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NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

February 15, 2005

3:09 p.m.

REGULAR SESSION

SENATOR RAYMOND A. MEIER, Acting President

STEVEN M. BOGGESS, Secretary

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P R O C E E D I N G S

ACTING PRESIDENT MEIER: The
Senate will come to order.

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

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

ACTING PRESIDENT MEIER: The
invocation will be offered by the Reverend
Shawn Foster, pastor of Valley Bible Baptist
Church in Middleburgh.

Pastor.

REVEREND FOSTER: Let us pray.
Our heavenly Father, we ask that
this day, in this place, that You will be
glorified. We pray that You will give each
legislator the wisdom that they need.

Lord, protect our land. Protect
our state. And, Father, we would ask for Your
blessing to be given upon us. We ask for Your
mercy to be shown to us as well.

And, Father, we ask that in this
day that the Lord Jesus Christ will be
glorified in this place. We ask this in his

1 precious name.

2 Amen.

3 ACTING PRESIDENT MEIER: Reading
4 of the Journal.

5 THE SECRETARY: In Senate,
6 Monday, February 14, the Senate met pursuant
7 to adjournment. The Journal of Sunday,
8 February 13, was read and approved. On
9 motion, Senate adjourned.

10 ACTING PRESIDENT MEIER: Without
11 objection, the Journal stands approved as
12 read.

13 Presentation of petitions.
14 Messages from the Assembly.
15 Messages from the Governor.
16 Reports of standing committees.
17 Reports of select committees.
18 Communications and reports from
19 state officers.

20 Motions and resolutions.

21 Senator Fuschillo.

22 SENATOR FUSCHILLO: Mr.
23 President, on behalf of Senator Trunzo, on
24 Page Number 5 I offer the following amendments
25 to Calendar Number 14, Senate Print Number

1 150, and ask that said bill retain its place
2 on Third Reading Calendar.

3 ACTING PRESIDENT MEIER: The
4 amendments are received and adopted, and the
5 bill will retain its place on third reading.

6 Senator Skelos.

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

10 ACTING PRESIDENT MEIER: The
11 Secretary will conduct the noncontroversial
12 reading of the calendar.

13 THE SECRETARY: Calendar Number
14 40, by Senator Flanagan, Senate Print 1809, an
15 act to --

16 ACTING PRESIDENT MEIER: Excuse
17 me.

18 The Secretary will read.

19 SENATOR LIZ KRUEGER: Lay it
20 aside, please.

21 ACTING PRESIDENT MEIER: Lay the
22 bill aside.

23 THE SECRETARY: Calendar Number
24 41, by Senator Flanagan, Senate Print 1810, an
25 act to amend the Election Law, in relation to

1 verification.

2 SENATOR PATERSON: Lay it aside,
3 please.

4 ACTING PRESIDENT MEIER: Lay the
5 bill aside.

6 THE SECRETARY: Calendar Number
7 42, by Senator Flanagan, Senate Print 1811, an
8 act to amend the Election Law, in relation to
9 providing.

10 SENATOR PATERSON: Lay it aside.

11 ACTING PRESIDENT MEIER: Lay the
12 bill aside.

13 THE SECRETARY: Calendar Number
14 43, by Senator Flanagan, Senate Print 1812, an
15 act to amend the State Finance Law, in
16 relation to establishing.

17 ACTING PRESIDENT MEIER: Read the
18 last section.

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

21 ACTING PRESIDENT MEIER: Call the
22 roll.

23 (The Secretary called the roll.)

24 THE SECRETARY: Ayes, 46.

25 ACTING PRESIDENT MEIER: There is

1 a local fiscal impact note at the desk.

2 The bill is passed.

3 THE SECRETARY: Calendar Number
4 44, by Senator Flanagan, Senate Print 1813, an
5 act to amend the Election Law, in relation to
6 creating a statewide voter registration list.

7 SENATOR PATERSON: Lay it aside,
8 please.

9 ACTING PRESIDENT MEIER: Lay the
10 bill aside.

11 THE SECRETARY: Calendar Number
12 45, by Senator Flanagan, Senate Print 1814, an
13 act to amend Chapter 420 of the Laws of 2004,
14 amending the Election Law.

15 SENATOR PATERSON: Lay it aside,
16 please.

17 ACTING PRESIDENT MEIER: Lay the
18 bill aside.

19 THE SECRETARY: Calendar Number
20 51, by Senator Robach, Senate Print 1215, an
21 act to amend Chapter 695 of the Laws of 1994
22 amending the Civil Service Law.

23 ACTING PRESIDENT MEIER: Read the
24 last section.

25 THE SECRETARY: Section 2. This

1 act shall take effect immediately.

2 ACTING PRESIDENT MEIER: Call the
3 roll.

4 (The Secretary called the roll.)

5 THE SECRETARY: Ayes, 49.

6 ACTING PRESIDENT MEIER: The bill
7 is passed.

8 THE SECRETARY: Calendar Number
9 52, by Senator Robach, Senate Print 1216, an
10 act to amend the Civil Service Law, in
11 relation to extending the effectiveness.

12 ACTING PRESIDENT MEIER: Read the
13 last section.

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

16 ACTING PRESIDENT MEIER: Call the
17 roll.

18 (The Secretary called the roll.)

19 THE SECRETARY: Ayes, 48. Nays,
20 1. Senator Maltese recorded in the negative.

21 ACTING PRESIDENT MEIER: The bill
22 is passed.

23 Senator Maltese.

24 SENATOR MALTESE: That was not
25 the correct bill. It would be 1217.

1 THE SECRETARY: In relation to
2 Calendar Number 52, ayes, 51.

3 ACTING PRESIDENT MEIER: The bill
4 is passed.

5 THE SECRETARY: Calendar Number
6 53, by Senator Robach, Senate Print 1217, an
7 act to amend Chapter 677 of the Laws of 1977
8 amending the Civil Service Law and others.

9 ACTING PRESIDENT MEIER: Read the
10 last section.

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

13 ACTING PRESIDENT MEIER: Call the
14 roll.

15 (The Secretary called the roll.)

16 THE SECRETARY: Ayes, 50. Nays,
17 1. Senator Maltese recorded in the negative.

18 ACTING PRESIDENT MEIER: The bill
19 is passed.

20 THE SECRETARY: Calendar Number
21 54, by Senator Padavan, Senate Print 1491, an
22 act to amend the Civil Service Law and the
23 Retirement and Social Security Law, in
24 relation to compensation.

25 ACTING PRESIDENT MEIER: Read the

1 last section.

2 THE SECRETARY: Section 16. This
3 act shall take effect immediately.

4 ACTING PRESIDENT MEIER: Call the
5 roll.

6 (The Secretary called the roll.)

7 THE SECRETARY: Ayes, 51.

8 ACTING PRESIDENT MEIER: The bill
9 is passed.

10 THE SECRETARY: Calendar Number
11 55, by Senator Farley, Senate Print 1711, an
12 act to amend Chapter 729 of the Laws of 1994
13 relating to affecting the health insurance
14 benefits.

15 ACTING PRESIDENT MEIER: There is
16 a local fiscal impact note at the desk.

17 Read the last section.

18 THE SECRETARY: Section 2. This
19 act shall take effect May 15, 2005.

20 ACTING PRESIDENT MEIER: Call the
21 roll.

22 (The Secretary called the roll.)

23 ACTING PRESIDENT MEIER: Senator
24 Farley, to explain his vote.

25 SENATOR FARLEY: Mr. President,

1 if I could just explain my vote.

2 And I want to thank my colleagues
3 for supporting this.

4 This is a bill that allows retired
5 teachers to keep their health insurance unless
6 they change it for all the active teachers.
7 It's a great bill. It's one that the teachers
8 pass every year, it's their number-one
9 priority.

10 We also passed a bill for all
11 public employees unanimously in this house,
12 which unfortunately was vetoed. I think
13 that's one we should do again sometime.

14 But this is a great piece of
15 legislation, and I thank my colleagues for
16 supporting it.

17 ACTING PRESIDENT MEIER: Senator
18 Farley will be recorded in the affirmative.

19 THE SECRETARY: Ayes, 52.

20 ACTING PRESIDENT MEIER: The bill
21 is passed.

22 THE SECRETARY: Calendar Number
23 58, by Senator LaValle, Senate Print --

24 SENATOR SKELOS: Lay it aside for
25 the day, please.

1 ACTING PRESIDENT MEIER: Lay the
2 bill aside for the day.

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

5 SENATOR SKELOS: Thank you, Mr.
6 President. There will be an immediate meeting
7 of the Rules Committee in the Majority
8 Conference Room.

9 And the Senate will stand at ease.

10 ACTING PRESIDENT MEIER:
11 Immediate meeting of the Rules Committee in
12 the Senate Majority Conference Room.

13 The Senate will stand at ease.

14 (Whereupon, the Senate stood at
15 ease at 3:17 p.m.)

16 (Whereupon, the Senate reconvened
17 at 3:23 p.m.)

18 ACTING PRESIDENT MEIER: Senator
19 Skelos.

20 SENATOR SKELOS: Mr. President,
21 if we could return to reports of standing
22 committees, I believe there's a report of the
23 Rules Committee at the desk.

24 ACTING PRESIDENT MEIER: Reports
25 of standing committees.

1 The Secretary will read.

2 THE SECRETARY: Senator Bruno,
3 from the Committee on Rules, reports the
4 following bill direct to third reading:

5 Senate Print 2366, Senate Budget
6 Bill, an act enacting the 2005-2006
7 contingency budget.

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

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

13 (Response of "Aye.")

14 ACTING PRESIDENT MEIER: Those
15 opposed, nay.

16 (No response.)

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

19 Senator Skelos.

20 SENATOR SKELOS: Mr. President,
21 we are now on the controversial reading of the
22 calendar, and I would ask that the bells be
23 rung so that all members can now come to the
24 chamber and sit at their desks as we proceed
25 with the controversial calendar.

1 ACTING PRESIDENT MEIER: Sound
2 the bells.

3 Members are requested to come to
4 the chamber for the controversial reading of
5 the calendar.

6 Senator Skelos.

7 SENATOR SKELOS: If we could
8 proceed with the controversial reading of the
9 calendar.

10 ACTING PRESIDENT MEIER: The
11 Secretary will conduct the controversial
12 reading of the calendar.

13 THE SECRETARY: Calendar Number
14 40, by Senator Flanagan, Senate Print 1809, an
15 act to amend the Election Law, in relation to
16 enacting the "Voting Machines Modernization
17 Act of 2005."

18 SENATOR PATERSON: Explanation.

19 ACTING PRESIDENT MEIER: Senator
20 Flanagan, an explanation has been requested of
21 Calendar 40.

22 SENATOR FLANAGAN: Thank you, Mr.
23 President.

24 This is the first in a series of
25 bills on HAVA. I know today there's going to

1 be a lot more exciting material to discuss in
2 a little while, but we can talk about HAVA for
3 now.

