NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

March 19, 2003

11:16 a.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will please come to order.

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

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

THE PRESIDENT: With us once again this morning is the Reverend Peter G. Young, from Blessed Sacrament Church, in Bolton Landing, of course to give the invocation.

REVEREND YOUNG: Let us pray.

Dear Lord, we ask Your presence and blessing on our time together today, especially at this time when we know that our country is in great turmoil and hope of being patriotic and defending our resources and our country and our people.

We express our concerns about the welfare of our country and to learn from each other, to grow in spirit and character, to find Your will for our lives and our neighbors.

We thank You for the opportunity in this country to assemble ourselves at any time and at any place to discuss our concern as citizens. We are mindful that many in our world do not enjoy such freedom, and today we talk about defending them.

Grant us the wisdom to carry our decisions within Your will. Bless us as we continue to conduct our business with dignity and sensitivity in this Senate chamber.

Amen.

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Tuesday, March 18, the Senate met pursuant to adjournment. The Journal of Monday, March 17, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Kuhl.

SENATOR KUHL: Yes, Madam President. I understand there's a substitution at the desk. Could we take that up now.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: On page 6, Senator Spano moves to discharge, from the Committee on Investigations and Government Operations, Assembly Bill Number 2769 and substitute it for the identical Senate Bill Number 1211, First Report Calendar 245.

THE PRESIDENT: Substitutions ordered.

Senator Kuhl.

SENATOR KUHL: Yes, Madam President. May we now have the noncontroversial reading of the calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 169, by Senator Meier, Senate Print 1827, an act to amend Chapter 436 of the Laws of 1997.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 179, by Senator Volker, Senate Print 306, an act to amend the Executive Law, in relation to extending provisions.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 180, by Member of the Assembly Sweeney, Assembly Print Number 4417, an act in relation to redistributing 2002 bond volume allocations.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 188, by Senator Meier, Senate Print 15A, an act to amend the Highway Law, in relation to designating a portion of the state highway system in the County of Oneida as the "Military Highway."

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 189, by Senator Maziarz, Senate Print 836, an act to amend the Highway Law, in relation to designating a portion of the state highway system as the "POW-MIA Memorial Highway."

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 190, by Senator Leibell, Senate Print 1176, an act to amend the Highway Law, in relation to the designation of the "AMVETS Memorial Bridge."

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 194, by Senator Nozzolio, Senate Print 439, an act to amend the Correction Law, in relation to requiring inmates --

SENATOR SCHNEIDERMAN: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 199, by Senator Larkin, Senate Print 1994, an act to amend the Public Authorities Law, in relation to enabling the Dormitory Authority.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 220, by Senator Marcellino, Senate Print 2935, an act --

SENATOR SCHNEIDERMAN: Lay it aside.

THE PRESIDENT: The bill is laid aside.

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

SENATOR KUHL: Yes, Madam President. May we now have the controversial reading of the calendar, please.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 194, by Senator Nozzolio, Senate Print 439, an act to amend the Correction Law, in relation to requiring inmates to make medical copayments.

SENATOR SCHNEIDERMAN: Explanation.

THE PRESIDENT: Senator Nozzolio,

an explanation has been requested.

SENATOR NOZZOLIO: Thank you, Madam President.

This measure has passed the Senate each year since 1997. The purpose is to require inmates in state correctional facilities to make a $7 copayment for medical treatment. It makes inmates partially responsible for their care, something that this house requires senior citizens to make copayments when they have a state-funded insurance policy.

No emergency treatment to inmates would be denied under this legislation. Chronic conditions would not be denied under this legislation. And that it is a measure now being carried in the Assembly by Assemblyman Gunther, who is -- and it's currently under review by the Corrections Committee in that body.

THE PRESIDENT: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President. Very briefly on the bill.

THE PRESIDENT: You may proceed.

SENATOR SCHNEIDERMAN: This is another bill whose anniversaries we celebrate frequently here.

I hope that we can move ahead, as we've said several times this session, towards dealing with issues related to sentencing and the treatment of inmates in our prison system.

This legislation is simply a punitive measure designed to impose fees on inmates. Seven dollars as copayment is an enormous fee for an inmate. I mean, those of us who grouse about paying a $10 copayment fee, a $7 fee is a lot given the very, very limited income that inmates have.

The problem with this legislation fundamentally is that it will discourage people who should receive medical care from receiving medical care. And for those of us -- and I guess there are not that many of us here -- those of us who have worked in prisons, there is nothing more terrifying than the outbreak of some sort of a serious disease that's running through a prison population.

I would hope that we would do everything we can do to get inmates to seek

medical care, not discourage them from doing so.

Once again, this is a punitive one-house measure that I hope we will abandon at some point and come together with the other house in an effort to actually address some of the very serious issues relating to the sentencing and treatment of inmates in our state prison system.

I'll be voting no.

Thank you, Madam President.

THE PRESIDENT: Senator Stavisky.

SENATOR STAVISKY: If the sponsor would yield to just a question or two, Madam President.

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

You may proceed.

SENATOR STAVISKY: Through you, Madam President, I remember this bill from last year and the extensive debate that ensued. Is this version any different than the one we debated for a lengthy period last year?

SENATOR NOZZOLIO: Madam

President, no.

THE PRESIDENT: Senator Nozzolio.

SENATOR NOZZOLIO: No. The answer is no.

SENATOR STAVISKY: The answer is no. In other words, none of our questions were addressed in this version.

One more question.

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

SENATOR NOZZOLIO: Yes, Madam President.

THE PRESIDENT: Thank you, Senator Nozzolio.

You may proceed.

SENATOR STAVISKY: Last year I asked the question of whether, if an inmate had a headache, he would be charged a $7 copayment for two aspirin. Is this still the case under your legislation?

SENATOR NOZZOLIO: Madam President, to answer my colleague's question, that this matter since last year has not changed, Senator.

And what also has not changed is

that the Federal Bureau of Prisons still has this criteria.

What has not changed is the states of California, Connecticut, Ohio, Pennsylvania, and New Jersey still have this procedure and this requirement, that those states have continued this requirement since we have last debated this statutory change, Madam President. While New York decides to continue to refrain from collecting these funds, while inmates continue to use sick call who may not be that sick.

But yes, Madam President, to answer the Senator's question, if someone has a headache in our correctional facilities that is incarcerated and that someone, that inmate goes to sick call and utilizes the state-funded doctor, the state-funded nurses, the state-funded pharmaceuticals, yes, Madam President, that inmate who had the headache and used the doctor, the nurse, the medicine, would have to pay a $7 copay.

SENATOR STAVISKY: Thank you, Senator.

I will be voting no.

THE PRESIDENT: Senator Onorato.

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

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

SENATOR NOZZOLIO: Yes, Madam President, I'd be happy to yield.

THE PRESIDENT: You may proceed, Senator.

SENATOR ONORATO: Senator Nozzolio, I can agree with part of the concept of your legislation. But the thing that really troubles me is that you claim that there's a $7 copay for an inmate in prison.

We here in the Senate and Assembly and anybody working for the state have the facilities of the nurses at our disposal at all times for no charge, and we're making a pretty decent salary.

At $7 a visit, what does it amount to in the amount of time that a prisoner would have to work to be able to accumulate $7?

SENATOR NOZZOLIO: Madam President, the copay, I should add -- Senator

Onorato had listed those other copayments -- that a copayment now, since this bill was authored, the copayment for the state workers in Senator Onorato's district, the senior citizens in Senator Onorato's district, in all of our districts across the state, the copayment has been raised to $10 a visit or a procedure under most insurance carrier policies.

This is less. It remains at $7 that we have tried put forward. It originally was tied to the same type of copay that other insurance carriers and other policies required.

That it depends, Senator Onorato, on how, in terms of working, how much an inmate is working, how much -- there is no work requirement that an inmate be required to work in this state to help pay for the cost or part of their cost of incarceration. Those inmates who do work do receive a payment. It is anywhere from -- it's up to 65 cents an hour that an inmate is paid.

But that does not go into any of the costs of his incarceration or her

incarceration. That the cost of meals, the cost of commissaries, the allowances that they have are basically paid for by the taxpayers.

So anyone who is working and does have a revenue stream -- and I daresay there are many in prison today that have their own accounts and don't work.

There is a provision of this legislation, Senator, that does not deny any emergency care under this legislation to those inmates who cannot make that copayment.

SENATOR ONORATO: Again, through you, will the Senator continue to yield.

