NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

August 10, 2004

2:12 p.m.

REGULAR SESSION

SENATOR PATRICIA K. McGEE, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT McGEE: The Senate will come to order.

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

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

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

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

ACTING PRESIDENT McGEE: Reading of the Journal.

THE SECRETARY: In Senate, Monday, August 9, the Senate met pursuant to adjournment. The Journal of Sunday, August 8, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT McGEE: 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 Skelos.

SENATOR SKELOS: Madam President, there will be an immediate meeting of the Rules Committee in the Majority Conference Room.

ACTING PRESIDENT McGEE: Immediate meeting of the Rules Committee in the Majority Conference Room.

SENATOR SKELOS: And then if we could stand at ease.

ACTING PRESIDENT McGEE: The Senate will stand at ease.

(Whereupon, the Senate stood at ease at 2:14 p.m.)

(Whereupon, the Senate reconvened at 2:20 p.m.)

ACTING PRESIDENT McGEE: Senator Skelos.

SENATOR SKELOS: Madam President,

at this time I'd like to move that we adopt the Resolution Calendar in its entirety.

ACTING PRESIDENT McGEE: All in favor of adopting the Resolution Calendar in its entirety will signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The Resolution Calendar is adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, there will be an immediate meeting of the Finance Committee in the Majority Conference Room.

ACTING PRESIDENT McGEE: Immediate meeting of the Finance Committee in the Majority Conference Room.

Senator Skelos.

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

ACTING PRESIDENT McGEE: The Secretary will read.

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

Senate Print 4289B, by Senator Robach, an act to amend the Retirement and Social Security Law;

5927A, by Senator Andrews, an act authorizing the City of New York;

7710, by Senator Farley, an act to amend the Banking Law;

And Senate Print 7711, by the Senate Committee on Rules, an act to amend Chapter 83 of the Laws of 2002.

All bills ordered direct to third reading.

ACTING PRESIDENT McGEE: Senator Skelos.

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

ACTING PRESIDENT McGEE: All in favor of accepting the report of the Rules Committee will signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(No response.)

ACTING PRESIDENT McGEE: The Rules report is accepted.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could take up Calendar Number 1910 at this time.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 1910, by Senator Farley, Senate Print 7710, an act to amend the Banking Law, in relation to the cashing of checks.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Madam President, please call up Calendar Number 1913.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 1913, by Senator Robach, Senate Print 4289B, an act to amend the Retirement and Social Security Law, in relation to eligibility.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Madam President, please call up Calendar Number 1917.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: In relation to

Calendar Number 1917, Senator Andrews moves to discharge, from the Committee on Rules, Assembly Bill Number 9413A and substitute it for the identical Senate Bill Number 5927A, Third Reading Calendar 1917.

ACTING PRESIDENT McGEE: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1917, by Member of the Assembly Norman, Assembly Print Number 9413A, an act authorizing the City of New York to reconvey its interest.

ACTING PRESIDENT McGEE: 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 McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could stand at ease pending the report of the Finance Committee.

ACTING PRESIDENT McGEE: The Senate will stand at ease.

(Whereupon, the Senate stood at ease at 2:23 p.m.)

(Whereupon, the Senate reconvened at 2:34 p.m.)

ACTING PRESIDENT McGEE: Senator Bruno.

SENATOR BRUNO: Madam President, can we have some order, please. Would you bang that gavel.

Thank you very much.

And I would ask that we return to reports of standing committees.

I believe there is a report from the Finance Committee at the desk. I would ask that it be read and accepted at this time.

ACTING PRESIDENT McGEE: The Secretary will read.

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

Senate Print 6053B, Senate Budget Bill, an act making appropriations for the support of government;

6057B, Senate Budget Bill, an act to amend the Labor Law and others;

And Senate Print 7719, by Senator Robach, an act to amend the Civil Service Law.

All bills ordered direct to third reading.

ACTING PRESIDENT McGEE: Without objection, all bills are ordered direct to third reading.

Senator Bruno.

SENATOR BRUNO: Madam President, can we at this time take up Calendar Number 1914.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: In relation to Calendar Number 1914, Senator Johnson moves to discharge, from the Committee on Finance, Assembly Bill Number 9553B and substitute it for the identical Senate Bill Number 6053B, Third Reading Calendar 1914.

ACTING PRESIDENT McGEE:

Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1914, Assembly Budget Bill, Assembly Print Number 9553B, an act making appropriations for the support of government.

ACTING PRESIDENT McGEE: Senator Paterson.

SENATOR PATERSON: Madam President, I have read over this bill extensively during the past couple of days, and yet there's parts of it I just -- my comprehension -- maybe because it's August, it's just not what it usually is.

So I was wondering if, in an ephemeral way, Senator Johnson might give us an explanation of this legislation.

ACTING PRESIDENT McGEE: Senator Bruno.

SENATOR BRUNO: Senator Paterson, I would like to substitute at the moment for Senator Johnson. He's got blond hair; my hair is white. That's close enough, I hope.

SENATOR PATERSON: This is an outstanding substitution.

SENATOR BRUNO: Thank you.

And I can't, I'm sure, Senator, get specific. But I would welcome the chair, Madam President, to recognize Senator Saland as relates to the appropriation part of what we're doing.

