NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

June 1, 2004

3:07 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, Monday, May 31, the Senate met pursuant to adjournment. The Journal of Sunday, May 30, 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 Wright.

SENATOR WRIGHT: Madam President, on behalf of Senator Seward, I wish to call up Bill Print Number 6554, recalled from the Assembly, which is now at the desk.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 691, by Senator Seward, Senate Print 6554, an act to legalize, validate, ratify and confirm.

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

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

(The Secretary called the roll.)

THE SECRETARY: Ayes, 40.

THE PRESIDENT: Senator Wright.

SENATOR WRIGHT: Madam President,

I now offer the following amendments.

THE PRESIDENT: The amendments are received.

SENATOR WRIGHT: On behalf of Senator Volker, I wish to call up Bill Print Number 2326B, recalled from the Assembly, which is now at the desk.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 289, by Senator Volker, Senate Print 2326B, an act to amend the Environmental Conservation Law.

THE PRESIDENT: Senator Wright.

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

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

(The Secretary called the roll.)

THE SECRETARY: Ayes, 40.

THE PRESIDENT: Senator Wright.

SENATOR WRIGHT: Madam President, I now offer the following amendments.

THE PRESIDENT: The amendments

are received.

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

Senator Seward, page number 7, Calendar Number 130, Senate Print Number 1173;

Senator Johnson, page number 24, Calendar Number 573, Senate Print 5895;

Senator Bonacic, page number 27, Calendar Number 676, Senate Print 6392;

Senator Fuschillo, page 35, Calendar Number 829, Senate Print 6611;

Senator Skelos, page number 35, Calendar Number 830, Senate Print 6612;

Senator Morahan, page number 51, Calendar Number 1037, Senate Print 5657A;

Senator Maziarz, page 53, Calendar 1059, Senate Print 510A;

Senator Golden, page 71, Calendar Number 1279, Senate Print 4186A;

Senator Golden, page 73, Calendar Number 1298, Senate Print 7290A;

Senator Farley, page 22, Calendar Number 513, Senate Print 4779.

Madam President, I now move that

these bills retain their place on the order of third reading.

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

Senator McGee.

SENATOR McGEE: Thank you, Madam President.

On behalf of Senator Bonacic, please place a sponsor's star on Calendar Number 1338.

THE PRESIDENT: The bill is so starred.

SENATOR McGEE: Thank you, Madam President.

Madam President, I move to amend Senate Bill Number 839A by striking out the amendments made on March 22nd and restoring it to its original print number, 839, on behalf of Senator LaValle.

THE PRESIDENT: So ordered.

SENATOR McGEE: Thank you, Madam President.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Madam President,

Resolution 5209, by Senator Golden, was previously adopted. If we could have the title read at this time and please recognize Senator Golden.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Golden, Legislative Resolution Number 5209, commemorating the 60th Anniversary of the Allied invasion of Normandy on June 6, 1944, D-Day.

THE PRESIDENT: Senator Golden.

SENATOR GOLDEN: Thank you, Madam President.

I'd like to point out that Senator Marchi himself served during that period of time.

And D-Day, known as Operation Overload, began just after midnight on June 6, 1944. Some 4,000 transport, 800 warships, and innumerable small craft supported the invasion, under Admiral Sir B.H. Ramsey.

Over 160,000 Allied troops and 30,000 vehicles were landed along the 50-mile stretch to fortify the French coastline. The

beachheads -- Utah Beach, Omaha Beach. The British and Canadians fought on Gold, Juno, and Sword Beaches.

It was a magnificent event that will be in the history books for many, many years to come.

And yesterday, as we celebrated Memorial Day here across this state, we seen parades up and down our towns and in our streets, and we seen many people coming forward as they see that over 1,000 World War II vets today are dying, and passing the batons on to the new vets, those coming home from Iraq and Afghanistan, still defending this great nation, and will go on to defend this great nation.

I think this is a great day, and I open this up to all of our Senators here today to join with me in this resolution.

Thank you, Madam President.

THE PRESIDENT: This resolution was previously adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, first of all, I'd like to call a meeting of

the Finance Committee in the Majority Conference Room.

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

SENATOR SKELOS: And if we could go to the noncontroversial reading of the calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 263, by Senator Hannon, Senate Print 454, an act to amend the Public Health Law, in relation to providing.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 314, by Senator Spano, Senate Print 4241, an

act to amend the Tax Law, the Administrative Code of the City of New York, and the Codes and Ordinances of the City of Yonkers.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 13. This act shall take effect upon the enactment by the United States of a law.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 418, by Senator Larkin, Senate Print 5865A, an act to amend the Agriculture and Markets Law, in relation to including fermented agricultural products.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 6. This act shall take effect on the 180th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 659, by Senator DeFrancisco, Senate Print 2976, an act to amend the Estates, Powers and Trusts Law, in relation to disqualification.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 875, by Senator Robach, Senate Print 6399, an act to amend the Education Law and others, amending the Administrative Code of the City of New York.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 9. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 919, by Senator Golden, Senate Print 2223A, an act to amend the Social Services Law, in relation to requiring adult care facilities.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 931, by Senator Kuhl, Senate Print 743 --

SENATOR SCHNEIDERMAN: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 969, by Senator Stachowski, Senate Print 5891,

an act to amend the Labor Law, in relation to the definition of "employment."

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 1038, by Senator LaValle, Senate Print 5978A, an act to authorize the Sag Harbor Historical Society, Inc., Village of Sag Harbor.

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.

THE SECRETARY: Calendar Number

1076, by Senator Robach, Senate Print 5461, an act to amend the Alcoholic Beverage Control Law, in relation to increasing the length of suspension.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 90th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1110, by Member of the Assembly Ramos, Assembly Print Number 9440, an act to amend the Uniform District Court Act, in relation to allowing.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1120, by the Assembly Committee on Rules, Assembly Print Number 7993A, an act to amend the Criminal Procedure Law, in relation to designating members.

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.

