NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

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3:08 p.m.

REGULAR SESSION

SENATOR CHARLES J. FUSCHILLO, JR., Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT FUSCHILLO: 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.)

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

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

ACTING PRESIDENT FUSCHILLO: Reading of the Journal.

THE SECRETARY: In Senate, Saturday, May 8, the Senate met pursuant to adjournment. The Journal of Friday, May 7, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Farley.

SENATOR FARLEY: Thank you, Mr. President.

On behalf of Senator Johnson, Mr. President, I move that the following bill be discharged from its respective committee and be recommitted with instructions to strike the enacting clause: That's Senate Print 7177.

ACTING PRESIDENT FUSCHILLO: So ordered.

SENATOR FARLEY: Mr. President.

ACTING PRESIDENT FUSCHILLO: Senator Farley.

SENATOR FARLEY: I offer the following amendments to the following Third Reading Calendar bills:

By Senator Golden, on page 20, Calendar Number 207, Senate Print 3372;

By Senator Flanagan, on page 21,

Calendar 265, Senate Print 3581;

By Senator Robach, on page 30, Calendar 450, Senate Print 2764;

For Senator Saland, on page 33, Calendar 485, Senate Print 5940A;

And on behalf of Senator LaValle, on page 59, Calendar Number 927, Senate Print 6811A.

I move that these bills all shall retain their place on the Third Reading Calendar.

ACTING PRESIDENT FUSCHILLO: The amendments are received and adopted, and the bills will retain their place on the order of Third Reading Calendar.

Senator Skelos.

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

ACTING PRESIDENT FUSCHILLO: The Secretary will read.

THE SECRETARY: Calendar Number 157, by Senator Velella, Senate Print 5973B, an act to amend the Labor Law, in relation to the appointments to the Public Work Advisory

Board.

ACTING PRESIDENT FUSCHILLO: Read the last section.

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

ACTING PRESIDENT FUSCHILLO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT FUSCHILLO: The bill is passed.

THE SECRETARY: Calendar Number 501, by Senator Volker, Senate Print 2773A, an act --

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT FUSCHILLO: Lay it aside.

THE SECRETARY: Calendar Number 531, by Senator Maltese, Senate Print 6115 --

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT FUSCHILLO: The bill is laid aside.

THE SECRETARY: Calendar Number 581, by Senator Flanagan, Senate Print 6158B, an act to authorize the Congregation Lubavitch-Chabad House of the North Shore at Stony Brook, Inc.

ACTING PRESIDENT FUSCHILLO: Read the last section.

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

ACTING PRESIDENT FUSCHILLO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50. Nays, 1. Senator Bonacic recorded in the negative.

ACTING PRESIDENT FUSCHILLO: The bill is passed.

THE SECRETARY: Calendar Number 628, by Senator Volker, Senate Print 4814, an act to amend the Penal Law, in relation to causing the death of a peace officer.

ACTING PRESIDENT FUSCHILLO: Read the last section.

THE SECRETARY: Section 6. This act shall take effect on the 90th day.

ACTING PRESIDENT FUSCHILLO: Call

the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

ACTING PRESIDENT FUSCHILLO: The bill is passed.

THE SECRETARY: Calendar Number 645, by Senator Larkin, Senate --

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT FUSCHILLO: The bill is laid aside.

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

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

Read the last section.

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

ACTING PRESIDENT FUSCHILLO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

ACTING PRESIDENT FUSCHILLO: The

bill is passed.

THE SECRETARY: Calendar Number 689, by Senator Little, Senate Print 4333, an act to amend the Volunteer Firefighters Benefit Law and the Volunteer Ambulance Workers Benefit Law, in relation to waiver agreements.

ACTING PRESIDENT FUSCHILLO: Read the last section.

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

ACTING PRESIDENT FUSCHILLO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT FUSCHILLO: The bill is passed.

THE SECRETARY: Calendar Number 704, by the Assembly Committee on Rules, Assembly Print Number 8486, an act to amend the Labor Law and the Public Officers Law, in relation to public access.

ACTING PRESIDENT FUSCHILLO: Read the last section.

THE SECRETARY: Section 7. This

act shall take effect on the 60th day.

ACTING PRESIDENT FUSCHILLO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT FUSCHILLO: The bill is passed.

THE SECRETARY: Calendar Number 716, by Member of the Assembly Brodsky, Assembly Print Number 7401, an act to amend the Business Corporation Law, in relation to amendment of certificates.

ACTING PRESIDENT FUSCHILLO: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 180th day.

ACTING PRESIDENT FUSCHILLO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT FUSCHILLO: The bill is passed.

THE SECRETARY: Calendar Number 734, by Senator Saland, Senate Print 5389A, an act to amend the Penal Law, in relation to

obstructing telephonic or electronic communication for assistance.

ACTING PRESIDENT FUSCHILLO: Read the last section.

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

ACTING PRESIDENT FUSCHILLO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT FUSCHILLO: The bill is passed.

THE SECRETARY: Calendar Number 736, by the Assembly Committee on Rules, Assembly Print Number 8958A --

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT FUSCHILLO: The bill is laid aside.

THE SECRETARY: Calendar Number 748, by Senator Kuhl, Senate Print 4914, an act to amend the Highway Law, in relation to establishment of dedicated project accounts.

ACTING PRESIDENT FUSCHILLO: Read the last section.

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

ACTING PRESIDENT FUSCHILLO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT FUSCHILLO: The bill is passed.

THE SECRETARY: Calendar Number 785, by Senator Nozzolio, Senate Print 3216 --

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT FUSCHILLO: The bill is laid aside.

THE SECRETARY: Calendar Number 825, by Senator DeFrancisco, Senate Print 6988, an act to amend the Estates, Powers and Trusts Law, in relation to the disqualification of a parent.

ACTING PRESIDENT FUSCHILLO: Read the last section.

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

ACTING PRESIDENT FUSCHILLO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT FUSCHILLO: The bill is passed.

THE SECRETARY: Calendar Number 904, by Senator Rath, Senate Print 6632, an act to amend the Town Law, in relation to general powers of town boards.

ACTING PRESIDENT FUSCHILLO: Read the last section.

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

ACTING PRESIDENT FUSCHILLO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT FUSCHILLO: The bill is passed.

THE SECRETARY: Calendar Number 955, by Senator Seward, Senate Print 6314, an act to amend the State Finance Law, in relation to increasing the maximum amount of funds.

ACTING PRESIDENT FUSCHILLO: Read the last section.

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

ACTING PRESIDENT FUSCHILLO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT FUSCHILLO: The bill is passed.

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

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

ACTING PRESIDENT FUSCHILLO: The Secretary will read.

THE SECRETARY: Calendar Number 501, by Senator Volker, Senate Print 2773A, an act to amend the Criminal Procedure Law.

SENATOR SCHNEIDERMAN: Explanation.

SENATOR SKELOS: Lay it aside temporarily.

ACTING PRESIDENT FUSCHILLO: Lay it aside temporarily.

The Secretary will continue to

read.

THE SECRETARY: Calendar Number 531, by Senator Maltese, Senate Print 6115, an act to amend the Public Officers Law, in relation to the residence of fire alarm dispatchers employed.

SENATOR MONTGOMERY: Explanation.

