NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

June 16, 2004

11:10 a.m.

REGULAR SESSION

SENATOR THOMAS P. MORAHAN, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT MORAHAN: The Senate will come to order.

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

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

ACTING PRESIDENT MORAHAN: In the absence of clergy, I ask that we bow our heads for a moment of silence.

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

ACTING PRESIDENT MORAHAN: Reading of the Journal.

THE SECRETARY: In Senate, Tuesday, June 15, the Senate met pursuant to adjournment. The Journal of Monday, June 14, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT MORAHAN: 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 Bonacic.

SENATOR BONACIC: Thank you, Mr. President.

Amendments are offered to the following Third Reading Calendar bills:

By Senator Leibell, page 4, Calendar Number 51, Senate Print 4330;

Senator Padavan, page 33, Calendar Number 979, Senate Print 5931A;

Senator Saland, page 55, Calendar Number 1397, Senate Print 6674;

And last but not least, Senator Skelos's bill, page 44, Calendar Number 1190, Senate Print 6610.

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

ACTING PRESIDENT MORAHAN: The amendments are received, and the bills will

retain their place on the Third Reading Calendar.

SENATOR BONACIC: Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: You're welcome, Senator Bonacic.

Senator McGee.

SENATOR McGEE: Mr. President, on behalf of Senator Balboni, I wish to call up his bill, Print Number 7180, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: Calendar Number 834, by Senator Balboni, Senate Print 7180, an act to amend the General Business Law.

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

ACTING PRESIDENT MORAHAN: Call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 40.

SENATOR McGEE: Mr. President, I now offer the following amendments.

ACTING PRESIDENT MORAHAN: The amendments are received.

SENATOR McGEE: Mr. President, on behalf of Senator Leibell, I wish to call up his bill, Print Number 1332, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: Calendar Number 427, by Senator Leibell, Senate Print 1332, an act to amend the Eminent Domain Procedure Law.

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

ACTING PRESIDENT MORAHAN: Call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 40.

SENATOR McGEE: Mr. President, I now offer the following amendments.

ACTING PRESIDENT MORAHAN: The amendments are received.

SENATOR McGEE: Mr. President, on behalf of Senator Robach, I wish to call up Calendar Number 520, Assembly Print Number

9045A.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: Calendar Number 520, by the Assembly Committee on Rules, Assembly Print Number 9045A, an act to amend the Public Health Law.

SENATOR McGEE: I now move to reconsider the vote by which this Assembly bill was substituted for Senator Robach's bill, Senate Print Number 5446B, on June 7th.

ACTING PRESIDENT MORAHAN: Call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 40.

SENATOR McGEE: I now move that Assembly Bill Number 9045A be recommitted to the Committee on Rules, and Senator Robach's Senate bill be restored to the order of Third Reading Calendar.

ACTING PRESIDENT MORAHAN: So ordered.

SENATOR McGEE: Mr. President, I now offer the following amendments.

ACTING PRESIDENT MORAHAN: The

amendments are received.

SENATOR McGEE: Mr. President, on behalf of Senator Trunzo, on page number 37 I offer the following amendments to Calendar Number 1050, Senate Print Number 6865, and ask that said bill retain its place on Third Reading Calendar.

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

SENATOR McGEE: Thank you very much, Mr. President.

ACTING PRESIDENT MORAHAN: Senator Spano.

SENATOR SPANO: Are there any substitutions at the desk?

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: On page 59, Senator Oppenheimer moves to discharge, from the Committee on Rules, Assembly Bill Number 8685 and substitute it for the identical Senate Bill Number 5549, Third Reading Calendar 1546.

On page 59, Senator Meier moves to discharge, from the Committee on Rules, Assembly Bill Number 9684 and substitute it for the identical Senate Bill Number 6963, Third Reading Calendar 1552.

On page 59, Senator Meier moves to discharge, from the Committee on Rules, Assembly Bill Number 10389B and substitute it for the identical Senate Bill Number 6964B, Third Reading Calendar 1553.

On page 60, Senator Meier moves to discharge, from the Committee on Rules, Assembly Bill Number 10416 and substitute it for the identical Senate Bill Number 6966, Third Reading Calendar 1554.

On page 60, Senator Padavan moves to discharge, from the Committee on Rules, Assembly Bill Number 10914 and substitute it for the identical Senate Bill Number 6999, Third Reading Calendar 1555.

On page 60, Senator Wright moves to discharge, from the Committee on Rules, Assembly Bill Number 7201B and substitute it for the identical Senate Bill Number 7321A, Third Reading Calendar 1557.

And on page 61, Senator Bruno moves to discharge, from the Committee on Judiciary, Assembly Bill Number 10966 and substitute it for the identical Senate Bill Number 7460, Third Reading Calendar 1564.

ACTING PRESIDENT MORAHAN: Substitutions ordered.

Senator Skelos.

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

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: Calendar Number 31, by Senator McGee, Senate Print 1262, an act to amend the Vehicle and Traffic Law, in relation to providing.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 40.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 128, by Senator Balboni, Senate Print 525A, an act to amend the Insurance Law and the Public Health Law, in relation to the confidentiality.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the 120th day.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 40.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 259, by Senator Volker, Senate Print 1388A, an act to amend the County Law, in relation to

providing.

SENATOR VOLKER: Mr. President.

ACTING PRESIDENT MORAHAN: Senator Volker.

SENATOR VOLKER: Will you lay that bill aside for the day, please.

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

THE SECRETARY: Calendar Number 269, by Member of the Assembly Heastie, Assembly Print Number 9534, an act to amend the Public Health Law, in relation to prohibiting.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 40.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 270, by the Assembly Committee on Rules, Assembly Print Number 9212, an act to amend the Public Health Law, in relation to clinical laboratory tests.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 40.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 344, by Senator Mendez, Senate Print 2683A, an act to amend the Workers' Compensation Law, in relation to the provision.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 41.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 385, by Senator Volker, Senate Print 6118, an act to amend the Penal Law, in relation to aggregate weight standards.

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT MORAHAN: The bill is laid aside.

THE SECRETARY: Calendar Number 405, by Senator Libous, Senate Print 4615, an act to amend the Mental Hygiene Law and the Public Health Law, in relation to peace officer powers.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 40. Nays, 1. Senator A. Smith recorded in the negative.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 442, by Member of the Assembly --

SENATOR PADAVAN: Lay that aside for the day, please.

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

THE SECRETARY: Calendar Number 454, by Member of the Assembly Gunther, Assembly Print Number 9495A, an act to amend the Real Property Tax Law, in relation to the partial payment.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call

the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN:

Announce the results.

THE SECRETARY: Ayes, 41.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 481, by Senator Mendez, Senate Print --

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT MORAHAN: The bill is laid aside.

THE SECRETARY: Calendar Number 542, by Senator Leibell, Senate Print 4373B, an act to make certain parents, widows and children of certain firefighters.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN:

Announce the results.

THE SECRETARY: Ayes, 41.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 545, by Senator Golden, Senate Print 5816, an act to amend the Administrative Code of the City of New York, in relation to the removal.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 30th day.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 41.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 576, by the Assembly Committee on Rules, Assembly Print Number 11083A, an act to authorize Bethel Gospel Fellowship, Inc.

ACTING PRESIDENT MORAHAN: Read

the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 40. Nays, 1. Senator Bonacic recorded in the negative.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 590, by Senator Bonacic, Senate Print 4759A, an act to amend the Social Services Law, in relation to requiring investigation.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 41.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 598, by the Assembly Committee on Rules, Assembly Print Number 10903A, an act to amend the Administrative Code of the City of New York, in relation to adjusting.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 41.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 646, by Member of the Assembly Sweeney, Assembly Print Number 9415A, an act to authorize the Long Island Citizens for Community Values.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 40. Nays, 1. Senator Bonacic recorded in the negative.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 647, by Member of the Assembly Sweeney, Assembly Print Number 9414A, an act to authorize the Yoga Anand Ashram.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 41. Nays,

1. Senator Bonacic recorded in the negative.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 661, by Senator Volker --

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT MORAHAN: The bill is laid aside.

THE SECRETARY: Calendar Number 679, by Senator Maziarz, Senate Print 4994, an act to amend the General Business Law, in relation to free trial offers.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 42.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 680, by Senator Larkin, Senate Print 5866A, an act to amend the General Business Law and others, in relation to repeal of such provisions.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 5. This act shall take effect on the 180th day.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 42.

ACTING PRESIDENT MORAHAN: The bill is passed.

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

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

Read the last section.

THE SECRETARY: Section 5. This

act shall take effect immediately.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 43.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 756, by Member of the Assembly Oaks, Assembly Print Number 9476B, an act to amend the Highway Law, in relation to designating.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 45.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 788, by Senator Nozzolio, Senate Print 3829, an act to amend the Executive Law, in relation to personal interviews.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 44. Nays, 1. Senator Montgomery recorded in the negative.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 806, by Member of the Assembly P. Rivera, Assembly Print Number 9757, an act to amend the Mental Hygiene Law.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 45.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 895, by Senator Golden, Senate Print 6516A, an act to amend the General Municipal Law, in relation to allowing.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 45.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 896, by Senator Bonacic, Senate Print 6539, an act to amend the Volunteer Firefighters' Benefit Law, in relation to payment.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 45.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 912, by the Assembly Committee on Rules, Assembly Print Number 10887, an act to amend the Retirement and Social Security Law, in relation to adjusting.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 46.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 944, by Senator LaValle --

SENATOR SKELOS: Lay it aside for the day.

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

THE SECRETARY: Calendar Number 964, by Senator Mendez, Senate Print 2685 --

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT MORAHAN: The bill is laid aside.

THE SECRETARY: Calendar Number 972, by Senator Mendez, Senate Print 6814, an act to amend the Labor Law, in relation to the payment of wages.

ACTING PRESIDENT MORAHAN: Read

the last section.

THE SECRETARY: Section 7. This act shall take effect immediately.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 46.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 995, by Member of the Assembly Dinowitz, Assembly Print Number 9265, an act to amend the Vehicle and Traffic Law.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 46.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 997, by Senator Hannon, Senate Print 6110, an act to repeal Subdivision 5 of Section 508 of the Vehicle and Traffic Law.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the same date and in the same manner as Chapter 415 of the Laws of 2003.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 46.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1006, by Senator Balboni, Senate Print 3852B, an act to amend the New York State Defense Emergency Act, in relation to persons.

ACTING PRESIDENT MORAHAN: Read

the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 46.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1026, by Senator Spano, Senate Print 6236, an act to amend the Social Services Law, in relation to requiring agencies.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 46.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1035, by Member of the Assembly McEneny, Assembly Print Number 7502A, an act to authorize The Center for the Advancement of Family and Youth.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 45. Nays, 1. Senator Bonacic recorded in the negative.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1112, by Senator Volker, Senate Print --

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT MORAHAN: The bill is laid aside.

THE SECRETARY: Calendar Number 1150, by Senator Wright, Senate Print 6509A, an act to amend the New York State Defense Emergency Act, in relation to driver's license.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 46. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1163, by Senator Little, Senate Print 6602, an act to amend the Real Property Tax Law, in relation to the apportionment.

ACTING PRESIDENT MORAHAN: Read

the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 47.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1186, by Senator Little, Senate Print 6260, an act to amend the Parks, Recreation and Historic Preservation Law, in relation to allowing.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 48.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1188, by Senator Morahan, Senate Print 1318, an act to amend the General Business Law, in relation to prohibiting late charges.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 2. This act shall take effect in 30 days.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 48.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1198, by Senator Hannon, Senate Print 6891, an act to amend Chapter 590 of the Laws of 2002.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 48.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1230, by Senator Spano, Senate Print 6822B, an act to amend the Tax Law, in relation to taxes on cigarettes.

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT MORAHAN: The bill is laid aside.

THE SECRETARY: Calendar Number 1261, by Senator Morahan, Senate Print 6648, an act to authorize payment of transportation.

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

Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 48.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1286, by Member of the Assembly Abbate, Assembly Print Number 5921, an act to amend the Civil Service Law, in relation to powers.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 48.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number

1288, by Senator Robach, Senate Print 6388A, an act to amend the Civil Service Law, in relation to resolution.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 48.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1290, by Senator Robach, Senate Print 6415, an act to amend the Civil Service Law, in relation to the representation.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 48.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1308, by Member of the Assembly Christensen, Assembly Print Number 345A, an act to amend the State Administrative Procedure Act.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 48.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1343, by Senator Kuhl, Senate Print 6472A, an act to authorize the Village of Montour Falls, Schuyler County.

ACTING PRESIDENT MORAHAN: There

is a home-rule message at the desk.

Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 48.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1365, by Member of the Assembly Thiele, Assembly Print Number 10398A, an act in relation to the application for an agricultural assessment.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN:

Announce the results.

THE SECRETARY: Ayes, 48.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1376, by Member of the Assembly Lifton, Assembly Print Number 5776, an act to amend the Mental Hygiene Law and others, in relation to establishing.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 49.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1388, by Senator Saland, Senate Print 5382A, an act to amend the Education Law, in relation to contact lenses.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 7. This act shall take effect on the 90th day.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 49.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1417, by Senator Morahan, Senate Print 5826, an act to amend the Executive Law, in relation to prohibiting parole.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1417 are Senators Duane, L. Krueger, and Montgomery. Ayes, 46. Nays, 3.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1432, by Senator Johnson, Senate Print 494, an act to amend the Executive Law and others, in relation to personal injury.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 49.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1442, by Senator Maziarz, Senate Print 4598B, an act to amend the Parks, Recreation and

Historic Preservation Law, in relation to creating.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 49.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1444, by Senator McGee, Senate Print 4731B, an act to authorize.

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

Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 49.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1445, by the Assembly Committee on Rules, Assembly Print Number 9189A, an act to amend the Insurance Law, in relation to making technical corrections.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 49.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1463, by Senator Padavan, Senate Print 2297, an act to amend the Agriculture and Markets

Law, in relation to prohibiting.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 49.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1468, by Senator Volker, Senate Print --

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT MORAHAN: The bill is laid aside.

THE SECRETARY: Calendar Number 1486, by Senator Hannon, Senate Print 6227A, an act authorizing the assessor of the County of Nassau to accept an application.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 48. Nays, 1. Senator Bonacic recorded in the negative.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1522, by Senator Paterson, Senate Print 5394B, an act to establish a date of commencement.

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

Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 49.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1537, by Senator Saland, Senate Print 7408, an act to amend the County Law, in relation to wireless communications.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

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

Announce the results.

THE SECRETARY: Ayes, 49.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1543, by Senator Meier, Senate Print 1266, an act to amend the Family Court Act, in relation to orders of disposition.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 49.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1544, by Senator Meier, Senate Print 3106, an act to amend the General Municipal Law, in relation to allowing.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 49.

ACTING PRESIDENT MORAHAN: The

bill is passed.

The Secretary will read Calendar Number 1498, by Senator Alesi.

THE SECRETARY: Calendar Number 1498, by Senator Alesi, Senate Print 7341A, an act to authorize the County of Monroe.

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

Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 49.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1546, substituted earlier today by the Assembly Committee on Rules, Assembly Print Number 8685, an act authorizing the City of New Rochelle.

ACTING PRESIDENT MORAHAN: Read

the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 48. Nays, 1. Senator Bonacic recorded in the negative.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1548, by Senator Golden, Senate Print 6297A, an act in relation to requiring certain state and federal education aid.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 49.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1551, by Senator Robach, Senate Print 6618, an act --

SENATOR SKELOS: Lay it aside for the day.

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

THE SECRETARY: Calendar Number 1552, substituted earlier today by Member of the Assembly Destito, Assembly Print Number 9684, an act to amend the Real Property Tax Law.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 49.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1553, substituted earlier today by Member of the Assembly Destito, Assembly Print Number 10389B, an act to amend the Real Property Tax Law.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1554, substituted earlier today by Member of the Assembly Destito, Assembly Print Number 10416, an act in relation to authorizing.

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

Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 49.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1555, substituted earlier today by the Assembly Committee on Rules, Assembly Print Number 10914, an act to amend Chapter 890 of the Laws of 1982.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

Senator Duane, to explain his vote.

SENATOR DUANE: Thank you, Mr.

President.

I think that the issue of security would be better left to the Department of Homeland Security. So I'm going to be voting in the negative on this bill.

This isn't 1557? Oops, sorry. Well, remember me for the next one.

ACTING PRESIDENT MORAHAN: Next bill, thank you.

Announce the results.

THE SECRETARY: In relation to Calendar Number 1555, ayes, 50.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1557, substituted earlier today by Member of the Assembly Galef, Assembly Print Number 7201B, an act to amend the Penal Law, in relation to authorizing.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

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

SENATOR DUANE: Always a surprise, Mr. President.

I just think that the security of these plants would be better left to homeland security. So I'm going to be voting in the negative.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: You're welcome, Senator Duane. You will be recorded in the negative.

Announce the results.

THE SECRETARY: Ayes, 49. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1558, by Senator Nozzolio, Senate Print 7417, an act to amend the Criminal Procedure Law, in relation to exempting.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 49. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1559, by Senator Kuhl, Senate Print 7421, an act to amend the Vehicle and Traffic Law, in relation to requiring.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 50.

ACTING PRESIDENT MORAHAN: The

bill is passed.

THE SECRETARY: Calendar Number 1560, by Senator McGee, Senate Print 7426, an act to authorize the Delevan Baptist Church to file a real property tax exemption.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 49. Nays, 1. Senator Bonacic recorded in the negative.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1563, by Senator Nozzolio, Senate Print 7456, an act to amend the Penal Law, in relation to clandestine laboratory operations.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 4. This

act shall take effect on the first of November.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 49. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1564, substituted earlier today by the Assembly Committee on Rules, Assembly Print Number 10966, an act to amend the Judiciary Law.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 50.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1565, by Senator Mendez, Senate Print 7464, an act to amend the Administrative Code of the City of New York, in relation to the administration.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 51.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1568, by Senator Bruno, Senate Print 7471, an act to amend the Tax Law, in relation to reducing.

SENATOR SCHNEIDERMAN: Lay it

aside.

ACTING PRESIDENT MORAHAN: The bill is laid aside.

Senator Duane, why do you rise?

SENATOR DUANE: Why, surprisingly, do I rise? If I may have unanimous consent to be recorded in the negative on Calendar Numbers 31, 128, 788, 895, and 1006.

ACTING PRESIDENT MORAHAN: Senator Duane will be recorded in the negative without objection on 31, 128, 788, 895, and 1006.

Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President, I would like unanimous consent to be recorded in the negative on Calendar 31.

ACTING PRESIDENT MORAHAN: Senator Montgomery will be recorded in the negative, without objection, on Calendar Number 31.

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

SENATOR SKELOS: Thank you, Mr. President. If we could go to the

controversial reading of the calendar.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: Calendar Number 385, by Senator Volker, Senate Print 6118, an act to amend the Penal Law.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT MORAHAN: Senator Volker, an explanation has been requested by Senator Schneiderman.

SENATOR VOLKER: Mr. President, this is one of a series of bills that I have sponsored which relates to the budget. I think a few of us remember that. You don't remember the budget? And this provision actually is in the budget.

And according to the DOB, the implementation of the aggregate weight standard would reduce the State Police Laboratory spending by a million dollars.

New York is currently the only state in the union that uses both an aggregate and a pure weight standard in determining the level of drugs. This bill would eliminate the

pure weight standard.

Now, there's an argument about who gains by this, defense attorneys or prosecution. It actually is kind of a question as to whether -- in some cases, it can actually favor defense attorneys and other ways it could certainly favor the prosecution.

I think the reason some defense attorneys don't like this is because they would prefer, very honestly, to have the confusion. I mean, obviously, some confusion can help you in certain cases.

But the truth is, from the criminal justice standpoint, it seems to me that since the whole rest of the country is using aggregate weight standards, it certainly makes sense for us to do the same thing.

And that is basically what this bill does. And as I said, this bill also reflects a provision that is in the budget, which is Senate 6056A, Assembly 956. And it's one of the Governor's Article 7 bills, just so that you know. So what we're really discussing here is something that's in the budget, which eventually I have no doubt we

will pass.

