NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

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3:32 p.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will please come to order.

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

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

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

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

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Sunday, April 13, the Senate met pursuant to adjournment. The Journal of Saturday, April 12, 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 Fuschillo.

SENATOR FUSCHILLO: Thank you, Madam President.

On behalf of Senator Morahan, I move that the following bill be discharged from its respective committee and be recommitted with instructions to strike the enacting clause: Senate Print 3476.

THE PRESIDENT: So ordered, Senator.

SENATOR FUSCHILLO: Madam President, on behalf of Senator Volker, on page number 29 I offer the following amendments to Calendar Number 325, Senate Print Number 2325, and ask that said bill retain its place on Third Reading Calendar.

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

Senator Skelos.

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

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 215, by Senator Skelos, Senate Print 553, an act to amend the Insurance Law, in relation to policy coverage.

SENATOR SCHNEIDERMAN: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 330, by Senator Alesi, Senate Print 123, an act to amend the Banking Law, in relation to restricting the parties.

SENATOR SKELOS: Lay it aside for the day, please.

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

THE SECRETARY: Calendar Number 332, by Senator Farley, Senate Print 2242, an act to amend the Banking Law, in relation to

conforming the personal loan limitations.

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, 49.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 338, by Senator Trunzo, Senate Print 990, an act to amend the Education Law, in relation to scholarships for academic excellence.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 348, by Senator Seward, Senate Print 3467, an

act to amend --

SENATOR LIZ KRUEGER: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 351, by Senator Larkin, Senate Print 2569, an act to amend the Agriculture and Markets Law, in relation to promoting small businesses.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 11. This act shall take effect on the 180th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 355, by Senator Rath, Senate Print 1680, an act to amend the --

SENATOR SKELOS: Lay it aside for the day.

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

THE SECRETARY: Calendar Number 360, by Senator Velella, Senate Print 3445, an act to amend the --

SENATOR SKELOS: Lay it aside temporarily.

THE PRESIDENT: The bill is laid aside temporarily.

THE SECRETARY: Calendar Number 370, by Senator Saland, Senate Print 1928, an act to amend the Criminal Procedure Law, the Family Court Act --

SENATOR LIZ KRUEGER: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 379, by Member of the Assembly Lentol, Assembly Print Number 7482, an act to amend --

SENATOR SCHNEIDERMAN: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 395, by Senator Leibell, Senate Print 987, an act to authorize the Kent Fire District to

contract with the Sloper Willen or Alamo community ambulance service.

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, 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 396, by Senator LaValle, Senate Print 1660, an act to amend Chapter 643 of the Laws of 2002 relating to the removal of certain property.

THE PRESIDENT: There is a home-rule message at the desk.

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, 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 399, by Senator Robach, Senate Print 1784B, an act to authorize the City of Rochester to discontinue.

SENATOR SCHNEIDERMAN: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 400, by Senator Volker, Senate Print 1882, an act to authorize the towns of Bristol and Canandaigua, of Ontario County.

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, 50.

THE PRESIDENT: The bill is passed.

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

SENATOR SKELOS: Madam President, if we could continue, please.

THE PRESIDENT: The Secretary will continue to read.

SENATOR SKELOS: On the supplemental active list, if you could call up Calendar Number 443, please.

THE SECRETARY: Calendar Number 443, by Senator Skelos, Senate Print 3938A, an act to amend the Real Property Tax Law, in relation to allowing.

THE PRESIDENT: Read the last section.

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

SENATOR DUANE: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

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

SENATOR SKELOS: Thank you, Madam President. If we could go to the controversial reading of the calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number

215, by Senator Skelos, Senate Print 553, an act to amend the Insurance Law, in relation to policy coverage for persons with cancer.

SENATOR SCHNEIDERMAN: Explanation.

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

SENATOR SKELOS: Madam President, this bill would prevent the refusal to issue or renew any policy of life or noncancellable disability insurance based solely on the basis of genetic testing or because an individual has any type of cancer, the latter providing that the initial diagnosis of such disease occurred at least three years prior to the date of the application and a physician has certified that the disease has not reoccurred.

THE PRESIDENT: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President. If the sponsor would yield for a question.

SENATOR SKELOS: Yes, Madam President.

THE PRESIDENT: You may proceed,

Senator Schneiderman.

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

Has any consideration been given to the numerous other conditions for which there might be a genetic predisposition that would fall really within a similar category and to which the same rationale would apply as is applied with cancer in this piece of legislation?

SENATOR SKELOS: We've done similar legislation as it relates to breast cancer, but right now we're just dealing with any type of cancer.

SENATOR SCHNEIDERMAN: Thank you.

Madam President, on the bill briefly.

THE PRESIDENT: You may proceed on the bill.

SENATOR SCHNEIDERMAN: I don't think anyone could argue with this, though I think the question of genetic predisposition does require us to examine any other form of discrimination by insurance companies.

It is good that we are preventing

discrimination based on a genetic predisposition for cancer, but we really need to address this on a more comprehensive basis. And I hope we will have the chance to deal sooner rather than later with issues related to insurance denial of coverage for other conditions based on sometimes questionable scientific information.

This is an important area, a critical area, and it is something that insurance companies are just beginning to apply. So I hope we can move beyond this bill soon and get ahead of the curve on this critical issue.

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 4. This act shall take effect on the 180th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

THE PRESIDENT: The bill is

passed.

Senator Skelos.

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

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

The Secretary will continue to read.

THE SECRETARY: Calendar Number 348, by Senator Seward, Senate Print 3467, an act to amend the Insurance Law in relation to homeowner --

SENATOR LIZ KRUEGER: Explanation.

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

SENATOR SEWARD: Certainly, Madam President.

This bill would enact the Property/Casualty Insurance Availability Act. It's designed to make property and casualty insurance more available to more New Yorkers.

Because certainly in the last 18 months, and more so since September 11th and its impact on our state in terms of our insurance market, we have seen a deterioration of the market, a hardening of the market, and the availability of insurance at affordable cost has become an issue that is a problem for many New Yorkers.

And this bill is a comprehensive approach to deal with that by extending, for a three-year period, the provisions of NYPIUA, which stands for the New York Property Insurance Underwriting Association.

It also would extend, for a three-year period as well, the provisions related to automobile and property and casualty insurance rating.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Madam President, I believe the Minority has a hostile amendment. There are a number of -- I don't know why they would have a hostile amendment to this legislation, but there are a number of people in the Finance Committee that would like to be present.

So, Senator Seward, if you could

just lay it aside temporarily.

SENATOR SEWARD: Sure.

THE PRESIDENT: The bill is laid aside temporarily.

THE SECRETARY: Calendar Number 360, by Senator Velella, Senate Print 3445, an act to amend the Labor Law.

SENATOR SKELOS: Lay it aside for the day.

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

THE SECRETARY: Calendar Number 370, by Senator Saland, Senate Print 1928, an act to amend the Criminal Procedure Law and others --

SENATOR LIZ KRUEGER: Explanation, please.

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

Senator Skelos.

SENATOR SKELOS: If we could lay that aside temporarily.

THE PRESIDENT: The bill is laid aside temporarily.

THE SECRETARY: Calendar Number

379, by Member of the Assembly Lentol, Assembly Print Number 7482, an act to amend the Penal Law, in relation to the minimum portion.

THE PRESIDENT: Read the last section.

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

SENATOR SKELOS: Madam President.

THE PRESIDENT: Yes, Senator Skelos.

SENATOR SKELOS: I think we're running into conflict with the Finance Committee. So if we could lay Senator McGee's bill aside temporarily also.

THE PRESIDENT: The bill is laid aside temporarily.

THE SECRETARY: Calendar Number 399, by Senator Robach, Senate Print 1784B, an act to authorize the City of Rochester to discontinue the use of certain lands.

SENATOR SCHNEIDERMAN: Explanation.

THE PRESIDENT: Senator Robach,

an explanation has been requested.

SENATOR ROBACH: Yes, Madam President.

This bill is a piece of legislation which would allow a parkland swap, 3.46 acres in the southern portion of a park adjacent to the Genesee River, trading for 19.5 acres in the northern portion, to accommodate a project bridge linking through the park on the University of Rochester to the 19th Ward, the southwest section of the City of Rochester, which has been talked about for some time, that we feel would spur economic development and is supported not only by the mayor and the City Council in Rochester, but one of the things we strive for the most in government: Every single neighborhood group on record is for this project.

And it would help revitalize that neighborhood and link the university to a city neighborhood.

THE PRESIDENT: Senator Schneiderman.

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

THE PRESIDENT: You may proceed.

SENATOR SCHNEIDERMAN: I think this calls attention, this piece of legislation calls attention to what can be done and what should be done before you alienate parkland, before you take away a precious resource of any community, parkland.

I would like to note in the City of New York, where we have more of a need for open space than anywhere else in the state, there is a proposal on the table to take away 50 acres of land in Van Cortlandt's Park to build a filtration plant.

And none of the processes that Senator Robach has described have been carried out in connection with that plan. There have not been public hearings regarding the alienation, there has not been the effort to bring together all the community groups. There is widespread community opposition.

And I hope that before we take that issue up, we can inform our judgment by the good work of the citizens of Rochester and their communities.

Let's not alienate any parkland,

let's not take away parkland over strong community opposition without going through a thorough vetting process and attempting to bring everyone together.

I'm going to support this legislation, Madam President, and I hope we'll get support for a similar, thorough process when we get to parkland in New York City as well.

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

Then the debate is closed.

There is a home rule message at the desk.

Read the last section.

THE SECRETARY: Section 7. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 443, by Senator Skelos, Senate Print 3938A, an act to amend the Real Property Tax Law, in

relation to allowing.

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, 55.

THE PRESIDENT: The bill is passed.

SENATOR SKELOS: Madam President.

THE PRESIDENT: Senator Skelos.

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

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

Senator Robach.

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

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

Senator Robach.

SENATOR ROBACH: Yes, Madam President. If we could return to the reports of standing committees, there is a report of the Rules Committee at the desk. I ask that it be read.

THE PRESIDENT: The Secretary will read.

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

Senate Print 4369, by the Senate Committee on Rules, an act making appropriations for the support of government.

And Senate Print 4370, by the Senate Committee on Rules, an act relating to the state's share of health insurance premiums.

Both bills ordered direct to third reading.

THE PRESIDENT: Senator Robach.

SENATOR ROBACH: Move to accept the report of the committee.

