NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

May 3, 2004

3:16 p.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will please come to order.

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

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

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

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

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Sunday, May 2nd, the Senate met pursuant to adjournment. The Journal of Saturday, May 1st, 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 Libous, I wish to call up Senate Print Number 6528, recalled from the Assembly, which is now at the desk.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 654, by Senator Libous, Senate Print 6528, an act to authorize the Village of Endicott.

THE PRESIDENT: Senator.

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

THE PRESIDENT: The Secretary will call the roll upon reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 47.

SENATOR FUSCHILLO: I now offer the following amendments.

THE PRESIDENT: The amendments are received, Senator.

SENATOR FUSCHILLO: Madam President, on behalf of Senator Nozzolio, I wish to call up Senate Print Number 5926, recalled from the Assembly, which is now at the desk.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 756, by Senator Nozzolio, Senate Print 5926, an act to amend the Highway Law.

THE PRESIDENT: Senator Fuschillo.

SENATOR FUSCHILLO: I now move to reconsider the vote by which the bill was passed.

THE PRESIDENT: The Secretary will call the roll upon reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 47.

SENATOR FUSCHILLO: I now offer the following amendments.

THE PRESIDENT: The amendments are received.

SENATOR FUSCHILLO: Madam President, amendments are offered to the following Third Reading Calendar bills:

Sponsored by Senator Larkin, page number 40, Calendar Number 645, Senate Print Number 5867;

Also by Senator Larkin, page number 43, Calendar Number 680, Senate Print Number 5866;

By Senator Rath, page number 49, Calendar Number 767, Senate Print Number 6742A;

By Senator Bonacic, page number 50, Calendar Number 777, Senate Print Number 6645;

And by Senator Larkin, page number 22, Calendar Number 251, Senate Print Number 5863.

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

SENATOR FUSCHILLO: Thank you.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Madam President,

I believe there are some substitutions at the desk.

THE PRESIDENT: Yes, there are.

SENATOR SKELOS: If we could make them at this time.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: On page 4, Senator LaValle moves to discharge, from the Committee on Higher Education, Assembly Bill Number 7143 and substitute it for the identical Senate Bill Number 289, First Report Calendar 922.

On page 34, Senator Fuschillo moves to discharge, from the Committee on Labor, Assembly Bill Number 8164 and substitute it for the identical Senate Bill Number 1779, Third Reading Calendar 478.

On page 41, Senator DeFrancisco moves to discharge, from the Committee on Judiciary, Assembly Bill Number 7881 and substitute it for the identical Senate Bill Number 2829, Third Reading Calendar 658.

And on page 52, Senator Robach moves to discharge, from the Committee on

Health, Assembly Bill Number 9878 and substitute it for the identical Senate Bill Number 6398, Third Reading Calendar 802.

THE PRESIDENT: Substitutions ordered.

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 189, by Senator LaValle, Senate Print 2479, an act to amend the Highway Law, in relation to limitations.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number

490, by Senator Volker, Senate Print 1441, an act to amend the Penal Law, in relation to sentences.

SENATOR SCHNEIDERMAN: Lay it aside.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Madam President, if we could have the last section read for the purposes of Senator Golden voting, and then we'll withdraw the roll call and lay the bill aside.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 18. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator Golden.

SENATOR GOLDEN: I vote aye on S1441.

THE PRESIDENT: You will be so recorded as voting in the affirmative on this bill.

SENATOR GOLDEN: Thank you.

THE PRESIDENT: Withdraw the roll

call and lay the bill aside.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 551, by Senator Kuhl, Senate Print 5075, an act to amend the Highway Law, in relation to the use and recovery of fines.

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, 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 580, by Senator Saland, Senate Print 6144B, an act to amend Chapter 208 of the Laws of 1983 relating to enabling.

THE PRESIDENT: There is a local fiscal impact note 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 629, by Senator Robach, Senate Print 4989, an act to amend the Penal Law, in relation to aggravated vehicular assault and vehicular murder.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 665, by Senator Farley, Senate Print 4389, an act to amend the Banking Law, in relation to unauthorized entities.

THE PRESIDENT: Read the last

section.

THE SECRETARY: Section 5. This act shall take effect on the 30th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 674, by Senator Bonacic, Senate Print 4008, an act to amend the Private Housing Finance Law, in relation to the powers of the New York State Housing Finance Agency.

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 688, by Senator Maziarz, Senate Print 3953, an act to amend the Local Finance Law, in

relation to providing for a period of probable usefulness.

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, 51.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 701, by Senator Golden, Senate Print 5460, an act to amend the Alcoholic Beverage Control Law and the Vehicle and Traffic Law, in relation to requiring.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 120th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

THE PRESIDENT: The bill is

passed.

THE SECRETARY: Calendar Number 709 --

SENATOR MONTGOMERY: I vote no on that bill, please. Thank you.

THE SECRETARY: In relation to Calendar Number 701, Senator Montgomery recorded in the negative. Ayes, 51. Nays, 1.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 709, by Senator Velella, Senate Print 6760, an act to amend Chapter 511 of the Laws of 1995, relating to establishing.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 724, by Senator Morahan, Senate Print 1319B,

an act to amend the Penal Law, in relation to requiring a mandatory life sentence.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 5. This act shall take effect on the first of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50. Nays, 2. Senators Duane and Montgomery recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 731, by Senator Libous, Senate Print 2580, an act to amend the Penal Law, in relation to the provision of large quantities.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 765, by Senator Skelos, Senate Print 6720, an act to amend the Education Law, in relation to the use of certain federal funds.

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, 53.

THE PRESIDENT: The bill is passed.

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

ACTING PRESIDENT MEIER: Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time return to motions and resolutions.

And I believe, Mr. President, that I have a privileged resolution at the desk. I

would ask that it be read in its entirety and move for its immediate adoption.

ACTING PRESIDENT MEIER: Motions and resolutions.

The Secretary will read.

THE SECRETARY: By Senator Bruno, Legislative Resolution Number 4751, honoring the nurses of New York State for the significant role they play in the delivery of quality health care, in recognition of National Nurses Week, May 6 through 12, 2004.

"WHEREAS, The health and well-being of the citizens of the State of New York is of paramount import to this Legislative Body; and

"WHEREAS, It is the sense of this Legislative Body that those women and men of humanitarian commitment who dedicate themselves to the professional, compassionate care of others merit the recognition and commendation of all the citizens of this great Empire State; and

"WHEREAS, Attendant to such concern, and in full accord with its long-standing traditions, this Legislative Body is justly proud to honor the nurses of

New York State for the significant role they play in the delivery of quality health care, during National Nurses Week, May 6 through 12, 2004, in conjunction with the anniversary of the birth of Florence Nightingale, the founder of the nursing profession; and

"WHEREAS, Nurses are the heart of health care. In hundreds of settings across New York State and around the world, nurses are essential to the provision of quality health care; and

"WHEREAS, Nurses throughout the state are working on behalf of all New Yorkers in a wide range of settings. Their dedicated expertise can be seen in hospitals, long-term-care facilities, the halls of research institutions, colleges, schools, homes, and businesses; and

"WHEREAS, Further apparent is the significant contributions that nurses have made while serving in the United States Armed Forces, showing a unique combination of empathy and compassion while providing vital health care leadership; and

"WHEREAS, Nurses exemplify the

proud tradition of caring, service, and tradition to excellence. Their professionalism and unequivocal dedication in support of the health and dignity of their fellow citizens contributes significantly to the well-being of this great State of New York; and

"WHEREAS, It is the custom of this Legislative Body to publicly applaud nurses from the State of New York for their valuable contributions to health care, both as caregivers and patient advocates; now, therefore, be it

"RESOLVED, that this Legislative Body pause in its deliberations to honor the nurses of New York State for the significant role they play in the delivery of quality health care during National Nurses Week, May 6 through 12, 2004; and be it further

"RESOLVED, That a copy of this resolution, suitably engrossed, be transmitted to New York State Nurses Association, an affiliate of the New York State AFL-CIO."