ACTING PRESIDENT MORAHAN: Senator Schneiderman.

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

ACTING PRESIDENT MORAHAN: Senator Volker, will you yield for a question?

SENATOR VOLKER: Yes.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR SCHNEIDERMAN: We've had a lot of discussions about reform of drug laws this year. I continue to be hopeful that we will reform our drug sentencing laws.

My question is, how would this bill -- what would be the net effect of this bill as far as increasing the number of people incarcerated, increasing or decreasing the length of sentences?

SENATOR VOLKER: In all honesty -- and we tried to kind of figure it out, because we have been looking at these issues a great deal -- we don't think it would have any real impact.

It probably would have the major

impact on major drug sellers. I don't see where it would have any particular impact on minor drug possessors or drug sellers. But it seems to me, if there was an impact, it would probably be on the higher side; that is, on the major drug seller side.

But we don't believe that this truly has any net effect other than the -- actually, it will be cheaper for the State Police Lab.

SENATOR SCHNEIDERMAN: Through you, Mr. President, if the sponsor would continue to yield.

SENATOR VOLKER: Sure.

SENATOR SCHNEIDERMAN: My understanding, though, is that the pure weight standard requires the police to analyze how much of the pure drug there is. So if you had a bag of cocaine that was very pure, there would be a different standard for that than a bag of cocaine that some cheap street hustler had cut with baking soda and was full of all sorts of other stuff.

SENATOR VOLKER: That's true. That's true.

SENATOR SCHNEIDERMAN: Is that correct? And that would be eliminated when we go to the aggregate weight standard.

SENATOR VOLKER: That is true.

But I think that what you have to realize is it's very difficult to determine pure weight standards in any case. And what we're saying here is we're kind of leveling the playing field, sort of.

And the problem with pure weight versus aggregate weight is there's really a debate about what even constitutes totally pure weight and whether it really is a better quality or not. And that's actually one of the most difficult things to deal with.

So what we're saying here is we're sort of leveling the playing field and just saying: Look, you have the drugs, whatever they are is what they are, and that is what you're going to use in prosecution cases.

SENATOR SCHNEIDERMAN: Thank you.

Mr. President, on the bill.

ACTING PRESIDENT MORAHAN: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: I

appreciate the difficulty we have with requiring our law enforcement authorities to analyze what exactly is in drugs seized from suspects in a case.

My concern with this legislation, however, is that we've had a discussion over the years, and Senator Volker has participated in much of it, about the discrimination in the sentencing laws. That drugs, cocaine that might be used by more affluent people is treated -- it's much more pure, and yet it's treated on the same basis as far as sentencing from the point of view of weight as cheap crack cocaine that's sold in poor neighborhoods.

So the net effect of this is to sentence more harshly people in poorer communities, mostly communities of color, frankly because their drugs are of a lower quality and so they weigh more for, you know, the actual amount of cocaine in the drug.

So the concern is that this would appear to have the effect of increasing the penalties on poorer people, people in low-income communities, because they simply

have a lower quality of drugs, heavier gross weight for the amount of actual drug that is at issue in any particular prosecution.

So while I realize that it is a burden on law enforcement authorities to try to analyze what's in the drug, it appears to me that the overall effect of this switch is to make it more likely that poor people, people who are in poorer neighborhoods who don't have access to as high-quality drugs, would be punished more than people who have access to the pure drugs.

And also, I would urge that the purer the drug, probably the farther up the chain you're going as far as getting towards drug kingpins. I mean, the drug kingpins are probably the people that have the purest drug, and it's being cut and broken up and turned into other forms of drugs and combined with other products as it goes down the line.

So based on that, and based on the fact that we have still what many of us view as a crisis as far as our drug sentencing laws go -- we have many too many nonviolent offenders sentenced for drug offenses -- I'm

hopeful, as I know that the sponsor is hopeful, that we will not adjourn this year without reforming our sentencing laws.

But I see this bill, frankly, as a step backwards, as I think this would make the system less fair, I think it would make it more prejudicial, I think it would make it more likely that poor people would receive less favorable treatment.

So on that basis, I am going to be voting no. Thank you.

ACTING PRESIDENT MORAHAN: Senator Volker.

SENATOR VOLKER: Mr. President.

ACTING PRESIDENT MORAHAN: Is this on the bill?

SENATOR VOLKER: I've heard that argument. And I have to tell you, in talking to people in the State Police and in the DAs', they don't see that at all. They don't care about that issue.

And remember, on the lower level, when you're talking about arrests, I know we say that there's some big charge out there to get people who are on a lower level. The

truth is most of those people get arrested dozens of times before they ever go to jail.

Nobody is out there trying to -- the people we want and I think the people the State Police want are the major sellers. They want to get the people -- and it's true occasionally they use the lower sellers to get at these people.

One of the things that's funny is when I listen to people come in here and talk about the Rockefeller Drug Laws, which of course is a very small number of people, they say: Well, we don't have any big sellers in jail. They have no idea who we have in jail. We have some of the biggest sellers in the nation, thankfully, in jail. If we can reach them, we grab them.

And one of the ways they are grabbed is, is -- one fellow and his brother are in jail for possessing 24 pounds of cocaine. Because of course they couldn't get them for sale. And of course they claimed that they were set up. I said, yeah, well, people hang around with 24 pounds of cocaine on a regular basis, and they claim they were

set up? I said, I don't know who the people are that would set you up with 24 pounds of cocaine, but none of them are in my area.

But my point, I think, is I don't agree with that assessment. Now, I think this is more for bigger dealers. And I really mean that, that this will make it easier -- and I'm the first to admit that -- better and easier and cleaner to prosecute people with larger quantities of drugs, purity or no purity.

Because when you come right down to it, the purity does impact to a certain extent on the people who are taking the drugs, but it really, when you come down to it, has little impact on the actual value of the drugs when you put it all together.

So my argument is this is not intended, and I don't intend it to make it more difficult for the street people. I think this really is designed for dealers more than anything, and not for users.

ACTING PRESIDENT MORAHAN: Thank you, Senator Volker.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you.

I appreciate the sponsor's intention. And I don't doubt his sincerity.

I would note, however, that this bill states very explicitly that it relates to -- and this is in lines 8 and 9 on the first page, it refers to criminal possession of a controlled substance in the fifth degree. We're talking about low-level drug offenders.

And we're talking about something that whatever the State Police intend, whatever good intentions people have, the fact of the matter is that well-to-do people in a suburban community who might have a small amount of very pure cocaine are far less likely to get into the system anyway. They can afford better lawyers and all that.

But we shouldn't be compounding that problem by saying that, you know, if you're living in a poor community where you have less pure crack cocaine or some other product, or some kind of bizarre speedball combination, that you're going to be prosecuted based on aggregate weight when in fact you have a smaller amount of the drug. And it just increases the disparity.

This is not a bill -- and maybe you could redraft it to refer only to high-level drug offenses. But when you're talking about possession of a controlled substance in the fifth degree, you're talking about very low-level offenders.

So I would urge that as we go forward -- and I suspect this is going to be sitting in the grand hopper of one-house bills for a while -- maybe we could amend it to try and address that issue.

I will be voting no. Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 385 are

Senators Diaz, Dilán, Duane, L. Krueger, Montgomery, Parker, Paterson, and Schneiderman. Also Senator A. Smith. Ayes, 45. Nays, 9.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 481, by Senator Mendez, Senate Print 6338, an act directing the Commissioner of Labor.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT MORAHAN: Senator Mendez, an explanation has been requested by Senator Schneiderman.

SENATOR MENDEZ: Yes. This bill will require the Commissioner of Labor to study the effect of offshore outsourcing of information technology jobs on the future New York job market state of affairs. And they should report, after conducting the study, by February 1st of 2005.

The summary of the provisions are the report should include trends in offshore outsourcing of information technology jobs, including customer services and technical

employees, identification of benefits and risks of offshore outsourcing and strategies for addressing those risks, determining state and federal policies regarding offshore outsourcing of technology jobs, and providing policy recommendations for enhancing New York's competitiveness in this market.

ACTING PRESIDENT MORAHAN: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President. Thank the sponsor for her explanation.

On the bill.

This issue of outsourcing and of New York State's failure to deal with outsourcing was raised by Senator Paterson in a rather comprehensive report he issued, along with legislation, in February. And I would urge that while it's -- what this bill does, directing that a report be issued, there are facts that we know that we need to take action on before a report comes back.

The fact of the matter is we are still subsidizing the export of jobs in this state. And Senator Paterson's proposals would

take action immediately, not wait for a report. And I would urge that it's something that we should be tending to sooner rather than later.

Forrester Research estimates that over 830,000 jobs will move overseas by the end of 2005. We can't act until our jobs deficit is even deeper if we're going to go this route of waiting for a report. We shouldn't be telling laid-off New Yorkers to feel better because a report is going to come out telling them the IT sector is hurting when it is issued in February.

It is absolutely clear that our economic development programs in the State of New York to this day are providing tax benefits to companies that are shipping jobs out of the state. It is time, in this year's budget, to end taxpayer subsidies for moving American jobs overseas, to protect the security of sensitive private medical and financial records when they are transferred overseas, to prevent the Governor from committing the state to government procurement agreements with foreign countries without

ratification by the Legislature.

There are concrete steps we should take this year. I have no problem with us directing the Department of Labor to do a report, so I'm going to vote for this bill. But if this is all we do on the issue of outsourcing this session, I think we have failed to take action which is there to be taken. Bills are drafted, policies are clear. We have to do more than this before we adjourn.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number

661, by Senator Volker, Senate --

SENATOR LIZ KRUEGER: Explanation.

ACTING PRESIDENT MORAHAN: Senator Volker, an explanation has been requested.

SENATOR SPANO: Lay it aside temporarily.

ACTING PRESIDENT MORAHAN: The bill is laid aside temporarily.

The Secretary will read.

THE SECRETARY: Calendar Number 964, by Senator Mendez, Senate Print 2685, an act to amend the Labor Law.

SENATOR LIZ KRUEGER: Explanation.

ACTING PRESIDENT MORAHAN: Senator Mendez, an explanation has been requested by Senator Krueger.

SENATOR LIZ KRUEGER: I meant to say I have an amendment at the desk first. I apologize.

ACTING PRESIDENT MORAHAN: Okay, your apology is accepted.

SENATOR LIZ KRUEGER: Thank you,

Mr. President.

Mr. President, I believe I have an amendment at the desk. I'd like to waive reading.

ACTING PRESIDENT MORAHAN: Okay, we'll waive the reading and Senator Krueger will speak on the amendment.

SENATOR LIZ KRUEGER: Thank you.

I have an amendment at the desk which would actually amend Senator Mendez's bill with another bill that she has previously submitted and sponsored, which is S3351.

Senator Mendez's bill on the floor today requires that there be a written agreement of some sort between workers on farms and their employers, an agreement that would be prescribed by the Labor Commissioner at some point in time.

I believe that a previous bill, S3351, the Farmworkers Fair Labor Practices Act, would be a far superior model for us to go forward, and would include within it the section on a conformed-upon workers agreement by the Labor Commissioner.

But in addition, my amendment, the

Farmworkers Fair Labor Practice Act, would grant collective rights to farm laborers; would require employers of farm laborers to allow at least 24 consecutive hours of rest each week; would provide for an 8-hour workday for farm laborers; would require overtime pay at 1½ times the normal rate and make provisions for unemployment insurance laws applicable to farm laborers; would actually define the work agreement, the subsection that today's bill speaks about; would provide for a sanitary code that applies to all farm and food processing labor camps intended to house migrant workers; would provide for the eligibility of farm laborers to receive workers' compensation benefits if hurt on the job; would require employers of farm laborers to provide such laborers with claim forms for workers' compensation claims under certain conditions; and would require reporting of injuries to employers of farmworkers.

Basically, this act would provide farmworkers the same legal rights and protections as workers as almost every other worker in the state of New York.

We know why workers' protections are so important. We all stand up in recognition of equal rights for workers in this state, fair labor practices for workers in this state, reasonable hours, protections from harm and injury. And yet we still, in the state of New York, do not stand up and support parallel protections and parallel laws for farmworkers.

Perhaps because disproportionately large numbers of them tend to be new Americans or immigrant workers, they're often extremely poor, they only get to work part-time each year, they wander from location to location.

It is these most vulnerable of the workers in New York State that we should be standing up to support by ensuring that there are equal rights and protections for them as workers.

I hope my colleagues will join me in supporting this amendment, which in fact is a recognition of previous work done by Senator Mendez, since it was originally her bill. And I hope she will support it.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator Krueger.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you. I just want to rise to speak in support of this amendment.

We're talking about something here that is supported by an extraordinarily broad coalition -- the New York State Catholic Conference, labor/religion coalitions, unions, other religious organizations.

And quite frankly, what we're talking about here is an issue of fundamental civil rights. We shouldn't, in the state of New York, with a budget in excess of a $100 billion a year, with all the extraordinary wealth we have, have 80,000 workers who can't get the basic rights that are provided to all other workers in our state.

So I would urge that this amendment be adopted and that we move forward with Senate 3351. We can get support on the other side of the Capitol. We talk a lot about things that aren't getting done on the other

side. This is something that can get done on the other side, where the Senate is the obstacle.

We should not let this session pass without addressing the fundamental denial of civil rights to tens of thousands of workers in this state. I urge everyone to support this amendment.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Those Senators in agreement with the amendment please signify by raising your hands.

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

ACTING PRESIDENT MORAHAN: The amendment is lost.

Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

Senator Hoffmann, to explain her vote.

SENATOR HOFFMANN: Yes, Mr. President. Typically, legislation that deals directly with agriculture has a review by the Agriculture Committee. Because these issues deal with working agreements, they have gone through the Labor Committee. So I am going to reserve judgment on them today.

I will say, however, that Farm Bureau has taken no position on these bills. And I am content to let the new chair of the Labor Committee see them pass into law today, with the understanding that we will watch them closely.

And as Ag chair, I reserve the right to weigh in at some future date if they seem to impose any kind of inappropriate restrictions on farmers or not address the root issues of farmworker and farm owner relationships in an appropriate way.

So I compliment Senator Mendez on

her new chairmanship. I look forward to a fruitful working relationship with her in the future.

But we are in dangerous territory here, because, as we have just seen by the recently defeated amendment, there are people in other parts of the state who don't understand what life on the farm is all about.

It's relatively easy for somebody who lives in Manhattan to try to impose restrictions that are tantamount to an eight-hour factory shift on farms. But in reality, we do have to make hay while the sun shines, and that often means long -- ridiculously long, grueling long hours for all people who are employed in agriculture.

We have a very awesome Labor Department, with a strict Labor Commissioner who enforces all labor laws to the very best of her ability on this state. And wherever there are abuses, they should be corrected and they should be carefully monitored by the Labor Department.

But we cannot impose unreasonable burdens on the farmers of this state, who are

already suffering a competitive disadvantage from Third World countries. And I will always defend the rights of our farmers to do what they do best, manage the environment and grow our food. They deserve our respect, and they should not have unreasonable burdens put upon them.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Senator Stavisky, to explain her vote.

SENATOR STAVISKY: To explain my vote, Mr. President.

We in Queens County -- and I say this as someone who grew up in Manhattan and spent most of my early years in Manhattan -- we have a farm in Queens County. And on behalf of the people who work in the farm, this is an important issue and I vote yes.

ACTING PRESIDENT MORAHAN: Thank you, Senator Stavisky. You will be recorded in the affirmative.

Announce the results.

THE SECRETARY: Ayes, 53. Nays, 1. Senator --

ACTING PRESIDENT MORAHAN:

Senator Montgomery, to explain her vote.

SENATOR MONTGOMERY: Yes, Mr. President, to explain my vote.

I'm certainly voting for this legislation. However, I would like to make a comment regarding our respect for the farmers, as my colleague has so eloquently articulated.

And I want you and I want her to know that when I look on this side of the aisle, you should not in any way think that we do not have every respect and regard for the farmers. In fact, we understand that this is a farming state and so downstate is not the only part of the New York State. And we respect that very much.

But I'm voting yes on this legislation.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Senator Montgomery will be recorded in the affirmative.

Announce the results.

THE SECRETARY: Ayes, 53. Nays, 1. Senator McGee recorded in the negative.

ACTING PRESIDENT MORAHAN: The

bill is passed.

THE SECRETARY: Calendar Number 661, by Senator Volker, Senate Print --

SENATOR LIZ KRUEGER: Explanation, please.

ACTING PRESIDENT MORAHAN: Senator Volker, an explanation has been asked for by Senator Krueger.

SENATOR VOLKER: Mr. President, this is a bill sponsored by the Republican -- I mean Democrat Attorney General Eliot Spitzer --

(Laughter.)

SENATOR SCHNEIDERMAN: Dream on, Dale.

SENATOR VOLKER: Yeah, I know, I know.

-- that is basically a reform. I have had legislation in the past, by the way, and this bill is a reform of the old "Bawdy House Law," which some of us -- and I myself was at one time, I think, involved in a case involving -- let me clarify this. I was involved in a prosecution or an eviction process because of a problem involving a house

that was involved with both prostitution, drugs. You name it, and the house had it.

The problem with the "Bawdy House Law" is that most of it is about -- oh, I don't know how many years old it is. It's very old. What this bill really tries to do, and it really is not -- the biggest thing it provides is the evidentiary presumptions as far as drugs.

Just about everything else -- it does upgrade the terminology as far as prostitution; brings in, I think, into the twentieth century some of the provisions relating to the Real Property Law; and allows more definitively a person who is not either a tenant or a landlord or whatever to make a motion to evict someone or to bring an action where the house is being used, as we used to say, for ill repute or for drug use or whatever.

I would think this bill would probably have more relationship to the urban areas, although the way things have been going there's a lot of rural housing now that could come into this category also.

Really, a lot of what's in here is really redone old law, and it's reauthorized. The big difference in this bill relates to the references to drugs, where in the mid-1800s, when this first started, obviously, it was houses of prostitution and other various things.

ACTING PRESIDENT MORAHAN: Senator Krueger.

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

ACTING PRESIDENT MORAHAN: Senator Volker, will you yield?

SENATOR VOLKER: Yes.

SENATOR LIZ KRUEGER: Thank you. I appreciated the explanation, Senator.

And my concerns relate to the process under which this bill would apply.

SENATOR VOLKER: Right.

SENATOR LIZ KRUEGER: Certainly none of us would want to support, you know, the activity of a crackhouse, as described in the memo, or, I suppose, a house of prostitution.

But when you look at the language of this bill, under this, one could be evicted from their home if they were found guilty of two misdemeanor criminal drug charges -- say, the sale of one cigarette of marijuana twice in the course of a year.

Is that your understanding of -- that this bill could be used to evict based on misdemeanor charges?

SENATOR VOLKER: No. The crime you're talking about, by the way, is a violation.

But I think that you would not be able to consider this a bawdy house. I think -- keep in mind that there is -- what you're trying to do here is to deal with unlawful trade or manufacturing business.

In fact, someone talked to me and I suppose you could somehow stretch this to do a daycare center, although I don't know how exactly you'd do that. Somebody brought that up to me, and I said, Well, you'd have to commit some pretty serious crimes before any judge is going to -- if you look at the list here, these are pretty serious crimes --

before a judge would even consider using -- you could bring an action under any case, but you have to have pretty serious crimes before any judge is going to take the potential penalties that are involved here.

You have to have some flexibility. Because, remember, you're going into court on an issue of what may be a lot of potential offenses. And you have to give some flexibility.

One of the reasons we haven't amended the "Bawdy House Law" is -- in part is because it's difficult to know exactly how to amend it. You don't want to make it too restrictive, because you want to give a judge the opportunity to have some say.

And yet on the other hand, if you make it too loose -- and I think this bill, the Attorney General, I think, labored with this. And I think the Attorney General and myself, I think we feel that this does have enough flexibility in it to deal with the most severe cases and yet allow a judge to hold back on cases that are really not that severe.

SENATOR LIZ KRUEGER: Mr.

President, if the sponsor would continue to yield.

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

SENATOR VOLKER: Why, certainly.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR LIZ KRUEGER: Thank you.