THE PRESIDENT: All in favor of accepting the committee report please say aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The report is accepted.

Senator Robach.

SENATOR ROBACH: If we could call up Calendar 447 at this time, Madam President.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 447, by the Senate Committee on Rules, Senate Print 4369, an act making appropriations for the support of government.

THE PRESIDENT: Senator Robach.

SENATOR ROBACH: Is there a message of necessity and appropriation at the desk?

THE PRESIDENT: Yes, there is, Senator.

SENATOR ROBACH: Move to accept.

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

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The message of necessity and appropriation is accepted.

SENATOR ROBACH: Lay it aside temporarily, Madam President.

THE PRESIDENT: The bill is laid aside temporarily.

SENATOR ROBACH: If you could call up Calendar Number 448.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 448, by the Senate Committee on Rules, Senate Print 4370, an act relating to the state's share of health insurance premiums.

THE PRESIDENT: Senator Robach.

SENATOR ROBACH: Is there a message of necessity, Madam President?

THE PRESIDENT: Yes, there is, Senator.

SENATOR ROBACH: Move to accept.

THE PRESIDENT: All in favor of accepting the message of necessity please

signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The message is accepted.

SENATOR ROBACH: Lay that aside also, temporarily.

THE PRESIDENT: The bill is laid aside temporarily.

Senator Robach.

SENATOR ROBACH: If we could just stand at ease until the Judiciary Committee meeting is over.

THE PRESIDENT: The Senate stands at ease.

(Whereupon, the Senate stood at ease at 4:02 p.m.)

(Whereupon, the Senate reconvened at 4:07 p.m.)

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT MORAHAN: Senator Skelos.

SENATOR SKELOS: Mr. President, if we could return to reports of standing

committees, I believe there's a report of the Judiciary Committee at the desk. I ask that it be read.

ACTING PRESIDENT MORAHAN: The Secretary will read.

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

Senate Print 4285, by Senator Hannon, an act to amend the Estates, Powers and Trusts Law.

ACTING PRESIDENT MORAHAN: Without objection, direct to third reading.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could return to the controversial reading of the calendar, I believe Senator Seward's bill, 348, is up.

And I also know that he explained it, so, Senator Schneiderman --

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: Calendar Number 348, by Senator Seward, Senate Print 3467, an

act to amend the Insurance Law.

ACTING PRESIDENT MORAHAN: Senator Krueger.

SENATOR LIZ KRUEGER: We had the explanation, so I don't want to interrupt the flow for an explanation. But I would like to ask the sponsor to yield to a question, Mr. President.

ACTING PRESIDENT MORAHAN: Senator Seward, do you yield?

SENATOR SEWARD: Certainly.

SENATOR LIZ KRUEGER: Thank you.

Senator Seward, the bill that you propose today only extends the NYPIUA program for two more years. Why is this an extender bill rather than a bill making this permanent?

Since New York State already has a very successful history with this program, we have a growing number of individuals and companies who find it necessary to take advantage of this insurance program, and we are now one of only two states left in this country, Iowa, Alabama, and New York -- three states in the country that have not made this "Fair Plan" permanent, why does your bill not

make it a permanent bill?

SENATOR SEWARD: Well, Mr. President, since the Fair Plan, this so-called NYPIUA plan was first created back in 1968 -- it's gone through some transformations since that time -- it has never been permanent in the state. In fact, in most cases in the past there have been one-year extenders. Two years ago, this house, in conjunction with the other house, passed a two-year extender.

And this particular bill before us would extend NYPIUA and the Fair Plan for a three-year period, which is the longest period of an extension that this house has ever passed for the Fair Plan.

Now, the reason that this bill doesn't include provisions that would make it permanent is this reason. The market is a very dynamic thing. There are changes periodically as conditions change that affect the insurance market in the state and particularly the segment of the population that's served under this plan.

And I believe that the fact that this Legislature needs to review the program

and renew it -- in this case, that would be three years from now -- it gives us an opportunity to assess the market, what's needed, what changes may be warranted. And it's an opportune time to do that once the bill is sunsetting and we have to renew it.

In fact, there have been changes in the program over the years at the very time of renewals in the past. And so that's the reason we would not make it permanent: it gives an opportunity to assess the market and the need for changes in the program periodically.

ACTING PRESIDENT MORAHAN: Senator Krueger.

SENATOR LIZ KRUEGER: Mr. President, thank you. If through you, Mr. President, the sponsor could continue to yield.

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

SENATOR SEWARD: Certainly.

SENATOR LIZ KRUEGER: Thank you, Senator Seward, through the President.

I understand your point about the

industry changes. The demands of communities change. But when I look at some of the data that's available, it shows that the significant change is the growing percentage of our populations in various parts of the state that need to take advantage of the Fair insurance.

I'm looking at some data just for 2001 to 2002; for example, we saw a 235 percent increase in usage in Rockland County, the President's county. We saw overall a 57 percent increase in use for residential purposes and a 118 percent use for commercial.

And a concern is, and apparently it's happened in the history of our state before, that if you go to a time period where there is a lapse in coverage, that you could leave these thousands of households throughout the state of New York without any Fair insurance.

So again, after all these years of having extender bills, while I appreciate a three-year extender is better than a one-year extender, it still leaves the policyholders

and the companies in a situation of never knowing -- that would be in a 36-month period instead of a 12-month period, but never knowing what the continuation of this program would be.

So I understand your point about going from one-year to three-year, but again, I don't quite understand why we wouldn't just follow the lead of 47 other states, make this permanent, decrease the risks for policyholders and insurance companies of finding themselves with lapsed coverage timing, and just go ahead and do what's clearly been the successful model throughout our country.

ACTING PRESIDENT MORAHAN: Yes, Senator Seward, in there someplace is a question.

SENATOR SEWARD: Well, Mr. President, I would just simply respond in this way.

Through this bill we are extending the NYPIUA program for the longest period of time ever in the history of the program. I think that's a commendable thing to do, and

this bill does that.

SENATOR LIZ KRUEGER: Mr. President, if, through you, the sponsor will continue to yield.

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

SENATOR SEWARD: Certainly.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR LIZ KRUEGER: Thank you, Mr. President.

So your bill, Senator Seward, is actually a two-parter. It both deals with the extension of NYPIUA for three years, but it also ties into it a completely separate insurance issue, the flex plan rating for auto insurance.

I'll start out by asking you, why would we mix these two completely different insurance issues in one bill?

SENATOR SEWARD: Mr. President, this bill deals with the efforts to provide more availability of insurance -- thus the name of the bill, Property/Casualty Insurance Availability Act.

And it also deals strictly with extenders, extenders of the NYPIUA as well as the various provisions related to primarily auto, which have been -- there's been a lapse in those extenders since August of 2001, and we have seen a deterioration of the market in that area as well.

And so it's very common when we are dealing with extenders to put them together in a comprehensive package, particularly when they all deal, in this case, with availability of insurance.

And we have one provision that is expiring at the end of April, and another which had expired in August of 2001. It seems to make perfect sense to me to bring these together in a comprehensive package and let's get the job done once and for all.

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

ACTING PRESIDENT MORAHAN: Does the sponsor continue to yield?

SENATOR SEWARD: Certainly.

ACTING PRESIDENT MORAHAN: He

yields.

SENATOR LIZ KRUEGER: Thank you, Senator Seward, through the President.

So you've put together two different sections of insurance law into one bill in the belief that we could get moving on both of them.

And clearly a concern for me, and I think for many members of this house, now we've put ourselves in a situation where, for example, speaking for myself I would very much like to be able to vote for the extension of NYPIUA. I think it's been a very successful insurance program, a program I think we should make permanent, a program I don't think should be left to the risk of lagging and having a period of time where, because the two houses cannot agree, that we won't have a continuation of NYPIUA.

And yet I am faced with your bill of having to make a decision, then, to also support reinstatement of expired flex rating. And there are many concerns about the flex rating program.

So to just specifically focus again

on the flex rating side of your bill, it's my understanding that while this would -- that this section of your legislation would, on average, require if an auto insurance company was going to raise their rates they could do it by no more than 7 percent without going to the insurance commissioner, because of the averaging that an insurance company could actually raise its rates on an individual as high as 30 percent without having to go to the insurance commissioner, under your bill.

Could I ask you for a clarification of that scenario?

SENATOR SEWARD: Mr. President, in reference to the first part of the question, in terms of why combining these provisions together, there is in fact precedent for putting the NYPIUA program together with the auto extenders. That was exactly done back in 1995. So this has been done in the past.

And also in reference to your second question, regarding the flex rating provisions of the bill, the reason that flex rating is important and included here with the

extender bill is the fact that these provisions have been in law up until August of 2001, when they were allowed to expire due to inaction in the other house.

These provisions, over the years, have done much to stabilize the auto insurance market, to make New York State a more attractive place in which to write business, provided for more competition, companies competing for our business. And in fact, they have helped to stabilize rates over the years.

Now, the fact that a company could make adjustments to their rates without prior approval, within certain limits, does not preclude and does not change the fact that the State Insurance Department is charged with the responsibility not for prior approval, but they are required to review the rates and to make sure that they are in fact justified.

And so this bill in no way would take out of the law oversight provisions and requirements on the part of the State Insurance Department.

Now, we're all concerned -- we're all concerned about auto insurance rates. In

fact, what we have seen since flex rating and the other extenders have gone out of the law in August of 2001, we have seen, since then, rates going up more than they would have if flex rating was in place.

And so I don't think that the fact that flex rating is out of the law has done the job in terms of holding auto rates down. In fact, the opposite has been true.

And I would point out that both last session and earlier this session, this house has I believe unanimously approved these auto extenders both last year and this year previously.

We're asking you to do it again as part of this comprehensive package.

SENATOR LIZ KRUEGER: Mr. President, if through you -- excuse me. I have an amendment at the desk, I believe.

ACTING PRESIDENT MORAHAN: Yes, there is an amendment at the desk.

SENATOR LIZ KRUEGER: Could I waive reading?

ACTING PRESIDENT MORAHAN: You may waive the reading and speak to the

amendment.

SENATOR LIZ KRUEGER: Thank you. On my amendment.

To highlight again, this is a bill that addresses two completely different issues in insurance, as Senator Seward has proposed it. On the one hand, it extends the NYPIUA legislation, New York State Property Insurance Underwriting Association insurance, which is the insurance of last resort for many homeowners and businesses. It's a bill that I think not only should we be extending, but a bill that we should make permanent in our law in New York State. But he has mixed his bill with a completely different insurance issue, that of pricing in auto insurance.

