NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

June 10, 2004

11:04 a.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will please come to order.

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

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

THE PRESIDENT: With us this morning to give the invocation is Rabbi Hirsch Joseph Simckes, from Hollis Hills Jewish Center in Hollis Hills, New York.

RABBI SIMCKES: June 10, 2004. Five golden rules of effective political leadership.

We remember with sincere respect the life and achievements of past President Ronald Reagan, who is being brought to his final resting place this week. May his soul find peace and his family, loved ones, friends and fellow countrymen find comfort, healing, and inspiration.

Let us pray.

Almighty God, may we learn from the life of our departed past president, who rose

from humble origins to the highest levels of authority and responsibility in our blessed land.

May he not have lived, laughed, loved and led our country in vain; but, rather, may we find illumination for our own choices as we walk along the challenging byways of government service by carefully examining the path he chose and the decisions he made.

Among other things, may we discover our own golden rules of effective political leadership, which might include the following insights.

One, to get what we want done, we often have to give others fair and equal opportunity to get what they want done.

Two, artful and respectful compromise, however, need not mean selling out our basic principles or undermining our fundamental values.

Three, adherence to moral principles and ethical sensibilities are a politician's most powerful weapons in his or her own war for personal survival and the

fulfillment of his or her constituents' deepest needs and dearest dreams.

Four, in the ongoing struggle for the achievement of our legislative and political goals, we dare not take ourselves too seriously. Our sacred and most precious goals, oh, yes; ourselves, no. For we are all but humble and flawed instruments, less than perfect servants of a higher purpose beyond our mortal and limited powers.

Five, above all, we must remember to laugh often, forgive much, and turn the lights out at the end of the day when we return to our own families, spouses, children and friends, for it is their love and their respect and their unconditional acceptance of who we really are, with all our mortal weaknesses and human limitations as well as our talents and our strengths, that truly defines us and reenergizes us every day.

Without them, our true loved ones, our work is hollow, our joy is shallow, our lives are lonely, our courage is weak, and our vision sometimes distorted. God bless them every one, for enabling us to function every

day, every week. They truly are the wind beneath our wings. Without them, we falter. With them, and perhaps because of them, we are capable of soaring to new heights.

Government service is a rare privilege. We thank You, Lord, for that privilege and pledge ourselves for that privilege to be forever grateful.

Amen.

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Wednesday, June 9, the Senate met pursuant to adjournment. The Journal of Tuesday, June 8, was read and approved.

On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from

state officers.

Motions and resolutions.

Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Madam President.

Amendments are offered to the following Third Reading Calendar bills:

The first two, sponsored by myself, both on page number 22, Calendar Numbers 646 and 647, Senate Print Number 5929 and Senate Print Number 5930;

By Senator LaValle, page number 40, Calendar Number 1022, Senate Print Number 282A;

By Senator Morahan, page number 42, Calendar Number 1039, Senate Print Number 6020;

By Senator LaValle, page number 44, Calendar Number 1069, Senate Print Number 335A;

By Senator Maziarz, page number 44, Calendar Number 1077, Senate Print Number 6152;

By Senator Balboni, page number 48, Calendar Number 1169, Senate Print Number

7134A.

I now move that these bills retain their place on the order of third reading.

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

SENATOR FUSCHILLO: Madam President, on behalf of Senator Hoffmann, I wish to call up Senate Print Number 7148, recalled from the Assembly, which is now at the desk.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 878, by Senator Hoffmann, Senate Print 7148, an act authorizing the Town of Cicero.

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

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

(The Secretary called the roll.)

THE SECRETARY: Ayes, 40.

SENATOR FUSCHILLO: I now offer the following amendments.

THE PRESIDENT: The amendments are received.

SENATOR FUSCHILLO: Madam President, on behalf of Senator Bonacic, I wish to call up Senate Print Number 5172, recalled from the Assembly, which is now at the desk.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 173, by Senator Bonacic, Senate Print 5172, an act to amend the Agriculture and Markets Law.

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

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

(The Secretary called the roll.)

THE SECRETARY: Ayes, 40.

SENATOR FUSCHILLO: I now offer the following amendments.

THE PRESIDENT: The amendments are received.

SENATOR FUSCHILLO: Madam President, on behalf of Senator Larkin, I wish

to call up Senate Print Number 5864, recalled from the Assembly, which is now at the desk.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 175, by Senator Larkin, Senate Print 5864, an act to amend the Agriculture and Markets Law.

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

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

(The Secretary called the roll.)

THE SECRETARY: Ayes, 40.

SENATOR FUSCHILLO: I now offer the following amendments.

THE PRESIDENT: The amendments are received.

Senator Seward.

SENATOR SEWARD: Yes, Madam President. I would like to place a sponsor's star on Calendar Number 811, Senate Print Number 6076.

THE PRESIDENT: The bill will be starred at the sponsor's request.

SENATOR SEWARD: And also, Madam President, yesterday Calendar Number 95, S1487, passed while I was out of the chamber at a meeting. And I would just like the record to show had I been present, I would have voted in the negative.

THE PRESIDENT: The record will so reflect.

SENATOR SEWARD: Thank you.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Madam President, I believe there are substitutions at the desk. If we could make them at this time.

THE PRESIDENT: Yes, there are, Senator.

The Secretary will read.

THE SECRETARY: On page 7, Senator Golden moves to discharge, from the Committee on Rules, Assembly Bill Number 9833 and substitute it for the identical Senate Bill Number 5898, Third Reading Calendar 203.

On page 21, Senator Morahan moves to discharge, from the Committee on Rules, Assembly Bill Number 11083A and substitute it for the identical Senate Bill Number 5972A,

Third Reading Calendar 576.

On page 33, Senator Volker moves to discharge, from the Committee on Rules, Assembly Bill Number 11058A and substitute it for the identical Senate Bill Number 6716A, Third Reading Calendar 905.

On page 42, Senator Morahan moves to discharge, from the Committee on Rules, Assembly Bill Number 9078B and substitute it for the identical Senate Bill Number 5657, Third Reading Calendar 1037.

On page 42, Senator Morahan moves to discharge, from the Committee on Rules, Assembly Bill Number 9749A and substitute it for the identical Senate Bill Number 6139, Third Reading Calendar 1040.