4 This one is the "Voting Machines
5 Modernization Act of 2005." And, Mr.
6 President, if I could for a moment just sort
7 of talk about the package in relation to some
8 of the issues that are out there, this is
9 obviously an important and timely issue for
10 all of us, not only in this chamber but in the
11 Assembly and for the people across the state
12 of New York, for two primary reasons.

13 Number one, we have an obligation
14 to act and to act quickly. Time is awasting,
15 and we can't afford to lose any more precious
16 time. Because if we do, we're going to lose
17 potentially over \$200 million in federal
18 funding. We have a unique opportunity because
19 the federal government not only created a new
20 statute, but they actually gave us the money
21 to help pay for it.

22 So we need to act now, we need to
23 act quickly. And I would tell you that just
24 having been recently appointed as chair of the
25 Election Law Committee, it would be my

1 expectation that shortly after we pass these
2 bills that we would move to, as we did last
3 year, to a conference committee with the
4 Assembly.

5 I don't think anyone has any
6 interest, in this house in particular, in
7 wasting any kind of time. So I expect that we
8 would pass these bills today, move to a
9 conference committee -- and I have reached out
10 to and spoken with Assemblyman Wright and
11 expect that we'll have dialogue, probably even
12 later this afternoon, on how we may move
13 forward from here.

14 But in terms of Senate Bill 1809, I
15 would basically describe this bill as the
16 following. This bill allows the State Board
17 of Elections to get into the process in terms
18 of working with machines. I don't think
19 there's anything in this bill where you would
20 say it's got to be Machine A, it has to have
21 this kind of button, it has to say this, it
22 has to look like this, and it has to stand a
23 certain way.

24 Essentially what we've done is
25 require a competitive bidding process. We've

1 asked the State Board of Elections to act in
2 its professional capacity, contract for
3 machines, and pick out machines that meet
4 standards. Not standards set by you or me or
5 by the New York State Assembly, but rather
6 those set by the State Board of Elections in
7 conjunction with the federal government in
8 terms of meeting certification standards.

9 Thank you, Mr. President.

10 ACTING PRESIDENT MEIER: Senator
11 Liz Krueger.

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

15 ACTING PRESIDENT MEIER: Senator
16 Flanagan, do you yield for a question?

17 SENATOR FLANAGAN: Yes.

18 ACTING PRESIDENT MEIER: The
19 sponsor yields.

20 SENATOR LIZ KRUEGER: Thank you.

21 Senator Flanagan, we all agree that
22 we need to address the problems of the HAVA
23 act. But in your bill is it -- is it my
24 understanding you don't have any standards set
25 about what a machine must or must not do for

1 the State of New York in this bill?

2 SENATOR FLANAGAN: No, that's not
3 true at all.

4 SENATOR LIZ KRUEGER: What are
5 the standards?

6 I'm sorry, Mr. President. If,
7 through you, the sponsor would yield.

8 SENATOR FLANAGAN: I believe that
9 the bill requires -- it's not like the State
10 Board of Elections is going to go out and say,
11 you know, this is a really cool-looking
12 machine, we think everybody should have that.

13 You obviously have to meet federal
14 certification standards. And that, frankly,
15 has been a moving target. There have been
16 some standards set, but that could change. We
17 don't want to find ourselves in a situation
18 where we may act today and, a month or two
19 from now, we have to then come back because
20 the federal government may have changed the
21 standards.

22 So yes, there are standards.

23 SENATOR LIZ KRUEGER: Mr.
24 President, if the sponsor would continue to
25 yield.

1 ACTING PRESIDENT MEIER: Senator
2 Flanagan, do you continue to yield?

3 SENATOR FLANAGAN: Yes.

4 ACTING PRESIDENT MEIER: The
5 sponsor yields.

6 SENATOR LIZ KRUEGER: Thank you.

7 In your bill would there be one
8 standard for machines statewide with the state
9 purchase? Or would there be variations by
10 county or even district?

11 SENATOR FLANAGAN: The State
12 Board of Elections is not mandated to pick
13 only one machine. There does have to be
14 competitive bidding.

15 We give the state board the
16 latitude. They may come in and say: Here are
17 the general things that we're looking for,
18 certain basic things. Forgetting the machine
19 itself, but the concept of, wow, this could be
20 around for a while, so we're going to say as
21 part of our process that we're going to have a
22 10-year warranty and there's got to be service
23 included so these machines can be properly
24 taken care of.

25 I do not believe that this bill

1 would prevent any municipality from going and
2 saying, All right, the state board has
3 approved five different types of machines, and
4 in our local municipality, in our jurisdiction
5 we've made a decision that we like this one.
6 We're going to take A; we're not going to take
7 B.

8 The state board is not mandated to
9 pick one, two, three, four or five. There's
10 flexibility.

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

14 ACTING PRESIDENT MEIER: Senator
15 Flanagan, do you yield?

16 SENATOR FLANAGAN: Yes.

17 ACTING PRESIDENT MEIER: The
18 sponsor yields.

19 SENATOR LIZ KRUEGER: Thank you.

20 In your bill does it require that
21 there be specific types of technology used or
22 not used by the board in their decisions about
23 making their standards or telling each county
24 what they might or might not do on their own?

25 For example, does it require open

1 access to software systems?

2 SENATOR FLANAGAN: No.

3 SENATOR LIZ KRUEGER: It does not
4 require that.

5 Does it require paper --
6 voter-verified paper trails?

7 SENATOR FLANAGAN: Yes.

8 SENATOR LIZ KRUEGER: Excuse me,
9 through the president. Thank you.

10 Mr. President, if through you the
11 sponsor would continue to yield.

12 ACTING PRESIDENT MEIER: Senator
13 Flanagan, do you continue to yield?

14 SENATOR FLANAGAN: Yes.

15 ACTING PRESIDENT MEIER: The
16 sponsor yields.

17 SENATOR LIZ KRUEGER: In this
18 legislation, the state pays for the voting
19 machines?

20 SENATOR FLANAGAN: That's
21 correct.

22 SENATOR LIZ KRUEGER: If through
23 you, Mr. President, the sponsor would continue
24 to yield.

25 ACTING PRESIDENT MEIER: Do you

1 continue to yield, Senator Flanagan?

2 SENATOR FLANAGAN: Yes.

3 ACTING PRESIDENT MEIER: The
4 Senator yields.

5 SENATOR LIZ KRUEGER: Thank you.

6 Does this legislation address
7 maintenance costs for the machines?

8 SENATOR FLANAGAN: Not directly.

9 But I made the point, I think, a
10 moment ago that one of the things that the
11 state board could do is say, Here are the
12 parameters that we're going to operate under.
13 And some of that can include long-term
14 servicing.

15 I had a meeting with some folks who
16 are trying to do some service in the State of
17 Connecticut, and they were talking about the
18 fact that the State of Connecticut was looking
19 for 20-year service agreements.

20 SENATOR LIZ KRUEGER: Thank you.

21 Mr. President, if through you the
22 sponsor would continue to yield.

23 ACTING PRESIDENT MEIER: Senator,
24 do you continue to yield?

25 SENATOR FLANAGAN: Yes.

1 ACTING PRESIDENT MEIER: The
2 sponsor yields.

3 SENATOR LIZ KRUEGER: Thank you.
4 Does this legislation address whose
5 obligation it is to replace the machines when
6 they die? Because even with a warranty, they
7 will die, particularly computer-driven
8 machines.

9 SENATOR FLANAGAN: No, I don't
10 believe it does. But I don't think the
11 Assembly bill does either.

12 SENATOR LIZ KRUEGER: Okay, thank
13 you.

14 Mr. President, if through you the
15 sponsor would continue to yield.

16 ACTING PRESIDENT MEIER: Do you
17 yield, Senator?

18 SENATOR FLANAGAN: Yes.

19 ACTING PRESIDENT MEIER: The
20 Senator yields.

21 SENATOR LIZ KRUEGER: Thank you.
22 Thank you.

23 There was a Senate bill last
24 year -- it was not yours, I believe it was
25 Senator Morahan's, and I don't remember the

1 number. But it addressed these issues. I
2 don't know if it's an identical bill or a
3 similar bill.

4 So I guess the first question, is
5 it an identical bill to last year's bill
6 although it has a different number and a
7 different sponsor?

8 SENATOR FLANAGAN: I don't know.

9 SENATOR LIZ KRUEGER: Well, I
10 will continue to ask the question although I'm
11 not sure what I expect the answer might be.

12 Mr. President, through you, if the
13 sponsor would yield.

14 ACTING PRESIDENT MEIER: Senator
15 Flanagan, do you yield for another question?

16 SENATOR FLANAGAN: Yes.

17 ACTING PRESIDENT MEIER: The
18 sponsor yields.

19 SENATOR LIZ KRUEGER: Thank you.

20 So neither of us know whether it's
21 identical to Senator Morahan's bill from last
22 wire.

23 But clearly we now had a new
24 election cycle, 2004, and reports going in
25 throughout the country of problems with voter

1 technology from the approximately 50 percent
2 of the country that operated on newer voting
3 machines than the ones we are -- probably
4 80 percent of the country is newer than what
5 our New York State voting machines are. But
6 50 percent of the country was operating their
7 votes under new technologies in voting
8 machines.

9 Has any research from the problems
10 that were found around the country been
11 incorporated into the bill that you are
12 proposing today?

13 SENATOR FLANAGAN: Well, I would
14 respectfully suggest a couple of things.

15 First of all, you raise what I
16 believe to be an excellent point, the change
17 in technology. And in all the people I've met
18 with and discussed this issue, I'm going to
19 use a personal example that applies to
20 everybody in this chamber.

21 Think of your own personal life or
22 your business or professional life in the last
23 five years or the last 10 years. How many of
24 you have changed your computer, literally
25 thrown out your old computer, upgraded your

1 software, changed your technology?

2 What we're doing here is providing
3 the State Board of Elections general
4 guidelines, with an eye towards meeting
5 federal certification standards, but we're not
6 saying to them you have to do it this way or
7 no way. I think we're providing them the
8 latitude and flexibility to make professional
9 decisions now and down the road.

10 And I would also add, one of the
11 things that you alluded to before that I think
12 is important as part of the process, there's
13 an advisory committee created. And there are
14 members that are appointed by the Governor,
15 the Majority Leader, the Speaker, the State
16 Office for -- the Advocate for Persons with
17 Disabilities, and another disability
18 representative that would have to be approved
19 by the Senate.

20 So there is a committee of people
21 who will be appointed under this legislation.
22 Part of their obligation is to not only work
23 on the issues that you talked about, but to
24 report back to the Legislature on at least two
25 separate occasions.