And as he just referenced a minute ago, this house has been attempting to deal with auto insurance rates. And in fact, it's my understanding that there is supposed to be a conference committee between the Assembly and the Senate specific to auto insurance reform.

And so in my amendment before you at the desk, I amend his bill in two ways.

One, to make permanent the NYPIUA legislation; but, second, to repeal the flex rating plan of auto insurance in the bill. Because I think it is critical not to put homeowners and businesses at risk of losing this insurance because we combine that insurance package with a completely different auto insurance issue, putting at risk the continuation of that important insurance of last resort.

I do not believe the Assembly will consider these two packages of insurance in one bill, so I believe it would be critical for us to pass an amended version of Senator Seward's bill today.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator Krueger.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Yes, Mr. President, briefly on the amendment.

I think this is an excellent amendment. We are attempting by this legislation to combine something that the consumers of this state absolutely need. New York is, I believe, one of only two states

that has not made permanent -- three states that has not made permanent these provisions that Senator Krueger was speaking about.

This is something we're required to do, this is something that the businesses of the state need. We talk about being pro-business; this is an essential piece of legislation that clearly should be made permanent.

What's going on here simply is we're taking something we should do that our constituents need and using it for political leverage, to try and force the Assembly to move on a piece of legislation which I also join our Assembly colleagues in opposing.

I don't think there's any need to give an automatic increase or an increase without hearing of insurance as is provided for in this legislation. I think the system of providing hearings and requiring some process to be followed before increases in insurance is absolutely essential. I think it's a fair provision. I don't think it's having a negative impact to the degree that we should change the law.

But to try and link the debate over whether or not we should impose due process requirements and hearing requirements on the insurance industry when they seek to increase insurance, to link that to something that we know is critical I think is really not the right way to do business.

Let's pass the bill, let's do Senator Krueger's amendment, let's renew the Fair Plan, and then let's fight on the other issues another day and let's engage in that debate. This is something we have to do this session. And I hope it will not be held hostage to these other ill-conceived ideas.

I support the amendment. I urge everyone to do so.

ACTING PRESIDENT MORAHAN: Thank you, Senator Schneiderman.

All those Senators in favor of the amendment please signify by raising your hands.

THE SECRETARY: Those recorded in agreement are Senators Andrews, Breslin, Brown, Diaz, Dilán, Duane, Gonzalez, Hassell-Thompson, L. Krueger, C. Kruger,

Lachman, Onorato, Oppenheimer, Parker, Paterson, Sabini, Schneiderman, A. Smith, M. Smith, Stachowski, and Stavisky.

ACTING PRESIDENT MORAHAN: The amendment is lost.

Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

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

SENATOR BRESLIN: Thank you, Mr. President.

I concur with Senator Krueger in her presentation of her amendment. But on the other hand, the flex rating passed this house 58 to 1 in January. It provides some flexibility for insurance companies in terms of short increases or decreases in rates and provides them some ability to cancel a small percentage of their subscribers.

NYPIUA unquestionably should be passed and become permanent in law. It's been

around for so long. It doesn't belong with flex. But NYPIUA also is something that two years ago passed 56 to 1, and we all agree what an important, good program it is as the insurer of last resort.

They each should be independent of each other. But I think it's important to remember that both of them are good. It's posturing by this house to combine them. But they're still two good bills, and I intend to vote in the positive on this bill.

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

The Secretary will announce the results.

THE SECRETARY: Ayes, 59. Nays, 2. Senators L. Krueger and Senator Schneiderman recorded in the negative.

ACTING PRESIDENT MORAHAN: The bill is passed.

The Secretary will read.

THE SECRETARY: Calendar Number 370, by Senator Saland, Senate Print 1928, an act to amend the Criminal Procedure Law and

others, in relation to testing.

SENATOR LIZ KRUEGER: Explanation.

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

SENATOR SALAND: Thank you, Mr. President.

Mr. President, this is a bill which we have seen in this house on prior occasion. This bill, as some may recall, in 1995 we as part of the then-budget deliberations passed legislation which required post-conviction testing that could be requested by a sexual assault victim, the purpose of that testing being HIV determination.

What this bill proposes to do is to provide preconviction testing. It has a reasonable-cause standard, that reasonable-cause standard being either an indictment or an accusatory instrument having been filed. The bill proposes to provide an application to the court. Information gathered in the course of this application process and thereafter would remain

confidential information.

The bill sets forth a series of requirements that an applicant or petitioner would have to be aware of before he or she would be able to expect that a court would rule favorably in his or her favor.

The bill is an effort to, in effect, empower victims, give victims the ability to choose where they believe they may have, by reason of the commission of a violent felony, an assault, a sexual assault, an act of incest, where they believe that they may have been infected by a transmissible disease to apply for the court for that testing. That testing, should that person choose to do so, the expense would be borne by the state.

And again, this, as I said, is an effort to empower victims.

There's probably somewhere in the area -- I don't know the most recent statistics, but I believe last year's statistics, I think there were somewhere in the area of about 4600 sexual assaults committed in this state.

And if in fact those people who

choose, after going through this process, not to make that decision, that's something they choose of their own free will, that's the choice that they elect to make.

If those who go through this process after being informed, as is required under this bill, elect to in fact require testing of their assailant, then that too is a product of the choice of that person and hopefully will assist that person as they attempt to deal not only with their physical well-being but their emotional and psychological well-being as well.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Krueger.

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

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

SENATOR SALAND: Yes, Mr. President.

SENATOR LIZ KRUEGER: Thank you,

Mr. President.

I believe that the sponsor and I are both very strong advocates for victims of sexual assault. And yet there are many issues I have with this legislation, so I will just start.

Senator Saland, if this is about protecting sexual assault survivors, why does your bill not have any specific requirements for counseling about sexually transmitted diseases?

SENATOR SALAND: What this bill does, Senator Krueger, is it basically provides the ability for somebody to make an informed decision. And if as part and parcel of that informed decision they elect to choose counseling, they certainly may. This bill does nothing to impede anybody's engaging in counseling. I would certainly hope that that would be part and parcel.

But I would call your attention to subparagraph (d) of paragraph 4, which basically sets forth what I have termed in prior debates the conditions precedent before an applicant can hope to have her or his

application entertained. And I think it's pretty self-explanatory. What it says is:

"In all such applications for testing filed pursuant to this section, the applicant must also state that the applicant has been offered counseling by a public health officer and then been advised of (1) the limitations of the information to be obtained through a blood test on the proposed subject; (2) current scientific assessments of the risk of transmission of a disease from the exposure he or she may have experienced; (3) the need for the applicant to undergo testing to definitively determine his or her status with regard to any disease; and (4) the availability of prompt, readily accessible and scientifically recognized laboratory testing of the applicant, including, where appropriate, PCR or other advanced testing." And it goes on for a couple more lines.

It doesn't specifically refer to therapy, but certainly therapy or counseling would be something that would be well within the realm of what someone would choose to do. They may be able to have that therapy through

their own insurance coverage. They may be able to receive some kind of assistance with that through the Victim's Compensation Board as well.

It certainly does not -- I hope it wasn't implied that somehow or other it's intended to preclude that.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Krueger.

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

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

SENATOR SALAND: Yes, Mr. President.

SENATOR LIZ KRUEGER: Thank you.

I appreciated the sponsor's response, and I think that did go to some of the concerns about counseling about blood testing of the potential perpetrator.

But that doesn't deal -- and of course we don't have in state law yet a requirement that these services would be

available or paid for in our emergency rooms, where we assume most sexual assault survivors would end up soon after the sexual assault.

But I'd also like to talk specifically about the type of counseling that's so important of assuring coverage for prophylactic treatment of a survivor of assault. The current research shows that the most effective and most important medical response that a survivor of sexual assault can take, the best advice is to start prophylactic treatment to protect themselves from sexually transmitted diseases, including HIV and other forms of STDs, within the first 12 hours of the assault.

So I'm concerned that your legislation doesn't specifically outline or even mandate that this is the kind of counseling and these are the kinds of resources that we should make sure are available to victims of sexual assault. Because if they don't have that information and if they don't in fact have access to that treatment -- actually, the CDC recommends within the first two hours after an assault,

but medical knowledge says within the first 12 hours, that that's really the state-of-the-art medical prevention and treatment that we should be providing.

So I'm concerned that I don't see that in your bill. Is that there?

SENATOR SALAND: I think, being realistic about this, this is after an indictment? Or after an accusatory instrument has been filed? That would not be within two hours of the incident.

So you're attempting to deal with an issue that's not possibly dealt with without having some concern about the civil liberties of the defendant, the so-called alleged perpetrator. There has to be some reasonable-cause standard. You just can't walk in and say: He or she did this to me; therefore, test them.

What this says is there must be an indictment or an accusatory instrument. And again, that's not going to happen in a couple of hours.

But I would think that the counseling by the public health official, if

the victim had not been apprised prior to that, certainly would apprise him or her of that at that point. But not, again, within two hours.

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

ACTING PRESIDENT MORAHAN: Senator Saland, do you continue to yield for another short question and another short answer?

SENATOR SALAND: Yes, sir.

(Laughter.)

SENATOR SALAND: Sorry, I couldn't hear you, sir.

SENATOR LIZ KRUEGER: We'll just ignore the President for a moment.

Just to clarify, thank you for your response. I don't think we were disagreeing about the timeline of going to court to have yet the testing of the alleged perpetrator. But, rather, it's the issue for the survivor; that the survivor doesn't need to go to court and shouldn't need to go to court to start prophylactic treatment to protect themselves.

My point was that from a medical perspective, if the most important issue here for a survivor of sexual assault is to try to, as best possible, protect him- or herself from the risk of disease transmitted during the sexual assault, then the number-one priority is what is the best medical care they could get upon reporting a sexual assault.

Your bill doesn't address that part of my concern. Rather, it goes into the "you would have the right to go to court and within a five-day period get a test done on the accused perpetrator," but not -- it does not take the step closer to the assault where medical care really is critical, not waiting to determine whether there's a test result done on a perpetrator.

That was clarification of your answer, and I apologize. I should go forward with an actual question.

Since you do talk about going to court, getting permission from the court to test the perpetrator, then having the test done, what is your understanding -- because it's not clear from this legislation -- what

the correct protocol should be once a test is done?

