, $40,000. But yet there's very little use of gasoline. They don't use a lot of fuel back and forth over long terms of miles.

So they're recognizing, I think, that what they're seeing on the streets, back and forth on the highways for various places at work, is that more and more people actually are using motorcycles as a real neat way of transportation.

SENATOR LIZ KRUEGER: Mr. President, if the sponsor would yield for an additional question, please.

ACTING PRESIDENT BONACIC: Senator Kuhl, do you continue to yield?

SENATOR KUHL: Yes.

SENATOR LIZ KRUEGER: Thank you. I appreciate the explanation, Senator Kuhl.

I'll rephrase, I think, my first question. Are there any laws on the books in

any municipality today in New York State that this law would override? Or are we talking about the state passing a bill that potentially precludes some issue in the future, as opposed to there are municipalities today who have laws on the books, this would usurp their authority to continue that law?

SENATOR KUHL: I can only answer that with regard to my knowledge. I am not aware, in the course of drafting this bill and my having it being brought to me by the American Motorcycle Association representatives, that in fact there is any law currently on the books that this would supersede or make illegal.

I think it's the greater fear that in fact as more and more people start to use this as a mode of transportation, that in fact there will be some attempts in some areas to try to limit that usage.

And their desire, because of what they've seen in other states, is that other states have been willing to accept and adopt this kind of legislation, that in fact they want to move ahead and make sure that their

users, their subscribers, their members in fact don't get inhibited in their usage of this mode of transportation.

SENATOR LIZ KRUEGER: Thank you.

Mr. President, on the bill, if I may.

ACTING PRESIDENT BONACIC: Senator Krueger, on the bill.

SENATOR LIZ KRUEGER: Thank you so much.

I appreciate Senator Kuhl's position. My concern is that why do we need legislation at the state level that sets requirements or limits the opportunities of municipalities to deal with issues if they arise, and that rather we should wait until there is a time when in fact we have heard complaints based on localities passing laws that we would argue are not acceptable from a statewide purpose.

And that the role of the Legislature should not be establish laws precluding localities from options for themselves in advance of anyone having any examples of a locality having something on the

books that we would argue from a state perspective is bad public policy for the state.

I would think that most of us in this room would agree in most situations, if there's not a problem or it's not, quote, broken, we don't need to fix it. And so far today, I have not heard any argument that there is a problem at the local level that we need to fix through this legislation.

So I believe that I need to vote no on this bill, because I don't see the reason to have this legislation at this point in time.

And while I would conceivably accept that New York City, my city, is probably least likely to rush forward mandating local laws around motorcycles, I would also raise the point that if you have driven on the streets of Manhattan, particularly the trafficked avenues, you can see all kinds of dangers and safety concerns involved with motorcycles perhaps, again, not following the traffic laws correctly but zigzagging out of traffic, creating lanes that

don't actually exist on crowded avenues, and putting themselves at risk, pedestrians at risk, and other drivers at risk.

So while I'm not saying that today I would support a local law for New York City limiting the use of motorcycles without knowing more about the issue, I would argue that from my own experience in my own city that there are additional hazards in crowded, congested streets, such as on Manhattan Island, to having motorcycles.

But nonetheless, again, my argument today for needing to vote against the Senator's bill is I don't see something that needs to be fixed by the State Legislature at this point. So I will vote no on this bill.

Thank you very much, Mr. President.

ACTING PRESIDENT BONACIC: Thank you, Senator Krueger.

Senator Dollinger, why do you rise?

SENATOR DOLLINGER: Thank you, Mr. President.

Senator Krueger, I would only say to you: Welcome to June in Albany, in the State Senate.

This bill encapsulates what we're probably going to do -- at least in the ten years I've been here, we've done a lot in June. This bill is addressing a problem that, with all due respect to Senator Kuhl, who says "I don't know whether the problem exists, but this is the solution. We've got the answer."

And I would suggest that what we do oftentimes in June is we solve hypothetical problems and we attack issues that might someday happen. We have no evidence that this is a problem, but this is the solution.

And I would suggest that this is what we do a lot in June in the State Senate, Senator Krueger. And you will find that there will be a whole bunch of bills that we do this way that are about potential problems, potential issues.

I think Senator Kuhl's got a good point, which is if there were a specific issue, I would suggest that we simply solve the problem. If it's a problem with, I think as Senator Hevesi was concerned about, maybe excess noise or other restrictions in Manhattan or in the congested urban areas,

then I would say let's do a bill that exempts the City of New York, gives them some control.

But unfortunately, Senator, this is what we do a lot of in June. We attack hypothetical problems. We come up with solutions that in the long run will only create potentially future problems.

I'm always in a quandary about how to vote on a bill like this. Hypothetically, it makes reasonable sense. I guess I'm going to take my vote, cast it hypothetically as yes, and be satisfied.

But this will not be the last one of these that you see, Senator Krueger. I guarantee it.

ACTING PRESIDENT BONACIC: Thank you, Senator Dollinger.

Does any other Senator wish to be heard on this bill?

Debate is closed.

Read the last section.

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

ACTING PRESIDENT BONACIC: Call the roll, please.

(The Secretary called the roll.)

ACTING PRESIDENT BONACIC: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 251 are Senators Duane, L. Krueger, and Padavan. Ayes, 54. Nays, 3.

ACTING PRESIDENT BONACIC: The bill is passed.

THE SECRETARY: Calendar Number 1039, by Senator Bruno, Senate Print 2372, an act to amend the Vehicle and Traffic Law, in relation to the disqualification of a bus driver.

ACTING PRESIDENT BONACIC: Senator Paterson.

SENATOR PATERSON: Mr. President, I'd just like to put into the record that we've debated this bill several times. Last year, the bill passed with five "no" votes. They were Senators Duane, Montgomery, Santiago, Schneiderman, and Stavisky.

ACTING PRESIDENT BONACIC: Thank you, Senator.

Last section, please.

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

ACTING PRESIDENT BONACIC: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 1039 are Senators Duane, L. Krueger, and Stavisky. Also Senator Hassell-Thompson. Ayes, 53. Nays, 4.

ACTING PRESIDENT BONACIC: The bill is passed.