THE PRESIDENT: Senator Nozzolio, do you continue to yield for another question?

SENATOR NOZZOLIO: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator.

SENATOR ONORATO: What I'm getting at, Senator, is the amount of the copay is not commensurate with what the prisoner is earning.

You just mentioned the very, very low figure of 65 cents. Where we're all

making copays, it's very well within our means to pay the copay. But when you're talking about somebody making 65 cents an hour or 65 cents a day, it is no longer commensurate with what they're earning to pay a $7 copay.

What I would like to see is at least -- at that part of the bill is to at least reduce the amount of copay so that the prisoner can readily afford to make the copay.

SENATOR NOZZOLIO: Madam President, I would certainly welcome Senator Onorato or any other Senator's amendment to this legislation that would change the dollar amount of copay that is suggested.

I would hasten to add to Senator Onorato, though, you're comparing apples with watermelons, in the sense that each of the inmates should also be considered the fact that none of them, to my knowledge, pay for their room, none of them pay for their board, none of them pay for any of the services provided to our inmates.

And I'm not suggesting any draconian denial of benefits to inmates, that certainly medical care should not be denied an

inmate. But the fact of the matter is anyone who visits a correctional facility and goes into the sick-call area will find, on any given day, some inmates who are very sick and need that care; another number of inmates may be trying to avoid other routines in prison by going to sick call.

And in fact, whether or not you have a headache or a taxpayer has a headache, they don't go to the doctor every time they have a headache. Some inmates end up using sick call for a variety of maladies that could certainly be held in question. Yet the taxpayers are asked each and every time to pay for that use of services.

This shares the burden.

SENATOR ONORATO: Thank you.

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

Senator Diaz.

SENATOR DIAZ: Thank you, Madam President. On the bill.

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

SENATOR DIAZ: I heard Senator

Nozzolio mention two things that really bothers me. First, he mentioned one over and over about senior citizens being imposed an increase on their coshare, copayment. And that's an injustice done to senior citizens.

And it bothers me to hear, to see that some of my colleagues are using an injustice done to senior citizens as an example to commit another injustice. It was wrong to increase the copayment on senior citizens, and it is wrong to increase the copayment -- to impose a copayment on inmates.

The other thing that Senator Nozzolio mentioned was federal prisoners. The men and women that goes to federal prison are -- most of them are rich, millionaires. They should pay. Because they go to a hotel, sometimes, in the federal detention facilities, compared to the men and women that comes to the state, that are property of the state.

And also, Madam Chairlady, if an inmate is paid 25 cents an hour in a New York State detention center, it would take 28 hours for an inmate to work to be able to pay the

$7 copayment.

I think that this body here is once and for all, that if this body has been dealing with this for many years, I think that this is enough. This is one bill that should be taken out of the floor forever, and stop trying to commit this injustice to the inmates in New York State.

Thank you.

THE PRESIDENT: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Madam President, I would ask if Senator Nozzolio would yield for a question.

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

SENATOR NOZZOLIO: Yes, Madam President, I'll be happy to yield.

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

SENATOR MONTGOMERY: Thank you.

Senator Nozzolio, I would like to know -- it's my understanding that the state and the Corrections Department has entered into an arrangement with their telephone

service people that -- whereby the state -- Corrections, specifically -- receives a kickback which amounts to over $20 million.

And they initially -- it was my understanding that the purpose of that fund was to impart -- fund services, including health services, to inmates. Are you familiar with that program?

SENATOR NOZZOLIO: Yes, Madam President, I am familiar with the program Senator Montgomery outlined.

SENATOR MONTGOMERY: All right. And, Senator Nozzolio, you realize that the arrangement for the telephone services between inmates and their families results in an approximate amount of $3,000 a year, on the average, for a family who receives the calls from the inmate, based on this contract?

So that the family of the inmate pays for every phone call, on the average of $25 or more per call, per minute. So this $20 million is generated based on, in part, the payments that are made to the phone company by the families for the phone calls.

SENATOR NOZZOLIO: Senator, I am

familiar with the fact that those charges are brought back into the correctional system, which I think you and I both agree is a good thing.

That those services provided by that money are going in large part -- I can't give you the specific dollar amount, but I understand they go to inmate services, some of which our taxpayers would rather see go into the General Fund and pay for things like educating -- not inmates, but educating our schoolchildren.

That the fact of the matter is that those payments do go to some of the costs of incarceration, but they don't go to all of the costs of incarceration, and in fact make only a dent, a small dent, into the actual costs of taking care of our inmates.

And it's also my understanding, Senator, and you bring up a very good point, that here is one example where the charges to inmates are going to be utilized for services to inmates. Like television, like other reading materials and materials that are utilized by the inmates.

So there is a precedent for this, and you indicate what that precedent is. There's a precedent for, I believe, this type of copayment based on this type of program you had outlined.

SENATOR MONTGOMERY: Thank you, Senator Nozzolio.

On the bill, Madam President.

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

SENATOR MONTGOMERY: Yes. This, to me, is just an instance where, as my colleague said before, this really is not to in any way improve the delivery of healthcare, it's just a means of -- or to even pay for healthcare in the prison system, it's a means to disincentive, to give disincentive for inmates to use health services.

And let me just say, Madam President, for the record, a very large percent of our inmates suffer from mental illness, for which we attempt to provide some services.

Senior citizens, there are a number of inmates who have -- are serving life

sentences. They have become senior citizens. Are we now going to -- and many of them are not able to work, necessarily, to even earn their 65 cents an hour. Sixty-five cents an hour is on the high side. Most inmates don't even earn that much. And senior citizens may not be able to go out to work.

And there are a number -- the last time that I visited a facility in our state, there was a whole wing in that facility of people who were wheelchair-bound, so that they are not able to do any work.

So the issue of providing -- forcing inmates to have a copay to pay for their service is really, I think, at this point in time a thoughtless proposal, because there are many aspects that we must consider in relationship to healthcare in prisons.

And lastly, Madam President, I just would like to caution Senator Nozzolio that we have a large number of inmates who are infected with hepatitis C as well as with the HIV/AIDS virus. And those inmates are going to be returning to communities across the state, hopefully having had healthcare, having

had treatments in the prisons.

If we are now going to require them to pay $7 per visit, we're going to have a number of people who will not access any health service, any healthcare in prison. And if they do, and they return with a -- owing money to DOCS, they either may not be able to come out of prison or we may end up with their families, in addition to having to pay very high costs just being able to communicate with them, to be in touch with them, they may be burdened with having to provide assistance to inmates to repay DOCS based on having had healthcare.

So this really is, I think, a very unwise piece of legislation.

And I'm certainly reminded that in the last -- when we debated this last year, a number of us voted against it, including Senators, Andrews, Duane, Hassell-Thompson, Krueger, Montgomery, Onorato, Oppenheimer, Paterson, Sampson, Santiago, Schneiderman, A. Smith, Stavisky, Espada, and Senator Marchi. So there are a number of us who obviously have some great concerns about this legislation.

And I will certainly be voting no again this time.

THE PRESIDENT: Senator Connor.

SENATOR CONNOR: Thank you, Madam President.

As just noted by Senator Montgomery, it appears that I voted for this last year and the year before. In all reality, let me confess something. I was then the minority leader, and the counsel who sit over there by the rules of this house voted for me.

And as I looked over this bill preparing for today's session, I thought -- whatever reason, my reaction was: Good Lord, how did I get recorded voting in favor of this bill?

Because I'm against this bill. And I'm against this bill because it does not deal with the reality of an inmate's life.

I grew up in a home where we used to go down -- we had a wonderful family doctor. Why we was he wonderful? He charged 2 bucks a visit. He was a great doctor. And as my mother used to say, if you got a shot,

it was $5. But we sure didn't run down there every time we had a cut, bruise, bang, or headache, because that $2 and that $5 meant something.

What did you do if you had a headache? My father had a headache, and I guess we gave him plenty. And my mother had a headache, and I'm sure we gave her even more. You went to that big jar of aspirin that was kept in the bathroom -- and why was it a big jar? You got it somewhere on discount, cheap as you could -- and you took a couple of aspirin.

Today, and I've had a few headaches over the past years, you take the Advil, the bottle of Advil you have that you bought for a couple of bucks. Maybe it was more than a couple of bucks, $5 or $6. But you got a whole year's worth of headaches in that jar for 5 bucks.

You certainly don't run off to see a doctor every time you have a cut, unless it's bad enough for stitches. Or we're even privileged up here; frankly, if I get a headache here and I go to the nurses, it's not

because I need to see a nurse for a headache. It's because I need to get a couple of aspirin or whatever.