Is it the recommendation from your legislation that having had one blood test on a proposed perpetrator, that should be the basis of some medical determination?

SENATOR SALAND: This bill makes no effort to define what the protocol should be. Again, as I said earlier, this is basically about empowering victims to have the opportunity when they believe, when he or she believes that, after having an understanding, based upon the section that I read to you, of what is entailed as part of this process, whether that person in the first instance wishes to go forward.

And if he or she then wishes to go forward, that is something that will be resolved between that person and whatever professional they deal with in terms of getting their healthcare.

That is -- no bill could attempt to define what would be a person's decision and then how that person should engage his or her medical professional in terms of what the

protocol or treatment should be. I mean, that's for a doctor and -- or a medical professional and the patient.

SENATOR LIZ KRUEGER: Thank you.

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

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

SENATOR SALAND: Yes.

SENATOR LIZ KRUEGER: Thank you.

So based on your previous answer to the question, we agree that your legislation doesn't specifically help a sexual assault survivor to evaluate the meaning of an alleged perpetrator's test result if they haven't had counseling, and it doesn't mandate counseling.

We also know that the Center for Disease Control calls on all tested individuals to be counseled before testing and after receiving test results, and note that specifically for positive test results there should be a follow-up test using another technique to confirm that it hasn't been a false positive or a false negative.

And yet in your bill we also agree

there are no provisions in the law specifically for assuring counseling or CDC standards or follow-up counseling or review of the meaning of a test result by a survivor who might turn to court.

So my question is, could not all this confusion and timelines -- going to court, not knowing what the answers are, perhaps not having access to counseling about what test results should be, not knowing there should be follow-up tests, not knowing that there's a rate of false negatives and false positives, false negatives particularly for people who may have been infected within the last few weeks or months -- could all of these requirements in your law that on the one hand appear to be intended to protect survivors of sexual assault instead, in reverse, result in them, in these men and women doing harm to themselves by not following what is, again, the best medical protocol, have themselves tested in over an extended period of time, have themselves start prophylactic drug treatment as soon as possible?

So does all of the intended, I

think we would agree, potentially intended good consequences of your legislation, because of all the technicalities and the health technicalities and the going back and forth, in fact result in survivors choosing to not do what medical science says they should do, start the treatment themselves right away?

SENATOR SALAND: You may be talking apples and I may be talking oranges, Senator Krueger.

There was, in our earlier dialogue, reference to what I assumed was therapy. And perhaps the ambit of counseling is so broad that it really takes care of a multiplicity of disciplines.

But this bill does provide that before you get in the door there has to be counseling through the public health official. That certainly is a given.

As I said earlier, the issue that you wish to deal with is an issue which certainly is an issue which, at onset, is a critical issue. This comes much later.

And as I also said to you, this is about choice. This is about choice, pure and

simple. Choice that empowers people to make intelligent decisions.

The commissioner, the health commissioner, under this proposal, has the ability to promulgate rules and regulations that will provide whatever type of testing the health commissioner -- not me, not you -- the health professionals think would be appropriate. And certainly it's my understanding, which may not be as great as yours, but that multiple testing certainly is the appropriate protocol.

And anybody who comes into this system is going to know that. Because if you just go and follow the footprints which I read to you earlier, you're going to have to know. And what you choose after you go through those what I term condition precedents will be your decision. You may say: You know what? I just don't want to go there. But by the same token, you may say: I do want to go there. And that's purely a matter of choice.

And as I said, if there are some 4600 cases, if there are a thousand cases and out of those thousand cases 500 choose not to

go there and 500 do, or 800 choose not to and 200 do, whatever it is, it will be result of an intelligent decision, with as much information as can be marshalled for that person to make his or her decision.

But the decision is not mine, it's not anybody in this chamber's, it's the victim's decision. And I'd like to think that we could certainly provide that people have the God-given ability to make those types of choices.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Krueger.

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

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

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT MORAHAN: The sponsor yields.

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

So you were highlighting that this is a bill to give sexual assault survivors options. Choices, as you put it. And again, in theory, choices to make smart medical decisions for themselves.

What is your understanding of the smart medical decision that a survivor could -- the conclusion they could come to if they were to follow through with your law, go to court, have the court-ordered test, get the test results -- what, in your understanding, are the choices they would then have available to them that would be different than if they didn't follow that route?

SENATOR SALAND: My understanding is -- my understanding is not as important as whatever may be that which constitutes the best interests and efforts of the victim.

I mean, it was almost a year ago to the day that there was considerable notoriety surrounding an event in New York City involving a woman taxicab driver. And all this woman wanted was to basically have her assailant tested. And she found out that she couldn't have her assailant tested.

I came to this issue a number of years ago, in the early 1990s, when I found that there were at least two reported cases in the media -- one in a law periodical, one in the media -- where an assailant refused to undergo any testing unless in return he got a plea bargain. Now, that offended me. And I assume it offends you as well.

And I just want to make sure that that can't happen. And I want to make sure that that can't happen in an environment that provides as much information to the victim as is humanly possible.

And we may disagree on whether this is appropriate or not, and obviously we do. But I believe it's appropriate. I'm not making that decision for anybody. I just want them armed with all the tools I can give them to make that decision.

I want that cab driver to have the ability to have her assailant tested. And after she knows the state of the medical advice that she can receive, if that's what she wants, if she's not satisfied with the information that she has received and she

wants that, and there's an indictment filed against her assailant which rises to the level of reasonable cause, then I think by all means she should have it. Pure and simple.

And out of those 4600 cases, if there's only 10 victims like that, I say let the ten have it. I'll side with the 10, and others, you know, can be concerned with other issues and not side with the 10.

SENATOR LIZ KRUEGER: Thank you.

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

ACTING PRESIDENT MORAHAN: Senator Saland, would you continue to yield?

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR LIZ KRUEGER: Thank you.

So if I could shorthand, just -- Senator Saland, you agree that -- excuse me, your position is that somebody should have the right to this information because they choose to want this information. But I think I'm also hearing you agree with me that there may

be no medical basis or argument in support of this information leading them to any medically advised decision-making for themselves as a victim of sexual assault.

SENATOR SALAND: That may be your characterization of what I said, but as far as I know I didn't say that. If I said it, then I'll try saying something else differently.

I mean, the bottom line is, is that there are cases in which -- that are in our criminal courts in which people commit the most heinous of crimes on other people. This bill attempts to identify those violent crimes, and it says if you are a victim of a transmissible disease -- and we define what a transmissible disease is here in the bill. And I'm not going to bother to read the definition. I'm sure you've seen it already.

SENATOR LIZ KRUEGER: Mm-hmm.

SENATOR SALAND: -- if the determination is made, then you have the ability to make an application.

Whether everybody would make that application, I have no idea. I would assume everybody wouldn't make that application. And

when you go through that application process, if you decide that you don't want to see it through to the end, you can do that.

But if you want to see it through to the end because you feel that it's important to you, it's important whether it be for medical reasons, whether it be for psychological reasons, if we want to make that separate and distinct from medical reasons, for whatever reason, you're the victim. You should have that ability.

You can't do it willy-nilly, because we've put in a reasonable-cause standard. The law permits it. Certainly New York has recognized that. I mean, there's nothing unconstitutional about this.

I've seen the most recent Civil Liberties Union memo in opposition, and quite candidly I don't think it would stand up for ten minutes. Maybe you could find a judge somewhere that will give you a favorable ruling, but it certainly wouldn't stand up on appeal.

And I would just suggest they take a look at Matter of Abe A. and understand how

we take blood from people in New York without their consent, and they'll understand that the state, if it has a compelling interest, has the ability to do that as long as there's some reasonable nexus for it. And we have that reasonable nexus here.

SENATOR LIZ KRUEGER: Mr. President, if the sponsor would continue to yield.

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

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR LIZ KRUEGER: Thank you.

I think that the state's compelling interest in this case, and the issues that I'm talking about here, are the health concerns of the assault victim.

And so a question I have, based on this continuing discussion, would you support your own legislation if the result of it was that people failed to get the healthcare that they should get for themselves because the

information that was made available to them through this legislation led them to fail to get best practical healthcare for themselves?

SENATOR SALAND: I view that as being so contrived as to not warrant a response. Not by you, I've seen it in other memos.

I mean, people have got -- I mean, if you go from A to B, if you follow the steps, unless you have some severe intellectual-capacity problems, you know, you're going to know what all your options are, you're going to be able to arrive at, again, a reasonably intelligent decision. The health commissioner is going to promulgate rules and regulations. You're going to be told what the state of the art is and what you should do as well as what your rights are with respect to the perpetrator.

I mean, it's a road map, and it's not a very complicated road map. Just, you know, follow the steps. They'll get you there.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

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

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

SENATOR SALAND: Yes, Mr. President. Although I get the impression you think I should do so reluctantly.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR LIZ KRUEGER: Thank you, Mr. President.

I think I will lay out a scenario because I think I don't agree with your last answer that anybody, quote, unquote, who was not intellectually incapacitated couldn't just follow the road map and go forward.

If I imagine myself to be a victim of sexual assault and I'm in an emergency room -- and I would argue that I'm conceivably in a state of shock, I may be physically as well as clearly emotional battered. I may not have somebody standing there in that emergency room giving me all of the details and the counseling of the specific best-case scenario

in medical care and treatment. I may not have an emergency room that has prophylactic drug treatments available to me without my knowing to ask for them, and I'm not likely to be in a state to know to ask for those.

I may, in fact, be told, under your law, that I have the right to have my accused perpetrator, on the very slim chance that they've in fact been arrested in the short period of time, I may be told that I have the right to have them tested. And I may, again -- not necessarily having this road map, all this information in front of me, clearly being psychologically if not physically damaged and traumatized at this time -- I may believe that if I can have them tested and the test comes up negative, that I don't have to go forward with medical treatments that may not seem too pleasant.

Who wants to take medicine if they don't have to? Who certainly wants to go through shots? I personally have a fear of needles. So who wants to go through shots if they don't believe they have to?

So I may, again, being of good,

sound mind in normal circumstances, hear this information and say: No, as long as I have them tested, I don't have to have myself tested. I don't have to start this treatment somebody's telling me I should start in the first two hours. I just want to put this behind me for a while and try to calm down.

So I would argue with your analysis and ask you again to rethink whether there are circumstances where the right of someone under your law to go to court and ask for this test would not in fact be in their best medical interest.