THE SECRETARY: Calendar Number 1278, by Senator Stafford, Senate Print 7408, an act to amend the Racing, Pari-Mutuel Wagering and Breeding Law, in relation to payment.

ACTING PRESIDENT FUSCHILLO: Read the last section.

SENATOR DOLLINGER: Explanation, please.

ACTING PRESIDENT FUSCHILLO: Senator Stafford, an explanation has been requested.

SENATOR STAFFORD: I was asked to

introduce this bill. And off-track betting, I voted for it in the Legislature. I do not attend too many of the -- or visit too many of the parlors, because every time I do I lose.

But we have a board of directors. We have a board of directors. And in two instances right now, we have county -- one county supervisor and one county legislator which serves on this board. They're competent. They know what's going on. And I think they do a good job on the board.

Now, the directors receive $250 per meeting. And they can't exceed, for a year, $2,500. Therefore, we would like to make it possible for, if you're a legislator or you're a supervisor, to receive this compensation.

Now, let me explain something. We have all sorts of people who work in the public sector who are legislators, and they get paid. My friends, teachers, people in the law enforcement -- well, law enforcement, I guess it would be people who serve in the departments throughout the state, various departments. They are also county legislators. They're supervisors. And by the

way, they're some of the best supervisors and some of the best legislators. But they also get paid for the job that they have.

As far as a conflict of interest, I think it's just the opposite. I like to have a member of the legislature of the county there finding out what the OTB board is doing, because of course this revenue comes into the county.

I hope I've explained it well, and I certainly would be more than happy to answer any questions. Thank you.

ACTING PRESIDENT FUSCHILLO: Senator Dollinger.

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

Senator Stafford, I think you've explained it right on the, as they would say in Rochester, on the schnozzola. You've hit this thing right on the nose.

SENATOR STAFFORD: That's what they say in Plattsburgh.

SENATOR DOLLINGER: That's what they say in Plattsburgh. It must be catching.

Unfortunately, Senator Stafford,

the effect of this is to in part repeal the prohibitions about double-dipping that we put in the 1996 law.

And I understand the interest of a member of the county legislature sitting on the OTB board. But I think what we decided to do in the mid-nineties was to eliminate the possibility that someone would be wearing both hat and be compensated from the public payroll in both capacities.

And I appreciate the fact that this may not seem like a lot of money, expenses and a per diem. But at the same time, I believe that our instinct in the mid-1990s was the right instinct.

And I am afraid that this kind of action, even given the circumstances which you relay -- which I think have justification in the sense that a county legislator should sit on the OTB board -- my concern is that from the public's point of view the participation and service on the OTB board is an extension of their duties as a member of the county legislature.

And I believe that we should have a

single rule that says in those instances double-dipping would not be allowed.

I oftentimes worry about the slippery slope. Sometimes I get the sense that it's real slippage; other times, I'm not as concerned. In this instance, I see us moving away from the ideal that we put in place in the mid-nineties. It was the right thing to do then.

And despite those potential problems that you talk about, and I understand they're real, I still believe that we should abide by a general, broad rule that says no double-dipping in these instances.

So I'm going to vote no.

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

The debate is closed.

Read the last section.

THE SECRETARY: Section 2. This act shall take effect July 1.

ACTING PRESIDENT FUSCHILLO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in

the negative on Calendar Number 1278 are Senators Dollinger, Duane, L. Krueger, Onorato, Paterson, A. Smith, and Stachowski. Ayes, 50. Nays, 7.

ACTING PRESIDENT FUSCHILLO: The bill is passed.

Senator Stavisky, why do you rise?

SENATOR STAVISKY: Did you record me as no?

ACTING PRESIDENT FUSCHILLO: You will be recorded in the negative.

SENATOR STAVISKY: Thank you.

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

SENATOR SCHNEIDERMAN: Yes, Mr. President, I would request unanimous consent to be recorded in the negative on Calendar 1039, Senate 2372, as well as Calendar 1278, Senate 7408.

ACTING PRESIDENT FUSCHILLO: Without objection, Senator Schneiderman will be recorded in the negative.

SENATOR SCHNEIDERMAN: Thank you.

THE SECRETARY: Calendar Number 1283, by Senator McGee, Senate Print 870, an

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

ACTING PRESIDENT FUSCHILLO: Read the last section.

SENATOR DUANE: Explanation, please.

ACTING PRESIDENT FUSCHILLO: Senator McGee, an explanation has been requested by Senator Duane.

SENATOR McGEE: Thank you, Mr. President.

Mr. President, the present law requires that a motor vehicle operator involved in an accident or violating traffic laws to submit to a breath test if requested to do so by a police officer. This bill amends the Vehicle and Traffic Law to require that all drivers, all drivers involved in an accident involving a school bus which results in serious physical injury or fatality, to submit to a chemical breath test.

We know by seeing reports on television, by seeing reports in the newspaper, that on many occasions when you have a school bus accident it's a very

chaotic, tragic scene. And sometimes, through the chaos, a request for a Breathalyzer test is not given. Through nobody's fault, but it just unfortunately doesn't happen.

So this bill says it is mandatory that anytime a school bus is involved in an accident that all drivers involved in that particular accident will be required to take a breath test.

ACTING PRESIDENT FUSCHILLO: Senator Marcellino, why do you rise?

SENATOR MARCELLINO: If the Senator would suffer an interruption. I apologize.

There will be an immediate meeting of the Higher Education Committee in the Majority Conference Room, please.

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

Senator McGee.

SENATOR MARCELLINO: I apologize, Senator.

ACTING PRESIDENT FUSCHILLO:

Senator Duane.

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

ACTING PRESIDENT FUSCHILLO: Senator McGee, do you yield for a question?

SENATOR McGEE: I certainly will.

ACTING PRESIDENT FUSCHILLO: The Senator yields.

SENATOR DUANE: Has there been a case when a bus driver who's been engaged in an accident where there was a death or serious physical injury just drove away without getting a Breathalyzer test?

SENATOR McGEE: I don't know of any, Senator Duane. I have not researched the records for an answer to that.

This bill only states that that will not occur. By passing this bill and putting it on the books, it will be mandatory for every driver involved in a school bus accident, to all drivers involved in school bus accidents, to take a Breathalyzer test.

