NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

March 24, 2004

11:10 a.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will please come to order.

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

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

THE PRESIDENT: In the absence of clergy, may we please 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, Tuesday, March 23, the Senate met pursuant to adjournment. The Journal of Monday, March 22, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Morahan, from the Committee on Elections, reports the following bills:

Senate Print 95A, by Senator Maltese, an act to amend the Election Law;

1383, by Senator Larkin, an act to amend the Election Law;

And Senate Print 6492, by Senator Morahan, an act to amend Chapter 92 of the Laws of 2001.

All bills ordered direct to third reading.

THE PRESIDENT: All bills reported direct to third reading.

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 Marchi, on

page number 31 I offer the following amendments to Calendar Number 515, Senate Print Number 6160, 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 FUSCHILLO: Madam President, on behalf of Senator Morahan, on page number 35 I offer the following amendments to Calendar Number 565, Senate Print Number 3118, 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 FUSCHILLO: Madam President, on behalf of Senator Meier, on page number 32 I offer the following amendments to Calendar Number 527, Senate Print Number 5736, 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 FUSCHILLO: Madam President, on behalf of Senator Meier, on page number 32 I offer the following amendments to Calendar Number 528, Senate Print Number 5737, and ask that said bill retain its place on Third Reading Calendar.

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

SENATOR FUSCHILLO: On behalf of Senator Meier, on page number 32 I offer the following amendments to Calendar Number 529, Senate Print Number 5738, 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 FUSCHILLO: On behalf of Senator Padavan, on page number 34 I offer the following amendments to Calendar Number 552, Senate Print Number 5117, 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 FUSCHILLO: Madam President, on behalf of Senator Volker, on page number 35 I offer the following amendments to Calendar Number 561, Senate Print Number 6321, 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 Bruno.

SENATOR BRUNO: Madam President, I believe there are four privileged resolutions at the desk, by Senators Bonacic, Skelos, Rath, and LaValle. I would ask that their titles be read and move for their immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Skelos, Legislative Resolution Number 3910, commending Dr. William H. Johnson upon the occasion of his designation for special honor

by the Rockville Centre Education Foundation on March 27, 2004.

By Senator LaValle, Legislative Resolution Number 3971, encouraging local school districts to provide optional vegetarian school entrees and encourage nutrition education materials and instruction to include information about healthy multicultural and vegetarian eating options.

By Senator Bonacic, Legislative Resolution Number 4041, honoring Jennifer M. Gould upon the occasion of her designation as recipient of the Fleischmanns Woman of the Year Award on March 27, 2004.

And by Senator Rath, Legislative Resolution Number 4042, honoring Bob Hettler upon the occasion of his induction into the New York State Basketball Hall of Fame.

THE PRESIDENT: The question is on all of the resolutions. All those in favor please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolutions

are all adopted.

Senator Bruno.

SENATOR BRUNO: Madam President, I believe I have a privileged resolution at the desk. I would at this time ask that it be read in its entirety and then move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Bruno, Legislative Resolution Number 4021, congratulating the 2003 RPI Engineers Football Team and coach Joe King on their outstanding season and overall team record.

"WHEREAS, Excellence and success in competitive sports can be achieved only through strenuous practice, team play, and team spirit, nurtured by dedicated coaching and strategic planning; and

"WHEREAS, Athletic competition enhances the moral and physical development of the young people of this state, preparing them for the future by instilling in them the value of teamwork, encouraging a standard of healthy living, imparting a desire for success, and

developing a sense of fair play and competition; and

"WHEREAS, The 2003 RPI Engineers Football Team posted a school record 11 wins while making its first appearance in the Division III National Semifinal game and receiving its first Division III Lambert Meadowlands Team of the Year Award; and

"WHEREAS, In the final national rankings, the Engineers were listed in the top 10 in all three polls and ranked among the leader in the nation in numerous statistical categories, including passing offense, total offense, and turnover margin, while establishing over 50 school records; and

"WHEREAS, The athletic talent displayed by this team is due in great part to the efforts of Joe King and his team of outstanding assistant coaches, skilled and inspirational tutors, respected for their ability to develop potential into excellence; and

"WHEREAS, The team's overall record is outstanding, and the team members were loyally and enthusiastically supported by

family, fans, friends and the community at large; and

"WHEREAS, The hallmarks of the 2003 RPI Football Team, from the opening game of the season to participation in the championship, were a brotherhood of athletic ability, of good sportsmanship, of honor and of scholarship, demonstrating that these team players are second to none; and

"WHEREAS, Athletically and academically, the team members have proven themselves to be an unbeatable combination of talents, reflecting favorably on their school; and