SENATOR SALAND: You may have heard me say earlier you're talking apples and I'm talking oranges. The bottom line here is that this situation that you describe will not arise under this bill because it will not arise in an emergency room. And it will not occur within the two first two hours of whatever horrific incident may occur.

The bottom line is, is that I'm talking about providing people with knowledge; you're talking about dealing with people in an emergency room. This is not going to occur in

an emergency room. And, again, there are those steps that you have to take. It can't occur within two hours. It will never occur within two hours. You will never have someone who's indicted, certainly, within two hours after an incident. And you won't have anybody who has an accusatory instrument filed against them within two hours of the incident.

So it's just not going to happen. It's a totally unrealistic scenario that you describe with regard to the application in this bill. I mean, that -- there's no other way to answer or respond to you.

SENATOR LIZ KRUEGER: Thank you, Senator --

SENATOR SKELOS: Mr. President, if I could just interrupt for a moment.

If we could have the last section read for the purposes of Senator Smith voting.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: Section 8. This act shall take effect immediately.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

SENATOR ADA SMITH: No.

Thank you.

SENATOR SKELOS: Please withdraw the roll call.

ACTING PRESIDENT MORAHAN: Okay. Senator Smith will be recorded in the negative, and we'll withdraw the roll call.

Senator Krueger.

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

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

SENATOR SALAND: I will continue to yield, Senator Krueger, but I'm beginning to think this is -- unless we're on the same page, this is getting a little pointless.

So if -- and I say this at the expense of being less than collegial. And I don't want to appear to be rude here. But, you know, if we're on the same page, fine. You're talking over me and I'm talking over you. So, you know, if we have something that brings us together, why don't you do that with

a question, and I'll be happy to answer it.

SENATOR LIZ KRUEGER: All right. Mr. President, out of respect for my colleague -- because I think we clearly don't agree on this legislation -- what I would like to do instead is there is an amendment at the desk.

ACTING PRESIDENT MORAHAN: Yes, there is.

SENATOR LIZ KRUEGER: Thank you. If I could waive reading of the amendment.

ACTING PRESIDENT MORAHAN: The reading of the amendment is waived.

SENATOR LIZ KRUEGER: Thank you. If I could speak on my amendment.

ACTING PRESIDENT MORAHAN: You may speak on your amendment.

SENATOR LIZ KRUEGER: Thank you.

ACTING PRESIDENT MORAHAN: You're welcome.

SENATOR LIZ KRUEGER: What I do believe is that while Senator Saland and I do not agree, clearly, about his legislation, I do believe that we both agree that what is important -- and I think this whole house

agrees that what is important is to provide the best possible services and treatments and responses to people in the State of New York who have been the victims of sexual assault.

And so in hopes of taking a bill that I in fact cannot support and turning it into something that I could support, and that would, I think, make a difference in the lives of sexual assault victims, I have proposed an amendment that adds a number of different items to Senator Saland's bill.

One, in my amendment we would provide for the dispensing of emergency contraception by nurses and pharmacists so that EC can be used when other -- when a woman is a victim of sexual assault. That that EC, the emergency contraception should be available at emergency rooms throughout the State of New York.

Two, I add a section that in fact I take directly from a bill of Senator Nozzolio, S958, which would establish direct reimbursement by the Crime Victims Board for exams, counseling, lab tests, and post-exposure prophylactic costs for victims

of sexual assault.

Because I do believe that Senator Saland and I agree that what is most important is ensuring that victims of sexual assault get the best possible medical care, counseling services immediately upon being reported as a victim of sexual assault.

And, third, my amendment would also remove the statute of limitations for prosecution of violent felony sexual offenses; i.e., rape in the first degree, sodomy in the first degree, sexual abuse in the first degree, aggravated sexual abuse in the second degree.

Because while Senator Saland's bill in fact deals with a tiny scenario of people who might be caught and then sexual assault victims who might request blood testing of those accused perpetrators, what is really the scandal in the State of New York right now is the large numbers of rape victims who never have their perpetrators caught. And that we have backlogs in warehouses throughout this state of DNA rape tests that have been done, and yet we have never done the DNA

cross-matching and testing, meaning that it can be well beyond the five-year statute of limitations for rape when the perpetrator is discovered through a DNA test, and then it is too late.

So I hope that this house will consider supporting my amendments to this legislation.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: You're welcome, Senator Krueger.

All those Senators in favor of the amendment please signify by raising your hands.

THE SECRETARY: Those recorded in agreement are Senators Andrews, Breslin, Connor, Dilán, Duane, L. Krueger, Montgomery, Parker, Paterson, Sabini, Schneiderman, M. Smith, and Stavisky. Also Senators Hassell-Thompson, Oppenheimer, and Onorato.

ACTING PRESIDENT MORAHAN: The amendment is lost.

Read the last section.

THE SECRETARY: Section 8. This act shall take effect immediately.

ACTING PRESIDENT MORAHAN: Call the roll.

Senator Duane, why do you rise?

SENATOR DUANE: Mr. President, I just want to -- we're on the bill at this point?

ACTING PRESIDENT MORAHAN: We're on the roll call.

SENATOR DUANE: I wanted to speak on the bill. I'm sorry, Mr. President.

ACTING PRESIDENT MORAHAN: On the bill.

Withdraw the roll call.

SENATOR DUANE: Thank you, Mr. President.

The most important issue I think that we can address is that we need to get the focus off the testing of the perpetrator and put the focus on the victim or the survivor of an assault.

Now, I have spoken out on this bill in the past. And while the bill has improved in many ways, the bill is still not one that I think we should be voting on. Particularly since we already have principles in place

governing mandated HIV testing of persons accused of certain crimes, which was put forward by the Governor's own AIDS Advisory Council in 1996.

Now, the sponsor said that he didn't want to read the definition of transmissible diseases in this legislation, but I think it's important that we know what that definition is. It's HIV, syphilis, gonorrhea, lymphogranuloma, venereum, herpes, genital warts, and hepatitis.

Now, I disagree with this position. But even if you thought because HIV unfortunately now is still a deadly disease and that's why the mandatory testing is so important, I don't think that you could make the same argument about herpes or genital warts or venereum. They are not deadly diseases.

And so the level of why mandatory testing would be required is certainly not the same as it would be for the person who believes that HIV needs to be mandatorily tested for.

The legislation also continues to

be flawed in that there is a section in the legislation that says -- that refers to exposure to body fluid during the commission of a crime as "approximate result of the commission of or in the course of flight from an offense described in such paragraph in such a manner that may have involved transmission of a specified transmissible disease from the defendant to the petitioner."

And particularly because the "transmissible disease" is so overbroad and because of what we know happens in facilities, particularly where people are incarcerated and there are other circumstances, the net is just too wide that's being cast for mandatory testing.

And again, the principles for that are already in place. And if we believed that it was important to change the circumstances under which a defendant should be mandatorily tested, well, I don't think we should just do that here on the floor without having a hearing from public health experts, people who know about HIV transmission, and, if we're going to discuss the other transmissible

diseases which I listed, people who know about those diseases as well -- infectious disease experts is the group that I'm reaching for -- as well as those involved in the criminal justice system.

The proper forum for that would be in that kind of an HIV advisory panel which exists now and which has had hearings on this.

Also, I just -- there is another point which I think is worth mentioning. Already testing can be done of the perpetrator -- or the alleged perpetrator, I should say -- on a voluntary basis to accused persons. This is a much easier way to go about combating, I think, what the sponsor is trying to get at in terms of how the victim or the survivor would get their information.

And I also think that to have that level of due process for a defendant is very important. And there's a practical purpose that if a defendant willingly agrees to be tested, there's a lot of time and money and expense that's saved in doing it that way. And I think ultimately that would be -- in the cases where that works, that's a much better

way of going about getting information to the victim or survivor.

But I want to go back to the original idea, and that is let's stop the obsession with believing that all people with HIV are criminals and all criminals have HIV. Because that's what starts to -- that's what these bills lead to when they're put forward without a thoughtful public health discussion, a thoughtful criminal justice discussion.

Of course some perpetrators have HIV, and many, many do not. And of course some people with HIV are criminals, and many, many of them are not. Sadly, HIV, unlike the other diseases that are listed -- like herpes and venereum, et cetera, gonorrhea, are not deadly as HIV is deadly.

So the bottom line is let's take the emphasis off the testing for transmissible diseases of the defendant and put the immediate treatment of the victim at the top of the agenda -- perhaps not at the exact moment of the attack, but certainly within the first few moments that the victim arrives at the hospital. That should be our first

responsibility.

The other issues are those which -- and as I say, the legislation has improved, but it's still not necessary and it's still flawed. That's a place to take -- those are issues to take to public hearings.

But what we should be doing here is protecting the immediate safety of the victim. So again, even though this is a new version of the legislation, I would encourage my colleagues to vote no.

ACTING PRESIDENT MORAHAN: The Secretary will call the roll.

THE SECRETARY: Section 8. This act shall take effect immediately.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Senator Krueger, to explain your vote.

SENATOR LIZ KRUEGER: Thank you, Mr. President.

Some of you might believe I've already said all I could say about this bill. And in fact, there's so much more.

But I do want to highlight that while I don't necessarily believe that Senator Saland's intention with this bill is to mislead the public or to mislead survivors of sexual assault -- that somehow this option for them, or this choice, as he puts it, gives them some added protection or information for their health -- in fact, even the discussion of this legislation has resulted in misleading TV and radio ads that have led many in my district to believe that somehow the right to test a perpetrator, if they are the victims of sexual assault, will in fact protect them from sexually transmitted diseases.

And what I want to just highlight in voting no against this bill is there is so much more we can be doing to ensure that victims of sexual assault get the best medical care possible. But this legislation in fact puts them at risk of believing that they don't need to follow the advice of best medical practice.

And so I vote no on this bill because I believe that its risk to do harm is greater than the good to be coming out of just

one more choice for people.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator Krueger.

Senator Krueger will be recorded in the negative.

The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 370 are Senators Andrews, Connor, Dilán, Duane, Hassell-Thompson, L. Krueger, Montgomery, Oppenheimer, Parker, Paterson, Sabini, Schneiderman, A. Smith, M. Smith, and Stavisky. Ayes, 46. Nays, 15.

ACTING PRESIDENT MORAHAN: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Senator Morahan, there will be an immediate meeting -- Mr. President, there will be an immediate meeting of the Local Government Committee in the Majority Conference Room.