On page 42, Senator Morahan moves to discharge, from the Committee on Rules, Assembly Bill Number 10019B and substitute it for the identical Senate Bill Number 6462, Third Reading Calendar 1046.

On page 45, Senator Maltese moves to discharge, from the Committee on Rules, Assembly Bill Number 6619 and substitute it for the identical Senate Bill Number 147,

Third Reading Calendar 1087.

On page 54, Senator Farley moves to discharge, from the Committee on Rules, Assembly Bill Number 10814A and substitute it for the identical Senate Bill Number 6772, Third Reading Calendar 1262.

On page 59, Senator Breslin moves to discharge, from the Committee on Rules, Assembly Bill Number 8394A and substitute it for the identical Senate Bill Number 4972, Third Reading Calendar 1336.

On page 68, Senator Bruno moves to discharge, from the Committee on Rules, Assembly Bill Number 10902 and substitute it for the identical Senate Bill Number 6747A, Third Reading Calendar 1476.

And on page 71, Senator Golden moves to discharge, from the Committee on Rules, Assembly Bill Number 10152 and substitute it for the identical Senate Bill Number 7373, Third Reading Calendar 1503.

THE PRESIDENT: Substitutions ordered.

Senator Skelos.

SENATOR SKELOS: Madam President,

if we could go to the noncontroversial reading of the calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 84, by Senator Skelos, Senate Print 556A, an act to amend the Family Court Act and the Criminal Procedure Law, in relation to the age of child witnesses.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 40.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 303, by Senator Bruno, Senate Print 6023A, an act to amend the Public Authorities Law, in relation to extending.

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

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 40.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 337, by Senator Padavan, Senate Print 4258A, an act to amend the Retirement and Social Security Law, in relation to employment of retired New York City Police and Fire Department personnel.

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, 42.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number

342, by Senator Bonacic, Senate Print 4443A, an act to amend the Tax Law, in relation to issuance of lottery sales agent licenses.

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: Those recorded in the negative on Calendar Number 342 are Senators L. Krueger, Padavan, and Schneiderman. Ayes, 39. Nays, 3.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 345, by Senator Mendez, Senate Print 3444A, an act to amend the Labor Law, in relation to in-person assistance.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 60th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator Krueger, to explain your vote.

SENATOR LIZ KRUEGER: Thank you, Madam President.

I vote for this bill because I think it's a good proposal to ensure that people who are applying for unemployment benefits have the ability, when they have language issues, when they have disability issues, to actually go into an office and talk to a person.

However, I want to note for the record this bill should have had a fiscal note attached, because clearly in the design of this bill we would be completely reorganizing the Department of Labor, who was recently reorganized to do away with in-person office arrangements for people applying for unemployment benefits.

It's a one-house bill. I would suspect that the Governor, if this passed both houses, would probably veto the bill because it would require a complete reorganization, yet again, of the State Department of Labor.

So I vote for it because it's a

good idea. But it's exactly the type of legislation I think should be going through (a) the budget process and much deeper analysis before we move these types of bills through the house.

Thank you, Madam President.

THE PRESIDENT: The Secretary will announce the results.

THE SECRETARY: Ayes, 46.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 366, by Senator Golden, Senate Print 5745C, an act to amend the General Business Law, in relation to cyber-cafes.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 46.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number

382, by Senator Skelos, Senate Print 6043B, an act to amend the Penal Law and others, in relation to prohibiting sex offenders.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 46.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 458, by Senator Wright, Senate Print 6024 --

SENATOR SKELOS: Lay it aside for the day.

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

THE SECRETARY: Calendar Number 547, by Senator LaValle, Senate Print 1117A, an act to amend the Vehicle and Traffic Law, in relation to authorizing.

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, 46.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 557, by Senator Rath, Senate Print 6131A, an act to amend the Vehicle and Traffic Law, in relation to restrictions.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 180th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 46.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 573, by Senator Johnson, Senate Print 5895A, an act to authorize the Calvary Chapel Church to file applications.

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

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 613, by Senator Maltese, Senate Print 6478, an act to amend the Labor Law, in relation to expanding quota penalty provisions.

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, 46.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 624, by Senator Larkin, Senate Print 1188, an act to amend the Penal Law, in relation to

obscene sexual performance.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 10. This act shall take effect on the first of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 46.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 635, by Senator Johnson, Senate Print 6557 --

SENATOR SCHNEIDERMAN: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 663, by the Assembly Committee on Rules, Assembly Print Number 10967, an act to amend the Estates, Powers and Trusts Law, in relation to the termination.

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, 46.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 676, by the Assembly Committee on Rules, Assembly Print Number 11162A, an act to amend the Private Housing Finance Law, in relation to the powers of the New York State Housing Finance Agency.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 46.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 683, by Senator Fuschillo, Senate Print 6638, an act to amend the General Business Law, in relation to the practice of barbering.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 46.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 766, by Senator Rath, Senate Print 6738A, an act to amend the Education Law, in relation to the creation of school district child nutrition.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 48.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 768, by Member of the Assembly Lopez, Assembly

Print Number 5513, an act to amend the Family Court Act, in relation to venue.

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, 48.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 775, by Senator Maziarz, Senate Print 6538, an act to amend the Real Property Tax Law, in relation to the procedure.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 48.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number

791, by Member of the Assembly DiNapoli, Assembly Print Number 3796, an act to amend the Public Authorities Law, in relation --

THE PRESIDENT: Would the members please take their conversations out of the chambers, please. Thank you.

The Secretary will continue to read.

THE SECRETARY: An act to amend the Public Authorities Law, in relation to rates charged.

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, 48.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 808, by Senator Seward, Senate Print 3312A, an act to amend the Insurance Law, in relation to accounting.

THE PRESIDENT: Read the last

section.

THE SECRETARY: Section 11. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 48.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 809, by Senator Seward, Senate Print 4532A --

SENATOR MARCELLINO: Lay the bill aside for the day, please.

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

THE SECRETARY: Calendar Number 872, by Member of the Assembly Morelle, Assembly Print Number 10321, an act to amend Chapter 912 of the Laws of 1920 relating to the regulation of boxing.