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

SENATOR MALTESE: Mr. President, this is an act to amend the Public Officers Law in relation to the residence of fire alarm dispatchers employed in the paid fire department of the City of New York. It exempts fire department dispatchers in New York City from being a resident of the political subdivision in which they are employed.

The justification is that approximately a year ago, pursuant -- approximately two years ago now, pursuant to legislative enactment by the City Council, fire alarm dispatchers and their supervisors became members of the uniformed force of the

New York City Fire Department.

Currently, firefighters, fire officers, fire marshals, marine division personnel, and emergency medical service personnel are not required to live within the confines of the City of New York. These uniformed members of the department are permitted to reside in several counties, as spelled out in the Public Officers Law; basically, the contiguous suburban counties.

The current residency requirement is out of step with other parts of the uniformed force of the fire department and hampers the Bureau of Fire Communications in its recruitment and retention efforts.

Basically, the position requires, or would seem to have as an asset, prior experience in volunteer fire departments. There are very few, if any -- except one in my own district, the Hamilton Beach Fire Department, the City of New York has very few, if any other, working and active volunteer fire departments. Therefore, it would seem advantageous to go into the suburbs, where there are many volunteer fire departments.

The Fire Alarm Dispatchers Benevolent Association is not asking to be treated any differently than any other portion of the uniformed forces department. However, they currently are treated differently. They are the only uniformed fire department personnel, including sanitation and police personnel, that are required to reside within the City of New York.

Under ordinary circumstances, Mr. President, diversity is a laudable goal. In this particular case with fire alarm dispatchers, fully 50 percent are either minority or women and therefore would seem to come within the confines of achieving any diversity goal that would be assisted by requiring that they reside within the confines of the City of New York.

ACTING PRESIDENT FUSCHILLO: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President. I would just like to comment on the legislation.

ACTING PRESIDENT FUSCHILLO: On the bill.

SENATOR MONTGOMERY: Yes.

First of all, Mr. President, I just would like to point out to my colleagues that we do have a memo in opposition from the City of New York, so that obviously this legislation is not being requested by or endorsed by the mayor of the city.

Second of all, I note that in the memo of opposition from the city there is an indication that currently the fire department is fully staffed for the positions of FADs which this legislation addresses, as well as supervisors. So there is really not a compelling need, based on the inability of the city to recruit people for these positions. So the residency requirement is not a problem in that respect.

And the other issue that I would like to raise as it relates to the residency requirements, even though, as the memo states and Senator Maltese has indicated, that currently firefighters, fire officers, fire marshals, marine division personnel and emergency medical service personnel are not required to live within the confines of the

City of New York, that is one of the issues that a number of members of the Black, Puerto Rican and Hispanic Caucus in particular, as well as other members, take specific exception to.

We have a position, we're on record having a position that all uniformed personnel working for the City of New York should be required to reside in the city of New York.

And, Mr. President, since we have this, you know, this extremely difficult if not impossible situation in requiring people who live outside of the city to even pay a commuter tax, why would we, as city residents, be looking to exempt even more people from living in the city of New York so that they could go outside of the city and not have to pay a commuter tax to work in the city?

So I am opposed to this, and I would certainly think and hope that the members of this Legislature, especially those of us who represent the City of New York, should be voting against this bill.

Thank you, Mr. President.

ACTING PRESIDENT FUSCHILLO: Does

any other Senator wish to be heard on the bill?

Read the last section.

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

ACTING PRESIDENT FUSCHILLO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 531 are Senators Andrews, Dilán, Hassell-Thompson, Lachman, Montgomery, Onorato, Parker, Paterson, Schneiderman, and A. Smith. Ayes, 45. Nays, 10.

ACTING PRESIDENT FUSCHILLO: The bill is passed.

Senator Padavan.

SENATOR PADAVAN: Mr. President, may we return to Senator Volker's bill, Calendar 501.

ACTING PRESIDENT FUSCHILLO: The Secretary will read.

THE SECRETARY: Calendar Number 501, by Senator Volker, Senate Print 2773A, an act to amend the Criminal Procedure Law, in

relation to the authority of police officers.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT FUSCHILLO: An explanation has been requested, Senator Volker.

SENATOR VOLKER: Mr. President, this is a bill that has been around for a few years. It is called the Police and Public Protection Act.

It originally had some other provisions in it, I believe one of which became law, if I remember right, and another provision that we omitted. And I can't find my notes, but that's okay.

It basically has three provisions in it. The first provision is something that really relates to the issue of stopping a person. It has nothing to do, frankly, as I've pointed out before, with the ability of police officers really to stop somebody. There's always been the right to talk to somebody.

But what this has to do with is that our Court of Appeals probably is the most

restrictive Court of Appeals in the country as to what happens after a person is stopped and talked to. Because our Court of Appeals has seen fit to throw out all sorts of cases where in some cases, I think -- and if you read the cases, you'd realize they seem a little bit ridiculous. But of course in a court, where you're farther away from the street, it's easy to make decisions, legal decisions, based on what you consider to be something that maybe we in a courtroom think differently of.

Out on the street, having been a cop, I can tell you if I find a gun someplace, and I don't care how I find it, I'm going to grab it and I'm going to make sure that nobody gets ahold of it, whether it ends up as credible evidence or not. As somebody who had several incidents where, let's just say, I had to dive into cars to make sure that nobody was able to use anything, you begin to realize.

Now, what this bill basically says is -- it has three provisions. One provision says that a police officer has the right to question a person when he has an objective, credible reason not necessarily indicative of

criminality. And the reason is that the Court of Appeals has used a much more restrictive criteria relating to the potential commission of a crime. It really has no effect on the person you're talking to except if you should uncover or find evidence; then it could lead to a conviction.

This is, of course, a defense lawyer's great deal for the Court of Appeals. And our Court of Appeals has become notorious for being extremely conducive to people who are involved in criminal activity.

The second provision relates to the issue of abandonment of property. A criminal is running from the scene of possibly a crime -- it depends on your indication of what represents a crime -- throws a bag of drugs as he's running, you grab the bag of drugs.

The Court of Appeals has thrown out a number of those cases, saying that you cannot directly prove that that person didn't intend to abandon the property and therefore it wasn't in his possession, and you can't convict him of the crime. In one case it was something like six pounds of cocaine, if I'm

not mistaken.

And the final provision relates to an issue that has kind of reverberated around the country relating to the exclusionary rule and the issue of how the law relates to implements of crimes, evidence and so forth, that then has been taken by law enforcement people. And the question whether, if it was not taken entirely correctly, whether that evidence could be used in a trial.

It's called the exclusionary rule, and it relates to the issue of whether the law enforcement people were acting deliberately in an unjust or incorrect way or whether it was, in some cases, possibly an accidental mistake.

And if it did not get right to the heart of the crime, the Supreme Court of the United States has ruled that such evidence can be offered at a hearing or a trial, and the Court of Appeals of this state has taken a much more restrictive position -- interestingly enough, using the exact same language in the Constitution of the United States and the Constitution of New York.

And even though the Supreme Court

has said that the more liberal attitude can be taken, the Court of Appeals of this state has basically said that as long as -- has not taken the bad faith rule, but has said that the evidence can be excluded even if it complies with the Supreme Court's opinion of how this should be done, saying that New York's Constitution, with the exact same language, is more restrictive than the Constitution of the United States.