THE SECRETARY: Calendar Number 1140, by Senator Little, Senate Print 5873, an act to amend the Correction Law, in relation to authorizing the use of the Warren County Jail.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 6. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1146, by Senator Nozzolio, Senate Print 6908, an act to amend the Correction Law, in relation to custody and supervision.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 90th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1159, by Member of the Assembly Sweeney, Assembly Print Number 2213, an act to amend the Volunteer Ambulance Workers' Benefit Law, in relation to increasing.

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.

THE SECRETARY: Calendar Number 1170, by Senator Balboni, Senate Print 7197A, an act to authorize the Temple Sinai of Roslyn to file an application.

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. Nays, 1. Senator Bonacic recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1172, by Senator Larkin --

SENATOR SCHNEIDERMAN: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 1185, by Senator Kuhl, Senate Print 2581 --

SENATOR SCHNEIDERMAN: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 1214, by Senator Johnson, Senate Print 5138, an act to amend the State Finance Law, in relation to authorizing the provision of insurance.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1243, by Senator Fuschillo, Senate Print 2333, an act to amend the Vehicle and Traffic Law,

in relation to criminal history checks.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 90th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1248, by Senator Libous, Senate Print 6832, an act to amend the Highway Law, in relation to designating a portion of the state highway system.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number

1267, by Senator Marcellino, Senate Print 2670A, an act to require the New York State and Local Employees' Retirement System to accept a retirement application.

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

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1302, by Senator Saland --

SENATOR SCHNEIDERMAN: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 1398, by Senator Wright, Senate Print 6676, an act to amend the Tax Law, in relation to authorizing the City of Oswego.

THE PRESIDENT: There is a local

fiscal impact note at the desk.

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

THE PRESIDENT: The bill is passed.

Senator Bonacic.

SENATOR BONACIC: Thank you, Madam President. I ask for unanimous consent to reconsider Senate Bill 5978A. I'd like to be recorded in the negative.

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

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

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

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number

931, by Senator Kuhl, Senate Print 743, an act to amend the Agriculture and Markets Law and the Vehicle and Traffic Law.

SENATOR SCHNEIDERMAN: Explanation.

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

SENATOR SKELOS: Lay it aside temporarily.

THE PRESIDENT: The bill is laid aside temporarily.

THE SECRETARY: Calendar Number 1172, by Senator Larkin, Senate Print 1374, an act to amend the Insurance Law, in relation to providing for standardized health insurance contracts.

SENATOR LIZ KRUEGER: Explanation.

SENATOR SKELOS: Lay that aside temporarily.

THE PRESIDENT: The bill is laid aside temporarily.

THE SECRETARY: Calendar Number 1185, by Senator Kuhl, Senate Print 2581, an act to amend the Parks, Recreation and

Historic Preservation Law and the General Municipal Law.

SENATOR SCHNEIDERMAN: Explanation.

SENATOR SKELOS: Lay that aside temporarily.

THE PRESIDENT: The bill is laid aside temporarily.

THE SECRETARY: Calendar Number 1302, by Senator Saland, Senate Print 2947B, an act to amend the Social Services Law, in relation to the reporting of child abuse.

SENATOR LIZ KRUEGER: To speak on the bill, Madam President.

THE PRESIDENT: Senator Krueger, you may proceed on the bill.

SENATOR LIZ KRUEGER: Thank you.

Well, this is a variation on a bill that we considered last year on the floor of the Senate. It's the B version. And yet again, it does not get us to a point where we could be having a same-as bill with the Assembly.

And it frustrates me continually that we can't seem to address what I think

everyone in both houses of the Legislature wants, which is a bill that would require that clergy must report sex abuse in a manner parallel to other mandatory reporters who are people in positions of trust.

And unfortunately, Senator Saland has decided to combine that goal with many other positions he has around abuse and neglect and the reporting of abuse of children.

And while I respect Senator Saland's views about the other concerns around abused children, by rolling all of those into one bill what he has done is to put us in a position where we will most likely pass his bill today but it will be a bill that is a one-house bill and does not get us to the simple assignment, a clergy reporting bill that can be passed by both houses of Legislature, the Assembly and the Senate.

I will start out with just one statistic that I think is very important for people to understand. The vast majority of reports of child abuse and sexual abuse around the country are ultimately not substantiated.

It doesn't mean people shouldn't make those reports. Of course they should. But making a report and it actually ending up in a finding of abuse of the child are not the same things.

And according to the federal government's Department of Child Abuse Prevention and Treatment of the U.S. Department of Health and Human Services, who collects national data and analyzes this data state by state, it shows that 60 percent of the reported case of abuse are not substantiated or unsubstantiated.

Why do I highlight that? Because under Senator Saland's bill we would shift from a current model of making reports of abuse to the state hotline, trained workers who know about child abuse, who are trained professionals, to review cases, to prioritize them and to correctly target them to child welfare agencies or the police based on their findings. And under Senator Saland's bill, S2947B, for a sub-universe of reports, we would send all of them to the police.

But with all due respect, the police of New York State are not trained to

handle calls on child abuse and are not, in many, many cases, the appropriate agency to follow up on complaints of abuse.

And in fact, it will take police away from the other functions that we all know we have greater need for in our communities and shift them into a new set of responsibilities that they are woefully unprepared for unless we're prepared to put large amounts of money into new training protocols for police on reporting of abuse.

And in fact, the model that has been set out in Senator Saland's bill will likely, in addition to shifting from reports to a trained child welfare abuse hotline system to the police, will also likely deter people from ever going for counseling or for health care from health-care providers and in fact hiding the kinds of abuse that we want to know about.

In fact, under Senator Saland's bill what we will likely find is that young people, minors, won't go for health care or counseling because they will be afraid that law enforcement officials will intrude upon

and undermine their relationships with their health care professionals.

If young people aren't prepared to go to teachers, to counselors, to physicians, to nurses for counseling around sexual activity, there are two things we can be assured of. One, cases of abuse won't get reported through to the correct process; and, two, young people won't get the kind of health care and counseling and information that they desperately need.