Has there been a case in point where it's not been done? I really can't tell you. I suspect it may have. But to point out

a specific incident, I can't do so.

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

ACTING PRESIDENT FUSCHILLO: Mr. President to you, Senator Duane.

Senator McGee, do you yield?

SENATOR McGEE: Thank you, Mr. President. Yes, I do.

ACTING PRESIDENT FUSCHILLO: The Senator yields.

SENATOR McGEE: Yes.

ACTING PRESIDENT FUSCHILLO: The Senator yields for your question.

SENATOR DUANE: I'm having trouble -- there's a lot of interruptions and talking.

ACTING PRESIDENT FUSCHILLO: Senator Duane -

SENATOR McGEE: I will try to talk as loud as I possibly can, Senator Duane. Can you hear me now?

SENATOR DUANE: Yes, thank you.

SENATOR McGEE: Okay. Thank you.

SENATOR DUANE: Thank you.

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

ACTING PRESIDENT FUSCHILLO: The Senator yields.

SENATOR DUANE: So is the point of this bill to punish police officers who are not administering these Breathalyzer tests?

SENATOR McGEE: Oh, dear. I certainly hope that you don't read it that way, Senator Duane.

The purpose of this bill is to make sure that there's public safety any time a school bus is involved. Public safety meaning that any driver, school bus driver or whoever drives the other vehicle or vehicles involved in an accident, where there is an accident with serious physical injury or a fatality to submit to a mandatory breath test. And I, sir, would call that public safety.

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

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

SENATOR McGEE: I certainly do.

ACTING PRESIDENT FUSCHILLO: The Senator yields.

SENATOR DUANE: Well, what happens now when a police officer doesn't administer a Breathalyzer test where there's been a death or serious injury?

SENATOR McGEE: I'm sorry?

ACTING PRESIDENT FUSCHILLO: Senator Duane, will you ask your question again, please? Thank you.

SENATOR McGEE: I'm sorry, Senator Duane, I couldn't hear you.

SENATOR DUANE: Well, I'll speak louder.

SENATOR McGEE: Thank you.

SENATOR DUANE: What happens now when a police officer does not administer a Breathalyzer test when there's been death or a serious injury to a child?

SENATOR McGEE: I would suspect that there is not any kind of a violation issued to the individual, because there is not a breath test taken.

This bill would say that a breath test must be taken at any time a serious

injury or fatality happens in a school bus accident.

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

SENATOR McGEE: Yes, I will.

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

SENATOR McGEE: Yes, I will.

ACTING PRESIDENT FUSCHILLO: The Senator yields.

SENATOR DUANE: What is the punishment for a police officer who does not administer a Breathalyzer test?

SENATOR McGEE: I don't know as there's any punishment, Senator Duane. I have not checked on that. I certainly can look into it if you'd like me to. That might be a little difficult to do, but I'd be more than happy to do it for you.

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

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

SENATOR McGEE: Yes, I do.

ACTING PRESIDENT FUSCHILLO: The Senator yields.

SENATOR DUANE: Are police officers in some places in the state not trained to give a Breathalyzer test when a child has been killed or seriously injured in a bus traffic accident?

SENATOR McGEE: I think if you will recall during my support of the bill, sir, that it is quite frequently, any time there is a school bus accident, it is a chaotic scene. And many times that request is not made by that police officer.

This bill again, I will state, makes it mandatory. It is not necessary for the police officer to physically request it. It is mandatory that those drivers will be submitted to a Breathalyzer test.

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

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

SENATOR McGEE: I certainly will.

ACTING PRESIDENT FUSCHILLO: The Senator yields.

SENATOR DUANE: I did hear the sponsor say that many times when there's chaos, the Breathalyzer test may not be administered. I'm wondering if there are statistics to back up the claim that this happens many times.

SENATOR McGEE: I don't believe that I said that the -- I don't believe I said it quite that way, Senator Duane. I think I said many times the request for a Breathalyzer test is not given because it is chaotic and sometimes tragedies occur.

Unfortunately, that does happen. Do I have statistics on it? No, I'm sorry, I do not have statistics on it. I don't know where they would even show up to be able to try to find them.

But in any event, this bill, again, makes it mandatory for all drivers, all drivers involved in a school bus accident to submit to a mandatory, mandatory Breathalyzer test so that -- thereby resolving or relieving the police officer from having to make that

request.

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

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

SENATOR McGEE: Absolutely.

ACTING PRESIDENT FUSCHILLO: The Senator yields.

SENATOR DUANE: Are there many examples of bus drivers or others involved in accidents with school bus drivers leaving the scene of an accident and thereby not getting a Breathalyzer test? Are they fleeing from these accidents and the police are not running after them?

SENATOR McGEE: I don't believe I can quote any figures for you, Senator Duane.

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

SENATOR McGEE: Yes.

ACTING PRESIDENT FUSCHILLO: Senator McGee, do you continue to yield.

SENATOR McGEE: I certainly do.

ACTING PRESIDENT FUSCHILLO: The Senator yields.

SENATOR DUANE: Who requested this bill?

SENATOR McGEE: I suspect probably that I requested the bill. But the bill is supported by the Medical Society of New York State and the School Boards Association.

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

ACTING PRESIDENT FUSCHILLO: Senator McGee, will you yield for a question?

SENATOR McGEE: Yes, I do.

ACTING PRESIDENT FUSCHILLO: The Senator yields.

SENATOR DUANE: Are there any groups that are in opposition to this bill?

SENATOR McGEE: I have not received any opposition, sir.

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

ACTING PRESIDENT FUSCHILLO:

Senator McGee, will you yield for a question?

SENATOR McGEE: Yes, I will.

ACTING PRESIDENT FUSCHILLO: The Senator yields.

SENATOR DUANE: Are any of the law enforcement unions in support of this bill?

SENATOR McGEE: I have not received any word from them. But I would suspect that they would be in support of it, because it relieves that police officer from having to physically ask each individual to take a mandatary Breathalyzer test.

This makes it mandatory. They don't have to ask anymore. They'll have to do it.

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

ACTING PRESIDENT FUSCHILLO: Senator McGee, will you yield for a question?

SENATOR McGEE: I will. I will, thank you.

ACTING PRESIDENT FUSCHILLO: The Senator yields.