And that's basically the three provisions in here. And this has been debated on many occasions.

Senator?

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

SENATOR SAMPSON: Would the sponsor yield for a few questions?

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

SENATOR VOLKER: Certainly.

ACTING PRESIDENT FUSCHILLO: The sponsor yields.

SENATOR SAMPSON: Through you, Mr. President. Senator Volker, when you talk

about the objective reasons for a police officer to question or stop, what are these objective reasons based upon?

SENATOR VOLKER: Well, the reason we're using this language, as you know, John, very well, there's been a number of cases that have said that you don't have to question -- you are able to question somebody -- in fact, generally speaking, you're able to question somebody -- he doesn't have to answer, by the way, but you at least have the right to challenge someone or to talk to someone.

The great, you know, for instance, I guess, is somebody who's obviously drunk, somebody is in an area where he or she doesn't appear to be in a place where they should be. I mean, I've used the example before of you have a person wearing military clothes in a residential neighborhood. There's a whole series of ways in which it can be done. It doesn't mean they committed any crime, but it does mean it wouldn't be a bad idea to at least question them.

And what this would say is if nothing happens, then the guy of course

wouldn't be arrested and nothing would happen. The issue, though, is what happens after that. The guy, for instance, has a machete on him, as happened in one case, and you didn't see the machete until you walked right up to him, you're questioning him, and, you know, things of that nature. So obviously you're going to charge him with an illegal weapon.

And the courts in one case, I believe, threw that case out because they said there was no indication of a crime before they actually went to question him.

SENATOR SAMPSON: Through you, Mr. President, would the sponsor continue to yield?

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

SENATOR VOLKER: I certainly do.

ACTING PRESIDENT FUSCHILLO: The Senator yields.

SENATOR SAMPSON: So, Senator, basically what you're saying is based upon the discretion of the officer, that is the reason why he would stop these individuals and make these inquiries.

SENATOR VOLKER: Yeah. If there was, as it says here, an objective, credible reason not necessarily indicative of criminality. What that all means is that it doesn't necessarily mean that you have to have suspicion of a crime.

The truth is, in our law for years has been the right, if you want to say, of an individual not to answer questions, by the way, unless there's some crime involved. And we don't change that. This doesn't change at all.

The police officer in effect is given almost a duty, under certain circumstances, to find out what is going on.

And I've always pointed this out, that one of the issues, for instance, of racial profiling is if you see a white man in a black neighborhood driving a car that was suspected to be involved in a burglary, a car, you'd better stop that car.

The same thing is true in reverse. If you don't, you're probably violating the principles of good police work. A lot of people, I don't think, understand that.

I caught a number of burglars, and I really didn't -- all I knew was that there was a suspicion that this kind of vehicle was involved. And if you don't at least stop that vehicle to at least check it out, you're probably not being a good cop.

And, you know, sometimes it conflicts with people's ideas of how things work. And of course you always get a story that's different from what it was really -- what really happened.

So that's really, you know, the -- what I'm saying. And, by the way, this would indirectly involve police stops, could involve police stops. You still are under the same caveats, though, as -- if you don't have a crime, you don't have a crime, so there's nothing you can do.

SENATOR SAMPSON: So through you, Mr. President, if the sponsor could continue to yield.

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

SENATOR VOLKER: Sure.

ACTING PRESIDENT FUSCHILLO: The

Senator yields.

SENATOR SAMPSON: So, Senator, basically what you're saying is we're talking about the difference between what you're proposing and what presently is in existence is the issue of criminality.

SENATOR VOLKER: Well, I think what's happened is the courts have restricted not the issue of stopping somebody; the issue is what happens after that.

For instance, as I said -- I used the machete as an example. The machete was thrown out as evidence, if I remember right, because there was no evidence before that that this person had committed a crime. Now, the fact that -- however, that under this, an objective credible reason not necessarily indicative of criminality, the fellow was acting unusually. He was staggering and, you know, moving around and so forth, and that's why they went to get him. He was actually, I think, high on something.

But that's an example. It wouldn't matter, they would have done it anyways, except that they were not able to charge him

then or, well, convict him. This would give the police at least the chance in court to get a person convicted who obviously was up to no good, with a machete on him.

SENATOR SAMPSON: Through you, Mr. President, would the sponsor continue to yield?

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

SENATOR VOLKER: Certainly.

ACTING PRESIDENT FUSCHILLO: The sponsor yields.

SENATOR SAMPSON: Senator, you talked about the cases in which evidence has been suppressed. But what is the percentage of those cases where the evidence has not been suppressed with respect to the current existence of the procedures now?

SENATOR VOLKER: Very honestly, John, and I think you know why, I have no idea what the percentage is.

All I'm saying to you is, though, that in the society that we are in, most of these cases, you're right, never get to the Court of Appeals. And I'm well aware of that.

In our society, frankly, as time has gone on, fewer and fewer people are getting confronted by police officers anyways. And there's lots of reasons for it.

But what we're saying here is that there are some rules that have creeped in not from the streets, but have creeped in because of overtechnicality in some of our courts, that appear to have created a situation where some pretty bad actors are able to dodge the penalties of the criminal law.

You're probably going to say to me: Yeah, but some people may get unjustly charged. It's always possible. On the other hand, they can get unjustly charged now.

The question is, can you convict them? And the answer is if they're unjustly charged, they're not going to be convicted anyways. And -- so that's the argument that I make.

SENATOR SAMPSON: Thank you.

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

Read the last section.

Oh, Senator Schneiderman. Didn't

see you.

SENATOR SCHNEIDERMAN: Thank you. It's my camouflage gear.

On the bill.

ACTING PRESIDENT FUSCHILLO: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: I'm not going to belabor what has been said many times before. As Senator Volker indicated, this bill has been around for a while, or the various provisions that are before us today.

I think that what I find the most frustrating about this year's legislative session probably is the fact that we are essentially down to debating the same one-house bills over and over again, knowing they're not going anywhere in the other house. And it is always interesting to debate with my colleagues. Sometimes people change their minds about things.

But I don't think that this really represents a serious effort to deal with the complicated issues that have to do with relations between the police and people in communities. And I would urge the sponsor,

who is a student of this business, that there still are substantial problems about the way police in certain areas deal with people. I think there are problems related to race, there are problems related to -- certainly to ethnicity and people's status as immigrants.

And I would respectfully submit that we have a set of laws in New York that do not -- have not resulted in, as some would put it, a jailbreak. We have a system of laws that work pretty well. We have an exclusionary rule that, you know, has not resulted in an increase in crime which is referred to in the bill memo supporting this legislation. In fact, there's been a dramatic decrease in crime in recent years.

The laws protecting people from unreasonable actions by police officers, attempting to set some boundaries on the conduct of those in authority, have not resulted in an increase in crime. Crime has gone down anyway.

So there doesn't appear to be any justification for weakening the laws that protect people from abuses of authority. And

we both know there are abuses of authority. There are those in authority who abuse their power. And it really does send the wrong message, I believe, to tell law enforcement officers as long as you can meet this sort of very amorphous standard of good faith, or, worse yet, put the burden of proving bad faith on the other side, as long as you have -- and I still, to this day, do not have an explanation for exactly what this means -- as long as you have an objective, credible reason not necessarily indicative of criminality, you may take such other actions as the officer deems appropriate.