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, 48.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 895, by Senator Golden, Senate Print --

SENATOR MARCELLINO: Lay the bill aside for the day, please.

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

THE SECRETARY: Calendar Number 898, by Senator Little, Senate Print 6604, an act to amend the Real Property Tax Law, in relation to apportionment.

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, 48.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 899, by Senator Little, Senate Print 6605, an act to amend the Real Property Tax Law, in

relation to valuation date.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 48.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 982, by Senator M. Smith, Senate Print 6685, an act authorizing the City of New York to reconvey its interest.

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

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 48.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number

1046, substituted earlier today by Member of the Assembly Karben, Assembly Print Number 10019B, an act to authorize the Mt. Zion Sanctuary of Rockland County.

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

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1116, by Senator Trunzo, Senate Print 2259, an act to amend the Penal Law, in relation to unlawful sale of tobacco products to a child.

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, 48.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1234, by the Assembly Committee on Rules, Assembly Print Number 11104, an act to amend the Social Services Law, in relation to increasing the standards.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 4. This act shall take effect December 31.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1284, by Senator Robach, Senate Print 6215A, an act to amend the Civil Service Law, in relation to granting leaves of absence.

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 1289, by Senator Robach, Senate Print 6397, an act to amend the Retirement and Social Security Law, in relation to additional pension benefits.

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, 49.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1321, by Member of the Assembly DiNapoli, Assembly Print Number 10052, an act to amend the Environmental Conservation Law, in relation to requiring.

THE PRESIDENT: Read the last --

SENATOR MARCELLINO: Lay it aside

for the day.

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

THE SECRETARY: Calendar Number 1323, by the Assembly Committee on Rules, Assembly Print Number 10818, an act to amend the Environmental Conservation Law and the State Finance Law, in relation to the creation of a venison donation account.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1439, by Senator Spano, Senate Print 2917B, an act to amend the Education Law, in relation to the funding of certain approved nonpublic special education programs.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 5. 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 1451, by the Assembly Committee on Rules, Assembly Print Number 10876, an act to amend Chapter 841 of the Laws of 1987 relating to the combined senior citizens services center.

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 1471, by the Assembly Committee on Rules, Assembly Print Number 9072, an act to legalize, validate, ratify and confirm certain

actions of the West Valley Central School District.

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 1473, by Senator DeFrancisco, Senate Print Number 6526, an act to authorize the Town of Camillus in the County of Onondaga.

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, 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1474, by Senator Wright, Senate Print 6616 --

SENATOR SCHNEIDERMAN: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 1475, by Senator Volker, Senate Print 6653, an act to amend Chapter 689 of the Laws of 1993 amending the Criminal Procedure Law.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1477, by Senator LaValle, Senate Print 6849A, an act to amend --

SENATOR OPPENHEIMER: Lay it aside.

THE PRESIDENT: The bill is laid

aside.

THE SECRETARY: Calendar Number 1478, by Senator Padavan --

SENATOR MARCELLINO: Lay it aside for the day.

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

THE SECRETARY: Calendar Number 1479, by Senator Saland, Senate Print 7343, an act authorizing the Chatham Central School District to provide.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1481, by Senator Rath, Senate Print 1679A, an act to amend the Education Law, in relation to deleting the requirement.

THE PRESIDENT: Read the last

section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1482, by Senator DeFrancisco, Senate Print 2289, an act to amend the General Obligations Law, in relation to the statutory short form.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1483, by Senator Farley, Senate Print 4387A, an act to amend the Banking Law, in relation to making certain technical corrections.

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, 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1484, by Senator Lachman, Senate Print 4649, an act to amend the Public Authorities Law, in relation to prescribing penalties for violations.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1485, by Senator Hannon, Senate Print 6137, an

act authorizing an exemption for specified real property owned.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

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

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1488, by Senator DeFrancisco, Senate Print 6985, an act to amend the Real Property Law, in relation to real estate agency.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 3. This act shall take effect January 1, 2005.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

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

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1489, by Senator Fuschillo, Senate Print 7008A, an act to amend the Education Law and the Penal Law, in relation to improving.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 11. This act shall take effect on the first of September.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1490, by Senator Saland, Senate Print 7019, an act to grant Linda LaPierre a retroactive membership and service credit.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1495, by Senator Padavan, Senate Print 7257, an act to amend the Real Property Actions and Proceedings Law and Chapter 375 of the Laws of 1999.

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, 51.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1496, by the Assembly Committee on Rules, Assembly Print Number 11080A, an act to amend the Public Officers Law, in relation to the residency of judges.

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, 51.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1499, by Senator Padavan, Senate Print 7342, an act to amend the Tax Law and the Administrative Code of the City of New York, in relation to evasion.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 5. This act shall take effect on the 90th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1500, by Senator Little, Senate Print 7352, an act to amend the County Law, in relation to authorizing wireless communications.

THE PRESIDENT: There is a local fiscal impact note at the desk.

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1501, by Senator Saland, Senate Print 7359, an act to amend Chapter 472 of the Laws of 1998, amending the Education Law.

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, 51.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1502, by the Assembly Committee on Rules,

Assembly Print Number 11349, an act to amend the Executive Law, in relation to the appointment of members of the active military.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

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

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1503, substituted earlier today by the Assembly Committee on Rules, Assembly Print Number 10152, an act to authorize the United Hebrew Community of New York, Inc.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50. Nays,

1. Senator Bonacic recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1504, by Senator Rath, Senate Print 7374, an act relating to the disposition of surplus monies of certain Town of Darien water districts.

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, 51.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1505, by Senator Golden, Senate Print 7376, an act to amend the --

SENATOR MARCELLINO: Lay the bill aside for the day, please.

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

THE SECRETARY: Calendar Number

1506, by Senator DeFrancisco, Senate Print 7383, an act to amend the Labor Law, in relation to limiting reduction of unemployment insurance benefits.

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, 51.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1512, by Senator Spano, Senate Print 7282A, an act to authorize the creation of an additional position of town justice.

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, 51.

THE PRESIDENT: The bill is

passed.

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

SENATOR MARCELLINO: Thank you, Madam President.