I do think the bill includes nonfelony convictions as well as felony convictions. So a concern, in fact, is why are we making this law so broad, why don't we keep it specific to felony convictions.

But my greater concern -- and it's a pattern that in fact already is in existence because of a similar law that now is in effect for families living in public housing, it's a federal HUD law for tenants within public housing -- when I read this bill, I read it to be if anyone in the household has the conviction, the entire household would be evicted.

So in a scenario -- and actually, this case on public housing went to the Supreme Court, so there are quite a few briefs

with examples about this. If a grandmother and her grandchildren -- and perhaps three generations in New York City is not uncommon, particularly in low-income communities for families to be doubled and tripled up multigenerationally. If a teenager member of the family or an uncle who they agreed to allow to stay in the living room is in fact found guilty of these drug convictions -- which, again, may or may not be particularly severe -- as I read your bill, the entire family would be evicted, not that individual member of the household.

And I'm wondering if you could clarify where that bill would protect an entire household from being evicted from their home based on the actions of one family member, the actions that may not have ever been known by the rest of the family.

SENATOR VOLKER: Mr. President, I don't agree with that.

And in fact, if you look, it's talking about the law-breaking tenant or individual. If the whole family obviously is involved in drug sales -- and by the way,

there is no drug sale or intent to sell that's less than a felony, just so that you know.

SENATOR LIZ KRUEGER: Okay.

SENATOR VOLKER: So as far as drugs are concerned, it wouldn't even apply to that.

The issue, though, is that I suppose you could argue that in some cases someone could bring an action that could endanger the entire household.

The problem is, though, and the answer to that is I guess we have to give judges at least some flexibility to make those kind of determinations. There's nothing that says the judge has to throw everybody out; it just said that you could make a pitch in behalf of someone who is complaining the house is being used for illegal activity.

You, for instance, might have one person in the house who is convicted twice of drug, intent to sell. Because in New York City there's a lot of people who do that and are washed out or whatever because of treatment situations and whatever.

But the problem, I think, for

someone making the challenge, you should have the ability to -- for somebody to bring an action to get rid of that person. And I think this bill would enable a judge to order that person out of that house but not necessarily to order everybody else. And no judge, I'm sure, that has any kind of common sense would do that.

The problem is if you try to restrict the ability of a judge to make those kinds of decisions -- it seems to me that's the argument, by the way, being made now: how do we deal with the issue of drugs in general. And the interesting thing is you're making an argument that is being made against me. And that argument is that we should give the judges more flexibility.

Well, we are doing that here. And of course the issue of prosecution still lies within the purview of the district attorney. But the issue of what happens after the prosecution lies within the purview of the judge.

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

ACTING PRESIDENT MORAHAN: Senator Krueger, on the bill.

SENATOR LIZ KRUEGER: Thank you.

I appreciate the Senator's explanation and his intentions. I think where I disagree with him, particularly with the last question about the discretion of the judge to evict only the guilty party, relates to the differences between our criminal law and our real property law.

In our criminal law, you're going after an individual. In real property law and in lease agreements, it's actually the lease that is ordered to be broken under this bill. It assigns the liability and the right of the property owner whose tenants uses premises for an illicit business to, in fact, break the lease on the grounds that the tenant has violated the law.

You don't break a lease for the grandchild in the apartment or the uncle staying in the apartment, you break a lease for the physical apartment. Therefore, everyone would lose their tenancy. And in fact, that was the basis of the argument

before the Supreme Court in U.S. Department of Housing and Urban Development and Oakland Housing Authority against Rucker, et al. Rucker was a case decided in 2001.

And in fact, there the Supreme Court said we can't even take up the argument of a case where a grandchild was found guilty of drugs and grandmother claimed that she didn't know anything about it and that she was happy to order the grandchild out, but she lost her tenancy rights in public housing. And the court basically concluded that they didn't have any grounds to argue one way or the other about the appropriateness of this, because under property law and tenancy you evict the tenants in the apartment.

And it's for that reason that I'll vote against this bill. And I hope that somebody might go back, including I will visit this with the Attorney General, since it's an Attorney General's program bill, that we need to redefine the language in this bill such that we don't find ourselves with a growing population of innocent family members, who may often not even know of the activities that

were taking place, losing their homes.

It has been a very real issue in the City of New York already, with our public housing under the existing federal law established by HUD. We cannot afford to throw people out into the streets in New York City, particularly low-income people who are often the families living in a doubled-up and tripled-up and a multigenerational family situation. We cannot afford to allow them to lose their tenancy rights and lose their homes, even if one member of that family is guilty of bad behavior and in fact might justifiably be requested or in some way forced to leave the apartment.

Because I certainly understand the other side of the argument. If you are neighboring tenants, if you are a property owner, you do not want to be living next to somebody who's dealing drugs. That's obvious.

But I also think that there's too great a risk, if this bill becomes law, that in the goal of removing somebody who's dealing drugs or, I suppose, involved in prostitution -- but again, you were focusing

on the dealing-drugs side -- that at the cost of one person rightly losing their home, you can have three, four, five, six other people also losing their homes. And the way this law is written, I don't believe we could protect those other family members.

So I'll vote against this bill, more because I believe it's a flawed bill in the writing, and hope that we will, between now and getting a same-as version in the Assembly, or a version in the Assembly, be able to work out these details.

Thank you very much, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator Krueger.

Senator Brown.

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

You know, I think it's very valid for Senator Krueger to raise concerns about innocent people potentially being caught up in this bill. But as a former city council member from Buffalo, this is also a situation that we've dealt with pretty extensively in Buffalo.

And I can tell you that people in that community are dealing with some pretty horrific situations of people dealing drugs, dealing guns, being involved in all kinds of criminal behavior. And if you are living in a residential setting where you have to deal with those kinds of conditions day in, day out -- in some cases, people that have owned their own homes and been law-abiding citizens for 50 years.

And while I agree that there do have to be checks and balances and we do have to look at this legislation to try to protect people who are innocent in homes where illegal activities might be taking place, what about the innocent people that have to live near and around these homes where this criminal activity is taking place? What about the rights of those individuals?

I think there has to be more personal responsibility on the part of those people that are living in those homes where those illegal actions are taking place.

And I can tell you, in situation after situation that I dealt with in the city

of Buffalo, the block club organizations, the tenant associations, police agencies made numerous attempts to notify tenants, to notify grandmothers, to notify mothers of illegal activity taking place on those premises. And even with those repeated notifications, the activity still persisted.

And I think there has to become a point where people have to take some responsibility, not only for their own actions but for the actions of their family members and the grave consequences that those actions have on neighborhoods, on communities, and on society.

So based on that, Mr. President, while I do share Senator Krueger's concerns that we do more to try to protect people who are innocent in this legislation, I'm going to support this bill.

ACTING PRESIDENT MORAHAN: Senator Brown will be recorded in the affirmative.

Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 54. Nays, 1. Senator L. Krueger recorded in the negative.

ACTING PRESIDENT MORAHAN: The bill is passed.

The Secretary will read.

THE SECRETARY: Calendar Number 1112, by Senator Volker, Senate Print 1108, an act to amend the Civil Practice Law and Rules.

SENATOR MONTGOMERY: Explanation.

ACTING PRESIDENT MORAHAN: Senator Volker, an explanation has been asked for.

SENATOR VOLKER: Mr. President, this is a bill that in all honesty should have been disposed of many, many years ago.

The history of this bill is that we, about ten -- at least ten years ago -- in fact, I'm looking; it actually was more than ten years ago -- we made an attempt to deal

with an issue in New York City, primarily, involving a union official and a -- it was a bargaining issue more than anything. And the city reached out and tried to get a union official to testify who had advised a law enforcement officer in regards to some issue. And I fail to remember.

Anyways, the bill was amended down dramatically to where now all this bill says is it establishes a privilege for communication made by an officer of the bargaining unit, which in this case would probably be a patrolman, let's say, and an actual union elected official. There's only a handful of elected union officials.

And the reason for this is to try to get some parity with other areas so that if somebody talks to a president of a union, vice president or whatever, and usually there's a designated person who's elected to try to advise someone.

Now, the answer is some of the city's people said, Well, why can't they get an attorney? Well, that's true. Eventually they're going to get an attorney.

But when it happens immediately -- and usually there's some sort of situation that occurs where some sort of advice is asked for.

I can tell you, I was in this position way back where people would ask me. Of course, I was a lawyer at the time too, so every police officer in Western New York, it seemed, was asking questions.

But the big thing here, I must say, is this bill was agreed on in 1995 and was vetoed by mistake. And the person who was the counsel at the time admitted it. And in the meantime, there were a number of other issues that came up in New York City that had nothing to do with this. And this is the real reason that this bill is here. We passed it on many occasion. It is really is not a supersignificant bill.

But I think the principle is a good one. And all we're asking here is that a -- and there are a handful of elected officials who are part of a union who are asked advice by patrolmen, is not subject to be reached in a criminal or civil investigation.

We're not asking -- you can still reach, subpoena, all that sort of stuff with the person involved, with other law enforcement officers, but only a very select few of people who are part of the union.

ACTING PRESIDENT MORAHAN: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President. I'd like to speak on the legislation.

ACTING PRESIDENT MORAHAN: Senator Montgomery, on the bill.

SENATOR MONTGOMERY: Yes, Mr. President. I just am looking at the fact that we've had this bill before us in the past and a number of us have voted in the negative.

And I think that even though Senator Volker indicates that he has substantially amended his legislation to make it simpler and more direct, it's still -- the main issue here is whether or not we are going to authorize or allow a police officer who has been charged with some illegal, possibly illegal activity or certainly questionable behavior as it relates to their professional

responsibility, will we now allow them an additional privilege of being able to speak to a union representative in the same way and give the same privilege to that communication as we do to that same police officer and his legal professional representative.

I think that for New York City in particular, we already have a problem with the 48-hour rule, which allows that officer 48 hours' time before he or she is required to speak to anyone. And so now, in addition to being able to speak to an attorney and have that communication privileged, we're now including a union official as if that person is also a legal representative.

So I think that based on the fact that we want more transparency, we want more openness, we want the police officers to be above the law, we don't want to now go and give additional opportunity for a police officer -- and we're talking now not about a police officer who is carrying out his duty forthrightly, above board and professionally, but we're talking about someone who has a question about their behavior.

And so we're saying to the public that, in these cases, we want to give the police officers one more additional privilege. They have the 48-hour rule, they have other protections, they have the same protections as any other citizen. Now we want to give them even more ability to be cloaked in silence and privileged communication.

I think that we should continue to oppose this legislation because it does not help to improve or to move in the direction which certainly I would like to see and I think many of us would like to see. We want to see a better relationship between community and police officers. But when we introduce this legislation or legislation that attempts to create this kind of secrecy around police behavior, it automatically creates a sense of mistrust with the community, between community and police.

So I'm going to oppose this. I think it's the wrong direction to take. And it certainly does not help, but probably ultimately will hurt our attempt to improve the relationships between communities,

especially in New York City, and the police themselves.

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

Senator Krueger.

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

ACTING PRESIDENT MORAHAN: Senator Volker, will you yield for a question by Senator Krueger?

SENATOR VOLKER: Oh, sure. Certainly.

Let me just say that you're absolutely wrong, Senator, but I'll get into that later. Go ahead. I'll tell you why.

SENATOR LIZ KRUEGER: I can't be wrong yet. Give me a chance.

SENATOR VOLKER: No, no, not you, her. The criminal act and all that sort of stuff.

But anyways, go ahead. I'm sorry.

SENATOR LIZ KRUEGER: On my reading of this bill, Senator, you would

provide the equivalent privileges as are currently afforded to an attorney and member of the clergy or a physician. Is that a good analogy?

SENATOR VOLKER: No, it's not a good analogy.

SENATOR LIZ KRUEGER: Okay.

SENATOR VOLKER: Remember, first of all, here there's no -- it doesn't have to be a criminal act or -- it could be, in fact, an order by another law enforcement person, whatever.

The problem -- the 48-hour rule has nothing to do with this. That's apparently, and I don't know, that's apparently some sort of reg that -- probably about a contract.

And it -- by the way, the 48-hour rule I assume wouldn't even apply here, because if the person within that 48 hours talks to this union official, that would be reachable. Whether -- you know, it's just that you don't have to talk to anybody for 48 hours.

I think what that is, is -- I'm just guessing on the 48-hour rule -- is that,

you know -- and many of these cases, by the way, involve shift issues. You know what I'm saying? I mean, the guy, he's supposed to be in for his shift, and there's confusion about his shift, so he talks to the union official and then they bring him up on charges because he wasn't there at the proper time.

There's a lot of -- this is bargaining stuff. And that's why the -- this is not necessarily a crime at all. This is the sort of thing that people -- and it's hard to imagine. You know, police departments are semimilitary operations. And I know because I dealt with some of them.

I was president of a police union, and I'll be very honest with you. And I was a patrolman, and I was not the most popular police officer in the department because I had a tendency to speak my mind. And sometimes I spoke my mind too firmly with the village board, and they didn't like it.

I'm only saying this because this is not necessarily a criminal situation at all. This has to do with the workings of a police department. And I only mention that --

and I don't mean to encroach on your question. But I think that the problem is here -- we have looked at this in terms of some police officers accused of a crime. That's not necessarily true at all. It could be -- it could be all kinds of things that happen.

And the difference is in the military, it's all set out as to what your rights and duties are. That's not set out -- and I don't know about this 48-hour rule, but I assume that was negotiated in the contract. And I only mention that because -- and I didn't mean to -- go ahead. Ask me a question.

ACTING PRESIDENT MORAHAN: Thank you, Senator Volker.

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

ACTING PRESIDENT MORAHAN: Senator Volker, will you continue to yield?

SENATOR VOLKER: I certainly will, Mr. President.

ACTING PRESIDENT MORAHAN: The Senator continues to yield, Senator Krueger.

SENATOR LIZ KRUEGER: Thank you.

You've shifted the direction on me, because I actually really assumed you meant privilege the same way we mean it for an attorney or a member of clergy.

But in your explanation you were talking more about this as not related to an accusation for a criminal charge but, rather, something internal to almost your collective bargaining issues as a union member.

So I think I'll shift my question to, then, why don't you make your law explicit to confidentiality in relationship to labor disputes, as opposed to leaving it open to criminal charges? That would make it a clearer and cleaner debate.

And if you're correct that mostly we're talking about that type of issue, why even open up the bailiwick of special privilege if criminal charges are involved?

SENATOR VOLKER: Because the answer to that is that the criminal charges tend to overlap on these kind of issues.

In other words, a police officer can actually be brought up on criminal charges

in an issue that has nothing to do with someone on the outside. In other words, if you don't perform your duties in the way in which you are supposed to do, you can actually be charged in department charges, which are the same thing as criminal charges. I mean, you could lose 30 days' pay, you could lose -- and you could also, for one reason or another, dereliction of duty, someone then may come in and say, well, he wasn't there when he should have been and something happened.

I mean, so the department not only could bring charges, but someone else could, for instance, based on that. Some attorney may come in -- which often happens when they find out something is going on, particularly when they have a police officer who's not the most popular police officer in the world who's been involved in another case, maybe -- they then come in and say, Well, you know, I've got somebody who says that he wasn't at his post at the right time and someone got hurt, and therefore he was in dereliction of his duty.

I guess my answer is there are so many potential issues that are involved when

you're talking about police officers, they do not and they rarely involve any real criminal prosecution. Because in the end, you don't need the -- you can go in and try to grab the union official. In the end, it really isn't going to matter. Because if you're going to prosecute him, you're going to prosecute him on other types of things anyways.

And most of the time the union official would tell him: Go to this attorney, Fred somebody or whatever, that would be the main part of it. And, you know, that's really what it is.

SENATOR LIZ KRUEGER: Thank you.

On the bill briefly, Mr. President.

ACTING PRESIDENT MORAHAN: Senator Krueger, on the bill.

SENATOR LIZ KRUEGER: Thank you.

Well, I actually think Senator Volker makes two sets of arguments. One, a reasonable one. If you're in a dispute with your employer or your police agency, that there's a reasonable argument for being able to have a confidential conversation with your union representative.

But then there's the other universe, where you're actually brought up on criminal charges, where I think the obvious advice is get an attorney and get one as fast as possible.

And I find it fairly unlikely that on an immediate-response basis, too many police officers are actually being brought up on criminal charges for union-collective-bargaining-related issues. Even if that happened later in the process, I don't see that as a very realistic model to be happening on a day-to-day basis where, because you were derelict in duty, some citizen came along and filed criminal charges right away, and by that time you should certainly have a lawyer.

So I will vote against the bill, because I still think fundamentally this is not the type of privilege we should be offering uniquely to police officers in the context of criminal charges for bad behavior and misbehavior.

And on the other hand, I think Senator Volker makes a reasonable argument for a different bill, if he were to choose to

sponsor it, that was specific to disputes with your union as opposed to outside criminal agencies that might be bringing charges against you, including your own police department.

So that he should really relook at this bill, make a more specific bill to noncriminal charges brought against police members, union-related, collective bargaining, not-getting-to-your-job-on-time-related issues. And that he could probably get that bill passed.

And I don't see it's too likely that this bill is going to pass two houses, and I'll continue to vote no against it.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator Krueger.

Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN:

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1112 are Senators Andrews, Brown, DeFrancisco, Diaz, Dilán, Duane, L. Krueger, Montgomery, Parker, Paterson, Schneiderman, and A. Smith. Ayes, 43. Nays, 12.

ACTING PRESIDENT MORAHAN: The bill is passed.

Ladies and gentlemen, I'm sorry to interrupt for a moment.

We have a young man who just returned from 14 months in Iraq, Specialist Yablonski, a native New Yorker who has won the Combat Infantry Badge, which means you're under direct fire by the enemy. He's also Airborne, United States Army.

Welcome, and welcome home.

(Standing ovation.)

ACTING PRESIDENT MORAHAN: Senator DeFrancisco.

SENATOR DeFRANCISCO: Mr. President, may I have unanimous consent to be recorded in the negative on Calendar Number 344, Senate Print 2683A.

ACTING PRESIDENT MORAHAN: Senator DeFrancisco will be recorded in the negative on 344.

Senator Spano.

SENATOR SPANO: I'd like to announce there will be a meeting of the Rules Committee at 1 o'clock in Room 332, the Majority Conference Room.

ACTING PRESIDENT MORAHAN: There will a meeting at 1 o'clock of the Rules Committee in the Majority Conference Room, Room 332.

The Secretary will read.

THE SECRETARY: Calendar Number 1230, by Senator Spano, Senate Print 6822B, an act to amend the Tax Law.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT MORAHAN: Senator Spano, an explanation has been requested by Senator Schneiderman.

SENATOR SPANO: Mr. President, last year the Legislature enacted provisions in the budget that required the Department of Taxation and Finance to put a system in place

to collect non-Indian taxes without violating reservation sovereignty.

This bill codifies the existing Department of Taxation and Finance regulations and requires taxes to be collected at a distributor level.

ACTING PRESIDENT MORAHAN: Thank you, Senator Spano.

Senator Schneiderman.

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

ACTING PRESIDENT MORAHAN: Senator Spano, will you yield for a question?

SENATOR SPANO: Yes.

ACTING PRESIDENT MORAHAN: Senator Spano yields.

SENATOR SCHNEIDERMAN: I just want to understand what we're adding to the law. My recollection is that last year the Legislature agreed to collect the revenues owed to the State of New York from the taxation of cigarettes, also fuel on Indian reservations.

What is this legislation adding to the work we already did last year?

SENATOR SPANO: So far the department has either refused or been unable to implement the system that was presented to them in the budget last year.

This bill codifies this in statute and also gives them another opportunity to require that the sales tax be collected at the distributor level.

The Governor and the agency had a concern about the safety of the State Police and our police officers and the security of our police officers if they attempted to collect this tax.

This will protect the safety of those police officers by changing the method of collection to make it similar to the method of collection that exists right now for gasoline, which would be at the manufacturer level. This will be at the distributor level.

ACTING PRESIDENT MORAHAN: Thank you, Senator Spano.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Through you, Mr. President, if the sponsor would continue to yield.