"WHEREAS, Coach Joe King and his dedicated staff have done a superb job in guiding, molding and inspiring the team members toward their goals; and

"WHEREAS, Sports competition instills the values of teamwork, pride, and accomplishment, and Coach Joe King and his outstanding athletes have clearly made a contribution to the spirit of excellence which is a tradition at RPI; now, therefore, be it

"RESOLVED, That this Legislative

Body pause in its deliberations to congratulate the 2003 RPI Football Team, its members -- Peter Herrick, Brock Gaspar, Flynn Cochran, Anthony Martuscello, Brent Hanson, Brad Williams, Dan Cole, Jai Echols, Joe Gomez, Mike Defilippi, Grant Cochran, Tony Couture, DeSean Moore, Ed Garcia, Justin Milanese, Pat Hughes, Dylan Cooper, Dan Stephens, Jimmy Motzkin, Frank Catallier, Derek Gribulis, Sean Doran, Mark Byrne, Sal Ferraioli, Tim Frame, Nick Taylor, Matt Hackett, Matt McCue, Michael DeJulio, Anthony Albano, Jay Bernardo, Chris Pierz, Collin Adalian, Brett Perron, Kyle Speck, Dave Pompei, Armin Warner, Scott Gallo, Honorio Borba, John Dorsey, John Golden, Otis Williams, Nick Fresina, Nick Foglia, Joe Breininger, Mike Wagner, Anthony Casale, Greg Giadone, Brandon Bradley, Dan Hitch, Mike Innominato, Matt Merrow, Shawn Herrmann, Eugene Aiken, Bob Perreault, Ray Noonan, Julian Vela, Thomas Cocca, Jake Russell, Ian McVey, Mike Scaringe, Pat Morse, Carl Harding, Scott Loudis, Nick Barnes, Jeff Douglas, John Bick, Dave Hansen, Matt Pisano, David Kenoyer,

Zack Middleton, Bryan McWayne, Adam Van Horn, Alex Keel, Joe Mandara, Dan Yanklowski, Jon Branche, Mehul Brahmbhatt, John Krol, Ezequiel Melo, Doug Teator, Graham Boyd, Dean Spitzer, Jim Shanley, Sean Dewey, Bryan Cass, Matt Verenini, Brett Kebea, Brad Morgan, Jeff Connolly, Ramses Jiminez, Paul Russo, and Drew Taranto -- and Coach Joe King on their outstanding season and overall team record; and be it further

"RESOLVED, That copies of this resolution, suitably engrossed, be transmitted to the 2003 RPI Football Team and to Coach Joe King."

THE PRESIDENT: Senator Bruno.

SENATOR BRUNO: Thank you, Madam President.

And I rise to welcome Dr. Shirley Jackson, who is the president of RPI, Coach King, all of the assistant coaches, and the members of the RPI championship team that we just heard described in this resolution that we all know becomes part of the record and the history of New York State.

Now, we are going to vote on this,

and I will welcome any of my colleagues joining in this resolution. Madam President, I would suggest we add the names of all of our colleagues unless any would like not to be included.

I want to really not just talk about this team, but RPI, which happens to be in the 43rd Senatorial District that I have the privilege and pleasure of representing. And let me tell you, wherever I go, when you mention RPI, it is always acknowledged as outstanding, as excellent -- but never like since Dr. Shirley Jackson has been there as president.

So I want to just acknowledge we're talking about leadership, we're talking about togetherness, we're talking about teamwork. And Dr. Jackson knows how to lead, she knows how to put a team together, she knows how to move continually towards excellence. The first woman to get a Ph.D. in physics from MIT, and possibly in the entire United States, and headed up the Nuclear Regulatory Commission as the chair.

Now, you talk about leadership and

accomplishment. We congratulate you on that, Dr. Jackson, and all the good things that you are doing in this community, in this state, and in this country as you provide the leadership to move through the students that move through to go out in the world and really change the world.

And, Coach, Coach King, when you're dealing with the athletes whose names we heard, you have one challenge, because any one of them are stars, any one of them, you know, can excel, and any one of them can go off and do their own thing. But it really takes what you've got to bring them together to recognize that winning is the way to go and you win together, as a team.

And there isn't anything in life -- like Senator Flanagan, Senator Balboni over here, there isn't anything that they can do or any of us by ourselves. We can't pass a bill in this house by ourselves, we can't do anything. So what it takes is teamwork. It takes supporting each other. And I thank you for that. And I thank all of you for that.