Inmate life is quite different, Madam President. I don't think inmates are allowed to keep large jars of pills in their cells. In fact, I know they're not. It would be considered contraband. Whether it's over-the-counter or prescription, whatever kind of drugs, they don't have that access.

So to the extent that it's been urged here by proponents of this bill that, gee, we're just treating the inmates, the state employees the way we're treated, if we go to the doctor, we have a copay -- it's deceptive. We don't have to go see the doctor or the nurse every time we have a minor ailment. You know?

If I've got a stiff shoulder, you know, I get a tube of whatever out of the medicine cabinet and I rub my shoulder and hope it feels better the next day. If I'm an inmate, I can't have that kind of drugs; I have to go make a sick call and get some of it.

So that what you're faced with here for everyday, common ailments -- when I get a cold, I don't run to the doctor. I go buy some cold syrup and I take it, or cough syrup, or whatever. Cold medication. Inmates can't do that.

So this becomes very punitive, because they -- if I have a cold, I certainly don't have to make my $10 copay to get some cough syrup or to get some cold tablets. An inmate, under this, would have to go for a visit and be charged $7. And a chronically ill inmate that needs a drug regimen every day or every other day or whatever would soon find their very small inmate account from their labors exhausted.

Now -- and I'm not standing here to be a bleeding heart for inmates. But let's be reasonable here. You can't expect people to do the impossible and to say, Well, too bad, if you've been sick a few times, you now can't go to the commissary and buy some personal item that you're allowed to buy there, because your account is empty because you had to go to the doctor's three times this month. It's

just not reasonable.

I would certainly support some reasonable measure to ensure perhaps that inmates make some contribution when they really need to see a doctor. But we've set up a system where they need to see a doctor or a nurse for every tiny little thing that we in our families wouldn't dream of bothering a medical professional about.

So for that reason, Madam President, I am very happy to clear the record, I renounce the prior votes that were cast for me, and I will be voting no.

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

Senator Krueger.

SENATOR KRUEGER: Thank you, Madam President.

THE PRESIDENT: You're welcome.

SENATOR KRUEGER: I rise to speak on the bill.

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

SENATOR KRUEGER: Thank you.

So many of my points have already

been made, but I just want to highlight from the discussion here today that in fact I believe that this proposal is unconscionable.

And it is unconscionable both on what the impact would be on people in our prison system's lack of access to healthcare -- and, as actually Senator Connor just described, where they have no other options but to turn to the healthcare system for anything that goes wrong when they're in our prison system -- but, second, to argue that it is unconscionable from a public health perspective, because in fact a disproportionately large number of people in the New York State prison system are the poor, the elderly, the sick, for a variety of reasons that may have related to their getting there.

But we have an epidemic, as was stated earlier by Senator Montgomery, of HIV infection, of hepatitis C, of illnesses associated with previous drug use and needle use in life.

We have a disproportionately large number of people with mental health problems

in New York's prison system. In fact, in New York City's prison system, based on a recent lawsuit decision, there are an estimated 30,000 people who get released out of the New York City prison system a year with mental health problems.

Although Senator Nozzolio's bill talks about psychiatric treatment being exempt, the vast majority of people even getting mental health services or psychotropic drugs while they're in the prison system are not in fact going to a psychiatrist, they are going to the prison health system.

And what we would be doing is preventing people who are most in need of healthcare from continuing to get it, creating increased health costs for us as they get sicker, increased health risks for the entire population of people who they share prisons with, and increased risk and health costs to the greater population when and if they are released back into our communities.

And so in fact the one item I found of interest in the memo was that we are paying just under $2,000 per inmate for healthcare

services in the New York State prison system. If you compare that to the healthcare costs under almost any insurance program in the state, private or public, one would actually reasonably ask the question how could we be doing this for so little money per person, under $2,000 per person.

And in fact, it raises the question to me of how are we failing to make sure that we have adequate public health and individual health services in our prison system. So I do appreciate the highlight of that number.

But again, I believe that this bill is not only poorly thought through, but it would absolutely not be in the best fiscal -- would not lead to smart fiscal analysis for the State of New York, and certainly wouldn't lead to savings in our healthcare system.

Thank you, Madam President.

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

Then the debate is closed.

Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 120th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator Nozzolio, to explain your vote.

SENATOR NOZZOLIO: Madam President, I rise again to explain my vote and support this measure.

What our body is doing today is making a choice. It's choosing to continue having our state not provide the same type of procedure that the states of California, Connecticut, Ohio, Pennsylvania, and New Jersey have made in making this copayment a mandatory situation, as well as a mandatory situation in our federal prisons.

And I ask each of my colleagues voting against this measure, next time some of the uninsured healthcare recipients in this state need upwards of $10 million, you can tell them that you provided prisoners this type of security as opposed to the uninsured in your districts.

Thank you, Madam President. I vote aye.

THE PRESIDENT: Senator Duane, to

explain your vote.

SENATOR DUANE: Thank you, Madam President. Thank you.

As many of you know, in past years I've led the floor debate on this bill. But I feel that for the most part my job has been accomplished and that more and more of my colleagues have voted in opposition to this bill, and for that I'm very grateful. And I think we've done very well, short of defeating this particular measure.

The sponsor and I have had many discussions on this, both on and off the floor, and I think we've pretty much just agreed to disagree on this particular piece of legislation. But I just want to fill in and reinforce a couple of things that my colleagues have said or, in one case, that they haven't said.

First is that I am afraid that incarcerated people will not go and get the treatment that they need for fear of incurring a cost which they can't afford.

And I have been to many of our correctional facilities, and I have to tell

you that within the individual facilities, it's not that pleasant to go to the sick bay. In fact, it's really more -- better to stay in your cell. They really are not nice places to go. So there really isn't a big incentive to go there.

And, finally, when I've talked to superintendents and people from DOCS, they say that the biggest flaw with this, aside from the humanitarian issues, is that it would cost more to administer this program than it would be in what they would collect in fees. So there really is no reason, both from a humanitarian or from a financial point of view, to put this law into effect.

So I'm grateful to my colleagues for voting in the negative on it. And while we probably will continue to disagree, I look forward to more discussions with the sponsor on this on how to improve conditions in our correctional facilities for those who are incarcerated.

I vote no, Madam President. Thank you.

THE PRESIDENT: You will be

recorded as voting in the negative.

Senator Nozzolio will be recorded as voting in the affirmative.

The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 194 are Senators Andrews, Connor, Diaz, Dilán, Duane, Hassell-Thompson, L. Krueger, Marchi, Montgomery, Onorato, Oppenheimer, Parker, Paterson, Sabini, Schneiderman, A. Smith, and Stavisky. Ayes, 42. Nays, 17.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 220, by Senator Marcellino, Senate Print 2935, an act to amend the Environmental Conservation Law and others.

SENATOR SCHNEIDERMAN: Explanation.

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

SENATOR MARCELLINO: Thank you, Madam President.

We're all familiar with the issue

of brownfields. We've talked about it before, we've debated them before, we've debated bills before of a different type.

This particular bill is not just another attempt to present one more alternative in a long-running debate that has stalled the process for many years. There is no other bill like this in the nation.

In 1978, New York State created the nation's first Superfund law. And since that time, our Superfund program hasn't been revisited. Other states have taken action to address brownfields, while New York State brownfields have been in limbo. Since March of 2001, no new funds have been made available for cleanups.

This bill will again place New York State in the forefront of the brownfield remediation and redevelopment. This bill will mean that more sites will be cleaned up, at a greater rate, without compromising public health or the environment. This bill will provide clarity and predictability to a current process that is arduous and time-consuming for municipalities and the

public, deterring potential redevelopment. This bill will provide for the highest cleanup standards in the country.

The bill also provides incentives to large and small brownfield sites throughout the state with proposed job training and water-treatment tax credits that have been applied nowhere else in the country.

This legislation empowers municipalities and community groups to revitalize areas burdened with brownfields by providing assistance for comprehensive planning and site redevelopment.

Brownfields are cancers growing within our inner cities, they're cancers growing in our suburbs, in our rural communities. They are creating pressure on pristine and -- greenfields, as we call them, because development goes where there is least resistance. And it's on the greenfields that I would stress.

This bill is environmental justice to communities that have been burdened with brownfields for many years and no cleanup in sight. This bill will allow municipalities to

get involved, and it incentivizes municipalities to get involved in the brownfields remediation program.