But while I'm on the floor, if you would indulge me, Senator, I would just like to observe that the bill that is before us is the appropriation bill to help fund education. And it moves, as we had released the runs yesterday, about $740 million on a school year. And with some miscellaneous dollars, it's $751 million, $555 million on a fiscal year.

The runs are out. Tax bills go out for most of the state by August 16th. We thought it was imperative -- and we're very pleased that we could agree with all of you here on the numbers, and with the Assembly and with the Governor, so that the people of this state are aware of the record amounts of state aid that will be flowing to help get the lid on property taxes, reduce property taxes, and properly fund education. Because funding

education has always been a priority in this house, and it will continue to be a priority.

So, Madam President, I would ask your support of this legislation. And for the specifics of any of the lines that are in this package -- but this is the appropriation bill, and there's others that will relate to the entirety of moving education -- I would defer to Senator Saland, who chairs, in a very distinguished, outstanding way, the Education Committee for the entire Senate.

ACTING PRESIDENT McGEE: Senator Saland.

SENATOR SALAND: As one of my colleagues just intoned, that's a heck of an introduction.

Ladies and gentlemen, as Senator Bruno, the Majority Leader, has just indicated in his remarks, this bill contains additional funding to the tune of some $751 million on a school-year basis, $740 million of which goes pursuant to one or another formula and $11 million that goes pursuant to certain categorical aid provisions.

Within that $740 million, a little

less than $330 million is being used to backfill some expense-driven aids, aids that include BOCES, transportation, public excess cost aid, and building aid. Those are expenses that were incurred in school districts throughout this state, in reasonably good faith on the part of school districts who anticipated being reimbursed.

The Governor, in providing us with his budget, either capped or cut certain of those programs. And in order to make those districts whole, we're required to provide some $329 million.

Over and above that, to the tune of 400-plus million dollars, a variety of formulas have been enhanced. And certainly the formula that's probably of the greatest interest to and the one that provides the greatest amount of discretion to our local school districts is the operating aid formula, comprehensive operating aid.

And there is no district in our state that will receive an increase of less than 1 3/4 percent, 1.75 percent, under this bill that's before us.

Again, as Senator Bruno has pointed out, it will require us in this fiscal year of ours to provide an additional $555 million.

We also, as part and parcel of this, restore a number of programs. We restore full funding to libraries, we restore independent living centers. There are a number of teacher programs, teacher centers, teacher mentor programs that we also restore under the terms of this measure.

This brings to $15.2 billion the total statewide that New York State is providing. This obviously is the largest amount that the state has provided in its history. It represents, over the course of the past ten years, an additional roughly $5.3 billion. We have, over the course of that period of time, increased well above the rate of inflation. The fact of the matter is is that we've almost doubled the rate of inflation.

With that, Madam President, I would yield to any questions.

ACTING PRESIDENT McGEE: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President. Through you, if the sponsor would yield for a few brief questions.

ACTING PRESIDENT McGEE: Senator Saland, will you yield?

SENATOR SALAND: Yes, Madam President.

ACTING PRESIDENT McGEE: The Senator yields.

SENATOR SCHNEIDERMAN: As I read this bill and the numbers that it provides, it appears to me that in the '03-'04 school year, New York City received 37.1 percent of the state's school aid, and in this bill New York City receives 37.2 percent. Is that correct?

SENATOR SALAND: I thought the number was more like 38-plus percent, I believe 38.86. I believe it's a little over 38 percent -- driven, in large part, by the additional extraordinary aid dollars that are in here, to the tune of some $265 million, I believe.

ACTING PRESIDENT McGEE: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Yes,

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

ACTING PRESIDENT McGEE: Senator Saland, do you continue to yield?

SENATOR SALAND: Yes.

SENATOR SCHNEIDERMAN: I believe that the sponsor is referring to the portion of new money, new money that's going to the city. But in fact, in terms of all aid, old plus new money --

SENATOR SALAND: Oh, okay. Overall aid goes from 37.1 to 37.2.

SENATOR SCHNEIDERMAN: And through you, Madam President, then it is -- my understanding is consistent with the sponsor's, that the portion of the new money provided in this bill that goes to New York City is 38.9 percent. Is that correct?

SENATOR SALAND: I believe that is close enough for our purposes.

SENATOR SCHNEIDERMAN: I won't comment on that.

Through you, Madam President, as the sources of these funds are not -- do not appear to be identified, I wonder if the

sponsor could share with us, is any of this money dependent on the expansion of VLTs or other lottery or gambling-related revenue?

ACTING PRESIDENT McGEE: Senator Saland, do you yield?

SENATOR SALAND: It is not dependent on any expansion of VLTs. It does, however, sweep the existing VLTs to the tune of approximately $240 million.

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

ACTING PRESIDENT McGEE: Senator Saland, do you continue to yield?

SENATOR SALAND: Yes, Madam President.

ACTING PRESIDENT McGEE: He continues to yield.

SENATOR SCHNEIDERMAN: In the litigation that is now pending before Justice Leland DeGrasse in the Supreme Court of New York County, the State of New York submitted, on July 30th, a letter to the court in opposition to the appointment of special masters, which was signed by Richard Rifkin,

the deputy attorney general representing the state, that advised the court, defendants -- which are us, the Governor and the Legislature -- defendants have developed and proposed --

SENATOR SALAND: Excuse me, Senator Schneiderman.