ACTING PRESIDENT MORAHAN: There will be an immediate meeting of the Local

Government Committee in the Majority Conference Room.

The Secretary will read.

THE SECRETARY: Calendar Number 379, by Member of the Assembly Lentol, Assembly Print Number 7482, an act to amend the Penal Law, in relation to the minimum portion.

ACTING PRESIDENT MORAHAN: Read the last section.

Senator Duane, why do you rise?

SENATOR DUANE: I'm asking if the sponsor would yield.

ACTING PRESIDENT MORAHAN: Senator McGee, will you yield?

SENATOR McGEE: The sponsor yields.

ACTING PRESIDENT MORAHAN: The sponsor yields.

SENATOR DUANE: Thank you, Mr. President. Through you, I'm just wondering if the sponsor would refresh my memory as to what age, under current law, you can try a juvenile as an adult.

SENATOR McGEE: Thirteen years --

SENATOR DUANE: With or without prompting.

SENATOR McGEE: A 13-year-old convicted of murder would be held in the custody of the Office of Children and Families until he or she is at least 16 years of age.

Thirteen years.

ACTING PRESIDENT MORAHAN: Senator Duane.

SENATOR DUANE: Well, no, that's wrong, actually.

SENATOR McGEE: It's not?

SENATOR DUANE: Well, I'll just speak on the bill, Mr. President, thank you.

ACTING PRESIDENT MORAHAN: Senator Duane, on the bill.

SENATOR DUANE: Just for everyone's edification, the answer is actually 17 years old.

ACTING PRESIDENT MORAHAN: You knew the answer.

SENATOR DUANE: Anyway, I think that in modern society, and as civilized society has moved forward, we decided that juveniles should be treated differently as

adults in the criminal justice system. That a child and an adolescent's mind and values and conscience and virtually everything about them is different than that of an adult.

The thinking is that a 15-year-old is really a different kind of living person than is a 30-year-old or a 35-year-old, that in fact children are different than adults.

There's a reason why we created a separate system as to how we treat juveniles in the criminal justice system than how it is that we treat adults in the criminal justice system. For that reason, juvenile detention facilities are different than adult facilities. Not just the atmosphere, but the entire philosophy is different.

And while I would argue that there should be more of an emphasis on rehabilitation in adult facilities, certainly in modern times we have come to believe that rehabilitation is a very, very important part of our juvenile justice system. A child doesn't have the same sets of consequences that an adult does. A child does not have the same formation of ideas and values that an

adult does. And that is why we treat them differently than adults in the criminal justice system.

Now, if we put a 14- or a 15-year-old -- well, let me say one thing. I hope perhaps as a result of last year's debate on this bill, formerly the -- well, under current law a juvenile could be sentenced to five to nine years for the kind of crime that's described in this legislation.

Last year's legislation, this bill provided that a person convicted -- a child convicted of this crime could serve a 15-to-25-year sentence, which was so far over the top and so overblown as to be unimaginable to sentence a 15-year-old child to be in a juvenile facility until they're 18 and then go and do hard time in a DOCS facility for however many more years after that until potentially being there to fulfill their 25-year sentence, up to fulfilling their 25-year sentence.

So now, though, the bill calls for -- instead of 5 to 9, it becomes 7½ to 15. Which is better than 15 to 25, I will

acknowledge that. But it's still a heck of long time for a 15-year-old who leaves the youth facilities at 18 to be spending doing hard time in a state penitentiary.

Now, our laws have called for young people, children, young teenagers to be treated differently as adults across the board. What this bill does is do an end run around the juvenile offender law and just makes the decision to start treating more young people virtually like adults in the criminal justice system. Well, maybe that is what we want to do. Maybe we want to treat all 15-year-olds like they're adults.

If that's what we want to do, then let's put it on the floor to do that for all 15-year-olds. Then let's go back to Dickens. Let's put in workhouses for kids if that's what we want to do. But let's at least have a debate on that. Let's not just make an end run and change the rules around for one circumstance for a 15-year-old, for one 15-year-old, for one case. Let's have the guts to do it across the board for all juveniles, and then let's see what happens

when we wake up in the morning after having done that.

So I ask my colleagues, don't vote for this. Don't make a special exception to our juvenile justice laws. You want to change our juvenile justice laws, then let's change our juvenile justice laws. But let's not make an end run around them. Let's not just do it for one particular case, horrible though it may be. That's not how we should make our laws in this state. I urge you to vote no on this.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator Duane.

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

Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN:

Senator Maziarz, to explain your vote.

SENATOR MAZIARZ: Thank you very much, Mr. President. To explain my vote.

I want to disagree with my colleague Senator Duane. I want to congratulate and thank Senator McGee for bringing this bill before us today for a vote.

Actually, Senator Duane is one hundred percent wrong. The better bill, the better bill was the bill that we passed last year to make 14-, 15-year-olds responsible for their actions.

Senator Duane should have sat in a living room, like Senator Brown and I did, with the mother of Jennifer Bolender and heard what a 14- and a 15-year-old did to her daughter. It's not about the one case that's mentioned in the bill memo.

Senator Duane should have sat in that living room like Senator Brown and I did and talked to that mother about a 14-year-old and a 15-year-old who almost cut her 16-year-old daughter's head off, cut her eyes out, because they were afraid she was still alive and they didn't want her to be able to

identify them. Went back a second time to make sure, did even more heinous things to her to make sure that she was dead. That was done by a 14- and a 15-year-old. Senator Duane should have sat in a living room like Senator Brown and I did.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator Maziarz.

Senator Volker.

SENATOR VOLKER: Have Pat speak first, please.

ACTING PRESIDENT MORAHAN: Well, I was going to ask the sponsor to close.

SENATOR VOLKER: Actually, we're on a roll.

I just wanted to say quickly, Senator Duane, you couldn't be more wrong. And I don't agree with you at all that all youths -- and by the way, your 17-year-old was not right. Pat, Senator McGee, was right. You're wrong. And I was here when we changed the law.

It was partly in response to a young kid, as you call them, a fellow who

killed 14 people by the time he was 15 years old. And, you know, having dealt with some of the so-called young people that need treatment it's pretty hard to treat somebody who just murdered 14 people and admitted to it in open court.

The problem is that we have some so-called youths who are so vicious and so beyond help that they're worse than adults in some ways. And the law has recognized that on a very limited basis. We certainly don't want to deal with all youth -- they're not children, by the way -- all youth, because some of them are much more than children.

But what Senator McGee is doing here, and I commend her for it, she was the one who had a bill that would go to 13. Now, Assemblyman Joe Lentol, in his -- in his intelligence, was able to get this through the Assembly, and I commend him for doing that, so that we could have an agreement on this bill that has been around for a number of years. It was called Penny's Law. And Senator McGee has been fighting for this for many years.

The individual who was involved in

the killing that this bill talks about was 14 years old. And the horror that the family went through was such a comparatively minor penalty, it's something that I don't think you want to go through and I really don't think any parents really want to go through.

The problem is here this is about justice. And you may call it a very limited area, and it is a limited area. We certainly don't want to do this if we have a real so-called child. That's not what's happening here. Violence is the kind of thing that we must deal with, whether it's a 13, 14, 15, 16, 17, whoever it is. And Senator McGee, in this bill, is dealing with it.

ACTING PRESIDENT MORAHAN: Thank you, Senator Volker.

Senator Montgomery, to explain your vote.

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

I'm very sorry to hear that the bill has already passed the Assembly -- I didn't realize that -- and that there is an agreement and it is going to be law.

This is a sentencing bill for 13-to-16-year-olds, simple as that. And so we can rush and do this -- it took a few years, but we're still doing it -- before we pass the budget, a budget which proposes that we have no funding for after-school programs, no funding for summer youth employment programs, no funding for mental health services, especially to young people, no funding for school-based health clinics.

So while we pass a sentencing law for 13-to-16-year-olds, we at the same time are proposing that we remove all or most, most of the support services and resources for young people in our state. I think this is an absolute outrage.

And I'm sorry, Senator McGee, I must absolutely disagree with you. We are not -- this is not a bill to address criminal activity by young people 13 to 16. It is a bill to increase the sentencing that they will receive in any case.

And so while I am opposed to heinous acts by any person at any age, I am also opposed to doing an increase in

sentencing for young people to be in prison for longer periods of time without rehabilitation and, in addition, to remove resources so that they will have no other choice except to be in prison for more years.

So I'm voting no on this legislation.

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

Senator McGee.

SENATOR McGEE: Thank you, Mr. President.

This truly is a great day. I'm going to be very pleased to be able to make a call to Salamanca, New York, to talk to Penny Brown's mother and father.

Penny Brown was a mother, a wife, and a nurse. And on Mother's Day, 1999, Penny Brown took her dogs out for a walk. And her dogs came back, but Penny Brown did not come back. Her family found her on a path where people walked, brutally beaten, brutally raped, and murdered and strangled with one of her dog's leashes.

The individual who perpetrated this crime was a teenager. And unfortunately, the lowest -- the highest minimum sentence that the judge could give that young man was nine years. Nine years for the life of a woman who was very productive in her community, who had children of her own, doesn't seem quite right, does it?

And when you hear the stories that Senator Maziarz has talked about that took place in his area, and talking to Senator Brown, and talking to -- I believe there was an incident in the city, the same type of thing that happened with a juvenile who commits an adult crime, then they need to take the responsibility for those crimes that are committed.

I really have to commend the Assembly for looking at this bill and working with this bill and the fact that we in turn can negotiate with the Assembly and bring this bill forward. This is a bill that we have worked on in this Senate for at least three years.

And I would point out that to my

knowledge there was only one negative vote last year on a bill that was much stronger, and I believe that was Senator Duane.

This is an excellent bill. I commend also the Assemblywoman from the 149th Assembly District who carried the stronger bill, did a great deal of work and background for this bill. I commend the Assembly. And I say thank you on behalf of Mr. and Mrs. Lockwood and Mr. Brown and their children. Thank you for bringing this bill to a vote and passing it in this house.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 379 are Senators Duane, Montgomery, and Parker. Ayes, 58. Nays, 3.

ACTING PRESIDENT MORAHAN: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you please call up Calendar Number 447.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: In relation to Calendar Number 447, Senator Johnson moves to discharge, from the Committee on Finance, Assembly Bill Number 8036 and substitute it for the identical Senate Bill Number 4369, Third Reading Calendar 447.