May we move to the controversial calendar, please. Can we start with Calendar Number 1474, Senate Print 6616, by Senator Wright.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 1474, by Senator Wright, Senate Print 6616, an act to amend the Public Authorities Law.

SENATOR SCHNEIDERMAN: Explanation.

SENATOR LIZ KRUEGER: Explanation, please.

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

SENATOR WRIGHT: Thank you, Madam President.

The bill before us amends the Public Authorities Law to authorize the New York State Power Authority to provide

low-cost energy to the military installations throughout New York State.

This is an economic development initiative that is a result of the recommendations from the Governor's Task Force on Military Bases, and it's part of New York's preparation as we approach the next federal round of base closure and renewal, so that we are in a position to put the best face on keeping military installations in the State of New York.

This would have an impact on in excess of 50,000 jobs in the state, and is very capable to what other states are doing as they prepare for the next round of base closure review.

For example, in Kentucky, they have just authorized a significant reduction in electricity rates to Fort Knox. And the same occurring in the state of California.

So New York needs to position itself. This is consistent with the previous authorities granted to the Power Authority for economic development purposes.

THE PRESIDENT: Senator

Schneiderman. Or Senator Krueger.

SENATOR LIZ KRUEGER: Thank you, Madam President.

If the sponsor would please yield, through you, Madam President.

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

SENATOR WRIGHT: I will, Madam President.

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

SENATOR LIZ KRUEGER: Thank you.

When the task force made its recommendations on base closings, did they speak about this specific proposal and how many bases they thought this would affect?

SENATOR WRIGHT: I don't have the task force recommendation with me, so I cannot speak to that specifically.

It would be available to be extended to all eight bases in the state of New York.

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

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

SENATOR WRIGHT: I will continue to yield, Madam President.

THE PRESIDENT: You may proceed, Senator.

SENATOR LIZ KRUEGER: Thank you.

Did the work of the task force lead to any recommendations or analyses of how many bases are potentially at risk of being closed?

SENATOR WRIGHT: It did not, because that is really premature at this point. The way the federal government approaches BRAC is that literally all bases are subject to review by the federal commission.

In turn, all you can best do is make an internal preliminary analysis, as each base does, trying to identify strengths and weaknesses based on previous BRAC decisions and reviews.

Like anything else in the economic development arena, New York has to compete against other installations in other states across the nation.

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

THE PRESIDENT: Senator, do you yield for another question?

SENATOR WRIGHT: I will, Madam President.

THE PRESIDENT: You may proceed, Senator.

SENATOR LIZ KRUEGER: Thank you.

So we don't know how many bases this might affect. And you describe it as an economic development proposal. And basically you're describing it as a job retention program proposal.

Do you have any estimate of what the cost of this could be to the State of New York?

SENATOR WRIGHT: No. As you'll note in the memo, we don't reflect that, because it's not known. It's all predicated on current costs at the installations, what the rates would be relative to the Power Authority. That would be determined by

whether or not the Power Authority generated its own power or in fact purchased that power.

So there are a number of variables that cannot be predicted.

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

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

SENATOR WRIGHT: I'll continue to yield, Madam President.

THE PRESIDENT: You may proceed with a question.

SENATOR LIZ KRUEGER: Thank you.

I appreciate the answer, Senator Wright.

Because this task force apparently came out with a number of recommendations, are there other recommendations that would in fact potentially cost the State of New York some amount of money in their budget that we can anticipate bills coming out on the floor for? Or is there a reason why we're doing this bill separate from potentially other bills with the same goal?

SENATOR WRIGHT: Well, this bill is being offered because it is a recommendation -- it's a departmental bill sent to us by ESDC. And I think that's consistent with the administration's plan as they address the recommendations.

SENATOR LIZ KRUEGER: Thank you.

Madam President, on the bill.

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

SENATOR LIZ KRUEGER: Thank you.

I appreciate the Senator's answers to my questions.

But it still leaves me with the big question, why should we, the State of New York, subsidize energy costs for the federal government when in fact we know that we don't get our fair share of federal funds?

And in fact, just last week this house passed a resolution pointing out to the federal government that when it comes to Medicaid reimbursement, they are shorting us multiple billions of dollars a year. That is just one place where the federal government doesn't provide to New York State our fair

share of federal money.

And so at a time when we are in a fiscal crisis, we can't figure out how to pay for the schools and the education of our children, we can't come to an agreement around the Campaign for Fiscal Equity lawsuit with a pending deadline of July 30th, we talk about reducing Medicaid funding to our -- for health care and other health care programs in the state of New York, I don't really understand why we would do a bill that would be an open-ended reduction in costs for energy for the federal government's well-being at the cost to the taxpayers of New York State, money we won't have available for other programs, including, potentially, our Power for Jobs program.

In the memo attached to the bill, it talks about this as being a similar model to the Power for Jobs program. But we know that that program is actually sunsetting in its funding stream. We know that that's a capped program with far more its entities hoping to get into the Power for Jobs program than we've been able to do because of our

limited resources.

I would argue if you view this as a request for an extension to Power for Jobs for the Defense Department, that we have other New York industries who are in desperate need of economic development assistance to continue their programs.

We have daycare centers, we have school districts, we have hospitals, we have universities who all complain that their cost of power is actually so high that it's limiting their ability to hire teachers or nurses.

So it seems to me, if one looks at this as economic development money, one has to evaluate it in the way we do other economic development projects -- what will it cost, what is the win, what is the specific trade-off. Not an open-ended offer to the Defense Department to consider reducing their energy costs.

From the perspective of who are those in greatest need of making sure that the State of New York assists as best we can, within our limited budget, to help them meet

their basic needs, I think we'd have to hold up military bases against all these other not-for-profit and governmental and business interests who also say the cost of energy is doing them great harm.

And I also think it's a dangerous precedent for us to simply offer an open-ended, no specific dollar amount arrangement to the federal government that we will lower their cost of energy in our state.

I think the fact is that we should be looking at the question of military base closings from a broader perspective of what do we know is real, what do we know is not, what's the package that New York State might be willing to go forward with for specific bases, with a true analysis of the risks to the State of New York and the costs of closing bases and keeping them open.