If we could please have that door closed. Thank you.

Thank you.

SENATOR SCHNEIDERMAN: That's okay.

What I was saying is there was a letter submitted to the court -- which we discussed in our debate last week -- on behalf of the state in opposition of the court's appointment of a panel of special masters.

And this letter, which was signed by Deputy Attorney General Richard Rifkin on behalf of the state -- really, the Governor -- stated that the defendants -- i.e., the Legislature and the Governor -- "have developed and proposed a comprehensive legislative compliance plan based on the recommendations of the bipartisan New York

State Commission on Educational Reform, and embodied in program legislation proposed by the Governor, to ensure that the schools in New York City and throughout the state have the resources necessary to provide all students with the opportunity for a sound, basic education."

Is the bill before us today -- the two bills, the appropriation and language bill, are those bills the comprehensive legislative compliance plan referred to in this letter?

SENATOR SALAND: No, certainly not.

To the extent that there's been an increase in funding for high-needs districts, there has been a recognition of trying to drive more dollars to high-needs districts. It does not, however, attempt to deal with the CFE decision.

SENATOR SCHNEIDERMAN: Thank you.

Through you, Madam President.

ACTING PRESIDENT McGEE: Senator Schneiderman.

SENATOR SCHNEIDERMAN: And could

the sponsor say something about this bill's provision for higher education programs? There was a reference to it earlier, but perhaps in a bit more detail.

SENATOR SALAND: I would yield to Senator LaValle for that purpose, unless, Senator Schneiderman, you have more questions on K-12. Whatever works for you, Senator Schneiderman.

SENATOR SCHNEIDERMAN: Well, whatever works for me is --

ACTING PRESIDENT McGEE: Gentlemen.

SENATOR SCHNEIDERMAN: Yes. Either Senator Saland or Senator LaValle, we would like to hear about the higher education funding restorations.

ACTING PRESIDENT McGEE: Senator LaValle.

SENATOR LaVALLE: I'll be glad to do so.

I think as everyone in this chamber knows, the staffs have been working very diligently in this house since January, when the Governor handed us the budget, and we have

had meeting upon meeting upon meeting. And all those meetings -- and you've heard me talk about this on the floor so many times, that when there was frustration about we didn't have a budget -- the fact is that people were working through this long period.

And it has produced restorations for the Tuition Assistance Program so that there will be no cuts. The Governor's budget had a one-third cut in which the students would have to lay out that money and get it back upon graduation. And so we have fully funded the Tuition Assistance Program.

Just so everyone knows, we are approaching a program that is growing very, very rapidly, and we are close to $1 billion in our Tuition Assistance Program. It's about $970 million that we are funding in that program.

While we're on the student financial aid programs, there were cuts to some of the opportunity programs. And we made restorations there to HEOP, STEP, C-STEP, Liberty Partnership, Teacher Opportunity Corps. And we also made a restoration to the

Bundy Aid program. That's an institutional aid program for our private colleges.

We have made -- for both the SUNY and CUNY community colleges, we have made a restoration of the base aid cuts that were in the Governor's budget, and we have -- to both SUNY and CUNY community colleges.

We have also added, and I will talk about this, increases to both the CUNY operating aid budget and to the SUNY operating aid budget, by finding some -- by being creative, finding some resources that will -- savings that we retrieved from bond issuances.

And we have -- for CUNY, we have found, on a one-year basis, some $27,375,000 that will be used for operating needs, with also some additional money for faculty lines. For SUNY, we have retrieved some money from their bonds, $41 million, which they will be using for operating expenses. For the faculty lines for SUNY, it is $9 million in additions to faculty lines and $6 million for CUNY.

We are also -- again, as I've indicated, we are adding money -- we not only made restorations for our community colleges,

but we are adding a $50 increase in base aid for both City University community colleges and the State University community colleges.

So I think that for higher education, with a lot of hard work, creativity, that we have once again placed higher education center stage as a priority of this house. And certainly the Assembly has been a partner where they have also made it a priority.

ACTING PRESIDENT McGEE: Senator Stavisky.

SENATOR STAVISKY: Madam President, I believe there's an amendment at the desk. I waive its reading, and I ask to be heard on the amendment.

ACTING PRESIDENT McGEE: The reading is waived. You may proceed.

SENATOR STAVISKY: Thank you, Madam President.

This amendment would restore -- would add $700 million to the CFE operating ingredient and $20 billion to the capital component, to put us in compliance or closer to the objective of the CFE court case.

As you know, Article 11 of the New York State Constitution requires that the Legislature -- not three masters or a court decree, but the Legislature shall provide for a system of common education wherein all of the children of the state may be educated. And this amendment tries to comply with that decision.

Back in March of this year, the Senate Minority offered an alternative budget. And as part of our budget, we increased the operating aid and the capital construction aid. This amendment, Madam President, would be statewide in application. It would apply to all of the school districts, but especially for the high-needs school districts.

This would, I think, bring us further into compliance, particularly in terms of the construction part. The $20 billion would be phased in over a five-year period to reduce class size. In other words, to provide the buildings where the kids can go to school.