ACTING PRESIDENT MORAHAN: Senator Spano, do you continue to yield?

SENATOR SPANO: Yes.

ACTING PRESIDENT MORAHAN: The Senator continues to yield.

SENATOR SCHNEIDERMAN: As I read the existing law, there is nothing to stop the Governor and the department from collecting taxes at the distributor level before we pass this bill. They simply declined to do so. Is that not correct?

SENATOR SPANO: The department -- upon the passage of the budget, the department did come up with regulations to do this, but they have not been collecting this. This codifies it so it takes away the discretion away from the agency.

SENATOR SCHNEIDERMAN: Thank you.

Mr. President, on the bill.

ACTING PRESIDENT MORAHAN: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: I think that what we've got here is further legislation attempting to do something which it's very difficult to do by legislation,

which is to get the Executive branch to comply with existing law.

There is nothing that we're adding here that -- really, that the Executive branch couldn't have done last year. Last year we attempted to do what we had to do. We failed to push them to collect the large amounts of money that every year the Governor is letting escape from us in a period of fiscal crisis when we're facing major problems about how to finance our school system, our health care system and other critical programs. The Governor simply refuses to collect this tax.

I assure you they're collecting the tax, sometimes at the distributor level, in other parts of the state. And the small businesses that are paying the tax are tired of this sort of discrimination.

So I would urge that we take the kid gloves off. There's no reason that the State Department of Taxation and Finance couldn't have collected these taxes before. There's no reason that the Governor should be refusing to enforce the law. They could have collected the taxes at the distributor level

before. This is simply a governor refusing to secure an extraordinarily important source of revenue during a period of fiscal crisis for reasons that to many of us are incomprehensible.

And whether this has to do with other negotiations over casinos and the Governor's deeply felt commitment to the primacy of gambling as the method of financing things in the State of New York, I don't know.

But this legislation, which I will support, I don't think is going to force the Governor, who really just doesn't want to collect these taxes, to do so. And I think it's a disgrace, and I think it's something that we should be addressing in a more aggressive way in the Legislature.

And if they don't start collecting the tax, I hope that we will see hearings and some other more aggressive form of action on our part to try and fill this revenue gap. We're talking about $33 for every carton purchased on the Internet rather than from a taxed retailer. That's a lot of money. That's a lot of money.

We're talking about hundreds of millions of dollars that we should have that should go to our schools and not be sitting there because the Governor refuses to abide by the law.

I will support this legislation, Mr. President. I just don't think it's going to do enough to get the job done.

Thank you.

ACTING PRESIDENT MORAHAN: Thank you, Senator Schneiderman.

Read the last section.

THE SECRETARY: Section 7. This act shall take effect January 1.

ACTING PRESIDENT MORAHAN: Senator Hoffmann, to explain her vote.

SENATOR HOFFMANN: No, on the bill, Mr. President.

ACTING PRESIDENT MORAHAN: Senator Hoffmann, on the bill.

SENATOR HOFFMANN: Thank you, Mr. President.

As a sponsor of 6822B, I'd like to compliment several of my colleagues, particularly Senator Spano, on taking

leadership in this area.

Collecting sales tax on those tobacco products and gasoline products that are sold at sovereign Indian locations to non-Indians has been a source of great concern to my constituents in Madison County and in Oneida County, New York, for a long time. Indeed, the residents of those counties have a long history of requests of this Legislature and of the Governor to take this type of action.

And I too hope that the Governor heeds the earnestness of this piece of legislation and the desire of the people in Madison and Oneida County, in particular, to be treated fairly where this is concerned. There are too many examples of double standards when it comes to New York State's relationship with sovereign Indian nations, whether it be with land-claim issues, with casinos and compacts, or, in the case of tax collection, my constituents feel like they are getting the shaft. And this particular piece of legislation is critical to addressing that problem.

While we in the Legislature acted in good faith last year and put collection of sales tax for gasoline and tobacco products in the budget, it was inexcusable that the Executive branch decided to ignore that and simply not make the collections. So now we have created a new statute, which hopefully will become law shortly, with the support of the other house, ably sponsored by Assemblyman Magee, and I think then the message will be even more clear.

In Madison County last year, the local tax collection was also affected, and it was in Oneida County. When we do not see the state collecting its portion, the localities are also denied their portion. So the loss is compounded for the people in Madison County in several ways. Madison County lost $3.2 million, and Oneida County lost $4.5 million. Now, that's the local portion of sales tax that would have been collected had these charges been in effect at the distributor level.

In addition, in Madison County, the loss of revenue-producing property has caused

an erosion of more than a million dollars in the tax base. Land that has been purchased by the Oneida Nation is now used for sovereign Oneida Nation activities. Businesses that were once non-Indian generating taxes for the community are no longer generating taxes for the community, they're generating taxes for a multibillion-dollar corporation known as the Oneida Indian Nation.

Now, I am frustrated in the extreme because we have had this debate so many times. And I truly hope that as we leave here -- without a budget, without a solution on the Campaign for Fiscal Equity lawsuit -- I hope that at least in Central New York some of the frustration can be addressed and this state can do the right thing and collect the sales tax on gasoline and tobacco products at the distributor level, remitting the fair portion to the state budget and allowing the counties to collect their fair portion, as they have asked us to do in home-rule messages over and over and over again.

Thank you, my colleagues, once again, for understanding how very important

this issue is and symbolically how much it means to the people in Madison and Oneida Counties to have been mistreated, to not have had their concerns addressed all these years. Let's set the record straight, and let's start collecting the sales tax the way it should be collected.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator Hoffmann.

Senator Padavan.

SENATOR PADAVAN: Will the sponsor yield to a question?

ACTING PRESIDENT MORAHAN: Senator Spano, will you yield for a question from Senator Padavan?

SENATOR SPANO: Yes.

ACTING PRESIDENT MORAHAN: He yields, Senator.

SENATOR PADAVAN: Senator, what is your estimate or the State Department of Taxation's estimate on the total amount of revenue lost to the state and its localities, presumably, by failure to collect these taxes?

SENATOR SPANO: It's quickly

approaching a billion dollars.

There was an economic study that was done in 2001 by a company named Ridgewood Economic Associates that estimated between $520 million to $600 million was lost in 2001. The estimates show that we're up to $895 million in 2002, and we'll certainly be over a billion this year as well.

ACTING PRESIDENT MORAHAN: Thank you, Senator Spano.

SENATOR PADAVAN: On the bill.

ACTING PRESIDENT MORAHAN: Senator Padavan, on the bill.

SENATOR PADAVAN: Very briefly, Mr. President. Not only are we losing this huge sum of money -- now, just think for a moment if we had that sum at our disposal how many of the problems we're dealing with with this budget would be resolved. But we don't.

But along with that loss of money, consider those small businesses, particularly those in the periphery of the reservations, who are not viable, they're not collecting sales taxes, and they're not making any money at an adequate level to pay a reasonable

amount of corporate taxes, property taxes, hiring individuals who pay income taxes. So the loss locally, in addition to this significant sum, is also considerable.

I met a year ago with the mayor of Oneida. He also wrote us all a letter, if you may recall getting it, in which he stated quite emphatically how this situation was impacting in a significant way on his ability to deliver services and maintain the viability of his town.

And I might say, parenthetically, the social costs associated with the casino on that reservation. But that's a separate issue.

However, he pointed out in great detail how the impact of the sales tax issue was adversely affecting the viability of his town and the surrounding area.

So when we talk about this issue and think about it, I think we have to keep those facts in mind as well.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 7. This

act shall take effect January 1.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT MORAHAN: The bill is passed.

The Secretary will read.

THE SECRETARY: Calendar Number 1468, by Senator Volker, Senate Print 5099, an act to amend the Criminal Procedure Law and others, in relation to DNA testing.

SENATOR SCHNEIDERMAN: Explanation.

SENATOR VOLKER: Mr. President, this is a bill that is a City of New York bill that I have sponsored which provides for -- is an updated bill on the issue of DNA and sample collecting for DNA.

Initially, I believe the city had sent us a bill that said that we would have fingerprinting for all people arrested. What this bill does is to provide for DNA sample

collection the same as we have now for fingerprinting.

In other words, if the offense is one that is serious enough to have fingerprinting, then the person would give a DNA sample. If the case is dismissed or, in the normal run of things, the case is dropped or whatever, the DNA sample would be expunged and returned either to the person or whatever, just as it is now with fingerprints.

So what this bill would do is expand the DNA profiles of individuals who are arrested for fingerprintable offenses and who are obviously convicted. Because if they're not convicted or if for some reason the charges are dropped or whatever, the records would be expunged.

There's a couple of things about this that I might point out. As opposed to previous bills, this would only apply to people who were arrested and arraigned or convicted after the affected date. Persons arrested or arraigned before this date would not -- it would not apply, and there would be no necessity for them to provide a DNA sample.

So what this would do is parallel the fingerprint offenses for people that are arrested and arraigned on or after the passage of -- the date of this bill.

ACTING PRESIDENT MORAHAN: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

If the sponsor would yield for a question.

ACTING PRESIDENT MORAHAN: Senator Volker, will you yield?

SENATOR VOLKER: Yes, I will.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR SCHNEIDERMAN: Thank you.

One of the issues that has been debated as we've seen this bill in past years is the question of what known offenses are in fact fingerprintable offenses. Because we really have nonintersecting lines of argument on this critical issue.

This is a bill, as I understand it, that simply would say any fingerprintable offense becomes an offense where DNA samples

would be collected. Is that correct?

SENATOR VOLKER: That's right, yes.

SENATOR SCHNEIDERMAN: And there have been discussions by people with experience in the criminal justice system -- Senator Sampson, Senator Montgomery raised them last year -- that a lot of times people are arrested for very low-level offenses and they're automatically fingerprinted. And the sponsor has asserted that in fact many of those low-level offenses are not offenses as to which people will be fingerprinted after arrest.

I'd like to ask the sponsor if -- I'm reading now from Section 160.10 of the Criminal Procedure Law -- if we could somehow incorporate those provisions into this legislation. Because Section 160.10 states: "Following an arrest or following the arraignment upon a local criminal court accusatory instrument of a defendant whose court attendance has been secured by a summons or an appearance ticket, under circumstances described in Sections 130.60 and 150.70, the

arresting or other appropriate police officer or agency must take or cause to be taken fingerprints of the arrested person or defendant if an offense which is the subject of the arrest or which is charged in the accusatory instrument is a felony, a misdemeanor defined in the Penal Law or a misdemeanor defined outside the Penal Law."

It goes on to state explicitly you have to be fingerprinted for loitering or for loitering as defined in Subsection 3 of Section 240 or loitering for the purpose of engaging in a prostitution offense.

So I would request from the sponsor clarification of our prior years' discussions. It appears to me, from reading the Criminal Procedure Law, that in fact loitering and other misdemeanors are offenses as to which the police are required to take fingerprints.

Does that change the sponsor's view of the scope of the DNA samples that would be taken under this legislation?

SENATOR VOLKER: Let me just say that the reason -- I think you know the reason why those offenses were listed specifically

for fingerprinting offenses, and that was because of the difficulty in dealing with these people and identifying them. Because many of those people have been arrested so many times, and keeping track of them was extremely difficult to do. And that's why they were included, even though they're not misdemeanors or felonies.

And in fact, I think I remember when that occurred. I think Senator Goodman may have been the one that did that, if I recollect, and it had to do with downtown New York City, I think, and the problem with prostitution in the commercial areas and so forth.

But you make a good point. And I think we did discuss last year that -- what's interesting is I wasn't even aware that apparently in New York City they do have -- they do fingerprint people that I don't believe we fingerprint anyplace else.

I mean, I don't ever remember fingerprinting anybody except for a felony or a traffic misdemeanor or something of that nature, because you were trying to identify

them, quite obviously, which under the law you can do.

Senator, in all honesty, it is something that I think is an issue, and I'm not going to deny it. And I've talked to the city in the past, and we've talked to the Assembly. We are looking at DNA issues now.

And it is something that I will admit to you that if we get to the point, I think, where we get the Assembly to deal with some of these issues, it is a provision that I think should be in there, because I don't think -- keep in mind, of course, the argument against that is, well, they're going to be tossed away anyways, like fingerprints, if the person is dismissed or whatever. Even having said that, we know that that's a fine argument. But in the long haul, there is a line that we probably should draw.

So even though I realize it's probably arguing against my own bill, I think it is something that, when we actually get to do this as a law, we should put in this legislation.

SENATOR SCHNEIDERMAN: Thank you.

Mr. President, on the bill.

ACTING PRESIDENT MORAHAN: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: I appreciate the sponsor's candor.

And I have to say that I am generally a very strong supporter of expanding the DNA database. I've said before I think all of our DNA should be in the database, because what DNA evidence does is help convict guilty people. And, just as significantly, there have been many, many cases in which people who have wrongfully been convicted have now been freed based on DNA evidence.

And it is in our criminal justice system where we are opposed to bend over backwards to see that innocent people do not go to prison. Really, the lowest point in the criminal justice system is when there's someone convicted and imprisoned for a crime that they did not commit. Certainly it's a strong argument against the death penalty, because that's something that you can never, never, never undo.

The difficulty with the DNA system

as it exists now is that we've got this incredible technology but we don't have the resources devoted to it to make it functional. What we have here is a system in which the DNA database is underfunded, the resources for analysis are not there. And we are dealing with an extremely precious product.

There's been some publicity in recent weeks about difficulties encountered by someone who was accused of terrorism because of a mistaken fingerprint. Well, this is a much more serious problem with regard to DNA, because it requires the right analysis, the right storage, the right resources.

And it is something that if we're going to be dealing with this in all of the police departments all across the state, we're talking about a tremendous investment -- and I think it's a valuable investment -- in technology that can assure that people convicted of crimes in this state are in fact guilty.

But until we provide those resources, until we ensure that this is handled properly, I'm very, very reluctant to

expand the reach of the DNA database in the way that's done in this piece of legislation.

I think that, as indicated by our conversation, whatever comes out of negotiations with the Governor and the Assembly is likely to be different, is likely to be more limited. It is absolutely the case -- and again, I appreciate the sponsor's candor -- that there are parts of the state where people are fingerprinted for crimes that they aren't fingerprinted for in other parts of the state.

Let's deal with this in a comprehensive basis. Let's put up the resources and handle this with the respect that this quality of evidence deserves. This is extremely important evidence. Let's expand the database in a realistic way.

I look forward to the day when, you know, DNA databases are available freely to all defense attorneys, including the court-appointed attorneys, and that there's no expense involved and they're able to get access to this information and see that innocent people are not wrongfully convicted.

We're not at that point in this state.

And so I'm going to vote against this. I think that this has got administrative problems. And I think that until we address these issues of the types of crimes for which people are fingerprinted, we're not really enacting a piece of legislation that treats all people fairly, that treats like crimes alike.

So I will be voting no, in the hopes that we will have some sort of legislation that I will be able to vote yes for expanding the database as we move forward.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator Schneiderman.

Senator Volker.

SENATOR VOLKER: Mr. President, very quickly.

One of the things that really irks me on the floor of this house is when you're debating an issue and the person you're debating is right. That really bugs me. Because -- you know, I mean not entirely right, but partially right.

In all candor, I agree with Senator Schneiderman. I think we need desperately to develop a comprehensive DNA process.

I sat with the Governor years ago, by the way, when we first did the DNA laboratory stuff, and I said to the Governor: "There's something I have to tell you here; the cost of this is going to be enormous." And I said, "I really don't want to ask Senator Bruno to do that."

He said, "No, it's something we should do." And one of his people looked at me and said, "Maybe $10 million." I said, "How about 20?" And the Governor gulped. And I said, "We're going to have to expand the lab."

But the point, I think, here is -- and although I think we could do this bill without causing enormous problems, if we are serious, and I think we are getting serious on this issue, we should get together, make a decision on expanding the lab even more -- because right now it wouldn't be, I don't think, big enough to handle all this.

At the same time, I think we should

limit the fingerprintable offenses if we're going to use DNA in the same category as fingerprints.

So on that side, I agree with Eric that I think what we need to do -- and we need to do this soon, because I think we have to get into this. It's too valuable a tool, both on the prosecution and the defense side, not to use it on a more frequent basis. And we're pushing this bill forward just to do that, to tell you the truth.

ACTING PRESIDENT MORAHAN: Thank you, Senator Volker.

Read the last section.

THE SECRETARY: Section 11. This act shall take effect on the 60th day.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

Senator Schneiderman, to explain his vote.

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

I just want to acknowledge the gracious words of the sponsor.

I am voting against this bill, but I think one of the things that has the Capitol in the state it's in today is the inability of too many people in the Legislature to refuse to acknowledge when they realize that they may be mistaken in some respect.

And that I hope that Senator Volker sets an example for all who are involved in the negotiations as we near the session's end. It's only when we're willing to look at our positions honestly that we're ever going to resolve these problems.

I am voting no, but I think that the debate is emblematic of the kind of discussions that don't go on nearly enough here.

Thank you.

ACTING PRESIDENT MORAHAN: Thank you, Senator Schneiderman. You will be recorded in the negative.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1468 are

Senators Andrews, Dilán, Duane, L. Krueger, Montgomery, Parker, Paterson, Sabini, Schneiderman, and Stavisky. Ayes, 45. Nays, 10.

ACTING PRESIDENT MORAHAN: The bill is passed.

Senator Stavisky.

SENATOR STAVISKY: Thank you, Mr. President.

On Calendar Number 1112, Senate 1108, I wish to be recorded in the negative.

ACTING PRESIDENT MORAHAN: Senator Stavisky will be recorded in the negative on Calendar 1108.

Senator Wright.

SENATOR WRIGHT: Thank you, Mr. President.

I request unanimous consent to be recorded in the negative on Calendar Number 964, Senate 2685.

ACTING PRESIDENT MORAHAN: Senator Wright will, without objection, be recorded in the negative on Calendar 964.

Senator Duane.

SENATOR DUANE: Batting cleanup.

Thank you, Mr. President.

I'd like to be recorded in the negative on Calendar Number 1230.

ACTING PRESIDENT MORAHAN: Senator Duane will be recorded in the negative on 1230, without objection.

Senator Marcellino.

SENATOR MARCELLINO: Thank you, Mr. President.

Can we now return to reports of standing committees.

I believe you have a report of Rules Committee at the desk. Can it be read.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: Senator Bruno, from the Committee on Rules, reports the following bills:

Senate Print 242, by Senator Volker, an act to amend the Penal Law;

595A, by Senator Hannon, an act to amend the Lien Law;

845, by Senator Padavan, an act to amend the Criminal Procedure Law;

1155A, by Senator DeFrancisco, an

act to amend the Tax Law;

1268, by Senator Meier, an act to amend the Executive Law;

1271, by Senator Meier, an act to amend the Tax Law;

1519A, by Senator Sampson, an act to amend the Executive Law;

2221A, by Senator Maltese, an act to amend the Administrative Code of the City of New York;

2952, by Senator McGee, an act to amend Chapter 540 of the Laws of 1992;

3065, by Senator Robach, an act to repeal paragraph (e) of subdivision 4;

3277, by Senator Robach, an act to amend the Retirement and Social Security Law;

3887, by Senator Robach, an act to amend the Executive Law;

4085, by Senator Meier, an act to amend the Labor Law;

4371A, by Senator DeFrancisco, an act to amend the Real Property Law;

4422A, by Senator Johnson, an act to amend the Vehicle and Traffic Law;

4772A, by Senator Flanagan, an act

to amend the Education Law;

5058A, by Senator Libous, an act to amend the Tax Law;

5464, by Senator Robach, an act to amend the Correction Law;

5971A, by Senator Meier, an act to amend the Education Law;

6259, by Senator Volker, an act to amend the Civil Practice Law and Rules;

6549, by Senator Robach, an act to amend the Retirement and Social Security Law;

6786, by Senator Robach, an act to amend the Executive Law;

6787, by Senator Robach, an act to amend the Retirement and Social Security Law;

6809, by Senator Bonacic, an act to amend the New York State Urban Development Corporation Act;

6946A, by Senator Maziarz, an act to create a temporary New York State French and Indian War 250th anniversary commemoration;

6994A, by Senator Johnson, an act to authorize;

7195C, by Senator Skelos, an act to

amend the Penal Law;

7271, by Senator Mendez, an act to amend the Labor Law;

7361, by Senator Padavan, an act to amend the Private Housing Finance Law;

7381, by Senator Mendez, an act to amend the Private Housing Finance Law;

7424, by the Senate Committee on Rules, an act to amend the Tax Law;

7430, by Senator Fuschillo, an act to authorize;

7443, by Senator Volker, an act to amend the Penal Law;

7446, by Senator DeFrancisco, an act to amend the Penal Law;

7449, by Senator Morahan, an act in relation to persons;

7454, by Senator Volker, an act to amend the General Obligations Law;

7458, by Senator Skelos, an act to amend the Criminal Procedure Law;

7459, by Senator Maltese, an act to amend Chapter 535 of the Laws of 1945;

7462, by Senator Libous, an act to amend Chapter 723 of the Laws of 1989;

7468, by the Senate Committee on Rules, an act to amend Chapter 266 of the Laws of 1986;

7482, by Senator Wright, an act in relation to making certain findings;

And Senate Print 7488, by Senator Morahan, an act to amend the Penal Law.