1 SENATOR LIZ KRUEGER: Thank you.

2 Mr. President, if through you the
3 sponsor would continue to yield.

4 ACTING PRESIDENT MEIER: Senator
5 Flanagan, do you yield?

6 SENATOR FLANAGAN: Yes.

7 ACTING PRESIDENT MEIER: The
8 sponsor yields.

9 SENATOR LIZ KRUEGER: Thank you.
10 What in this bill addresses
11 concerns for disabled New Yorkers and their
12 concerns with machines, if anything?

13 SENATOR FLANAGAN: Senator
14 Krueger, I believe I just answered that
15 question, perhaps without it having been
16 asked.

17 I'm comfortable that the state
18 board will act in a professional capacity and
19 will rely on the expertise of the people who
20 will be appointed to this advisory committee.

21 And I daresay that independent of
22 that, and probably in conjunction with that,
23 it will be people like you and me and other
24 lobbyists and advocates throughout the halls
25 of this Capitol who will offer their comments.

1 And the state board has certainly
2 not been sitting idly by. They have worked up
3 their own type of implementation plan. I know
4 in my discussions with them that they're
5 looking exactly at the types of issues that
6 you talked about: What happened in other
7 states, did they do it well, did they do it
8 poorly, how can we learn from things like
9 that.

10 SENATOR LIZ KRUEGER: Thank you.

11 Mr. President, I believe that I
12 have an amendment at the desk. I'd like to
13 waive reading and be heard on the amendment.

14 ACTING PRESIDENT MEIER: Senator,
15 your amendment is at the desk. The reading is
16 waived, and you're recognized to explain your
17 amendment.

18 SENATOR LIZ KRUEGER: Thank you
19 very much.

20 I believe that we'll be having a
21 series of amendments involving the HAVA act
22 today. And this is the first one.

23 And this amendment to Senator
24 Flanagan's bill, 1809, we believe would
25 improve access for persons -- access to voting

1 for persons with disabilities, would require
2 that all polling places shall have paths of
3 travel, entrances, exits and voting areas that
4 are accessible to individuals with
5 disabilities, including people who are blind
6 or visually impaired and those with various
7 mobility impairments.

8 Our amendment to this bill would
9 also require all local election officials to
10 implement outreach programs to educate and
11 inform voters about the availability of
12 accessible polling places and voting
13 equipment.

14 Further, this amendment would
15 require election officials to make information
16 about candidates and other election matters
17 available to the public in print,
18 electronically, or by other means, and provide
19 such information in alternative formats
20 accessible to people with disabilities.

21 While it does appear that S1809
22 might meet minimum requirements set forth in
23 the Help America Vote Act, we do not believe
24 and I do not believe it goes far enough. And
25 in fact, the bill overall is just the bare

1 minimums.

2 I understand Senator Flanagan's
3 argument that these decisions might be made by
4 the State Board of Elections, but I think the
5 lessons to be learned from throughout the
6 country is that too many people have made too
7 many mistakes with their voter technology.
8 Hundreds of millions of dollars have been
9 spent without states getting the types of
10 equipment that they need to have for
11 21st-century elections.

12 That we are still denying people
13 access to the vote because we don't have the
14 appropriate equipment or we don't have the
15 appropriate polling sites.

16 And that, in this amendment
17 specifically, the particular needs of people
18 with disabilities to be assured equal access
19 to place their votes privately,
20 confidentially, and with the assurance that
21 their votes count also, are not addressed.

22 So I hope that my colleagues will
23 join me in voting for the amendment to 1809
24 that I've just discussed.

25 Thank you, Mr. President.

1 ACTING PRESIDENT MEIER: Those
2 Senators in agreement with the amendment
3 signify by raising your hand.

4 THE SECRETARY: Those recorded in
5 agreement are Senators Andrews, Breslin, Diaz,
6 Dilan, Duane, Gonzalez, Hassell-Thompson,
7 Klein, L. Krueger, C. Kruger, Montgomery,
8 Onorato, Oppenheimer, Parker, Paterson,
9 Sabini, Sampson, Savino, Schneiderman,
10 Serrano, A. Smith, M. Smith, Stachowski,
11 Stavisky, and Valesky.

12 ACTING PRESIDENT MEIER: The
13 amendment is lost.

14 Senator Sabini.

15 SENATOR SABINI: Mr. President,
16 would the sponsor yield for a question.

17 ACTING PRESIDENT MEIER: Senator
18 Flanagan, will you yield for a question from
19 Senator Sabini?

20 SENATOR FLANAGAN: Yes.

21 ACTING PRESIDENT MEIER: The
22 sponsor yields.

23 SENATOR SABINI: I just wanted to
24 ask the Senator, I believe Suffolk County is
25 the second largest owner of voting machines in

1 the state, I believe after the City of
2 New York. Since we sort of have a hodgepodge
3 of who owns the machines right now. That's
4 one of the things HAVA tries to correct, is to
5 sort of figure out who owns the machines. And
6 I believe Suffolk is the number-two owner.

7 What kind of machines do they have
8 in Suffolk right now?

9 SENATOR FLANAGAN: We have
10 machines that I like. We have the old lever
11 machines. You know, where you go in there and
12 pull it right down, everything we're all used
13 to. That's what we have.

14 SENATOR SABINI: Would the
15 sponsor yield for another question.

16 ACTING PRESIDENT MEIER: Senator
17 Flanagan, do you continue to yield?

18 SENATOR FLANAGAN: Yes.

19 ACTING PRESIDENT MEIER: The
20 Senator yields.

21 SENATOR SABINI: That would be
22 the Shoup-manufactured machines, is that --
23 R.H. Shoup Corporation, that we have in the
24 city, the same ones?

25 SENATOR FLANAGAN: I think the

1 machines in the city are vertical, and ours
2 are horizontal.

3 SENATOR SABINI: Okay. But the
4 sponsor would agree that those machines were
5 pretty reliable, I thought.

6 SENATOR FLANAGAN: Right.

7 SENATOR SABINI: Forty years and
8 change, nothing went wrong. You said you
9 liked them.

10 SENATOR FLANAGAN: Senator, I
11 would agree.

12 SENATOR SABINI: Okay. So, Mr.
13 President, on the bill.

14 ACTING PRESIDENT MEIER: Senator
15 Sabini, on the bill.

16 SENATOR SABINI: Senator Flanagan
17 characterized the changing technologies about
18 how we throw out our computers very quickly
19 and technology changes and we want to catch up
20 with it. I'd submit to you, the only time we
21 heard about bad elections being run was when
22 we started messing with technology.

23 When we had the reliable Shoup
24 machines or the optical scanning machines that
25 City of New York uses on their absentees,

1 which are permitted under HAVA, we had less
2 problems.

3 So why would we want to open the
4 door to a bunch of bureaucrats at the Board of
5 Elections who, while they're appointed by our
6 political leaders, are going to make decisions
7 on how we vote?

8 Out in California they made
9 decisions on how to vote, and they had a
10 warranty, but they still junked the machines.
11 You may have a warranty, but if the thing
12 isn't user-friendly, why would you want it?

13 I think that this bill goes too far
14 in opening up the process to almost any kind
15 of machine. For once, our inaction worked for
16 us in New York State. By delaying and not
17 implementing HAVA, we actually get to see
18 everyone else's failings, like California.
19 And we should learn from that.

20 Now, this bill is very similar to
21 the bill that passed last year, it was a
22 one-house bill. We went to conference
23 committee. Senator Morahan, who was the chair
24 at the time, and Assemblyman Wright worked
25 very hard. And unfortunately, the bills

1 before us today don't even go as far as the
2 conference committee went. And I think we
3 should have done that, to show some level of
4 agreement.

5 So I think this bill goes too far.
6 It allows a voting machine purchase in
7 New York that we may regret down the line.

8 I believe optical scanners are the
9 way to go. It's a paper trail, everyone knows
10 how to use them. Every senior citizen has
11 filled one out. You have a paper trail.
12 They're easy to count. You can go back and
13 recount them.

14 And if we start opening it up to
15 all kinds of Rube Goldberg gizmos that have
16 been proven time and again to cause a problem,
17 we're not learning from other states. We
18 should take advantage of being late for once,
19 and learn from them.

20 So I'm going to oppose the bill.

21 I'd also, Mr. President --

22 ACTING PRESIDENT MEIER: Senator
23 Sabini.

24 SENATOR SABINI: I also have an
25 amendment at the desk.

1 ACTING PRESIDENT MEIER: Your
2 amendment is at the desk.

3 SENATOR SABINI: I'd like to
4 waive the reading and explain the amendment.

5 ACTING PRESIDENT MEIER: The
6 reading is waived, and you're recognized for
7 the purpose of explaining your amendment.

8 SENATOR SABINI: Thank you, Mr.
9 President.

10 My amendment would direct the State
11 Board of Elections, which works with local
12 boards that will know their neighborhoods and
13 their communities best, to identify additional
14 language groups beyond those already
15 identified in the Voting Rights Act, and
16 require those boards to provide language
17 assistance and written materials in the
18 identified languages to all such voters and
19 give assistance at the polling place.

20 Local election boards know their
21 voters the best. And New York is very unique
22 in having many, many, many languages spoken.
23 In Queens County, where I come from, in
24 neighborhoods like Elmhurst, we have
25 immigrants coming in from all over. And we

1 want them to achieve the American dream and
2 become full partners in citizenship. But
3 right now we don't always address their needs
4 in language. And I know there are others in
5 this chamber that represent similar districts.

6 We want to make sure that if people
7 take the trouble to become citizens and
8 register to vote, that they can participate
9 fully in a language that they understand and
10 be full partners in the electoral system.

11 And so I offer this amendment this
12 year, as I did last, in order to make that
13 easier for them and make the American dream
14 come true for immigrants who take the time to
15 become citizens and choose to register to vote
16 and participate in the process.

17 Thank you, Mr. President.

18 ACTING PRESIDENT MEIER: Those
19 Senators in agreement with the amendment
20 signify by raising your hand.

21 THE SECRETARY: Those recorded in
22 agreement are Senators Andrews, Breslin,
23 Brown, Diaz, Dilan, Duane, Gonzalez,
24 Hassell-Thompson, Klein, L. Krueger,
25 C. Kruger, Montgomery, Onorato, Oppenheimer,

1 Parker, Paterson, Sabini, Sampson, Savino,
2 Schneiderman, Serrano, A. Smith, M. Smith,
3 Stachowski, Stavisky, and Valesky.

4 ACTING PRESIDENT MEIER: The
5 amendment is not agreed to.

6 Senator Schneiderman.

7 SENATOR SCHNEIDERMAN: Yes, Mr.
8 President. Briefly on the bill.

9 ACTING PRESIDENT MEIER: Senator
10 Schneiderman, on the bill.

11 SENATOR SCHNEIDERMAN: We're
12 about to consider a series of bills here that
13 are, if not identical, virtually identical to
14 the legislation that came before us last year.
15 We all know that we're obliged to pass not
16 just one-house bills, but to enact these bills
17 into law because the federal government
18 requires us to do so.