SENATOR DUANE: How is this bill going to be enforced?

SENATOR McGEE: Well, once it becomes law -- the bill is effective once it becomes law, sir, the first day of September after it's signed into law, and enforced. It just automatically becomes enforced anytime there is an accident. Or anytime there is an accident that involves a school bus and any driver, Senator Duane, the law enforcement agent automatically will say "You must take a Breathalyzer test." That will just become a part of the Vehicle and Traffic Law.

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

ACTING PRESIDENT FUSCHILLO: Senator McGee, will you yield for a question?

SENATOR McGEE: I certainly will.

ACTING PRESIDENT FUSCHILLO: The Senator yields.

SENATOR DUANE: And I understand that this will become law. But how will we know that police officers are administering the test? Who will be in charge of making

sure that the law is followed?

SENATOR McGEE: I would assume, Senator Duane, that that becomes a part of anything that a law officer, a law enforcement officer attending any kind of an accident, does. Such as speaking with the individuals who are involved in the accident, such as noting if there are any treadmarks or any screeching tire marks, noting if there was somebody who was in the wrong lane, et cetera, et cetera. The various things that anybody does.

And I'm not a law enforcement agent, sir, and I cannot tell you exactly the checkoff list that each one of those law enforcement agent people do. But I realize that there is a checkoff list. Mandatory breath tests should be one of them. And when we pass this law, it will become so.

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

ACTING PRESIDENT FUSCHILLO: Senator McGee, will you yield for a question?

SENATOR McGEE: Yes, I do.

ACTING PRESIDENT FUSCHILLO: The sponsor yields.

SENATOR DUANE: I'm sorry, did the Senator say that there is or there is not a check list after a bus accident, a school bus accident?

SENATOR McGEE: I'm not sure -- I did say checkoff list. I'm not sure that I said that there was one. I am not a police officer, sir. I have seen vehicle and accident reports. I know that there are certain forms that one has to fill out. I assume that -- I just arbitrarily called it a checkoff list, I'm so sorry. If you have a more appropriate name, you certainly can give it to me. But I would assume that that would take the place of a checkoff list.

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

ACTING PRESIDENT FUSCHILLO: Senator McGee, will you yield for a question?

SENATOR McGEE: I do, thank you.

ACTING PRESIDENT FUSCHILLO: The Senator yields.

SENATOR DUANE: The sponsor mentioned that she assumes that this bill would be enforced in a certain way. I'm just wondering what makes the sponsor assume that that's what would happen.

SENATOR McGEE: Well, let me say this, Senator Duane. I believe it's, again, my understanding -- and you certainly can correct me if I'm wrong -- that when a bill is passed in both chambers and signed by the Governor and set into law, that is then sent to the appropriate agency, so that that -- how that bill is then put into the -- whatever that bill calls for is put into action, then that appropriate agency will take the proper steps to ensure that that bill is taken care of in the way that the legislation was meant.

And that's about the best I can tell you on that, sir.

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

ACTING PRESIDENT FUSCHILLO: Senator McGee, will you yield for a question?

SENATOR McGEE: I certainly will,

thank you.

ACTING PRESIDENT FUSCHILLO: The Senator yields.

SENATOR DUANE: What agency would this bill be sent to?

SENATOR McGEE: Well, I'm assuming, again, that -- again, an assumption, sir. We can track it if you'd like to. But I assume it would be sent to the division of law enforcement. It would go to the state police or actually, probably, the motor vehicle department, because it amends the Vehicle and Traffic Law. So I suspect it would be sent to the appropriate committees or agencies, those being two of them.

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

ACTING PRESIDENT FUSCHILLO: Senator McGee, will you yield for a question?

SENATOR McGEE: Yes, I will.

ACTING PRESIDENT FUSCHILLO: The Senator yields.

SENATOR DUANE: I'm assuming that the sponsor was referring to the Department of

Criminal Justice. However, would it also be sent to local law enforcement agencies around the state?

SENATOR McGEE: I believe that local law enforcement agencies throughout the state get a little book that's called the law of the DMV, the DMV laws. And they probably, if I recall -- perhaps I'm wrong. I'm not exactly sure what the process is. But each time a law is amended or approved and sent out, that is put in their Vehicle and Traffic Law books.

So I assume that that will be sent out throughout -- because it becomes a state law, that it will be sent to every law enforcement agency within the State of New York.

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

ACTING PRESIDENT FUSCHILLO: Senator McGee, will you continue to yield for a question?

SENATOR McGEE: Yes, I will.

ACTING PRESIDENT FUSCHILLO: The

Senator yields.

SENATOR DUANE: I'm wondering why the sponsor decided that the way to go with this is to make a law instead of requiring training for police officers.

SENATOR McGEE: I would assume again, Senator, that -- I put the bill in because I'm concerned about public safety as it applies to school buses. And my feeling is that if there is a bus accident, if there is a school bus accident involving other vehicles that has a serious injury or fatality, then there should be a law out there that makes it mandatory that both drivers or all drivers involved in that accident should have a Breathalyzer test.

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

ACTING PRESIDENT FUSCHILLO: Senator McGee, will you continue to yield for more questions?

SENATOR McGEE: Absolutely.

ACTING PRESIDENT FUSCHILLO: The Senator yields.

SENATOR DUANE: And so am I correct to assume, then, that officers are either not being trained to have the driver submit to a Breathalyzer or are callously disregarding the -- doing that because they don't want to catch drunk drivers?

I still don't understand why it is that a police officer -- I still don't understand why it is that we're assuming that police officers would not be providing a Breathalyzer test when a child dies in a bus accident.

SENATOR McGEE: In most cases - and I believe I said this before, Senator - in most cases, the police officers do make such a request. But in many cases when there is a school bus accident and there is serious injury involved in it, a fatality, perhaps that request is not made at that time, through the chaotic tragedy that's being experienced.

This makes it mandatory. This will be sent down so that every individual knows this.

SENATOR DUANE: On the bill, Mr. President.

SENATOR McGEE: On the bill.

SENATOR DUANE: I have not heard nor do I believe that police officers are so careless as to not give a Breathalyzer test to a driver when a child is seriously injured or killed. In fact, I don't believe that even if a child is not killed or seriously injured, if there's any injury at all, or even if there is no injury at all, that when there's an accident involving a school bus that police officers are not smart enough to administer an alcohol or a drug test.