And I think that if this is a side door to an expansion of the Power for Jobs program, that we have higher priorities for lower-cost power subsidized by the people of the state.

And if this is an economic

development proposal, we have so many problems with how we are making decisions legislatively around exempting companies and businesses and even governments from paying their fair share of taxes and costs to the State of New York, that I think on all these levels there are good reasons for people to not vote for this bill.

And I hope everyone will think about that, and I will be voting against this bill.

Thank you, Madam President.

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

Senator Wright.

SENATOR WRIGHT: Madam President, on the bill.

THE PRESIDENT: You may proceed on your bill.

SENATOR WRIGHT: Thank you.

I just want to point out a couple of misconceptions.

First of all, under the existing Power for Jobs programs, not-for-profits are eligible to apply, as are small businesses, as

are health care providers and hospitals.

Secondly, the New York State Power Authority provides numerous low-cost power throughout this state, including the Metropolitan Transportation Authority, the Port of New York. So there are a number of examples where low-cost energy is provided to make it competitive.

This is but an addition to that, reflecting the significant role that military installations play in the economy of this state. Fort Drum alone produces in excess of $520 million annually to the economy of the State of New York. And that's just but one of the eight installations.

We're talking in excess of 50,000 jobs. We are talking about a significant part of the economy of this state that historically has been recognized within the state's economic development programs.

More importantly, there have been at least 100 bases, including New York, that may be in line for closure. It would be very nice if in fact we had the opportunity to submit competitive proposals, but we do not.

We need to be in a position whereby we resolve any outstanding or potential weakness that could impact our ability to retain that base.

This bill is an attempt to do that. I encourage my colleagues to vote in the affirmative, as I intend to.

Thank you.

THE PRESIDENT: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President.

There are really three issues that I think are being raised here today. The first is essentially a philosophical issue about how you do economic development in this state.

There have been numerous articles outlining two different approaches to economic development for states. One is called the high-road approach, where you invest in infrastructure, cheap power, good schools and try and attract all businesses.

The other is called the low-road approach -- unfortunately, which is what we have been following in New York State in

recent years -- by which we sort of bid against ourselves in a race to the bottom, where we bid against other states in efforts to cut costs, cut wages, cut benefits, cut health care entitlement programs.

I respectfully submit that the low-road policy that has been in place in the current administration has been proven to be an utter failure in most of upstate New York.

And I'm sympathetic to Senator Wright's concerns, but let's face it, Central and Western New York have not just lost jobs; as the last census indicated, they have a million less people than they had in 1990. That's not a recession, that's a catastrophe.

The low road, though, of trying to offer cheaper power, trying to cut wages, trying to cut benefits just doesn't work. The race to the bottom does not work for state governments.

And I think that one of the things that is at issue here, if you step back and look at it this year with our fight over school funding, is whether we're going to put the money up to invest in that one product

which we know produces long-term economic growth, and that's a well-educated workforce.

So that's the primary issue that Senator Krueger, I think, was raising when she referred to economic development policies.

The second issue is an issue of equity. And I think anyone in this chamber who does not find it galling for us to have to subsidize the federal government when we are kicking in billions of dollars every year more than we get back -- where they just, in the context of homeland security, have enacted a program that provides many times the resources on a per-capita basis to Wyoming for protecting themselves against terrorism than it does us -- how can you not find that galling?

Maybe we're not effectively enough lobbying the federal government. Maybe we don't have the connections with this administration we need to have. I don't know what to say.

This is an abuse of the State of New York by the federal government. And the notion that we're then going to have to

subsidize the federal government further in order to try and prevent them from closing our military bases, I think is something that anyone in this chamber should find to be offensive.

The third problem is really a practical legislative problem. And that's that as written -- and again, I'm afraid this is doomed to fall into the grand hopper of one-house bills this session -- as written, there's really no parameter set, there are no guidelines set for how the authority is going to enter into contracts.

I mean, all this says is that on the recommendation of the Governor's task force and as deemed feasible and advisable by the trustees -- can't get any vaguer than that -- the authority may enter into contracts.

We're not going to pass a law that has no guidelines. The Assembly is not going to pass a law that has no guidelines.

So for all of these reasons, I'm going to voting against this bill, although I'm absolutely sympathetic to the need to

maintain these jobs. I'm absolutely sympathetic to the plight of the areas around these military bases. But that represents a broader failure of economic policy and the collapse of the economic development programs of this administration.

This is not the solution. We're not going to solve our problem with a race to the bottom. We're never going to compete with lower-cost states for military bases. You might provide a little cheaper power. What's next -- cutting wages? Cutting workers' compensation? Cutting benefits? Cutting the requirement that health care is provided?

We're not going to outbid Mississippi in a race to the bottom. It's the wrong approach to economic development. I vote no, Madam President, and I urge my colleagues to vote likewise.

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

Then the debate is closed.

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 1474 are Senators L. Krueger and Schneiderman. Ayes, 50. Nays, 2.

THE PRESIDENT: The bill is passed.

Senator Marcellino.

SENATOR MARCELLINO: Thank you, Madam President. Can we move now to Calendar Number 1477, Senate Print 6849A.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 1477, by Senator LaValle, Senate Print 6849A, an act to amend the Education Law.

SENATOR OPPENHEIMER: Explanation.

THE PRESIDENT: Senator LaValle.

SENATOR LaVALLE: Thank you, Madam President.

This legislation is filed to deal with some problems that I will explain that are faced by parents of students who are

instructed at home. We call them home-schoolers. There are some 20,000 to 25,000 students in this state that are being taught at home by their parents.

This started, home schooling started when parents that wanted to develop some religious awareness couldn't afford, maybe, to send their students to a private or parochial school and wanted to do this at home. But today, more and more parents, particularly in inner cities, where they find that the schools are failing and do not have the financial wherewithal to send their child to a private school, are using this as an alternate route to instruct their children at home.

We have found that there are some routes that individuals can take when they want to go and receive a postsecondary degree. One of the problems we find, that if there is not compliance, a student can be ineligible for our TAP program. They may be eligible for Pell grants, but not under our TAP program.

They have basically three routes. One is the GED degree, that they can take the

exam and would be eligible then to attend a postsecondary school.

