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

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

precious name.

Amen.

ACTING PRESIDENT MEIER: Reading of the Journal.

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

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Fuschillo.

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

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

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

Senator Skelos.

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

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

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

ACTING PRESIDENT MEIER: Excuse me.

The Secretary will read.

SENATOR LIZ KRUEGER: Lay it aside, please.

ACTING PRESIDENT MEIER: Lay the bill aside.

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

verification.

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT MEIER: Lay the bill aside.

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

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

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

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, 46.

ACTING PRESIDENT MEIER: There is

a local fiscal impact note at the desk.

The bill is passed.

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

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT MEIER: Lay the bill aside.

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

SENATOR PATERSON: Lay it aside, please.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 51, by Senator Robach, Senate Print 1215, an act to amend Chapter 695 of the Laws of 1994 amending the Civil Service 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, 49.

ACTING PRESIDENT MEIER: The bill is passed.

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

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, 48. Nays, 1. Senator Maltese recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Maltese.

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

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

ACTING PRESIDENT MEIER: The bill is passed.

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

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, 50. Nays, 1. Senator Maltese recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

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

ACTING PRESIDENT MEIER: Read the

last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51.

ACTING PRESIDENT MEIER: The bill is passed.

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

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

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

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

SENATOR FARLEY: Mr. President,

if I could just explain my vote.

And I want to thank my colleagues for supporting this.

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

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

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

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

THE SECRETARY: Ayes, 52.

ACTING PRESIDENT MEIER: The bill is passed.

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

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

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

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

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

And the Senate will stand at ease.

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

The Senate will stand at ease.

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

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

ACTING PRESIDENT MEIER: Senator Skelos.

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

ACTING PRESIDENT MEIER: Reports of standing committees.

The Secretary will read.

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

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

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

ACTING PRESIDENT MEIER: All those 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 Skelos.

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

ACTING PRESIDENT MEIER: Sound the bells.

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

Senator Skelos.

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

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

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

SENATOR PATERSON: Explanation.

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

SENATOR FLANAGAN: Thank you, Mr. President.

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

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

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

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

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

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

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

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

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

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

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Liz Krueger.

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

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

SENATOR FLANAGAN: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR LIZ KRUEGER: Thank you.

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

the State of New York in this bill?

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

SENATOR LIZ KRUEGER: What are the standards?

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

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

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

So yes, there are standards.

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

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

SENATOR FLANAGAN: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR LIZ KRUEGER: Thank you.

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

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

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

I do not believe that this bill

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

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

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

ACTING PRESIDENT MEIER: Senator Flanagan, do you yield?

SENATOR FLANAGAN: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR LIZ KRUEGER: Thank you.

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

For example, does it require open

access to software systems?

SENATOR FLANAGAN: No.

SENATOR LIZ KRUEGER: It does not require that.

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

SENATOR FLANAGAN: Yes.

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

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

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

SENATOR FLANAGAN: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

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

SENATOR FLANAGAN: That's correct.

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

ACTING PRESIDENT MEIER: Do you

continue to yield, Senator Flanagan?

SENATOR FLANAGAN: Yes.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR LIZ KRUEGER: Thank you.

Does this legislation address maintenance costs for the machines?

SENATOR FLANAGAN: Not directly.

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

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

SENATOR LIZ KRUEGER: Thank you.

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

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

SENATOR FLANAGAN: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR LIZ KRUEGER: Thank you.

Does this legislation address whose obligation it is to replace the machines when they die? Because even with a warranty, they will die, particularly computer-driven machines.

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

SENATOR LIZ KRUEGER: Okay, thank you.

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

ACTING PRESIDENT MEIER: Do you yield, Senator?

SENATOR FLANAGAN: Yes.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR LIZ KRUEGER: Thank you. Thank you.

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

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

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

SENATOR FLANAGAN: I don't know.

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

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

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

SENATOR FLANAGAN: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR LIZ KRUEGER: Thank you.

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

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

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

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

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

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

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

software, changed your technology?

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

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

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

SENATOR LIZ KRUEGER: Thank you.

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

ACTING PRESIDENT MEIER: Senator Flanagan, do you yield?

SENATOR FLANAGAN: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR LIZ KRUEGER: Thank you.

What in this bill addresses concerns for disabled New Yorkers and their concerns with machines, if anything?

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

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

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

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

SENATOR LIZ KRUEGER: Thank you.

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

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

SENATOR LIZ KRUEGER: Thank you very much.

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

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

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

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

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

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

minimums.

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

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

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

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

Thank you, Mr. President.

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

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

ACTING PRESIDENT MEIER: The amendment is lost.

Senator Sabini.

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

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

SENATOR FLANAGAN: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

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

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

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

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

SENATOR SABINI: Would the sponsor yield for another question.

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

SENATOR FLANAGAN: Yes.

ACTING PRESIDENT MEIER: The Senator yields.

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

SENATOR FLANAGAN: I think the

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

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

SENATOR FLANAGAN: Right.

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

SENATOR FLANAGAN: Senator, I would agree.

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

ACTING PRESIDENT MEIER: Senator Sabini, on the bill.

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

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

which are permitted under HAVA, we had less problems.

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

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

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

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

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

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

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

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

So I'm going to oppose the bill.

I'd also, Mr. President --

ACTING PRESIDENT MEIER: Senator Sabini.

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

ACTING PRESIDENT MEIER: Your amendment is at the desk.

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

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

SENATOR SABINI: Thank you, Mr. President.