ACTING PRESIDENT MORAHAN: The substitution is ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 447, by the Assembly Committee on Rules, Assembly Print Number 8036, an act making appropriations for the support of government.

SENATOR PATERSON: Explanation.

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

SENATOR JOHNSON: Mr. President, this bill appropriates $2.2 billion to various state departments to pay our bills from April 14th to April 127th, including payroll, including Social Security, including homeland security, criminal justice, Health Department,

EPIC programs, federal funds for Medicaid programs and unemployment benefits, among other wonderful and worthy causes.

ACTING PRESIDENT MORAHAN: Thank you, Senator Johnson.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President. If the sponsor would yield for a question.

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

SENATOR JOHNSON: Yes, Mr. President.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR SCHNEIDERMAN: I note that this extender runs for a longer period of time than the previous extender. Has there been any effort made, as far as you're aware, either in this house or by the Assembly or the Governor, to contact any of the service providers whose funding is affected by this operation of the government through extenders rather than budget legislation?

SENATOR JOHNSON: Senator, I explained what's in the bill. I can't explain what's not in the bill.

Is that sufficient, or do you have another question?

ACTING PRESIDENT MORAHAN: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Mr. President, on the bill.

ACTING PRESIDENT MORAHAN: On the bill.

SENATOR SCHNEIDERMAN: My question really was not directed at what was in the bill or not in the bill, but what the effect of the bill is.

And I think that the difficulty we have now is that the Governor is defining what is a bare-bones budget. And we are starting to hear, because we have undertaken, in our conference, to contact service providers, we have ascertained that in fact there is real pain being caused. There are services stopping around the state.

The business of government is not getting done here, and it is hurting people in

our districts. We have ascertained that in the area of alcoholism and substance abuse, 60 percent of the service providers reporting have had to access their lines of credit to make payments that are not being provided in these budget extenders.

We are making this situation worse with the present piece of legislation that we're considering now. We have ascertained that because of the lack of payment for defense costs for the indigent, the Legal Aid Society has advised us that if this legislation passes without change they will not be able to make their payroll on April 25th.

There are capital projects all over the state that are stopping, particularly, I would note -- and this is of very great importance to any of us who care about the long-term economy of the state -- capital projects at our institutions of higher education, including York College, City College, John Jay College, and Lehman College.

So our discussion over past extenders where there seemed to be some lack

of clarity as to whether or not anyone was actually being affected by the fact that we were giving the Governor a rubber stamp on these so-called bare-bones extenders, this is causing real pain. We are now at the point where, by passing these bills, we're hurting the people in our districts, we're hurting the people all around the state who depend on us to consider and pass budget legislation.

We have voted here -- I have voted against the past extenders. I think that the information we are receiving with regard to the present bill underscores the position that Senator Paterson has taken and many people in the Democratic conference have taken, that it is simply wrong under the present circumstances to rubber-stamp the Governor's extenders. We have to begin the process of actually passing a budget, we have to raise revenues, we have to provide funds for critical programs.

Two weeks from now, if we adjourn and we don't finish a budget and this extender carries us through, there are going to be millions of New Yorkers who are going to be

hurt by our inability to confront these issues. I urge all of my colleagues once again to vote no. This is not the way to do the business of government.

And we are learning every day of the pain that's being caused. And this is, again, just based on the inquiries we've been able to make. I'm sure that there are other problems out there that we are not aware of and that will become apparent over the next two weeks.

Let's vote no. Let's do our job and actually pass a budget.

Thank you, Mr. President.

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

Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

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

SENATOR BRESLIN: Thank you, Mr.

President.

This bill, as the one we took up last week, is geometrically hurting New Yorkers in healthcare and in education. And we as a body must begin the process of halting that.

And Democrats last week were challenged by the Senate Majority to come up with our own ideas, to make sure that we're part of that process, with the Assembly and the Senate, to bring to this state a fair budget. And we have transmitted to the Majority our ideas on how we would increase revenues to make sure that those people in healthcare and those 735-plus school districts in the State of New York are able to educate our children.

And included among those proposals have been to have a surcharge on the wealthy of this state, to come up with over $2 billion that we could help to restore in both education and healthcare; and, secondly, to strengthen the corporate franchise tax, which has created so many loopholes as to not be productive in collecting.

And, thirdly, to decouple from the federal bonus depreciation deduction, which again would generate additional revenues to be able to provide for placing monies back in for education and healthcare.

Expand the Bottle Bill would be fourth. And, fifth, to broaden the sales tax base. There are many, many areas in the state of New York -- charter flights, limousine services -- that don't include a sales tax, which in many respects are regressive because of the exclusions that are there.

We've also coupled with that proposals for cuts at agencies that will benefit this state.

But again, working in a collegial way with the Majority and the Democrats on this side of the aisle, and working with our brothers and sisters in the Assembly, we can do as we should -- we can do as we should, pass a budget that's fair and relatively on time and provides the place-back of the programs that all of us know are so critically important to the people of the State of New York.

I cannot, though, in conscience vote for the bill as it exists today. And I will vote no.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator Breslin. You will be recorded in the negative.

Senator Paterson.

SENATOR PATERSON: Mr. President, I vote no as well.

I think that none of us here in the Minority would want to be responsible for shutting down government, and none of us would give the deciding vote to do that. But we do think it's important to register a protest at this time that we are exacerbating the process by going on and on when it's my belief that every since April 1st we should have stayed here every day in order to pass a budget.

I don't know that discontinuing the payment of legislators makes much of a difference. I'm sure every legislator has a salary or has pension funds or can go to a bank to sustain themselves financially for a long budget. You've never seen candlelight

vigils for the legislators that aren't getting paid during the time that the budget hasn't been passed. You've never seen collections being taken up for legislators who don't have money during the time the budget is being passed.

If you really want to make people work on the budget and to expedite it, what you do is you make sure everybody is here every day, as they did, as we learned from our colleagues in Washington in the federal government during the impeachment hearings. They wanted impeachment hearings to always go quickly, they didn't want anyone to overpoliticizes it, they had every day, they had it done in two weeks.

And I suggest to you that there's no man or woman who represents people that wants to be away from their constituents for more than a week and a half or so, and that would expedite the process.

But since we didn't even try that hard, since we voted an extender even two days before, the day before the time period was going to elapse, to me it's just an arrogance

being shown about the process. And I think we could have stayed here and tried something else.

Last week we were admonished a little bit by Senator Balboni and Senator Skelos, and it was a proper admonishment. Here on this side of the aisle what we could be doing instead of just lecturing everyone else on what they're doing is to come up with some proposals of our own.

And this week, in good faith, we offer them for the consideration of the Majority, who has worked very hard on this budget process. It was the Majority who needs to be congratulated for putting out a whole new plan earlier in the session for how it might be expedited, and we congratulate them.

So what we've done is we've sent a letter to Senator Johnson giving him some of our ideas on how we could raise revenues to help close the gap of the $5.6 billion in cuts that have been scheduled.

Among them is the surcharge of 1 percent for those who make $300,000 a year and 2 percent for those who make $500,000 a

year. If that money was to come back to the state in terms of a tax, it would be $2.2 billion into our economy.

If you make between $10,000 and $27,000 a year, you pay 12.8 percent of your gross salary back to the state in taxes. If you make between $27,000 and $64,000 a year, you pay 11.4 percent back to the state in terms of taxes. If you make $300,000 a year, you pay 7.1 percent of your annual salary back in the form of state taxes.

This is not player-hating or jealousy of the rich, this is just trying to create a shared sacrifice, so that if we're going to be having tuition increases of 40.4 percent, or families making $50,000 a year losing $400 to create a sales tax for items less than $110, or a subway and commuter fare increase by the MTA, that we could make sure that all New Yorkers share in it.

And if a person makes $500,000 a year, we are asking them to pay a 2 percent higher rate in taxes, because people who make $500,000 a year who might be assessed a tax of an additional $10,000 would get $3,800 back

because of the coupling effect of the Federal Income Tax Act of 2001. That's really revenue-sharing on the federal level. So it would be a contribution, but many of it would be transposed from taxes already paid from the federal government.

Now, we think it's a plan that would really work and would be amenable to the state. But in our proposal we do something that may have surprised you. This is not the tax-and-spend-Democrats that you may have been familiar with in the past. This is the Democratic Party that recognizes that when you have an $11.5 billion budget deficit, there are going to have to be some cuts.

We think there will probably need to be about $1.2 billion in cuts, and we've come up with $700 million in cuts in our proposal, and we're very specific about where they come from.

And we're not going to get a pat on the back from some of the corners of the state that we're asking to make this sacrifice. But it's the way that we justify asking you, the Majority, to go along with us on this tax

surcharge, which will not kill jobs. The money from people who make over $300,000 or $500,000 make every year does not create jobs. Our survey shows that it is usually assessed for travel or for out-of-state residences. These are not revenues that inure back to the state.

So what we're saying is we are willing to recognize our responsibility, and we hope that you'll see your way to recognizing yours.

Regardless, we have certainly answered the challenge and put forth what our suggestions are to Senator Johnson, who is an honorable man and I know, along with the other members of the Majority, will consider them.

Our understanding is that right now the Governor is not -- says that he's tired of negotiating with the Legislature. We're all tired. But we are going to keep trying and we're going to keep working, because this is our responsibility. This is why we put our name on the ballot, because we wanted the tough challenges. And we just wanted you to know that our conference is willing to accept

ours.

ACTING PRESIDENT MORAHAN: Thank you, Senator Paterson.

Senator Paterson will be recorded in the negative.

Senator Krueger.

SENATOR LIZ KRUEGER: Thank you. To explain my negative vote.

So much has been said, and I know that the vote has already been taken. But just to highlight, because I know that regardless of which side of the aisle you sit on, if you are a Senator, you are concerned about the fact that money is not being put into these extender bills to assure that ongoing services get provided at home in your own districts.

And so I just want to highlight again not only that I am voting a third week in a row against an extender budget bill, but also the way this is being handled this year by the Executive chamber.

By this extender bill, compared with emergency appropriation bills in 2002, $1.9 billion in aid to education has not been

appropriated in 2003. This is in addition to the $1.3 billion in March 2003 school aid payments that have been held by the Governor through June.

When you look at these monies in combination, our school districts are now losing $351,000 per day in interest costs. We have to move forward on the budget. We cannot continue with these types of extender bills.

So I hope some people here might just reconsider if they voted for the bill today, because it is so important for us to send the message that we must move forward and pass a new budget.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator Krueger.