This bill, despite its recognition of the importance of confidentiality in exempting privileged confidences that are shared with clergy, fails to extend those same protections to other relationships usually privileged under our laws -- that between a patient and their doctor, nurse, or mental health professional. So a counselor or a doctor serving a young person will become a conduit to police rather than a trusted professional who can be confided in.

If young people, if adolescents believe that talking to their teacher or seeking health treatment means that the police

will show up at their door, that adolescent will not seek counseling and will not get necessary health care.

Even minors who do not fall within the targeted age range, under 14 with partners 19 or older, will also likely be deterred from seeking health care and counseling. Once any teenager hears that their trusted teacher, nurse, or clinic is obliged to call police or to report underaged sexual activity, they will not make the fine distinction that the bill does.

They will assume it is no longer safe to confide in those from who they so desperately need care and information. An issue of counselling or sexual education becomes, in the eyes of the young person, a criminal matter to be referred to the police.

This is particularly of concern to me, given the patterns and experiences of young people who have been the victims of incest in their own homes, a disturbingly large percentage of the sexual abuse cases reported through the federal government.

Incest is the type of crime that

young people are least likely to go and report. They don't show up at rape crisis centers, they don't turn to the police because, in their own minds, they are somehow guilty of the crime because it is happening at home or they believe, as they have often been told by the adult in an incestuous relationship with them, that it must be kept secret or that it's okay.

Young people who are the victims of incest disproportionately, when they actually turn to someone for help, are turning to a teacher or a health care professional, and they do not believe that they can go forward to the police at the time that they first initiate this discussion with someone. They are terrified, in fact, that police come to their home to take them or their parents away, and they would rather live with the shame and the continued abuse of incest rather than come forward.

I know Senator Saland has no intention of attempting to discourage young people from coming forward to get the help that they need by passing this legislation.

But I tell you, based upon my research, that's exactly what will happen. We will be discouraging young people from coming forward to the people that they trust and ought to trust, because it will suddenly walk into being a police matter when, again, the police are not best-trained to handle these situations.

There's also significant confusion in this bill about the role of mandated reporters receiving training on another kind of child abuse where they must report suspicions of abuse by a minor's family member to child welfare authorities versus the police. This bill adds to the confusion about what the role of the mandatory reporters is. And that will guarantee that there will be an increase in errors on the side, potentially, of overreporting or underreporting these charges.

Again, 60 percent of the child abuse reports that are collected are found to be unsubstantiated. Having the police walk in on any case called in, without the role for child welfare experts, is a serious mistake.

Finally, this bill does not answer the questions we need answered of assuring that we can have a bill agreed to by both houses and passed that would assure the public and our children that there could be reports by clergy to the appropriate authorities and that those cases would be handled appropriately and immediately.

I am sorry that I cannot urge my colleagues to vote for this bill, because it's not going to get us where we need to go. I won't vote against the bill, again, in my belief that we have to be doing the right thing on clergy reporting -- but that, in fact, this bill unfortunately is likely to guarantee that we don't have a same-as bill in both houses, that even if we attempt to conference these two bills, the Assembly version and the Senate version -- and I urge us to do so immediately -- that we're so far apart between Senator Saland's version and the Assembly version that at the end of the session we will yet again say we could not agree.

I wish so much that Senator Saland

would separate his bill into two bills: his bill on clergy reporting, which I believe we could then conference and make as a same-as piece of legislation and get signed by the Governor, and then take the other sections of his bill and open it up to a complete evaluation by child welfare experts, the police, and hold it up against other laws around the country and models that have been successful or not successful in ensuring that we have a greater and more effective model for ensuring that all cases of abuse against our children are successfully reported, that they are tracked carefully, that the appropriate investigations are done, and that the right outcomes happen on behalf of our children.

So I will reluctantly vote for the bill. But again, I urge my colleagues and Senator Saland, who I know has the best intentions with his legislation, to yet again reevaluate and move forward with a clergy reporting bill separate from the other sections of his bill which actually may put us further away from protecting our children.

Thank you, Madam President.

THE PRESIDENT: Senator Saland.

SENATOR SALAND: Thank you, Madam President.

Madam President, would Senator Krueger yield to a series of questions?

THE PRESIDENT: Senator Krueger, will you yield?

SENATOR LIZ KRUEGER: Certainly, Madam President.

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

SENATOR SALAND: I'm sorry, Senator Krueger, I was at the Finance meeting and I didn't hear your opening remarks. But I have heard perhaps the last five minutes or so of your remarks.

What I would like to start off by asking you would be, can you think of what social policy, if any, would be served by not reporting the sexual abuse of a 6- or 7-year-old child -- and that would probably be a kindergartener or first-grader -- by somebody who might be 19, 20, 30, or 40 years old?

Is there some reason why the

privilege that is currently enjoyed by mandated reporters in other than family situations should not be breached to report in such a case?

SENATOR LIZ KRUEGER: Madam President, through you, I'm not familiar with the scenario where a 6-, 7-, or 8-year-old would voluntarily be going to a counselor or a health provider to report their sexual activity where the health care provider or other mandatory reporter wouldn't see it as this is not a voluntary activity by the child and wouldn't report now under existing law.

SENATOR SALAND: Well, the 6-, 7-, or 8-year-old child would not be there seeking counseling initially. He or she would be brought into some health care provider, the parent might say: This is such a traumatic thing, I'd like it to end right here, despite the fact that I know who the perpetrator is. Would that -- and it's not a member of my family. I know who it is, I don't want to identify them.

Is there some socially sound policy that says that that person -- that pedophile,

that predator, whatever term you would want to use -- should in effect get a free pass?

SENATOR LIZ KRUEGER: No, I don't think they should.

And it's my understanding that existing law for mandatory reporters is that they would report that to the hotline for sex abuse already, that there wouldn't be any exemption for them not to be reporting that if they knew a child or believed a child was being abused.

SENATOR SALAND: There is no requirement under law that they do that. They may attempt to do that, and the hotline may then refer it, should they get such a call. But there is no requirement under law that they do that.

SENATOR LIZ KRUEGER: Thank you for the clarification.