Right now, they don't want any part of it. Banks will not lend money to developers and volunteers who want to clean up sites on brownfield issues because, under current law, the banks are as liable as the polluter.

We want to have the polluter pay 100 percent for the pollution they create, but we don't want to wait until we track them down and while the courts take their time. We want the site and the insult to the environment and to the communities removed.

This bill will do that. It will allow for chasing the polluter to get the money that is deserved by the state. It will also allow volunteers to come into the program and clean up those sites, restore our inner cities and, as we say, take economic and environmental pain and turn it into economic and environmental gain.

This is a very good bill. I'm very proud to have worked with many groups in

support of this bill, groups such as Environmental Advocates, which has given it three trees, their highest rating. Groups like Environmental Justice, the New York City Environmental Justice Alliance, Scenic Hudson, and the League of Conservation Voters all have written memos in support or have indicated verbally.

And by the way, I might add, the New York Conference of Mayors have come up and supported this particular bill. Those who head municipalities understand the problem and understand what our bill will do for the State of New York.

And as I said before, there is no other bill like this in the country. It sets the highest cleanup standards in the nation. I urge a yes vote on all our parts.

Thank you, Madam President.

THE PRESIDENT: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Yes, Madam President, if the sponsor would yield for a question.

THE PRESIDENT: Senator

Marcellino, will you yield for a question?

SENATOR MARCELLINO: I'd be pleased to.

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

SENATOR SCHNEIDERMAN: Through you, Madam President, I would appreciate it if the sponsor could explain the definition of a noncontributing responsible party that is set forth in the bill.

SENATOR MARCELLINO: I'm sorry, the --

SENATOR SCHNEIDERMAN: Noncontributing responsible party.

SENATOR MARCELLINO: My guess is a person who is not responsible for the pollution on the site.

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

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

SENATOR MARCELLINO: Sure.

THE PRESIDENT: You may proceed.

SENATOR SCHNEIDERMAN: Is that

term defined anywhere in the legislation?

SENATOR MARCELLINO: On page 3, line 7 -- I'm sorry, line 1, Number 7: "Noncontributory responsible party means any person who currently owns or operates a brownfield site and is not a contributory responsible party in regard to that site."

In other words, did not create the pollution.

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

THE PRESIDENT: Senator, do you yield for a question?

SENATOR MARCELLINO: Yes, I do.

THE PRESIDENT: You may proceed, Senator Schneiderman.

SENATOR SCHNEIDERMAN: I'm curious as to the reason that noncontributory responsible parties will have their liability to which they're subject changed through this legislation. Could the sponsor explain that?

My understanding is that a noncontributory responsible party, under the current law, would have a higher level of

responsibility than under the statute as proposed.

SENATOR MARCELLINO: You're saying that a person who had nothing to do with the pollution should be held to a higher standard than a person who did contribute to the pollution. Is that what you just said? Because that's what I heard.

SENATOR SCHNEIDERMAN: Through you, Madam President. No, I'm actually just asking for an explanation of the difference in liability today, under the previously existing statutory system, and under the statute as proposed by Senator Marcellino.

SENATOR MARCELLINO: Okay, I apologize. I misheard you.

The bill would say that if you're a noncontributory party and you're a volunteer and if you clean up to the standards that are approved by the DEC and the agencies that are involved in oversight in this process, you would get liability relief.

In other words, you would not be held responsible by the state for any further problems that might occur. Assuming you did

the job that had to be done. Assuming the cleanup was done and there was no fraud involved.

Right now, under current law, there's no end to your liability. There is never a sign-off. There is no point in time when you could walk away and sell the property and say: I'm finished with this, I've done it, the property I've sold to somebody else.

If something comes up later on or the government changes its mind and decides to go to a different standard, you're back on the hook again. Even though you may have done absolutely nothing wrong and have done everything that was required of you in the initial cleanup.

We feel that person, if they behaved honorably and have done the right thing, deserves relief, a bottom line.

No volunteer in his right mind is going to come into a program where they cannot determine what the cost will be. No bank will lend money to a developer, to a volunteer for cleanup if they're on the hook. Right now, under current law, if you lend money to a

volunteer who cleans it up, the bank is on the hook also for any costs that could be gotten to clean up the site. So hence they don't lend money to these sites. Hence the insult to the environment continues.

SENATOR SCHNEIDERMAN: Thank you.

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

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

SENATOR MARCELLINO: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator.

SENATOR SCHNEIDERMAN: So am I correct in my understanding that this term, as defined in the bill, would be subject to an exception -- and I'm reading now from Section 27-1401 -- exempting the party from liability so long as the party "is complying in good faith" with the statute?

SENATOR MARCELLINO: That's my understanding.

SENATOR SCHNEIDERMAN: Thank you.

Through you, Madam President, if

the sponsor will continue to yield.

THE PRESIDENT: Senator, do you yield?

SENATOR MARCELLINO: Yes.

THE PRESIDENT: You may proceed, Senator Schneiderman.

SENATOR SCHNEIDERMAN: The remedial program transfer fund that would be established through this legislation, is that a fund that would merge the programs that previously existed under the Oil Spill Fund and under the State Superfund?

SENATOR MARCELLINO: Yes.

SENATOR SCHNEIDERMAN: Okay. Thank you, Madam President. I'd like to thank the sponsor for his answers.

On the bill.

THE PRESIDENT: On the bill, Senator Schneiderman.

SENATOR SCHNEIDERMAN: I think that you know a piece of legislation is moving the ball forward when even the memoranda in opposition to the legislation have to go out of their way to praise Senator Marcellino and praise the effort.

I do think we are moving closer to where we need to be with this bill. I do not think we have gotten there. The two issues that I have raised really are at the heart of my objections to this legislation.

First of all, the question when we're dealing with issues of civil liability is always the question of who benefits and who is burdened.

And the theory of Superfund legislation around the country has been that if a party is owning a piece of property, seeking to make money out of that piece of property, that that person is in a better position to bear the costs of pollution in that property than an innocent party downstream, someone who doesn't own the property, doesn't benefit from the ownership, and is just subject to pollution leeching out or leaking out of the property.

The problem with this legislation is it takes -- it creates a new definition of a noncontributing responsible party, and it creates essentially a good-faith exception. Now, good-faith exceptions are always very,

very difficult to deal with, because anyone who in good faith attempts to look at a site is really indistinguishable from someone who just walks through.

There is a current common-law standard for negligence, there is a current common-law standard for what constitutes responsibility. This bill would repeal that for many, many people and shift the burden of proof to the state. That, I think, is a fundamental problem.

We need to provide incentives for brownfields to be cleaned up. We need to provide incentives for toxic waste sites to be cleaned up. But we can't do it by removing liability from parties who would seek to benefit.

Under the current system, anyone who wants to purchase such a site understands that they have the obligation to undertake a thorough examination because they may be subject to responsibility. This bill limits responsibility through the good-faith exception and also, very importantly, restricts responsibility to on-site

contamination. So if you own a piece of property next door and your site is contaminated, you would not be able to seek redress from that party.

More fundamentally -- and this is really the one thing I think we do have to overcome before we're going to come to agreement with the Assembly and actually pass a law and refinance these important programs. More fundamentally, in the Superfund legislation that was funded through the 1986 Environmental Quality Bond Act, industry paid 50 percent of the debt service for the pool that would finance orphan sites, sites where you couldn't catch the polluter and make them pay. Industry paid 50 percent, the state paid 50 percent.

Under the Oil Spill Fund, industry paid 100 percent. So industry was paying, if you combined those two funds, well over 50 percent of the cost.

This proposal reduces the share paid by industry. This proposal reduces the share paid by polluters and increases the share paid by the taxpayers.

Now, at a time when the taxpayers are subject to extraordinary burdens and those burdens are only going to increase as the year goes on, I don't think it sends a good message to say we in the Senate of the State of New York are going to try and reduce the portion of the financing of the cleanup of these toxic waste sites and of these brownfields, reduce the portion of the payment for industry and increase the portion paid by the taxpayers.

That's what this legislation does, by creating the remedial program transfer fund that is a merger of two funds.

Let's not kid ourselves about this. The fundamental difference between this legislation and the legislation pending in the Assembly is that the Assembly is attempting to keep the portion of the cost paid by the polluters, paid by industry at the same level. This reduces that cost. And for that reason, I feel that I must oppose this bill.

However, I must acknowledge that there are some very innovative provisions here. This is, as Senator Marcellino said,

unlike anything we've seen before. And I honestly do think it moves us closer to where we need to be to pass a law. I don't think we're there yet.

