NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

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2:18 p.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will please come to order.

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

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

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

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

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Tuesday, December 21, the Senate met pursuant to adjournment. The Journal of Monday, December 20, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Skelos.

SENATOR SKELOS: Please recognize Senator Golden.

THE PRESIDENT: Senator Golden.

SENATOR GOLDEN: Thank you, Madam Acting President.

Today there are three Boy Scouts here from -- actually, from New York City, that bring to us a light that is from Bethlehem, a light of peace. And with us today are the Boy Scouts Tom Colasanto, Jonathan Fronteere, and Anthony Faga of Troop 99 from St. Athanasius.

These boys will stand and put out their peace light. We have a rule here, we can't bring into the building any lit lights, so they put the light out so that they could present it to the State Senate here today. And these fine young men bring us their

message of goodwill with the peace light.

The Peace Light Project was originally organized in 1990, in Austria, as part of a large charitable relief mission, "Light Into Darkness," for children in need in Austria and abroad. The light has come into the United States since 2001.

This year the peace light was presented to a number of schools and churches in New York City, some of them being, obviously, St. Athanasius, where the boys are from, the Visitation, Our Lady of Angels, and others throughout the regions of Brooklyn and Queens and New York City.

These Boy Scouts from around the world take the light to their places of worship, hospitals, nursing homes, prisons and places of public, cultural and political importance. The aim of their campaign is to include as many people as possible in the peace message, to create peace in their environment by being tolerant towards people of different ethnic, cultural, political and religious groups.

Again, we want to welcome these

young boys. And they've brought to us their instruction, and it says each year a child from Austria fetches from a grotto in Bethlehem, where Jesus was born, a light of peace. This light then journeys across Europe and is passed on to others who receive it, the message of peace.

By accepting this light here at the New York Senate, we in New York hope to remove the barriers between people through personal contact, peaceful living between different races, faith traditions, cultures, and political ideologies. By passing this peace light from Bethlehem, we can overcome the darkness that is caused by hate, materialism, and racism. The peace light lantern is brought to the presider. It is held high for all to see.

This light from Bethlehem has traveled far, reminding us of the light which came into a dark and fearful world when Jesus was born. It is our prayer that this light and all those lit from it will be a sign of hope and joy in the great state of New York.

Members of the Senate and all those

present, this is a prayer that the boys have brought: The holy child of Bethlehem was born in a stable as a light to all people. Bless all who carry this peace light and all who will receive it, that peace may dwell in their hearts and homes, fill them with their love now and always. We ask this through His holy name, amen.

I'd like to commend these boys and their families for bringing that peace light here to the Senate in New York so it can be displayed so that the message can be carried throughout the state of New York, throughout this nation, and throughout this world.

Thank you, our Boy Scouts of America. Thank you.

(Applause.)

ACTING PRESIDENT MEIER: Senator Skelos.

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

ACTING PRESIDENT MEIER: Immediate meeting of the Rules Committee in

the Majority Conference Room.

(Pause in proceedings.)

ACTING PRESIDENT MEIER: Senator Bruno.

SENATOR BRUNO: Mr. President, can we return to reports of standing committees.

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

ACTING PRESIDENT MEIER: Reports of standing committees.

The Secretary will read.

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

Assembly Print 6619, by Member of the Assembly Pheffer, an act to amend the Surrogate's Court Procedure Act;

Senate Print 7268, by Senator Kuhl, an act to amend the Criminal Procedure Law;

7547, by Senator Breslin, an act validating;

7789, by Senator Flanagan, an act to amend the Real Property Tax Law;

And Senate Print 7806, by the Senate Committee on Rules, an act to amend the State Finance Law and others, in relation to budget reform.

All bills ordered direct to third reading.

ACTING PRESIDENT MEIER: Senator Bruno.

SENATOR BRUNO: I would move to accept the report of the Rules Committee.

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

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The report of the Rules Committee is accepted.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time return to the noncontroversial reading of the calendar.

ACTING PRESIDENT MEIER: The Secretary will conduct the noncontroversial

reading of the calendar.

THE SECRETARY: Calendar Number 1087, by Member of the Assembly Pheffer, Assembly Print Number 6619, an act to amend the Surrogate's Court Procedure Act.

ACTING PRESIDENT MEIER: Read the last section.

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

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: In relation to Calendar Number 1972, Senator Breslin moves to discharge, from the Committee on Rules, Assembly Bill Number 11635 and substitute it for the identical Senate Bill Number 7547, Third Reading Calendar 1972.

ACTING PRESIDENT MEIER: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1972, by the Assembly Committee on Rules, Assembly Print Number 11635, an act validating

any action taken by the Green Island Union Free School District.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1973, Senator Flanagan moves to discharge, from the Committee on Rules, Assembly Bill Number 11490 and substitute it for the identical Senate Bill Number 7789, Third Reading Calendar 1973.