Again, perhaps when you were out of the room you didn't hear me say -- but I'll just say it -- I don't think that your entire bill is with bad intent. I believe that if we separated out the clergy reporting and got that done as a two-house bill, we should then

follow up with evaluation of all the other different proposals in your bill.

Because yes, I would agree with you, Senator, there is a difference between knowing of sexual abuse of a young child and what the correct protocol ought to be under the law, versus the issues of a 16-year-old going in for in counseling on reproductive health care to a provider and admitting that they may be having sex with someone who is older than 19, who may or may not be a family member, and therefore you're walking into all the territory of incest versus a relationship that may be defined as voluntary, even if not condoned, of a teenager.

So I do think that the point you're making is correct and would hope that we could look at all of those sections of your bill separate from trying to get the clergy reporting section passed.

SENATOR SALAND: Let me just suggest to you, in the example that you gave, there would be no requirement to report under this bill. This is a different version than last year's bill.

So if that 16-year-old came in for counseling, in an effort to deal with the so-called high school sweetheart situation, it basically says that the perpetrator would have to be 21 or over. So the example you gave would not be applicable in this bill.

SENATOR LIZ KRUEGER: Thank you for the clarification.

SENATOR SALAND: So this bill is an effort to try and reach some common ground.

And quite candidly, I've had numerous conversations with Assemblyman McEneny during the course of this session. This really reflected, in large part, some of the agreements that I thought we had arrive at.

And when I looked at the ACLU memo to which you made some reference to earlier in committee, a week or two ago, there was a provision which I found, quite candidly, somewhat distressing or perhaps reflecting a lack of clear understanding of what the bill did.

And I'm really looking at the first page of the memo, which refers to the

reporting practices. And it makes reference to the language in the bill that says where the victim is 13 years or less and the perpetrator is 19 years or older, there will be no privilege. All such incidents must be reported.

Now remember, if you're 12 or 13 years old, you're in the sixth or seventh grade, perhaps even in the eighth grade. But again, the perpetrator would have to be 19 years or older.

And it goes on to say that this provision is sweeping in scope, encompassing all sexual conduct even if consensual.

Now, having dealt with this issue in a number of different ways, I would tell you with a great deal of confidence that the profile of the predator or the pedophile isn't necessarily this evil-looking person in a raincoat stalking somebody or hiding in a doorway.

That person is, more often than not -- and there are all kinds of studies that will support this -- a person with whom the child has established some sort of

relationship of trust, some sort of confidence in that particular person.

And that person, once they've tossed out the line and ensnared the child, will bring that line in slowly. And I've taken testimony from people in another context, where we did the fingerprinting bill that this house passed a couple of years ago -- after doing battle for some three years with the Assembly to get them to agree -- who have described their experiences, how they were ensnared.

So the fact of the matter is, if you assume for the moment that someone under the age of 13 has the ability to give his or her consent -- which the law really doesn't recognize, and we all know that. But if you assume for the moment that they can -- and I don't concede that. I believe it's absolutely impossible. But for the purposes of our argument, let's say it is.

When you have this predator who has taken advantage of his or her position to ensnare that child, can that 13- or 12- or 11- or 10-year-old really consent? Is it truly

consent in the fashion that I might consent or you might consent or anybody else in this chamber might consent? We know that the law recognizes that that is impossible.

So when I look at this memo and I see them make specific reference to a section in which I'm talking about somebody who can't be over the age of 13 and the perpetrator can be anywhere from 19 to 90, what's consensual about that? Perhaps you can understand why it's consensual. I don't have the ability to understand how it's consensual. And if you can, I'll be more than happy to try and grasp your logic.

I realize this isn't your memo, but --

SENATOR LIZ KRUEGER: Thank you. And in fact, I didn't reference those materials when I was speaking earlier. So I'm sorry that you weren't here, because -- I guess I'll go back to my earlier points.

First, I was also, as you are, focusing in my comments on the fact that you were right, the majority of children who are sexually abused, it's not a stranger in an

overcoat, it is a family member, disproportionately, or an immediate friend of a family member.

And I talked about the damage done in incest situations where children don't come forward, they are terrified to come forward because they believe that somehow they are equally guilty in this activity or fear that if they say anything, mom or dad will be dragged off, or Cousin Peter or Uncle Joe or the neighbor next door. And so they suffer from enormous amounts of guilt.

So I don't think I was discussing some difference with you about consensual sexual activity by a 13-year-old.

What I was raising and what I will continue to raise as my concerns, if I were to label them, in your bill is, one, the fact that we are shifting reporting to the police from an established child welfare abuse system where you have a trained person who is hopefully either handling the case correctly or making the determination that in this case they need to call in the police.

I was highlighting the fact that we

want to encourage people to come forward, we want them to feel like they can go forward to people in positions of trust, to health care providers, to counselors, to teachers, and believe that they can seek confidential help, rather than fearing ever going to anyone for help because they believe the police will show up immediately.

And in fact, in your bill you give clergy that recognition of confidentiality if it's in a religious counseling session, but you're actually taking it away from other health care providers in the rest of your bill.

I also -- I highlighted, one, I don't think we should have no mechanism for confidentiality between people who come to health-care providers or people of trust. I don't think we should have a different standard for clergy and other people of trust, which I think your bill sets us up for. And I don't think we should be shifting automatically, without serious evaluation of a model where reports are made to a child abuse hotline structure, to the police.

Because I don't think the police are trained to handle these cases. I don't see them as having any additional resources being provided for in this legislation to take on new responsibilities that require specialized training and are extraordinarily complex.

I believe that we need to be cognizant of the national data and the fact that most states have stayed with reporting through a child abuse hotline situation with trained workers for very specific reasons, because it's a model that works.

And in fact that we need to be cognizant of the fact that in 60 percent of the cases reported nationally to child abuse, they are not found to be substantiated. So we must be very careful about redoing a system that may in fact not be broken, while agreeing with you in recognizing that there is perhaps a number of different issues where we need to expand mandates and protections.