All bills ordered direct to third reading.

ACTING PRESIDENT MORAHAN: Senator Marcellino.

SENATOR MARCELLINO: Move to accept the report of Rules Committee.

ACTING PRESIDENT MORAHAN: All in favor of accepting the Rules Committee report say aye.

(Response of "Aye.")

ACTING PRESIDENT MORAHAN: Opposed, nay.

(No response.)

ACTING PRESIDENT MORAHAN: The Rules report is accepted.

Senator Marcellino.

SENATOR MARCELLINO: Would you recognize Senator Saland, please.

ACTING PRESIDENT MORAHAN:

Senator Saland.

SENATOR SALAND: Thank you, Mr. President.

I request unanimous consent to be recorded in the negative on Calendar Number 964, Senate 2685.

ACTING PRESIDENT MORAHAN:

Senator Saland will be recorded, without objection, in the negative on Calendar 964.

Senator Little.

SENATOR LITTLE: Thank you, Mr. President.

I wish to ask for unanimous consent to be recorded in the negative on Calendar Number 964.

ACTING PRESIDENT MORAHAN:

Senator Little will be recorded in the negative, without objection, on 964.

Senator Sabini.

SENATOR SABINI: Mr. President, I ask unanimous consent to be recorded in the negative on Calendar Number 1548, Senate Print 6297A.

ACTING PRESIDENT MORAHAN:

Without objection, Senator Sabini will be recorded in the negative on Calendar 1548.

Senator Stavisky.

SENATOR STAVISKY: Mr. President, I request unanimous consent to be recorded in the negative on Calendar Number 1548, Senate Print 6297A.

ACTING PRESIDENT MORAHAN: Senator Stavisky will be recorded, without objection, in the negative on 1548.

Senator Oppenheimer.

SENATOR OPPENHEIMER: Thank you. Similarly, I'd like to be recorded in the negative on 1548.

ACTING PRESIDENT MORAHAN: Without objection, Senator Oppenheimer will be recorded in the negative on Calendar 1548.

Senator Rath.

SENATOR RATH: Mr. Chairman, I'd like to be recorded in the negative on Calendar 964. Thank you.

ACTING PRESIDENT MORAHAN: Senator Rath will be recorded in the negative, without objection, on 964.

Senator A. Smith.

SENATOR ADA SMITH: Thank you, Mr. President.

I request unanimous consent to be recorded in the negative on Calendar Number 1548, Bill Number S6297A.

ACTING PRESIDENT MORAHAN: Senator Ada Smith will be recorded in the negative on 1548, without objection.

Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, on motions.

ACTING PRESIDENT MORAHAN: Motions and resolutions.

SENATOR FUSCHILLO: On behalf of Senator Little, I wish to call up Senate Print Number 6066, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT MORAHAN: Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time call up Calendar Number 1568.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: Calendar Number

1568, by Senator Bruno, Senate Print 7471, an act to amend the Tax Law, in relation to reducing.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT MORAHAN: Senator Bruno, an explanation has been requested.

SENATOR BRUNO: Thank you, Senator. Thank you, Mr. President.

This is a -- what I would call an investment in the future of economic development and job growth here in New York State.

It is a tax-cut package that, first year, on passage, saves the people that it would affect $56 million. It grows to 1 billion 65 million when fully implemented -- over a billion dollars that stays with families who are providing home care for part of their family that need it, in tax credits. It applies to farm credits, to help one of the largest industries here in New York State. It applies very specifically to about twenty-plus different categories where we need to help the

competitiveness of the industry or the people.

For instance, there is a kero-jet-fuel piece in here where jets are almost forced to fuel up in other states because New York State taxes their jet fuel higher than any other state in the United States. Now, that is crazy. It is not productive.

Airplane repairs, for instance, for the privates, we have a tax. If they get it repaired in Connecticut, New Hampshire, New Jersey, they don't.

A lot of things like that that we're addressing. The biggest piece, one of the biggest pieces really has to do with what we're calling the Excell program.

Senator Skelos -- and hopefully you're going to hear from him -- on behalf of the Senate, did hearings all over the state on what does it take to stimulate small businesses to encourage job growth here in this state. And all of us know that the greatest growth in jobs comes from small businesses, startups that get encouraged and expand.

So about $80 million of this goes into helping young companies, new companies, especially in the nanotechnologies, the life sciences, the biotechnologies, which would be the next step to the almost billion dollars that we here in this chamber, with the Assembly, with the Governor, invested in what we called our Ge*NY*sis plan, generating jobs through science and technology. And that has been working and creating stimulation.

This is the next step, Excell, as an outgrowth, because it helps not just fund but helps direct with venture capital, helps give direction to some of these young, high tech, life science, capability of growth companies. And that is a big part of all of this.

The whole package, as I mentioned, keeps about a billion-plus dollars in the economy as an investment in jobs. We've been talking about education, Campaign for Fiscal Equity. Courts have mandated that we must provide a sound, basic education for every student here in this state. And we're going to meet that obligation.

When the young people are educated, when they go through school and they go through college over the years, where have they gone? They've gone to California, they've gone to Texas, they've gone to the Carolinas, they've gone following the jobs, and most of them high-tech jobs.

So this plan is intended that while we invest billions in education, we keep our people here, our young people, our children, our grandchildren, we keep them here in New York State by offering them opportunities for not just employment, but for growth. And that benefits everybody.

So some people will say: You're spending $56 million growing to a billion. We are not spending anything. We are advocating that we invest in the present and the future job growth here in New York State, which drives revenue.

As companies expand, as people get employed, they pay taxes. When companies are profitable, they pay taxes. Those taxes pay for education, for health care, for the infrastructure, for mental health, for

everything having to do with governing here in New York State and keeping the Empire State with the quality of life that all of the constituents deserve.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator Bruno.

Senator Onorato.

SENATOR ONORATO: Mr. President, will the Senator yield for a question.

ACTING PRESIDENT MORAHAN: Senator Bruno, will you yield for a question from Senator Onorato?

SENATOR BRUNO: I'm sorry, Mr. President, the leader was sharing a thought, a very positive thought.

So, Senator, yours is probably a very positive question.

SENATOR ONORATO: I'm concerned about the tax credit for the film industry. As you know, I represent Kaufman and the Silvercup Studios, and I notice in here there's a nice incentive for the film industry. And I want to make sure that it applies equally across the board to all of the

film industry, not just one specific --

SENATOR BRUNO: Thank you, Senator. And you highlight a great point.

The answer is yes. It applies to Kaufman Astoria, it applies to film producers across the state. And it provides a tax credit.

Louisiana increased and put a tax credit in for filmmakers to come to Louisiana and make film. They ended up doing $100 million worth of business, up from about $25 million, as a result of their tax credit.

This tax credit that will, with all aspects of it, it's 10 percent, it could be 20 percent when you put all the aspects in, is throughout the whole state -- covers Kaufman, that great studio in your district. And we believe, in talking to these people, that they will produce film in New York City, which is unique in the world. Because some of them are going to Canada, they're in California. In California, filmmaking is a $35 billion industry.

So that's part of it. There's two pages' worth of specifics. So, Senator, thank

you for calling that to our attention. And the answer is yes, it covers them.

ACTING PRESIDENT MORAHAN: Thank you, Senator Bruno.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Mr. President, I believe there's an amendment at the desk. I request that the reading be waived and that I be heard on the amendment.

ACTING PRESIDENT MORAHAN: The reading is waived, and Senator Schneiderman will speak on the amendment.

SENATOR SCHNEIDERMAN: The amendment that we're seeking to add to this bill, which I think is a very positive contribution to this piece of legislation, is called the Small Business Protection Act. And who, after all, speaks more about the need to protect small business than senators in the state of New York.

However, we believe -- and Senator Paterson advanced everything that's included in this amendment when he presented his tax proposals on March 31st in a budget plan that we commend to you still, as we seek to resolve

the budget issues facing this state, is full of all sorts of ideas about finding revenue and closing the budget gap and funding CFE.

But included in Senator Paterson's budget plan were some modifications of the Tax Law that we think are tremendously important and that would generate a lot of revenue. And we understand the pressure everyone is under from various sources, friends and family, to close all of the budget gaps in all areas.

And Senator Paterson's proposal would do the following. It would require corporations to pay taxes which currently they should be paying -- we're not raising tax rates, but that they are not paying because of loopholes. Sound tax policy involves having as low a rate as you can and as few loopholes as possible so you don't end up taxing some businesses a lot because other businesses are exempt.

This amendment would eliminate what's been known as the "Toys 'R Us problem," where subsidiaries -- and Toys 'R Us has been used as the example for this -- subsidiaries of Toys 'R Us in Delaware are listing all of

the revenue from the use of their licenses as Delaware income. There's nothing in the New York State law to require them to pay here. New York State Toys 'R Us stores are not paying taxes because it's being attributed as income in Delaware.

Many states have eliminated this. We can decouple the requirement that businesses invest in machinery, equipment and capital if they're going to get tax credits to create employment. Now, that is critical for small businesses. Small businesses, service businesses don't tend to invest in equipment and machinery and capital. But under the current law in New York, they're not eligible for tax credits for increasing employment if they don't do that. Again, a discrimination against small businesses.

Finally, finally, there are corporate loopholes that have been closed in the State of New Jersey that have generated a billion dollars, a billion dollars in a state half the size of ours that we strongly urge be closed in New York State that will go a long way towards solving our current budget crises.

First of all, combined reporting, which has been repeatedly upheld by the United States Supreme Court, eliminates the corporate tax loopholes that plague our corporate tax system. We don't require companies to combine all of their reporting so that they pay taxes as one unified whole and are prevented from hiding income in other subsidiaries.

And, second of all, half the states now have adopted a federal definition of business income. New York has held on to our own, much narrower definition of business income, and this lets businesses claim tax-free income in New York that other states tax.

Again, the goal of our amendment is to say let's follow basic tax principles. Let's have as low a rate as possible and as few exemptions as possible. Let's not penalize companies that don't transfer their income to out-of-state subsidiaries. Let's not penalize companies that create jobs but, because they don't invest in machinery, equipment and capital, they don't get tax credits.

The Small Business Protection Act, we urge you, is something that should be included in this year's budget. We're offering it, and it's an amendment now, in the hope that it will get the consideration it deserves.

Once again, it was presented by Senator Paterson on March 31st, but as now we enter another phase of budget negotiations, we are very hopeful that these issues will be on the table.

I urge everyone to vote for this amendment, Mr. President. And I think that all of the materials which we presented here, we have presented to the Finance staff, we think are valuable contributions to our effort to close the existing budget gap.

Thank you.

ACTING PRESIDENT MORAHAN: Thank you, Senator Schneiderman.

These Senators in agreement with the amendment please signify by raising your hand.

THE SECRETARY: Those recorded in agreement are Senators Andrews, Breslin,

Brown, Diaz, Dilán, Duane, González, L. Krueger, Montgomery, Onorato, Oppenheimer, Parker, Paterson, Sabini, Schneiderman, A. Smith, Stachowski, and Stavisky.

ACTING PRESIDENT MORAHAN: The amendment is lost.

Read the last section.

THE SECRETARY: Section 3 --

ACTING PRESIDENT MORAHAN: Senator Schneiderman.

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

In the absence of the Small Business Protection Act being included in this bill, I am going to be voting against it. And the reason I'm going to be voting against it is because I believe this legislation reflects both bad tax policy and bad politics.

The reason it is bad tax policy is, again, that it violates the fundamental principle that good tax policy has broad-based taxes with few exemptions, treats similar transactions similarly, applies to everyone who's involved in the same nature of business.

This bill furthers the problem we

have in New York State where we have very high marginal tax rates that generate relatively little income because our tax system is so riddled with exemptions, loopholes, and special privileges, sometimes for particular companies, sometimes for particular industries, sometimes for particular parts of the state. This bill contains all of those flaws.

If we pass this bill, we will be enacting five new sales tax exemptions, eight new business tax exemptions, three income tax exemptions. We're not making tax policy here, Mr. President, we're making Swiss cheese.

This is not the way to reform the tax system in the State of New York. It creates discrimination at the most basic level. We have this initiative that Senator Bruno spoke about relating to high-tech businesses, but it's only available in certain areas of the state. So if you're in one part of the state, you will be taxed differently than the same business in another part of the state.

It would treat filling up your

corporate jet differently than filling up your car or filling up your yacht. I mean, why discriminate against millionaires who use yachts instead of use corporate jets? This is a bill that reflects the worst aspects of New York's preexisting tax policy.

And I understand the reason for proposing a bill like this. The reason is that when you identify very specific areas where we say we're willing to cut your taxes, you can go to those constituencies and say: We tried. We were doing something for you.

Because people don't respond when you say, If we get rid of these exemptions, we can lower everyone's tax rate a small amount. People respond when they think they're going to get a tax break just for their own particular need.

That's bad politics. And the reason it's bad politics is because we keep creating these exemptions, we keep making Swiss cheese instead of good tax laws. And the effect is that we're not cutting taxes.

So let's be honest for this afternoon at least. The state budget in

1995-96 was $63 billion. The state budget now over $100 billion. Every county during this period, which was picked randomly -- it happens to coincidence with the Governor's tenure, but it was picked randomly -- every county has raised its sales tax. Not one county has done any permanent tax rate cuts.

This session, this session we've continued this process of expanding government, refusing to raise the broad-based taxes, creating more exemptions so we generate less revenue and passing on to the local governments the need to fill in the gaps and passing on to future generations the debt with which we fill our gaps.

This year we're saying we want to cut taxes. Well, what are the bills we've been passing? Why don't we see about the phone surcharge taxes we've authorized for Columbia County, Franklin County, Onondaga County, Otsego County, Madison County, Orange County, Warren County, mortgage recording tax we've authorized for Delaware County, hotel-motel tax we've authorized here in this Senate for Dutchess County? What about the

sales tax increases we've authorized for Lewis, Clinton, Orange, Madison, Schoharie, Erie, Oswego, Jefferson and Essex counties?

We did not authorize them because we just woke up one morning and said, oh, we think we should raise sales taxes there. We did it because the local governments are dying, and they're dying because we're not giving them the money to fund the programs we mandate. And we're not bringing in the revenue because we've got a tax code that is so riddled with loopholes they're more like loop canyons.

The bill proposed today would create more loopholes. It would further the bad tax policy that animates the state. And let's be honest. We've got a budget gap. We don't have a budget surplus. We're not going to cut taxes this year. We're not going to cut taxes this year. In fact, what we're doing is raising taxes for local governments all over the state.

And I respectfully submit that this is not the way to make tax policy, and this is not the right way to do politics. So I'm

going to be voting no on this bill. If we want to do tax cuts that are, as Senator Bruno correctly identified the right way to do this is to view them as investment for growth, there are other ways to do them. They were in the amendment that was just rejected. They were in other proposals advanced by Senator Paterson in his March 31st budget proposal.

But the bill before us today does none of those things. And I would urge my colleagues that the most important investment for growth that would be threatened further if we pass this battery of tax cuts, the most important investment for growth is the investment in our children. And that requires us to fund the school system whatever we have to do. There's no greater threat to the long-term economic health of the State of New York than our ongoing refusal to provide excellent education for every child in this state.

So this is not a matter of charity, this is a matter of sound economic policy. I urge everyone to vote no on this bill, and then let's get back to the table, stop

pretending we're going to cut taxes, and fund the CFE mandate.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator Schneiderman.

Senator Sabini.

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

ACTING PRESIDENT MORAHAN: Senator Sabini, on the bill.

SENATOR SABINI: There's an old saying, if you can't say something nice, don't say anything at all. I will say a couple of nice things about this bill.

I think that making New York's film industry competitive is an important thing. Our film production is moving, in many cases, to Canada quicker than the "Fast Ferry." And that's particularly hurting Queens County.

I think the tax credit for historic homes is long overdue. It's something I fought to get a home rule for when I was on the New York City Council, because of the cost of those homeowners maintaining those properties is in many cases much more onerous.

Those are the good things. You know, we had an April 1st budget deadline, and this bill is essentially part of the budget because it affects the revenue we raise. And while it's still April here in the Capitol because we haven't passed a budget, it's also Christmas. And we have a tree with lots of ornaments on it. There are ornaments all over this thing for people. But it's piecemeal budget-making.

Last year this body and the Majority in this body joined with the Minority to have the courage to protect localities from onerous expenses and school taxes, property taxes. But this year, I guess since it's an election year, we're much more interested in awarding Christmas ornaments to all the branches on the tree.

And while I was aware of the fact that to cut costs businesses are fueling their jets elsewhere, I wasn't aware that it was such a burning problem for us that we would want to rush to correct that.

I wasn't aware that the bill ignored some of the progressive changes made

in the state of New Jersey in the last few years. And the New Jersey Legislature is considering, as we speak right now, some more changes to ensure that corporate loopholes are closed so that taxpayers, both at the local level and when they pay their property taxes to cover the programs we mandate and the taxpayers who pay the state income tax, are a little more protected.

So on the whole, I am disappointed in seeing this bill at this time. I think it's piecemeal budget-making, which is a bad way to conduct business. I think there are things in here we can live with. But in its totality, I will be voting in the negative.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Senator Parker.

SENATOR PARKER: Mr. President, on the bill.

ACTING PRESIDENT MORAHAN: On the bill, Senator Parker.

SENATOR PARKER: I guess I rise out of disappointment, out of disappointment that here we are, over 2½ months beyond when a

budget should be passed -- we all know that the budget should be passed on April 1st, and here we are 2½ months out beyond that.

And instead of getting a budget package that in fact considers and deals with directly CFE, that deals with the health care issues, the issues of housing, the issues of transportation in this state, we get a bill that is -- you know, I can't describe as anything else other than corporate welfare, a tax bill that not only deals with things in a piecemeal way but does not deal with any of the real issues that this state is facing.

And this is not a new thing. We go through this every year -- I mean, I've been, you know, going through this for only two years -- but, I mean, for over twenty years. You know, in a generation we haven't had an on-time budget. And it's a shame that not only have we not had an on-time budget, but we continue to get bills that are not helpful to the budget process.

If we're going to, in fact, you know, pass tax bills, let's create tax bills that in fact add to the revenue of the state,

that in fact help lift the burden off of the real taxpayers, not folks with private jets.

Instead of closing corporate loopholes, as some of my colleagues have indicated, this bill creates more corporate loopholes. And it doesn't -- and it doesn't -- I mean, it's a disingenuous attempt to deal with the issues that the state has.

The problems that the people in my constituency have, we don't have a lot of private planes in Flatbush and East Flatbush and Borough Park. So, you know -- and we're not making a lot of movies. The people in my district need housing. We have a lot of public schools, and they need money for the public schools. You know, we have transportation issues, we have people who have health concerns, we have seniors who are looking for new senior centers and for better meals and for more services to folks entering their golden ages. That's what we ought to be paying attention to. Those are the groups of people that we ought to be able to create some relief for in this chamber.