ACTING PRESIDENT MEIER: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1973, by the Assembly Committee on Rules, Assembly Print Number 11490, an act to amend the Real Property Tax Law.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1974, Senator Kuhl moves to discharge, from the Committee on Codes, Assembly Bill Number 11158 and substitute it for the identical Senate Bill Number 7268, Third Reading Calendar 1974.

ACTING PRESIDENT MEIER: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1974, by the Assembly Committee on Rules, Assembly Print Number 11158, an act to amend the Criminal Procedure Law.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1975, by the Senate Committee on Rules, Senate Print Number 7806, an act to amend the State Finance Law and others, in relation to budget reform.

ACTING PRESIDENT MEIER: Read the last section.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

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

SENATOR BRUNO: Can we at this time, Mr. President, return to the controversial calendar.

ACTING PRESIDENT MEIER: The Secretary will conduct the controversial

reading of the calendar.

THE SECRETARY: Calendar Number 1087, by Member of the Assembly Pheffer, Assembly Print Number 6619, an act to amend the Surrogate's Court Procedure Act.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEIER: The Secretary will announce the results.

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1975, by the Senate Committee on Rules, Senate Print Number 7806, an act to amend the State Finance Law and others, in relation to budget reform.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT MEIER: Senator

Bruno.

SENATOR BRUNO: Mr. President and colleagues, we have on the floor a bill that would be best described as a budget reform bill.

All of us have been focused on the dysfunctional process in the budget here in New York State, twenty years of late budgets. Senate 1 for ten years has been a budget reform bill. We had a bill that we had agreement on, passed the Legislature, went to the Governor. It really takes second passage. After the Governor vetoed it, it came back to us.

That particular bill takes second passage of a constitutional resolution next year, then goes to a referendum of the people in November and then would implement budget reform in '06.

We have -- we're not taking action at all on the Governor's veto because it truly takes us into second passage, a November referendum, and we have next year to deal with the dynamics of implementation if and when it gets approved.

So the bill that's before us really recognizes, especially with this recent court decision that transferred powers that the legislative branch had, we thought, in the budget process completely to the Executive.

So what we are proposing now is that the Comptroller has told us that there isn't enough time in '05 to move the budget implementation for a contingency to May 1st. So this bill deals with '05. Contingency would go into place April 1st, giving the Governor until the 15th to respond and make whatever corrections.

The caveats that were in the original bill, most of them are in this bill. The major difference is this would be implemented in '05, '05. And it has a two-year school aid requirement that the Governor would submit. It has the independent budget commission that would talk about a balanced budget, similar to the other bill that was vetoed.

So major differences are this would be effective '05, not '06, does not go to a referendum but would become law if the

Assembly would pass it. The Governor has indicated, and I believe I just saw a press release, that he will sign this if it gets to his desk.

Yesterday the Executive wasn't prepared to make that statement. But if the Assembly acts now or in early January on this reform, we would have reform effective in '05. And you'd have the contingency in place, all the caveats, all the reserves, everything that's in the other bill, but it's '05.

So we think this is critically important to provide the leadership for direction here in the Senate. It has been Senate 1, both sides of the aisle being supportive. So we appreciate the negotiation, the deliberation, the support that we've had. And we would encourage everyone here to be supportive so that we can get a budget done in '05.

And this gives us the best opportunity to get a budget done in '05, and then we will deal with the implementation of '06 when we do second passage in the language next year.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Read the last section.

Senator Paterson.

SENATOR PATERSON: Mr. President, an independent financial review board, a budget proposal that connects the Health Care Reform Act to the budget process -- which will save the Comptroller and many others a lot of problems -- and the fact that this budget would affect our immediate negotiations for the 2005-2006 budget compel me to support this bill.

There was a belief that our being here today represented just one-house justice. Clearly there are indications that there is interest in other houses and also in the Executive branch at seeing some reform take place immediately.

There are some specific core of issues of this bill that may compel some of us not to support it, but it must be said that the Senate has taken a step forward, has stepped immediately into the whole issue of budget reform. There has been long

negotiation without result, which is the problem with the budget process in the first place.

So the idea of putting a house's stand on the table I think is quite meritorious. I want to congratulate Senator Bruno for being willing to do that. And it is in that respect that I support the bill.

ACTING PRESIDENT MEIER: Senator Schneiderman.

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

I also will be supporting this legislation. I think that both of our leaders here, Senator Bruno and Senator Paterson, if anything have been somewhat polite, I believe, about the crisis that we're facing in this state. We can't go on with years like this, ladies and gentlemen. We cannot have sessions with nothing but frustration and futility to show. We cannot continue to pass late budgets.

The decision by the Court of Appeals in Silver v. Pataki and Pataki v. Assembly is nothing short of a disaster for

anyone who believes in a balance of powers and a system of legislative checks on the Executive.