And I would think that you and I probably would agree that when you're talking about sex between someone under 13 and anyone

else, that you should not make an assumption of consensual. Although as we know from the statistics, unfortunately, too many of our early teenagers are experimenting sexually in ways that you and I probably wouldn't approve of or that weren't considered experimental and casual when we were young teens. And that one has to recognize very different behavior patterns out there.

But no, if you're saying to me do I think that 13-year-olds are having consensual sex and that should be approved? No, I don't.

SENATOR SALAND: On the bill, Madam President.

THE PRESIDENT: You may proceed, Senator.

SENATOR SALAND: Madam President -- and thank you, Senator Krueger.

SENATOR LIZ KRUEGER: Thank you.

SENATOR SALAND: Some of the very same arguments that I've just heard presented with regard to bringing in law enforcement for investigation of what is a crime -- I mean, when -- we're not talking about a familial situation, we're talking about a situation

that occurs outside of the household. We're not talking about an Article 10 proceeding.

But some of these very same issues or somewhat analogous issues were raised nearly ten years ago now when, in dealing with the issue of domestic violence, I proposed the Family Protection and Domestic Violence Intervention Act, which ultimately was signed into law and provided for mandatory arrest.

And there were many people at that point, including advocates, who said: No, no, no, we don't want mandatory arrest, that's not a good idea; it's more than you can ask of the police, and it takes away certain amount of our ability to exercise our choice.

Well, it's now 2004; we still have mandatory arrest. It worked, I think, rather successfully, continues to work successfully. We created, in effect, a new paradigm.

There is a crime that is committed when somebody over the age of 19 sexually abuses a child that's 13 years or under.

And the reason we use those numbers, incidentally, was in part due to negotiations between myself and Assemblyman

McEneny, the concern being that the reports that were issued at that time by the John Jay College of Criminal Justice and by the commission that was authorized by the church both said pretty much the same thing. Very significantly and disproportionately, children 14 and under, particularly young boys, had been abused. And the use of that age category was viewed as some way within which to deal with that issue, to require all reporting.

So I believe we successfully have dealt with the issue of the so-called teenage sweetheart situation. In fact, even the Civil Liberties Union provides faint praise in their memo, I believe in their last paragraph, talking about the fact that this version tightens up what they had previously expressed reservations about with the use of the concept of a person in a position of trust.

So I don't think there's any reason for anybody to oppose this bill. I think this bill certainly expands and was intended to expand protection for children.

This issue is greater than clergy abuse. This issue is about abuse of children.

Clergy are a very critical element of dealing with this particular issue in this context. But, quite candidly, that's not where I started from, nor is that where I want to wind up. I want to create a greater safety net for children. They are among the most vulnerable in our society, and we owe them that duty.

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

Then the debate is closed.

Read the last section.

THE SECRETARY: Section 6. This act shall take effect on the 60th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator Duane, to explain your vote.

SENATOR DUANE: Thank you, Madam President.

I suppose that today's passage of this mandatory clergy reporting bill will maybe in some small way protect future generations of children from being sexually molested by clergy members. But it certainly doesn't do enough, and it cannot be seen as a

solution to the current clergy abuse crisis here in New York State.

For instance, the bill does absolutely nothing to provide justice and healing for those who are already hurting because of being victimized by clergy sexual abuse. This bill only requires clergy to release records of abuse dating back twenty years or less.

And, you know, just bizarrely, if a clergy member is deceased, then the records don't have to be disclosed at all. And the pain and the hurt from being abused, even by a deceased clergy member, is not erased when the clergy member dies.

So that's simply not enough. I have a bill where clergy would have to go back -- institutions would have to go back fifty years and release that information.

And also, we still haven't taken up in any kind of real way the statute of limitations for childhood sexual abuse. That has to be lengthened. It's been lengthened in California and Illinois. That's not happening here.

So the statute of limitations for civil cases has to go back and be retroactive so the current survivors can have their day in court.

So for those reasons, I'm going to be voting no on this bill. And I hope, Madam President -- and I'll continue to reach out to the sponsor of the legislation to try to craft real legislation that will deal in a real and comprehensive way with survivors of clergy abuse and to prevent anyone in the future from being abuse by clergy.

Thank you, Madam President.

THE PRESIDENT: You will be so recorded as voting in the negative.

Senator Montgomery.

SENATOR MONTGOMERY: Yes, Madam President. I'm going to be voting in the negative on this legislation.

I think that trying to decipher or separate out the positive from the -- what I consider to be problematic, it's the last part of the bill that I think is very far-reaching. And we need to, I believe, be much more careful about how we approach this particular

aspect.

Obviously I'm very much supportive of including the clergy in the reporting and the reporting on. But I believe that the second part of the bill, where we engage law enforcement as an initial reporting agency, is certainly problematic.

Because even though the legislation calls for a Class A misdemeanor charge for anyone not reporting, at the same time, once the police are engaged, it is a very different scenario for the persons who are the alleged perpetrators, if you will.

And I believe that this legislation as written, it seems to me, covers much more than even just sexual abuse.

So we've gone pretty far-reaching in creating an entirely new process which brings people directly into the law enforcement agency before we have the involvement of experts who would be more -- have more capacity and more time to be able to ferret out and understand and investigate and make sure that the reporting is accurate. And we also have immunity for anyone who reports

and they make an error in reporting.

So I think we need to look at this much more carefully. Therefore, I'm going to vote no on this legislation.

THE PRESIDENT: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President.

One of the mysteries of Albany is how members of both houses can overwhelmingly support dealing with an issue and yet nothing can happen year after year.

I think some of my colleagues have pointed out some of their concerns. And whether you agree or disagree, these concerns have clearly been reflected in the debate and the results of that debate in the Assembly.

I would urge that this may be an issue where there is sufficient ground of agreement to move to a conference committee. We are having more success with conference committees this year. And it is something that is increasingly incomprehensible to our constituents, that you can have all sides saying this is an issue we must address, and

yet year after year nothing happens.

So perhaps we can take time out of Senator Saland's busy schedule to cochair a conference committee on the issue and actually move this forward. It is clear to me that in its present form, we are in danger of ending another session without addressing this critical issue and this issue which we have committed to many, many millions of people in this state to resolve.