You don't have to be a genius to know what it takes to provide a good education. You need a licensed teacher and

you need small class size and you need a school facility that's conducive to learning.

So, Madam President, I move this amendment and urge its adoption.

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

SENATOR LACHMAN: Madam Chair.

ACTING PRESIDENT McGEE: On the amendment?

Senator Lachman, on the amendment.

SENATOR LACHMAN: Within 60 seconds, Madam Chair.

I agree with the amendment. I don't think it goes far enough. I don't think the CFE part of it is adequately taken care of.

ACTING PRESIDENT McGEE: Those 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, Hassell-Thompson, L. Krueger, Lachman, Montgomery, Onorato, Oppenheimer, Parker,

Paterson, Sabini, Sampson, Schneiderman, A. Smith, M. Smith, Stachowski, and Stavisky.

ACTING PRESIDENT McGEE: The amendment is lost.

Senator Montgomery.

SENATOR MONTGOMERY: Yes, Madam President. I believe there's an amendment at the desk, and I ask that we waive its reading. And I ask to be heard on the amendment.

ACTING PRESIDENT McGEE: The reading is waived, and you may be heard on the amendment.

SENATOR MONTGOMERY: Thank you.

My amendment is simply being offered to this house from the members of the Democratic conference to restore $10 million to the Summer Youth Employment Program.

In addition, we would implement a new program to provide youth employment opportunities during the fall and winter months. Since we have missed the opportunity to have young people employed in the Summer Youth Employment Program, we are proposing that we restore the funding. And in order for the city and the young people in the city not

to lose out on it, because summer is almost over, we want to expand that into fall and winter.

And if we don't do this, we are passing a budget, hundreds of pages and a few pounds -- this budget will be passing, and we will be forced to vote on a budget which essentially tells young people in our state to go take a hike, we don't care about you, whether or not you have an opportunity to be employed.

And I invite anyone in this room to come to my district and sit down with a group of teenagers, talk to them and ask them what is their first and main issue, what do they need most from us as elected officials, and they will tell you they need jobs. They need an opportunity to work.

And in many instances, the Summer Youth Employment Program introduces them to careers which they had not thought about. So not only are they paid, but they are introduced to a new world of opportunities for them that they had not thought about.

So I ask my colleagues on the

Republican side of the aisle to agree with this amendment. It is a very small amount to create opportunity for large numbers of young people. It is the right thing to do.

So, Madam President, I ask that you call for the vote. And I expect and anticipate that this may be, historically, the only and first amendment to pass, because both sides of the aisle will be voting on this amendment.

Thank you.

ACTING PRESIDENT McGEE: Senator Brown.

SENATOR BROWN: Thank you, Madam President.

I'm also pleased to rise in support of this amendment. I think $10 million being added to money for youth employment is a very small amount of money for this state government.

You know, I can tell you that this summer I encountered so many youth in my own community that were looking for summer jobs. And unfortunately, there weren't enough summer jobs out there for those youth.

Oftentimes we hear about what youth aren't doing, and there's a lot of criticism about our youth. But I can tell you, I was tremendously impressed this summer that there were so many young people, particularly in my community -- Buffalo, Niagara Falls, Grand Island, the city of Tonawanda -- that were out looking for employment.

One sad statistic that I came across is that New York State has the lowest number of youth employment opportunities of any state in this nation. And when we look at the fact that to incarcerate one youth probably costs the state over $100,000, us adding $10 million back to this program to employ youth that we missed employing for the summer, but employing them over the school year part-time, on weekends, in the evenings after they come home from school, I think makes a lot of sense.

Not only do these youth come from very low-income households, many of them; they are able to contribute to those households or able to contribute to their clothing for back-to-school. They are also able to

contribute to the economy of this state.

When we provide opportunities for youth to work, that money doesn't just go into the pockets of the youth and stay there, it funnels back into the state economy and it helps to grow our economy.

So I am very pleased to join Senator Montgomery and urge all of my colleagues to support this amendment to add $10 million back to the Summer Youth Employment Program.

Thank you very much.

ACTING PRESIDENT McGEE: Senator Diaz.

SENATOR DIAZ: Thank you, Madam President.

I represent one of the poorer districts in the State of New York, the 32nd Senatorial District in the Bronx. It is a pity to see all the youth come to my office trying to find jobs, trying to find programs, and that we cannot provide our youth with good programs, with good money, so they could have jobs and good programs.

I join -- I'm standing up here

joining Senator Montgomery, Senator Brown in asking our Republican colleagues to join us, to join us in voting for this restoration of money. Our youth deserve better. Our communities deserve better. I think that to ignore our youth and to cut -- not to put this money back in the budget and force us to vote for a budget that will kill, practically kill our youth, it's a shame, it's a pity, and it's a disgrace.

And I would like -- I'm asking and urging, again, our Republican colleagues to join us, the Democratic conference, in restoring this money so our youth could have better services and better programs.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Those 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, Hassell-Thompson, L. Krueger, Lachman, Montgomery, Onorato, Oppenheimer, Parker, Paterson, Sabini, Sampson, Schneiderman,

A. Smith, M. Smith, Stachowski, and Stavisky.

ACTING PRESIDENT McGEE: The amendment is lost.