There's a second route, under the commissioner's regulations, that allows a student to take 24 credit hours and, after completion of a sequenced, specific program, receive a certificate of equivalency and allow them to then receive their TAP award and their degree.

We have found that many students that have not taken this properly sequenced 24-credit-hour program got to the end and someone said, Well, you don't have a high school diploma, you don't have an equivalency, you don't have a GED, you can't get your degree. So they have to go back and either take the GED exam or do the 24-hour sequencing or do something else.

So we found that some students -- probably not many, but because, today, home schoolers kind of are networked and I think they understand what the rules of the road are.

The last one is through equivalency. And that's what this bill is all

about. The amended version, 6849A, provides a process, provides a process for the student and the parent to receive the proper textbooks, an understanding that they have to take national standardized exams and achieve a certain level of success on those exams. And this process has to go on for a four-year turnaround.

Now, one of the reasons that we have filed this bill, and probably one of the reasons that my colleagues have asked for an explanation, is that we have found that the school districts and the school superintendents have to be involved in this process. And they have, under whatever regulations are in effect, been unwilling to be cooperative.

And this is very, very upsetting. Because in all candor, there are too many superintendents today that are part of the problem rather than part of the solution. That they should be energized, but they view this as just another piece of paper that they have to work at, sign off on, and it's just a pain in the neck.

This legislation provides for checks for the superintendent. If, at the beginning of the process of each year, the superintendent feels that the parent is not meeting adequately the requirements, the superintendent doesn't sign off. The superintendent does, after four years, does have to sign off that equivalency was achieved over the four years.

Now, if that superintendent says, Well, they don't want to use the right books, they didn't take the standardized exams, they didn't pass, I'm not going to sign off, the parents and the students, under this legislation, under appeals under Section 4, can go before the commissioner and say, Well, we believe that we did abide by the requirements and the process of the law.

So this legislation and its provisions is a process to get the superintendent involved in the process, to get the school district involved in the process, because they have been unwilling to do so. And this legislation provides for proper safeguards and appeals for the parents and the

students should, under this legislation, the school districts overreach, not comply, throw hurdles into the process.

So I think it's a well-balanced approach to dealing with the problem.

Now, many of us have been lobbied by parents of home-schoolers who have wanted greater rights. Our colleague Senator Robach has such a bill, that would be more inclusive in terms of involvement and so forth.

This bill is narrowly carved out to deal with the equivalency issue, ensure that they can qualify for a college degree without going through hoops, and to receive TAP. And that's what this bill achieves to do, and hopefully in a reasonable way.

THE PRESIDENT: Senator Oppenheimer.

SENATOR STAVISKY: People mix us up.

THE PRESIDENT: You may both speak together, if you prefer.

(Laughter.)

SENATOR OPPENHEIMER: Thank you, Senator LaValle. And I can hear your

frustration. And I can understand well what you're saying.

But that doesn't address a couple of my concerns. Which is you have developed a process -- and you mention this, as that being the paramount issue. But the concern I hear is that there is no one really doing the quality of -- verifying what the quality of that education is.

So let me just ask you a couple of quick questions, if I may, if you will yield.

For example, why are there no requirements that the private or public school teacher judging the quality of the student's work either be a certified teacher -- or could it be a substitute teacher? There's absolutely no specificity about the teacher's quality and who we're dealing with, to determine what the quality of the work is.

SENATOR LaVALLE: I want to go to that section, because we do. They have to meet certain requirements. And one deals with a portfolio and also deals with, I believe, a certified teacher, Senator. We'll get that section for you.

SENATOR OPPENHEIMER: Okay.

SENATOR LaVALLE: Section D, line 42. It says portfolio of the student's work or equivalent by a private or public school teacher, indicating the child is progressing according to his ability at the end of the equivalent of one year of study.

Now, if the individual is viewing this portfolio in the public school, Senator, they are a certified teacher.

SENATOR OPPENHEIMER: But it doesn't say that it could not be a private school teacher, a substitute teacher. There's no -- nothing specific.

SENATOR LaVALLE: Senator, they would have -- they would have to be, if they're in the public school -- language is -- they have to be certified.

Now, I mean, I don't -- I think someone is reaching here to say that a substitute teacher is going to be given this responsibility by the school. I think they are trying to be part of the problem rather than part of the solution, Senator.

SENATOR OPPENHEIMER: Okay.

Thank you, Senator. If you'd yield again.

SENATOR LaVALLE: Yes, I will.

SENATOR OPPENHEIMER: And by the way, in New York City we have an awful lot of teachers that aren't certified.

But let me go to my next question, which is achieving a score of above a 33rd percentile, is that really substantially equivalent to the 55 percentile that's required of the Regents exam?

SENATOR LaVALLE: I'm told that this is a State Ed regulation at this particular time. That's the standard.

SENATOR OPPENHEIMER: Thirty-three?

SENATOR LaVALLE: Thirty-three, yeah.

SENATOR OPPENHEIMER: All right. Thank you, Senator, very much.

On the bill.

ACTING PRESIDENT WRIGHT: Senator Oppenheimer, on the bill.

SENATOR OPPENHEIMER: All right. Thank you, Senator, very much.

The fact is that the

superintendents, although they may have been intransigent about doing this work, if -- you know, I have to believe that Senator LaValle is describing a situation that existed. Still and all, I think the concern that they have about signing off, that -- you know, they'll sign off that proper procedures have been followed, but they're concerned that the quality of education has really not been determined. And they would like to see a greater assurance that that quality will be monitored and that they can rely on the quality of the education.

I'll be voting no, because I feel that they're correct in saying who is it that determines this quality of work, is this someone that we have confidence in that the curricula is being met.

And I'm also concerned about meeting only the 33rd percentile in order to assure, you know, that the education that has been received is of a nature similar to the one which requires a much higher percentage for earning a Regents diploma in our state.

So until I see an improvement in

this legislation, which I assume will happen, I'm going to be voting no.

ACTING PRESIDENT WRIGHT: Senator Stavisky.

SENATOR STAVISKY: Mr. President, I understand Senator LaValle's concerns and frustrations with the system. But I am not sure that that legislation will solve the problem of the recalcitrant superintendents.