ACTING PRESIDENT MEIER: Senator Bruno.

SENATOR BRUNO: Mr. President, thank you.

And colleagues, today, as you've heard, we are recognizing and honoring nurses all over the state, all over the country. There are something like 303,000 nurses here in this state. There's an organization, Gail Myers provides leadership of an association that goes back, I believe, to 1901 -- 34,000 nurses.

I don't have to share with my colleagues here, or anyone, how important nurses are in our lives. There isn't a member here that hasn't in some way been touched or affected by a nurse, personally or with your families.

So this is very special. This is Nurses Week. We recognize and we honor those that help us in our daily lives in ways that really represent kind of a labor of love and of affection and of compassion. Because that is a calling that you just don't do just because; you do it because you want to and because you care about people and because you relate to people.

Now, we are honoring especially some nurses that are here with us who have served in Desert Storm, Vietnam, Korean War, Second World War, presently in Iraq. And I'm proud to be able to recognize them individually.

And I would just ask them -- they're here with us -- to just stand up, starting with Major Paul Robertson, of Hudson, who spent 120 days in Iraq and returned last fall.

Lieutenant Colonel Lenore Boris, of Saratoga, who serves in the U.S. Air Force Nurse CORPS Reserve.

Major Elaine Tucci, of Delmar, who served in Desert Storm.

Lieutenant Colonel Mary Lou Clifford, of Rensselaer, who serves in the U.S. Army Nurses CORPS Reserve.

Major Thomas Delong, of Troy, who serves in the U.S. Army Nurse CORPS Reserve.

Major Robert Moore, of Cohoes, who is a veteran of Operation Desert Storm.

Retired Major Helen Vartigan, of Cohoes, who is a veteran of Vietnam.

Norma Hudson, of Schenectady, who is a World War Two veteran.

Now, ladies and gentlemen, these people have served, as we just recognized, in various places throughout the world, having given of their time -- and some of them still are.

So I just wanted to say a special word of thanks to you, because you are representative of all of the nurses throughout the state and throughout the nation who do whatever it takes, be wherever you are, to help make people's lives better.

And I'm indebted for the experiences I've had this last year, as I spent a lot of hours in a hospital in treatment, for the nurses that attend to you on a personal basis and the way they do it.

And we know that you're proud of what you do, and your families are proud and your neighbors are proud. We want you to know, as we recognize and appreciate you, how proud we are of what you do.

(Standing ovation.)

SENATOR BRUNO: Is there another

nurse that's here that we didn't recognize?

GALLERY MEMBER: You didn't recognize me.

SENATOR BRUNO: Tell us your name.

GALLERY MEMBER: Colonel Mary Mogan, retired.

SENATOR BRUNO: And you served in?

GALLERY MEMBER: WWII.

SENATOR BRUNO: And where's your home now?

GALLERY MEMBER: Oh, Watervliet, just up the road.

(Laughter.)

SENATOR BRUNO: Watervliet, we are neighbors. Thank you. Thank you.

(Applause.)

SENATOR BRUNO: Thank you all.

ACTING PRESIDENT MEIER: Senator Maltese.

SENATOR MALTESE: Mr. President, I was moved earlier by comments of the Majority Leader that we were going to recognize all nurses.

And listening to the words about the service of the nurses and the ranks that our heroes have held, including those heroes from WWII, brings to mind many of the contacts that I have had over the years with nurses, whether they were during my service during the Korean War or, more recently, with visits to the Veterans Hospital at St. Albans, the Veterans Hospital in Manhattan, the New York State Veterans Home in St. Albans, and others.

We know, it was said earlier, that they are the heart of health care, and their dedication is second to none, whether they serve in the military or serve simply as nurses.

Many years ago, nursing was a profession that was not accorded the respect that it is today. A few years ago, when the AIDS epidemic began, we saw many people shirking and turning away from nursing. And indeed, nursing has become in some respects, in many respects, even if it doesn't involve service in the military, a hazardous profession.

When we think of the exposure to

blood as they courageously go about their duties with accident victims and in operating rooms or in hospitals, or in contact with bodily fluids, or in contact with the many needles that are constantly a part of the their profession that may very well carry the death-dealing hazard of AIDS, we have to reflect on their courage and dedication, the hours away from home, the hours away from their loved ones as they help and minister to our loved ones in hospitals. Their compassion is essential in their positions as they deal with children, dying children and others.

We in the Senate, under the leadership of Senator Bruno, have recognized the nurses today, and I think that we could well recognize them every day of the year. Mr. President, I second the resolution.

ACTING PRESIDENT MEIER: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Mr. President. I wish to congratulate Senator Bruno and this body for its recognition of nurses.

As most of you know, I retired from

nursing from a hospital, from a hospital setting, but I continue to regard nursing as the primary profession of my life. And I continue to encourage women and men to become a part of the nursing profession.

I have been asked, which I feel so honored, at nursing schools and at graduations to talk about this profession. And one of the things that I would hope that we will continue to do is if we believe that it is the profession that it is and that we honor the people who are in it, that as we look at the legislation requests that nurses make for us to look at the mandatory overtime and some of the other issues before us, that we would do that with concern for the fact that this is a noble profession, but yet the working hours and the time that is spent should be regarded with the same level of respect that we do as we celebrate this particular week.

So I thank you again for this resolution. And I, as a nurse who reveres the years that I have worked in patient care, certainly know that we have a long way to go before nursing is truly the profession that it

ought to be recognized as, as we've done today.

Thank you.

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

(Response of "Aye.")

ACTING PRESIDENT MEIER: I'm sorry. Senator Morahan.

SENATOR MORAHAN: Thank you, Mr. President. I too rise in support of this most thoughtful and timely resolution by Senator Bruno.

The nursing profession, as has been said so eloquently here by Serph Maltese and Senator Hassell-Thompson and, of course, Senator Bruno, speaks to the point that there's legislation we need to do in the coming months to create an environment that will encourage more people to enter into what Serph Maltese calls a hazardous profession.

It's hazardous, it's dangerous, it's difficult for family life. And we have to do what we can do here to ensure appropriate staffing and eliminating mandatory

overtime, which seems to be an impediment to attracting new people men and women to this most noble profession.

And indeed, there are other things that we can do to help upgrade the profession to make it truly professional -- by advancing graduate courses, advancing the techniques that they're able to use, enhancing their ability to assist doctors and, in turn, servicing the patient.

So I'm delighted to vote yes for this resolution. Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Larkin.

SENATOR LARKIN: Thank you, Mr. President.

Nursing, a most honorable profession. We were introduced to the men and women of the nursing corps who served our great country. I can't thank all the nurses that have done such great things. I served on active duty from 26 April, 1944, to 30 June, 1967. And I know that there are many men in the South Pacific during World War II in our units who wouldn't be alive today if it wasn't

for the commitment of the nurses, who put their personal sacrifice behind what was necessary for the troops.

Many people who have talked about Korea and about Vietnam have said that the joint units of the nurses in their MASH hospitals were the difference between life and death. And I'm sure it's the same today in Iraq.

The nursing profession has provided us with another arm for the service in order to ensure the best, the fastest, and the quality care for our men and women who have been wounded in combat.

Congratulations, and thank God for you.

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

Senator Marchi.

SENATOR MARCHI: I just -- I had to muse about my own personal circumstances. Back in 1945, I was serving my fourth year in World War II, and I was dying of dengue fever and dysentery. And I would say that the supportive concern and affection that they

demonstrated at that time saved my life. And here I am; I'm still here.

But in any event, I have a daughter who is an R.N. I'm very proud of the fact. And I'm proud that we have a member over here that is also a nurse in her own right.

So it's a felicitous circumstance that I could not have anticipated, but I'm delighted that at least we have this opportunity, ably demonstrated by Senator Bruno's initiative, to recognize the great debt that as a society we all owe to them.