19 Unfortunately, I believe we have
20 not spent the year since these bills were
21 passed in the prior session working as we
22 should have to improve them. And I have two
23 general objections to the package of bills
24 that are before us today. I'll mention it
25 with the first bill so we don't have to

1 belabor the point. I know we have a lot to
2 deal with today.

3 The first is, and I guess the theme
4 of the day, is sort of punting. The problem
5 with the Senate's package as compared to the
6 Assembly package, and it just came out in the
7 debate, is that this defers everything to the
8 Board of Elections.

9 This basically says we're going to
10 give you some very general standards, and
11 we're going to defer to the Board of
12 Elections. And over and over again in these
13 bills it refers to the Board of Elections
14 enacting regulations, the Board of Elections
15 making choices.

16 The Assembly bills are much more
17 precise. They provide more specification,
18 they put more limitations on. We won't have
19 the possibility of all sorts of different
20 machines all over the state supervised in a
21 way that's unclear to me by the Board of
22 Elections.

23 And the second objection I have, if
24 anything, is more compelling, and I think it's
25 addressed by some of our amendments. My

1 second objection is that as compared to the
2 Assembly bills, I think these bills really do
3 limit voter participation more.

4 The theme of our efforts to
5 implement HAVA should be -- consistent with
6 the debate in Congress when HAVA was enacted,
7 I believe -- an effort to ensure that every
8 eligible voter gets to cast their ballot. We
9 should err on the side of counting votes. We
10 should err on the side of opening up the
11 process for identification, make sure that
12 people who are not native English speakers,
13 people with disabilities get every possible
14 opportunity to participate. People who can't
15 make it to the polling place and need to vote
16 by absentee ballot.

17 These will be addressed in our
18 amendments, and to a certain extent they're
19 addressed in the Assembly bill.

20 I think that I'm going to vote no
21 on this bill, and I'm going to be voting no on
22 most of these bills today, because of these
23 two central problems: too much deference to
24 the board, and a lack of a real effort to open
25 the process up and guarantee that every

1 eligible voter has the right to vote and that
2 every opportunity is provided to that voter to
3 exercise that right.

4 So I will be voting no, Mr.
5 President. I thank you for the time.

6 ACTING PRESIDENT MEIER: Any
7 other Senator wish to be heard on the bill?

8 Then the debate is closed.

9 The Secretary will sound the bell.

10 There is a local fiscal impact note
11 at the desk.

12 Read the last section.

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

15 ACTING PRESIDENT MEIER: Call the
16 roll.

17 (The Secretary called the roll.)

18 ACTING PRESIDENT MEIER: Announce
19 the results.

20 THE SECRETARY: Those recorded in
21 the negative on Calendar Number 40 are
22 Senators Andrews, Duane, Gonzalez,
23 Hassell-Thompson, Klein, L. Krueger,
24 Montgomery, Onorato, Parker, Paterson,
25 Sampson, Savino, Schneiderman, Serrano,

1 A. Smith, M. Smith, Stachowski, Stavisky.

2 Also Senators Breslin and Sabini.

3 Ayes, 38. Nays, 20.

4 ACTING PRESIDENT MEIER: The bill
5 is passed.

6 THE SECRETARY: Calendar Number
7 41, by Senator Flanagan, Senate Print 1810, an
8 act to amend the Election Law, in relation to
9 verification of voter information.

10 ACTING PRESIDENT MEIER: Read the
11 last section.

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

14 ACTING PRESIDENT MEIER: Call the
15 roll.

16 (The Secretary called the roll.)

17 ACTING PRESIDENT MEIER: Announce
18 the results.

19 THE SECRETARY: Those recorded in
20 the negative on Calendar Number 41 are
21 Senators Breslin, Duane, Gonzalez,
22 Hassell-Thompson, L. Krueger, Montgomery,
23 Onorato, Parker, Paterson, Sabini, Sampson,
24 Savino, Schneiderman, Serrano, A. Smith,
25 Stachowski, and Stavisky. Also Senator

1 Andrews.

2 Ayes, 40. Nays, 18.

3 ACTING PRESIDENT MEIER: The bill
4 is passed.

5 THE SECRETARY: Calendar Number
6 42, by Senator Flanagan, Senate Print 1811, an
7 act to amend the Election Law, in relation to
8 providing for a Help America Voter Act.

9 ACTING PRESIDENT MEIER: Read the
10 last section.

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

13 ACTING PRESIDENT MEIER: Call the
14 roll.

15 (The Secretary called the roll.)

16 ACTING PRESIDENT MEIER: Announce
17 the results.

18 THE SECRETARY: Those recorded in
19 the negative on Calendar Number 42 are
20 Senators Andrews, Breslin, Duane, Gonzalez,
21 Hassell-Thompson, L. Krueger, Parker,
22 Paterson, Schneiderman, Serrano, A. Smith, and
23 M. Smith.

24 Ayes, 46. Nays, 12.

25 ACTING PRESIDENT MEIER: The bill

1 is passed.

2 THE SECRETARY: Calendar Number
3 44, by Senator Flanagan, Senate Print 1813, an
4 act to amend the Election Law, in relation to
5 creating a statewide voter registration list.

6 SENATOR KLEIN: Explanation on
7 the bill, please.

8 ACTING PRESIDENT MEIER: Senator
9 Flanagan, an explanation has been requested of
10 Calendar 44.

11 SENATOR FLANAGAN: Thank you, Mr.
12 President.

13 We are taking Senator Morahan's
14 bill of last year, which would have applied
15 through July of this year, and we're making it
16 permanent.

17 ACTING PRESIDENT MEIER: Senator
18 Klein.

19 SENATOR LaVALLE: Mr. President,
20 I believe there's an amendment at the desk.
21 And I ask for the reading of the amendment to
22 be waived, and I'd like to be heard on the
23 amendment.

24 ACTING PRESIDENT MEIER: Your
25 amendment is at the desk. The reading is

1 waived. And, Senator Klein, you're recognized
2 to explain your amendment.

3 SENATOR KLEIN: Thank you, Mr.
4 President.

5 This amendment would extend
6 absentee voting rights to any individual who
7 for any reason is unable to vote in person.
8 It includes the category of "personal matters"
9 in the list of acceptable reasons for absentee
10 voting and eliminates the requirement that an
11 individual applying for an absentee ballot be
12 required to file a statement regarding the
13 nature and reasons of their absentee from the
14 county of his or her residence.

15 ACTING PRESIDENT MEIER: Would
16 those Senators in agreement with the amendment
17 signify by raising your hand.

18 THE SECRETARY: Those recorded in
19 agreement are Senators Andrews, Breslin,
20 Brown, Diaz, Dilan, Duane, Gonzalez,
21 Hassell-Thompson, Klein, L. Krueger,
22 Montgomery, Onorato, Oppenheimer, Parker,
23 Paterson, Sabini, Sampson, Savino,
24 Schneiderman, Serrano, A. Smith, M. Smith,
25 Stachowski, Stavisky, and Valesky.

1 ACTING PRESIDENT MEIER: The
2 amendment is not agreed to.

3 Read the last section.

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

6 ACTING PRESIDENT MEIER: Call the
7 roll.

8 (The Secretary called the roll.)

9 ACTING PRESIDENT MEIER: Announce
10 the results.

11 THE SECRETARY: Those recorded in
12 the negative on Calendar Number 44 are
13 Senators Andrews, Breslin, Duane, Gonzalez,
14 Hassell-Thompson, L. Krueger, Parker,
15 Paterson, Schneiderman, Serrano, A. Smith, and
16 Stavisky. Also Senators Onorato and Sabini.

17 Ayes, 44. Nays, 14.

18 ACTING PRESIDENT MEIER: The bill
19 is passed.

20 THE SECRETARY: Calendar Number
21 45, by Senator Flanagan, Senate Print 1814, an
22 act to amend Chapter 420 of the Laws of 2004,
23 amending the Election Law.

24 ACTING PRESIDENT MEIER: Senator
25 Serrano.

1 SENATOR SERRANO: Explanation,
2 please.

3 ACTING PRESIDENT MEIER: Senator
4 Flanagan, Senator Serrano has requested an
5 explanation of Calendar 45.

6 SENATOR FLANAGAN: Thank you.

7 Mr. President, I have to admit that
8 the excitement of HAVA got to me a few minutes
9 ago. I know this is riveting debate --

10 ACTING PRESIDENT MEIER: You need
11 to get out more, Senator.

12 (Laughter.)

13 SENATOR FLANAGAN: But in
14 response to the Senator's question, the
15 explanation I gave on the last bill was
16 actually supposed to apply to this bill.

17 (Laughter.)

18 SENATOR FLANAGAN: I just wanted
19 to get so far ahead of myself.

20 What we're doing is the forms of ID
21 that we required last year and put into
22 statute, it appears that it worked well, so
23 we're making it permanent.

24 ACTING PRESIDENT MEIER: Senator
25 Serrano.

1 SENATOR SERRANO: Mr. President,
2 I believe there's an amendment at the desk. I
3 ask that the reading of this amendment be
4 waived, and I ask to be heard on the
5 amendment.

6 ACTING PRESIDENT MEIER: Your
7 amendment is at the desk. The reading is
8 waived, and you're recognized to explain the
9 amendment.

10 SENATOR SERRANO: Mr. President,
11 I believe that this amendment helps to
12 eliminate much of the vagueness of this
13 current legislation.

14 This amendment would provide for a
15 far broader definition of what valid
16 identification would be, thus removing any
17 unnecessary barriers to an individual wishing
18 to vote. This amendment provides a long list
19 of valid IDs.

20 And I ask that all of my colleagues
21 support this amendment.

22 Thank you, Mr. President.

23 ACTING PRESIDENT MEIER: Those
24 Senators in agreement with the amendment
25 signify by raising your hand.

1 Why do you rise, Senator Diaz?

2 SENATOR DIAZ: I would like to
3 speak on the bill, Mr. President. To explain
4 my vote. On the amendment.

5 ACTING PRESIDENT MEIER: We're on
6 a canvass of agreement on an amendment,
7 Senator. That wouldn't be in order.

8 The Secretary will proceed.

9 THE SECRETARY: Those recorded in
10 agreement are Senators Andrews, Breslin,
11 Brown, Diaz, Dilan, Duane, Gonzalez,
12 Hassell-Thompson, Klein, L. Krueger,
13 Montgomery, Onorato, Oppenheimer, Parker,
14 Paterson, Sabini, Sampson, Savino,
15 Schneiderman, Serrano, A. Smith, M. Smith,
16 Stavisky, and Valesky.