I mean, I've been accused of being partisan. I am partisan. But this is not a partisan issue. This is an institutional issue. And I hope that on both sides of the aisle in this house, and in the other house, people recognize what we're in for if we do not take action to respond to the Court of Appeals.

The Court of Appeals has set up a situation where an Executive -- and I do believe soon we will probably have a Democratic Executive, so this is something that should -- I'm talking about limitations on the Executive whatever the party -- the Executive can submit an extremely difficult budget with inadequate funding for programs we deem to be important and control the process that way.

The Executive can then submit emergency spending bills that we have no ability to control. We could be in a situation where the budgetary powers of the

Legislature are essentially eliminated.

We have to do something. I agree with -- of course, with my leader, Senator Paterson, that there are -- I have some issues with some things in this particular bill. I would like to see a bill that requires conference committees. I'd like to see a bill -- I'm not sure that moving the date for consensus revenue forecast to March 1st is the way to do it. But at least we're doing something.

And I assure you that if in the other house and on the Second Floor people do not recognize that we have to do something, we're in for a lot more trouble than we've even had in this year of -- the 20th year of late budgets and a year of unparalleled frustration and futility in the Legislature.

We have to take action. This is a step forward. And I assure everyone here that if we don't deal with this now, we're going to be dealing with it in January. We've got to restore a reasonable balance of powers in the government of the State of New York. And that's going to require unity and creativity.

And I'm proud to be in support of both of our leaders here in this effort.

Thank you.

ACTING PRESIDENT MEIER: Senator Bonacic.

SENATOR BONACIC: Thank you, Mr. President.

It may be the Christmas spirit, but I rise to agree with Senator Schneiderman.

This court decision by the Court of Appeals is just simply devastating to the Legislature. It makes the Legislature subservient to the Executive office in terms of being a partner in the budget process.

And I, for one, have been here a while to see the Legislature fight with Democratic governors, I've seen the Legislature fight with Republican governors when it comes to the judgment of the budget process to do what's right for the needs of the people of the state of New York.

So my only message today is that we have to keep focused on this issue and do whatever legislation is necessary, united in a bipartisan way -- if not this bill, other

legislation next year that restores legislative power, if we're really going to take care of the needs of our constituency in the state of New York.

And my final thought is: To all, happy holidays, peace and good health to you and your families.

Thank you.

ACTING PRESIDENT MEIER: Senator DeFrancisco.

SENATOR DeFRANCISCO: You know, my thought in coming here today is that we were going to override a veto.

But the problem with a veto override, as we've discussed amongst ourselves, is that the budget process is more than simply a piece of paper. And if we've got a bill here that the Governor says he will sign and that he will go along with and agree with the process, and if the Assembly is willing to put the bill in, which we have some indications that they will, an agreement is far better than a battle over a process.

With an override, we would have had a budget process that at least one member of

that process would not be happy with. And to implement it would have been a nightmare.

So it would have been the easy thing to do to override a veto and say we've done something, but in this case, after a lot of reflection, if the Governor is on board and certainly the Assembly has the same incentive that we do to get this bill or very close to this bill passed because of that court decision, we're doing much better for the public and we're doing it much sooner, by next year, by budget year 2005.

So with that in mind, I'm going to support this bill.

ACTING PRESIDENT MEIER: Senator Marcellino.

SENATOR MARCELLINO: Thank you, Mr. President.

I would like to thank and commend Majority Leader Bruno for his leadership on this piece of legislation and his negotiations with the Second Floor and in the Assembly. It's a masterful piece of negotiations. I'm glad to hear that the Governor has indicated that he will sign the bill if it reaches his

desk. And I call upon the Assembly, as we all do, to do their share and come up and step up and pass this piece of legislation.

It is imperative that we go into the 2005 negotiations on the budget, with all that is before us, as a solid -- with a solid mechanism in place to make sure that the negotiations are done in a timely fashion and an appropriate fashion that is amongst equal partners. Amongst equal partners. It cannot be a lopsided arrangement with one segment of government dominating all the others and having the major say. We must be partners in this process; the people's work requires it.

And it is an imperative that we move forward in this direction. Again, I commend Senator Bruno. And I urge the Assembly to come to the floor and come back as soon as possible and pass this piece of legislation so we can move ahead.

And I second Senator Bonacic's comments. Merry Christmas, Happy Hanukkah, and may everybody come back safe and sound after the New Year.

ACTING PRESIDENT MEIER: Senator

Breslin.

SENATOR BRESLIN: On the bill, Mr. President.

It appears as though everyone is holding hands and coming together. And I do commend Senator Bruno and my leader, Senator Paterson, and Senator Bonacic and Senator DeFrancisco and Senator Marcellino in talking about the terms that are being used -- negotiation, participation, uniting.

Yet when you look at the process on how this bill got to the floor, the Democrats in the Senate weren't united and didn't negotiate and didn't participate. This bill came up on the Internet on Sunday night or early Monday morning. There's been no hearings on this bill. There's been no participation by this side on this bill.