This team, and I want you just to

acknowledge, they won the regional finals in the NCAA, and they averaged I believe it was 33.5 points a game against their opponents' 19. Do you know what's the most impressive thing? They won the regional sections, I believe for the first time, in a blizzard.

And if you ever saw what was going on that day -- and I was home comfortably watching you on TV. Okay? I think I was having a beer. And it was really living large. But I got to tell you, when I watched them persevere, with their determination, their stamina, their playing together in literally a blizzard, that is excellence. That's excellence. That's persistence.

And you know what? That same determination, that same winning spirit, that same going through adversity, that's what's going to hold you in good stead throughout your lives. That spirit that you have as you go on through life, you will be the leaders here in this state, in this country, and in the world.

So we want to respect and honor what you've accomplished here in this chamber.

And we appreciate you taking the time, and Dr. Jackson for leading this team, and Coach King for your leadership and all the good things that you do for young people, this team and all of the people that go on through life to accomplish the great outstanding things that take place.

And I've got to say this to all of you. Since Dr. Shirley Jackson has been president, think about this, the largest endowment, gift, to a college in the whole world was bestowed on RPI. I believe the number is something like $360 million.

Now, there's been a lot of speculation about that anonymous donor. It wasn't me. Okay?

(Laughter.)

SENATOR BRUNO: And nobody thought it was me. And it wasn't a member item.

(Laughter.)

SENATOR BRUNO: But there is some, now, awareness that it's undoubtedly a graduate from RPI who went on to excel and to do the great things that people that get an

education like that can get.

Now, you imagine the employees, you imagine the paychecks, you imagine the profits, you imagine the taxes to pay our salaries that run this government as a result of the excellence of the people that -- whose lives you touch.

So we're indebted to you. Coach, we're indebted to you. And we're indebted to the whole team for doing all the great things that you do. God bless you all.

Thank you, Madam President.

(Standing ovation.)

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

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Montgomery, do you wish to be heard?

SENATOR MONTGOMERY: Yes, Madam President. I would just like to thank the

Majority Leader, Senator Bruno, for acknowledging this wonderful institution.

There's just one small thing that you left out that I would like to mention, and that is Dr. Jackson is also from Texas. And I am from Texas. So I am extremely proud to be associated with such an esteemed woman who now serves as president of RPI.

Thank you.

THE PRESIDENT: Thank you, Senator.

The resolution is adopted.

Congratulations. Troy is my hometown, and I'm very proud of what you've achieved.

And, Dr. Jackson, not only have you emphasized the intellectual with such prominence and great achievement, but to emphasize and be here to show respect for the athletic achievement is something that we need more of and more to see in our society.

As Senator Bruno mentioned, the skills that you've used, not only in your academic achievements but in your sports achievements, will be successful with you

through your life and through your career. Congratulations and continued best wishes.

Any member who does not wish to sponsor the last resolution please notify the desk.

Senator Bruno.

SENATOR BRUNO: Madam President, could I ask the chamber to acknowledge Dr. Jackson.

Would you stand up, Shirley?

(Standing ovation.)

THE PRESIDENT: Senator Bruno.

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

THE PRESIDENT: Yes, there are, Senator.

SENATOR BRUNO: Would you make those substitutions at this time.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: On page 35, Senator Kuhl moves to discharge, from the Committee on Transportation, Assembly Bill Number 3693 and substitute it for the

identical Senate Bill Number 6542, Third Reading Calendar 564.

THE PRESIDENT: The substitution is ordered.

Senator Bruno.

SENATOR BRUNO: Madam President, can we ask for an immediate meeting of the Children and Families Committee in the Majority Conference Room.

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

Senator Bruno.

SENATOR BRUNO: Can we at this time have the noncontroversial reading of the calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 100, by Senator Marcellino, Senate Print 783B, an act to amend the Vehicle and Traffic Law, in relation to issuance of distinctive plates for Persian Gulf veterans.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 268, by Senator Golden, Senate Print 5748, an act to amend the Public Health Law, in relation to diagnostic and treatment center indigent care.

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, 58.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 315, by Senator Spano, Senate Print 4806, an act to amend the Executive Law, in relation to providing.

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, 58.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 367, by Senator Nozzolio, Senate Print 5954, an act to amend the General Business Law, in relation to the New York Motor Fuel Marketing Practices Act.

THE PRESIDENT: 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, 58.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 379, by Senator Volker, Senate Print 5396A, an

act to amend the Penal Law and the Correction Law, in relation to the new crime of gang sexual assault.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57. Nays, 1. Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 401, by Senator Little, Senate Print 6066, an act to authorize and direct the Commissioner of General Services.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 433, by Senator Libous --

SENATOR SCHNEIDERMAN: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 454, by Senator Wright, Senate Print 1528, an act to amend the Real Property Tax Law, in relation to partial payment.