That takes away limitations that have not resulted in thousands of criminals running free. There's no study that says this is a huge problem. Crime has gone down. And I think that the issue of how the police deal with the public and the standards for stop and frisk, the standards for excluding evidence wrongfully obtained should be addressed in a more thoughtful way.

This legislation is not going anywhere. I'm sorry to see it back in its

present form again. I'm going to vote against it.

And I also would suggest that, you know, if we are going to try and do something that deals with some of these issues, the notion of the bad faith rule relating to warrants, as presented in this bill, really distorts the federal rule. The federal law says that if you have a warrant and there was a technical problem with it, then you have a -- then you can provide some sort of a good faith rule: Illinois v. Gates. This bill, as I read it, doesn't have a requirement for a warrant at all.

So maybe we could do something with a more narrowly drawn statute. This one is a an oldie but baddie, I'm afraid. And again, it purports to address a dramatic increase in violent crime that does not exist.

I think there are real issues in this area. I hope we'll have a chance to deal with them in a more serious way later in the session. Thank you.

ACTING PRESIDENT FUSCHILLO: Senator Volker.

SENATOR VOLKER: I'll just be a second. By the way, I just -- no, I'll be very brief.

I don't agree, obviously -- well, I agree to a certain extent. I would tell you, though, I don't think that the Supreme Court case is just on warrants. It's actually specifically on warrants, but it also applies to nonwarrant cases, the so-called bad faith rule.

Let me just say, though, that you're right about the memo. This memo is from 1999. And thankfully, because of this house and the Governor and so forth, and we've done a lot of things, the crime rate is falling. And we're not saying that this -- these bad faith -- and I call them bad faith. They have somewhat discouraged police officers.

If you're a police officer and you have a known drug addict who starts running away from you with a bag of drugs and throws it, and a Court of Appeals says: Well, we can't convict that person because he disposed of his drugs and therefore he really abandoned

them, and you can't charge him with possession because you can't say absolutely that the entire time he was in possession of those drugs -- that seems a bit severe, I would think.

And my point, I guess, is these are the kinds of things that discourage law enforcement from attacking people who prey on our neighborhoods. And I agree with you that this is probably not going to pass the Assembly this year. It's a defense attorney's nightmare to have this sort of stuff happen.

But maybe it would be good for us to realize that sometime in the future, things are going to change and it would be good for us to have, it seems to me, a more reasonable Court of Appeals when our Court of Appeals decides to be even more restrictive than the Supreme Court of the United States.

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

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

ACTING PRESIDENT FUSCHILLO:

Senator Volker, will you yield for a question?

SENATOR VOLKER: Sure. Sure.

ACTING PRESIDENT FUSCHILLO: The Senator yields.

SENATOR SCHNEIDERMAN: Have any of those Court of Appeals justices gotten on the bench without confirmation in this house?

SENATOR VOLKER: Those Court of Appeals justices, the new ones, have all got on the bench with my consent. I admit that.

And I am not necessarily calling these judges, by the way, incompetent or -- I'm just saying that these decisions, I think, are areas that we should reconsider, and that we should because the Court of Appeals made these decisions based on the fact of the law as it was. We can change that, and we have the right to do that.

And so I'm saying to you, just as I think that we are still here in May reaving [ph] on the budget because the Court of Appeals decided to do what I consider a ridiculous decision on CFE and tie us up in knots, it just seems to me that this is a time -- as I told my wife, Judith Kaye and her

people are responsible for my not getting paid -- it seems to me this is a good time for us to deal with the Court of Appeals.

SENATOR SCHNEIDERMAN: Thank you.

Mr. President, that comes in the category of getting more than what you asked for.

On the bill.

ACTING PRESIDENT FUSCHILLO: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: I look forward to seeing new judges appointed to the Court of Appeals. I look forward to new judges under a new Governor who will meet some of these requirements for standing up for things.

But I would urge that this is a Court of Appeals that is not dominated by appointees, at this point, of any sort of left-wing governors. And when this Court of Appeals -- which is a pretty balanced group, I would respectfully submit -- finds that certain types of police conduct are so egregious that it really is better to err on the side of excluding evidence in a very small

number of cases -- I mean, let's not misconstrue this -- that that probably represents a fairly balanced view. And there are dissents in all of these cases, and it's obviously argued.

And I would further suggest that when this Court of Appeals rules on an issue of tremendous importance to many of us who have children in public schools and who represent districts with severely delapidated and inadequate public schools, it probably reflects something dramatic in the record rather than any sort of out-of-control court.

I enjoy debating the sponsor on issues related to criminal justice. I think that he is -- I appreciate his candor in acknowledging that the increase in violent crime in fact is a decrease in violent crime. Maybe the balance that has been struck between this house and the other house hasn't been so awful. I certainly have not heard, in the years I've been here, a good justification for changing the existing law.

Once again, I urge everyone to vote no on this bill. And we will revisit the

issue of the Campaign for Fiscal Equity case, I hope, soon. Thank you.

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

SENATOR MONTGOMERY: Yes, Mr. President, I rise to speak to one specific aspect of the legislation. On the bill.

ACTING PRESIDENT FUSCHILLO: Senator Montgomery, on the bill.

SENATOR MONTGOMERY: Okay, thank you.

The current law, as I have here, indicates that in order to make an arrest, the police must have probable cause to believe that a crime has been committed. To briefly but forcibly stop and detain an individual, the police must have reasonable suspicion to believe a crime has been committed.

Now, this legislation, as I understand it, seeks to expand the authority of a police officer to stop, question, and take any action against a person in a public place that the police officer deems appropriate, without the officer having any reasonable suspicion that a crime has

occurred, is occurring, or is about to occur.

Now, one of the problems that I have with this proposal, Mr. President, is that, first of all, in my district and in districts across, certainly, the borough of Brooklyn and the city of New York, we have several different police operations.

We have Operation Impact going, we have Operation Atlas going, we have various other so-called special forces in our precincts, the purpose being to crack down on terrorism and to crack down on this crime and that crime and so forth and so on.

What happens is, Mr. President, that these operations require the police to take action; i.e., make a certain number of arrests. They carry with them a quota. They target districts like mine. The precincts that they target are in my district and Senator Smith's district and your district, Senator Sampson's district. So our districts are targeted for these operations.

In order for the police officers to meet their quota, they must do what? Go out and arrest people. And they end up doing it

whether or not there's any crime being committed. They stop and frisk people just on GP. It leads to profiling in my district.

And so there are huge numbers of complaints lodged against police officers and the police department because people have been unduly harassed by the police. And the reason that that happens is that these operations are put in place, and they target certain areas and they drive this behavior. How are we ever going to address the issue of police brutality and profiling if we don't stop proposing this kind of outrageous legislation?

So I'm absolutely opposed to it. I think that it is the wrong thing to do. It creates havoc in our districts. I don't know how many white people have been arrested because they were in the wrong neighborhood driving the wrong car, but I certainly can tell you that there's plenty of African-American and Latino young people who have been thrown up against the wall and frisked and even arrested, taken down to the precinct, held overnight because they were standing on the street corner waiting for

their friends or just standing out, just standing out on the street corner in a little group, just doing their little thing. So I -- and no crime being committed; I want to make that very clear.