Thank you, Madam President.

THE PRESIDENT: Senator Brown.

SENATOR BROWN: Thank you, Madam President. Through you, if the sponsor would yield for a few questions.

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

SENATOR MARCELLINO: Yes.

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

SENATOR BROWN: Senator, I've tried to read through this piece of legislation and really grasp it. It is an important piece of legislation.

One of the concerns that I have, that I'm grappling with, is if someone purchases a brownfield site -- say, this site was a former factory and they are going to use the site for a factory again and they remediate the site to that use, to factory use. However, five years goes by and the

owner decides: I don't want to keep this property a factory anymore, I want to make the property a housing development.

How would this legislation deal with that circumstance?

SENATOR MARCELLINO: Senator, use is not a key here. The site contamination determines the level of cleanup required. We don't use use as criteria here in any of the levels.

In each of the three levels established, one of the things that must done is the source of contamination must be removed in all three situations. So, one, we've taken the source of the problem away, so it can't get any worse than it was. And then we require remediation to a clean standard.

Now, in some cases it would be to absolute pristine or as pristine as we can possibly get. That would leave unlimited use to that person or that entity who is the volunteer.

But if they can't, or if it's not possible, another level, Level 2, would be set up so that they could then negotiate and look

at a list of prior cleanups that have been done where this site might fit the criteria -- soil content, water type, you name it. Use, prior use might come into effect as one of the criteria there as to the source of contamination.

And then they would say, okay, that kind of cleanup, that level of cleanup which would be frankly more stringent than what is currently required, would be the site -- they would sign a contract with the DEC and move on with the process.

But in every site, the source -- and every level and every track we establish, the source of the contamination must be taken away, must be removed.

Now, if you purchased the site and you're volunteering, you are responsible for cleaning up only the site. If you're not the original polluter, you didn't engage in the pollution, you are only required under this bill to clean up the pollution on-site. The state is required to take care of off-site.

If you're the polluter, if you're the polluter, you are responsible for cleaning

on- and off-site. We don't allow the off-site to go if you've created that. And under no circumstances do we let off-site pollution continue unabated. But since you have cleaned up the site and taken away the source, you have cut down on the amount of spread that would be possible from that point on.

So use is not the determinant here, it's the level of contamination tells the system what kind of cleanup you will have to perform.

SENATOR BROWN: Madam President, through you, if Senator Marcellino would yield for another question.

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

SENATOR MARCELLINO: Surely.

THE PRESIDENT: You may proceed, Senator Brown.

SENATOR BROWN: I'm appreciative of Senator Marcellino addressing the issue of liability for off-site remediation.

And in the case of a -- in a case of pollution that is off-site, and say the polluter is no longer in business, in that

case would the state be fully liable for the remediation of off-site pollution?

SENATOR MARCELLINO: Yes. The answer is simply yes to that. The state would take on the responsibility of cleaning it up if it's an orphan site. Or whatever municipality might be -- might come into that.

Remember, if it's located in one of the cities, under the current law municipalities don't want to get involved because they could be involved in that bottomless pit and their tax dollars go down the drain. So they stay away from taking on these sites.

What we're saying is now you don't have to take title, if you're a municipality, to get involved in the cleanup. You can start the cleanup process and get it moving. If you then take it, the municipality can then engage in selling that site once it's cleaned to the proper standard and keep half the revenue. Half of it goes back into the fund to refinance Superfund and to keep the process going.

But the municipalities now can keep

half of the revenue to offset their costs and to move ahead. So we've incentivized municipalities to get involved where they have not before.

The worst part of the '86 bond act, the part that has been least successful of all has been the municipal bond act's part, because municipalities have no reason to get involved. They step aside because they don't want to get caught into the nightmare of pay and pay and pay and pay and clean up that is no end, and the lawsuits that ensue. We can't give them relief.

But now we've given them a reason to get involved and to take on. We've increased the match from 75 percent to 90 percent. We've allowed them to use state and federal funds to offset the other 10 percent, which they can't do under the current program. So we think we've bettered the system and we've enhanced the cleanup and we've encouraged more cleanup in the process.

That's the key here. We want to encourage more cleanup. We want to expedite, streamline, and encourage cleanup. We want to

encourage volunteers, be they municipalities or private individuals, to get into the system, go in it and clean up those sites. If we don't, we have a situation that we have now: the insult continues, the brownfields continue, our inner cities rot from it.

The suburbs are under pressure. Sprawl is everywhere. We want to control that. We want to revitalize the inner cities, we want to keep people there, put those properties back on tax rolls, and get them into productive use for the community. It's a benefit to the environment. I believe it's the biggest economic development program we could ever devise in this state.

SENATOR BROWN: Through you, Madam President, if Senator Marcellino would yield for one final question.

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

SENATOR MARCELLINO: It would be my pleasure to yield to my colleague.

THE PRESIDENT: You may proceed, Senator.

SENATOR BROWN: My final question is in the area of DEC oversight.

SENATOR MARCELLINO: Can I call on an assistant if it's his final question?

SENATOR BROWN: Yes, it is, Senator.

SENATOR MARCELLINO: Thank you. I want to make sure.

SENATOR BROWN: My question is in the area of DEC oversight.

And from what I'm reading, and perhaps I'm not reading correctly, it seems in some cases a company or a party could come to the DEC after it has a plan in place already for the cleanup, for DEC approval of its plan. Rather than having DEC tell the company initially, tell the company first: This is what we would like to see you do.

And I'm concerned that perhaps that creates a situation where some of these things could be rubber-stamped through DEC.

And in a situation where DEC has lost a number of employees over the years, does it make it more difficult for DEC to have the necessary oversight to look at these

issues?

Maybe I'm not reading it right. I just had an opportunity to read it thoroughly today. Am I looking at that in the right way? Does the DEC oversight, in some cases, is that allowed to happen after the fact as opposed to before the fact?

SENATOR MARCELLINO: Yes and no. That's a good political answer, yes and no.

There is an allowability for someone to start, to develop a process. The volunteer can come in, they must pay a fee -- I believe it's $5,000 -- to get into the program. That's used to offset DEC's costs for staffing and personnel that are necessary to oversight the process.

If the remediation and the investigation is done by the volunteer -- because they all do. It must be done by licensed engineers. It just can't be done by their Aunt Tillie, it's got to be done -- although unless she's a licensed engineer. If they establish a credible plan, a credible program that identifies sources of pollution, in good faith, committed no fraud, did not

deceive -- all those situations come into play -- we want them in the program. We want to encourage them in.

A good many of these brownfield sites, they don't rise to the level of a Superfund site. They're the little gas station sitting on the corner where there's some oil spill that leaked or gasoline leaked out of a tank. And nobody wants to clean that mess up, because they don't know how long it will go.

I know some gas stations that are cleaning up right now, they've been cleaning it up for six years. I know some people who have the cost and still owe debts of over $400,000, $500,000. It's outrageous.

We want people to come into the site. And if they begin by removing the contaminant, fine. That's the source of the problem. That's the contamination source. Get rid of it. We don't mind that. We want them in, we want the process ongoing, and we want the volunteers to come forward.

To do that, we have to make it streamlined and incentivized. We're doing

that. That's what this bill does. It does in no way, in no way water down standards, no pun intended. It does in no way weaken standards or lessen standards. In fact, it sets the highest cleanup standards in the nation for cleanup of sites in this program. We want to ensure that sites are cleaned up.

Under the current system, it simply isn't working. It simply isn't working. People are not coming forward -- for a whole host of reasons, revenue being one of them. But they're not coming forward. We want to encourage them to come forward. This bill does that, Senator. And I believe all of our communities will benefit from it greatly.

SENATOR BROWN: Madam President, on the bill.

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

SENATOR BROWN: Thank you.

I want to thank Senator Marcellino for responding to my questions.

And as Senator Marcellino has indicated, this is a major, major issue and a major problem for many communities all across

our state. In the community that I represent, Buffalo and Niagara Falls, there are many brownfields. And the present requirements that we deal with make it difficult to get those brownfields cleaned up and make it difficult to reuse that plan.

And as Senator Marcellino has indicated, from an economic development perspective, there's land sitting there in these communities that just can't be used that is desperately needed to be developed.

However, as Senator Schneiderman has said -- and while I certainly commend Senator Marcellino for doing a tremendous amount of work in advancing this legislation and improving on this legislation, I am concerned that perhaps it doesn't go far enough.