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, 58.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 472, by Senator McGee, Senate Print 2858, an act to amend the Alcoholic Beverage Control Law, in relation to mandatory license

revocation.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 537, by Member of the Assembly Stringer --

SENATOR SCHNEIDERMAN: Lay it aside.

THE PRESIDENT: The bill is laid aside.

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

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

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 433, by Senator Libous, Senate Print 2577 --

SENATOR LIZ KRUEGER: Explanation.

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

SENATOR LIBOUS: Thank you, Madam President.

What this bill would do is help to promote economic development in the Southern Tier. It actually would transfer a piece of property that is presently owned by the Department of Transportation to the Broome County Industrial Development Agency for the purpose of development.

THE PRESIDENT: Senator Krueger.

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

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

SENATOR LIBOUS: I would be honored, Madam President, to yield to Senator Krueger.

THE PRESIDENT: You may proceed, Senator Krueger.

SENATOR LIZ KRUEGER: Thank you. Appreciate the honor.

Senator Libous, your bill is what's called a two-thirds bill. And it's a two-thirds -- it requires two-thirds of the vote of each house of the Legislature because it's actually a transfer of property from the state to another entity under our Constitution. And in this case it's a transfer to an IDA, an independent -- excuse me, an industrial development agency.

Unlike many of the other bills I've looked through that were two-thirds bills and that were related to transfer of property, it doesn't lay out either the purpose of the transfer, what it will be used for, what kind of financial arrangements will be made in exchange for this land. Could you help me understand why this bill is different than so many other two-thirds bills?

SENATOR LIBOUS: Yes, because -- Madam President, like many deals that I've been involved in as far as bringing jobs or economic development, at least in our community, and I can only speak in ours, many times it is a work in process. It is something that you can't pin down at a certain

point.

Let me try to, Madam President, share with my colleagues and the Senator a little bit about this project so that you can be familiar with it.

The 10 acres has been abandoned, I believe, since 2002, which is a former DOT site. DOT has since moved away from that site to another, larger site in another location because they ran out of space. Abutting that site is an empty factory, a factory -- a company called Stowe Manufacturing. And I believe that empty factory is about on a 15-acre site.

A local developer has had an option on the property for some time. And there is a company -- and unfortunately, Madam President, I am not able at this time to divulge the name of that company that is very interested in developing the site. As a matter of fact, as recently as this week, we reached out to make sure that this thing was still alive. Otherwise, there would be no purpose to bring this bill before the house.

And that is something that we're

hopeful that we can move forward on, because if the option could be completed, if the IDA can take access to the property, we believe that we can have a nice development project that hopefully will create some jobs in a city that definitely needs it.

So, Madam President and Senator, I think that the specifics are still being worked out, but I'm happy to share, as I just have publicly with you, as much as I can. And I don't have the financials at this point in time because they are not available.

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

THE PRESIDENT: Senator Libous?

SENATOR LIBOUS: I would be happy to.

THE PRESIDENT: He does yield. You may proceed, Senator.

SENATOR LIZ KRUEGER: Thank you. I appreciate your answers.

And again, let me put this in context. My concern is in the role of IDAs and the fact that we are transferring the

land, which is the State of New York's or a division of the State of New York's, to an entity that does not have legislative authority and may not even have to report to their local legislative county legislature or town legislature, that we're doing a transfer of a valuable good through a middle entity with perhaps not enough oversight.

And so my concern is broader than just your bill. But certainly your bill highlighted those concerns for me.

Again, for my understanding, does the State Comptroller or any other state agency have to approve the deal once the Legislature passed this kind of bill?

SENATOR LIBOUS: I'm not aware of that. I'm assuming it would have to go through some sort of scrutiny through the state.

Madam President, I don't know if the Comptroller has to approve it. And maybe our counsels could advise us on that. I'm not sure.

SENATOR LIZ KRUEGER: Does the State Commissioner of Transportation have to

approve the transaction? Or if we pass legislation, does the State Commissioner of Transportation have no choice but to transfer this land? Do they have a role in this?

SENATOR LIBOUS: It is my belief that once the bill is passed that the Commissioner of DOT can then enter into an agreement with the IDA for the actual transfer of the property.

SENATOR LIZ KRUEGER: Madam -- oh, excuse me, Mr. President. You changed since I last looked up.

ACTING PRESIDENT MARCELLINO: I lost some weight.

(Laughter.)