This happens over and over. I get hundreds of complaints. So, Mr. President, this is absolutely a problem for people like me. And there are a number of us in this Legislature, both in the Assembly and the Senate, who experience this problem on a daily basis.

So I ask my constituents -- my colleagues; my constituents are asking us -- I ask my colleagues to join me in rejecting this idea, rejecting this kind of legislation that seeds these problems for us in our districts, because our young people in particular are being subjected to this aggressive policing at the street level because people like Senator Volker and others -- it's not only him -- continue to promote this kind of legislation.

Let's just reject this. And let's talk about resources that support the development of young people, so they have some

hope and they don't have to be subjected to this outrageous kind of legal process.

Thank you, Mr. President. I'm voting no.

ACTING PRESIDENT FUSCHILLO: Senator Padavan.

SENATOR PADAVAN: Read the last section.

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

Senator Krueger.

SENATOR LIZ KRUEGER: Thank you. Briefly on the bill, Mr. President.

So I listened to the debate, and one of Senator Volker's comments was that this would be a nightmare for a criminal defense attorney. And I would argue that this bill would be a nightmare for all of us.

And I was doing some homework earlier today -- and I'm not a criminal attorney, as I've mentioned before, but I decided to go and read some of the positions of conservative constitutional attorneys. And they're also opposed to this legislation, and

they highlight the understanding that an impatient public can sometimes encourage law enforcement officials to cut corners in their quest to apprehend the guilty.

But one of the greatest challenges for crime-fighting in a free society is to develop and maintain legal procedures that will make it possible to bring the guilty to justice without subjecting innocent citizens to unreasonable searches, unfounded accusations, or even death.

When agents of the executive branch of the government -- the police, in this situation -- disregard the terms of search warrants or attempt to bypass the warrant issuance process altogether, it is the role of the judicial branch to respond by checking that misbehavior when it is able to do so.

And as it happens, the most opportune time for the judicial branch to check such unconstitutional behavior is when executive branch lawyers -- prosecutors -- attempt to introduce illegally seized evidence in court.

Because of the existence of the

exclusionary rule, this is the only effective tool the judiciary has for preserving the integrity of its warrant-issuing process. And any legislative attempt to abrogate this rule should be declared null and void.

This is from the Cato Institute's legal experts on the Constitution, and their disapproval of this bill. And so I side with my conservative friends when I argue against this bill and hope my colleagues will vote against it.

Thank you, Mr. President.

ACTING PRESIDENT FUSCHILLO: Does 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 FUSCHILLO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT FUSCHILLO: Senator DeFrancisco, to explain his vote.

SENATOR DeFRANCISCO: Yes, I vote no on the bill. And it's not because I'm

coddling the criminals, or it's not because I in some way don't feel the police need all the tools that they get.

But I just can't understand, for the life of me, if the stop is due to some objective, credible reason not necessarily indicative of criminality, what is the standard? If there's no reasonable suspicion that a crime has been committed, what's the standard?

If there's no standard, that means it's an open-ended stop for any reason, good or bad. And you can always come up with some credible reason, depending upon who it's credible to.

And once again, the comment that it's a defense attorney's field day -- you know, we're all citizens in this community, the State of New York. And to suggest that this is -- the people that are against this bill somehow are in favor of defense attorneys finding so-called loopholes, I think is an irresponsible comment.

But I really think that this bill has many flaws, and I don't think any citizen

should be subjected to a stop for a reason that cannot be defined in a statute.

Thank you.

ACTING PRESIDENT FUSCHILLO: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 501 are Senators Andrews, Breslin, Brown, DeFrancisco, Dilán, Duane, Hassell-Thompson, L. Krueger, Montgomery, Onorato, Oppenheimer, Parker, Paterson, Sabini, Schneiderman, A. Smith, and Stavisky. Ayes, 43. Nays, 17.

ACTING PRESIDENT FUSCHILLO: The bill is passed.

The Secretary will continue to read.

Senator Skelos, why do you rise?

SENATOR SKELOS: Thank you for recognizing me, Mr. President.

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

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

Room.

Senator Brown.

SENATOR BROWN: Thank you, Mr. President. I'd like unanimous consent to be recorded in the negative on Calendar 531.

ACTING PRESIDENT FUSCHILLO: Without objection.

The Secretary will continue to read.

Senator Sampson.

SENATOR SAMPSON: (Indicating a no vote.)

ACTING PRESIDENT FUSCHILLO: Without objection.

THE SECRETARY: In relation to Calendar 501, Senator Sampson voting in the negative also.

Calendar Number 645, by Senator Larkin, Senate Print 5867A --

SENATOR LIZ KRUEGER: Explanation.

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

SENATOR LARKIN: Mr. President,

this is a bill that was generated as a result of the agricultural community and their deep concerns about the ability to obtain technical and financial assistance. And we put this together so that they can be a partner in the growth.

Agriculture is the largest industry in the state of New York. And all this bill does is allow the IDAs to provide technical and financial assistance or loans in order to help the farm community.

Major communities where we have the big agricultural processing houses and that are already covered. But the farm community itself, the ones that's doing all of the work, are not counted.

And in a farm community meeting that we've held with my colleague John Bonacic over here and others in the Hudson Valley, the number one issue was let the IDA be a partner.

ACTING PRESIDENT FUSCHILLO: Senator Krueger.

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

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

SENATOR LARKIN: Yes, Mr. President.

ACTING PRESIDENT FUSCHILLO: The Senator yields.

SENATOR LIZ KRUEGER: Thank you, Mr. President.

I certainly am empathetic to trying to help support small farms in the state of New York. But I'm concerned about are there any safeguards in your proposed law to ensure that family farms are protected from this bill potentially giving even greater power to large industrial producers with whom they already find themselves not competing.

SENATOR LARKIN: Just the opposite, Senator. This is to include those small family farms who right now, if they don't have the finances locally in their own family, they're out of luck. But a major grower or storer can go to the IDA.

This makes the family farm inclusive to the rest of the agriculture industry.

SENATOR LIZ KRUEGER: Thank you.

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

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

SENATOR LARKIN: Yes.

ACTING PRESIDENT FUSCHILLO: The Senator yields.

SENATOR LIZ KRUEGER: Thank you, Mr. President.

So if I heard you right, Senator Larkin, you're clarifying that you believe under existing law the larger agribusinesses, and even things like concentrated animal feeding operations, already have the ability to go to IDAs; that this would specifically, in your understanding, be opening it up to the smaller family farms?

SENATOR LARKIN: Yes.

SENATOR LIZ KRUEGER: Thank you, Mr. President. I have no objection to the bill.

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

Read the last section.

THE SECRETARY: Section 5 --

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

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

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

SENATOR LARKIN: Yes.

ACTING PRESIDENT FUSCHILLO: The Senator yields.

SENATOR SCHNEIDERMAN: And this may just be a clarification of the colloquy that went before. But I don't see in this legislation anything that would require the inclusion of smaller farms. And it does seem that it would make these large concentrated animal feeding operations and others eligible for IDA support.

Is there some provision here that directs the inclusion of smaller operations or excludes these larger producers?

SENATOR LARKIN: The larger producers are already included in it. And

what we want to do is to open this up so those other farm entities who are falling by the wayside or selling all of their land because they don't have the money to buy the equipment that is essential to keep the farm up to current status -- and this bill is exactly what the farmers asked for, and this is what we propose to give to the farmers.