17 ACTING PRESIDENT MEIER: The
18 amendment is not agreed to.

19 Senator Diaz.

20 SENATOR DIAZ: Thank you, Mr.
21 President.

22 Even though I voted for the
23 amendment, I have to tell you, Mr. President
24 and my colleagues, that I come from a country
25 called Puerto Rico. And in Puerto Rico and in

1 Santa Domingo, we are required to get
2 identification. In order for us to vote, they
3 issue us an ID card with pictures and with
4 your fingerprint. And to avoid people being
5 registered here and there and voting a few
6 times, many times.

7 This is a perfect system in Puerto
8 Rico and in Santa Domingo. And people there,
9 no one complains. Nobody complains over
10 there. Anyone that wants to vote, they have
11 to comply with the rules, they have to provide
12 all the documentation that they require. And
13 no one will vote without that identification.
14 And that identification, I'm going to say
15 again, requires your picture.

16 It's about time that -- and we're
17 talking about Puerto Rico. We're talking
18 about Santa Domingo. Two countries that are
19 far behind all our resources.

20 So here in New York we have more
21 resources, and we're supposed to be more
22 sophisticated than Puerto Rico and Santa
23 Domingo. So it's about time that we here
24 establish a system that stop voting fraud for
25 once and for all, and that people could only

1 vote once and that nobody could vote twice or
2 register twice in different places.

3 So even though I voted for the
4 amendment, but again, we have to establish
5 something like in Puerto Rico. We should take
6 an example of Puerto Rico and Santa Domingo.
7 And nobody, again, nobody complains there.
8 And people vote.

9 Here, we open the doors for
10 everyone to vote with no identification, with
11 no means to prove who the people are. And
12 people complain.

13 So, Mr. President, thank you very
14 much for this opportunity. And it's about
15 time that we establish something very strong
16 with identification.

17 ACTING PRESIDENT MEIER: Senator
18 Flanagan.

19 SENATOR FLANAGAN: On the bill,
20 Mr. President.

21 Senator Diaz, my wife's family is
22 from Puerto Rico. So I don't know if I'm
23 agreeing with you on that basis or just
24 because I agree with you on the substance of
25 your comments.

1 But I want to speak briefly on the
2 bill, and sort of in relation to the package.
3 And I want to address some of the comments,
4 while it's not specific on this bill, to some
5 of the comments made by Senator Schneiderman.

6 A couple of things. I believe we
7 sort of have a general difference in
8 philosophy. I'm not suggesting that one is
9 better than the other, but it's sort of
10 philosophy in style. Particularly at this
11 juncture.

12 Senator Sabini raised the point.
13 We have the luxury and the curse of having
14 come in almost dead last in terms of our
15 compliance with HAVA. So we get to watch
16 everybody else and see what they've done and
17 potentially learn from their mistakes.

18 But, ladies and gentlemen, the
19 window of time is closing. We believe
20 generally, in the Majority, that we should
21 have some type of faith in what's going to
22 happen at the State Board of Elections. It's
23 bipartisan. And they are supposed to act in a
24 professional capacity.

25 I don't want to find us in a

1 situation in July, August, September where the
2 state board is saying, We're in deep trouble,
3 because you know why, you gave us a bill, you
4 had 25 things that had to be done, and 22 of
5 them are fine, but three of them are virtually
6 impossible, and we're going to need to call
7 the Legislature back into special session.
8 And, ladies and gentlemen, when we are talking
9 about \$200 million, we'll come back.

10 We shouldn't really have to do
11 that. If we have to make modest amendments
12 along the way, I think that's a prudent thing
13 to do. But our bills -- and I want to make
14 this absolutely crystal clear -- the Senate
15 Majority, in advancing this package, we want
16 to encourage voter participation. We want
17 people to get out and register, we want them
18 to campaign, we want them to participate. And
19 I'm not going to take a back seat to anybody
20 in either house, from either party, in terms
21 of that commitment. We have a strong package
22 here, and we're going to stick with it.

23 Now, we're ready to work in the
24 conference committee. And I also want to
25 close by remembering that we said we would go

1 to conference committee. And in so doing, I'm
2 very comfortable that we'll have a good,
3 working, solid relationship with Assemblyman
4 Keith Wright and whoever the Speaker may
5 appoint to the Assembly conference committee.

6 But we are actively encouraging
7 voter participation. That's our goal. We
8 want people to get out, participate in the
9 process all across the state of New York. But
10 frankly, Mr. President, we want to do it the
11 right way.

12 ACTING PRESIDENT MEIER: Senator
13 Schneiderman.

14 SENATOR SCHNEIDERMAN: Thank you,
15 Mr. President. I believe there's an amendment
16 at the desk. I would ask that the reading be
17 waived and I be heard on the amendment.

18 ACTING PRESIDENT MEIER: Your
19 amendment is at the desk. The reading is
20 waived, and you're recognized to explain the
21 amendment.

22 SENATOR SCHNEIDERMAN: Thank you,
23 Mr. President.

24 I appreciate Senator Flanagan's
25 comments.

1 I think that there is a difference
2 in philosophy here. And I think that the
3 amendment that was just offered by Assemblyman
4 Klein -- the amendment offered by Senator
5 Klein -- Assemblyman emeritus, excuse me,
6 Klein -- Councilman Serrano -- no, Senator
7 Serrano -- and Senators Krueger and Sabini
8 reflect our philosophy.

9 And I think it's great to have the
10 rhetoric saying we want to encourage people to
11 vote. The fact of the matter is every one of
12 our amendments will ensure that more people
13 vote.

14 The question is this. Do you work
15 as hard as you can to make every vote count,
16 or do you set up barriers that are
17 unnecessary? And our philosophy is that we
18 should bend over backwards to ensure that
19 wherever possible, every vote counts.

20 And Senator Diaz was speaking about
21 Puerto Rico and the Dominican Republic. Voter
22 participation there, as in virtually every
23 other country in the world where there are
24 functioning democracies, is much higher than
25 in the United States. We have a disgracefully

1 low rate of participation.

2 And I think that it's important for
3 us to recognize that there are people whose
4 votes are not counted. And my amendment that
5 I'm offering now is consistent with those of
6 my colleagues. This amendment addresses
7 issues that were raised in the recent lengthy
8 dispute over the 35th Senate District and
9 addresses them in three different ways.

10 The first thing is that it codifies
11 a decision in *Panio v. Sunderland*, so that
12 people who go into the right polling place but
13 vote in the wrong election district, their
14 votes are counted.

15 But it also goes beyond that,
16 because we have hundreds of people in this one
17 district and we have, as far as we know,
18 thousands of people across the state who for
19 whatever reason walk into the wrong polling
20 place, are not told by the Board of Elections
21 staff that they have to go to some other
22 polling place, and submit provisional ballots
23 and yet those ballots are not counted -- the
24 so-called "wrong church, wrong pew" voters.

25 Everyone who walks into a polling

1 place and gives a ballot to a Board of
2 Elections worker and is not told, You know
3 what, you have to go around the corner to the
4 school there, that person in good faith gave
5 their vote to be counted. That person in good
6 faith, if they are registered in the
7 district -- and again, we can check that
8 through the computers -- if someone is a
9 legitimately registered voter, their vote
10 should be counted.

11 Now, this amendment would at least
12 take us to the next stage. It doesn't say
13 because it would be hard, frankly, to draft
14 something and to work it out administratively,
15 that you count people's votes in every
16 election. But at least in the basic
17 administrative unit of the state, the Assembly
18 district, if you're in the right Assembly
19 district, if you go into the wrong polling
20 place, vote in the wrong ED, your vote is
21 counted. Again, this only applies to people
22 who are registered voters eligible to vote and
23 who only vote once.

24 Let's not disenfranchise people.
25 Let's not have people who really, maybe if a

1 Board of Elections worker told them they were
2 in the wrong place, would have gone to the
3 wrong place. Once that worker accepts their
4 ballot, that is the State of New York, that is
5 our government that we create telling people
6 their vote will be counted.

7 And, finally, this directs the
8 Board of Elections to look at the broader
9 issue beyond Assembly district voting and come
10 with proposals for legislative solutions.

11 Again, our philosophy on this side
12 of the aisle is to make the rules simple and
13 clear, not just defer everything to an
14 administrative agency that may be supposed to
15 operate bipartisanly but maybe sometimes
16 doesn't operate as much in a bipartisan manner
17 as some of us would like. And our philosophy
18 is to make every vote count.

19 There are simple changes that we
20 can make -- and I respectfully suggest that
21 some of the amendments we offer today, we
22 don't have any great illusion that they're
23 going to pass, but that some of these
24 amendments should form the basis for
25 discussions when we go to conference

1 committee.

2 We know this is going to conference
3 committee. We love conference committees.
4 Senator Flanagan, as you lead us into this
5 conference committee, we hope you'll take a
6 serious look at these issues.

7 I suggest that counting the ballots
8 of people who go into the wrong polling place
9 but are still in their Assembly district is a
10 reasonable way to make sure that every vote
11 counts, a reasonable accommodation for voters
12 who are only trying to exercise their
13 constitutional and legal rights, only voting
14 once, only voting in the district in which
15 they're registered.

16 Let's not disenfranchise these
17 people. I suggest everyone vote yes on this
18 amendment, and that all the amendments offered
19 here today are taken into consideration when
20 we reach conference committee.

21 Thank you, Mr. President.

22 ACTING PRESIDENT MEIER: Those
23 Senators in agreement with the amendment
24 signify by raising their hand.

25 THE SECRETARY: Those recorded in

1 agreement are Senators Andrews, Breslin,
2 Brown, Diaz, Dilan, Duane, Gonzalez,
3 Hassell-Thompson, Klein, L. Krueger,
4 C. Kruger, Montgomery, Onorato, Oppenheimer,
5 Parker, Paterson, Sabini, Sampson, Savino,
6 Schneiderman, Serrano, A. Smith, M. Smith,
7 Stachowski, Stavisky, and Valesky.

8 ACTING PRESIDENT MEIER: The
9 amendment is not agreed to.

10 Does any other Senator wish to be
11 heard on the bill?

12 Debate is closed, then.

13 The Secretary will sound the bell.

14 Read the last section.

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

17 ACTING PRESIDENT MEIER: Call the
18 roll.

19 (The Secretary called the roll.)

20 ACTING PRESIDENT MEIER: Announce
21 the results.

22 THE SECRETARY: Ayes, 58.

23 ACTING PRESIDENT MEIER: The bill
24 is passed.

25 The Secretary will read.

1 THE SECRETARY: Calendar Number
2 121, Senate Budget Bill, Senate Print 2366, an
3 act enacting the 2005-2006 contingency budget.