I think a tremendous job has been done here in looking at the problems, in looking at the concerns of the environmental community, in looking at the health concerns in communities across the state and in trying to fashion legislation that from a common-sense and sound perspective moves the

situation of remediating brownfields across the state forward.

I still remain a little bit concerned about DEC oversight. I'm a little concerned about off-site contamination. In fact, in an area of the community that is not in my district, is actually in Senator Stachowski's district, a community called Hickory Woods, that is a community that has been built on a contaminated site and the site is primarily contaminated from the migration of contaminants off-site.

And those people, those individuals are dealing with a terrible situation -- all kinds of health problems, the loss of their property values.

And I would hate to see us not fully address situations like that in the future. I would hate to see people invest life savings and invest their hopes and dreams in properties only to find out later on that we did not do enough to protect them against off-site contamination. That while we did what needed to be done to remediate a brownfield and put a brownfield back on the

tax rolls and make it usable for people, that we didn't do enough to make sure there wasn't off-site contamination.

So while I certainly commend Senator Marcellino for the work -- clearly, the considerable work that has been put into this piece of legislation, I would like to see us go a little further. So I am torn today.

And I probably will end up voting in the negative on this piece of legislation, but I do so with commendation to Senator Marcellino and asking him to be open to moving just a little further on this bill.

Thank you.

THE PRESIDENT: Senator Oppenheimer.

SENATOR OPPENHEIMER: I agree with everyone. I think all of us are very conflicted on this issue.

SENATOR MARCELLINO: I have a solution.

(Laughter.)

SENATOR OPPENHEIMER: What is it, dear?

(Laughter.)

SENATOR OPPENHEIMER: Well, actually, Senator Marcellino, I am coming down in support of the bill.

And I've been rather a purist in the past. You know, every site has to be clean to the extent that it was as pure and as pristine as before any pollution happened.

But, you know, we've been talking now for two years or more about the State Superfund and refinancing it, and we're getting nowhere. I mean, I think we have to say something has to be done, and we're not getting to square one. We haven't gotten to square one on brownfields, we haven't gotten to square one on Superfund.

We have to do something. We still have a minimum of 800 seriously contaminated sites. We know that. We've been bankrupt in Superfund for two years. I mean, where do we go? Do we still try for the ultimate, or do we have to come down and say maybe we can't have the ultimate? We're certainly in a terrible fiscal crisis right now. I don't know where we'd get the money. So we have to do something here.

This would provide $138 million towards a Superfund program. That would be money that is desperately, desperately needed. We have thousands of brownfields.

And I actually have an interesting story about a gas station that finally got remediated. And it got remediated because it happened to be in Westchester County where two homes could be built on that site. And I've told you on this floor what the cost of the median house in Westchester County now is, $535,000. So it finally made sense for the developer to remediate.

But this situation does not exist, I don't think, elsewhere in the state. And I don't see that we're getting our thousands of brownfields remediated. And the municipalities have just been too fearful of the liability costs. I know White Plains wanted to do something, but . . .

So this is a new approach. It's something that I think will be improved upon when we hopefully can do a conference committee with the Assembly. But this isn't the best of all possible worlds, and I'm now

making my peace with that. And so I will be supporting this legislation.

THE PRESIDENT: Senator Krueger.

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

THE PRESIDENT: Senator, do you yield?

SENATOR MARCELLINO: Yes, I will.

THE PRESIDENT: You may proceed, Senator Krueger.

SENATOR LIZ KRUEGER: Thank you, Madam President.

I too am, I think, confused and mixed about this bill. I admire the amount of effort and work and dedication you've put into this by attempting to do an omnibus act and responding to concerns that have been raised before on the floor. And I don't know whether to be admiring of the fact that you took these massive programs and blended them all into one bill or to, frankly, be aggravated because things that I can support in one section are things that I'm concerned about in others and my question is how do you draw the line

between them.

So the question I have is we define something as a brownfield site, and we accept the standards for cleanup, and it's not on the Superfund list at the time, it's on a brownfield site. It's categorized as a brownfield site. But then at some point during the remediation or after the remediation it is discovered that in fact that site should have been a Superfund site or, in fact, either because we were late in doing all of the evaluations we should have or something came to light during the process or something came to light afterwards -- how do you deal with the situation that you had one standard of cleanup and liability when it was defined as a brownfield, there's a different standard if it was Superfund, and can you do anything about it after the fact if in fact we discover later on that it should have and appropriately ought to be on a Superfund list for that level of cleanup?

SENATOR MARCELLINO: Our program right now for cleanup of these sites is based on the past performance of cleanup of

Superfund sites. So the remedial methodologies, if you use Track 2, that would be developed by the expert group would come from sites that were cleaned up under Superfund programs. So the remediation would be to the highest level that you need.

If there's something discovered in the process of cleaning up a site, well, it gets a reopener and we look at it. We just don't ignore it. There is provision in the legislation to allow for a reopener and a renegotiation. Something came up that was not discovered in the remediation, but we see it, we don't simply ignore it. That goes back into the process and it gets factored in.

The off-site, if it's a site after the fact, years and years down the road, again, if there was fraud committed by the initial person, well, you chase them as a polluter, and we try to get them back.

But we want the site cleaned up. We don't want it to sit there. I agree with you, Senator, and I have the same frustrations you show. There are too many sites. Senator Oppenheimer said it before, there are too many

sites just sitting there and sitting there and sitting there and sitting there, go on and on and on and never get addressed, until it gets economically feasible to do it.

Well, in many communities we don't have that luxury. The value of the land will never get to the level of worth that would allow the developer to come in there. So we want those sites cleaned up. We need to encourage that, we need to incentivize it.

This is what we are doing in this program. We're trying to get bad things eliminated from our neighborhoods. We want to clean up these sites so that they don't perpetuate the problems that exist there now. And we're flexible on this, and the program is flexible on this. And the volunteers know what the requirements are. And there are reopeners that get triggered if certain things are discovered in the process.

SENATOR LIZ KRUEGER: Madam President, if, through you, the sponsor would yield to another question.

THE PRESIDENT: Senator Marcellino, will you yield?

SENATOR MARCELLINO: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Krueger.

SENATOR LIZ KRUEGER: Thank you, Senator Marcellino, and thank you for your previous answer.

And while you were talking to me, one of my staff was highlighting that in fact under the bill DEC has the option to reopen, but actually not the mandate.

And so one of the concerns would be if you're in process and you discover that in fact the problems are worse than expected and that this shouldn't perhaps fall under the brownfield category but, rather, Superfund, that would DEC have a motivation not to want to revisit the issue? Because under Superfund, it potentially becomes a liability factor for the state and a liability cost for the state. And how would we protect ourselves in that situation?

Because I think that you and I both agree what we want to happen and that we want this land cleaned up and that we want more

brownfields made available for important uses in our communities. Certainly in my city, and we already heard about Buffalo.

But I'm also concerned that the liability trade-offs here would actually motivate the state not to want to revisit certain issues.

SENATOR MARCELLINO: To the contrary, the liability to the state would incentivize the state to force the cleanup while the person is on-site, while we have the volunteer in our grasp, if you will. Because down the road, the state would be liable then. We would not want to get involved.

Why would the state want to take over a site or take on the responsibility of cleaning up a site when we've got a volunteer who's willing? And if they've got the financial resources, we're going to get them. We've got them there, we've given them a program, we want to them to clean it up.

It is in the state's best interests, financial or otherwise, to go in there and make sure and assure that these sites are cleaned up to the utmost while the

volunteer is on the scene, while we still have leverage. Otherwise, the state becomes liable and it becomes the responsibility of the state to clean that up, and the state would not want that.

SENATOR LIZ KRUEGER: Madam President, if, through you, the sponsor would continue to yield.

THE PRESIDENT: Senator Marcellino, will you yield?

SENATOR MARCELLINO: Sure.

THE PRESIDENT: You may proceed.

SENATOR LIZ KRUEGER: Thank you, Madam President. Thank you, Senator.

So again, perhaps I'm confused, but let's say I have decided to try to clean up a brownfield, a piece of property under brownfield. And in the course of my attempt to clean up, I discover that in fact this is a much more complex cleanup than I imagined, far more costly, there is ground contamination beyond what I originally was advised or believed.

Again, in your explanation, DEC might reopen the whole issue themselves. But

if DEC did, it might then -- I might walk away. And DEC would not want me to walk away and might be willing to, for financial reasons for the state -- again, I'm not accusing DEC, I'm playing --

SENATOR MARCELLINO: No, but you are. You --

SENATOR LIZ KRUEGER: -- out hypotheticals that I think we should be concerned about.