It seems to me that perhaps the best way to accomplish the result that I think we all want to achieve is through regulations through the Commissioner of Education, the Commissioner of Education's office, which leads me to one question.

I don't want to belabor the point, but if the Senator would yield for just one question.

ACTING PRESIDENT WRIGHT: Will the sponsor yield?

SENATOR LaVALLE: Yes.

ACTING PRESIDENT WRIGHT: The sponsor will yield.

SENATOR STAVISKY: Aren't the Regents undertaking a review of this whole

issue right now? And if so, wouldn't we be wiser to wait until they come up with some recommendations?

SENATOR LaVALLE: The answer is yes, the Regents are exploring and reviewing their regulations.

But throughout this legislation we make cross-references back to the regulations of the commissioner. So whatever they are looking at, it would seem, would not conflict with this legislation.

But the answer to your question is yes, they are doing a review.

SENATOR STAVISKY: Yeah, that's really -- I don't want to belabor the point, Mr. President. And I thank Senator LaValle.

I'm also troubled by the fact that all we're asking the students to achieve is to reach the 33rd percentile. It seems to me that students can do a lot better.

Oh, I did have one more question, if the Senator would yield to one other question.

ACTING PRESIDENT WRIGHT: Senator, would you yield?

SENATOR LaVALLE: Yes.

ACTING PRESIDENT WRIGHT: The Senator yields.

SENATOR STAVISKY: What has been the experience on standardized testing with home-schooled students versus public or private school students?

SENATOR LaVALLE: I am being told by my counsel that on SATs and ACT exams that home-schoolers are achieving higher levels of success than those not being home-schooled.

SENATOR STAVISKY: And what about the Regents exams?

SENATOR LaVALLE: They don't take the Regents exams.

SENATOR STAVISKY: Thank you, Mr. President.

And I plan to vote against this. Until such time as the Regents come up with their report, I think it would be wise to hold off such a decision.

ACTING PRESIDENT WRIGHT: Senator Little.

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

The number of students that are choosing home schooling, their families are choosing home schooling in my district has risen. And one of the things that has become a problem for them, which this bill would solve -- and I commend Senator LaValle for putting this bill on the floor.

For instance, I have a young gal who was home-schooled by her parents throughout, kindergarten through high school, took the tests, is at Clinton Community College receiving a 4.0. Before she can graduate from Clinton Community College, she must go back and get a GED.

Now, will she pass the GED? Of course she'll pass the GED. But the idea is that it diminishes the results of her home-schooling education by classifying it as the equivalent -- having to pass the GED to say that she got enough home-school education.

And they find that this is -- it's almost an insult to them, in effect, because, as Senator LaValle mentioned, there are so many regulations and forms and paperwork.

This isn't somebody that's just out

there that shows up at the end of their high school years and says, I'd like a certified high school equivalency thing. They have to be showing reports at every stage along the way, every so many months. They have to have a plan. They certainly follow the rules of education and provide a good education. And it is their choice.

And if they're providing it according to the regulations and all, I believe that they should be able to get a high school certification that recognizes the education that they have received at home.

Therefore, I will be voting in favor of this bill, and I would encourage others do so.

And again, I thank Senator LaValle for putting this bill forward.

ACTING PRESIDENT WRIGHT: Senator Robach.

SENATOR ROBACH: Yes, Mr. President. I'm sure after I'm done speaking I will change all my colleagues' minds and they'll vote yes for this bill.

We have one of the largest amounts

of home-schoolers in Monroe County. And I want to rise to support this legislation. And as my colleague Senator LaValle pointed out, I think this is just a baby step. I hope we'll be back, I hope the Regents' recommendations will either be more far-reaching.

Continuing on what Betty Little said, up to two years ago this was never an issue. And only until we started putting all the stress on one test, which many of us don't know is the right way for the general population group, was this ever an issue.

But for these kids and their parents who far outperform on GPA, testing, and also on SAT, for them now not to be able to access college in New York is ridiculous.

If there was ever an issue if it's not broke, why fix it -- I don't even know why we're messing around with this kids to begin with. And the problem seems to be at SED. I have presidents of colleges, when I'm advocating for kids to get into universities here in New York, SUNYs, community colleges, that say: We can't take those kids.

And you want to talk about adding

insult to injury, if a home-schooled child from Pennsylvania or Connecticut wants to get into a New York college, they can. But in our regulations, they can't.

So I applaud Senator LaValle's legislation. I would, as has been pointed out, like to see it even go farther. And we all know how critically important it is to have kids access higher education. These are kids who have done very well statistically. Their parents are very engaged, obviously. I love my kids dearly, but I do not have the patience to home-school them, God knows.

They are doing very well, are moving along, and we should be doing everything we can to get them to access higher education, not diminish them from going to school here or making them go backwards, as my colleague Senator Little pointed out, and say even after you've finished your college degree, you have to go back and get a GED. That absolutely makes no sense to me.

So I hope -- as I know we are all proponents of higher education, a trained workforce, and people going to college here in

New York -- we would support this legislation.

Thank you.

ACTING PRESIDENT WRIGHT: Is any other member wishing to speak on the bill?

Read the last section.

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

ACTING PRESIDENT WRIGHT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 1477 are Senators Oppenheimer and Stavisky. Ayes, 50. Nays, 2.

ACTING PRESIDENT WRIGHT: Senator Oppenheimer.

SENATOR OPPENHEIMER: Oh, I wanted to explain my vote.

ACTING PRESIDENT WRIGHT: Senator Oppenheimer, to explain her vote.

SENATOR OPPENHEIMER: I think it's interesting that these children apparently exceed the norm as far as their performance on tests. Therefore, it's very surprising that the regulation only requires a

33 percentile of achievement.

And if we could remediate that and bring it up to the same level as we have for our students in schools in passing our exams, 55 percent, I think that would certainly help assure that the quality of the education is similar.

But for now I think I will be voting no. Hope I see a change in the bill.

ACTING PRESIDENT WRIGHT: Senator Oppenheimer will be recorded in the negative.

Announce the results.

THE SECRETARY: Ayes, 50. Nays, 2.

ACTING PRESIDENT WRIGHT: The bill is passed.