We've heard the accusation made that police officers sometimes don't because the situation is so chaotic. I don't believe that. I know lots of police officers who don't -- who I can't imagine that they would not give a Breathalyzer test. I could think of cases where a driver might refuse to take a Breathalyzer test, but I cannot conceive of a case where a police officer would refuse to administer a Breathalyzer test.

We've been provided with no statistics backing up that police officers don't provide this test. If that were the

case, I don't think we need to legislate that. I think that's a training matter. I can't believe that this is not part of a police officer's training, that when children on a school bus are involved in an accident that a Breathalyzer test would not be administered. I think that we do our law enforcement people a tremendous disservice to assume that they don't do it and to have to put it into law.

I think even -- and if law enforcement people were not providing Breathalyzer tests, I think it's completely ridiculous, then, to not put some kind of punishment in the law if they're not doing it. But this law actually doesn't even say what would happen if a police officer doesn't do it, although I don't think that they're not doing it. So this whole bill is, I think, just completely ridiculous.

I trust the police officers in this state to do the right thing and administer a Breathalyzer test if a child is dead or is killed or seriously injured in an accident. I think this is just, you know, a bill that, you know, makes it seem like we're tough on drunk

driving or something. But then we should get tough on the drunk driver. We shouldn't get tough on the police officers or assume that they're stupid or negligent in how it is that they do their job.

And even if we did assume this, which I am not, then the way to go is training, not just passing a law that has no teeth in it. So I'm going to protest this way to legislative and vote no.

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

The debate is closed.

Read the last section.

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

ACTING PRESIDENT FUSCHILLO: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT FUSCHILLO: The bill is passed.

THE SECRETARY: Calendar Number

1284, by Senator McGee, Senate Print 1167, an act to amend the Vehicle and Traffic Law, in relation to providing.

ACTING PRESIDENT FUSCHILLO: Read the last section.

SENATOR HASSELL-THOMPSON: Explanation.

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

ACTING PRESIDENT FUSCHILLO: Senator Hassell-Thompson, you asked for an explanation?

SENATOR HASSELL-THOMPSON: Yes, please.

ACTING PRESIDENT FUSCHILLO: Senator McGee, Senator Hassell-Thompson has asked for an explanation of the bill.

SENATOR McGEE: Thank you very much.

This bill would add to the Vehicle and Traffic Law that operation of a motor vehicle during a permanent license revocation for DWI, DWAI, driving under the influence of drugs, or a chemical test refusal offense

shall constitute aggravated operation of a motor vehicle in the first degree, a Class E felony.

Present law defines this offense as aggravated operation of a motor vehicle in the second degree, which is considered a misdemeanor.

This bill also would require permanent driver's license revocation for a person convicted of a refusal to submit to a chemical test or any DWI, DWAI, or driving while impaired by drugs violation and who has, within the last five years, been twice convicted of any DWI, DWAI, or driving while impaired by drugs or refusal to submit to a chemical test or who has, within the last ten years, been three times convicted of any DWI, DWAI, or driving while impaired by drugs or refusal to submit to a chemical test.

Currently, a permanent license revocation is issued only in cases where there are two convictions of alcohol- or drug-related crashes involving personal injury or death. There are currently no provisions for a waiver in the permanent license

revocation.

This bill would allow for waiver of the permanent revocation after a period of ten years unless the person has had four alcohol-related incidents in a five-year period or five incidents within a ten-year period.

This bill is supported by the Comprehensive DWI Reform Coalition, Empire State Restaurant and Tavern Association, MADD -- which stands for Mothers Against Drunk Driving -- Century Council, Stop DWI, Distilled Spirits Council, the New York State Drinking Driver Program Directors Association.

I would point out to you that this bill is basically an attempt to keep repeat drunk drivers off the road. And I would cite for you an example that has happened just recently within my own district where a young man who was home on leave and his girlfriend were in fact hit by a woman and killed while she was drunk driving. This was one of her several offenses. The young lady died. The young man died. She was buried in her graduation gown because the accident took

place three days before graduation. She was buried in her graduation gown with her diploma with her.

It's time that New York State moved to take the repeat offender off the road. This is one of those bills that will do that.

SENATOR HASSELL-THOMPSON: Thank you.

ACTING PRESIDENT FUSCHILLO: Explanation satisfactory.

Read the last section.

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

ACTING PRESIDENT FUSCHILLO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

SENATOR OPPENHEIMER: Mr. President.

ACTING PRESIDENT FUSCHILLO: The bill is passed.

Senator Oppenheimer, why do you rise?

SENATOR OPPENHEIMER: Is this the

appropriate time? I'd like to strike an enacting clause.

May I proceed at this time?

Oh, it's at the end of housekeeping. Thank you very much. I got the answer.

ACTING PRESIDENT FUSCHILLO: Senator Marcellino.

SENATOR MARCELLINO: Mr. President, is there any housekeeping at the desk?

ACTING PRESIDENT FUSCHILLO: Yes, there is.

But before we do that. Senator Andrews?

SENATOR ANDREWS: I request unanimous consent to be recorded in the negative on Calendar 1039.

ACTING PRESIDENT FUSCHILLO: Without objection, Senator Andrews will be recorded in the negative.

SENATOR MARCELLINO: Please recognize Senator Montgomery.

ACTING PRESIDENT FUSCHILLO: Senator Montgomery, why do you rise?

SENATOR MONTGOMERY: Yes, Mr. President, I would like unanimous consent to be recorded in the negative on Calendar 1039.

ACTING PRESIDENT FUSCHILLO: Without objection.

Senator Marcellino.

SENATOR MARCELLINO: Can we now clean the house.

ACTING PRESIDENT FUSCHILLO: Senator Oppenheimer.

SENATOR OPPENHEIMER: On page number 56, I offer the following amendments to Calendar Number 1134, Senate Print 4820, and ask that the said bill retain its place on the Third Reading Calendar.

Also, if I may, Mr. President, I move that the following bills be discharged from their respective committees and be recommitted with instructions to strike the enacting clause: Senate Number 4798.