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

The question is on the resolution. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The resolution is unanimously adopted.

Senator Bruno.

SENATOR BRUNO: And, Mr.

President, can we ask any member that would like not to be on the resolution to let the desk know, because we'd like to add all of the members' names to this resolution.

And thank you, Mr. President, and thank you, colleagues.

ACTING PRESIDENT MEIER: Members' names will be added to the resolution. Please inform the desk if you wish not to be listed.

SENATOR BRUNO: And, Mr. President, we are going to have a Finance Committee meeting in the Majority Conference Room.

And I believe that since we have some nominations to come to the floor to be confirmed, and then we're going to be taking up the Senator Volker bill after that, it might be best serving the members here to stand at ease while Finance meets. Because I believe a number of the members would like to be back in the chamber for the discussion on the Senator Volker bill.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: There will be an immediate meeting of the Finance

Committee. Pending the report of the Finance Committee, the Senate will stand at ease.

(Whereupon, the Senate stood at ease at 4:00 p.m.)

(Whereupon, the Senate reconvened at 4:55 p.m.)

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT MEIER: Senator Skelos.

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

ACTING PRESIDENT MEIER: Reports of standing committees.

The Secretary will read.

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

As a member of the Dormitory Authority, Brian Ruder, of Ausable Forks.

As a member of the State Board of Real Property Services, John M. Bacheller, Ph.D., of Latham.

As a member of the Finger Lakes State Parks, Recreation and Historic Preservation Commission, James D. Howell, Jr., of Montour Falls.

As a member of the Fire Fighting and Code Enforcement Personnel Standards and Education Commission, Bruce E. Heberer, of Johnstown.

As commissioners of the State Insurance Fund, John F. Carpenter, of Elmira; Donald T. DeCarlo, Esquire, of Douglaston; and Terence L. Morris, of Burnt Hills.

As a member of the Medical Advisory Committee, Brenda J. Trickler, of Waterloo.

As a member of the Board of Directors of the New York Convention Center Operating Corporation, Michael J. Stengel, of New York City.

As directors of the Municipal Assistance Corporation for the City of New York, Kenneth Biaklin, of New York City, and Darcy Bradbury, of New York City.

As a member of the Public Health Council, Theodore J. Strange, M.D., of Staten Island.

As a member of the State Camp Safety Advisory Council, Shirley A. Hansen, of Lake Placid.

As Major General of the New York Guard, Clarence B. Hartman, of Clifton Park.

As a member of the Board of Visitors of the Helen Hayes Hospital, Jeffrey Sweet, of Peekskill.

And as a member of the Board of Visitor of the New York State Home for Veterans and Their Dependents at Montrose, Charlotte Craven, of Poughkeepsie.

ACTING PRESIDENT MEIER: Senator Johnson.

SENATOR JOHNSON: Move the nominations.

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

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The

nominees are confirmed.

The Secretary will continue to read.

THE SECRETARY: As a member of the State Board of Parole, Thomas P. Grant, of Rensselaer.

ACTING PRESIDENT MEIER: Senator Johnson.

SENATOR JOHNSON: Move the nomination.

ACTING PRESIDENT MEIER: The question is on the confirmation of Thomas Grant as a member of the State Board of Parole. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The nominee is confirmed.

Mr. Grant has joined us today in the gallery with his wife, Eileen, his son John, and his son Thomas.

Mr. Grant, congratulations and good

luck with your duties.

(Applause.)

ACTING PRESIDENT MEIER: The Secretary will continue to read.

THE SECRETARY: As a member of the State Commission of Correction, Frances T. Sullivan, of Fulton.

ACTING PRESIDENT MEIER: Senator Johnson.

SENATOR JOHNSON: Move the nomination.

ACTING PRESIDENT MEIER: Senator Wright.

SENATOR WRIGHT: Thank you, Mr. President.

I want to commend the Governor on his nomination of Frannie. We've had the occasion to serve together as representatives from Oswego County, Fran having served six terms in the New York State Assembly.

In addition, she brings to this nomination the experience of actually serving as a probation officer, hands-on experience, and prior to that having served as a children's services case worker.

So she brings the background and the experience of the legislative chambers and the legislative background and combines that with the practical experience of work in the field. That certainly is the attribute that the Governor saw in his recommendation.

I know that her knowledge and understanding of local government will certainly be very beneficial to the task that the commission has before them. So it's my pleasure to join my colleague in nominating and encouraging my colleagues in supporting the confirmation of Fran Sullivan.

I'd also like to take the opportunity to recognize several of my constituents, those being her son and daughter -- Gene, who is a deputy sheriff, and Margaret, who is a nurse. So it's only appropriate that we were recognizing registered nurses earlier.

Frannie, good luck.

Thank you.

(Applause.)

ACTING PRESIDENT MEIER: The question is on the confirmation of Fran

Sullivan as a member of the Commission of Correction. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The nominee is confirmed.

Congratulations, Fran.

And Fran is joined today, in addition to Margaret and Gene, who Senator Wright mentioned, by her daughter-in-law, Jennie, granddaughter Janel, and grandson Patrick.

Congratulations.

(Applause.)

ACTING PRESIDENT MEIER: The Secretary will continue to read.

THE SECRETARY: As a member of the State Civil Service Commission, Daniel E. Wall, Esquire, of Albany.

ACTING PRESIDENT MEIER: Senator Johnson.

SENATOR JOHNSON: Move the

nomination.

ACTING PRESIDENT MEIER: Senator Balboni.

SENATOR BALBONI: Mr. President, I've had the privilege of working with Dan Wall in the private sector. He is somebody who brings a unique combination of temperament, wit, humor, experience and intelligence. He's going to be an excellent, excellent member.

And what I want everybody is understand also is he's a guy who never takes himself too seriously, but holds us in high regard. So maybe sometimes his sense of the world is a little off. But he's a terrifically hard-working person as an attorney and as a member of society. We can't have picked a better person for this spot.

Congratulations, Danny.

ACTING PRESIDENT MEIER: Senator Andrews.

SENATOR ANDREWS: Yes, Mr. President. On the confirmation of Daniel Wall, I just want to state that as the ranking member of Civil Service and Pensions, I've had

the opportunity to work with him under the leadership of then Commissioner Sinnott and he as the executive director.

And he has shown me to be a very diligent and hard-working individual, and I support this nomination wholeheartedly and wish him much success in his continued advancement in state government.

ACTING PRESIDENT MEIER: The question is on the confirmation of Daniel Wall as a member of the Civil Service Commission. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The nominee is confirmed.

Mr. Wall is with us today in the gallery. He is joined by his parents, Robert and Gloria Wall; by his wife, Suzanne. He's also joined by Nicole and Lindsay Wall, his daughters, by his brother, Richard Wall, and his niece, Taylor.

Mr. Wall, congratulations.

(Applause.)

ACTING PRESIDENT MEIER: The Secretary will continue to read.

THE SECRETARY: As a member of the State Council on the Arts, Richard J. Schwartz, of New York City.

ACTING PRESIDENT MEIER: Senator Johnson.

SENATOR JOHNSON: Move the nomination.

ACTING PRESIDENT MEIER: Senator Maltese.

SENATOR MALTESE: Mr. President, as I indicated earlier at the meeting of the Finance Committee, Dick Schwartz came to the State Council on the Arts well prepared, with an extensive background in business and in the arts and culture.

In the almost 15 years that he has served with the State Council on the Art as vice chairman and as chairman, he has brought a great deal of dedication to the position. He has not forgotten that New York State has 62 counties. He makes it his business to go to many, many events, no matter what distance

is involved, takes a great deal of time from his family and personal life to perform as a very diligent and efficient and competent chairman of the State Council on the Arts.

Certainly, as a resident of Queens County, I know that many times my colleagues comment on the fact that there are so-called outer boroughs, there are counties in addition to Manhattan. Mr. Schwartz has taken note of that and has taken a great many remedial steps to ensure that all the groups in the entire state get an appropriate amount of attention and funding from the State Council on the Arts.