Senator Volker.

SENATOR VOLKER: Mr. President, would you call up Senator Johnson's bill, Calendar Number 635, please.

ACTING PRESIDENT WRIGHT: The Secretary will read.

THE SECRETARY: Calendar Number 635, by Senator Johnson, Senate Print 6557, an act to amend the Civil Practice Law and Rules.

ACTING PRESIDENT WRIGHT: Senator Schneiderman.

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

I've had an informal discussion with Senator Johnson, the last part of which just now was very enlightening. And I'm afraid we are going to have to agree to disagree on this piece of legislation.

This is an act that in New York State I believe is unprecedented. It would amend the Civil Practice Law and Rules to essentially provide that, with regard to one particular industry, the tobacco industry, the requirement that a bond be posted after a defendant loses a case -- in order to protect the plaintiffs and their ability to recover from the defendant that has been judged to be guilty and liable -- this would exempt tobacco companies from that requirement.

This would cap the bond at $100 million no matter how large the judgment was that was awarded to plaintiffs.

So there's not a judgment out there against tobacco companies in New York State.

This is anticipatory relief. What we're doing here is saying no matter what evidence is adduced at trial, no matter what conduct is exposed, no matter how egregious the actions of the tobacco companies were -- falsifying data, lying -- and we know from other cases around the country there have been extraordinarily disturbing revelations about the conduct of tobacco companies. There have been revelations suggesting that they had the ability to produce cigarettes that were less addictive, and they intentionally produced cigarettes that were more addictive in an effort to hook young people.

This legislation says no matter what the findings of fact are, no matter what the judgment is, they get an exemption. All they have to do is post a $100 million bond.

Well, what does that mean? That means the plaintiffs who win the case, the people who were wronged, the people who were injured would not have the security that every other plaintiff in the state of New York has, the security of a bond to protect their potential recovery.

So this is an exceptional piece of legislation. I think it sets a terrible precedent. And I understand that the state's dire fiscal situation has induced some people to say, well, the tobacco companies are part of the master settlement agreement and they're paying the state money over a period of time, we want to protect that stream of revenue.

So we've already established that we're hooked on gambling revenues. And I guess we're now acknowledging, with this bill, that we're also hooked on tobacco revenues.

So this is a bill that is defended with the argument that we have to help the tobacco companies stay in business and we have to help them stay alive so that they can keep paying the master settlement agreement.

The purpose of a bond, Mr. President, is to ensure that a defendant doesn't dissipate its assets, transfer assets away, do things to get assets out of the reach of the successful plaintiffs.

If no one succeeds in a lawsuit against the tobacco companies in New York, this legislation is irrelevant. This

legislation only applies if a court finds that they have broken the law. And the charges against them are very serious. They involve millions of people suffering serious health problems, they involve people dying earlier than they should have, and they involve allegations of the worst kind of corporate misconduct.

I suggest that it is a big mistake for us to create an exemption for the tobacco companies. It's a big mistake for us to treat them more specially than any other industry is treated in the state of New York, to come in and enact special interest legislation, changing the rules to benefit this set of corporations, with the argument that we need to try and help them so they won't go out of business because we're hooked on the stream of revenue from the master settlement agreement.

The tobacco industry is doing fine. They are having -- they have lawsuits all over the country. And wouldn't it be a shame if there were problems, financial problems due to this litigation exposing their misconduct over decades, and some tobacco companies did have

financial troubles and started to go out of business and have to sell off assets.

And the plaintiffs in the state of New York who had gotten a judgment against them would then be unable to recover because of this bill capping their bond at $100 million.

This is the worst kind of special-interest legislation. This is the worst kind of public policy. And it also exposes the really embarrassing, as Senator Bruno said last week, situation we're in in New York State regarding how we finance our state government: gambling and tobacco. I don't know what's next.

But this is not the kind of legislation that we should be passing. This sends a terrible message to everyone about how we deal with our system of justice in New York State.

And I appreciate the fact that there are people who view it in a short-term context, that we have to preserve the streams of revenue. But this is not the way to finance our state government.

So I'm going to vote no and encourage others to do the same.

Thank you, Mr. President.

ACTING PRESIDENT WRIGHT: Any further discussion on the bill?

Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 30th day.

ACTING PRESIDENT WRIGHT: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT WRIGHT: Report the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 635 are Senators Andrews, Connor, L. Krueger, Lachman, Meier, Paterson, Sabini, Schneiderman, A. Smith, and Stachowski. Also Senators Oppenheimer and Stavisky.

Ayes, 40. Nays, 12.

ACTING PRESIDENT WRIGHT: The bill is passed.

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

SENATOR VOLKER: Mr. President,

is there any housekeeping at the desk?

ACTING PRESIDENT WRIGHT: Yes, there is.

Senator Meier.

SENATOR MEIER: Thank you, Mr. President.

On behalf of Senator Farley, on page number 52, I offer the following amendments to Calendar Number 1228, Senate Print 6661, and ask that said bill retain its place on the Third Reading Calendar.

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

SENATOR MEIER: Mr. President, on behalf of Senator LaValle, on page number 27 I offer the following amendments to Calendar 764, Senate Print 6265, and ask that said bill retain its place on the Third Reading Calendar.

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

SENATOR MEIER: Mr. President, on page number 42 I offer the following amendments to Calendar Number 1042, Senate Print 6268B, and ask that said bill retain its place on the Third Reading Calendar.

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

SENATOR MEIER: Finally, Mr. President, on behalf of Senator LaValle, on page number 58 I offer the following amendments to Calendar Number 1317, Senate Print 5984, and ask that said bill retain its place on the Third Reading Calendar.

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

Senator Volker.

SENATOR VOLKER: Is there anything else at the desk? That's it?

ACTING PRESIDENT WRIGHT: There is not.

SENATOR VOLKER: Then there being

no further business, I move we adjourn until Monday, June 14th, at 3:00 p.m., intervening days being legislative days.

ACTING PRESIDENT WRIGHT: On motion, the Senate stands adjourned until Monday, June 14th, at 3:00 p.m., intervening days being legislative days.

(Whereupon, at 12:27 p.m., the Senate adjourned.)