And it begs the question on we should be going forward not only with budget reform, budget participation, but the process reform, the involvement of all members of the Legislature and all members of the Senate.

And this bill has wonderful things in it. But as Senator Schneiderman so aptly

pointed out, it doesn't include conference committees. It didn't include other items that possibly hearings in November and December might have taken up and participation by the full Senate might have taken up, to come up with not only the good parts of this bill but so many more things that should be included.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Connor.

SENATOR CONNOR: Thank you, Mr. President.

I intend to vote for this bill. But I think I would urge all my colleagues to pause and reflect about a larger issue.

You know, we keep saying and the public believes the budget process is broken in Albany, the budget process is broken. And you read the decision of the Court of Appeals, and you say -- and colleagues here have said it -- that, Oh, the Governor now has all this power with respect to the budget and the Legislature has lost its budget powers.

That concerns me less than the fact

that when I read that decision, I realize we are losing our legislative powers, our powers to set policy, to set programs, to articulate how programs ought to be conducted, for whom they should be beneficiaries and so on.

And it didn't just happen overnight. And it's not just because the budget has been late the past 10 or 20 years.

The first year I sat here, over there, right where Senator Sabini is, I was there all of four or five weeks when we did the budget. We had a conference. In those days -- and those who were here will remember -- the budget consisted of 18, 20, 22 different bills, all different bills.

There was one bill, a very minor bill that would change the way the money taken in by the Comptroller's office under the Abandoned Property Law would be -- whether it would go into the General Fund or they'd be self-funded and so on.

I stood up in conference to comment on it, and Senator Ohrenstein, who was then our leader, said: "Well, Marty, Marty, this is very complicated stuff, this abandoned

property, take my word for it."

And I said, "Excuse me, four weeks ago I was the deputy counsel to the Comptroller for abandoned property. I know a little bit about this." Of course, Fred was like, Whoa. And I told why I thought that was bad.

And then we got shuffled, go, we're going to go out here -- because the budget would pass over a three-or-four-day period. We'd do eight bills one day, ten bills the other. And I spoke against that bill from that seat here in the Minority, and my colleagues all listened. And you know what? This Senate voted that bill down.

And it was of course withdrawn and laid aside, and we came back the next day and we did seven or eight other budget bills. And the next day we did some more. And they brought that one up again, Senator Anderson brought it up -- actually, it was Bill Conklin sitting there, acting as the majority leader. And I talked against it again, and it was voted down.

So we got all the other budget

bills done, and that was still sitting there on the calendar because it had been voted down and laid -- you know, withdrawn and laid aside. And Senator Ohrenstein called me in and said, "I just got off the phone with Bob Morgado. Okay, we're changing the fiscal plan, and we're taking that out of the budget."

That's about legislating. That was in the context of a budget. But it's about legislating, about all of our colleagues setting policy. See, the bill had a price tag on it, that's why it was part of the budget, but the bill articulated -- and it was a very minor thing -- what I convinced my colleagues was bad policy. And we had the power to do that then.

Then what happened? A number of years later we had -- we were presented with the Big Ugly. That was a big budget bill. We're all: Oh, look at that big one. And why? I forget why. I think there was something there having to do with gambling, and it never would have passed this house because our dear colleague Senator Padavan

would have led the charge, and many of us would have agreed with him, and it wouldn't have passed.

So they wrapped that up with a bill with something else, and they threw some taxes in, which the majority in this house at that time wasn't about to vote for, but they put some other goodies in there. And they learned -- and by doing that under the guise of the budget, they contravened something I was taught when I first got here, that we don't do riders here. We're not like Congress; we don't do riders, a rider being a piece of legislation tacked on to an unrelated bill.

Why don't we do it? Because if you read the State Constitution -- and I recommend it to all of you -- it says each bill shall deal with a separate subject. So we don't do riders. And generally, when we do our calendars and our bills, we don't have bills with riders attached to them, the bill doesn't deal with two disparate things. Except when we do the budget.

So we went from that Big Ugly, and

then we only had about 15 bills, to where we got to what we have now, the Teddy and this and that. We have about four bills, and they're like this (indicating), and there's all sorts of unrelated stuff in them. Not to totally fault this Governor; his budget offices have perfected it. But it was a thing that grew. And it certainly grew under Governor Cuomo, and it began a little bit under Governor Carey, where you throw everything but the kitchen sink in under the guise of a budget, because it has a fiscal impact.

Well, Mr. President, every single policy choice this Legislature makes or any other legislature makes has some budget implications. It either costs money or it doesn't cost money. That has budget implications. So it's one of these things coming and going you can always say it has a budget implication. Because it doesn't cost anything; well, it saves money. Well, it costs something.