Thank you, Madam President. I vote yes.

THE PRESIDENT: Senator Schneiderman, you will be so recorded as voting in the affirmative.

And Senator Montgomery, you will be recorded as voting in the negative.

The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1302 are Senators Duane and Montgomery. Ayes, 57. Nays, 2.

THE PRESIDENT: The bill is passed.

Senator Duane.

SENATOR DUANE: Thank you, Madam President. If I may have unanimous consent to be recorded in the negative on Calendar Numbers 1076, 1120, and 1243.

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

Senator Montgomery.

SENATOR MONTGOMERY: Yes, Madam President, I would like unanimous consent to be recorded in the negative on Calendar Numbers 1076 and 1243.

THE PRESIDENT: You will be so recorded as voting in the negative on those bills.

Senator Rath.

SENATOR RATH: Madam President, could we please lay aside Calendar Numbers 931 and 1185 for the day.

THE PRESIDENT: Those bills are laid aside for the day.

SENATOR RATH: Thank you. And could we please take up Calendar Number 1172.

THE PRESIDENT: The Secretary

will read.

THE SECRETARY: Calendar Number 1172, by Senator Larkin, Senate Print 1374, an act to amend the Insurance Law, in relation to providing.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Senator Krueger.

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

THE PRESIDENT: You may proceed on the bill.

SENATOR LIZ KRUEGER: Thank you very much.

I had actually had a debate with Senator Larkin about this bill last year, so I wanted to skip that process and yet again reiterate that, while I appreciate his effort to want to expand the use of the Healthy New York program, my problem with the bill -- which, again, I won't vote against because I am not sure it's getting anywhere two-house until we really deal with the serious issues

of lack of access to health care -- is that under his proposal we would be allowing companies who currently care health insurance for their employees to move their employees to the less comprehensive Healthy New York program.

And while it may not be the case right now that we have a shortage of funding in that program, because not enough people are using it, that we're not expanding access to health care under this bill, we're simply shifting the population of people who might be using this health insurance, the Healthy New York program, because under his bill we would allow people who currently have insurance by their employers to move to Healthy New York when their employers drop their ongoing coverage.

I don't think it's the intention of the State of New York to discourage businesses from continuing to provide health insurance. I know it is the intention of all of us to try to expand access to the health insurance market in our state for the estimated over 2 million people currently not receiving

health insurance.

And while I don't necessarily agree with all the proposals in Senator Seward's report of this year on expanding the health insurance market and affordable coverage, I actually wish that Senator Larkin had brought that kind of bill to the floor for debate.

Because at least in that proposal of Senator Bruno and Senator Seward of February 2004 in the Insurance Committee, they were talking about trying to maximize new coverage of New Yorkers in health insurance rather than shifting an existing population already insured from one set of programs to another set of programs.

And I will just say for the record, on the floor, we should be looking to a single-payor universal program here in New York State. While ultimately we need federal access to truly assure universal health care coverage, New York State is one of the states, because of our size and our market power, that could seriously explore a model for universal coverage, single-payor access, bulk purchase negotiations on the ridiculous

cost of prescription drug costs.

So I wish in fact you were offering us more, Senator Larkin, than what this bill does today. But I won't vote against the bill, even though I don't think it gets us where we all need to go.

Thank you, Madam President.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

THE PRESIDENT: The bill is passed.

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

SENATOR RATH: Can we please return to reports of standing committees, for the Finance Committee report.

THE PRESIDENT: The Secretary will read.

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

following nominations.

As members of the Empire Plaza Art Commission, Jackie Kingon, of Poughkeepsie, and Kristin Jannitto Woodward, of Latham.

And as a member of the State Council on the Arts, Debra Ressler Black, of New York City.

THE PRESIDENT: Senator Johnson.

SENATOR JOHNSON: Move the nomination, Madam President.

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

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The nominees are hereby confirmed.

Senator Rath.

SENATOR RATH: I believe there are some bills that are to be reported from Finance.

THE PRESIDENT: There are, Senator.

The Secretary will read.

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

Senate Print 7369, by the Senate Committee on Rules, an act making appropriations for the support of government.

And 7370, by the Senate Committee on Rules, an act in relation to suspending until July 31, 2004.

Both bills ordered direct to third reading.

THE PRESIDENT: Both bills ordered direct to third reading.

Senator Rath.

SENATOR RATH: Yes, Madam President, if we could please take up Calendar 1408.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: In relation to Calendar Number 1408, Senator Johnson moves to discharge, from the Committee on Finance, Assembly Bill Number 11343 and substitute it for the identical Senate Bill Number 7369, Third Reading Calendar 1408.

THE PRESIDENT: Substitutions ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1408, by the Assembly Committee on Rules, Assembly Print Number 11343, an act making appropriations for the support of government.

THE PRESIDENT: Senator Rath.

SENATOR RATH: Madam President, is there a message of necessity and appropriation at the desk?

THE PRESIDENT: Yes, there is, Senator.

SENATOR RATH: Move to accept.

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

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(Response of "Nay.")

THE PRESIDENT: The message is accepted.

Read the last section.

SENATOR SCHNEIDERMAN: Explanation.

THE PRESIDENT: Senator Johnson.

SENATOR JOHNSON: Madam President, this bill appropriates money to pay the bills of government for the next six days, the 1st to the 6th of June. It includes normal school aid payments, payroll, general state charges, Medicaid payments, and transfers to New York City of the money for the sales tax revenues.

Thank you.

THE PRESIDENT: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Madam President, on the bill.

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

SENATOR SCHNEIDERMAN: I have been voting against the appropriation and the language bills to extend the budget, and so have many of my colleagues. I will be voting no again today, and I urge everyone to do so.

I think the issue with regard to another one-month extension of the sales tax on clothing under $110 should be clear to anyone with any sense of social or economic

justice in this state. We are voting to increase the taxes on those least able to pay.