SENATOR SCHNEIDERMAN: And through you, Mr. President, if the sponsor would yield for one more question.

ACTING PRESIDENT FUSCHILLO: Senator Larkin, will you continue to yield?

SENATOR LARKIN: One more question.

ACTING PRESIDENT FUSCHILLO: The Senator yields for one more question.

SENATOR SCHNEIDERMAN: And the question is, where in this bill or in the current law is the provision that allows these larger producers, particularly the concentrated animal feeding operations or other factory farms, to be eligible for support from IDAs? I just don't see it anywhere.

SENATOR LARKIN: Senator, if you look at it, big farms fall under the district of commercial, which is taken into the IDA. That's where they come on. And we're just adding this.

They come under the commercial. And it becomes an industrial operation when they start the big silos for the storage of onions, apples.

SENATOR SCHNEIDERMAN: Okay. Thank you, Mr. President.

On the bill.

ACTING PRESIDENT FUSCHILLO: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: I think -- and this may -- I'm not sure if this is a drafting error, but I don't really see -- I don't really see that if -- for the addition of agriculture, which this bill would add to the statute that directs the operation or the eligibility for IDA -- for aid from IDAs, I'm not really sure I see where factory farms would be included.

The current language refers to recreation, economically sound commerce and

industry, and does not include agriculture.

So I may be misreading this, but I do think that some clarification of that would be appropriate. If this is something that really is geared to family farms, then I think some of the opposition of the Sierra Club and others are just -- may be mistaken. But the language as it's written now to me doesn't seem to clarify the issue enough, and I would urge that we do so before we move forward.

Thank you.

ACTING PRESIDENT FUSCHILLO: Does 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 FUSCHILLO: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT FUSCHILLO: The bill is passed.

The Secretary will continue to

read.

THE SECRETARY: Calendar Number 736, by the Assembly Committee on Rules, Assembly Print Number 8958A, an act --

SENATOR SCHNEIDERMAN: Explanation.

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

SENATOR SKELOS: Thank you, Mr. President.

This bill will give peace officer status to juvenile counselors employed by the Department of Juvenile Justice for the City of New York who are assigned to court services or to a detention facility for juveniles.

This legislation is supported by DC 37, New York Police Department Sergeants Benevolent Association.

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

SENATOR LIZ KRUEGER: Thank you. I rise to speak on the bill, Mr. President.

ACTING PRESIDENT FUSCHILLO: Senator Krueger, on the bill.

SENATOR LIZ KRUEGER: Thank you.

As I have risen on many bills that have come before this house related to adding peace officer status, yet again to urge my colleagues not to support this kind of bill.

What we continue to do, bill after bill, in this house is to create a secondary police force on college campuses, in hospitals, now in the context of juvenile detention.

The City of New York, the Mayor of the City of New York has given us a memorandum urging us not to support this legislation, because I think his concerns are similar to mine, that we should not be expanding a secondary, nontrained, separately structured police system in our city. That we actually have a police department that's doing a very good job at providing the services that we need, that we don't want to even further criminalize the status of youth in a detention system by putting them under some kind of additional, secondary police structure.

And so as I so often stand here and urge my colleagues don't expand the model of

peace officers where they're not needed in the State of New York, I urge us to vote against this bill today.

Thank you, Mr. President.

ACTING PRESIDENT FUSCHILLO: Senator Hassell-Thompson, why do you rise?

SENATOR HASSELL-THOMPSON: Thank you, Mr. President. I rise just to speak on the bill.

ACTING PRESIDENT FUSCHILLO: Senator Hassell-Thompson, on the bill.

SENATOR HASSELL-THOMPSON: Thank you.

In looking at this bill and several others, one of the concerns that I have asked to be raised was whether or not peace officers have to take a psychological test. And I've been told that they do not.

And my concern is that there's a young man -- who I think is a very fine young man, I like him a great deal -- who took the exam for the police department, and he failed the psychological. He is now a peace officer. And he is pushing my office to help to pass a peace officer bill which will, in fact, give

him permission to carry a weapon.

My greatest concern is that this category, unlike the police department, does not require that you have to have a psychological in order to carry a weapon. That would be a great concern to me.

And certainly, until such time as we examine that and ensure that anyone carrying a weapon is of the frame of mind -- or that we can be as assured as we can be that they are of the frame of mind that should be carrying a weapon, I will continue to vote no on these peace officer bills.

Thank you, Mr. President.

ACTING PRESIDENT FUSCHILLO: Does any other member wish to be heard on the bill?

Read the last section.

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

ACTING PRESIDENT FUSCHILLO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT FUSCHILLO: Senator Montgomery, to explain your vote.

SENATOR MONTGOMERY: Yes, Mr.

President, to explain my vote.

I just think this is another instance where we're actually putting the lives of young people in danger. I don't think that we would like to see counselors and personnel who are specifically assigned to work with juveniles now equipped with a gun. We don't even have the corrections officers who work with inmates in the DOCS facilities carrying guns.

So now we want to have these people with weapons, and in a very volatile situation with young people who are already on edge. And it's just, I think, a recipe for total disaster. We're going to have more deaths of young people, and it's just going to breed all kinds of problems in the areas where there are numbers of people in charge of juveniles.

So I oppose this, and I hope my colleagues will join me in voting against this.

Thank you.

THE SECRETARY: Those recorded in the negative on Calendar Number 736 are Senators Dilán, Hassell-Thompson, L. Krueger,

and Montgomery. Ayes, 56. Nays, 4.

ACTING PRESIDENT FUSCHILLO: The bill is passed.

THE SECRETARY: Calendar Number 785, by Senator Nozzolio, Senate Print 3216, an act to amend the Executive Law and others, in relation to access to records.

SENATOR SCHNEIDERMAN: Explanation.

SENATOR SKELOS: Lay it aside for the day.

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

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

SENATOR SKELOS: Is there any housekeeping at the desk?

ACTING PRESIDENT FUSCHILLO: No, there's not, Senator.

SENATOR SKELOS: Then if we could stand at ease pending the return of the report of the Finance Committee.

ACTING PRESIDENT FUSCHILLO: The Senate stands at ease.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT FUSCHILLO: Senator Skelos.

SENATOR SKELOS: Thank you for recognizing me. If you could recognize Senator Montgomery.

ACTING PRESIDENT FUSCHILLO: Senator Montgomery.

SENATOR MONTGOMERY: Thank you. Mr. President, I would like unanimous consent to be recorded in the negative on Calendar 628.

ACTING PRESIDENT FUSCHILLO: Without objection, Senator.

SENATOR MONTGOMERY: Thank you.

ACTING PRESIDENT FUSCHILLO: Senator Skelos.

SENATOR SKELOS: Mr. President, if we could stand at ease, please.

ACTING PRESIDENT FUSCHILLO: The Senate will stand at ease.

(Whereupon, the Senate stood at ease at 4:10 p.m.)

(Whereupon, the Senate reconvened at 4:12 p.m.)

ACTING PRESIDENT FUSCHILLO:

Senator Skelos, why do you rise?

SENATOR SKELOS: Mr. President, I rise so that I can be recognized by you.

ACTING PRESIDENT FUSCHILLO: Senator Skelos.