Senator Sabini.

SENATOR SABINI: Madam President, I believe there's an amendment at the desk. I ask that we waive the reading and that I can be heard on the amendment.

ACTING PRESIDENT McGEE: The reading is waived, and you may be heard on the amendment.

SENATOR SABINI: Thank you, Madam President.

I have an amendment which would increase the childcare block grant by $100 million to create another 20,000 slots of subsidized daycare. The fiscal impact on this is $50 million, but it allows the parents of those children to confidently go to work, which is an economic engine.

The childcare block grant program funding is sustained in the budget proposal at $929 million, which supports about 186,000 slots, which is a small increase. The total remains constant, but what this amendment

would do is increase by $100 million.

Federal eligibility guidelines for childcare subsidies are for families with incomes of 275 percent of the poverty line or lower. New York State restricts subsidized childcare to those with incomes of 200 percent of the poverty line or lower. And we have failed to service that population, let alone those filing under those guidelines.

What's more, in neighborhoods where housing costs are up, we need to get more people into the business of providing childcare for both subsidized and unsubsidized slots. And I represent a district that has need for both of those.

And by getting more providers into the business and by providing for more slots, I believe it helps our neighborhoods remain stable, helps people confidently go to work and not worry as much about childcare arrangements, and is in general a good thing for the economy and the population of the State of New York. And that's why I propose the amendment.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Madam President. On the amendment, just an additional comment.

As someone who was an infant childcare director for seven years in the County of Westchester, and as someone who continues to work very closely with the childcare community, one of the things that this amendment speaks to -- and it's very critical for all of us to understand -- childcare is not a poverty program.

And I think we need to start with that premise, that child care is at the base of household need. It is a necessity; it's not a privilege.

Also, as someone who worked extensively through the '70s to get a national daycare bill, it continues to amaze me with the numbers of parents, both parents who are in the workforce, that we have not done, in the State of New York, a readdressing of the issues pertaining to the cost of childcare.

Childcare, for instance, has become

so costly that childcare for infants is anywhere between $175 and $275 a week, and toddlers are from $125 to $225 a week.

Many of our middle-income families have lost their jobs in this economy, and the kinds of jobs they have had to take are service types of jobs. That does not make them bad people, but it means that in order to survive and to serve their families, they have had a need to take severe cuts in their income. And in taking that cut, their ability to continue to afford childcare at this level is tremendously diminished.

It is therefore incumbent upon us to do two things. Number one, we have the opportunity to use more of the TANF monies to create additional slots, up to an additional 10,000 slots at least.

And, number two, we need to revamp the way in which the formula -- we talk about these formulas in this room constantly. But the formulas for childcare must be changed, because the copay for a parent could be as much as 10 to 35 percent of their income in order to sustain childcare for their children.

We continue to do bills in this body that talk about the safety of our children. All of us are very eloquent when we stand on the floor about how we want to look at childcare and who takes care of our children. But if parents cannot afford to put their children in licensed, monitored daycare programs, the kind of secondary alternatives that they have to make cannot guarantee that their children will be safe.

We have, therefore, an obligation to look at what it is that we're doing. And we have an opportunity, because the money is there. And we have continued to have a surplus in our TANF which would allow us to make these adjustments that will benefit families across the economic spectrum in the State of New York.

I would ask, then, that this amendment be given very due consideration and support by both sides of this house.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Senator Oppenheimer.

SENATOR OPPENHEIMER: I'd also

like to speak on this amendment, because something very interesting happened last week when I was talking with the executive director of the Westchester Childcare Council. And that was she told me that they did have slots available, which was astounding to me, because we've always had too few slots.

I said, "Well, that's ridiculous. We have all this great need. How come we don't have the slots filled?" And the answer was -- I don't have to tell you -- "It is too costly for most parents to afford to pay for the childcare."

This has a lot of very horrible ramifications. But let me just say that with this money available for the additional subsidized slots, we would see these slots filled. They are not extremely costly, they are simply beyond the wherewithal of these families, who are on rather low-paying wages, to provide for their children to get proper childcare.

We know that the federal eligibility guidelines for childcare subsidy are for families with incomes up to

275 percent of the poverty level. We in this state provide only for 200 percent family income of the -- 200 percent of the poverty level for subsidized slots.

That is not conscionable. If we are permitted to provide for more, we must be providing for more. Over half of our young children are not in childcare, they are in some kind of care that is below par, something we would not want. They may be sitting at the home of a neighbor watching television all day. This is not what we want for our children. They are going to have to at some point, we hope, get educated and enter our workforce, and this is not a good beginning.

The copays are simply too high presently because the subsidy is too low. The income level is too high. And the need for more subsidy is an absolute essential.

And I lay this before you as something that is not just important to us today, because they are our children, but also critically important for our future and for those children who we hope will meet standardized tests when they get to school.

ACTING PRESIDENT McGEE: Those 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, Hassell-Thompson, L. Krueger, Lachman, Montgomery, Onorato, Oppenheimer, Parker, Paterson, Sabini, Sampson, Schneiderman, A. Smith, M. Smith, Stachowski, and Stavisky.

ACTING PRESIDENT McGEE: The amendment is lost.

Senator Paterson.