He's done an exemplary job, and I am proud to second the nomination of Mr. Schwartz as a member of the State Council on the Arts.

ACTING PRESIDENT MEIER: Senator Oppenheimer.

SENATOR OPPENHEIMER: Thank you.

Well, I'm delighted that Richard Schwartz is going to do this again. He's been doing a fabulous job. I've known him for a number of years because he has been totally

committed to the arts, preservation of history, just a lot of very good deeds he's been doing throughout his life.

And the work that he did on the Westchester Council on the Arts we are still benefiting from, even though he moved away from Westchester. And the work that he does at Lincoln Center I'm very familiar with.

So we are very lucky to have a man of this caliber willing to accept renomination.

Congratulations, Richard.

ACTING PRESIDENT MEIER: The question is on the confirmation of Richard Schwartz as a member of the State Council on the Arts. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The nominee is confirmed.

Mr. Schwartz is with us today in the gallery, and we wish you congratulations

and good luck, sir.

(Applause.)

ACTING PRESIDENT MEIER: The Secretary will continue to read.

THE SECRETARY: As a member of the Metropolitan Transportation Authority, John H. Banks, III, of Brooklyn.

ACTING PRESIDENT MEIER: Senator Johnson.

SENATOR JOHNSON: Move the nomination.

ACTING PRESIDENT MEIER: Senator Ada Smith.

SENATOR ADA SMITH: Thank you, Mr. President.

I would like to second the nomination of John Banks, whom I've the pleasure of working with for many years. John is the consummate professional and has always proven to be a master at whatever task he's been given.

I would like to congratulate the Governor and thank him for putting forth John's name. And I know that he will do a good job for all of the people of the State of

New York.

ACTING PRESIDENT MEIER: Senator Duane.

SENATOR DUANE: Thank you very much, Mr. President. I also want to speak in favor of this nominee.

John Banks is really a terrific, terrific choice. I had the pleasure of working with him. He's really smart, really easy to work with, and just a terrific guy. So I'm very, very happy to be voting in favor of him today.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Sabini.

SENATOR SABINI: Mr. President, I also want to rise in support of the nomination of John Banks.

Like Senator Duane, I had the pleasure of working with John in his staff roles in the City Council, both as the finance director and also as the chief of staff for the speaker.

And he is a smart, even-tempered person who I hope can bring some common sense

to the MTA board and hopefully make things better for the ridership as well as the folks who have to suffer through what sometimes is not a very pleasant commute. And I also appreciate the fact that he is a mass transit user.

So I want to support the nomination, support the Mayor's nomination, and say that I'm sure he'll do as good a job at the MTA board as he has in his other roles.

Thank you.

ACTING PRESIDENT MEIER: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Mr. President.

I rise to add my congratulations to the appointment of John Banks. Mr. Banks is someone that I've come to know in the last four years who has provided tremendous leadership.

And as someone who's on the Transportation Committee and who has lots of concerns about what is going to be what happening with the Metropolitan Transportation Authority, it gives me great pleasure to know

someone with Mr. Banks' talent and skill will be there to help us to resolve some of those issues.

So I want to congratulate the Mayor and of course our Governor for this particular appointment.

Congratulations to you, John Banks.

ACTING PRESIDENT MEIER: Senator Montgomery.

SENATOR MONTGOMERY: Yes, thank you, Mr. President.

It is a pleasure to be able to rise and second the nomination of a person who not only has an excellent resume and history and whom I look forward to working with, but he is also a constituent and therefore a particularly important person. In that it is in my district, he probably doesn't vote for me, but that's neither here nor there. I certainly understand that.

But I think the Governor has really chosen an excellent nominee for the MTA. And since my district is heavily impacted by MTA business and operations, I really look forward to having someone that I can reach out to, not

only as an official representing the MTA, but also as a constituent who probably has some of the same concerns that I do and that residents in my district have.

So congratulations, Mr. Banks. I certainly look forward to working with you.

Thank you, Mr. President.

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

Senator Diaz.

SENATOR DIAZ: Thank you, Mr. Chairman. This Puerto Rican Senator takes the position to praise the Mayor and the Governor for appointing John Banks to the position.

I met Mr. Banks when I became a City Council member. He used to be the chief of staff. And that time was a critical time for the City of New York due to the new term limits. And the new speaker, with few experience, and the new council members that got on board at that time, that was kind of chaos.

And, ladies and gentlemen, the

knowledge, the leadership, the dedication of Mr. Banks to the city of New York and to the City Council was so great and so magnificent that he made an impact in my life. He also was instrumental in appointing me as the chairman of the Aging Committee on the City Council.

And this man is one of the brightest persons that I ever met. This man is one of those leaders that even though they hold no elected offices, he is one that's shown to be concerned, to be dedicated, and to care for the community.

I'm so proud -- I'm so proud that I could hold this position and that I could give my vote in the approval of this, of Mr. Banks' nomination.

Mr. Banks, you deserve this and more.

Thank you, ladies and gentlemen.

ACTING PRESIDENT MEIER: Senator Liz Krueger.

SENATOR LIZ KRUEGER: Thank you.

Everyone has said so many things about John Banks that I also just wanted to

rise to say that he's been playing an important role in New York City with so many issues. And I look forward to his participation on the MTA because, as we know, we have many issues facing us in the future with the MTA and we need the new energy and the blood.

So congratulations, John. Thank you.

ACTING PRESIDENT MEIER: Senator Andrews.

SENATOR ANDREWS: Yes, Mr. Chairman. I'd like just to ditto all the kind remarks said about the nominee, Mr. Banks.

And for the record, even though he's in Senator Montgomery's district, he's right next door to my district, and I claim him as a constituent too.

Thank you.

ACTING PRESIDENT MEIER: Senator Wright. I didn't know that you had trains in your district.

SENATOR WRIGHT: Thank you, Mr. Chairman.

It's only appropriate that I join my colleagues from the city. While the MTA has yet to find its way to Watertown, John Banks has proven to be a good friend the last several years. We've worked together on the energy issues. And I want to join my colleagues commending John and congratulating him on the nomination.

I move the confirmation, Mr. Chairman.

ACTING PRESIDENT MEIER: The question is on the confirmation of John Banks as a member of the Metropolitan Transportation Authority. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The nominee is confirmed. Mr. Banks has been patiently standing there in the gallery, and we congratulate you, sir.

(Applause.)

ACTING PRESIDENT MEIER: The

Secretary will continue to read.

THE SECRETARY: Senator Johnson, from the Committee on Finance, reports the following bills:

Senate Print 7225, by the Senate Committee on Rules, an act making appropriations for the support of government.

And Senate Print 7226, by the Senate Committee on Rules, an act to amend the Executive Law.

Both bills ordered direct that third reading.

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: Mr. President, would you please call up Calendar Number 928.

ACTING PRESIDENT MEIER: Without objection, directly to third reading.

The Secretary will read Calendar 928.

THE SECRETARY: In relation to Calendar Number 928, Senator Johnson moves to discharge, from the Committee on Finance, Assembly Bill Number 11066 and substitute it for the identical Senate Bill Number 7225,

Third Reading Calendar 928.

ACTING PRESIDENT MEIER: Senator Skelos.

SENATOR SKELOS: Mr. President, I believe there's a substitution to be made first.

ACTING PRESIDENT MEIER: Substitution ordered.

THE SECRETARY: Calendar Number 928, by the Assembly Committee on Rules, Assembly Print Number 11066, an act making appropriations for the support of government.

ACTING PRESIDENT MEIER: Senator Skelos.

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

ACTING PRESIDENT MEIER: There is.

SENATOR SKELOS: Move to accept.

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

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(Response of "Nay.")

ACTING PRESIDENT MEIER: The message is accepted.

Read the last section.