SENATOR LIZ KRUEGER: Very nice.

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

ACTING PRESIDENT MARCELLINO: Senator Libous, do you yield?

SENATOR LIBOUS: Yes, Mr. President.

ACTING PRESIDENT MARCELLINO: The Senator yields.

SENATOR LIZ KRUEGER: Thank you.

On many transfers of land or land that has been, as you described, used for something else in the past, we have to be concerned about remediation on hazardous materials. Do you know who would have responsibility in this type of situation for the remediation, if any was needed on the land?

SENATOR LIBOUS: Actually, that's an excellent question. And probably, because it was DOT property -- the land is clear for sale now, but we believe that once you start digging there may need to be some remediation because of the trucks and different equipment and opportunities or whatever that land was used for.

The beauty of this is that the IDA would be responsible and DEC would have to sign off. And I think the Department of Transportation is thrilled about that, because they don't really want to pay for any cleanup, if there is. And I believe they would love to see someone else pay for that cleanup, and I think the IDA is prepared to do that, in conjunction with whatever they negotiate with

the developer.

SENATOR LIZ KRUEGER: Thank you.

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

ACTING PRESIDENT MARCELLINO: Do you yield, Senator?

SENATOR LIBOUS: Absolutely.

ACTING PRESIDENT MARCELLINO: The Senator yields.

SENATOR LIZ KRUEGER: Thank you.

Since, in this arrangement, rather than the state selling directly to the developer it would be the IDA with authority, who sets the fair market value for the land and actually evaluates whether this is a good deal in the best interests of the people of New York or of the Broome County area?

SENATOR LIBOUS: That's a very good question. And I can only speak, Mr. President and Senator, on the performance of the Broome County IDA, because I have worked with them over the last 16 years. And let me tell you that their record has been impeccable.

And I appreciate the Senator's

concern, because there are some concerns around the state with different industrial development agencies and how they're functioned and how properties are sold.

But it is my understanding that they will go out for a fair market appraisal, and that appraisal will then become a negotiated appraisal that they'll use in selling to the developer. Just like the -- I believe the IDA will also take over the industrial site that's empty, and they will pay whatever the fair market price is for that.

But that's how it has been done in the past, and that's how I expect it to be done under these circumstances.

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

ACTING PRESIDENT MARCELLINO: The Senator yields.

SENATOR LIZ KRUEGER: Thank you.

In your bill, Senator, it stipulates that the transfer shall be to advance some public purpose to be specified in

the contract. And you described why you couldn't provide details about the development arrangement or who it was with.

I'm a little confused about the public purpose if it's to a private developer and how would we -- how should we interpret that. Since it says it's for a public purpose, but we're talking about a transfer to a private developer with some amount of money -- although unclear now what that amount of money might be -- being moved into the IDA.

Where do we get to the public purpose here?

SENATOR LIBOUS: The public purpose, Senator, where I come from is basically to create and generate new jobs. That's how we worded it. That's what I consider public purpose.

SENATOR LIZ KRUEGER: Senator Libous, under -- excuse me.

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

SENATOR LIBOUS: Sure.

ACTING PRESIDENT MARCELLINO: The Senator yields.

SENATOR LIZ KRUEGER: Thank you very much.

Would the county legislature or the -- I don't know whether the specific town that this is in has its own town council or what the local equivalent government -- will they have a legal say in what is approved or not approved once the IDA has control of the property?

SENATOR LIBOUS: The way that the Broome County Industrial Development Agency is set up -- and I have a document here and, Senator, I would also offer to you that you can go up on their web page and they have a nice breakout as to how they function and some of the functions that they do.

What happens is the county legislature in Broome appoints the governing board of the IDA. And the IDA also has an appointed attorney and counsel. And the board has, under local statute, the authority to make various decisions and investments and transfers and buys up to certain limits. And that's all documented, obviously, in their bylaws.

So once the county legislature -- who appoints each and every one of those members, with the approval of the county executive -- they basically are giving the board members, through the chairman and their vote, the opportunity to make whatever decisions they need to make.

SENATOR LIZ KRUEGER: Thank you.

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

SENATOR LIBOUS: Sure.

ACTING PRESIDENT MARCELLINO: Senator Libous indicates he yields.

SENATOR LIZ KRUEGER: Thank you.

So as I understand it, while there was a legislative role in picking who would be on the IDA, the IDA would not have to go back to local elected officials on a decision they were making around this particular parcel of land or whatever deal was transacted as far as money for this land?

SENATOR LIBOUS: Mr. President, I believe they don't. And I don't want to sit here and verify -- again, I didn't expect to stand before us today and debate the Broome

Industrial Development Agency's bylaws or whatever. And, Senator, I apologize.