And so again, I'm disappointed.

I'm further disappointed by the fact that there's no serious consideration of the proposal put forth by the Democratic conference of the State Senate in which, before April 1st, we submitted a plan that would, on time, not spend more money than the Governor had proposed, that in fact dealt with the issue of CFE, that put money into all of the vital services that we needed, and in fact balanced the budget.

And, you know, if we can't have an honest and sincere discussion about those kind of issues at this late date, then I'm not sure what we're all doing here.

A billion dollars spent without solving the problems of the people of the State of New York is unacceptable. I'm voting no, and I'm urging all of my colleagues in this chamber of good conscience to vote no with me.

Thank you.

ACTING PRESIDENT MORAHAN: Senator DeFrancisco.

SENATOR DeFRANCISCO: Thank you, Mr. President.

You know, we're talking about a tax cut bill here, and the discussion is -- a lot of the discussion is centered around CFE, money to education, late budgets and everything else. And, you know, as a practical matter, there's no benevolent dictator in the State of New York that can impose a budget on anybody who's not going to want to go along with that individual's opinion.

And there's a process that's obviously dysfunctional, but, on the other hand, for a tax cut bill to come up here and we start complaining about the late budget -- as if the Senate is the only reason that this budget is not in place -- is, I think, a little bit unfair. I'll leave it at that.

Secondly, if every issue is going to revolve around school aid and the need for greater and greater school aid, the fact of the matter is the only way that you can get more money for school aid is either to tax people more or to provide a better economy where more people are paying taxes. And that's, I think, the intent of this tax cut

bill and the intent of many, many other tax cut bills that we've proposed.

I don't agree with every aspect of this bill. But the fact of the matter is it will drive more revenues. And it does remind me of when we talked about the STAR program where we were giving senior citizens and others tax breaks on property taxes and so forth: "How can we afford this?" You know, or giving other tax breaks, income tax cuts when Pataki first came into office: "How can we do that? We won't be able to afford it. We're going to hurt everybody because we won't have the revenues."

In fact, those tax cuts are what drive the economy. And obviously our economy needs to be driven further. And once we have more revenues by a greater tax base, we can provide more for education, we can provide more for -- and hopefully some more tax relief for property owners.

So, you know, I guess my point basically is this. Although I may not agree with every aspect of this tax cut bill, it drives the economy. I hope it will help drive

the economy.

Secondly, to blame everything -- every time there's a bill, to get back to the late budget, which is not the sole responsibility of one house, or to claim that we should be providing more for education -- you know, those are givens. The question is, where do we get the money and how do we get reasonable negotiations in both houses to come to a final conclusion?

And hopefully everyone can see these are separate issues that hopefully will be resolved favorably.

Thank you.

ACTING PRESIDENT MORAHAN: Thank you.

Senator Skelos.

SENATOR SKELOS: Thank you, Mr. President. If Senator Parker would just yield for one short question.

ACTING PRESIDENT MORAHAN: Senator Parker, will you yield for a question?

SENATOR PARKER: I will.

SENATOR SKELOS: The proposal that you were talking about that was put out

by the Democrat Minority March 31st, has that been put into bill form?

SENATOR PARKER: It has not been introduced yet.

SENATOR SKELOS: So it has not been put into bill form, it has not been introduced yet, even though you're talking about a proposal from March 31st.

SENATOR PARKER: Correct.

But we do, in fact, have a proposal that we were hoping that, you know, you would pick up and go forward. We were providing the proposal and the framework, hoping, you know -- we didn't want the credit, we just wanted to make sure that the proper policy was in fact implemented.

SENATOR SKELOS: No, I understand what you're saying. But my question really is, is it in bill form?

ACTING PRESIDENT MORAHAN: Senator Skelos, are you asking the Senator to continue to yield?

SENATOR SKELOS: No, that's fine. I received my answer.

Mr. President, if I could just

comment on the bill. A couple of comments.

Number one, so often when I hear about closing tax loopholes, and perhaps what Governor McGreevey has done in New Jersey, that generally means raising taxes. And I encourage New Jersey and other states around us to raise their taxes so all these businesses will come to New York State and create jobs right here in New York State.

I think what's very important -- and Senator DeFrancisco was really touching upon it. What I believe has happened in the last several months, and one of the reasons why the budget is delayed, is the Senate, through negotiations, the leadership of Senator Bruno and our membership, the Senate Majority has changed the dialogue on the issue of CFE from a decision that has narrowed down just to New York City -- and that was the only concern of so many on the other side of the aisle, and in the Assembly Majority -- to an issue of how do we take care of CFE, how do we take care of the high-needs districts that exist upstate and on Long Island. And I can speak for Long Island, like Roosevelt,

Uniondale, Freeport, and Hempstead. That dialogue has been changed.

And the dialogue also been changed as to how do we also protect many of the school districts, upstate and on the island, where the taxpayers over the years have invested, through the real estate taxes, to make sure that we have a sound system, and despite the fact that they have not received the level of aid that New York City has. And we do not want to tear that down either.

So I think the dialogue has been changed very positively. And I think that that is one of the reasons right now -- this is my opinion -- that the budget is delayed.

And if we have managed to change that dialogue, and it comes out that high-needs districts -- whether New York City, Long Island, or upstate -- are satisfied, plus other school districts are protected, I think, in my opinion, it was worth the delay.

And in terms of Medicaid reform, you know, so many throughout the state are saying the state should just take it over, the state should just cap it. But we've had,

through a Medicaid Reform Task Force -- Senator Meier, Senator Hannon, they're looking at real reforms, on how to reform the system to maintain quality of care and to make it more affordable here in New York State for our localities and also for our state.

And I think it's also been pointed out by a resolution that passed unanimously, unanimously right here in the Senate, that the problem also exists on the reimbursement rate that we receive from the federal government. All right?

We're shorted by the federal government in New York State. We have high needs. But because of the wealth factors -- and I know that Senator Meier or Senator Hannon can speak a lot better than I can on that -- we do not receive our fair share despite our high needs.

But we're focusing now on where so many of the problems lie and how we can best move forward with the state. Whether it's Medicaid reform, protecting our counties, tax cuts to encourage job development, and the so-called CFE, which is really a total

education package, I think we've changed the dialogue in a very positive way. And when we do have a budget and we do resolve the CFE problem, that it's going to be good for all the kids of New York State.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator Skelos.

Senator Larkin.

SENATOR LARKIN: Thank you, Mr. President.

Senator DeFrancisco and Senator Skelos stole the thunder. But what we're really saying here this afternoon is this tax package is for the benefit of New Yorkers.

Let me just cite one example in here. When we talk about eliminating the taxes on noncommercial aircraft, a commercial aircraft comes into New York and it needs repairs, it just has exceeded the time of miles that it has. It can get its parts, it can bring them, it's repaired, and there is no tax.

We have, in the State of New York, probably 2,500 people that work at small

airports -- Long Island, the Hudson Valley and over -- employing close to 3,000 employees. There are seven states that surround New York that do not have a tax on these repairs.

So in my case, there's 157 employees at Stewart that can just -- Cessna can say, We're going to Connecticut, it's a 37-mile flight over to Connecticut. They can go to Connecticut, get their aircraft repaired, and we lose 157 jobs.

You look at Long Island, Rochester's got a problem. I talked to Senator Brown from Buffalo, he's got the same problem. So do they have it up in Niagara.

So here you are given an opportunity to continue growth, to continue employment, and to make people want to come to New York. I have people now at Cessna tell me that they would rather go to Florida than come to New York and pay the tax. And what do we do with the 157? Long Island Airport, Dean told me last night that they told him that they could work seven days a week, 14 hours a day, instead of five days, seven, if they didn't have the tax because people would come

here and employ.

And we're sitting around talking. We're talking about school aid. We're talking about this aid. And then, as Senator Schneiderman said, they had a package here for us in March. You know what? I can't read up in the sky. I can only read it when you reduce it to a bill. It's not there. It's pie in the sky.

We talk about CFE. We talk about the budget. We talk about it. You know, the average person on the street are saying, What's the difference? You can't come together.

We are together in this house, on this side of the aisle, because we've come up with sound procedures. Just one I'm citing for you. Think about it. Do you want jobs to go to Connecticut and Massachusetts, New Hampshire, Florida, Maryland, or do you want to keep them right here in New York? That's your decision.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator Larkin.

Senator Stavisky.

SENATOR STAVISKY: Mr. President, I want to keep the jobs in New York City and in New York State.

There's a section of this tax proposal, Part O, which runs from page 40 until page 48. And it seems to me it's such an important part that it ought to be a stand-alone piece of legislation. It provides for a tax credit for our motion picture and television industry.

Kaufman Studios and Silvercup are two very, very important studios doing filming in New York City. And they spend, incidentally, approximately $5 billion, with a B, $5 billion a year on film production. This is a very, very significant industry.

I live in an apartment house, and they filmed a segment of "Law and Order" where I live. I haven't seen the program yet. But they had their film crews out, the City of New York blocked off the street for them, the co-op, my co-op received a payment, the people whose apartment they took received a payment, and they made a very significant contribution

to the economy of the city by filming.

And if you replicate this in other parts of the city and in other parts of the state the tax benefits that will inure to the people and to the state are tremendous.

This is a very significant industry where I understand, in the last three or four years, something like 8,000 jobs have been lost. They've been lost to places like Toronto, where a lot of the filming is done.

So I would urge, since my colleagues on the other side of the aisle are putting forth a tax reduction, that this is such an important issue that it be a stand-alone proposal which would certainly merit our support.

Unfortunately, it is like a Christmas tree. There are, however, some weeds in the Christmas tree that have to be pruned. This is not one of them. And on balance, I'm afraid I'm going to have to vote against this bill.

But I do recognize the importance of the film industry. And I would urge that before we go home that we have a major tax

benefit proposal to help the filming industry and the television industry.

Thank you.

ACTING PRESIDENT MORAHAN: Thank you, Senator Stavisky.

Senator Krueger.

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

ACTING PRESIDENT MORAHAN: Senator Krueger, on the bill.

SENATOR LIZ KRUEGER: Thank you. So much to say.

Senator Schneiderman started out by saying that this was not tax policy, we'd be creating Swiss cheese. I will clarify, we have Swiss cheese already in New York State in our tax policies. This would just increase the number of holes in our cheese.

And I heard Senator DeFrancisco's objection to tying everything to the budget and to CFE. And I'll even agree with him there. This would be an outrageous bill if it had no correlation to our budget, to education funding, to our current fiscal situation in New York State. It's the opposite of what we

ought to be doing.

To start, we have already in New York State a tax expenditure budget -- tax credits, tax expenditures, tax exemptions that total $26 billion a year. So we argue about whether we can afford more money for our schools, to the tune of a couple of billion dollars -- and I'm not underestimating the dollar value of a couple of billion dollars -- and we argue about what year we're going to cut in health care for the elderly and the disabled and the poor through our Medicaid program, and we argue about whether or not we're going to have equitable distribution of transportation funding in our budget.

But we never look at our tax expenditure budget. We never even bother to review tax laws and policies, not unlike these, that were passed ten years ago, twenty years ago, thirty years ago, and question whether they are in the best interests of the State of New York or the best interests of the people of New York.

But if we looked at the existing tax expenditure budget as we ought to each and

every year as part of the budget process, and as we look at these individual proposals made in Senator Bruno's bill before us today, we see very consistent patterns.

One, these are tax benefits that make our tax system more regressive. We are reducing taxes for multinational corporations, for multistate corporations, for wealthier New Yorkers, and we are translating those costs to the backs of working New Yorkers, middle-income New Yorkers and low-income New Yorkers.

We talk about having dropped the state tax level a few years ago and how great that was for our economy. Well, in fact, all we know we did was transfer that tax cost from the states to the localities. Every one of my colleagues, Republican and Democrat, has stood up on the floor at some point in the last year or two complaining about the increased costs at the local level of having to raise local taxes.

Why do you think you're paying local taxes at a higher level? Because we keep reducing the state tax revenue and the

federal tax revenue, placing the burden at the local level. We're part of the problem. And this bill would go much further in creating a greater problem.

I heard discussion. I heard Senator Bruno very eloquently talk about the need to do these kinds of tax exceptions, tax cuts and tax credits to bring businesses into New York. Senator Larkin just spoke on it also.

The devil is in the details. Just because you cut a tax doesn't mean you create new job opportunities. There is often absolutely no correlation between a specific tax policy and what happens in the economy at the local or state level. You can't simply make that statement.

And in fact, one can make the opposite argument, that on a number of these proposals we will do harm, not good, to existing businesses and to existing taxpayers and not bring in any new jobs.

In fact, this group of proposals -- although I agree with several colleagues some of them are very good and should be evaluated

in their own right individually, in the context of an overall tax policy analysis in relationship to reviewing our entire structure of tax expenditures.

But to make the argument that it is more important to give a tax cut for aviation fuel or for private aircraft repair, versus not recognizing that right now people leave New York State to go to New Jersey and other states to buy their clothing because they don't have a sales tax on clothing in other states and we do here -- but we're planning on keeping that tax, despite our commitment to the taxpayers that we would do away with that. But instead, we want to reduce taxes for the petroleum business, for aviation fuel and for aircraft repair services -- is a disingenuous argument about the number of jobs we're interested in trying to hold onto or create in New York.

Because of course we all know that tax policies that provide assistance to small businesses have a much greater win in our economy for job creation than tax policies that benefit large corporations and

multinationals.

And the disproportionate impact of this bill today, when you total up all of the proposals, is the advantage of large corporations and multinationals, not the advantage of small businesses who are the job-creation generators for our state. And of course the price is picked up through other tax increases on the people of New York State when we give big business even greater tax cuts.

But to go through a few more, the concept that we're prepared to give a tax cut through -- a tax credit, excuse me, to businesses who provide health insurance now if they actually reduce the package of health benefits that they're providing, to the tune of potentially $665 million in tax credits for health insurance?

So often on this floor we discuss the need to expand people's eligibility for health insurance, to make sure more New Yorkers are covered by health insurance, and yet we don't get there. And now, in this bill, we're going to give tax credits to

businesses who already provide health insurance, but the win for them is only if they reduce the package of health care that they're providing.

Under the Senate Republicans' proposal, businesses that currently provide health insurance coverage for their employees would not qualify for this credit unless they were to eliminate their current health benefits for one year, do away with health insurance coverage, then create an incentive for them to bring back health insurance coverage at a lower level for their employees.

In fact, it would be an insurance coverage package that was far less superior than the kinds of programs we are offering and trying to expand offering through Family Health Plus and Child Health Plus and Healthy New York.

Why would we want to encourage businesses to do away with their health insurance and then come back with a worse package? That is completely contrary to public health policy in the State of New York and what I thought we were all interested in.

The concept of giving a dollar-for-dollar tax credit for companies who would be "angel investors" in the Excelsior angel investor program, primarily insurance companies, where they would get a $1 tax credit for every $1 they invested? It's a free ride for, frankly, venture capital.

What are we doing offering free rides to large corporations rather than investing in education? Yes, I will say the word, although I said this bill is bad regardless of the budget or CFE.

We all know, the research shows, you invest in good education, you invest in good infrastructure, you invest in good health care, and you bring jobs and you hold jobs. Instead, we're going into venture capital models that are tax-free for corporations.

We're offering to give a tax credit back to companies who provide life insurance because we taxed them a little bit three years ago. So now that we had increased their tax rate to just above 1 percent, we're concerned about having to cut their taxes again. A 1 percent tax rate. Talk to the people in

your district about their tax rate; see if they're crying over a specific category of corporations having a 1.05 percent franchise tax and wanting to bring it down below a 1.01 percent tax.

This is a ridiculous use of our money. This bill is an outrage if you are evaluating the question of tax policy, progressive versus regressive, trying to think through what the best interests of the people of New York State are and the small businesses of New York State.

New York State has reduced its business tax percentage from 10.5 percent to 6.6 percent. Some argue that that has increased business opportunities in the state of New York. I argue we'd better do some research and prove it corporation by corporation, industry by industry.

Because in fact, when you do do some homework, you find that some of the largest corporations in the state of New York who get some of the highest rates of tax exemptions and tax credits in this state -- companies like Eastman Kodak, General

Electric, IBM, Toys 'R Us, UPS, Wal-Mart, Wegman's, and Xerox -- are actually figuring how to avoid paying state taxes, in some cases completely. Toys 'R Us, Eastman Kodak and Xerox actually have negative state income tax liabilities, despite having substantial net taxable income.

We have some of the largest corporations in the state not paying a dime in taxes to the State of New York, and we are letting them do it legally by exactly these types of loopholes and tax credits that are being proposed today.

We are doing damage to the future of our state and to the economy of our state. We are treating our citizens, our localities, and our small businesses unfairly. This bill continues to send New York in completely the wrong direction when it comes to tax policy, equity, the philosophy of a progressive tax system, and a fairness factor that must be built into our tax policies which are not there today.

The Senate Democrats proposed some corporate loophole closing. One colleague

here today argued that's raising a tax. Just to clarify, a corporate loophole is exactly that. It's a special exemption, a special treatment of some entity. Closing a loophole addresses an equity issue for an unfair tax structure. It is not raising taxes. It is assuring the State of New York increased revenue to pay for fundamental public services.

We have been going in the wrong direction on tax policy for at least the last two decades in New York State. We have refused to evaluate our tax expenditure budget that has grown exponentially, again to the tune now of $26 billion a year that we're not collecting. And I would guess no one in this room knows where that money is going, because we never take a look at it.

This bill goes -- continues down the wrong path in the absolute wrong direction. I urge everyone to vote against this bill.

Thank you, Mr. President.

ACTING PRESIDENT MARCELLINO: Senator Little, please.

SENATOR LITTLE: Thank you, Mr. President. If I may, on the bill.

I commend Senator Bruno, Senator Skelos and all of those who have put together this bill with these many tax cuts. It was put together in order to increase business in New York State, and it was put together based upon some of the things that need to be done to increase business in New York State.

In one particular area I'd just like to speak of, although there are many parts of this bill that I think are going to have tremendous impact on the business climate in New York State -- and when you ask for results, I think one of the things you need to look at is that Sight magazine, which lists the states and the areas where a business would be best to look at in order to begin a new business, now has New York State near the top of its list, whereas it wasn't even on the list several years ago.

The film industry, we need to really and truly look at doing something for the film industry. And I don't know how anyone from New York City wouldn't be in favor

of this bill. New York City has more film companies than any other part of the state. It certainly has one of the finest universities for the study of film in New York University. And I would daresay it has more celebrities from the film industry living in New York City.

My own son is not a celebrity in the film industry, but he is a producer for TV commercials. And many commercials are still done in New York City. That is thought to be the one film business that is still okay in the city. However, the movie film industry is pretty much gone from New York City. They may be doing commercials and TV shows, but not movies.

For one thing, in entire New York State, "Miracle on Ice" is a movie about the win in Lake Placid of the 1980 Olympics hockey game, which was so exciting. And yet -- it features Lake Placid, yet the film was filmed in Canada. And I could name numerous films that have been filmed elsewhere, and yet their real base is a story about something that took place in New York State.

We have beautiful areas, particularly in my area, in which we have lots of vacant land and mountains and lakes and scenery. We need to be attracting this business. And this tax credit to the film production business is critical for New York State. And on that basis alone, we should all be voting for this bill.

Thank you.

ACTING PRESIDENT MARCELLINO: Senator LaValle, please.

Senators, we have a list that we're going down.

SENATOR LaVALLE: Thank you, Mr. President.

I just want to reinforce some points that Senator Bruno has made. And yesterday at the press conference, he was just absolutely terrific and on point. And he talked about this tax package really being an investment, and that with investments we yield additional revenue.

And he talked about people -- let's take -- we've heard so much about the movie industry. The movie industry has made movies

in the eastern end of Long Island, in the city, all over the state. And it's something we need to nurture. But as we bring people in, they go to our restaurants, they spend money, they buy clothes, et cetera, et cetera, et cetera.

And that investment -- that, by the way, would be $56 million -- is within the growth in our revenue stream of some $250 million. So what we're doing is really taking $56 million of that $250 million and making an investment in our state.