4 SENATOR BRESLIN: Explanation,
5 please.

6 ACTING PRESIDENT MEIER: Senator
7 Bruno, an explanation has been requested.

8 SENATOR BRUNO: Thank you, Mr.
9 President and colleagues.

10 The bill that's before us is part
11 of the budget reform package. And it's really
12 the heart of budget reform. And as all of you
13 will recall, the Senate has for the last ten
14 years had Senate 1, budget reform.

15 Budget reform being that if -- if,
16 as we haven't in twenty years, agreed on a
17 budget, then a contingency budget goes into
18 place on April 1st. That's what we all passed
19 in December here in this chamber for '05.

20 We've also passed budget reform for
21 '06. And in order to do true reform based on
22 the Court of Appeals decision, we have to
23 change the constitution. You all know, to
24 change the constitution, two resolutions,
25 separate Legislatures. The earliest we could

1 get second passage is this year. After second
2 passage, it goes to the voters in November.
3 If the voters approve it, you then can deal
4 with budget reform in '06. But that doesn't
5 get us a budget in '05.

6 So you joined with us, in your
7 wisdom, in December unanimously, and I
8 recognize that. You also joined with us when
9 we did the '06 budget reform this year, and we
10 did the '05. Some of you, not all of you.
11 And I'm pointing to my colleagues on the
12 left-hand side of the aisle, Mr. President.

13 Now, why is it important to put a
14 contingency in place? Contingency means just
15 in case. That's what it means. It doesn't
16 mean instead of. It doesn't mean to replace a
17 budget. It simply means contingency.
18 Contingent. If we can't do a budget, this
19 goes into place April 1st.

20 Now, what is it? It's 1,900 pages,
21 and I'm sure you've all read it. Everybody
22 here has read it. It puts last year's budget
23 in place. Pre -- now, listen, because this is
24 going to be important to you. I guarantee
25 it's going to be important to you. It puts

1 last year's budget in place pre-Governor's
2 veto. \$235 million ends up back. A
3 billion-six that was vetoed in capital, puts
4 it back.

5 Now, so that everyone is clear,
6 when it goes back, it is cash out the door.
7 So that those parts that weren't in the
8 '04-'05 budget, where there's no cash, even
9 though we do pre-veto, they don't get funded
10 unless we take further action. See? So we're
11 clear.

12 We put everything back, but what
13 was vetoed, cash didn't get out the door. So
14 they don't become, realistically, part of the
15 contingency budget. Unless we fund it with
16 cash.

17 Now, we are hung up, I can tell
18 you. We had the third leaders' meeting,
19 colleague David -- Senator Paterson joined
20 with the others. And we're airing our
21 problems. The biggest problem that we have
22 got is that Court of Appeals decision. Nobody
23 seems to understand clearly what the
24 ramifications of that are. Lawyers have been
25 lawyering for months. Governor's counsels

1 still have a different impression than some of
2 our lawyers. And I believe, Senator Paterson,
3 you may have a different impression of what
4 the Legislature, 212 of us, can do.

5 Now, the Governor says: Look, I
6 will give up some of power vested in me by the
7 courts if we can get three-ways agreement.
8 Well, we haven't been able to do that in
9 twenty years in this state. We haven't been
10 able to do it since I've been here as leader
11 for ten years.

12 Now, having said that, we're going
13 to do everything that we can to get a budget
14 by April 1st. And here's what we're doing, if
15 you join us. Pass the contingency, just in
16 case. We're going to pass our own resolution
17 for a budget by March 7th. We're trying to
18 accelerate the process. We're hoping that the
19 Assembly will do the same. We're going to go
20 to conference committee in a public, public
21 discussion of getting a budget done by
22 April 1st. Okay? That's our target.

23 We're going to meet on avails and
24 revenue now. We have never been able to,
25 11 years I've been here, agree on avails.

1 Never agreed with the Governor, Assembly and
2 we. Why? Because people have a different
3 impression of what numbers mean.

4 So we're dealing in reality. Okay?
5 This contingency that's before us was sent up
6 by the Governor. By the Governor. So if we
7 pass it, the Assembly passes it, the Governor
8 proposed it, it becomes the budget on
9 April 1st in case we can't negotiate a budget
10 three ways on April 1st.

11 Now, let's say that happens. And I
12 hope it doesn't, but let's say it happens.
13 Where are we? We have \$101 billion, that's
14 what's in here, in place. With some caveats.
15 That's in here. And I've described the rest.
16 That goes into place.

17 Now, let's say we don't do
18 anything. Let's not get it done. Assembly
19 doesn't want to do it, we don't get it done.
20 April 1st comes, you have no budget. Now
21 where are we? Oh. Oh. We have an emergency
22 bill, an emergency bill. To deal with a week,
23 okay. Two weeks.

24 You want to deal in emergency bills
25 from now to August or September or October?

1 That is one of the options. I am telling you
2 sincerely, based on the Court of Appeals
3 decision, we presently do not have clarity on
4 how we can get a budget done.

5 Now, some people are saying, and my
6 concern is that in the Assembly many are
7 saying, We'll do nothing. We'll do nothing.
8 Fold our arms. Do nothing. That's great.
9 That's fine. In April, May, June, July,
10 August, September, we'll do nothing.

11 Now, we got what? Are we going to
12 embarrass the Governor by doing nothing? Oh,
13 yeah. The court said that we can't do
14 anything, so we're not going to do anything.

15 Well, the courts have said that we
16 can do a lot if we want to do it. But one of
17 the things that is within our control is put a
18 contingency in place.

19 Now, the Speaker says publicly that
20 we give more power to the Governor than the
21 courts did. You know what? I think he's
22 right. I think we do, for this year. Now,
23 you know why? Because it's the only
24 contingency budget we can negotiate to get
25 sent to us, that's why. And the alternative

1 was to do nothing.

2 And if you want to do nothing and
3 they want to do nothing in the Assembly, well,
4 then, nothing will get done. And we're going
5 to be on the floor here, reviewing this. Now,
6 we're going to review this constantly and
7 continually.

8 I'm addressing my esteemed
9 colleagues on the left. You have voted one,
10 two, three, four, five, six times for budget
11 reform. You've voted already six times for
12 some portion of budget reform, including a
13 contingency budget. The '06 has a contingency
14 budget in it with all of the same language
15 that's in this.

16 So, now, we want to be political?
17 We want to create pressure? We know all about
18 that. We know about that. We in this chamber
19 get to be experts at creating awkward moments
20 for each other. Inadvertently, mostly. But
21 it happens; right?

22 So if anyone here thinks that we're
23 going to have a budget done by April 1st,
24 guaranteed for the people of this state, don't
25 vote for this. Don't vote for this. But on

1 April 1st, when you're looking at an emergency
2 bill for the week that cuts off all of the
3 flow of about probably \$100 billion, well,
4 then, you answer to your constituency on why
5 you didn't have the good judgment to put
6 something in place contingent upon not being
7 able to negotiate a budget. Now, to me that
8 seems like common sense.

9 Now, at the leaders' meeting -- and
10 previously my -- one of my favorite
11 Assemblymen, the Speaker, says: Let's
12 negotiate a budget. Well, that's great.
13 Let's do it. Let's do both. Let's get a
14 contingency in place, in case, and let's get a
15 budget done. We're there. Then I say, How
16 you going to do it? Oh, well. How you going
17 to do it?

18 Now, you ask the same questions,
19 okay, that I'm asking: How are you going to
20 do it? Now, if anybody here has clarity on
21 how we're going to do it, share it with us.
22 Share it with the Governor. Other than
23 negotiating three ways and the Governor giving
24 up the powers that the courts vested in him
25 until we get a budget reform in place.

1 You owe it to your constituents, we
2 owe it to our constituents not to deal with
3 emergency bills for months and months and
4 months. We owe it to them. Hospitals,
5 nursing homes, schools, all of the others that
6 are affected.

7 Now, recognize that we in the past
8 several years have had the latest budgets in
9 the history of this state. Now, is that
10 right? Yes, it is. Why? Because we couldn't
11 get agreement. That's before the Court of
12 Appeals basically says the Governor has most
13 of the power in the budget process; you don't
14 have any, 212 of you.

15 So we can sit here, look at each
16 other, or we can take some action. This side
17 is taking some action. We here are taking
18 some action. Budget reform is the most
19 important reform.

20 We all want to posture about
21 reform. We all love to posture about reform.
22 I among them. Great reformer. The greatest
23 reform is budget reform. And that has a
24 contingency budget in it.

25 Now, I am sure, Mr. President, that

1 my observations and comments have convinced
2 everyone to support this contingency, and I
3 will be amazed and surprised if there are any
4 votes against it.

5 But thank you, Mr. President.

6 ACTING PRESIDENT MEIER: Senator
7 Paterson.

8 SENATOR PATERSON: Mr. President,
9 I have known Senator Bruno for twenty years
10 that I've been an associate of his. And in
11 the last ten years, when I became the floor
12 leader here and worked with him, is when I
13 would say I really became friends with him.
14 In the last two years, as a leader here, I've
15 really grown to love and admire him for the
16 work that he does.

17 And I said something behind his
18 back about a week ago, and it was that no one
19 here seems genuinely more frustrated at our
20 late budgets than the Majority Leader. And I
21 think that's true.

22 And I think that this is a very
23 well intentioned effort to try and facilitate
24 a quicker budget process and also what would
25 really be a way in which government can

1 operate if we are unable to meet the
2 constitutional deadline on April 1st and pass
3 the budget.

4 In December, December 22nd, three
5 days before Christmas when a frustrated bunch
6 of Senators came back here, there was some
7 objection to this piece of legislation.

8 And we in the Democratic conference
9 took the position at that time that it would
10 be good for the entire Legislature to pass
11 this because we were at the end of one
12 constitutional period, the end of the '03-'04
13 session. Therefore, even if we had any
14 differences of opinion, we had a second bite
15 at the apple, that we could come back and take
16 another look at this legislation here in the
17 '05-'06 legislative session.

18 If we did not pass the bill, if we
19 did not view it that way, a constitutional
20 amendment couldn't be passed until 2007.
21 Whereas theoretically, after a second passage,
22 we have a chance now.

23 So what we tried to do was to
24 accommodate maybe not the specifics of this
25 resolution, but certainly the spirit of it,

1 that there would be a contingency plan if we
2 can't pass the budget on time.

3 Now, we still feel that way. But
4 we have a problem with this piece of
5 legislation. It arrogates to the Governor the
6 ability to, according to the legislation,
7 suspend, alter or modify the operation of any
8 law, regulation or rule pertaining to the
9 budget, which is really an ultimate authority.

10 And although the Governor might see
11 this as a good idea right now, in the future I
12 think we will all not see this as a good idea.
13 We have actually gone beyond the Court of
14 Appeals' interpretation, expanding the
15 dominion and control over the budget process
16 to the Governor in a contingency period.