Senator Krueger will be recorded in the negative.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 447 are Senators Andrews, Breslin, Dilán, Duane, Hassell-Thompson, L. Krueger, Lachman, Montgomery, Onorato, Oppenheimer, Parker,

Paterson, Sabini, Schneiderman, and Stavisky.

Ayes, 46. Nays, 15.

ACTING PRESIDENT MORAHAN: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Can you please call up Calendar Number 448.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: In relation to Calendar Number 448, Senator Johnson moves to discharge, from the Committee on Finance, Assembly Bill Number 8037 and substitute it for the identical Senate Bill Number 4370, Third Reading Calendar 448.

ACTING PRESIDENT MORAHAN: The substitution is ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 448, by the Assembly Committee on Rules, Assembly Print Number 8037, an act relating to the state's share of health insurance premiums.

ACTING PRESIDENT MORAHAN: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President. On the bill.

This is the companion bill to the legislation that we just debated, and I would urge all of my colleagues to vote no for the same reason that applied to the predecessor.

The same arguments apply. This is no way to do business. We should not break for two weeks without passing something that is a more realistic budget and taking into account some of the proposals that have been advanced today.

ACTING PRESIDENT MORAHAN: Thank you, Senator Schneiderman.

Any other Senator wish to be heard on the bill?

The Secretary will read the last section the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results when tabulated.

THE SECRETARY: Those recorded in the negative on Calendar Number 448 are Senators Andrews, Dilán, Duane, Hassell-Thompson, L. Krueger, Breslin, Onorato, Parker, Paterson, Sabini, Schneiderman, Stavisky. Also Senator Lachman. Also Senator Oppenheimer. Ayes, 47. Nays, 14.

ACTING PRESIDENT MORAHAN: The bill is passed.

Senator Skelos.

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

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

Senator Onorato, why do you rise?

SENATOR ONORATO: Mr. President, there will be an immediate Democratic conference in the Democratic Conference Room, Room 314.

ACTING PRESIDENT MORAHAN: There

will be an immediate meeting of the Democratic conference in Room 314.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT MORAHAN: Senator Skelos.

SENATOR SKELOS: If we could return to reports of standing committees, I believe there's a report of the Rules Committee at the desk. I ask that it be read.

ACTING PRESIDENT MORAHAN: The Secretary will read.

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

Senate Print 4286, by Senator Saland, an act to amend the Education Law.

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

ACTING PRESIDENT MORAHAN: The motion is to accept the report. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MORAHAN: Those recorded in the negative.

(No response.)

ACTING PRESIDENT MORAHAN: The report is accepted, Senator Skelos.

SENATOR SKELOS: Then would you please call up Calendar Number 468.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: In relation to Calendar Number 468, Senator Saland moves to discharge, from the Committee on Education, Assembly Bill Number 8023 and substitute it for the identical Senate Bill Number 4286, Third Reading Calendar 468.

ACTING PRESIDENT MORAHAN: The substitution is ordered.

THE SECRETARY: Calendar Number 468, by the Assembly Committee on Rules, Assembly Print Number 8023, an act to amend the Education Law, in relation to adjournment of school district elections.

SENATOR OPPENHEIMER: Explanation.

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

SENATOR SALAND: Thank you, Mr.

President.

Mr. President, this is a bill which a bit earlier this afternoon passed unanimously in the Assembly. What the bill does is it takes the current statewide budget adoption date, which May 20, extends it by two weeks, taking it out to the 3rd of June.

And whereas, under the existing law, the date by which school districts have to adopt their proposed budgets is currently April 26th, some 24 days counting back from May 20th, which falls on a Saturday -- everybody has been using April 25th as that last day -- what this does is it now counts back 20 days from June 3rd, making the date for budget adoption May 14th.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Oppenheimer.

SENATOR OPPENHEIMER: If Senator Saland would yield for a couple of small questions.

ACTING PRESIDENT MORAHAN: Senator Saland, will you yield?

SENATOR SALAND: Yes, Mr.

President.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR OPPENHEIMER: One question I have, Senator Saland, would be would the election for school board members also fall on the date of the budget vote? It's not involved in this legislation. You know, the election for our board members is the same date as our budget vote.

SENATOR SALAND: Well, it is all delayed. There will not be two separate votes. There will be the one vote scheduled for the 3rd of June.

SENATOR OPPENHEIMER: Okay. Oh, and that was my -- if the Senator would yield one more time.

ACTING PRESIDENT MORAHAN: Senator, would you yield for one more question from Senator Oppenheimer?

SENATOR SALAND: Excuse me, I'll put my glasses on so I can hear better.

Yes.

SENATOR OPPENHEIMER: I'll have to enunciate louder so your eyes will hear.

I've seen two different dates. One was a June 1st date, one was a June 3rd. I guess they were two different pieces of legislation.

But at any rate, you're now saying the date is June 3rd?

SENATOR SALAND: Yeah, the first Tuesday in June, which is June 3rd.

And currently, not to confuse -- currently the third Tuesday in May, which is May 20th, we're moving from the third Tuesday in May, May 20th, to the first Tuesday in June, which is June 3rd.

SENATOR OPPENHEIMER: Thank you very much, Senator.

On the bill, please.

ACTING PRESIDENT MORAHAN: Senator Oppenheimer, on the bill.

SENATOR OPPENHEIMER: Well, this is a godsend and essential for those of us who have to draw up budgets and present a proposed budget, which is required by law, 20 or 24 days before we actually vote.

There is -- there is just an enormous amount of information, basically

funding information, that is lacking if we do not have a budget in place in New York State telling our school districts what they have. This is an opportunity for us to work out our differences in the next week or two and therefore go back to our school districts and say: This is what you have, you don't have to be guessing as to what your budgets will look like.

I urge a yes vote.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Alesi, you wish to be recognized?

SENATOR ALESI: Thank you, Mr. President. Just briefly on the bill.

ACTING PRESIDENT MORAHAN: Senator Alesi, on the bill.

SENATOR ALESI: I'd like to commend Senator Saland for his efforts in bringing forth a reasonable approach that will be of great assistance to our local school districts, especially in the shadow of the delayed budget process that we're continuing to endure here in the state's capital.

The taxpayers and the citizens of this state rely to a very large extent on those elected school board members and their superintendents to put forth budgets that are reasonable and make sense. So through Senator Saland's efforts, this will enable them to have some additional time and, at least in the case of the Fairport School District, which I represent, will give them the time that they have been looking for in their efforts as well.

So I'd like to congratulate Senator Saland and thank him for his hard work on this bill. I'll be voting yes.

ACTING PRESIDENT MORAHAN: Thank you, Senator Alesi.

Senator Paterson.

SENATOR PATERSON: Mr. President, I'd like to join Senator Alesi in congratulating Senator Saland on this piece of legislation, and to also thank him because on April 2nd I held a press conference at which I was offering a bill similar to this.

What my bill would have done was to have given the school districts a second

chance to vote on their budget, a chance to incorporate further resources in their budget, perhaps to rehire teachers, to revisit programs that were cut.

Because the problem that both Senator Saland and I were trying to address is that we do not want school districts negotiating in the dark. We don't want them guessing as to what the state budget should be, especially when their product is not revenues, their product is children.

And what we are very happy to see with this piece of legislation is that with the further two weeks to June 3rd, hopefully we would have passed the budget by then.

I think when we're finished with this, we do have to look at the long-term problem that 19 years in a row we haven't passed a budget on time and that these school districts, many of them are pilloried with the fact that they can't figure out what direction we're going and they basically have to guess. And they'd better be right. They'd better low-ball where we think we're coming in.

So at the time that I held the

press conference, I got the response back from the Governor's office that I should spend my time working on bringing the budget in on time. Well, I've tried for the 18 years that I've been here. I would think so has everyone else.

If we know that there's a reasonable possibility that the budgets are going to be late, we should revisit the opportunity to give these school boards a second chance to lay out their plan and give the public a second chance to ratify it.

For this year, I would think that this is a good plan. We have to remember that the budget is already two weeks late, so the school boards theoretically -- so the districts have no less time, unless we were to pass the budget tomorrow. But still, it will give them a greater opportunity to arrive at an apt decision.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator Paterson.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Mr.

President, is there a message from the Governor on this at the desk?

ACTING PRESIDENT MORAHAN: There's no message from the Governor.

SENATOR SCHNEIDERMAN: Well, I think in fact we have gotten a message from the Governor.

If there is no message from the Governor to bring Senator Saland's bill to the floor in the proper manner, I think the message from the Governor --

ACTING PRESIDENT MORAHAN: Well, it's not required, Senator Schneiderman.

SENATOR SCHNEIDERMAN: -- to substitute Senator Saland's bill for the Assembly bill.

Speaking on the bill, I think we've got a clear message from the Governor. I think, while I do prefer Senator Paterson's approach, Senator Saland is addressing a clear consequence of our inability to pass a budget. It becomes apparent at this point that we may have an unwilling participant in these negotiations on the second floor. And I hope that the rest of the legislative leadership

will follow Senator Paterson's and Senator Breslin's examples of coming up with creative solutions.

No message from the Governor? I think there's a very clear message from the Governor. And I think it is time for us to undertake our constitutional obligation in the absence of action from the second floor.

ACTING PRESIDENT MORAHAN: Any other member wishing to be heard on the bill?

Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 60. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT MORAHAN: The bill is passed.

Senator Skelos.

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

ACTING PRESIDENT MORAHAN: Yes, there is. We have a substitution, Senator.

SENATOR SKELOS: Please make the substitution.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: Senator Hannon moves to discharge, from the Committee on Judiciary, Assembly Bill Number 8021 and substitute it for the identical Senate Bill Number 4285, Third Reading Calendar 465.

ACTING PRESIDENT MORAHAN: The substitution is ordered.

Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President, I was erroneously recorded in the affirmative on Calendar 448. I would like to be recorded in the negative. Thank you.

ACTING PRESIDENT MORAHAN: So ordered, without objection.

SENATOR SKELOS: Mr. President, before we adjourn, on behalf of Senator Bruno I'd like to mention that there will be a conference of the Majority called off the floor tomorrow.

And there being no further business, I move we adjourn until Tuesday, April 15th, at 11:00 a.m.

ACTING PRESIDENT MORAHAN: There being no further business, the Senate stands adjourned until Tuesday, April 15th, at 11:00 a.m.

(Whereupon, at 6:10 p.m., the Senate adjourned.)