But I don't believe they do. I think once the board makes a decision, I think they can move forward.

SENATOR LIZ KRUEGER: Thank you.

Mr. President, on the bill, please.

ACTING PRESIDENT MARCELLINO: Senator Krueger, on the bill.

SENATOR LIZ KRUEGER: Thank you.

I appreciate the sponsor's answers. And in fact, his answers highlight for me, although it's not intended, why I have a problem with this bill and in general with many of the bills that come before us, either to increase the number of IDAs or to give a greater authority to IDAs.

And this bill stood out in particular distinction to me today even in relationship to Senator Little's bill, which was also a two-thirds bill that we approved today without stopping to debate it. And in her bill, it specifically talks about what the land is now, what it's going to be used for after transfer, that a money transfer will go

through an agreement with the town. It's for, quote, the public good of expanding the parking lot of a hospital in that community.

And while I would probably still have some concerns about transfers in general through IDAs, in this bill we don't know what the land will be transferred for, we don't know at what price, we don't know what the, quote, public good or not therein is.

While I recognize that under our own laws, IDAs then do generally have the authority to make their own determinations about the monies they get in exchange for property or the right to make tax exemptions or the right to do subsidies or PILOTs or any number of powers that IDAs have, that in this case what we are actually saying, if we pass this bill, is that we, the State of New York, own a piece of land, we are prepared to transfer that land to an entity that is not an elected body, and we are prepared to give that body the authority to take the people's land, so to speak, sell it for private development, have no legislative oversight or elected, even at the local level, role in deciding where the

monies ought to go once they are collected, no potential local -- again, absent the role of local electeds in deciding who should be on the IDA, no role in deciding whether in fact they do think the use of that land would be a public good or not.

There are developments that communities may be thrilled with getting, and there are other developments that communities may be upset about. There are good neighbors in private development, and there are not-so-good neighbors in private development. There are towns who are excited about redevelopment of their downtown areas but very upset when malls move in, and vice versa. There's any number of issues that arise at the local planning level when talking about taking what is now government land and using it for other purposes.

And my concern here is that we don't have any of those answers to explain to that town or to talk to that town, those people, that county, about these issues. We would be taking our authority and our responsibility and vesting it in a local IDA.

There would be no mechanism, we don't think, for Comptroller oversight or other state government oversight over the use of the land or the spending of the money.

We don't know, although I did not question the sponsor specifically on this, whether the IDA might then also provide such things as PILOTs or exemptions from local taxes to that developer, which might translate into what some people might believe on paper is at least new tax revenue to the town, something we understand all our towns and counties are desperate for. That it might not even translate into new tax revenue for the town or locality. It might or might not, depending on the option in the development, provide for additional jobs. It might be for companies that would compete with existing jobs or existing stores.

I think my point here is there are so many unknowns and there are so many what-ifs in this model. And there's also, unfortunately, as you said -- I have no questions about Broome. I have never heard of any conflicts of interest with the Broome

County IDA. But there have been conflicts of interest with other IDAs.

Only yesterday the Albany Times-Union reported on some very questionable arrangements with a local IDA about having -- or the Times-Union says, this has not been proved, that the IDA used funds to pave a NASCAR speedway, repave a NASCAR speedway, $380,000 paid for a private car racing operator to repave their speedway.

Some might argue it's the public good versus private good. Some might argue differently. For me, though, a question is who is overseeing those kinds of questions, who is making determinations about whether that's a good use of $380,000 of public money or not.

And because it too went through an IDA with some state transfer of dollars back and forth for this, there was no legislative oversight, there was no outside oversight. And I think there's serious and reasonable scrutiny that should be applied to that kind of arrangement.

And unlike many other IDA bills

that have come before this house, or two-thirds bills, we don't have the details to even be able to say we believed we were making an evaluation at X time that it was for this purpose at this cost for this good.

So I am urging my colleagues actually not to vote for this bill because there are too many unanswered questions. And I think that even in the best intentions of Broome County and the Department of Transportation and the Broome County IDA, we are opening ourselves up to exactly the type of thing we ought not be doing in the State of New York. We ought not be giving away our authority and our responsibility to protect the people's interest, public land and dollars in exchange for government-owned land.

We ought to try to come up with models that ensure both good fiscal oversight and responsibility and guarantee that localities and their elected officials have the ability to participate in the process, to make their own local determinations on whether they think a piece of land ought to be used for this purpose or that purpose, whether it's

a good deal for their county or their town or not. And that we shouldn't be overriding their local power or their ability to be involved in this through this kind of legislation.