ACTING PRESIDENT FUSCHILLO: On the first one, the amendments are received and adopted, and the bill will retain its place on the Third Reading Calendar.

And on the second one, so ordered.

SENATOR OPPENHEIMER: Thank you.

ACTING PRESIDENT FUSCHILLO: Senator McGee.

SENATOR McGEE: Thank you, Mr. President. On behalf of Senator LaValle, on page number 5 I offer the following amendments to Calendar Number 39, Senate Print Number 6043A, and ask that said bill retain its place on Third Reading Calendar.

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

Senator McGee.

SENATOR McGEE: Mr. President, on behalf of Senator Saland, on page number 33 I offer the following amendments to Calendar Number 759, Senate Print Number 6979, and ask that said bill retain its place on Third Reading Calendar.

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

Senator McGee.

SENATOR McGEE: Mr. President, on behalf of Senator Fuschillo I wish to call up Calendar Number 699, Assembly Print 4955.

ACTING PRESIDENT FUSCHILLO: The Secretary will read.

THE SECRETARY: Calendar Number 699, by Member of the Assembly Sweeney, Assembly Print Number 4955, an act to authorize.

SENATOR McGEE: I now move to reconsider the vote by which this Assembly bill was substituted for Senator Fuschillo's bill, Senate Print Number 2586, on 4/24.

ACTING PRESIDENT FUSCHILLO: The Secretary will call the roll upon reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

SENATOR McGEE: I now move that the Assembly Bill Number 4955 be committed to the Committee on Rules and that Senator Fuschillo's Senate bill be restored on the order of the Third Reading Calendar.

ACTING PRESIDENT FUSCHILLO: So ordered.

SENATOR McGEE: Thank you, Mr. President.

ACTING PRESIDENT FUSCHILLO: Thank you, Senator McGee.

SENATOR McGEE: I offer the following amendments.

ACTING PRESIDENT FUSCHILLO: The amendments are received, Senator.

SENATOR McGEE: Thank you.

ACTING PRESIDENT FUSCHILLO: Senator Marcellino.

SENATOR MARCELLINO: Thank you, Mr. President.

I'd just like to make an announcement for all the members. We expect to shortly be calling a Rules Committee meeting that will report out a significant bill which we will take up on the floor.

In the interim, we will be at ease.

ACTING PRESIDENT FUSCHILLO: The Senate will stand at ease.

(Whereupon, the Senate stood at ease at 12:30 p.m.)

(Whereupon, the Senate reconvened at 12:39 p.m.)

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT FUSCHILLO: Senator Skelos.

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

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

SENATOR SKELOS: Stand at ease.

ACTING PRESIDENT FUSCHILLO: The Senate stands at ease.

(Whereupon, the Senate stood at ease at 12:40 p.m.)

(Whereupon, the Senate reconvened at 12:55 p.m.)

ACTING PRESIDENT FUSCHILLO: The Senate will come to order.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time return to the reports of standing committees.

I believe there is a report of the Rules Committee at the desk. I'd ask that it

be read at this time.

ACTING PRESIDENT FUSCHILLO: The Secretary will read.

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

Senate Print 7536, by the Senate Committee on Rules, an act to amend the State Law.

ACTING PRESIDENT FUSCHILLO: Senator Bruno.

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

ACTING PRESIDENT FUSCHILLO: All in favor of accepting the report of the Rules Committee signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT FUSCHILLO: Opposed, nay.

(No response.)

ACTING PRESIDENT FUSCHILLO: The ayes have it. The report is accepted.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time take up Calendar Number

1302.

ACTING PRESIDENT FUSCHILLO: The Secretary will read.

THE SECRETARY: Calendar Number 1302, by the Senate Committee on Rules, Senate Print Number 7536, an act to amend the State Law, in relation to the creation of Congressional districts.

SENATOR BRUNO: Is there a message of necessity at the desk?

ACTING PRESIDENT FUSCHILLO: Yes, there is.

SENATOR BRUNO: I move that we accept the message.

ACTING PRESIDENT FUSCHILLO: All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT FUSCHILLO: Opposed, nay.

(No response.)

ACTING PRESIDENT FUSCHILLO: The ayes have it. The message is accepted.

SENATOR DOLLINGER: Mr. President, point of order.

ACTING PRESIDENT FUSCHILLO:

Senator Dollinger.

SENATOR DOLLINGER: Mr. President, is there a sponsor's memorandum in support of the bill before the house?

ACTING PRESIDENT FUSCHILLO: Senator Dollinger, there is a sponsor's memo on the previous print of the bill.

SENATOR DOLLINGER: Can we have a copy of that, Mr. President?

ACTING PRESIDENT FUSCHILLO: We don't have it at the desk, Senator Dollinger.

SENATOR DOLLINGER: I believe that the Senate Rules require that the memorandum be here.

ACTING PRESIDENT FUSCHILLO: Senator Bruno.

SENATOR BRUNO: Mr. President, I am informed by our counsels that we will have that memorandum at the desk within a few seconds.

And thank you for your diligence in helping us adhere to the rules of the Senate, because it's critically important in all of our lives that we have an orderly process as we work together to improve the quality of

government for all the people here in New York State.

ACTING PRESIDENT FUSCHILLO: Thank you, Senator Bruno.

Senator Bruno.

SENATOR BRUNO: Thank you, Mr. President. Thank you, colleagues.

The bill before us is the reapportionment bill that reapportions Congress here in New York State. And as you all know, constitutionally, it is a mandate of the Legislature to reapportion all of the Assembly, Senate, and Congressional districts throughout the state, based on criteria that are set forth by the Justice Department, by the Constitution, bottom line relating to equal opportunity for all citizens here in New York State to vote for and have proper representation.

What has been so difficult in this process is that based on the shifts in population in New York State to other states, and the growth in other states relative to New York, census figures have dictated that we reduce the number of Congressional seats in

New York State by two.

And when you have committed, dedicated, outstanding public servants like the 31 Congressional people on both sides of the aisle who are presently serving, all of them intending on running again, it is a very, very difficult task to eliminate two Congressional seats.