And it is true that if we are not doing the kinds of things that other states are doing -- Senator Bruno talked about Louisiana and how the growth -- I think he talked about a $25 million expenditure before Louisiana made some tax credit investments. That grew to $100 million. And so we would like to do the same kinds of thing.

Motor fuel oil, we passed a bill of mine last week that -- right now our fishing fleet will fuel up in other neighboring states, in Rhode Island and so forth. Because our state says to the fishing fleet: You

spend the money, then put in a slip and then you'll get the tax money that you spend back later on. Well, these are small business operations, boat owners. And so they would rather do that in other states, whether it be Connecticut or Rhode Island or Massachusetts.

So we are making investments through this tax package.

One of the things that our Majority Leader has the viewpoint is he can see the mosaic. And some of the Senators have spoken about other issues here, other than what is in this tax package. Senator Bruno sees the whole mosaic. I believe our conference sees the whole mosaic.

We understand that as part of the budget we must make investments in education, in elementary and secondary education, as well as higher education. And we will do that. And we will do it to a point where members -- most of the members, I'm sure, will at one point or another rise and be very proud of what we are doing.

We will have a bill before us that will deal with school district real property

taxes. That's part of the mosaic. We will deal with Medicaid reform. That will be part of the mosaic. Doesn't have to be done today. It can be done and will be done tomorrow and on Monday and Tuesday and thereafter. And I think most of the members know that we will be addressing these issues.

And sometimes I listen to members on the floor and I know that they're trying to make a point, and they're very passionate about it. But the fact of the matter is that there is a mosaic that will be filled and completed by this legislative session.

And once again, and I said this a week or so ago, we together, members of both political parties, are involved in the legislative process in dealing with these issues, whether it be CFE, Medicaid reform, tax relief at all levels, and other kinds of things that we will be proud of because we as a Legislature will be making an investment in New Yorkers that will go forward and do good things in all of our respective communities.

So this is but one snapshot. And the Majority Leader yesterday -- and I wasn't

here earlier when he was speaking, but I'm sure talked about the investment that we are making, a $56 million investment that will yield to our economy tenfold what we are going about.

And each piece that is in this tax bill, Senator Skelos -- you know, we talk about so often members get up and they say, Well, you know, we haven't done enough research, we haven't had enough hearings. Senator Skelos and a number of us held hearings around the state on the high-tech piece. And this is but one small portion of what we got back throughout those hearings that needed to be addressed.

So this package was put together in a thoughtful way, in a way that used the legislative process, in a way that has used our intellectual capabilities here in this chamber. And I hope that the members, before casting a negative vote, will at least be supportive of this snapshot, because it talks about the investment that we're making in New Yorkers and in New York State.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator LaValle.

Senator Marcellino.

SENATOR MARCELLINO: Thank you, Mr. President.

Senator LaValle has eloquently stated a number of the points that I was going to bring up, and that is the fact that this is an investment package, and we should never forget that. This is an investment in the future of the economy of this country and of this state. And that's the most important aspect of it.

When you hold a business, when you keep a business in your area, it spreads. Because the people who come in and support that particular industry also go, as Senator LaValle correctly said, and Senator Bruno and Senator Skelos before, they go to other areas, they buy clothes, they buy food, they use cabs, they use the infrastructure, they benefit the local areas in which these businesses are located.

You know, it's nice to say, Oh, it's a fairness issue, we want to close

loopholes. It's like saying we want to cut out waste, it's going to solve the tax problems in the system. I'm still waiting for that to happen. I'm still waiting for all these loopholes -- you want to close loopholes, you are increasing taxes, there's no doubt about that. You are going to increase taxes on those businesses.

And that means they're going to cut jobs or they're going to not stay in this state. And that means all of our residents suffer. Those areas with high unemployment in this state will suffer unless we bring businesses into those areas.

That's what this is designed to do. It's designed to hold and designed to attract. That's important. We must compete with what's going on around us. If New York State sits still and raises taxes and raises fees and that's all we do and that's all we stand for, then we will lose in the competitiveness on the states around us.

New Jersey, Connecticut, New Hampshire, Vermont are all cutting. And we compete with them, like it or not.

Florida, Texas, California, all of them, they're cutting their taxes, they're cutting to attract businesses. From where? From New York. They want those businesses.

If you don't want them in your neighborhood, I want them in mine. I want them in my constituency. I want them in the 5th Senate District. If you don't want them in Manhattan, Senator, send them out to us. We'll take them. We need those businesses. And we need the tax base that is supported by those businesses.

JFK cut taxes. John F. Kennedy cut taxes, and the business economy of this country grew and everybody benefited. Jimmy Carter raised taxes, and the economy went down the tubes. Ronald Reagan cut taxes, and he was criticized, oh, the world was going to come to an end. Yet the economy grew. Bill Clinton, in his first term, raised taxes and it went down. And when the Republicans took over the Congress at the federal level, taxes were cut, budget was balanced and the economy grew. George Bush cut taxes. The economy is growing as a result.

This is what you need to do to stay competitive in a global economy and in a state economy. We must support our local businesspeople. They support the jobs. They create the jobs for our people. Our people then can use that revenue and that money and go out and buy the wherewithal to maintain this economy.

This is important. This is important. Let's not ever lose sight of that. Because then you'll generate the revenue to pay for those schools that we all want, to pay for health care costs, to pay for all those other things that we need in this state and that we want for our constituents and they want us to help provide for.

But you've got to generate revenue for that. And the worst way, the most regressive way, is to cause them to lose their jobs and to raise taxes on top of it. That's regressive. We must cut taxes, stimulate the economy by growing jobs and growing businesses in this state, keeping businesses in this state, and then the economy keeps on moving in a robust way and then we can afford to pay for

important programs.

Ladies and gentlemen, this is an important bill. I congratulate Senator Bruno for stimulating it and getting it going. He's a leader in this area, and this conference has been a leader. We must support this, pass this, and move this state forward.

I'm going to vote yes, and I urge everyone to vote yes on this very, very important bill.

ACTING PRESIDENT MORAHAN: Thank you, Senator Marcellino.

Senator Montgomery.

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

My recollection or my perception or understanding of the way that the tax cuts work is a little different from Senator Marcellino's. But I do stand to be corrected, Senator.

But I do have a serious problem and question, an issue with the process or the policy or the philosophy that if we cut our revenues, if we cut ourselves on one side of the balance sheet, somehow the other side,

where we have the needs, will be taken care of. It seems to me to be an oxymoron, if that's a word. I'm not sure about it.

We reduce revenue at the highest levels in this legislation. And at the same time, we have such important needs -- i.e., the need to fulfill our CFE responsibility, along with so many other needs that the citizens of our state have. And this is not targeted tax cuts to areas where we know we are going to have some results.

I.e., if we spend money, if we do targeted expenditures or investments in the arts, for instance, or in tourism, both of which are extremely important to the economy in our state, we know that it would result in jobs in communities across the state of New York.

Why do I see more advertising from the state of Louisiana than I do from upstate New York, which is a beautiful state? It is a minefield of opportunities for tourism, and I don't see us mining it.

We could create jobs, I believe, in a very hospitable, in a wholesome and welcome

manner by the people in upstate as well as in New York City. We know that when we invest in housing, automatically we're going to have jobs in construction, we're going to have new housing, we're going to have families who can move into neighborhoods, new neighborhoods, stabilize those neighborhoods, families who now can work and give back to the economy and also pay real estate taxes.

We know that when we invest in public transportation, there is going to be an outcome associated with it. When we invest in higher education, there is an economic opportunity, there is an economic outcome from our investment in higher education. It's almost immediate. When we invest in the community colleges around our state, it is an immediate, tangible outcome for business, economy, community, local government and so forth and so on.

So -- but what do we do? We cut in all of those areas. We cut. And moreover, we cut taxes, which makes it impossible for us to make the necessary investments. It just makes no sense to me.

Now, I'm just looking at this package of tax cuts, this wonderful legislation that everybody is crowing about. I would like to ask what have we -- what have we, to date, to show for the hundreds of millions of dollars that we have invested in the Empire State authority, development authority? Where are we? Do we have any evaluation of what those dollars have bought us? What have we gained from our investment for the Port Authority? What have they done? We created this Port Authority for New York and New Jersey. What did we get, what have we gotten from it in the years and the decades that it's been in existence? Was the job development authority worth anything? Apparently not, because it's out of existence. What do we get from our Jobs Now program? Where are we? What have we gotten from our CATs program, which is the technology investment that we've made over the years to universities across the state for the so-called Centers for Advanced Technology. What have they produced for us? If we don't have an analysis, what does that Empire Zone

program do for the State of New York?

If we don't have an analysis of the direct impact of these investments in these major authorities and programs that we've created over the years for so-called economic development, I don't know why we would go and do the same thing all over again, on a bigger scale, just to say that we have a program that's going to do something. And we have no indication of what we have gotten based on the investments that we've already made in these huge economic development organs in the State of New York.

So I would say, Mr. President, in the least, we should, first of all, be extremely targeted with our tax cuts. I'm for tax cuts. But I think the citizens of this state are asking us to be more logical and to make sure that our policies and our programs fit an outcome. It's when we are so dysfunctional and when we keep pouring money, good money after bad money, continuing to invest in programs that don't produce jobs, that don't revitalize communities, that don't help upstate neighborhoods in the long run,

that's when people become very disillusioned with us.

And I think, moreover, when we do a tax cut and say to people we've done you a favor, and they look around and they have a 10 percent tax increase to pay for their local schools and an increase in property taxes and an increase in local sales taxes -- our citizens are not stupid. They can read. They can count. They see that money is going into one hand and out of the other hand.

So I think that we need to be much more careful, much more targeted. We need to make sure that any tax cuts are targeted to businesses that will in fact create jobs and be a stimulant for economic recovery and economic development and not just be an opportunity to say to people, oh, we're giving you a tax cut. That is not fair, it's not right, and the citizens of this state are correct in having lost all respect for what we talk about, because what we do here is so often contradictory to what they think they need for their communities.

So Mr. President, I'm very unhappy

with this process. There are some wonderful opportunities in this legislation. But overall, overall, I think that it will drain the revenue from the state, especially on a long-term basis, leaving us little opportunity to do the targeted tax cuts that I mentioned before which we know definitely, definitively, would make a huge difference in the economy of our neighborhoods throughout the state.

Thank you.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Parker.

SENATOR PARKER: On the bill, Mr. President.

ACTING PRESIDENT MORAHAN: On the bill, Senator Parker.

SENATOR PARKER: Thank you very much.

I wanted to give some clarification to some of the discussion that we're having here, and first, specifically, to some comments that Senator Skelos and Senator Larkin made about, you know, the proposals that came out of the Democratic conference and

about them being in bill form.

Everybody in this chamber just had an opportunity to vote on an amendment that was presented that deals with this issue, that in fact would have given us an opportunity to put in place the proposal that David Paterson and the members of the Democratic conference put forth as a way to in fact deal with the budget, balance it, deal with CFE, and add money for all the programs that are important to all of the people around this state. And we said no to it.

In addition, we talked about Medicaid -- Medicare, sorry. And on the issue of Medicare, I have not seen a proposal, despite a very vigorous task force meetings and a number of people went around the state and talked about the issue and there were reports issued. I have not seen legislation come to this body on the issue of Medicare.

We do all the time, it is the order of the day in Albany to do policy by press release. That is unacceptable. It is not the way we should go. And if you bring a bill here that in fact deals with the issues of

Medicare, I'd be more than happy to consider it and vote for it if it's appropriate for the people of the State of New York and the people of my district.

But it's interesting to me that, you know, I have my colleagues on the other side of the aisle who share the same frustrations I do, so I'd like to work with you on this issue. On the issue of Medicare, we understand that part of it is a federal mandate.

And so, to me, we should be looking at the impetus of the governor and a Republican mayor who have not been able to get the Republican president to give money to the State of New York to deal with the indigent populations that we have here on the issue of health care. So if people want to talk about that, if people want to take a delegation down to D.C. to see the president, I will take time off, even in a reelection year, to make sure that we're able to deal with this issue.

Regarding the issue of CFE, it is not only germane to this bill, it is relevant to every single thing that we do going

forward. Because technically we should not be doing anything in this house or in this Legislature until we deal with the budget. The budget is over 2½ months late, and, you know, everybody is walking around like it's okay.

You know, you talk about, you know, helping businesses. How do school districts survive when they don't know what they're going to do going forward? I have nonprofit organizations who are still waiting for money from last year from agencies and can't get that resolved. How many thousands of people -- not hundreds, thousands of people work in nonprofit organizations around this state, in each one of our districts, who now cannot get proper dispensation of contracts they have with the state because we haven't passed the budget? And no one seems to be concerned about that.

The issue of CFE and a $100 billion budget. We have the third largest budget in the entire country. The federal government's budget, the State of California, and then the State of New York. And in a $100 billion

budget, the question is not where you get the money, the question is simply about priorities.

And my thing is if we in fact say that children are our future and they are our priority, then we put the money there. Years ago, we tricked the people of the State of New York and said, okay, we're going to create this Lotto and then we're going to take the money from Lotto and put it into education. Where's the Lotto money?

There is money out there. Don't tell me in a $100 billion budget we can't find a billion dollars, a billion dollars to put into education, something that we say is important.

And I actually resent the implication that the people in the Democratic conference have no concerns about people around the state. We in fact argued from the very beginning that the fact that we need to deal with this before the special master comes in is exactly because if a special master comes in, the likelihood that they will in fact deal with anything other than New York

City -- it will be the major problem.

And we have an opportunity to here to do a great deal of good for needy school districts around the state, not just in New York, but from Brooklyn to Buffalo to Binghamton. And we'd like to see that get done.

And so, you know, if we -- and I'll do what it takes. I mean, you know, let's not go home this weekend. Let's not stop on the 22nd. Let's continue to be here and let's debate the issues and talk about how we can in fact get a resolution, an agreement so we can pass a budget so we deal with the CFE before the deadline reaches us and we're forced into a situation where our hands are tied.

One last thing. I really just want to thank all of my colleagues across the aisle for their benevolence and their wanting to help New York City. I'm hearing over and over again that New York City residents ought to want this bill because it helps us in economic development.

People are so interested in helping New York City, then let's pass the budget.

The biggest thing that will help to pass the budget is not this one-house tax-relief bill, but a bill that would put a budget with real substance, that deals with the issues of education, of health care, of housing and of transportation.

And we should also just be clear that, you know, my opposition to this bill is really because there is no real evidence that there are substantial relationships between tax cuts, or what I would call corporate welfare, and job creation. That in fact sometimes it stimulates spending, sometimes it creates it in some very specific circumstances. But generally, just cutting taxes does not necessarily bring people to your state.

If you look at the things that -- and you can check with the Harvard Business School or Wharton or whoever you want to check with. And when you look at the things that in fact bring businesses to your state, it is in fact having a trained and educated workforce. It is having decent housing conditions. It being able to provide for the kind of health

care that people need to have in their state for their workers. And we ought to be concentrating on those things.

And so let's do -- you know, people should -- we should pay attention to that, particularly as we do revisionist history about Republican Congresses improving the economy in this country.

If we want to in fact do something that's going to in fact add to pumping up the economy, bring the minimum wage increase bill to the floor. Let's pass a minimum wage increase for the people of the state of New York. That way we'll put more money in the people in the hands of the people who spend the most money.

The folks on the bottom who receive a minimum wage spend more out of every dollar in terms of retail purchases than any other class of people. Corporations and rich folks who own or who fly in private jets, you know, they're not putting most of their money back into the economy. It's in fact minimum-wage workers.

So in fact if we want to do a

single thing that will boost up the economy and make people spend more money on the retail level, let's in fact pass a minimum wage, put money in the hands of working-class people, and let's watch the economy rise.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Krueger.

SENATOR LIZ KRUEGER: Thank you.

On the bill, Mr. President. I will make this second set of presentations much briefer than my first.

But I have to respond to statements that were made implying that my position was perhaps based on my concern for Manhattan over other parts of the state. Or that if I didn't want the job in Manhattan, send them somewhere else.

So for the record, this bill is much worse for the people in upstate New York and rural New York and even Long Island, Carl Marcellino's district, than it is for my district. I would actually argue that the majority of the significant tax credits and exemptions in this bill will go to people who

live in my district.

Where do the owners of major corporations live? My district. Where do the people who have private planes live, or their businesses have private planes? My district. Where are the life insurance executives living, and the companies who will take advantage of the business health insurance credit, which doesn't really go to small businesses, but in fact goes to the health insurance companies? My district.

The people who will have the windfall from these proposals are probably disproportionately my constituents. And they might stand up and argue and even vote against me, saying, Well, we love this stuff, we want our taxes to be cut, we're multinational corporations, we're large national corporations, we're hedge fund investors, we don't want to have to pay taxes to New York State.

But I will tell you, as I told them last year when I supported the tax increase on the wealthiest New Yorkers, knowing that the disproportionate share of those new taxes

would also fall on the people of my district, that the question is what's in the best interests of the State of New York and what is fair and equitable tax policy.

So I do not criticize this bill because I somehow believe that doing so is in the best interests of my district or Manhattan over the interests of the people of New York. I would argue that this bill to some degree is written for the large corporations and the heads of large corporations and special interests who do live in my district, and that the price that will be paid will be paid by the constituents in districts like Senator Ray Meier's district and Carl Marcellino's district and upstate districts and Senator Volker's district.

And that this is a question of good public policy for the State of New York, not what the win or loss is for any individual subgroup. Because if I made those arguments, I would stand up and say this bill is fabulous because most of the win will end up applying to my constituents. But it's wrong, and I don't accept that.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Read the last section.

Senator Meier.

SENATOR MEIER: Thank you.

I thought we disposed of the idea with Ed Koch that people in upstate New York spend their time driving around in pickup trucks and looking forward to the square dance on Saturday night.

I have, within my Senate district, a fairly large aircraft maintenance company. I have, within my Senate district, some fairly important software manufacturers. I have, within my Senate district, the beginnings of a biotechnology business. We have insurance companies and banks headquartered in my Senate district located in upstate New York, and this bill helps them grow jobs.

And this business about tax cuts controlling and cutting back on spending in this state? When I got here in 1997, the budget was $64 billion. It's over $100 billion today. And you're telling me

that we're cutting spending because we cut taxes? Thanks for the levity. I mean, it's been a break in an otherwise boring day.

This is a good bill. It helps create private-sector jobs. Private-sector jobs create the wealth that permit us to make public investment. Period, end of story. I'm going to vote yes.

Thanks for your indulgence, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Senator Stavisky, to explain her vote.

SENATOR STAVISKY: To explain my vote.

I have been impressed with the debate that I've hear here today. And listening to what everybody has had to say,

I'm going to vote for this bill because the entertainment industry in Queens County is such an essential part of the economy that I just think we have to do all we can to encourage it.

ACTING PRESIDENT MORAHAN: Thank you, Senator. You will be recorded in the affirmative.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1568 are Senators Andrews, Dilán, L. Krueger, Montgomery, Parker, Paterson, and Sabini. Ayes, 50. Nays, 7.

ACTING PRESIDENT MORAHAN: The bill is passed.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Yes, Mr. President. I would request unanimous consent for myself and Senator Paterson to be recorded in the negative on Calendar 1548.

ACTING PRESIDENT MORAHAN: Thank you. Without objection, 1548, Senator Schneiderman and Senator Paterson will be recorded in the negative.

Senator Fuschillo.

SENATOR FUSCHILLO: Will you recognize Senator LaValle, please.

ACTING PRESIDENT MORAHAN: Senator LaValle.

SENATOR LaVALLE: May I have unanimous consent to be recorded in the negative on Calendar Number 1548.

ACTING PRESIDENT MORAHAN: Without objection, Senator LaValle will be recorded in the negative on Calendar 1548.

Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, I too would like unanimous consent to be recorded in the negative on that bill.

ACTING PRESIDENT MORAHAN: 1548?

SENATOR FUSCHILLO: 1548.

ACTING PRESIDENT MORAHAN: Senator Fuschillo, without objection, will be recorded in the negative on Calendar 1548.