SENATOR MARCELLINO: But, Senator, you are. You're laying on a department the worst of possible intentions, where the department would simply allow a contamination to exist and look the other way. I don't think anybody honorably would do that.

The volunteer, if they discovered -- and if they did, they belong in jail, quite frankly. And Senator Schneiderman would probably go back into prosecution, and we would lead the charge and put this person away forever, under the highest possible standards.

Am I right, Senator? Never mind. Don't --

SENATOR SCHNEIDERMAN: I was a defense lawyer. But I'd take that case.

SENATOR MARCELLINO: He'd take that case. You see that?

THE PRESIDENT: Senator Krueger, are you finished with your question?

SENATOR MARCELLINO: I digress, Madam President. If I might --

SENATOR LIZ KRUEGER: Madam President, if I could ask the sponsor to continue to yield.

THE PRESIDENT: Yes, you may.

SENATOR LIZ KRUEGER: Thank you, Madam President.

SENATOR MARCELLINO: Sure, I continue to yield.

SENATOR LIZ KRUEGER: Thank you, Senator Marcellino.

Actually, to shift gears on this, I'm also particularly interested in the financing structure for this. And you have a series of descriptions about various credits and tax credits that would be used.

And I actually think from my own experience that tax credits to motivate people

to build in less desirable areas or, say, affordable housing, for example, affordable housing in brownfields, is a dual important issue for me in my city and I think in many other areas in the state.

Under the tax credit proposals that are laid out in your bill, is there any reason for us to be concerned that under the -- I'll try to say this correctly. Under the president's new plan for tax cuts, there is serious concern that there will be an end of a motivation to use these types of tax credits for investment, either in housing -- which was actually an example story in the New York Times today -- or I would argue potentially for brownfields.

And so I wonder whether anyone has done any evaluation of what the potential harm to your proposal -- and again, on the brownfields side of this and the financing side of this, I believe I am a supporter of your bill -- any analysis of what harm would be done through federal tax code proposals in basically negating the financial advantages of these kinds of credits for brownfields.

SENATOR MARCELLINO: Frankly, I'm not aware of anything we've done on that level that would look at the negative.

But I frankly don't see it as a negative, since we're allowing these deductions off the state income tax, not the property tax. So these polluters or these volunteers who clean up these sites would still be paying property taxes to the municipalities in which they exist.

Which, frankly, these sites aren't paying anything right now. There is no taxes being paid. That's the problem with most of them, they're just lying there and not being done.

So these incentives would accrue to the income tax level, but they also increase with the level of cleanup. The highest standard of cleanup gets the highest level of incentive. So we're trying to get people to move up the ladder to do more, not less.

That goes back to your earlier question of the person where they find more into it. Well, if they do, and it's a good-faith thing, and they bring it to our

attention or we discover it, as the case may be, through the DEC or its agents, then they are then qualified for an even higher incentive.

So we want them to come in, and I think there's that incentive to move ahead and clean it up.

SENATOR LIZ KRUEGER: Thank you, Senator Marcellino.

Thank you, Madam President.

THE PRESIDENT: Senator Volker.

SENATOR VOLKER: Madam President, very quickly.

I guess I was the only major leader from upstate that supported the bond act some years ago. And I took quite a bit of heat and quite a bit of criticism because, as was pointed out to me, the city that is most affected by brownfields in the state of New York is Buffalo.

Something in the area of 45 percent of Buffalo's area is not developable because of potential environmental problems.

The waterfront that we hear people always complaining, Oh, you won't develop the

waterfront and all that, a big part of that reason is because we had so much industry on the waterfront for so long that there are places that are suspect. And we don't know for sure how heavy it is in some places. There's chemicals.

I think the problem here is that we have a lot of our environmental friends who want to do so much so fast. They're the real reason we haven't been able to pass the Superfund legislation, because they wanted to put rules and regulations in there that would make it so expensive and so difficult to do that we couldn't get it done.

And if you look at the situation and you talk with the people that are doing this, they say, Look, there's some simple things that you can do. And Senator Marcellino, I think his bill does those things.

I'm not saying it's perfect. If we could find a perfect bill, we'll then knight Senator Marcellino and we will make him a -- whatever we can make him.

But I think the key here is that we

need good solid legislation on brownfields. And Buffalo needs it, Rochester needs it, the upstate cities need it. And I think that what Senator Marcellino has done here is a huge step in the right direction.

And I think what you'll find is that the Assembly will be much more inclined, now that the election is over -- and I think even the environmentalists that have been the main block in this thing for so many years hopefully will begin to realize that you have to walk before you jump.

I mean, the money that we have invested in certain places is huge. Some of those have been questionable, because people think that we can do things that we are not capable of doing.

And I would remind everyone here, I get tired listening to other countries try to dictate to us about environment. This country has done more to clean up the environment than any country in the world has ever done. Nobody is even close to it. And this state, by the way, has done more than any state in the union has ever done. But it's been

expensive, it's been difficult -- not just for the state, but for the localities.

I mean, Lake Erie is an environmental miracle that the local paper conveniently forgot to say when they did a story on the Great Lakes. And I heard that, by the way, from some friends of mine from Europe and Russia. And they said, "You've got this Lake Erie, which is an environmental miracle."

It was the first lake in the world that was essentially dead; that is, some fish and wildlife couldn't live there. And now anything can live there. And that wasn't done by the State of New York and the federal government, by the way. That was done primarily by Canada and by our local area, Buffalo people and Rochester people and so forth.

So we have done a lot. We still have a long way to go. And Senator Marcellino's bill I think is a bill that goes a long way toward helping -- particularly, I'm going to say, Buffalo, because I represent the area around Buffalo, but I'm talking about the

whole state.

So I really think it's something we should do and get the Assembly to move quickly.

THE PRESIDENT: Senator Sabini.

SENATOR SABINI: Thank you, Madam President. On the bill.

THE PRESIDENT: You may proceed on the bill.

SENATOR SABINI: I wanted to say that the issue we're dealing with is one that's evolved over the years. And the terms used in dealing with this issue, we sort of throw them around, but their meanings have changed.

Superfund came about through the federal government efforts, through RCRA and work that Congressman Florio did in Congress when I worked there. And it was to deal with issues like Love Canal, which was a disaster in this state, issues of very toxic problems on our land that essentially left that land not only useless but in effect uninhabitable and dangerous for people to be on just even passing through.

We had a situation in Senator Onorato's district, which at the time was the largest, most expensive cleanup under Superfund, the Radiac plant in Woodside.

But the term of art that we use now, brownfields, are a little different. Brownfields are basically places that, because of past policies of neglect, are now dangerously polluted to the extent that liability becomes an issue for people.

And we have about 10,000 brownfields in the state. Those are sites that are accessible by transportation, by roads, by railroads. They're in cities and suburbs. They're the land that we really need to continue to make investments in in order for the state's economy to thrive. It's a measurable percentage of some of our urban areas. We heard about Buffalo.

Essentially a large part of the Greenpoint section of Brooklyn is a brownfield because it has the world's largest oil spill underneath, from Mobil Oil. And people are living on that land right now, but it is in effect a brownfield.

If we don't do something and let this continue to -- this issue continue to fester, we are really guaranteeing large sections of the state being sort of an economic calvinism. They're never going to come back if we don't do something.

And so I commend Senator Marcellino for his work on the bill. There are problems I have with the legislation. I'd like to see some of the liability issues tinkered with. I'd like to see stronger DEC enforcement in the bill. But I've learned over the years that the perfect shouldn't be the enemy of the good and that doing something is better than doing nothing. And funding Superfund is better than not funding Superfund in the state. And so I support the bill.

And I would hope that based on his past work on issues regarding the environment, that Senator Marcellino, if there were problems that needed to be tinkered with in the future, that the committee would take up those problems if this bill doesn't address all that it hopes to address.

So I'm going to support the bill,

but I also want to editorialize just a wee bit on some discussion we had a couple of weeks ago in this chamber, and I know in his final day here Senator Hevesi brought up, and that is sort of the process here.

This is a 70-some-odd-page bill, a 77-page bill, single-typed, and there's a lot of thought that went into this. But it could have been better had we had more people in to talk about it, had we had more member participation in the crafting of the legislation, that we drew upon some of the experiences that some people have both inside this chamber and in the outside world.