So what do we do? In 1995, the first year I was minority leader here, we got

these four big ugly bills, or whatever you called them then, Teddy and this one and that one. Well, we've changed the whole sentencing structure in the criminal justice system, in a budget bill. And what was our choice here? Did we have a debate over criminal justice? Did we -- look, forget about it, no hearings or anything like that. We didn't even have a debate here over it because, oh, no, the budget was late, you know. You know, you got to vote for the budget. You know? Got a lot of other good things in there our constituents need.

So we gave up our legislative powers to make policy choices. Forget the budget choices, forget -- we always have the power to take 100 million and cut it to 50 million or try and add 25 million. It's the policy choices we lose.

This bill takes a giant step, I believe, toward getting our budgets on time and whatever, but it doesn't address the central issue that we as a legislature ought to be insisting on, particularly since the Court of Appeals has now given a blessing to

it, and that is how do we preserve not only our power, how do we exercise our responsibility to our constituents that we make the policy choices for how the government -- you know, the Governor executes those choices. The Governor carries out the laws. We're supposed to make those choices.

I got calls after that '95 budget from judges, law professors, other people concerned with criminal justice issues saying: You've changed the sentencing laws? When were the hearings? How come we didn't get notice of this? The Bar Association gave us a call: Well, we never got notice of this.

Because, my colleagues, that's how this Legislature used to operate before that. We never would have done an overhaul of the sentencing laws without Senator Volker having hearings all throughout the state and eliciting expert testimony. I mean, that's one example.

We over and over and over again, under the guise of a budget, we have been forced to swallow policy choices made by the Executive. In effect, we have been forced --

the Executive has been making legislative decisions, and we have been forced to go along under the hammer of there's no budget. And the additional hammer we gave ourselves of no paychecks, for those of us who sit in this Legislature. Which we all laughed at at first and said we can survive. And, you know, when it gets to be August, it gets a little -- you know, anybody can get through April and May, probably.

So we have given up -- it's not just budget power, it's the legislative power. And the Legislature is the voice of the people. And we have to work toward reestablishing that.

I would humbly suggest that somehow or other we try and get back to where the budget is broken up. And I know -- look, it was very clever when they came up with the Big Ugly. The leaders then -- not the present leaders, but the leaders then thought, How are we going to sell this poison pill? Let's wrap it up -- let's wrap it up and let's chocolate-coat it, you know. And that way people like, you know, Connor there, who won't

vote for a gambling thing, will vote for it because he's very strongly for funding for displaced homemakers or something. They were the kind of issues then that were important.

I suggest we go back to the old way, make the policy choices. Hey, sometimes something won't go through. That's what it's all about. But it's not -- my colleagues, it is not just about the budget process, it's about legislative power.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Little.

SENATOR LITTLE: Thank you, Mr. President.

I am certain that the number-one issue in my district and most likely in most of your districts has been getting an on-time budget. And when I first came to the Senate two years ago, after seven years in the Assembly, I was excited to be voting on Senate Bill Number 1, which was budget reform. The Senate has been the leader in reforming the budget process and getting a bill on time.

And I commend Senator Bruno for

getting this bill and for negotiating it. I commend Senator Paterson, in the Minority conference here, for supporting this bill.

This is a negotiated bill. There are parts it that none of us like. But that's part of negotiation. You put together the best that you can that you can all agree on to make a difference.

We have the Governor on board on this bill, willing to sign this bill, so we have a two-way agreement. I look forward to there being a three-way agreement. And I'm pleased to support this bill.

Thank you.

ACTING PRESIDENT MEIER: Senator Farley.

SENATOR FARLEY: Thank you, Mr. President. I rise to support this.

You know, those of us in the Capital District have had our brains beaten out for twenty years on the late budget, and now it's resonating all over the state about a late budget.

At least this bill that we have here moves the process. And I commend my

colleagues and Senator Bruno for being here on Christmas Eve, practically, to try to move this process to get something done, particularly in 2005, to try to get a budget passed on time.

I couldn't agree more with so many that have spoken about the devastation of this court decision. I mentioned this in conference, and it's something that I think that really denigrates and destroys the institution of the Legislature. And it's something I think that we have to address some way down the road.

But today we are passing a piece of legislation that at least gets the process moving. That's what we're trying to do, and this house has been in the forefront of not only trying to move the process forward of getting an on-time budget.

And I applaud my colleagues for joining in the support of this legislation. It's not critical that it be the final piece of legislation passed. But it does move the process, it gets us going for an on-time budget, and I support it.

ACTING PRESIDENT MEIER: Senator Robach.

SENATOR ROBACH: Yes, Mr. President. On the bill.

I rise because this is a good day. I believe that budget reform is certainly something everyone knows is critically, critically important.

I applaud my colleagues, though it won't get in the media -- and I mean all my colleagues -- for being here a couple of days before Christmas to try and move an agenda, a bill that will be good for the state. It is in direct response to what our constituents want, whether upstate, downstate, urban, suburban. One thing I haven't had anyone say to me, "Thank goodness for a late budget." People would like this to be more on time, and this bill will accomplish this.