Extending the tax on clothing and footwear priced under $110 represents the enactment of the Governor's budget one month at a time. It is a disgraceful tax. And the fact that we are extending that tax while we're not dealing with any of the other issues that we could be dealing with in these extenders to make our tax code less regressive I think speaks very badly for all of us.

I also want to urge that there are other problems with the system that we have fallen into of doing these one-week extenders. People say, well, you're just keeping the budget going. In fact, there are proposals on the table that would provide significant savings. Every week we approve over $700 million in state and federal Medicaid funds, about a quarter of which is for prescription drug expenses.

A proposal has been advanced by Senator Paterson in our conference that simply puts into effect some programs that are working in other states. Bulk purchasing,

preferred drug lists would save $12.6 million every week for the state. It would save New York City $4.2 million every week. Our inability to deal with the budget is preventing us from passing reforms like this.

As far as the local share of Medicaid goes, the proposal presented by Senator Paterson on March 31st of this year showed how we can save local governments $1 million per day if we pass a Medicaid reform package.

These are the kinds of things that are not in these budget extenders. These are the kinds of savings for local and state governments that we cannot really dismiss as irrelevancies or things we will get to later when we pass the budget. I think the system of sitting around waiting for lightning to strike and resolve the school financing issue is just not enough of an excuse anymore.

Once again, I will be voting no on both of these bills. I think that we are making our state more regressive. I think we are failing to enact reforms that clearly could save state and local governments

substantial amounts of money, and that our inability to act really should require us to stay here until we pass a budget and not to keep providing another dose of legislative methadone as we pass an extender and take away the pain, on ourselves, of not passing the budget and we fail to enactment reforms that our local governments need and that the people of the State of New York deserve.

Thank you, new Madam President. I'll be voting no.

ACTING PRESIDENT McGEE: Senator Liz Krueger.

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

ACTING PRESIDENT McGEE: Senator Liz Krueger, on the bill.

SENATOR LIZ KRUEGER: I too will be continuing my pattern of voting no on the extender bills.

But to highlight a few issues that were not highlighted by my colleague, Senator Schneiderman -- although he did a superb job in his analysis -- in this budget bill, now for the eighth time this year, we have failed

to honor this legislative body's commitment to my city, New York City, in providing it with the authority to bond out money that it needs to do in order to not have a hole in its budget.

This is the money we approved last year as part of the legislative budget to allow restructuring of New York City's $2.5 billion MAC, Municipal Assistance Corporation, debt, which was currently scheduled to be paid off in 2008.

As we know, the Governor vetoed the bill. We overrode the vote. A series of court appeals ended with the recent court appeal reaffirming the soundness of our, the Legislature's restructuring plan.

But yet again, in this extender bill, there is no approval of an appropriation or budget language clarifying the terms of the restructuring. And therefore, the City of New York can still not go forward to borrow to restructure its debt, to borrow the money needed to assure that it does not end its own fiscal year on June 30th with an estimated $500 million hole that it expected not to have

because it believed, as I believed, that we passed this legislation in last year's budget in good faith.

And so again I'm so frustrated that the Governor continues to send us extender bills that don't get us where we need to go and in fact do harm to localities.

And on the issue of harm, this bill yet again extends the continuation of the sales tax on clothing under $110 for another month, which is raising taxes on people who we had promised we would remove that tax on. And of course sales tax disproportionately hurts lower-income and working-income New Yorkers. And this specific tax on clothing items under $110 also disproportionately hurts small businesses.

And so again it frustrates me not only that we don't have a budget for June 1st going forward, but that the extenders that we're offered actually do harm to the people of the State of New York.

Thank you, Madam President. I'll be voting no.

ACTING PRESIDENT McGEE: Thank

you, Senator Liz Krueger.

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

Senator Montgomery.

SENATOR MONTGOMERY: Yes, Madam President. I just want to add my voice to and to explain why I'm going to voting no on this.

This bill that -- in particular, I just want to comment on one aspect of it, and that is the tax on clothing and footwear. And our staff has given an analysis that says approximately 40 to 43 million per month is raised on this particular tax. That is specifically a tax on poor working families who must buy clothing and shoes for themselves and their children. And moreover, it hurts our businesses.

So I definitely think that in the least, we should remove this from our bill. That the Governor is certainly not doing a service to the working families in this state by extending this tax.

And I would also add that I will continue to send a message to the Governor that if I had the power, I would withhold his

paycheck just the same as I'm not being paid while we do not pass a budget and we're not doing the business of the citizens of the State of New York.

So I'm voting no, Madam President.

ACTING PRESIDENT McGEE: Read the last section.

THE SECRETARY: Section 28. This act shall take effect immediately.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 1408 are Senators Breslin, Diaz, Dilán, Duane, Hassell-Thompson, L. Krueger, Lachman, Montgomery, Onorato, Paterson, Sabini, Schneiderman, A. Smith, and Stavisky. Ayes, 45. Nays, 14.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Rath.

SENATOR RATH: Yes, Madam President. Can we please take up Calendar Number 1409.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: In relation to Calendar Number 1409, Senator Johnson moves to discharge, from the Committee on Finance, Assembly Bill Number 11344 and substitute it for the identical Senate Bill Number 7370, Third Reading Calendar 1409.

ACTING PRESIDENT McGEE: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1409, by the Assembly Committee on Rules, Assembly Print Number 11344, an act in relation to suspending until July 31, 2004, and the effectiveness of exemptions.

ACTING PRESIDENT McGEE: Senator Rath.

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

ACTING PRESIDENT McGEE: Yes, there is a message of necessity at the desk.

SENATOR RATH: Move to accept.

ACTING PRESIDENT McGEE: All in favor of the motion to accept the message of

necessity will signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(Response of "Nay.")

ACTING PRESIDENT McGEE: The message is accepted.

Read the last section.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Madam President, on the bill.

ACTING PRESIDENT McGEE: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: We've discussed this bill in the context of the debate over the previous piece of legislation.

This is, in fact, the portion of the budget extender that does include the extension of the sales tax on clothing and footwear priced under $110.