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

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

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

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

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

Thank you, Mr. President.

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

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

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

ACTING PRESIDENT MEIER: The amendment is not agreed to.

Senator Schneiderman.

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

ACTING PRESIDENT MEIER: Senator Schneiderman, on the bill.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Then the debate is closed.

The Secretary will sound the bell.

There is a local fiscal impact note at the desk.

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEIER: Announce the results.

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

A. Smith, M. Smith, Stachowski, Stavisky. Also Senators Breslin and Sabini.

Ayes, 38. Nays, 20.

ACTING PRESIDENT MEIER: The bill is passed.

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

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.)

ACTING PRESIDENT MEIER: Announce the results.

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

Andrews.

Ayes, 40. Nays, 18.

ACTING PRESIDENT MEIER: The bill is passed.

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

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.)

ACTING PRESIDENT MEIER: Announce the results.

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

Ayes, 46. Nays, 12.

ACTING PRESIDENT MEIER: The bill

is passed.

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

SENATOR KLEIN: Explanation on the bill, please.

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

SENATOR FLANAGAN: Thank you, Mr. President.

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

ACTING PRESIDENT MEIER: Senator Klein.

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

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

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

SENATOR KLEIN: Thank you, Mr. President.

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

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

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

ACTING PRESIDENT MEIER: The amendment is not agreed to.

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.)

ACTING PRESIDENT MEIER: Announce the results.

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

Ayes, 44. Nays, 14.

ACTING PRESIDENT MEIER: The bill is passed.

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

ACTING PRESIDENT MEIER: Senator Serrano.

SENATOR SERRANO: Explanation, please.

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

SENATOR FLANAGAN: Thank you.

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

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

(Laughter.)

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

(Laughter.)

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

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

ACTING PRESIDENT MEIER: Senator Serrano.

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

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

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

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

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

Thank you, Mr. President.

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

Why do you rise, Senator Diaz?

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

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

The Secretary will proceed.

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

ACTING PRESIDENT MEIER: The amendment is not agreed to.

Senator Diaz.

SENATOR DIAZ: Thank you, Mr. President.

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

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

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

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

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

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

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

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

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

ACTING PRESIDENT MEIER: Senator Flanagan.

SENATOR FLANAGAN: On the bill, Mr. President.

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

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

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

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

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

I don't want to find us in a

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

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

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

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

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

ACTING PRESIDENT MEIER: Senator Schneiderman.

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

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

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

I appreciate Senator Flanagan's comments.

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

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

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

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

low rate of participation.

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

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

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

Everyone who walks into a polling

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

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

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

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

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

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

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

committee.

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

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

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

Thank you, Mr. President.

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

THE SECRETARY: Those recorded in

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

ACTING PRESIDENT MEIER: The amendment is not agreed to.

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

Debate is closed, then.

The Secretary will sound the bell.

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.)

ACTING PRESIDENT MEIER: Announce the results.

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MEIER: The bill is passed.

The Secretary will read.

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

SENATOR BRESLIN: Explanation, please.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

was to do nothing.

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

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

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

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

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

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

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

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

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

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

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

Now, I am sure, Mr. President, that

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

But thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Paterson.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

And what I'm saying is that the

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

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

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

congruent strategy so that we can even negotiate the budget.

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

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

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

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

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

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

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

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

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

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

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

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

ACTING PRESIDENT MEIER: Senator Bruno.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Mr. President, that's a rhetorical question.

Thank you.

ACTING PRESIDENT MEIER: Senator Paterson.

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

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

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

So we are not trying to delay an

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

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

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

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

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

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

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

ACTING PRESIDENT MEIER: Senator Bruno.

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

liked him in September and October of last year --

(Laughter.)

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

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Breslin.

SENATOR BRESLIN: Thank you, Mr. President.

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

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

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

powers.

And I think it probably is good that at least for the members who haven't read the 1,900 pages -- as most of us on this side have read several times -- that the language inter alia includes the following: "Notwithstanding any other provision of law to the contrary, to ensure that during a contingency period disbursements authorized by individual items of appropriation or reappropriation in this act shall not exceed disbursement made for such individual items in the immediately preceding fiscal year, the Governor, in addition to all the powers conferred on him by State Constitution and state law, shall have the power to suspend, alter or modify the operation of any law, rule or regulation relating to the appointment, allocation or expenditure of appropriated funds."

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

legislators. We've abdicated our total responsibility.

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

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

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

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

ACTING PRESIDENT MEIER: The amendment is not agreed to.

Senator Schneiderman.

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

ACTING PRESIDENT MEIER: Senator Schneiderman, on the bill.

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

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

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

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

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

One of my colleagues on the other side of the aisle, talking about the budget process, said: "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."

Another of my colleagues on the other side of the aisle stated, on December 22nd: "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 can go on and on quoting but not identifying my colleagues who expressed great resolve for the Legislature to regain some of our power in the budget process.

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

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

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

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

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

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

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

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

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

bill is in fact the man who would be king.

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

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

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

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

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

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

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

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

Senator Breslin.

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

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

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

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

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

Debate is closed, then.

The Secretary will ring the bell.

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

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

SENATOR ROBACH: I'll pass.

ACTING PRESIDENT MEIER: Senator Robach passes.

Announce the results.

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

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

Ayes, 38. Nays, 20.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Bruno, that completes the calendar.

SENATOR BRUNO: Thank you, Mr. President.

Is there any further business at the desk?

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

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

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

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

Senate adjourned.)