I in fact would argue that we need to have much stronger rules about the state's oversight of public authorities, IDAs, off-budget public corporations, for exactly the same reasons I'm describing today on this one parcel of land and this one issue. I think we should have much more transparency, much stricter standards, much greater oversight when the state is either providing incentives through tax deductions, tax incentives, subsidies, or the passing along of public land, because that's what this situation is.

And in fact, while someone might argue this might not be germane and I didn't -- I'm not proposing it as an amendment to your law today, I have introduced a Senate bill, 5921, corporate accountability for tax expenditures and other government subsidies. And I hope that my colleagues might take a

look at my bill at some point in time and be willing to discuss it with me, privately or on the floor.

Because I think, regardless of party and regardless of house, in this state there is a recognition -- and certainly Comptroller Hevesi's recent report on Empire Zones and public authorities has helped to highlight some of those concerns -- that we really need to be doing a better job of self-policing our own models for distribution of government goods to the public.

So I will vote against this bill, and I hope at least I have brought some new concerns to the floor about how we approach the issues of IDAs and other government off-budget authority arrangements.

So I will be voting no and hope my colleagues will vote no.

Thank you, Mr. President.

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

SENATOR MONTGOMERY: Yes, Mr. President. I certainly agree with the issues that my colleague Senator Krueger has raised.

And I just would like to ask the sponsor a question.

ACTING PRESIDENT MARCELLINO: Senator Libous, do you yield to a question from Senator Montgomery?

SENATOR LIBOUS: Sure do.

ACTING PRESIDENT MARCELLINO: The Senator yields.

SENATOR MONTGOMERY: Thank you.

Senator Libous, I have, visiting our chamber today, a group of young people, the George Henry Murray Academy. And they are from my district in Brooklyn. And as you know, I represent the borough of Brooklyn in New York State.

And I see that you are -- your legislation refers to Broome County. Could you be specific -- Broome County, where would that be in our state, Senator Libous?

SENATOR LIBOUS: Thank you. Mr. President and Senator Montgomery, I would -- first of all, it's nice to have your group with us today.

And I would be more than happy to share with them that Broome County is in the

Southern Tier of New York State. It borders Pennsylvania. My home, as a matter of fact, is about 3 miles from the Pennsylvania border, where I live in the city of Binghamton, which is the seat, the city that is the main hub of the county of Broome. It also borders Chemung County, which is -- or Tioga County, I mean, which is to the west; Chenango County, to the north; and Delaware County, to the east.

SENATOR MONTGOMERY: Thank you, Senator Libous.

So it is my understanding that if Binghamton --

ACTING PRESIDENT MARCELLINO: Senator Montgomery, are you asking the Senator to yield?

SENATOR MONTGOMERY: Mr. President, through you, may I continue to ask Senator Libous -- if he will continue --

ACTING PRESIDENT MARCELLINO: Okay, we'll go on with more of the geography lesson. Go right ahead.

SENATOR MONTGOMERY: Thank you.

Senator Libous, for the sake of clarification here, so your legislation is an

attempt to bring some economic development activities to an area of our state near Pennsylvania, but certainly still in New York State, to the city of Binghamton?

SENATOR LIBOUS: That is correct. This site is actually in the city of Binghamton, and it would bring additional jobs to our state that we desperately need.

SENATOR MONTGOMERY: Thank you.

Senator, I want to thank you for your responses. And since I'm from Brooklyn and I have similar issues, I wanted you to know that I too am very concerned and interested in the fact that we need to bring jobs to our localities. I would like to be able to do the same for Brooklyn.

And so I'm going to support your legislation.

SENATOR LIBOUS: Thank you.

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

Read the last section.

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

ACTING PRESIDENT MARCELLINO:

Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59. Nays, 1. Senator Krueger recorded in the negative.

ACTING PRESIDENT MARCELLINO: The bill is passed.

THE SECRETARY: Calendar Number 537, by Member of the Assembly Stringer, Assembly Print Number 9837, an act to amend the Education Law, in relation to instructional materials.

ACTING PRESIDENT MARCELLINO: Read the last section.

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

ACTING PRESIDENT MARCELLINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT MARCELLINO: The bill is passed.

Senator Skelos, that completes the controversial reading.

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

committees.

And if we could have the report at the desk read at this time.

ACTING PRESIDENT MARCELLINO: The Secretary will read the reports of standing committees.