THE SECRETARY: Section 26. This act shall take effect immediately.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

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

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

I have voted no on extenders before. The two bills that we're doing today, in addition to the fact that they are providing cover for the ongoing dysfunctionality of our government, have a further flaw which compels me to rise and speak. And I will address the same issue -- I could address the same issue with regard to the second bill, which actually contains the language I'm talking about.

When we did the budget last year, we promised our constituents that the sales tax on clothing worth less than $110 would not last, that it would sunset, that this was a temporary emergency measure. And with this bill, slipped in among all the other provisions, and with the two bills we pass today, there's a 30-day extender on this extraordinarily regressive, counterproductive, antibusiness and anti-working family tax.

The poorest 20 percent of New Yorkers pay almost 10 percent of their income in sales taxes. This is something I hear about from merchants in my district. This is not the way we should be balancing the state's budget. And I strongly object to a 30-day extension of this regressive tax being slipped into a one-week extender bill so we can keep the state in operation.

I vote no. I urge everyone to vote no on both of these budget bills.

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

Senator Liz Krueger, to explain her vote.

SENATOR LIZ KRUEGER: Thank you, Mr. President.

I too have voted against the previous extenders and will vote against these extenders. But I want to highlight again, following up on what Senator Schneiderman says, it's not just that we are sliding in a continuation of the sales tax for low-income New Yorkers, a population who already pay nearly 10 percent of their income in sales tax in the state, compared to 1 percent to 1.2 percent of their income on sales tax for our wealthiest New Yorkers. It's not just that we still have not come to a budget agreement. It is not just that we have failed to address the adequate revenue streams for the State of New York and so instead we play these games with sales taxes.

It's the fact that we refuse to even evaluate the inordinately regressive tax structure that we've established in this state, continuing to put more and more of the burden of the costs of the State of New York on our lowest-income New Yorkers and our working New Yorkers, and we continue to fail

to make a fair budget that addresses the concept of progressivity in our tax structure and, rather, instead continue to have this kind of regressive taxation on our people.

We also fail yet again, as I raise every week now, that we did a handshake deal on reforming the budget process, which at least gave our constituents some hope that we would perhaps finally change our rules in such a way that we didn't revisit this exercise of late budgets without any discussion, without any transparency, without any open information made available to the public. At least with our reform package we would be able to say this was our last year to be embarrassed about this kind of process.

But we still have not seen any bills coming out to institutionalize and to establish that handshake deal into potential legislation that we could take back to our constituents and say we didn't do just a press conference, we made a commitment to change the rules of how we run the state and how we go forward with a budget process each year from 2005, hopefully, forward.

So again I stand up here and say shame on us, have we made any progress since last week or the week before or the week before that. Even if we don't have a budget, we should have --

ACTING PRESIDENT MEIER: Senator Krueger, the time in --

SENATOR LIZ KRUEGER: -- legislation on budget reform --

ACTING PRESIDENT MEIER: Senator Krueger, please don't interrupt me.

SENATOR LIZ KRUEGER: Excuse me.

ACTING PRESIDENT MEIER: The time in which to explain your vote has expired. How do you vote?

SENATOR LIZ KRUEGER: I will vote no.

Thank you, Mr. President.

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

Senator Sabini, to explain his vote.

SENATOR SABINI: Mr. President, I too rise out of concern that what we're doing here today, as I have said in the past when

I've voted against extenders, is that our inaction comes with a cost. There is a cost to this.

And today the cost is obvious. It's going to cost New Yorkers when they go to buy clothing, when they go to buy footwear. I'm wondering if there are going to be any major press events with chief executives of the state or the city going out to buy clothing in the next couple of weeks as the tax stays up instead of going down. I think not.

The sad truth of it is that with our budget deadline April 1st, we got to April 19th having had two session days. Two, out of those 19 days. We're now over a month late, and we've been in session eight days in over a month.

Senator Krueger has a reform bill in that would require us to stay here until a budget is done when the deadline comes. That's the way it's done in other places; that's the way it's done in labor negotiations; that's the way it's done in New York City and in other states. We should

do that.

So I will continue to vote no on these extenders until I see a desire on the part of both houses to show some real concern for a deadline and to admit that there's a cost. There's also a cost to our school districts, who will now start to budget their year and they don't know what lines to fill in from state aid.

So the system does not work, it continues not to work. We had a nice show of a conference committee report that has resulted in no legislation, but we had an April 1st press conference. I see no difference now than I saw before April 1st. And I will be voting no on this and hopefully won't have to do this again.

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

Senator Parker.

SENATOR PARKER: Mr. President, I rise to vote no on this bill but to support the people in my community who sent not only me here but the folks all over the state who sent all 62 of us here to the State

Legislature to do one thing, which is to pass the budget. And we have woefully not only missed our deadline but obfuscated our responsibility.

We need to have a budget now. Some of you who -- I don't have children. Some of you who have children, if you have a child who is a sophomore in college, somebody who interns as a junior or a sophomore, some of them in their lifetime haven't seen an on-time budget in the State of New York. In their lifetime. And that really is shameful.

And although we've had talks about, you know, reforming the system and we've put up bills and have nice press conferences, we haven't done a good job at that.

I'm voting no on this bill in part because not only are we extending the extender budgets without passing a real budget, but we're spending our time now also continuing to hurt the people of the State of New York, and particularly the folks in my district who are going to get hurt severely by this regressive tax structure.

We are acting in bad faith here,

slipping this into the middle of an extender budget. You know, if people are serious about doing it, let's have a real debate about this in a full session and a real bill. But this is -- this is horrible. I ask my colleagues to change their votes to no and don't go on with this sham and let's continue to try to not only pass a budget om time but make sure that we have a tax structure that's progressive and not only does not hurt people but also doesn't hurt our businesses as they go into the busy summer season and try to make a profit.

ACTING PRESIDENT MORAHAN: Senator Ada Smith, to explain her vote.

SENATOR ADA SMITH: Thank you, Mr. President.

I readily admit that there is not much that I can do as a Minority State Senator to move the budget process. That is totally controlled by those three men in a room. But we made a promise and a commitment to the people of the State of New York that we would eliminate the regressive tax and there would be a deadline.

And if I can do nothing else, I will keep my promise to the people of the State of New York and vote no.

Thank you.

ACTING PRESIDENT MORAHAN: Senator Smith will be recorded in the negative.

Senator Stavisky, to explain her vote?

SENATOR STAVISKY: No, I'm voting no.

ACTING PRESIDENT MORAHAN: The Secretary will announce the results.

Senator Onorato, you wish to explain your vote?

SENATOR ONORATO: I wish to vote in the negative.

THE SECRETARY: Those recorded in the negative on Calendar Number 928 are Senators Andrews, Diaz, Duane, L. Krueger, Onorato, Parker, Sabini, Schneiderman, A. Smith, Stavisky, and Dilán. Also Senator Hassell-Thompson. Ayes, 47. Nays, 12.

ACTING PRESIDENT MORAHAN: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Please call up Calendar Number 929.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: In relation to Calendar Number 929, Senator Johnson moves to discharge, from the Committee on Finance, Assembly Bill Number 11067 and substitute it for the identical Senate Bill Number 7226, Third Reading Calendar 929.

ACTING PRESIDENT MORAHAN: The substitution is ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 929, by the Assembly Committee on Rules, Assembly Print Number 11067, an act to amend the Executive Law, in relation to Medicare drug discount card agreements.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT MORAHAN: Senator Skelos.

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

ACTING PRESIDENT MORAHAN: Yes,

there is.

SENATOR SKELOS: Move to accept.

ACTING PRESIDENT MORAHAN: All in favor of accepting the message.

(Response of "Aye.")

ACTING PRESIDENT MORAHAN: Opposed, nay.

(No response.)

ACTING PRESIDENT MORAHAN: The message is accepted.

Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

SENATOR SCHNEIDERMAN: Mr. President, I'm seeking to be heard on the bill.