I came here prepared, at the call of my leader and with my colleagues, to do whatever we could to push this very, very important issue right here for my constituents time and time again. This bill has a benefit that it does give us the opportunity to move

up the budget timeliness or have a more timely budget in 2005 rather than 2006. But that is also incumbent on the other participants in this triangle for participating.

We have word from the Governor. Senator Breslin had talked about not liking some parts of the bill, or participation, but there's clearly a part for all of us to participate in. And certainly we can talk to our colleagues in the other house to make sure the Assembly is equally engaged.

And if this bill does pass -- and it's my hope that it will -- in three houses, we will be doing something good for every constituent in New York and taking a very complicated budget process, jamming it into a more timely process that will benefit everyone. And I think that will be a good day.

But I end with this, of saying this is incumbent on all of us continuing to work to make sure the other house and the Executive follow up on this. It's what we've promised the people of New York, it's what we should give the people of New York: a better

process.

Thank you.

ACTING PRESIDENT MEIER: Senator Lachman.

SENATOR LACHMAN: Yeah, I rise -- and I'm just going to speak very briefly.

First of all, as one of my colleagues on the other side, I wish everyone a very blessed holiday season and a very fruitful creative session starting in two weeks.

I also want to commend Senator Bruno and my leader, Senator Paterson, for having the imagination of starting this. This is a beginning.

As others have said, prior to my standing and speaking, there are two problems here. One is basically a constitutional problem, a division of powers between executive, judiciary and legislative.

The Legislature must not give up the powers it has. It must enhance the powers it has. And enhancing the powers it has means that every legislator should be involved in the process.

I must tell you I was surprised that one of my Republican colleagues said that he thought he was coming to Albany yesterday to vote on an override and not this bill. And I think that it shows that the process has not been opened far enough.

Now, I remember when I was a college student, which goes back to the McKinley administration in the 19th century, I once went to a movie. And at the end of the movie, it said "The Beginning." It didn't say "The End," it said "The Beginning."

And I think each and every one of us have to realize, as we're voting for this bill -- which has imperfections, but it's a necessary beginning -- that we have to strive to make certain and sure that next year, in the next session, this was not called a bill that is just window dressing, that will not go to the basic problem of involving every legislator in the process of legislation in regard to the budget and every other major and minor bill taken up by this institution.

And that's all I have to say. Thank you kindly.

ACTING PRESIDENT MEIER: Senator Johnson.

SENATOR JOHNSON: Mr. President, last spring when I was called upon to lead a budget conference committee, along with Denny Farrell in the Assembly, I didn't think the prospects were that we would ever achieve reform, but we were going to make a try.

We did achieve the reform, we did create the bill and the constitutional amendment, as you're all aware. You all voted for it, it was passed in both houses. I thought we were really on our way to get an on-time budget.

Apparently the override is not taking place and that bill will not become law. But the new bill we have before us is essentially that law. For the most part, all those ingredients are in there, especially an on-time budget. Because the contingency budget will go in effect on April 1st if we don't have a budget, which means we'll have an on-time budget from now on.

So congratulate yourselves. That's a good first step. And we're going to keep

working.

And I want to congratulate Senator Bruno, by the way, for creating this bill and getting the agreement of the Governor and so forth to put this into effect.

Thank you.

ACTING PRESIDENT MEIER: Senator Saland.

SENATOR SALAND: Thank you, Mr. President.

Mr. President, I rise, as all of my colleagues have, to express my support for this bill. And I rise particularly to commend Senator Bruno for his unfailing efforts to try and deal with the issue of budget reform. And hopefully this, given the spirit of the season, that this may initiate some genuine goodwill with all of the other elements necessary to actually make this a matter of law.

But I also rise particularly because there's been mention of this court decision. And the court decision troubles me. It troubles me because what I see is a rather cavalier attitude of the court, if not just

outright self-righteous hypocrisy.

On the one hand, the court decries gridlock. On the other hand, it basically says that that is the only alternative -- no, let me rephrase that -- that is the principal alternative left to this Legislature.

And I would call your attention -- I have the slip opinion. I don't have the formal opinion. And if you look on that slip opinion at pages 8 and 9, the language just reaches out and says how can you possibly embrace gridlock as an institutional form of responding to the excessive powers that you have affirmed in the Governor in some tortuous fashion, particularly with respect to the case involving the language portion of the argument.

And I'm going to read just a few lines. And this is in the plurality opinion by Judge Smith. "Perhaps most important, the Legislature can, and almost invariably does, refuse to act on the budget pending negotiations with the Governor. All budgets within recent memory have been largely a product of such negotiations, often extremely

protracted ones. The inefficiencies of New York's budgeting system are well known today and much deplored. The word 'gridlock' is often used. No one familiar with the process can believe that this is one in which the Governor is omnipotent and that the Legislature is helpless."