17 At that time we don't see the
18 interest, the obligation or even the need for
19 a Governor to facilitate passage of a budget,
20 because during this emergency period where the
21 constitutional deadline wasn't met and a
22 budget for the next fiscal year has not been
23 put into place, you have situations such as
24 snow removal. A greater amount of snowfall in
25 a particular year, the Department of

1 Transportation needs more money, so the
2 Governor accommodates it. Where do you take
3 the money from? Anywhere -- education,
4 health care, housing.

5 And this is our concern. Senator
6 Bruno actually articulated my concerns when he
7 said, Does this expand the Governor's
8 authority? Yes, it does. He said that the
9 Speaker felt that way, and he thinks the
10 Speaker is right.

11 So his argument to pass this
12 contingency budget was that this is the only
13 one that's acceptable to the Governor. Well,
14 you bet it is. Because this is exactly what
15 the Executive branch wants.

16 And I suggest, my colleagues on
17 both sides of the aisle -- because we all did
18 take this position in December -- look before
19 you leap. Because the reality is that we will
20 not be in a process that we are
21 constitutionally mandated to be involved.
22 It's under Section 6 that we are supposed to
23 be. So I don't even know if the contingency
24 budget process itself is constitutional.

25 And what I'm saying is that the

1 persuasion that we need to pass it, because
2 it's the only thing that he'll listen to, I
3 propose to my colleagues that we go back and
4 meet with the Assembly, that we find a
5 contingency budget plan that's suitable to
6 both houses, that doesn't restrict the
7 authority of the Legislature, that we pass it
8 and send it back to the Governor. That's my
9 suggestion. And we've got plenty of time to
10 do that before April 1st.

11 The issues that Senator Bruno
12 raised are right on point. We have had
13 problems with economic forecasts and the
14 rating services because we don't bring a
15 budget in on time. We've had school districts
16 that are negotiating in the dark, guessing
17 what resources we're going to send to them
18 because we can't arrive at a budget on time.

19 But I think here we're putting the
20 cart before the horse. We're discussing the
21 contingency when the real issue that needs to
22 be resolved right now are the language
23 requirements and differences between the
24 Senate and the Assembly and the Executive
25 branch that might bring us more into a

1 congruent strategy so that we can even
2 negotiate the budget.

3 There's been a lot of progress, and
4 all parties are certainly in a position to
5 take credit for that -- the speeding of the
6 revenue forecasting, the agreement that the
7 Comptroller will make the final determination
8 or prediction should we fail to do that, and a
9 number of other ways in which we're speeding
10 up the negotiating process.

11 But if Senator Bruno has the
12 cynicism as to whether or not we can pass a
13 budget on April 1st, he's certainly entitled
14 to have that, based on twenty years of
15 noncompliance with our constitutional duty.

16 However, it's times like this, when
17 there is frustration and there is, frankly,
18 even a feeling of uncertainty about our
19 ability to meet our constitutional
20 obligations, that often decisions are made out
21 of a sense of coercion.

22 And if the Governor is saying, Take
23 this contingency budget in the form that I
24 presented it or I'm just not going to send you
25 one, then I think it demonstrates somewhat of

1 a lack of responsibility about the fact that
2 we need to have some sort of process so we're
3 not passing emergency bills every two weeks.

4 But I don't think that eschewing
5 the opportunity to negotiate with the
6 Legislature entitles you to then point fingers
7 at the Legislature when there isn't an
8 agreement on what an apt contingency policy
9 should be.

10 I don't think that one authority,
11 even if it's the Executive, should have the
12 opportunity to suspend, to alter or modify
13 that much of the budget process. It really
14 turns into a \$100 billion discretionary fund.
15 And I don't mean that it would be used that
16 way. But the choice is discretionary and
17 unilateral.

18 It is in my opinion, at this time,
19 with the serious issues that are confronting
20 this state, an unfortunate determination
21 that's actually being made.

22 So let our conference's position be
23 clear. We like the idea of a contingency
24 budget. We supported the idea, even if we
25 didn't agree with all of it, in December. But

1 the Assembly has made it clear that they're
2 not going to pass it. And in my opinion, what
3 you have to do and what has often created the
4 quagmire around here is we're going to have to
5 sit down and talk to them about the language
6 of contingency that would still vest the same
7 amount of authority in the Governor as it did
8 in the emergency extender process but does not
9 give superfluous authority, as this
10 legislation does.

11 So we continue to wish to try to
12 assist the Majority in terms of achieving a
13 contingency budget, but we are unalterably
14 opposed to the concept that, because an entity
15 is saying this is the only contingency there
16 is, that that will be the final verdict of the
17 issue.

18 We recognize that the Executive
19 feels that he's right. But certitude is an
20 anagram, not a synonym, for rectitude. There
21 is no reason why the Governor at this point,
22 knowing what the problems with the emergency
23 process have been, should be taking this
24 position and, in my view, no reason that we,
25 the Senate, should be supporting it.

1 ACTING PRESIDENT MEIER: Senator
2 Bruno.

3 SENATOR BRUNO: I'm sorry, there
4 are other speakers. I wanted to just, if I
5 may, Mr. President and colleagues, just for
6 purposes of discussion here, correct some
7 impressions.

8 And Senator Paterson very
9 articulately describes the position that he
10 and his colleagues, many of them, are taking,
11 and the Speaker. And I have the greatest of
12 respect for the leader on that side of the
13 aisle.

14 But there is misinformation that is
15 out there. Number one -- and by the way, why
16 not do both? Put a contingency in place while
17 we negotiate the budget. That's what we're
18 talking about.

19 But, Senator Paterson, if we could
20 have negotiated the contingency, we would have
21 done it. We haven't been able to since the
22 court decision. The Speaker passed -- has
23 submitted a resolution that literally takes
24 you into 2007 and 2008 to correct the court
25 decision.

1 The Governor cannot, cannot simply
2 move money anywhere he wants to. He is very
3 limited -- take a look at the limitations that
4 the Governor has in this package. Okay? He's
5 got 30 days. The Governor, in case of a snow
6 emergency, can submit an appropriation bill at
7 any time. So it's not so that everything is
8 standing still. It just isn't so.

9 It is not discretionary on the part
10 of the Governor to move dollars around within
11 this framework. It is not. He can't take
12 education money and put it other places.

13 Now, if you and the Speaker can
14 negotiate a contingency with the Governor that
15 works for April 1st, I would have to ask, why
16 haven't you? Why haven't you? Because you
17 can't. And you think that what we've done
18 here doesn't get us there? You think
19 emergency bills are better for your
20 constituents and ours? They're not.

21 And I am -- I look around this
22 room, I'm probably the most optimistic person
23 in this room. A couple of you that are close.
24 But I am. And I also, you're right, like you,
25 have a frustration level, an exasperation

1 level. But this is action. Action is better
2 than inaction.

3 And one of our weapons, according
4 to some of those participating, is inaction.
5 Do nothing. Do nothing. You will bring the
6 Executive to the table. Yeah, you might. You
7 might. And you might not. In October,
8 November, December, you might.

9 But I had and you had, probably,
10 many of the health care providers, hospitals
11 in your districts, hospitals in your
12 districts, many of them saying they will close
13 if we put in place what's been submitted.

14 The point is, think about it, in
15 health care there's \$3 billion in
16 ramifications proposed in the budget that has
17 been submitted by the Executive. We do this
18 contingency, it goes back to last year. None
19 of that \$3 billion that you are going to get
20 in pain is in there.

21 So then Senator Paterson, in all
22 due respect, says: Why should the Governor
23 negotiate anything? Well, he should because
24 he submitted a \$105 billion budget. This is
25 \$101 billion. All of the programs, everything

1 the Governor wants to get done is undone.
2 Okay? Undone. So he has every incentive in
3 the world to negotiate in good faith. Every
4 incentive.

5 Now, we can differ. Reasonable
6 people differ. Okay? And that's what we do
7 in this chamber. Many times we differ, and we
8 end up taking a vote. And we each state our
9 positions. And that's what you're doing, and
10 that's what I'm doing. And there are others
11 here that want to be heard. And I am anxious
12 to hear you. Okay? Very anxious. But I want
13 you to stay mindful of the facts.

14 Right now there's no reason why we
15 can't do this while we negotiate another
16 contingency with the Governor and with Senator
17 Paterson and the leaders in the Assembly.
18 Right? There's no reason. Next two weeks, we
19 come back, we'll do another contingency. You
20 can help get it done. And we can negotiate
21 the budget at the same time. Now, you tell me
22 reasonably why that doesn't make sense.

23 Mr. President, that's a rhetorical
24 question.

25 Thank you.

1 ACTING PRESIDENT MEIER: Senator
2 Paterson.

3 SENATOR PATERSON: Mr. President,
4 I want to propose an action. The action is
5 that we take this section of it out. Because
6 it says "beyond the powers that the Governor
7 already has," and it relates to expenditures.
8 It says it.

9 And it says that the Governor has
10 the power. "Power" I would define as the
11 capacity to influence a situation. The
12 ultimate capacity to suspend, alter or modify
13 the laws, the rules, the regulations related
14 to the expenditures.

15 Well, I think this is very clear.
16 And I know something -- somebody wrote it.
17 And it wasn't Senator Schneiderman, who handed
18 it to me. Who wrote this? I'd really like to
19 know. Because if it's -- it's there for a
20 reason. And I think it's crystal clear. The
21 30-day period allows the Governor to resubmit
22 his budget on May 1st, and that's the second
23 bite at the apple, second opportunity to
24 negotiate this.

25 So we are not trying to delay an

1 action. We agree that a contingency budget
2 should be in place. We just don't like this
3 the way it's written.

4 Now, you can't negotiate it. Well,
5 I think it's a one-house bill that the
6 Assembly says they're not going to pass it.
7 So perhaps somebody would like to step in at
8 this point and try to promote an agreement.
9 Because all parties -- the Senate, the
10 Assembly, and the Governor -- seem to
11 completely agree that we need to get out of
12 this extraordinary process of passing
13 extenders. It's wrong, nobody likes it, it
14 brings shame on this institution.

15 And I'm just proposing that this be
16 rewritten in a form that would be acceptable.
17 I don't get the impression that we're that far
18 apart.

19 Now, Senator Bruno said that the
20 Governor can do an appropriations bill for
21 snow removal. That is correct, he can. But
22 he doesn't have to, because he has this. And
23 I know that if I were Governor and I had this,
24 I wouldn't be sending appropriations bills,
25 because I don't have to.

1 And all we're saying is that with a
2 lessening of the ultimate authority vested in
3 the Executive branch, we can support this
4 legislation.

5 We knew there was a problem with it
6 in December. We knew the Assembly wasn't
7 passing it. We wanted to show some unity in
8 this chamber. And I, you know, hope it was
9 appreciated that we all wanted to see a
10 contingency process.