ACTING PRESIDENT MORAHAN: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: Thank you.

This is the language provision implementing the tax change that we spoke about earlier. And to the extent that there

is anyone in doubt about the merits of the last bill, which admittedly at least was necessary for keeping the operations of state government going, there is no excuse for a yes vote on this bill. This is something that is economically regressive, politically irresponsible, and, in terms of the commitment that we made to our constituents when we did the budget last year, absolutely dishonest.

I think that there is no -- if there's any tax we should not be extending, it is the sales tax on clothing under $110. Once again, I urge everyone to vote no.

ACTING PRESIDENT MORAHAN: Any other Senator wishing to be heard?

Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 929 are Senators Andrews, Diaz, Dilán, Duane, Hassell-Thompson, L. Krueger, Montgomery,

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

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 44. Nays, 15.

ACTING PRESIDENT MORAHAN: The bill is passed.

Senator Skelos.

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

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: Calendar Number 490, by Senator Volker, Senate Print 1441, an act to amend the Penal Law, in relation to sentences.

SENATOR SKELOS: Mr. President, could we have the last section read for the purposes of Senator Wright voting.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 18. This act shall take effect immediately.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

SENATOR WRIGHT: Aye.

ACTING PRESIDENT MORAHAN: Senator Oppenheimer.

SENATOR OPPENHEIMER: No.

ACTING PRESIDENT MORAHAN: Senator Oppenheimer, in the negative.

Senator Wright, in the affirmative.

Senator Bonacic.

SENATOR BONACIC: Affirmative.

ACTING PRESIDENT MORAHAN: Senator Bonacic, in the affirmative.

Senator Hoffmann.

SENATOR HOFFMANN: Affirmative.

ACTING PRESIDENT MORAHAN: Senator Hoffmann, in the affirmative.

Senator Farley, in the affirmative?

SENATOR FARLEY: Senator Farley, in the affirmative.

SENATOR FUSCHILLO: Affirmative.

ACTING PRESIDENT MORAHAN: Senator Fuschillo, in the affirmative.

SENATOR SKELOS: Please withdraw

the roll call.

ACTING PRESIDENT MORAHAN: Could the Senators announce their votes again, please. Senator Wright is in the affirmative, Senator Fuschillo in the affirmative, Senator Hoffmann in the affirmative, Senator Bonacic in the affirmative, Senator Oppenheimer in the negative.

SENATOR FARLEY: Senator Farley, affirmative.

ACTING PRESIDENT MORAHAN: Senator Farley, in the affirmative.

SENATOR BALBONI: I vote yes.

ACTING PRESIDENT MORAHAN: Senator Balboni, in the affirmative.

SENATOR PATERSON: Mr. President.

ACTING PRESIDENT MORAHAN: Senator Paterson, we're still on the roll call.

SENATOR PATERSON: We're on the roll call?

ACTING PRESIDENT MORAHAN: We're going to withdraw it in a moment.

SENATOR PATERSON: On the bill. See, Mr. President, I wanted to stay here with

you.

ACTING PRESIDENT MORAHAN: Yes.

(Laughter.)

ACTING PRESIDENT MORAHAN: The roll call is withdrawn. The bill is before the house.

Senator Paterson.

SENATOR PATERSON: Thank you.

Mr. President, I would like very much to extend to Majority Leader Senator Bruno and to the members of the Majority our appreciation that Senator Bruno took the lead last week and asked for a conference committee on this legislation.

There has been a concerted effort and a bipartisan effort over the last few years to create some reforms to the legislation passed nearly 30 years ago, commonly and heretofore regarded as the Rockefeller Drug Laws. This was a great step in helping negotiation, in helping people to get back to the table, and we deeply appreciate that Senator Bruno will do that.

It is such an important issue, in my opinion, that for the Minority I've

appointed myself to the position on the conference committee. And I've also accepted the appointment.

(Laughter.)

SENATOR PATERSON: Mr. President, these laws have been in effect for over thirty years. Shortly before their passage in 1972, our population in our state penitentiaries in this state was about 12,385. In 1998, that number sextupled. "Sextupled" is not a prurient reference to the impeachment hearings; it means six times. We had nearly 80,000 prisoners in this state.

Many of them are for offenses that involve drug possession; many of them were nonviolent drug possessions. Some of them were, and are probably addressed in the bill that Senator Volker brings before us today. It will affect hundreds if not a few thousand people, but they relate to the most severe penalties, the As and the A-IIs.

And, most respectfully, I don't think that's what the Rockefeller drug reform message was all about. We think it related more to the lower-level crimes, the ones that

we are compelled to address. And it is very disturbing that when all surveys show that there really is not based on ethnicity any greater or lesser use of illegal substances, the fact is that 92 percent of those individuals incarcerated on these drug violations are minorities, African-Americans and Hispanics, for the most part.

And it is our strong desire to make sure that we are not impeding the progress of another generation. People who are for the most part -- not all of them, but many of them -- nonviolent offenders, there is a belief that most of these individuals, if you go through their past arrest records, were arrested for violent charges. I'm afraid that I remember people I knew, people who wound up incarcerated who were not violent offenders.

This is an issue that is obviously very personal to me as the Senate Minority Leader and very personal to me as a leader in the communities of color greatly affected by this legislation.

I certainly commend Senator Volker for his work. Senator Volker is one of the

most reasonable people I've ever talked to. This is one area that even when we differed over the issue of the death penalty, I found his position to be very reasonable. And particularly after September 11th, I find his position to be more reasonable.

The fact is that when it comes to the incarceration of people over the types of statutes that we have, our drug laws, I couldn't disagree more. This is an issue in which the actual original incarceration creates a culture of criminality in communities where I don't think the people really who live there were originally guilty of anything more than perhaps some poor judgment, for which all of us in our younger years -- and even in some of our older years -- are guilty.

It is alarming and in many respects disturbing that so many people have seen their lives frittered away out of one reckless act and spent years of incarceration for it.

We did a study here in the Senate Minority, and we found that in 32 states of this country, there is probation for first

offenses. There are 12 other states where there's probation with conditions after the first offense.

Of the six states that have mandatory minimums, only Ohio comes close to New York and their original penalties are 70 percent of what we have, 4½-year minimums at least for any type of drug offense.

There's an argument that prosecutors around this state have started to address this issue. In some places, they have. But we want a uniform law. If prosecutors have started to address it, it's because they understand the severity of the previous legislation.

I'd like to add that Governor Rockefeller really thought, when he introduced the legislation -- and he introduced the concept in the 1970 election -- that it would be a deterrent. It wasn't.

And if it wasn't a deterrent, at least now we can create some ideas that would even perhaps touch the issues of mandatory sentencing in these areas, but with an eye toward reentry for those and getting the judge

to be a player in the entire script, where we try to get people who need help the help that they actually deserve.

And a Supreme Court case in the state, the State versus Sirro, showed that we don't really rehabilitate people in prison, we only incarcerate them. And this is probably the worst example of it.

And so what I'm advocating for, what members of the Minority conference are advocating is that we go back and take a look, as many who were part of the original legislation have, and recognize that whether we're Republicans or Democrats or whatever part of the state in which we live, that we owe particularly our younger generation I think a greater opportunity than what they have had to realize through the existing legislation.

And so, Mr. President, that is what we're going to be advocating for in the conference committee, that's what we're going to be advocating for in the rest of this session. And hopefully we'll be able to screen our differences to a degree that we can

find something that will be recognizable as reform but at the same time be understandable to all parties here in Albany.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Duane.

SENATOR DUANE: Thank you, Mr. President.

The problem with Senate Bill 1441 is that it doesn't really make for real drug reform. Unfortunately, it will only affect those individuals who have been convicted of Class A-I or Class A-II felonies, and that's a very, very small percentage of the current prison population.