So the court effectively says gridlock is your path, you have that path. The fact that we have struggled for 20 years to get away from gridlock, the fact that this house has initiated Senate 1 for ten consecutive years, the fact that we here today, we have spoken here today in broad bipartisan fashion of the need to right this imbalance that has now been certainly taken to another level by this court, all bespeaks a tone of bipartisanship and a tone by which we seek to strike an institution balance between the Legislature and the Executive.

And yet this court, in its infinite wisdom, has said: You've got the right to gridlock. That's your remedy. And if you ask me, again, it's insufferable, it's appalling, and it's the kind of hypocrisy that seems

somehow or other to be written into virtually every major decision that involves this Legislature by this Court of Appeals.

ACTING PRESIDENT MEIER: Senator Balboni.

SENATOR BALBONI: Mr. President, before the election, reform was in the air. People put out all sorts of proposals, and they were met with cynicism. Why? Well, because there is this little thing called an election.

And we've come back now after the election on many, many different occasions. And so for the folks who are wondering what happened here today, what happened here today, what's happened here the last couple of weeks is that this house in particular has come back and has said: We've heard you, the people of this state. We are willing to work as hard as it takes at any time of the year to try and move the agenda forward. But we're not going to rush into it recklessly, we're going to try to get a result.

Not for us. Because at the end of the day, it's not about us. It's about the

people we represent. And right now, here in this chamber, we have just signified that we have a little bill that is live that has been passed by this house -- unanimously, bipartisan, Democrats and Republicans together -- that the chief executive of this state says he will sign.

There is no greater invitation to the party to the Speaker of the State Assembly. He doesn't need a hundred votes to enact this, he needs a simple majority. He can do this next week; we move forward on this issue this year, now.

Lest anybody think that a result of not doing the overrides today we have weakened our position, I say the opposite. We have strengthened it, because we did what we were supposed to do. We deliberated. We thought it through, and we discussed it. Which is what everybody said the reformers were supposed to be doing. We did it, Christmas week here in the Capitol.

So I make one pitch to the press, in this spirit of giving, helping, being a little charitable and giving us credit, this

house, for being ready to work anytime, anywhere for the betterment of the people.

Merry Christmas.

(Laughter; applause.)

ACTING PRESIDENT MEIER: Senator Balboni, the chair would observe it's the season of miracles, but don't count on it.

(Laughter.)

ACTING PRESIDENT MEIER: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Mr. President, on the bill.

I'm a little bit sorry that I got to speak before Senator Krueger but, ooh, following Senator Balboni.

We call this a reform. But I think it should be relabeled. I think it's a "so the budget will come on time" bill. Because in this bill we have not changed the process by which we get to what we're supposed to do.

You talked about all this deliberation. But it's not an inclusive deliberation. When people across this state held forums, they said that the State of New York is broken. And I'm not sure who

dubbed us, but we got dubbed the 50th of all the 50 states, as being the worst state legislature.

Now, those of us who went back into our districts and campaigned around that issue, it didn't make us feel really good to be a part of this Legislature.

But I am sorry, I don't feel as bad as everybody else did about a late budget. What I feel about bad about is not the fact that the budget is late, because a late budget for me said that there were dialogue and conversation until we got to a number that everybody could agree upon that is in the best interests of the state.

And we have allowed the media and everybody else to be the tail that wags this dog. They don't sit here and make these decisions; we do. And Marty is absolutely right. We lose the legislative process, we give it away, we give it away every time we do what we continue to do with these bills.

I will vote for this bill, and we probably will have a unanimous vote for this bill, because I too believe in reform. I

didn't campaign on reform. My local newspaper thought I should have been more of a reformer, because that's what I've been known to do. But I don't participate in the process, so I can't reform something if I don't participate.

Many of us have said, Call on us, we will come, we will be a part of any subcommittees that we hold to discuss how we get to this process. And for us to feel any honesty about that, how can we go back and say that we are responsible for this budget being late on time or any other thing? Because we're not. We take the weight for it, but we don't get the credit for it.

If we're going to reform the way in which we do budgets in this state, there needs to be a list of -- of a new way in which we process. And reforms should include process. There's no process here. It just tells us we're going to be a little later on the date that we're going to do this and a little later on the date that we're going to do that, and therefore we're going to end up at a point that everybody is going to be satisfied that we met the deadline.

But I don't feel that there is legislative reform participating in this bill. Is it better than what we did before? Absolutely, one step better. What I will hope is that we will continue to be one step better and one step better every time we look at this legislation. But this is not the way to get there.

ACTING PRESIDENT MEIER: Senator Hoffmann.

SENATOR HOFFMANN: Thank you, Mr. President.

This whole discussion about budget reform really will go down in history by the constitutional scholars as one of the greatest challenges for balance of power in any government anywhere. And to have had the Court of Appeals weigh in as they have just done, further eroding the very limited power of this body, is a sad day for New York State.