It's taken a long time, but with the diligence of the chairs, the cochairs, Senator Skelos and Assemblyman Parment representing the Assembly, with the Speaker, with the Governor, with so many of you that have been here representing the best interests of your constituency -- Steve Boggess, our Secretary to the Senate, who played a continuous role over these last several weeks especially -- through this process, while it's been contentious, while it's been uncertain, while it's been very, very difficult, we have arrived at the plan that is before us that we think best represents the opportunity for this constituency to select representatives that they would like to have in Washington working on their behalf.

And as you all know, it puts Congressional people Louise Slaughter together with Congressman LaFalce in the western part of the state in a primary, and it puts Congressman Gilman together with Congresswoman Kelly here in the lower mid-Hudson in a primary.

And the winners, if that's the way it all turns out, will have consequently eliminated one seat there and one seat here, and we get down to the required 29 that will meet the constitutional requirements of us here in New York State.

So again, I commend those that have been so diligent. I commend the Speaker and the Governor for their diligence in staying with the process. We're making a lot of people more comfortable with what we're doing, and content, and the constituency in a position to be more informed as they vote.

And it has not been a pleasant process, just because we do have to eliminate two. But we are what we are. We think this is fair, it is equitable, it's in the public's best interest that we move the process

forward.

So I thank you for your indulgence. Thank you, Mr. President.

ACTING PRESIDENT FUSCHILLO: Senator Dollinger.

SENATOR DOLLINGER: Mr. President, on the bill.

First of all, I greatly appreciate the three-sentence memorandum in support of the bill which through you, Mr. President, my guess is meets the rules of the Senate just barely.

It does say fascinating things like "The United States Constitution requires that we do this. This process is known as redistricting," which should be an education to all of us that had never heard that term before.

And then it does contain an interesting statement. It says "In New York State, the Legislative Task Force on Demographic Research and Reapportionment analyzes the Census Bureau population figures used in the redistricting plan." What a perfect segue, quite frankly, Mr. President,

to my remarks about this plan.

This state set up a process by statute in which it was going to engage in the reapportionment process for both the Assembly and the Senate, as we are required to do, and for the United States Congress, as we are further required to do. In that process, we held about 20 hearings around the state. Eleven of those were held in the first phase, prior to the release of any plan.

During that process, we heard lots of testimony about the Congressional districts. We heard lots of testimony about various constituencies in New York that Senator Bruno referred to in his remarks, and what they wanted for their reapportionment plan with respect to Congress, with respect to the 29 seats that New York was apportioned in the national House of Representatives.

I daresay, Mr. President, that the plan that's currently formulated, at least as it respects the community that I represent, bears absolutely no congruency to what was heard in the public testimony portion of hearings both in Rochester, Syracuse, and

Buffalo. Or, for that matter, in Binghamton.

And it seems to me that what this process has done, what we've done today, is we've done exactly what we promised the people of this state we would not do. We told them that this would be done by a legislative task force, that there would be a public participation component, that we would eventually take the proposed plan back to them for public comment before we voted on it. We're not doing that today.

Instead, we have hatched this little chicken of a reapportionment plan. It's barely -- as I believe Senator Volker mentioned, it's still pretty hot. It's still warm. And what we're doing is we're putting it into law without further public comment.

Quite frankly, Mr. President, from my point of view there couldn't be any more bad faith in the whole Congressional reapportionment process than the bad faith that we've pursued to this day.

We don't hold the public comment period, we don't give those constituencies in New York that we promised an opportunity to

comment, we don't even give them an opportunity to comment again. We don't take the plan back to the people to solicit their input.

Instead, we pass it on a pro forma basis with a hastily concocted memorandum in support at the last possible second, and we cut the public out of the process completely. It seems to me, Mr. President, there couldn't be any better indicia of bad faith with our public than what we do today.

Lastly, Mr. President, this plan in my opinion is a catastrophe for the people that I represent and the community that I represent. Rochester and Monroe County are going to be carved into four pieces. This plan is a hastily concocted attempt to bring together two active Democrats and by doing so to serve the needs of one Republican Congressman.

This plan is going to carve up Monroe County, deny us the opportunity to elect one of our own to the United States Congress, and in my opinion create havoc with respect to the community that I represent.

I have led a movement, among others in the city of Rochester -- our mayor, other members of the state delegation who believe that this is the wrong thing for our community. I believe that those of us who come from Western New York should have listened to the people who said create a Buffalo-based district, create a Rochester-based district, create a district based in Syracuse, let the urban populations have a voice in Congress, and then thread the districts through the suburbs and the rural areas that are necessary to fill up the remain remainder of the Western New York delegation.

I believe this is a catastrophe for Rochester, a catastrophe for our community. And what's worse, Mr. President, I believe today we achieve the ultimate in bad faith in the reapportionment process.

Nothing could be worse than producing behind closed doors a bill that springs to life at 1 o'clock in the afternoon, a memorandum that springs to subsequent life four or five minutes later, hastily put together, and that this is the best we can do

in New York. I would suggest, Mr. President, this is a sign that we've engaged in bad faith in our Congressional reapportionment.

My hope is that since it is apparent that this Legislature does not want as to act in good faith, that the courts of this nation, that those who have some input on this plan in the future will require us to go back and exercise the good faith that the people of the State of New York deserve.

This, Mr. President, this bill does not embody the best we can do. We can do much, much better. For those reasons, Mr. President, I urge all of my colleagues, vote no for a back-room deal on Congressional reapportionment that frankly sacrifices the people of New York for insider interests in this state.

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

Debate is closed.

Read the last section.

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

ACTING PRESIDENT FUSCHILLO: Call

the roll.

(The Secretary called the roll.)

ACTING PRESIDENT FUSCHILLO: Senator McGee, to explain her vote.

SENATOR McGEE: Thank you, Mr. President.

Mr. President, I cannot disagree with any of my colleagues that have spoken on this bill through the many months and days that we've talked about reapportionment, particularly for the Congressional districts.

I realize that drafting a reapportionment bill is a very difficult job. And I do commend those who have spent so many hours and so much time drafting the bill.

However, I do have to say that I'm very disappointed. I'm extremely disappointed with the creation of a Congressional seat that will represent the western -- southwestern tier. The 31st Congressional District shares a common heritage. The values and the rural flavor that runs along the Pennsylvania-New York State border, we all share those in common.