In fact, if you look at the more than 17,000 court-ordered incarcerations to Department of Correction facilities in 2002, which is the last year that I have the numbers for, only 608 of them, only 608 out of more than 17,000 cases, were for Class A drug felonies. That's, I don't know, maybe -- it's certainly less than 10 percent; it may be as low as 8 percent. That's not real reform. There's no way you could consider that to be

real reform.

If we are really concerned about drug reform here in New York State, then we have to deal with the Class B drug felony arrests. Just, you know, a figure on that, there were 6,644 drug offenders sentenced to Department of Correctional facilities in the state in 2002, and 30 percent of them were Class B felony drug offenses.

These are nonviolent offenders. They were either selling or in many cases they just possessed any amount, any amount, any amount -- tiny amounts -- of any kind of illegal narcotic substance.

So that means that a 19-year-old who was caught selling a rock of crack could be faced with a 4½-year mandatory sentence, 4½ years for a 19-year-old who bought a vial of crack. Completely and totally out of what normal criminal justice laws across the nation would call for, but that's what that drug offender would get in New York State. It's completely and totally, utterly out of the mainstream.

And well-intentioned though Senator

Volker's bill may be, it doesn't address that problem of sentencing a young person to a minimum 4½ years in prison. I mean, wouldn't it be cheaper to allow for that person to get treatment on the outside? Wouldn't that be more helpful than incarcerating them? Wouldn't it be more reasonably priced? I think so. And that's what we're doing across the nation. What we're doing here is just out of the mainstream of what happens across the nation.

You know, district attorneys will say: Oh, you know, we're putting people into programs like the DTAP program -- which is a good program, and we support that program. But the truth is that district attorneys are not putting people into the DTAP program or similar programs in the state. I mean, if you look at what happens across the state -- and I'll do a sort of decreasing to increasing percentage of what happens -- Erie County sends 30 percent of the offenders that I just talked about to prison; Monroe, 32 percent; Broome, 45 percent; Saratoga, 45 percent; Rensselaer, 69 percent to prison; Albany

County, 73 percent to prison; and Schenectady sends 96 percent of these low-level drug offenders to prison. That's unbelievable -- 96 percent of low-level drug offenders are sent to State Department of Correction facilities.

What a waste of life. What a waste of money. It's absolutely unacceptable. And again, well-intentioned though Senator Volker's bill is, it would not address this really terrible problem in New York State.

You know, we have to -- and this is one of the things that we in the Senate Minority have been talking about -- we have to address the issue of the B felonies. We've had hearings on it, we're going to continue to have hearings on it. But that has to be on the agenda for real, meaningful drug law reform in our state.

And just, finally, you know -- and I've visited many of our correctional facilities, and I know many of our colleagues have. But, you know, 80 percent of those who are incarcerated in our state facilities are black and Hispanic. So what does that mean?

That 80 percent of the bad people or the drug-addicted people are black and Hispanic? I don't think that's true. I don't think that's true. I think that is absurd. And yet that's what our state prison facilities reflect.

So let's, you know, stop letting low-level drug offenders, nonviolent drug offenders -- let's stop them, you know, from rotting in prison. Let's, you know, really do a drug policy in this state that's in the mainstream of what happens in our nation. Not doing it is really the shame of New York, and really it's -- it's our shame.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Diaz.

SENATOR DIAZ: I just want to vote in the negative, please. Can I?

ACTING PRESIDENT MORAHAN: We're not on a roll call.

SENATOR DIAZ: Ah, come on.

(Laughter.)

ACTING PRESIDENT MORAHAN: Does

any other member wish to be heard on this bill?

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Just to follow up, I appreciate Senator Volker's forbearance. I know this is an issue he's work on for a very long time.

I think that -- and I hope everyone here understands that Senator Paterson's objection to this bill is that we really want real reform this year. We're joined by Assemblyman Aubry and by Dick McDonald, who does good work in the Assembly on this issue. They've been working for many years to see real reform.

It has to go beyond the As. It has to include a broader range of prisoners. And it has to be free of the sorts of poison pills that have killed these efforts in the past. This conference committee should be about reducing disproportionate sentences for nonviolent offenders. That's what we're here to talk about.

And I hope, as we go forward, Senator Volker and Senator Paterson and the

others on the committee in this house, Assemblyman Aubry and the others from the Assembly, will bear that in mind. We're here to reform the drug laws, not for a few people, but for thousands and thousands of people. Let's get that job done this year.

I will be voting no on this bill because it does not go far enough. But all of us in our conference are proud of the work that Senator Paterson and his staff did to revive this issue, and we're very hopeful that this year we will finally see some results.

Thank you.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Mr. President.

Just a couple of points that I would like to add to the discussion. As we look at the public safety issue, I'd like to hope that in our deliberations that we will be expanding the use of drug courts in New York State to divert the nonviolent drug offenders.

Currently, these courts can be used

to adjudicate offenders who have no prior felony convictions. And rather than read all this, I can just tell you one of the things I think I'm most proud of is in the City of Mt. Vernon, as part of my participation with our city government, we created one of the first and best drug courts, and it is a model for many of the drug courts in the state.

And as I have attended the graduations of each of these drug courts, there have been, out of 60 graduates, one offender who refused to go through the program and was not successful.

And as we look at these graduations, as we look at what is happening, it becomes incumbent upon us to understand that this is a way to deal with our nonviolent felony convictions.

And additionally, the question needs to be asked as to why the nonviolent felony offense of drug possession carries an average of 34 months when the average minimum sentence for certain violent felonies is much lower. Shouldn't we as a public safety measure be more concerned about locking up the

people we're afraid of rather than those individuals who are suffering from a drug addiction?

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Lachman.

SENATOR LACHMAN: This is probably the first time that I've risen in the Senate and say that I look upon this as a ethical and moral issue.

We are basically permitting murderers to go on parole in order to open up our prisons to minor drug offenders. I think this is unethical, and I think it's immoral.

When you know that a man such as Chambers, the preppy murderer, went on parole after 10 years when he killed a young lady in Central Park, and when you realize that a man called Steinberg beat his girlfriend to a pulp and killed his child and will shortly be on parole, then you know something is wrong.

We should admit that this is a law that failed. Whatever the Rockefeller laws were supposed to do, it has failed. And this

bill does not address that failure.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Ada Smith.

SENATOR ADA SMITH: Slow roll call.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 18. This act shall take effect immediately.

ACTING PRESIDENT MORAHAN: Five members are standing for a slow roll call.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT MORAHAN: Senator Skelos.

SENATOR SKELOS: If we could have the bells rung at this time. And I would ask all the members who are within listening distance to come over to the chamber so they can vote on the slow roll call.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Ring the bells.

THE SECRETARY: Senator Alesi.

SENATOR ALESI: Yes.

THE SECRETARY: Senator Andrews.

SENATOR ANDREWS: No.

THE SECRETARY: Senator Balboni voting in the affirmative earlier today.

Senator Bonacic voting in the affirmative earlier today.

Senator Breslin.

SENATOR BRESLIN: No.

THE SECRETARY: Senator Brown.

SENATOR BROWN: No.

THE SECRETARY: Senator Bruno.

(Senator Bruno was indicated as voting in the affirmative.)

THE SECRETARY: Senator Connor, excused.

Senator DeFrancisco.

(No response.)

THE SECRETARY: Senator Diaz.

SENATOR DIAZ: No.

THE SECRETARY: Senator Dilán.

SENATOR DILAN: No.

THE SECRETARY: Senator Duane.

SENATOR DUANE: No.

THE SECRETARY: Senator Farley voting in the affirmative earlier today.

Senator Flanagan.

(No response.)

THE SECRETARY: Senator Fuschillo voting in the affirmative earlier today.

Senator Golden voting in the affirmative earlier today.

Senator Gonzalez.

SENATOR GONZALEZ: No.

THE SECRETARY: Senator Hannon.

SENATOR HANNON: Aye.

THE SECRETARY: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: No.

THE SECRETARY: Senator Hoffmann voting in the affirmative earlier today.