I would like to just raise one more fact in urging everyone to vote no on this bill. The temporary income tax that we passed on the wealthiest New Yorkers is being allowed to expire. That's not in these budget

extenders. But the temporary tax increase in low-income New Yorkers is being extended.

So the message we're sending here is that the families with income less than $15,000 who pay 9.5 percent of their income in sales tax have to bear the burden of keeping the state afloat while the top 1 percent of taxpayers with incomes over $634,000 only pay 1.2 percent of their income in sales tax. They're not being asked to share the burden.

What we need in New York is a less regressive tax structure, a less regressive sales tax law. And I think it is absolutely shameful that this, of all the taxes we could be extending to keep the state afloat, is the tax that is being chosen by the Governor and agree to by the Legislature.

I'm voting no. I urge everyone to vote no.

ACTING PRESIDENT McGEE: Senator Volker.

SENATOR VOLKER: Madam President, in one sense I guess I agree with you, except for two things.

Number one, as far as the business

of the higher income tax, this Legislature and the Governor, we all agreed that we were going to let that lapse. And in a very tough situation last year, by the way, when we did the overrides.

And the law, I tend to agree with you that it's unfortunate that we have to extend the exemption. The reason, by the way, that it's in here -- and I asked the question, Why is it in this extender? And the answer is you have to give the sales tax people notification in advance. So that's why it's in -- you've got to give them -- I don't know whether it's 30 days, 60 days, whatever it is.

But the answer to your question, I think we should repeal this. That is, I think we should let the exemption come into effect. And I would hope that when we finally do the budget that we will allow that to happen. And I am very hopeful that we will do that.

The problem with the other end, the so-called higher end, is that we as a Legislature made a commitment last year, when we did the actual budget -- and the Governor -- to let this lapse. And if we

actually then said no, we're going to let it go, the opponents would immediately say: Well, you know what you did here is you agreed not to do it. And a lot of people, by the way, wealthy people would then say: See, we knew you weren't going to do it.

So I think the answer here is it seems to me -- and although I tend to agree with you that normally we wouldn't let this happen, the truth is we haven't done the budget yet. And when we do the budget, we should let the exemption come into effect for the $110.

But I think unfortunately we're kind of caught in our own problem from last year, because if we didn't, we'd be under even more huge criticism from the other end of the scale.

ACTING PRESIDENT McGEE: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Madam President, I would like officially to welcome Senator Volker to the progressive populist movement. We know with his support we're going to be able to produce a more progressive

tax structure in New York State.

My only correction to my new comrade is that we made a commitment that both of these taxes would expire. This one was supposed to expire January 1st. And we are extending it.

So, you know, if they need some time to adjust, maybe we should put them on notice as of today.

But I certainly do share your belief that we have to get rid of this when we do finally pass a budget. And I appreciate your sentiments that we do have some inequities in our tax system that hopefully we can begin to address.

The tax system in the State of New York over the last decade has become significantly more regressive with taxes and fees that burden working people increasing, while we've been cutting taxes on the very wealthy. And, you know, as -- some of us benefit from those tax increases. But it's not creating the kind of society that we should have in the State of New York.

So again, I appreciate Senator

Volker's comments, but I will be urging everyone to vote no on this today, in the hope that we'll be able to vote yes on a budget that repeals this finally.

Thank you.

ACTING PRESIDENT McGEE: Senator Oppenheimer.

SENATOR OPPENHEIMER: Well, I just want to echo what Senator Schneiderman has said. It is no small wonder that our state has the distinction -- albeit a very negative distinction -- of having the very largest discrepancy of any state in the country between our wealthy and our poor. I think that's a disgrace.

But be that as it may, it is the tax structure in this state which has caused this to occur, and this is just another example of it. We know that in the last 25 years our highest-income earners in our state have seen their taxes reduced, their state taxes reduced 50 percent in the last 25 years.

This is taking away all progressivity out of our progressive income tax. That is the tax that is the fairest tax.

It is paid by people who have the income; otherwise, they wouldn't be paying the tax.

And it is certainly a better tax than what we have experienced growing alarmingly in our county, which is the property tax, where we see people that have been living in their homes for many, many decades and now their homes are worth maybe much more, but their incomes haven't gone up and there's no way that they can afford the property taxes.

And of course the worst tax of all is the sales tax. And I'm glad that we will be seeing perhaps some attention brought to that in the next few weeks, so that our poorest residents are not stuck with paying 9 percent of their income to sales tax.

Thank you. I'll be voting no.

ACTING PRESIDENT McGEE: Any other Senator wishing to speak on the bill?

Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 1409 are Senators Breslin, Diaz, Dilán, Duane, Hassell-Thompson, L. Krueger, Kuhl, Lachman, Montgomery, Onorato, Oppenheimer, Parker, Paterson, Sabini, Schneiderman, A. Smith, and Stavisky. Ayes, 42. Nays, 17.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Rath.

SENATOR RATH: Is there any housekeeping at the desk?

ACTING PRESIDENT McGEE: Yes, there is.

Senator Dilán.

SENATOR DILAN: Madam President, on page 80 I offer the following amendments to Calendar Number 1366, Senate Print Number 6423A, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT McGEE: Thank you, Senator. The amendments are received, and the bill will retain its place on the Third Reading Calendar.

Senator Rath.

SENATOR RATH: Thank you. I move we adjourn until Wednesday, June 2nd, at 3:00 p.m.

ACTING PRESIDENT McGEE: Wait just one moment.

Senator Parker.

SENATOR PARKER: I'd like to request unanimous consent to be recorded in the negative on Calendar Number 1408, Assembly Bill 11343.

ACTING PRESIDENT McGEE: Without objection.

SENATOR PARKER: Thank you.

ACTING PRESIDENT McGEE: Senator Rath.

SENATOR RATH: Madam President, I move we adjourn until Wednesday, June 2nd, at 3:00 p.m.

ACTING PRESIDENT McGEE: On motion, the Senate stands adjourned until Wednesday, June 2nd, at 3:00 p.m.

(Whereupon, at 4:25 p.m., the Senate adjourned.)