But as Senator Bruno likes to say, we are what we are. This is what we have been dealt. And given the circumstances of another chamber that has refused to come to the table and give an assurance at this point, and a

Governor who enjoys the absolute power of the budget that has been handed him, I think it is a magic achievement to have a commitment from the Governor and a very strong likelihood that the Speaker will convene the Assembly and this measure will pass both houses.

I'm troubled by the long history that we've had of late budgets, not just because of the failures of the Legislature and the Executive to come to an agreement, but because of the creation of a very unusual practice. Having been here twenty years -- and just by way of quick reference, I understand that in my district almost everybody who has watched any television over the last few months assumes that it is my fault exclusively that we have a late budget, the 20 years that I've served here being the same period of time that we've had late budgets. So I'm also happy to congratulate the taxpayers of New York State. By removing myself from the problem, I'm confident that there will be no more late budgets at all. Good luck. Good luck, everyone.

But the fact remains that several

years I experienced a late budget by only a couple of days. And it was a somewhat different situation, because we did not have the practice of something called continuing resolutions.

And I can remember when the state employees were issued something called scrip instead of a paycheck. They were told that their check was going to be delayed by a couple of days. And it was considered to be a minor inconvenience. But the message was quite clear, that state government would stop unless that scrip could be cashed. And therefore, there was an earnest negotiation that took place by the Executive and by the leaders of both chambers.

I think it was 1987 when that practice changed, and no longer was scrip issued, people just got paid as they always had. State agencies continued doing their work through these continuing resolutions. And the Legislature, both houses, voted on the messages of necessity to advance everybody's pay, keep all of state government operating with continuing resolutions.

Now the Court of Appeals has so thoroughly emasculated the Legislature's limited budget powers, the only recourse, if this measure is not enacted, will be the draconian measure we have seen in Washington under Newt Gingrich. The Legislature does in fact have the power to exacerbate gridlock by refusing to pass continuing resolutions and forcing government to come grinding to a halt.

I don't think that the taxpayers of this state, in any part of this state, want to see that happen. And I think if they understand the imbalance of power as it has been determined by the Court of Appeals most recently, they too will howl in outrage that the duly elected members of the Senate and the Assembly have thus been limited in their already limited powers.

I would like to compliment one member of the Court of Appeals on her dissent. The Honorable Judith Kaye, the presiding judge, I think wrote a very, very strong dissenting opinion. And I would hope that should the issue or any comparable issue -- I can't imagine one with such weighty

significance, but a comparable issue coming before the Court of Appeals again, I would hope that it would be the wisdom of Judge Kaye that would determine the final outcome and not the majority opinion that we have seen in this case.

ACTING PRESIDENT MEIER: Senator Leibell.

SENATOR LEIBELL: Thank you, Mr. President.

Our congratulations to you, Senator Bruno, our Majority Leader.

This has certainly been a difficult issue for this legislative body. And it's been difficult for our constituents. We've been confronted by late budgets for so many years now, it's become something that everybody seems to have accepted -- up until very recently. This last year we've seen a tremendous amount of turmoil as a result of these late budgets.

I think with this legislation today, and with the support of all of our members here, or certainly almost all of our members here, and hopefully now with the

Assembly coming on board and with the Governor apparently on board, we've taken a great stride in reconciling these problems.

So I think we can look forward to the future now. Certainly the job is not done. Our constituents, for the most part, do not understand clearly how difficult an issue this has been in terms of the State Constitution.

Hopefully now we'll be able to go forward, despite the Court of Appeals' decision, we'll be able to reconcile this hopefully in the next few months, and New York State and its budget process will see a brighter day.

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

Read the last section.

THE SECRETARY: Section 32. This act shall take effect immediately.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT MEIER: The bill

is passed.

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

SENATOR BRUNO: Mr. President, can we at this time return to motions and resolutions.

ACTING PRESIDENT MEIER: Motions and resolutions.

SENATOR BRUNO: And may we adopt the Resolution Calendar in its entirety.

ACTING PRESIDENT MEIER: All those in favor of adopting the Resolution Calendar signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The Resolution Calendar is adopted.

SENATOR BRUNO: Is there any further business, Mr. President, to come before the house?

ACTING PRESIDENT MEIER: There is no further business, Senator Bruno.

SENATOR BRUNO: There being no

further business, and while I want to share with my colleagues how much I've enjoyed the quality time that we have spent together most recently, I look forward to adjourning, subject to the call of the Majority Leader. And I so move, and intervening days to be legislative days.

And I would hope and expect that everyone here will have a happy holiday, a peaceful, tranquil holiday, and that I would look forward to seeing you all safely and in good health in the new year.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: On motion, the Senate stands adjourned until the call of the Majority Leader, intervening days being legislative days.

(Whereupon, at 3:31 p.m., the Senate adjourned.)