SENATOR PATERSON: I'm sorry, Madam President. Did you say the amendment lost?

ACTING PRESIDENT McGEE: The amendment is lost.

SENATOR PATERSON: Oh. Oh.

(Laughter.)

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Senator

Schneiderman.

SENATOR SCHNEIDERMAN: Madam President, briefly on the bill. Briefly.

ACTING PRESIDENT McGEE: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: Briefly.

I would thank the full rotation of responders to our questions about this -- Senator Bruno, Senator Saland, Senator LaValle.

There are some good things in this bill. It certainly restores some critical cuts that the Governor attempted to make, the area of higher education in particular. There are some very, very important restorations.

On the central issue that has been before us all session, however, and that is before us to this day, I'm afraid this bill does not accomplish what we need to accomplish. And I'm constrained, in good conscience, as I represent people -- including children -- in the City of New York, to vote against this bill, because I do not believe that this bill in any way, shape or form complies with the Court of Appeals' directive

in the Campaign for Fiscal Equity decision.

And I would like to just urge my colleagues that since -- this case was filed in 1993. It went to trial in 1999 and 2000. The findings of fact are devastating. Again, I'm not going to rehash our debates of past months. But this is not something that is a matter of greed or luxury.

People of the City of New York need money for decent education for our children. We subsidize the rest of the state over $7 billion a year. We need to have a higher portion of the new state funding for education go to the city.

This legislation doesn't do that. In fact, as conceded by the distinguished chair of the Education Committee, 38.9 percent of the new money provided in this bill goes to New York City.

Now, the letter I just cited that was submitted to the court on July 30th, just a few weeks ago, by the state represented on our behalf, on behalf of the Governor and the Legislature, that we have developed and proposed a comprehensive legislative

compliance plan based on the recommendations of the bipartisan New York State Commission on Education Reform. Well, that's the so-called Zarb Commission.

Here's the report of the Zarb Commission. The Zarb Commission recommended that between 50 and 70 percent of all new state money go to the City of New York. The bill before us today has only 38.9 percent of the new money going to the City of New York.

The Governor's Executive Budget recommended 49 percent of new state money to go to the City of New York to help us bring our schools into compliance.

The Assembly's proposal required 63.8 percent of the new state money to go to the schools in the City of New York.

And the proposal developed by Senator Paterson and his staff would have provided 60 percent of the new state money.

We have schools where to this day children are being taught in closets, children are being taught in converted bathrooms. We have a school system in New York City in which less than 50 percent of our students graduate

high school in four years. Less than 50 percent. And yet this bill does not in any way, shape or form address the inequities in school funding.

Money isn't everything. The state is not responsible by itself, although under the constitution it is ultimately responsible. But this legislation, in my view, does not do enough for the 1.1 million in New York City schools. This legislation does not reflect the statement made to the court that we are attempting to comply.

And therefore, I'm going to be voting no. I hope we will be coming back later this year to attempt again to address this. If we pass bills like this, though, we're simply acquiescing in the relinquishment of our responsibility to the judiciary, something that I don't think is good for any of us.

I will be voting no, Madam President, and urging everyone else to do likewise.

ACTING PRESIDENT McGEE: Senator Volker.

SENATOR VOLKER: Madam President, very quickly. And I have a little bit different tack that I wanted to speak on.

As I mentioned in the Finance Committee, first of all, I think this is a great victory for the State of New York and especially for upstate, in that we did what is the normal spread and gave the city some extra money. And I'm not going to get into a discussion of that.

But I am going to get into a discussion, first of all, of these bills. The bills are dated January 20, 2004. Now, let me point out something that the media has paid no attention to, and that I pay attention to because -- as one of the oldest people here in terms of service.

This bill is here and we are here more because of the Court of Appeals than any other reason. Years ago, the Bankers decision was passed, and a number of other decisions that have debilitated the authority of this body and our companion body in the Assembly to deal with budgets.

The reason this bill says

January 20, 2004, is because the Court of Appeals decided that what we did as the Legislature, did since about 1923, I think -- Al Smith -- was wrong. In fact, it was interesting they did it, I believe it was March 26 or 27th, somewhere right in there, about four days before, which completely disrupted our budget process. It took us almost three years to figure out just how to do this stuff. And we're not sure we do it right even now.

There's two bills here, because the second bill is the so-called language bill, because they decided that the Governor has the preeminent power in this state to do budgets. Well, you know, I'm for that. But I just think that the elected people of New York State, which is us -- and I know there's a lot of people in the media that don't like the fact that we're elected. This is democracy. It's not a communist state or anything else. We're democratically elected people.

It just seems to me that one of the things personally I feel strongly about is that we are here, as much as anything, because

the courts have so watered down our powers that -- and I've told Senator Bruno and I'm trying to convince him that we should do a constitutional amendment restoring our powers as they were before the Bankers decision and before a number of these decisions that have followed along with the Executive.

And by the way, those came before Governor Pataki. I'm not talking about Governor Pataki, I'm talking about previous governors also.

And I only mention that because it's something totally unknown to people, it seems to me, outside this place.

So I would say to you, when you talk about the power of the judiciary, the judiciary doesn't have the power to dictate to us on anything. The only thing they can do is do what they did here, and that is make a vote for either the Legislature or the Governor. And they made a vote for the Governor.