SENATOR SKELOS: Thank you. If you could recognize Senator Duane.

ACTING PRESIDENT FUSCHILLO: Senator Duane.

SENATOR DUANE: Thank you, Mr. President. If I may have unanimous consent to be recorded in the negative on Calendar Numbers 645 and 736.

ACTING PRESIDENT FUSCHILLO: Without objection.

SENATOR SKELOS: Does any other member wish to change their vote or vote?

ACTING PRESIDENT FUSCHILLO: Senator Andrews.

SENATOR ANDREWS: Mr. President, I'd like to be recorded in the negative on Calendar Number 736.

ACTING PRESIDENT FUSCHILLO: Without objection.

SENATOR ANDREWS: Thank you.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT FUSCHILLO: Senator Skelos.

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

ACTING PRESIDENT FUSCHILLO: 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 Workers' Compensation Board, Mona A. Bargnesi, Esquire, of Snyder.

ACTING PRESIDENT FUSCHILLO: Senator Johnson.

SENATOR JOHNSON: Move the nomination.

ACTING PRESIDENT FUSCHILLO: The question is on the confirmation of the reappointment of Mona A. Bargnesi as a member of the Workers' Compensation Board. All those

in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT FUSCHILLO: Opposed, nay.

(No response.)

ACTING PRESIDENT FUSCHILLO: The ayes have it. The confirmation is confirmed.

And she is here. Mona Bargnesi, congratulations.

(Applause.)

ACTING PRESIDENT FUSCHILLO: The Secretary will read.

THE SECRETARY: As members of the Buffalo and Fort Erie Public Bridge Authority-Peace Bridge, Paul J. Koessler, of Buffalo, and Gerald J. Lewandowski, of Clarence.

As a nonvoting member of the Metropolitan Transportation Authority, Michael J. Canino, of Babylon.

As a member of the Dormitory Authority, Gail Hill Gordon, of Slingerlands.

As members of the Empire State Plaza Art Commission, Joseph G. Perrella, of Niskayuna, and Lynette M. Tucker, of Delmar.

As a member of the Allegany State Park, Recreation and Historic Preservation Commission, Wayne R. Grossman, of Bemus Point.

As a member of the Genesee State Park, Recreation and Historic Preservation Commission, Frank X. Allkofer, of Rochester.

As members of the Veterans' Affairs Commission, Harold G. Cronin, of Lake Luzerne, and Herman G. Harrington, of Rensselaer.

As a member of the Council on Human Blood and Transfusion Services, Alicia Elena Gomensoro-Garcia, M.D., of Staten Island.

And as members of the State Hospital Review and Planning Council, Michael H. Barnett, Esquire, of New York City, and Vincent James Calamia, Jr., M.D., of Staten Island.

ACTING PRESIDENT FUSCHILLO: Senator Johnson.

SENATOR JOHNSON: Move the nominations.

ACTING PRESIDENT FUSCHILLO: The question is on the confirmation of the appointments as read by the Secretary. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT FUSCHILLO: Opposed, nay.

(No response.)

ACTING PRESIDENT FUSCHILLO: The ayes have it. The confirmations are approved.

The Secretary will read.

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

Senate Print 7260, by the Senate Committee on Rules, an act making appropriations for the support of government.

And Senate Print 7264, by the Senate Committee on Rules, an act making appropriations for the support of government.

Both bills ordered direct to third reading.

ACTING PRESIDENT FUSCHILLO: Without objection, the bills are ordered direct to third reading.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you please call up Calendar Number 1063.

ACTING PRESIDENT FUSCHILLO: The

Secretary will read.

THE SECRETARY: Calendar Number 1063, by the Senate Committee on Rules, Senate Print Number 7260, an act making appropriations for the support of government and to amend Chapter 18 of the Laws of 2004.

ACTING PRESIDENT FUSCHILLO: Senator Skelos.

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

ACTING PRESIDENT FUSCHILLO: Yes, there is.

SENATOR SKELOS: Move to accept.

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

(Response of "Aye.")

ACTING PRESIDENT FUSCHILLO: Opposed, nay.

(Response of "Nay.")

ACTING PRESIDENT FUSCHILLO: The message is accepted.

Read the last section.

THE SECRETARY: Section 30. This

act shall take effect immediately.

ACTING PRESIDENT FUSCHILLO: Call the roll.

(The Secretary called the roll.)

SENATOR SCHNEIDERMAN: Explanation.

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

SENATOR JOHNSON: This bill appropriates $1.4 billion to various state departments and agencies: $600 million for Medicaid, $122 million for school aid payments, $194 million for state payroll requirements through May 19th.

ACTING PRESIDENT FUSCHILLO: Senator Schneiderman.

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

ACTING PRESIDENT FUSCHILLO: Senator Johnson?

SENATOR JOHNSON: Yes.

ACTING PRESIDENT FUSCHILLO: The Senator yields.

SENATOR SCHNEIDERMAN: Thank you.

I see here today we're doing a one-week extender and then a separate bill that provides for an additional budget extender. My question is, why are we doing two separate bills for two periods of time instead of one bill just to get us through the entire period of time?

SENATOR JOHNSON: Because this is the way they were sent to us by the Governor.

Thank you.

(Laughter.)

SENATOR SCHNEIDERMAN: On the bill.

ACTING PRESIDENT FUSCHILLO: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: That is -- I think that I would like to thank the sponsor for his answer.

I do -- it does sort of raise the issue, though, of what is in the mind of the sender to conduct business in such a way.

And I would respectfully suggest -- and this is not fault of any individual here, but it is something I believe we have to take

collective responsibility for -- that it may well be that people involved in negotiating the budget, or involved in not negotiating the budget, would rather not do a two-week extender because then we can say, Well, now you're just going on and having longer and longer extenders, so we're going to keep doing one-week extenders but pass two of them at the same time.

That's -- it's just a very strange way to do business. But it underscores a point that several of us have made here in relation to past budget bills.

We have a better way. It's been proposed by Senator Paterson to force us to pass a budget. We should be staying here to work on it. The ease with which the Governor sends up bills, misuses messages of necessity, and that we all are supposed to fall into line and allow this process to go forward is not serving the interests of the people of this state.

This is the 40th working day of the legislative session. We're supposed to have 60 working days, so we're now two-thirds of

the way through. We have passed 405 one-house bills; the Assembly has passed 619 one-house bills. We have 45 bills that have become law, but virtually every one of those is either a budget extender, a local tax bill, a chapter amendment, or a program extender.

I don't think it's a great mystery to anyone here what's going on. What's going on is that we are not making progress on the budget. And in the absence of the budget, we're not making progress on anything else. I think this is not the way to proceed. I think we should stay here and try and get this done.

And I think that if the Governor wants to avoid the accusation that he's doing two-week budget extenders by sending us two one-week bills the same day, my daughter's fifth-grade class, I think, can see through that one.

I am going to vote no again, Mr. President. I think we can do better than this.

ACTING PRESIDENT FUSCHILLO: Senator Sabini.

SENATOR SABINI: Mr. President,

American industry has been accused of instituting planned obsolescence to their products. Now we have planned inaction. We know we're not going to do anything for two weeks, but let's make it look good by doing it in one-week increments. It's -- only in Albany does this happen.