11 But now we're raising this as
12 something that we think is an essential issue
13 and at least a legitimate issue. We're not
14 making this up; it's written down. And we'd
15 certainly like in this debate some
16 consideration or some explanation of how my
17 conclusion is wrong. Because if it is wrong,
18 I'll be willing to say that. But I have a
19 funny feeling I'm not going to have to,
20 because it's too clearly written.

21 ACTING PRESIDENT MEIER: Senator
22 Bruno.

23 SENATOR BRUNO: Senator Paterson,
24 again, in all due respect, because I really --
25 I like Senator Paterson so much more than I

1 liked him in September and October of last
2 year --

3 (Laughter.)

4 SENATOR BRUNO: -- we cannot
5 delete this from what the Governor submitted.
6 Constitutionally we cannot do that. We cannot
7 take out of context that sheet, out of context
8 from the 1,900-and-some. Constitutionally, we
9 cannot do it. Cannot do it.

10 Thank you, Mr. President.

11 ACTING PRESIDENT MEIER: Senator
12 Breslin.

13 SENATOR BRESLIN: Thank you, Mr.
14 President.

15 Coincidentally, I think that I have
16 an amendment at the desk. And I ask that the
17 amendment be waived and I be allowed to speak
18 on the amendment.

19 ACTING PRESIDENT MEIER: Your
20 amendment is at the desk. The reading is
21 waived, and you're recognized to explain the
22 amendment.

23 SENATOR BRESLIN: And again using
24 the word "coincidentally," it deals with the
25 language that gives the Governor certain

1 powers.

2 And I think it probably is good
3 that at least for the members who haven't read
4 the 1,900 pages -- as most of us on this side
5 have read several times -- that the language
6 inter alia includes the following:

7 "Notwithstanding any other provision of law to
8 the contrary, to ensure that during a
9 contingency period disbursements authorized by
10 individual items of appropriation or
11 reappropriation in this act shall not exceed
12 disbursement made for such individual items in
13 the immediately preceding fiscal year, the
14 Governor, in addition to all the powers
15 conferred on him by State Constitution and
16 state law, shall have the power to suspend,
17 alter or modify the operation of any law, rule
18 or regulation relating to the appointment,
19 allocation or expenditure of appropriated
20 funds."

21 That is extremely strong language.
22 That makes it more like a king than a
23 Governor. It gives absolute power. And I'd
24 suggest that with that language, we've
25 abdicated our total responsibility here as

1 legislators. We've abdicated our total
2 responsibility.

3 And I would suggest that if this
4 language has no power and it simply deals with
5 references to snowplowing, then it can be
6 taken out of here. It can be taken out of
7 here and not affect the total, total substance
8 of the other 1,900 pages.

9 And accordingly, I request that
10 everyone here consider that amendment and
11 retain our strength.

12 ACTING PRESIDENT MEIER: Those
13 Senators in agreement with the amendment
14 please signify by raising your hand.

15 THE SECRETARY: Those recorded in
16 agreement are Senators Andrews, Breslin,
17 Brown, Diaz, Dilan, Duane, Gonzalez,
18 Hassell-Thompson, Klein, L. Krueger,
19 Montgomery, Onorato, Oppenheimer, Parker,
20 Paterson, Sabini, Sampson, Savino,
21 Schneiderman, Serrano, A. Smith, M. Smith,
22 Stachowski, Stavisky, and Valesky.

23 ACTING PRESIDENT MEIER: The
24 amendment is not agreed to.

25 Senator Schneiderman.

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

3 ACTING PRESIDENT MEIER: Senator
4 Schneiderman, on the bill.

5 SENATOR SCHNEIDERMAN: I am going
6 to shock the house by suggesting that I'm
7 going to join my leader, Senator Paterson, in
8 urging everyone to vote against this bill.

9 I find the course of conduct we're
10 embarked on to be one that is completely at
11 odds with the political realities of this
12 capital. We can vote this bill down, as
13 Senator Paterson said. Just because the
14 Governor gives us a bill doesn't mean we have
15 to support it. We can work on drafting an
16 alternative bill. We're acknowledging it's a
17 one-house bill already. As Senator Bruno
18 said, the Assembly is not going to pass it.

19 And futile action is not
20 necessarily better than inaction. In fact,
21 some would argue that it's just a way of
22 keeping busy while you're actually engaged in
23 inaction.

24 I would suggest that the problem
25 with this bill is very simply this. We were

1 here December 22nd, and many of my colleagues
2 on the other side of the aisle spoke
3 eloquently about the Court of Appeals decision
4 that reduced the power of the Legislature.

5 One of my colleagues on the other
6 side of the aisle, talking about the budget
7 process, said: "It cannot be a lopsided
8 arrangement, with one segment of government
9 dominating all the others and having the major
10 say. We must be partners in this process."

11 Another of my colleagues on the
12 other side of the aisle stated, on
13 December 22nd: "This court decision by the
14 Court of Appeals is just simply devastating to
15 the Legislature. It makes the Legislature
16 subservient to the Executive office in terms
17 of being a partner in the budget process."

18 And I can go on and on quoting but
19 not identifying my colleagues who expressed
20 great resolve for the Legislature to regain
21 some of our power in the budget process.

22 And now we come here, understanding
23 that that's something that many people treat
24 as something of the crisis in the functioning
25 of the state government, and we're coming with

1 a bill that, based on the language Senator
2 Paterson and Senator Breslin both just read to
3 you, confers more power on the Governor even
4 than the New York State Court of Appeals.

5 Now, what is going to be the effect
6 of passing a contingency budget that gives the
7 Governor unfettered power to move money
8 around? And with all due respect to Senator
9 Bruno's analysis, this bill, in the language
10 Senator Breslin and Senator Paterson read,
11 simply states that there's a cap, you can't
12 spend more on an individual item in the
13 immediately preceding fiscal year. But other
14 than that limitation, the Governor can
15 suspend, alter or modify the operation of any
16 law, rule or regulation relating to the
17 apportionment, allocation or expenditure of
18 appropriated funds.

19 Well, what is an item in the
20 budget? School aid is an item. So the
21 Governor cannot raise the school aid amount,
22 but he can move it around from one district to
23 another. TAP is an item. The payments for
24 SUNY hospitals is an item. Operation of the
25 state prisons is an item.

1 The Governor would be able to have
2 unfettered discretion. This is creating a
3 monarchy, ladies and gentlemen.

4 And with all due respect for the
5 views of my colleagues on the Court of Appeals
6 decision, I believe we do have some other
7 options other than simply lying down and
8 conferring whatever authority is left over
9 after that opinion on the Governor.

10 This is politically a foolish move.
11 What moves politicians? Pressure moves
12 politicians. Why are we here today? Why are
13 we trying to avoid the wrath of the voters if
14 we pass another budget late? Because of
15 pressure.

16 What does this contingency budget
17 bill do? It removes the pressure from the
18 Governor. After the Court of Appeals
19 decision, what we need is legislation to
20 increase the pressure on the Governor, not to
21 remove the pressure on the Governor. I'm the
22 Governor, I love this. I'm the king. I can
23 do whatever I want.

24 Well, and as duly pointed out by
25 Senator Ada Smith, that the author of this

1 bill is in fact the man who would be king.

2 So let's be realistic about what
3 we're doing. I appreciate the fact that we
4 have a problem passing budgets here. I find
5 it astonishing, having spent most of my career
6 in the private sector, to watch the budget
7 process.

8 But let us not pass a contingency
9 budget that's going to make it harder for us
10 to negotiate a real budget. That is not the
11 solution. Let's not take a situation in which
12 the Governor already has too much power, and
13 doesn't feel enough pressure to pass a budget
14 on time and refuses to take the leadership
15 that the Governor should take, and give him
16 more power, take more pressure off.

17 This would not solve the problem.
18 The problem must be addressed by another
19 means. So I respectfully suggest that this
20 bill would make the situation worse, that we
21 should be following the lead -- and, you know,
22 we lead, sometimes we follow -- of the
23 Assembly in putting forth, as they are doing
24 this week, a constitutional amendment to
25 redress the Court of Appeals decision. And I

1 would suggest that even though that takes a
2 long time, let's get it started.

3 And maybe, if we're moving on the
4 process of equalizing the power between the
5 Executive and the Legislature, maybe as that
6 process moves forward we'll find the Governor
7 a little more receptive to negotiations.

8 This bill confers too much power on
9 the Executive for all the reasons stated. And
10 it may be this year creating a King George --
11 but, my colleagues on the other side of the
12 aisle, very soon that might be a King Eliot.
13 And I'm not so sure you want to have a king by
14 that identification.

15 I urge everyone to vote no. Thank
16 you, Mr. President.

17 ACTING PRESIDENT MEIER: Any
18 other Senator wish to be heard on the bill?

19 Senator Breslin.

20 SENATOR BRESLIN: Again on the
21 bill. Thank you, Mr. President.

22 As I said earlier, this is not
23 reform, it's an abdication. Here we are,
24 February 15th, we don't have our revenues
25 resolved, we're still in budget hearings,

1 there hasn't been serious attempts to
2 negotiate a budget.

3 And the Governor would like nothing
4 more than to have this in place, because it
5 would exert no pressure, no pressure on him to
6 come to the table. And for that reason, I
7 will vote no.

8 ACTING PRESIDENT MEIER: Any
9 other Senator wish to be heard?

10 Debate is closed, then.

11 The Secretary will ring the bell.

12 Read the last section.

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

15 ACTING PRESIDENT MEIER: Call the
16 roll.

17 (The Secretary called the roll.)

18 ACTING PRESIDENT MEIER: Senator
19 Robach, to explain his vote.

20 SENATOR ROBACH: I'll pass.

21 ACTING PRESIDENT MEIER: Senator
22 Robach passes.

23 Announce the results.

24 THE SECRETARY: Those recorded in
25 the negative on Calendar Number 121 are

1 Senators Andrews, Breslin, Dilan, Duane,
2 Gonzalez, Hassell-Thompson, L. Krueger,
3 Montgomery, Onorato, Oppenheimer, Parker,
4 Paterson, Sabini, Sampson, Savino,
5 Schneiderman, Serrano, A. Smith, M. Smith, and
6 Stavisky.

7 Ayes, 38. Nays, 20.

8 ACTING PRESIDENT MEIER: The bill
9 is passed.

10 Senator Bruno, that completes the
11 calendar.

12 SENATOR BRUNO: Thank you, Mr.
13 President.

14 Is there any further business at
15 the desk?

16 ACTING PRESIDENT MEIER: There is
17 no business at the desk.

18 SENATOR BRUNO: I would then move
19 that, there being no further business, that we
20 stand adjourned until tomorrow, Wednesday, at
21 11:00 a.m.

22 ACTING PRESIDENT MEIER: On
23 motion, the Senate stands adjourned until
24 Wednesday, February 16th, at 11:00 a.m.

25 (Whereupon, at 5:03 p.m., the

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Senate adjourned.)