Senator Johnson.

SENATOR JOHNSON: Aye.

THE SECRETARY: Senator L. Krueger.

SENATOR LIZ KRUEGER: No.

THE SECRETARY: Senator C. Kruger.

SENATOR KRUGER: No.

THE SECRETARY: Senator Kuhl.

SENATOR KUHL: Aye.

THE SECRETARY: Senator Lachman.

SENATOR LACHMAN: No.

THE SECRETARY: Senator Larkin.

SENATOR LARKIN: Aye.

THE SECRETARY: Senator LaValle.

SENATOR LAVALLE: Aye.

THE SECRETARY: Senator Leibell.

SENATOR LEIBELL: Aye.

THE SECRETARY: Senator Libous.

SENATOR LIBOUS: Aye.

THE SECRETARY: Senator Little.

SENATOR LITTLE: Aye.

THE SECRETARY: Senator Maltese.

SENATOR MALTESE: Aye.

THE SECRETARY: Senator Marcellino.

SENATOR MARCELLINO: Yes.

THE SECRETARY: Senator Marchi.

SENATOR MARCHI: Aye.

THE SECRETARY: Senator Maziarz.

SENATOR MAZIARZ: Aye.

THE SECRETARY: Senator McGee.

SENATOR McGEE: Yes.

THE SECRETARY: Senator Meier.

SENATOR MEIER: Yes.

THE SECRETARY: Senator Mendez, excused.

Senator Montgomery.

SENATOR MONTGOMERY: No.

THE SECRETARY: Senator Morahan.

SENATOR MORAHAN: Yes.

THE SECRETARY: Senator Nozzolio.

SENATOR NOZZOLIO: Aye.

THE SECRETARY: Senator Onorato.

SENATOR ONORATO: To explain my vote, Mr. Chairman.

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

SENATOR ONORATO: I want to commend Senator Volker for taking the first step. But in all fair conscience, I think he didn't take the step far enough.

While he's making recommendations here to reduce the sentences of the most serious of all the drug felons that are in prison, those that are of a lesser caliber should also be getting the same equal break as the worst offenders should.

So when you expand this bill to include all of them -- you know, we're still

all part of the same country and the same state. And we should treat all of our citizens, whether they're in prison or out of prison, equally. So until we treat them equally, I am going to vote no.

ACTING PRESIDENT MORAHAN: Senator Onorato will be recorded in the negative.

THE SECRETARY: Senator Oppenheimer voting in the negative earlier today.

Senator Padavan.

SENATOR PADAVAN: Yes.

THE SECRETARY: Senator Parker.

SENATOR PARKER: Nay.

THE SECRETARY: Senator Paterson.

(Senator Paterson was indicated as voting in the negative.)

THE SECRETARY: Senator Rath.

SENATOR RATH: Aye.

THE SECRETARY: Senator Robach.

SENATOR ROBACH: Yes.

THE SECRETARY: Senator Sabini.

SENATOR SABINI: Nay.

THE SECRETARY: Senator Saland.

SENATOR SALAND: Aye.

THE SECRETARY: Senator Sampson.

SENATOR SAMPSON: No.

THE SECRETARY: Senator Schneiderman.

SENATOR SCHNEIDERMAN: No.

THE SECRETARY: Senator Seward.

SENATOR SEWARD: Aye.

THE SECRETARY: Senator Skelos.

SENATOR SKELOS: Yes.

THE SECRETARY: Senator A. Smith.

SENATOR ADA SMITH: No.

THE SECRETARY: Senator M. Smith, excused.

Senator Spano.

SENATOR SPANO: Aye.

THE SECRETARY: Senator Stachowski.

SENATOR STACHOWSKI: No.

THE SECRETARY: Senator Stavisky.

SENATOR STAVISKY: No.

THE SECRETARY: Senator Trunzo.

SENATOR TRUNZO: Yes.

THE SECRETARY: Senator Velella.

SENATOR VELELLA: Aye.

THE SECRETARY: Senator Volker.

SENATOR VOLKER: Mr. President, may I explain my vote.

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

SENATOR VOLKER: Well, I vowed to be a good boy today, as I said. And to try to be brief, I don't agree with a lot of what has been said here today, only from the standpoint -- and I'll say it again, I was there for the Rockefeller Drug Laws. I opposed them initially. We made the Governor change his drug laws. They've been changed time after time after time.

What we have in this bill really is the last of the Rockefeller Drug Laws to be amended. However -- and Eric Senator Schneiderman and I talked about this last year -- you're still arguing about changes that were changed many years ago in B felonies.

I guess part of my problem is that we have already made enormous changes, and people -- probably more people per capita are getting treatment in this state than virtually

any other state in the union. You know, the shock incarceration program is down so much because we can't find enough nonviolent drug people to get into the program.

What this bill basically does is say that we change indeterminate sentences to determinate sentences. We change the 15 minimum to 25 to life to 10 minimum to 20 -- in effect, eliminate the life term -- and give an option to do something which is really already being done, but on a more broad basis, to have people looked at, have their sentences looked at who are A-I and in certain cases A-II felons.

By the way, I think a hundred and some people have been let out because of the law we passed last year as part of the budget. It got almost no press because everybody was zeroing in on the lesser number people.

Let me remind you of something. No one goes to jail as a first-time felony offender, because usually they've been arrested about 10 or 15 times before they ever go to jail, even in New York City or upstate. I mean, it's a little bit disingenuous to

think that DAs are going to prosecute people and send them to long sentences away.

Now, that doesn't mean, by the way, that we shouldn't look at the laws. And I've said that all the way along. I think we should take a look at it. But let's not say that this state hasn't done anything. We're the only state in the union with a declining inmate population, rather decided declining. And everyone knows that our level of violence in our prisons may be the highest in the nation. It's close to 75 percent.

California -- this chamber is talking about California. No question, california has a heck of a problem of warehousing, 170,000 people. They're letting people out. We're down to about 63,000. Just a few years ago, we were even with California.

So anyways, I understand the nature of this issue. And I appreciate, by the way, that we can deal with -- the reason we're dealing with this, by the way, right now is because this is the basis of the conference committee for this house. And I'm not saying this -- I've never said this is all we're

going to do.

I did feel, however, last year that this was the way to deal with the last of the major Rockefeller Drug Law issues. I never said that we weren't going to deal with drug law potential reform. But I would like to point that out. It's a little bit of a something for me, because of the Rockefeller Drug Laws and because of my involvement in it, I ended up here in the Senate. Because Nelson Rockefeller came after me, and several people got indicted and all sorts of stuff. He was one tough dude, that's all I can say to you.

But it's a fact -- and therefore, this is a personal issue for me. Not to defend the Rockefeller Drug Laws, but the issue of how this occurred and what's left and so forth.

So we are going to have a conference committee. And I can assure everybody here, I'm going to do what I can to try to come to a reasonable compromise with the Assembly, avoiding a jail break, but to attempt to find a better way to deal with drug arrests.

So having said that, I vote yes.

ACTING PRESIDENT MORAHAN: Thank you.

Senator Volker will be recorded in the affirmative.

THE SECRETARY: Senator Wright recorded in the affirmative earlier today.

ACTING PRESIDENT MORAHAN: The Secretary will call the absentees.

THE SECRETARY: Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes.

THE SECRETARY: Senator Flanagan.

SENATOR FLANAGAN: Yes.

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 37. Nays, 22.

ACTING PRESIDENT MORAHAN: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Is there any housekeeping at the desk?

ACTING PRESIDENT MORAHAN: There is no housekeeping at the desk, Senator.

SENATOR SKELOS: There being no further business to come before the Senate, I move we stand adjourned until Tuesday, May 4th, at 3:00 p.m.

ACTING PRESIDENT MORAHAN: On motion, the Senate stands adjourned until Tuesday, May 4th, at 3:00 p.m.

(Whereupon, at 6:00 p.m., the Senate adjourned.)