And I think something this large, this type of an omnibus bill really requires -- I'm sure a lot of thought went into it, but maybe more open thought. And maybe more experts brought in. And maybe more open discussions with members of both parties so that we can make these things better.

All in all, I think it's a good bill. I commend Chairman Marcellino on his work. And I intend to vote in the positive.

Thank you.

THE PRESIDENT: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Madam President.

Prior to coming to the State Senate, I served on the city council in the city of Mount Vernon. And at the beginning of that period in 1993, as in most cities in the Northeast, so many of our industrial businesses moved away and left us with buildings that were uninhabitable. And part of that was because of brownfields.

Over the last 7½ years, Mount Vernon has done an astronomical job in trying to get those properties back on the tax rolls. And we have been successful to the percentage of about 92 percent.

And that remaining 8 percent, and some other sites that we've identified, we cannot, we cannot afford to do this by ourselves. And the owners of some of those properties have abandoned them, have walked away.

What does that mean, to not just the economic development of our community but

the residential community as well? It abuts it and it continues to cause it to grow and to be extended.

I feel an obligation, even though as a person who's newly appointed to the Environmental Committee and one who thinks that, yes, this bill could be a great deal better -- but I am very appreciative that members of this Senate apparently listened when we talked about the standards in the Governor's bill last year and have gone a long way toward making it a better bill.

And so therefore, based upon our personal needs within our communities, I have to vote for this bill. I have to support it. And I've got to talk with my Assembly colleagues to make sure that they understand the necessity of this bill in direct relationship to our inability to create economic development.

We cannot afford to go backward. Everything that we do to increase the ability of our communities to raise our own efforts of economic development will go a long way to securing our tax base. Our communities have

to do that. Small communities, small cities don't have the advantage that New York City has. And so therefore, from that perspective, I have to support the bill.

And, Senator Marcellino, I think that you and the committee have gone a long way toward making this a much better bill than that which we spoke on last year.

Thank you.

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

Senator Krueger, why do you rise?

SENATOR LIZ KRUEGER: I rise to speak on the bill, Madam President, briefly.

THE PRESIDENT: You may proceed.

SENATOR LIZ KRUEGER: I appreciated the entire debate and discussion today.

And while I also do think this bill could be made better, and I am going to urge that through conference committees with the Assembly that we continue to move to address concerns that I have in this bill, both on liability issues overall and specifically the funding and liability categories of Superfund

and the Oil Spill Fund sections of this bill, I too find myself congratulating Senator Marcellino on the work he has done to get us this far.

And that I will be voting for this bill, because I think it is so critical for us and the Assembly and the Governor to insist that we move forward both with brownfields legislation and with addressing the other, larger concerns around Superfund and liability this year in the state.

So thank you very much, Senator. I will be voting yes.

THE PRESIDENT: Senator Stavisky.

SENATOR STAVISKY: I too want to echo what has been said. And I will certainly not repeat it.

However, this has great impact for Queens County. We have brownfield areas near Shea Stadium in what is known as the Iron Triangle, a large area where oil from the junkyards, the auto junkyards, the oil has seeped into the ground, creating brownfields. And hopefully this legislation will enable us to encourage potential economic development,

particularly from the private sector.

I think that there's a long way to go, and I do have things on my wish list to be added, but I certainly intend to support this.

Thank you. And thank you, Senator Marcellino.

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

Senator Schneiderman, to close for the minority.

SENATOR SCHNEIDERMAN: Thank you, Madam President.

Very briefly, I think that this has been a good debate. Obviously, we have some more work to do. The Superfund has been bankrupt for some time in my district and in many other districts. There are waste sites where investigations have stopped, where cleanup is not even in anyone's mind at this point. And we clearly have to act.

I would urge all of my colleagues, though, on both sides of the aisle that the Assembly does have legislation that is good legislation that would enable us to start this process again, that would enable the cleanups

to start.

And people keep saying: We have to do something. We do have to do something. But this is not the only answer to the problem. We could easily just pass the Assembly's bills, and then we would start the process overnight.

This is a step forward in a tortuous process by which we're trying to come to some agreement with the Assembly so that we can pass a law, not just another series of one-house bills. Because we've passed one-house bills on this issue in the last few years, and the Assembly has passed one-house bills. That doesn't clean up any toxic waste sites.

The provisions of this bill are a step forward towards the Assembly's bill and towards a bill that is in the Senate, Senate 876, by Malcolm Smith, which would refinance the Superfund program and keep it more in line with the current standards of requiring the polluters and industry to pay a larger share than this proposed legislation we're addressing today would.

But I would urge my colleagues that we still have a ways to go. We're not going to get a law out of this bill. This is going to have to come back to us. And I hope that the sponsor is willing to take more steps towards the Assembly's position, as I believe they are willing to take steps, and I think their position has softened over the last year or two.

There are provisions in this bill that I think raise serious questions. We haven't really even gotten to the question of the blanket immunity that it would provide to the state, essentially repealing the common law of negligence in many situations, and the waivers of liability for many private parties that would be provided for under this bill.

There are serious questions here. We have to do something. But a vote against this bill does not mean a vote against doing something. It simply means a vote for something a little bit better for the people of the State of New York, a little bit harder on polluters, and something that we believe will pass the Assembly, which is the ultimate

goal so we can have a law and not end this session once again with us saying "We passed our bill" and the Assembly saying they passed their bill and the pollution resting in the ground and not facing any possibility of cleanup.

I'm going to be voting no, Madam President. I understand everyone's conflicts over this. I share them to some extent. But I think we do have further ways to go to get this bill to the point that we can actually have a law.

THE PRESIDENT: To close debate, Senator Marcellino.

SENATOR MARCELLINO: Thank you, Madam President.

I thank my colleagues for a very interesting and informative debate.

I've been working on this legislation for over six years now, and it's been before the house in various forms and methodologies. This I believe is the best one that I have ever seen.

I thank my colleagues who participated in the negotiations and in the

doing of this bill, and part of that goes back to Assemblyman DiNapoli's staff when we started this process last year very late in the session. But his staff, my staff, and members of Senator Bruno's staff were working together way back then to do the forerunner of this bill.

There are 450,000 brownfield sites in this country. There are between 14,000 and 15,000 in the state of New York alone. There are 7,000 on Long Island. What was said before by Senator Oppenheimer and others, we've got to move, we've got to get this process to closure, because the insult to the environment and the insult to our citizens continues. We've got to stop that insult. Passing good brownfields legislation such as this bill will go a long way.

I urge a yes vote to send the right message to everybody that this bill is the step to take.

Thank you, Madam President.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 49. This

act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator Brown.

SENATOR BROWN: To explain my vote, Madam President.

THE PRESIDENT: To explain your vote.

SENATOR BROWN: Again, I want to commend Senator Marcellino for moving the issue of brownfields in the State of New York forward. This is an important issue and an issue that we have to get some movement on.

I listened very carefully to the debate. And as I said during my debate, I am a little bit torn on this legislation. I'd like to see us go a little further. I think that Senator Marcellino, based on his six years of work on this issue, is certainly committed to doing that.

Based on that, I am going to vote in the affirmative on this piece of legislation.

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

affirmative.

The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 220 are Senators Andrews, Breslin, Duane, Paterson, Sampson, and Schneiderman. Ayes, 54. Nays, 6.

THE PRESIDENT: The bill is passed.

Senator Lachman.

SENATOR LACHMAN: Yes, Madam President. I'd like to have unanimous consent to be recorded in the negative on Calendar Number 194, Senate Bill 439.

THE PRESIDENT: Hearing no objection, you will be so recorded as voting in the negative.

SENATOR LACHMAN: Thank you.

THE PRESIDENT: Senator Kuhl.

SENATOR KUHL: Yes, Madam President. May we return to the order of motions and resolutions.

I understand there's a privileged resolution at the desk by Senator Bruno. I'd

like the title of it read only and move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Bruno, Legislative Resolution Number 805, commemorating Good Joes Day 2003.

THE PRESIDENT: All in favor of the resolution signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Kuhl.

SENATOR KUHL: Madam President, is there any housekeeping at the desk?

THE PRESIDENT: No, there isn't, Senator.

SENATOR KUHL: There being no further business to come before the Senate, Madam President, I move we stand adjourned until Monday, March 24th, at 3:00 p.m., intervening days to be legislative days.

THE PRESIDENT: The Senate stands

adjourned until Monday, March 24th, 3:00 p.m., intervening days being legislative days.

(Whereupon, at 1:00 p.m., the Senate adjourned.)