But it seems to me that we should do a constitutional amendment that reverses that process and at least allows us a totally equal opportunity to pass a budget.

ACTING PRESIDENT McGEE: Senator Liz Krueger.

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

ACTING PRESIDENT McGEE: Senator Krueger, on the bill.

SENATOR LIZ KRUEGER: Thank you.

Well, my colleagues went into many of the sections of the bill, and I won't repeat what they said, certainly. But I do want to highlight that this bill is not just an education bill or a daycare bill but is also the social services or human services bill for the State of New York this year.

And while it is a better bill than the Governor proposed, I am very glad -- and I want to say that on the record -- I'm very glad that we did do restorations to ensure that we did not create full family sanctions in our public assistance program or reduce the right to have earnings while still receiving some small supplement of public assistance, and that we did not actually reduce the basic grant for people on public assistance.

We did, however, fail to reverse

the Governor's decision to reduce the public assistance grants for nearly 40,000 households in this state who receive SSI for some disabled family member. The Governor decided to bypass the Legislature, perhaps in a way different than Senator Volker just discussed with the courts, but the Governor decided to bypass the Legislature by implementing a regulatory change on July 7th that reduced the grant level for poor families who most frequently have a disabled child.

And the fact is that the federal government, and the state up until now, has recognized there are special needs for disabled children and that there are additional costs associated with having a special-needs child or a disabled adult in a family with nondisabled children.

And that the Governor went ahead and reduced those benefits through regulation an average of 14 percent for those households. It varies by county and by household size.

But I was hoping that in this budget and in this budget document we might revisit the question of the Governor I believe

usurping the authority of the Legislature to dictate, through regulation, an action that I don't think he believed he could pass through both houses of the Legislature, and urge us to revisit the question of why we allowed the state to reduce the grants of the most poor families in the State of New York with disabled family members, disabled children who are so disabled that they meet the federal requirements for SSI income.

These are parents and children who have cerebral palsy, autism, spina bifida and the like. They are our poorest families. They are our most vulnerable families. And with this bill we do not address the fact that they have now, as of July, lost as much as $2,100 per year of their income, which is 15 percent of their household income, at a time where we know that families living in poverty cannot meet their needs for their food and their housing and their health care.

I will also say that while we protected some of our programs from cuts that the Governor made, we did nothing to move forward on models and programs that we know

have been working. We did amendments on daycare, so I won't reiterate that. But the fact is we all know how desperate in every one of our districts our shortage of daycare is and what a direct correlation there is between ensuring you have adequate childcare, not only for pre-school-aged children but in after-school programs, to ensure that parents can get jobs and keep jobs. So we did nothing to move forward on that.

You might notice we never even discussed our previous year's commitments to expand universal pre-K. It seems as if we've dropped that assignment and dropped that discussion.

We did nothing to move forward on the improvements that we have seen, through Title 20, programs to address problems with abused and neglected children. We've seen drops in our foster-care caseload over the last few years, I would argue because we made a commitment to expanding money for Title 20 programs. The Governor proposed cutting them by 15 percent. We did not replace that money. We are not going to continue to make the

progress that we should all feel good about in our districts because of the monies that we did invest up till now, but we allowed that cut to go forward.

There's a long list, but I agreed to be short today on this.

I do want to reiterate, though, that I can't vote for this bill for a number of reasons. And the two distinct ones I'd like to bring up is, one, the issue my colleague Eric Schneiderman spoke so eloquently about. We completely flunked the test for education and for CFE with this bill.

As we have gone over and over and over again in these chambers over the last several months, we did not change the historical formulas for education aid either to New York City or the other high-needs districts of this state.

And, finally, something I'd like to raise with all of my colleagues. We are passing a bill today -- because I assume it will pass, despite the fact that I'm going to vote against it -- without having done a revenue bill. We have no idea what the

revenue for the State of New York's budget is. I do not believe it is a responsible action by a legislature to vote through the spending of money before we know what the revenue is.

And while this has been an interesting year in the sense that we've done budget extenders that have already approved $63 billion out of an estimated $100 billion or $101 billion budget, we still have had no discussion of revenue or taxation or where the money is coming from.

So even if I thought this was a great bill -- and it's not a great bill, there are major problems, but it is better than where we were in January -- I could not vote for this bill, because how do you in good faith vote for a bill that spends the money of a budget when you don't know where the revenue is coming from or how much it is?

So I would argue we have done this in the wrong order, and that the first budget bill we should take up in each and every budget session is the revenue bill. First, to establish where the money is coming from, then determine how you're going to spend that

money.

So I'll be voting no. I hope some of my colleagues will think this through as well.

Thank you, Madam President.

ACTING PRESIDENT McGEE: Senator Lachman.

SENATOR LACHMAN: I rise, Madam Chair, also to express many misgivings that I have regarding this bill. But specifically I want to relate my comments to an issue that was raised by one of the very finest men who sits in the New York State Senate, Senator Dale Volker -- and I mean that most sincerely, Senator Volker -- the issue of the courts getting involved in legislative matters.