The original plans of the Senate,

the Assembly, and the special master kept the 31st Congressional District, among Allegany, Cattaraugus and Chautauqua counties, bound together.

I would point out that throughout the time we were doing the Congressional redistricting and talking about Congressional redistricting, we had a drive in the 31st Congressional District to keep our district together. It was "Save Our District."

And we did in fact do a petition drive, and we did present to members of the Legislature 102,000 signatures indicating that we want, we would like the 31st Congressional District held together, that that borders right along the Southern Tier, between Pennsylvania and New York.

Unfortunately, that didn't happen. Again, I understand the difficulty in being able to draw a plan which is fair and equitable to all the people in the state of New York. And there are some who will be unhappy, and some who will be happy.

I am very disappointed. This proposal has disrupted the continuity of the

Southern Tier. This bill does not reflect the feelings of the people that I represent, and I vote no.

ACTING PRESIDENT FUSCHILLO: Senator Morahan.

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

I too want to commend those who have worked so hard and so arduously through a very painstaking process, not only in drawing the lines but getting agreements and making revisions and all of the heartache that goes through that with the courts.

And I really want to congratulate the Senate and the Assembly and the Governor for at last coming together and doing the job that we should do, and that is to do the reapportionment bill, versus the courts.

However, having said that, I must just make mention of my concern with this reapportionment bill. The County of Rockland, one of the counties I represent, is the smallest geographical county in the State of New York. And in this new plan, it has - well, now it is served by one Congressional

member, plus other counties.

The county was whole. Now this plan now creates three Congressional seats that will sliver into the County of Rockland, taking a small piece in each one of the districts, which will really fragment the County of Rockland.

The lines are difficult, when I talk about communities. But I know the people in Rockland have also spoken strongly that they wanted their county uncut. I know not everybody can be pleased. But I know on their behalf they would want me to speak today to say that, as their representative, they have serious objections to this plan. Therefore, I will have to vote no.

ACTING PRESIDENT FUSCHILLO: Senator Morahan will be recorded in the negative.

Senator Alesi.

SENATOR ALESI: Thank you, Mr. President. To explain my vote.

A large portion of the 55th Senate District does not include the city of Rochester, although it does include part of

the city of Rochester. The 55th Senate District is totally enclosed within Monroe County. And this plan, as has been stated earlier, would combine the city of Buffalo, to some extent, and the city of Rochester, to some extent, in the same Congressional district.

And while that is a matter of concern, what I recognize in this very difficult process of redistricting is that nothing is perfect. And if you look at this picture as it covers all of New York State - and that's what we have to consider. Thank you, Mr. President.

That's what we have to consider, that this is a plan that covers all of New York State. And so yes, there are some bumps and some bruises in this plan. And we should expect that.

I'm not especially that concerned about the city of Rochester portion of this plan, at least from the standpoint of the 55th Senate District. Because in the 55th Senate District, whereas before we had one member of Congress representing us, we now have four,

and three very powerful members of Congress who can work with me and with whom I can work, and my colleagues who also have a piece of Monroe County in the Assembly and in the Senate.

So from the standpoint that it is not perfect, that's true. From the standpoint that there are concerns about melding Rochester and Buffalo together, that is true.

But from the standpoint that this is a plan that serves all of New York State because we have lost representation in the Congress, it's pretty much one that serves all of New York State.

From the standpoint that it serves the 55th Senate District, I'm looking forward to having four members of Congress to work with on behalf of the people in the towns of Riga and Wheatland and Penfield, Perinton, Pittsford, East Rochester and, yes, part of the city of Rochester.

I will vote yes.

ACTING PRESIDENT FUSCHILLO: Senator Alesi will be recorded in the affirmative.

Senator Krueger.

SENATOR LIZ KRUEGER: Thank you. I rise to explain my vote, Mr. President.

ACTING PRESIDENT FUSCHILLO: Senator Krueger, to explain her vote.

SENATOR LIZ KRUEGER: Thank you.

Unlike several of my colleagues who already rose to speak today, I am not voting no on this bill specifically because of my own district. And in fact I would say that for the City of New York and for Manhattan Island, I am not uncomfortable at all with the decisions that were made about the redistricting.

But yet I find myself having to vote no on the bill overall because of the absence of a fair and democratic process in the state that gave the people of our state their fair opportunity to participate and to comment, and that they expect better of us and I expect better of us.

It does not surprise anyone in this house or anyone listening today that the failure of the redistricting process in New York State this decade, the decade before,

and the decade before that are infamous. In fact, when you look at academic books that have been written about gerrymandering and how not to do redistricting in a fair and equitable way, New York State is always the number-one example of what you should not do in the redistricting process or in the redistricting outcome.

So I'd argue that while this bill will pass, I have no doubt about it, and from my district I do not have the same complaints and issues as many of the colleagues here on the floor have spoken about or will speak about, that in fact it's the year 2002. We had a test, we had an assignment this year to do better than we have done in past decades, to redeem the reputation of the great State of New York to do a fair and equitable model of redistricting. And yet this decade now we have flunked that test again and will not have the opportunity to do a better job for ourselves now for another ten years.

So while Senator Bruno, when he spoke, talked about the importance of a smooth and orderly process, I would argue that that

is not the test for us. The test for us is whether we in fact do our jobs well, whether we meet the obligations of the people who voted for us and put us here to do their work.

And I do not believe that any of us can go home and say that with the final outcome of the redistricting process for New York State this year, if in fact we are coming to closure on that, that we did our job for the people well. And so I will vote no on this bill.

Thank you very much.

ACTING PRESIDENT FUSCHILLO: Senator Krueger will be recorded in the negative.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1302 are Senators Dollinger, Duane, Hevesi, L. Krueger, McGee, Morahan, Schneiderman, and Stachowski. Ayes, 51. Nays, 8.

ACTING PRESIDENT FUSCHILLO: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Mr. President,

there being no further business to come before the Senate, I would move that we stand adjourned until Monday, June 10th, at 3:00 p.m., with intervening days being legislative days.

ACTING PRESIDENT FUSCHILLO: On motion, the Senate stands adjourned until Monday, June 10th, at 3:00 p.m., intervening days being legislative days.

(Whereupon, at 1:21 p.m., the Senate adjourned.)