THE SECRETARY: Senator Rath, from the Committee on Children and Families, reports:

Senate Print 1916, with amendments, by Senator Saland, an act to amend the Domestic Relations Law;

4759A, by Senator Bonacic, an act to amend the Social Services Law;

4984, by Senator Rath, an act to amend the Social Services Law;

5245, by Senator Rath, an act to amend the Family Court Act;

And Senate Print 5285, by Senator Rath, an act to amend the Domestic Relations Law.

All bills ordered direct to third reading.

ACTING PRESIDENT MARCELLINO: All bills are ordered direct to third reading.

Senator Skelos.

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

ACTING PRESIDENT MARCELLINO: No, we have no housekeeping, Senator.

SENATOR SKELOS: I believe Senator Schneiderman has a motion at this time.

ACTING PRESIDENT MARCELLINO: The chair recognizes Senator Schneiderman.

SENATOR SCHNEIDERMAN: Could we recognize Senator Montgomery first.

ACTING PRESIDENT MARCELLINO: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President, I would like to be recorded in the negative on Calendar 379.

ACTING PRESIDENT MARCELLINO: So ordered.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President. I have a motion at the desk, and I would like to have it called up at this time.

ACTING PRESIDENT MARCELLINO: The

Secretary will read.

THE SECRETARY: Senate Print 3837, by Senator Schneiderman, an act to amend the Education Law.

ACTING PRESIDENT MARCELLINO: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

This motion is an effort to put on the calendar a piece of legislation that I think really is very, very difficult to oppose. And unfortunately, while it has been passing in the Assembly for the last few years, it has been held up in this house. I hope that this year we can change that.

The bill that we are seeking to put on the Senate calendar today with this motion would make emergency contraception available without requiring that women go through the current procedure of having to go find a doctor, get a prescription, a specific prescription, and take it to a pharmacy.

This is essential to providing emergency contraception when it's needed. We're talking about a product that is clearly

safe, that clearly prevents pregnancy. And for those who are opposed to abortions, it prevents people from getting pregnant who sometimes then have to get abortions.

It is a product that the FDA has approved as a safe and effective means of preventing pregnancy -- again, not as a means of inducing abortion -- and it's something that is more effective the sooner it is taken. So what we're doing, by the Senate refusing to pass this bill, essentially is forcing women to become pregnant who don't want to become pregnant.

And last year we passed a piece of legislation that had also been held up for a number of years, and Senator Spano sponsored it, requiring that hospital emergency rooms make emergency contraception available to rape survivors. That was a great step. But there are many, many other women who are being denied this simple product and being prevented from getting it by the procedures that are imposed by New York State that could easily be eliminated, as other states have eliminated them.

This house, the Senate, I'm sad to say, is the only obstacle to passing this law and saving many millions of dollars, saving people's lives, and preventing many, many pregnancies.

According to an article in the New England Journal of Medicine, the use of emergency contraception can prevent as many as 1.7 million unintended pregnancies that occur each year in the United States, including as many as 800,000 pregnancies which now result in abortion. It's been proven to reduce a women's risk of pregnancy by 75 percent if the first dose is taken within 72 hours of the failure of the regular birth control method or unprotected intercourse.

Now, the key thing here is this. Every hour counts. The procedure that we're imposing doesn't prevent people from getting emergency contraception. We haven't made it illegal. We're just making it so hard to get to that the time when it's most effective is the time when it's not available.

Let's bring this bill to the floor, let's get this fundamental provision on the

books in New York State as it is in other states. Let's follow up all of our rhetoric about caring about women and protecting women's lives.

And also, I would note, in a time of fiscal crisis, let's pay attention to what the Comptroller of the State of New York has documented, in a report issued in November 2003, that improved access to emergency contraception will save New York State more than $450 million a year.

This is a fiscal issue, this is a medical issue, and, fundamentally, this is a moral issue. Women who do not want to become pregnant when there's a safe product that's available should not be prevented from getting that product, should not be forced to become pregnant because the Senate of the State of New York refuses to put a bill on the calendar that could alleviate this problem.

I urge everyone to vote yes, and I hope we will pass this bill this year.

ACTING PRESIDENT MARCELLINO: All those Senators in favor of the petition out of committee please signify by raising their

hands.

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

ACTING PRESIDENT MARCELLINO: The petition is lost.

Senator Skelos.

SENATOR SKELOS: Mr. President, there being no further business to come before the Senate, I move we stand adjourned until Monday, March 29th, at 3:00 p.m., intervening days being legislative days.

ACTING PRESIDENT MARCELLINO: On motion, the Senate stands adjourned until Monday, March 29th, at 3:00 p.m., intervening days being legislative days.

(Whereupon, at 12:05 p.m., the Senate adjourned.)