There's enough guilt around to heap on both parties and in both houses. You know, this does not past the duck test. This is -- it quacks, it waddles, it's a duck. It's a two-week extender if you take it -- if you staple it together, it's a two-week extender.

I'm -- you know, in professional wrestling people get bored every once in a while because they get used to the same tricks. So they change the tricks every couple of years. They have the twin referees, they have the foreign objects, they have the sand in the face, and they change it to keep people interested.

Maybe that's what we're doing here. It's like maybe people will think we're working harder if we pass two bills for two different weeks and say, gee, we're doing

double the work now.

You know, the public is going to get wise to this one of these days and say: This is not what we send you -- or don't pay you to do. I was going to say pay you to do, but we're not getting paid.

I am again amazed at the inaction here, and I plan on voting no.

Thank you.

ACTING PRESIDENT FUSCHILLO: Senator Johnson.

SENATOR JOHNSON: I'm just a bit embarrassed to realize that our friends on the other side of the aisle are unaware that they have a convention on the 17th and we cannot be here to pass the second week's budget. And that's why we're doing two now. Otherwise, it would have come up the following Monday.

So we are extending a courtesy to them by closing the shop down; in order that people can get paid on the 17th, the bills have to both go at this time.

It has nothing to do with trying to make two into one or anything else, or not having the courage to do a two-week budget.

Certainly the courage is there.

But we are hopeful always -- that's why we go one week at a time -- that things will materialize and progress is being made with the budget, but very slowly. And you know that; you can't take it out of the oven until it's baked.

So we're doing our best, and it's not a subterfuge to get two weeks. It's simply one week now and one week the next Monday when you will not be here to pass one the second week.

Thank you.

ACTING PRESIDENT FUSCHILLO: Senator Krueger.

SENATOR LIZ KRUEGER: Thank you, Mr. President. On the bill.

ACTING PRESIDENT FUSCHILLO: Senator Krueger, on the bill.

SENATOR LIZ KRUEGER: Just in response to Senator Johnson's clarification, I'm sorry, I would still argue that one could have done an eight-day extender bill if we were not going to be back here on the 17th.

They argue that in recovery the

first step to recovery is to admit you have a problem. And I don't think we're prepared to admit that we have a problem and that we're not addressing it.

And so as I have voted against the other extender bills, and as my colleagues have already amply explained, we should not be doing this today.

And we should particularly should not be doing -- despite the Senator's analysis of May 17th being a day that we're not in session, we should not be approving a message of necessity for a bill that wouldn't start until next week.

Even if one wants to argue seven days versus eight days, two weeks versus one week, how do you justify an emergency action on a message of necessity from the Governor for a time period that doesn't start now? It seems to me to defy the intention of the purpose of the message of necessity in our Constitution and under our rules.

So I'll vote against these extenders as I have voted against the others, for the same reasons, but I will add on the

inappropriateness, particularly, of the message of necessity on the second extender bill today.

Thank you, Mr. President.

ACTING PRESIDENT FUSCHILLO: Senator Stavisky.

SENATOR STAVISKY: I was under the impression that one and one equals two. But I guess we lost some more trees in trying to print the two separate bills.

Mr. President, I accept Senator Johnson's explanation, but I'm still not sure that's the proper way to go, and I will vote no also.

ACTING PRESIDENT FUSCHILLO: Senator Lachman.

SENATOR LACHMAN: Yes. I feel somewhat guilty in not having voted no before. But one can always change one's negative steps and paths, and I think we have gone far enough.

I think that the editorial in today's Times about a Legislature that does nothing is becoming more and more appropriate to this State Legislature. We are becoming

more and more dysfunctional. I think it's outrageous that we have to wait two weeks after we did it for one week and then one week and one week.

So from now on, I will be voting no on these extenders.

Thank you.

ACTING PRESIDENT FUSCHILLO: Does any other Senator wish to be heard?

Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President, I'll be very brief.

I certainly have supported the -- making sure that the government continues to work. But I'm less and less inclined to continue to support this process because there is no -- the Legislature is being left out of every single budget, our own pay.

And certainly -- I don't know if you know, but I realize that I'm not the one who's holding up this budget, and I don't think that most of us in this room are part of this.

Certainly if I had -- if we had a totally democratic legislature, I would be

able to introduce legislation specifically that would reverse an earlier bill that we passed withholding our pay until the budget is passed. I would reverse that, and I believe that it would pass both houses.

I'm certain that the Governor would veto it, but nonetheless I think that we might even have enough votes to override. Because why should we be left out of the budget while we pay the Governor? He is not being punished, and he is clearly one of the people who negotiates the budget.

So I have supported this process up until now, but today I'm going to vote no because I think it is just blatantly unfair and unreasonable to ask us, the working legislators, to continue to have our pay withheld while the Governor is paid and is nowhere to be found in terms of sitting down to negotiate honestly with this budget.

I'm voting no.

ACTING PRESIDENT FUSCHILLO: Does any other Senator wish to be heard?

Call the roll.

THE SECRETARY: Section 30. This

act shall take effect immediately.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 1063 are Senators Breslin, Duane, Hassell-Thompson, L. Krueger, Lachman, Montgomery, Onorato, Parker, Paterson, Sabini, Schneiderman, A. Smith and Stavisky. Ayes, 47. Nays, 13.

ACTING PRESIDENT FUSCHILLO: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could stand at ease.

ACTING PRESIDENT FUSCHILLO: The Senate will stand at ease.

(Whereupon, the Senate stood at ease at 4:29 p.m.)

(Whereupon, the Senate reconvened at 4:35 p.m.)

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT FUSCHILLO: Senator Skelos.

SENATOR SKELOS: Would you please call up Calendar Number 1064.

ACTING PRESIDENT FUSCHILLO: The

Secretary will read.

THE SECRETARY: Calendar Number 1064, by the Senate Committee on Rules, Senate Print Number 7264, an act making appropriations for the support of government.

SENATOR SKELOS: Mr. President, is there a message of necessity and appropriation at the desk?

ACTING PRESIDENT FUSCHILLO: Yes, there is.

SENATOR SKELOS: Move to accept.

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

(Response of "Aye.")

ACTING PRESIDENT FUSCHILLO: Opposed, nay.

(Response of "Nay.")

ACTING PRESIDENT FUSCHILLO: The message is accepted.

Read the last section.

THE SECRETARY: Section 21. This act shall take effect immediately.

ACTING PRESIDENT FUSCHILLO: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you for recognizing me also, Mr. President.

On the bill.

My reference to my daughter's fifth-grade class I think was a little bit overly optimistic in terms of the possible rationale for these two bills. I note that --

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT FUSCHILLO: Senator Skelos.

SENATOR SKELOS: Would you please lay the bill aside for the day.

ACTING PRESIDENT FUSCHILLO: Lay the bill aside for the day.

SENATOR SKELOS: Is there any housekeeping at the desk?

ACTING PRESIDENT FUSCHILLO: No, Senator Skelos.

SENATOR SKELOS: Mr. President, there being no further business to come before the Senate, I move we stand adjourned until Tuesday, May 11th, at 3:00 p.m.

ACTING PRESIDENT FUSCHILLO: On motion, the Senate stands adjourned until Tuesday, May 11th, at 3:00 p.m.

(Whereupon, at 4:37 p.m., the Senate adjourned.)