We all know that under the federal system of government, the Legislature has tremendous power in all areas. But we should also know, if we remember December 12th in the year 2000, when the U.S. Supreme Court stated that one man was president and one man was not president of the United States based upon the Electoral College and not the number of votes, that the Supreme Court has the power, as they

did in the early 19th century, in Marbury v. Madison, to step into situations which they think are particularly egregious.

Now, people -- you say we should change the constitution of the state. There are people who say we should change the Constitution of the nation and get rid of the Electoral College. It is unfortunate that the courts had to become involved. But they became involved because they deemed that our involvement was insufficient.

And two other reasons for that. Senator Schneiderman mentioned CFE. This does not in any way reach the goals of CFE. It doesn't reach the goals of the Zarb Commission appointed by the Governor, which had recommended 55 to 60 percent of the funds go to New York City. And only 39 percent are going to the City of New York.

It doesn't respond to Senator Krueger's issue that what we're doing is we're putting the cart before the horse. Before we know what we have in money, we're voting on this legislation.

So I would have to oppose this bill

on the grounds that I have mentioned.

And I also would urge my colleagues to be very careful on the issue of federalism and the separation of powers between the judiciary, the executive, and legislative branches of government.

Thank you.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 1914 are Senators Andrews, Diaz, Dilán, Duane, González, Hassell-Thompson, L. Krueger, Lachman, Montgomery, Onorato, Parker, Sabini, Schneiderman, A. Smith and Stavisky. Ayes, 43. Nays, 15.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Madam President,

can we at this time take up Calendar Number 1915.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: In relation to Calendar Number 1915, Senator Johnson moves to discharge, from the Committee on Finance, Assembly Bill Number 9557B and substitute it for the identical Senate Bill Number 6057B, Third Reading Calendar 1915.

ACTING PRESIDENT McGEE: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1915, Assembly Budget Bill, Assembly Print Number 9557B, an act to amend the Labor Law and others.

ACTING PRESIDENT McGEE: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President.

This is the language bill accompanying the appropriation bill which we just debated. They are two parts of the same whole, and I will be voting no for the same

reasons discussed and urge my colleagues to vote in the negative as well.

Thank you.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 1915 are Senators Andrews, Diaz, Dilán, Duane, González, Hassell-Thompson, L. Krueger, Lachman, Montgomery, Onorato, Parker, Sabini, Schneiderman, A. Smith, and Stavisky. Ayes, 43. Nays, 15.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Madam President, can we at this time call up Calendar Number 1912.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 1912, by the Senate Committee on Rules, Senate Print Number 7711, an act to amend Chapter 83 of the Laws of 2002, amending the Real Property Tax Law and others.

ACTING PRESIDENT McGEE: Read the last section.

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

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Madam President, can we at this time take up Calendar Number 1916.

ACTING PRESIDENT McGEE: The Secretary will read.

THE SECRETARY: Calendar Number 1916, by Senator Robach, Senate Print 7719, an act to amend the Civil Service Law and others, amending the Civil Service Law.

ACTING PRESIDENT McGEE: Senator Bruno.

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

ACTING PRESIDENT McGEE: There is a message at the desk.

SENATOR BRUNO: I would move that we accept that message.

ACTING PRESIDENT McGEE: All those in favor of accepting the message of necessity will signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT McGEE: Opposed, nay.

(Response of "Nay.")

ACTING PRESIDENT McGEE: The message is accepted.

Read the last section.

THE SECRETARY: Section 21. This act shall take effect on the date an agreement consistent with the provisions of this act negotiated.

ACTING PRESIDENT McGEE: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT McGEE: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Madam President, could we recognize Senator Paterson.

ACTING PRESIDENT McGEE: Senator Paterson.

SENATOR PATERSON: Thank you, Madam President.

There will be a conference of the Minority tomorrow at 1:30 --

ACTING PRESIDENT McGEE: There will be a conference of the Minority, tomorrow --

SENATOR PATERSON: -- Eastern Daylight Time --

ACTING PRESIDENT McGEE: -- at 1:30, Eastern Daylight Time --

SENATOR PATERSON: -- in Room 314, which is actually the numerical derivative of pi, Madam President.

ACTING PRESIDENT McGEE: Thank you very much, sir. I appreciate that.

-- in Room 314.

Senator Bruno.

SENATOR BRUNO: And, Madam President, I would like to recommend that the Majority conference also at 1:00 o'clock.

That's also Eastern -- Eastern Standard Time? Daylight.

And I can't tell you what the pi equivalent is, or whatever, but we'll accept my learned colleague's description.

(Laughter.)

ACTING PRESIDENT McGEE: Senate Majority conference at 1:00 o'clock tomorrow.

SENATOR BRUNO: Thank you, Madam President.

ACTING PRESIDENT McGEE: Thank you, Senator Bruno.

SENATOR BRUNO: And is there any further Senate business at the desk that we must contemplate?

ACTING PRESIDENT McGEE: There is no housekeeping at the desk.

SENATOR BRUNO: There being none, then I would move, our business being finished for the day, that we stand adjourned until

tomorrow, Wednesday, August 11th, at 2:00 p.m.

Thank you.

ACTING PRESIDENT McGEE: On motion, the Senate stands adjourned until Wednesday, August 11th, at 2:00 p.m.

(Whereupon, at 3:35 p.m., the Senate adjourned.)