SENATOR FUSCHILLO: Mr. President, will you please recognize my colleague to the left, Senator Schneiderman.

ACTING PRESIDENT MORAHAN: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

SENATOR FUSCHILLO: To the far left.

SENATOR SCHNEIDERMAN: Barry Goldwater is to my colleague's left.

I would request unanimous consent to be recorded in the negative on Calendar Number 1568, please.

And I would thank my colleague to the right for his courtesy in getting me recognized.

ACTING PRESIDENT MORAHAN: Without objection, Senator Schneiderman will be recorded in the negative on 1568.

Senator Marcellino.

SENATOR MARCELLINO: Yes, Mr. President. I'd like unanimous consent to be recorded in the negative on Calendar Number 1548.

ACTING PRESIDENT MORAHAN: Without objection, Senator Marcellino will be recorded in the negative on Calendar Number 1548.

Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President. I would like unanimous consent to be recorded in the negative on Calendar 1548.

ACTING PRESIDENT MORAHAN: Without objection, Senator Montgomery will be recorded in the negative on 1548.

SENATOR MONTGOMERY: Thank you.

ACTING PRESIDENT MORAHAN: Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, can we have the noncontroversial reading of the supplemental calendar.

ACTING PRESIDENT MORAHAN: Well, I was just going to announce we've finished the controversial reading of the other calendar. Now we're going to have the new calendar.

The Secretary will read.

SENATOR FUSCHILLO: Mr. President.

ACTING PRESIDENT MORAHAN: Senator Fuschillo.

SENATOR FUSCHILLO: Can we please return to motions and resolutions.

I believe there's some housekeeping

at the desk.

ACTING PRESIDENT MORAHAN: Return to motions and resolutions.

Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Mr. President.

On behalf of Senator Little, I wish to call up Senate Print Number 6066, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT MORAHAN: The Secretary will read.

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

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

ACTING PRESIDENT MORAHAN: The Secretary will call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

SENATOR FUSCHILLO: I now offer the following amendments.

ACTING PRESIDENT MORAHAN: The

amendments are received.

SENATOR FUSCHILLO: Mr. President, on behalf of Senator Golden, I wish to call up Senate Print Number 5816, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: Calendar Number 545, by Senator Golden, Senate Print 5816, an act to amend the Administrative Code of the City of New York.

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

ACTING PRESIDENT MORAHAN: The Secretary will call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MORAHAN: Senator McGee.

SENATOR McGEE: Mr. President, on behalf of Senator LaValle, on page number 54, I offer the following amendments to Calendar Number 1384, Senate Print Number 1879B, and

ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT MORAHAN: The amendments are received, and the said bill shall retain its place on the Third Reading Calendar.

SENATOR McGEE: Mr. President, on behalf of Senator Wright, on page number 54, I offer the following amendments to Calendar Number 1375, Senate Print Number 6746A, and ask that said bill retain its place on Third Reading Calendar.

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

SENATOR McGEE: Mr. President, on behalf of Senator Libous, on page number 47, I offer the following amendments to Calendar Number 1257, Senate Print Number 6827, and ask that said bill retain its place on Third Reading Calendar.

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

Calendar.

SENATOR McGEE: Mr. President, on behalf of Senator Nozzolio, on page number 21, I offer the following amendments to Calendar Number 687, Senate Print Number 1930A, and ask that said bill retain its place on Third Reading Calendar.

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

SENATOR McGEE: Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: You're welcome, Senator McGee.

The Secretary will read the substitution.

THE SECRETARY: On page 10, Senator Spano moves to discharge, from the Committee on Rules, Assembly Bill Number 5468A and substitute it for the identical Senate Bill Number 5803, Third Reading Calendar 320.

ACTING PRESIDENT MORAHAN: Substitution ordered.

Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, will you please recognize Senator Hoffmann.

ACTING PRESIDENT MORAHAN: Senator Hoffmann.

SENATOR HOFFMANN: Thank you, Mr. President. I'd request unanimous consent to be recorded in the negative on Calendar 1548.

ACTING PRESIDENT MORAHAN: Senator Hoffmann, without objection, will be recorded in the negative on Calendar 1548.

SENATOR HOFFMANN: Thank you.

ACTING PRESIDENT MORAHAN: Senator Brown.

SENATOR BROWN: Mr. President, thank you. I also request unanimous consent to be recorded in the negative on Calendar 1548.

ACTING PRESIDENT MORAHAN: Senator Brown, without objection, you will be recorded in the negative on 1548.

Senator Rath.

SENATOR RATH: Mr. President, I request unanimous consent to be recorded in the negative on 1548. Thank you.

ACTING PRESIDENT MORAHAN: Without objection, Senator Rath will be recorded in the negative on 1548.

The Secretary will read the noncontroversial calendar.

THE SECRETARY: Calendar Number 1569, by Senator Volker, Senate Print 242, an act to amend the Penal Law, in relation to consecutive terms.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1571, by Senator Padavan, Senate Print --

SENATOR SCHNEIDERMAN: Lay it

aside.

ACTING PRESIDENT MORAHAN: The bill is laid aside.

SENATOR PADAVAN: Lay it aside for the day, Mr. President.

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

THE SECRETARY: Calendar Number 1572, by Senator DeFrancisco, Senate Print 1155A, an act to amend the Tax Law, in relation to providing.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 7. This act shall take effect immediately.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1573, by Senator Meier, Senate Print 1268, an

act to amend the Executive Law and the Social Services Law, in relation to making reports.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1574, by Senator Meier, Senate Print 1271, an act to amend the Tax Law, in relation to exempting.

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

Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the first day of a sales tax quarterly period.

ACTING PRESIDENT MORAHAN: Call

the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1575, Senator Sampson moves to discharge, from the Committee on Finance, Assembly Bill Number 3098A and substitute it for the identical Senate Bill Number 1519A, Third Reading Calendar 1575.

ACTING PRESIDENT MORAHAN: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1575, by Member of the Assembly Towns, Assembly Print Number 3098A, an act to amend the Executive Law.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call

the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN:

Announce the results.

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1576, by Senator Maltese, Senate Print 2221A, an act to amend the Administrative Code of the City of New York, in relation to crediting.

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

Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN:

Announce the results.

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number

1577, by Senator McGee, Senate Print 2952, an act to amend Chapter 540 of the Laws of 1992.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1578, by Senator Robach, Senate Print 3065, an act to repeal paragraph (e) of subdivision 4.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN:

Announce the results.

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1579, by Senator Robach, Senate Print 3277, an act to amend the Retirement and Social Security Law, in relation to enhanced pension benefits.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1580, Senator Robach moves to discharge, from the Committee on Finance, Assembly Bill Number 4357 and substitute it

for the identical Senate Bill Number 3887, Third Reading Calendar 1580.

ACTING PRESIDENT MORAHAN: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1580, by Member of the Assembly Abbate, Assembly Print Number 4357, an act to amend the Executive Law.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1581, by Senator Meier, Senate Print 4085, an act to amend the Labor Law, in relation to security plans.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1582, by Senator DeFrancisco, Senate Print 4371A, an act to amend the Real Property Law, in relation to real estate brokers.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1584, by Senator Flanagan, Senate Print 4772A, an act to amend the Education Law, in relation to pupil transportation.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1585, by Senator Libous, Senate Print 5058A, an act to amend the Tax Law, in relation to the Workers with Disabilities Employment Tax Credit Program.

ACTING PRESIDENT MORAHAN: Read

the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1586, by Senator Robach, Senate Print 5464, an act to amend the Correction Law, in relation to uniformed personnel uniforms.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1587, Senator Meier moves to discharge, from the Committee on Rules, Assembly Bill Number 8558A and substitute it for the identical Senate Bill Number 5971A, Third Reading Calendar 1587.

ACTING PRESIDENT MORAHAN: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1587, by the Assembly Committee on Rules, Assembly Print Number 8558A, an act to amend the Education Law.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 56. Nays,

1. Senator Duane recorded in the negative.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1588, Senator Volker moves to discharge, from the Committee on Codes, Assembly Bill Number 10403 and substitute it for the identical Senate Bill Number 6259, Third Reading Calendar 1588.

ACTING PRESIDENT MORAHAN: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1588, by Member of the Assembly A. Cohen, Assembly Print Number 10403, an act to amend the Civil Practice Law and Rules.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1590, by Senator Robach, Senate Print 6549, an act to amend the Retirement and Social Security Law, in relation to a deferred retirement option.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1591, by Senator Robach, Senate Print 6786, an act to amend the Executive Law, in relation to members.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1592, by Senator Robach, Senate Print 6787, an act to amend the Retirement and Social Security Law, in relation to the establishment.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number

1593, by Senator Bonacic, Senate Print 6809, an act to amend the New York State Urban Development Corporation Act, in relation to no-interest loans.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1594, by Senator Maziarz, Senate Print 6946A, an act to create a temporary New York State French and Indian War 250th anniversary commemoration commission.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1595, Senator Johnson moves to discharge, from the Committee on Rules, Assembly Bill Number 11028 and substitute it for the identical Senate Bill Number 6994A, Third Reading Calendar 1595.

ACTING PRESIDENT MORAHAN: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1595, by the Assembly Committee on Rules, Assembly Print Number 11028, an act to authorize the Amityville Post 1015 American Legion.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Excuse me. In relation to Calendar Number 1595, ayes, 56. Nays, 1. Senator Bonacic recorded in the negative.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1597, by Senator Mendez, Senate Print 7271, an act to amend the Labor Law and the State Finance Law, in relation to the special September 11th bidder registry.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call

the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN:

Announce the results.

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1598, by Senator Padavan, Senate Print 7361, an act to amend the Private Housing Finance Law, in relation to increasing.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN:

Announce the results.

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1599, Senator Mendez moves to

discharge, from the Committee on Rules, Assembly Bill Number 11250 and substitute it for the identical Senate Bill Number 7381, Third Reading Calendar 1599.

ACTING PRESIDENT MORAHAN: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1599, by the Assembly Committee on Rules, Assembly Print Number 11250, an act to amend the Private Housing Finance Law.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1600, by the Senate Committee on Rules, Senate

Print Number 7424, an act to amend the Tax Law, in relation to authorizing.

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

Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1601, Senator Fuschillo moves to discharge, from the Committee on Rules, Assembly Bill Number 11099A and substitute it for the identical Senate Bill Number 7430, Third Reading Calendar 1601.

ACTING PRESIDENT MORAHAN: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number

1601, by the Assembly Committee on Rules, Assembly Print Number 11099A, an act to authorize the Mt. Clear Baptist Church.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 56. Nays, 1. Senator Bonacic recorded in the negative.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1603, by Senator DeFrancisco --

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT MORAHAN: The bill is laid aside.

THE SECRETARY: In relation to Calendar Number 1608, Senator Libous moves to discharge, from the Committee on Rules,

Assembly Bill Number 11097A and substitute it for the identical Senate Bill Number 7462, Third Reading Calendar 1608.

ACTING PRESIDENT MORAHAN: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1608, by the Assembly Committee on Rules, Assembly Print Number 11097A, an act to amend Chapter 723 of the Laws of 1989.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 1609, by the Senate Committee on Rules, Senate Print Number 7468, an act to amend Chapter 266

of the Laws of 1986.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 7. This act shall take effect immediately.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MORAHAN: The bill is passed.

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

SENATOR FUSCHILLO: Mr. President, will you please take up the controversial reading of the calendar.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: Calendar Number 1603, by Senator DeFrancisco, Senate Print 7446, an act to amend the Penal Law, in relation to allowing.

SENATOR SCHNEIDERMAN:

Explanation.

ACTING PRESIDENT MORAHAN: Senator DeFrancisco, an explanation has been requested by Senator Schneiderman.

SENATOR DeFRANCISCO: This bill has been prepared in response to a very tragic incident that occurred in Syracuse, New York, where an individual by the name of Jill Cahill was beaten to near death by her husband and was in the hospital on respirators, lifesaving equipment and the like, and her husband, while on parole, went into the hospital and killed her.

The case went up to the highest court of the state, the Court of Appeals. And the Court of Appeals indicated that the death penalty was not applicable because the section that the prosecutor was relying on -- namely, a murder happening in the course of commission of another felony -- really didn't apply here because the other felony was the same felony; namely, the murder. And as a result, they reversed the death penalty in this case.

There were many dissenting judges who were bewildered by this logic. And, quite

frankly, so am I. If there was ever more a heinous crime than killing a person who you tried to kill once before, while on life support equipment, I'm not quite -- I don't know what that more heinous crime is that would deserve the death penalty.

Whether you agree with the death penalty or not, the fact of the matter is that interpretation is hard to justify and hard to in any way explain.

The purpose of the bill is basically to make it clear that for the purposes of this statute, the death penalty statute, the crimes of burglary in the first degree or second degree -- namely, the other crime that's being committed -- may be based upon the intention to commit murder as well as any other type felony.

Probably, and hopefully, this bill will never, ever be needed in the future because of this type of situation. But in case it is, we wanted to make certain that the intent of the Legislature, which I thought was clear in this section before that death penalty decision, is very, very clear so

there's no judicial legislating again in this type of case.

And that's the purpose of the bill, and that's the purpose of the legislation that I'm proposing today.

ACTING PRESIDENT MORAHAN: Thank you, Senator DeFrancisco.

Senator Schneiderman.

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

ACTING PRESIDENT MORAHAN: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: The difficulty I have with this piece of legislation is that the statute that the sponsor is seeking to amend is a statute that provides for the death penalty under circumstances in which the defendant was in the course of committing or attempting to commit a series of crimes. They're enumerated crimes. Not every crime is a predicate offense for the application of the death penalty statute.

What this bill would do, essentially, is to say for the purposes of

this subparagraph, the crime of burglary in the first or second degree is being redefined to omit all of the requirements under Section 140.25 and 140.30 of the Penal Law for burglary in the first and second degree.

What this, I believe, is attempting to do is to say we're eliminating the requirement that you have to be in the process of committing or attempting to commit another crime when you commit a homicide in order to apply the death penalty. Every time someone goes into a place, you know, trespasses with the intent to commit murder, that's intentional murder. But that's not murder in the course of committing a separate crime.

So I think what the sponsor is trying to do is really turn a horse into a cow. If we have a statute, whatever our views of the death penalty are, that says we only apply the death penalty when the homicide is committed while the defendant was attempting to commit or committing a particular type of crime, this removes that requirement completely.

Anytime someone enters a building

to commit murder, it's just intentional murder, intentional homicide. It's not a homicide committed in the course of a separate crime.

It sounds as though, under the facts of this case, someone committed trespass, which is not a crime as a predicate for applying the death penalty. If you walk into a hospital with the intent to kill someone, you're committing intentional homicide. But you're not committing homicide in the course of a separate and independent crime.

So I'm going to vote no on this bill, and I think that it's -- if the sponsor's purpose is to say anytime someone commits trespass, goes into a building with the intent to commit homicide, that should be subject to the death penalty, then let's say it that way. And we can have a debate on that.

That's really what this statute would do. It's just done in a very bizarre way by attempting to redefine, for the purposes of this subparagraph, burglary in the

first or second degree.

I oppose expansion on the death penalty. I think that we should have, in fact, a moratorium on the death penalty in this state while we address issues that are being raised in other states around the country.

But I certainly don't support an effort to slip in through the back door an exception to the rule of this existing statute that says the death penalty shall only be applied when it's to a homicide committed in the course of the commission of another crime.

This would completely eviscerate that requirement, and I therefore oppose the statute and would urge that if the sponsor's intention is to address situations such as that raised by People v. Cahill, a different form of drafting would be required.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator Schneiderman.

Senator Volker, to explain your vote?

SENATOR VOLKER: Yeah, I can do

that if you'd prefer. Yeah, all right, I'll do that. I'll explain my vote. Go ahead, call up the roll.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

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

SENATOR VOLKER: Mr. President, I would agree with Senator Schneiderman except for one thing.

The Court of Appeals obliterated, in a sense, our statute and made an interesting decision. The reason this bill is necessary is only because our Court of Appeals decided they don't like juries and they looked into the mind of the jury and said: You made a decision here on the issue of crimes, but we're telling you that's not what happened here.

The problem with this -- I'm not in

favor of expanding the death penalty right now either, Eric. I just want you to know that.

This doesn't expand the death penalty. This says to some judges who said we are more capable of judging a person's intention and of looking into the issue of how a crime is determined than jurors are -- it is an outrageous case, by the way, that has been looked at by a lot of people who are anti-death penalty as an attack on our jury system.

But it is not an attack on our jury system. What it is, very honestly, is a Court of Appeals that to a certain extent has lost its way. And I don't like saying this, but I have to tell you, if I had my ability to pull back my vote on the chief judge of the Court of Appeals based on what's happened in the last two years, I would do it. And I was there. Because I think that the Court of Appeals to a certain extent has lost its way.

Okay, they don't like the death penalty; rule on the law. The same thing is drew with CFE, which they had absolutely no authority to do. They have no authority to

tell us to spend money in any way they please. It's outrageous. And I think it's time that I said it. I know that it's not popular with the press, but so what?

But Senator DeFrancisco has this bill only because our Court of Appeals is playing a game with the law, and that's wrong.

ACTING PRESIDENT MORAHAN: Thank you, Senator Volker.

Senator DeFrancisco.

SENATOR DeFRANCISCO: Just to explain my vote.

It's hornbook law, I think, still that a burglary is defined as breaking and entering with intent to commit a crime therein. And what this statute said originally was that if you commit a burglary and in the course of committing that crime you commit a murder, it's a death penalty case.

What the court determined was breaking and entering and trespassing in a hospital disguised where he was trying to get into the location where his wife was, was not a crime.

Well, I believe it was a crime.

And so that the law is clear, we made it very clear that that is a crime that you're committing, and therefore a burglary, and it fits in the felony burglary rule.

If this -- if it was meant -- it's so almost ludicrous that if he broke into the hospital and broke into a vending machine and took some candy before he went up and bludgeoned her to death while she's on a respirator, that would have fit the death-penalty statute, according to the court's interpretation. That's absurd.

And that's all this bill is meant, not to expand anything, but to say when we have a bill, it should be read and interpreted in the common ordinary sense of the word. And this is exactly what -- words in the bill. And that's exactly what the dissent said in the Cahill case.

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1603 are Senators Andrews, Connor, Duane, L. Krueger, Oppenheimer, Parker, Paterson, Schneiderman,

A. Smith, and Stavisky. Ayes, 47. Nays, 10.

ACTING PRESIDENT MORAHAN: The bill is passed.

Senator Fuschillo.

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

ACTING PRESIDENT MORAHAN: Yes, there is.

SENATOR FUSCHILLO: Mr. President, before we go to housekeeping, will you please recognize Senator Montgomery.

ACTING PRESIDENT MORAHAN: Senator Montgomery.

SENATOR MONTGOMERY: Yes, I would like unanimous consent to be recorded in the negative on Calendar 1603.

ACTING PRESIDENT MORAHAN: Without objection, Senator Montgomery will be recorded in the negative on Calendar 1603.

Senator McGee.

SENATOR McGEE: Mr. President, I wish to call up my bill, Print Number 2776C, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: Calendar Number 471, by Senator McGee, Senate Print 2776C, an act to amend the Vehicle and Traffic Law.

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

ACTING PRESIDENT MORAHAN: Call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

SENATOR McGEE: Mr. President, I now offer the following amendments.

ACTING PRESIDENT MORAHAN: The amendments are received.

SENATOR McGEE: Mr. President, on behalf of Senator Marcellino, on page number 50 I offer the following amendments to Calendar Number 1313, Senate Print Number 905B, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT MORAHAN: The amendments are received, and the bill will retain its position on the Third Reading

Calendar.

SENATOR McGEE: Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: You're welcome, Senator McGee.

Senator Fuschillo, that's the end of the housekeeping.

SENATOR FUSCHILLO: Mr. President, there being no further business, I move we adjourn until Thursday, June 17th, at 11:00 a.m.

ACTING PRESIDENT MORAHAN: On motion, the Senate stands adjourned until Thursday, June 17th, at 11:00 a.m.

(Whereupon, at 3:34 p.m., the Senate adjourned.)