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NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

March 7, 2005

3:15 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 join me in 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  
Peter G. Young.

REVEREND YOUNG: Thank you,  
Senator.

Dear Lord, we ask Your presence and  
Your blessings on this Senate chamber. We  
have come to express our concern about the  
welfare of our community and its constituents,  
to learn from each other, to grow in spirit  
and in character, to find Your will in our  
lives and in our neighborhoods.

We thank You for the opportunity in  
this Senate chamber to assemble ourselves at  
any time and in any place to discuss our  
concerns as citizens. We are mindful that  
many in our world do not enjoy such freedom.

1 Grant us the wisdom to carry out  
2 Your decisions within Your will, and bless us  
3 to continue to conduct our business with  
4 dignity and sensitivity to all.

5 Amen.

6 ACTING PRESIDENT MEIER: Reading  
7 of the Journal.

8 THE SECRETARY: In Senate,  
9 Friday, March 4, the Senate met pursuant to  
10 adjournment. The Journal of Thursday, March  
11 3, was read and approved. On motion, Senate  
12 adjourned.

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

16 Presentation of petitions.

17 Messages from the Assembly.

18 Senator Schneiderman.

19 SENATOR SCHNEIDERMAN: Mr.  
20 President, the Senate received a resolution  
21 from the Assembly advising the members of the  
22 Senate that the Senate and Assembly will meet  
23 at noon tomorrow in the Assembly chamber to  
24 elect Regents for the University of the State  
25 of New York, pursuant to Section 202 of the

1 Education Law.

2 ACTING PRESIDENT MEIER: Senator  
3 Schneiderman, I'm informed by the Secretary  
4 that we have received the communication and it  
5 is filed in the Journal Clerk's office.

6 SENATOR SCHNEIDERMAN: Thank you,  
7 Mr. President.

8 ACTING PRESIDENT MEIER: Thank  
9 you, Senator Schneiderman.

10 Messages from the Governor.  
11 Reports of standing committees.  
12 Reports of select committees.  
13 Communications and reports from  
14 state officers.

15 Motions and resolutions.  
16 Senator Skelos.

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

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

23 THE SECRETARY: Calendar Number  
24 49, by Senator Marcellino, Senate Print 769,  
25 an act to amend the General Business Law, in

1 relation to renewals.

2 ACTING PRESIDENT MEIER: Read the  
3 last section.

4 THE SECRETARY: Section 2. This  
5 act shall take effect on the 60th day.

6 ACTING PRESIDENT MEIER: Call the  
7 roll.

8 (The Secretary called the roll.)

9 THE SECRETARY: Ayes, 41. Nays,  
10 1. Senator Meier recorded in the negative.

11 ACTING PRESIDENT MEIER: The bill  
12 is passed.

13 THE SECRETARY: Calendar Number  
14 82, by Senator DeFrancisco, Senate Print 2148,  
15 an act to amend the General Obligations Law,  
16 in relation to the statutory short form.

17 ACTING PRESIDENT MEIER: Read the  
18 last section.

19 THE SECRETARY: Section 5. This  
20 act shall take effect on the first of January.

21 ACTING PRESIDENT MEIER: Call the  
22 roll.

23 (The Secretary called the roll.)

24 THE SECRETARY: Ayes, 44.

25 ACTING PRESIDENT MEIER: The bill

1 is passed.

2 THE SECRETARY: Calendar Number  
3 86, by Senator Maziarz, Senate Print 977, an  
4 act to amend the Workers' Compensation Law, in  
5 relation to the direct deposit.

6 ACTING PRESIDENT MEIER: Read the  
7 last section.

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

10 ACTING PRESIDENT MEIER: Call the  
11 roll.

12 (The Secretary called the roll.)

13 THE SECRETARY: Ayes, 44.

14 ACTING PRESIDENT MEIER: The bill  
15 is passed.

16 THE SECRETARY: Calendar Number  
17 94, by Senator Skelos, Senate Print 479, an  
18 act to amend the Penal Law, the Executive Law,  
19 and the Correction Law, in relation to  
20 prohibiting.

21 ACTING PRESIDENT MEIER: Read the  
22 last section.

23 THE SECRETARY: Section 4. This  
24 act shall take effect on the first of  
25 September.

1                   ACTING PRESIDENT MEIER:     Call the  
2     roll.

3                   (The Secretary called the roll.)

4                   THE SECRETARY:     Ayes, 46.

5                   ACTING PRESIDENT MEIER:     The bill  
6     is passed.

7                   THE SECRETARY:     Calendar Number  
8     95, by Senator Skelos, Senate Print 480, an  
9     act to amend the Penal Law, in relation to  
10    sexual assault against a child.

11                  ACTING PRESIDENT MEIER:     Read the  
12    last section.

13                  THE SECRETARY:     Section 5. This  
14    act shall take effect on the first of  
15    November.

16                  ACTING PRESIDENT MEIER:     Call the  
17    roll.

18                  (The Secretary called the roll.)

19                  THE SECRETARY:     Ayes, 46.

20                  ACTING PRESIDENT MEIER:     The bill  
21    is passed.

22                  THE SECRETARY:     Calendar Number  
23    98, by Senator Volker, Senate Print 878, an  
24    act to amend the Criminal Procedure Law, in  
25    relation to police officer statements.

1                   ACTING PRESIDENT MEIER:     Read the  
2     last section.

3                   THE SECRETARY:        Section 5. This  
4     act --

5                   SENATOR SCHNEIDERMAN:     Lay it  
6     aside.

7                   ACTING PRESIDENT MEIER:     The bill  
8     is laid aside.

9                   THE SECRETARY:        Calendar Number  
10    100, by Senator Balboni, Senate Print 932, an  
11    act to amend the Penal Law, in relation to  
12    increasing the criminal penalties.

13                  ACTING PRESIDENT MEIER:     Read the  
14    last section.

15                  THE SECRETARY:        Section 12. This  
16    act shall take effect on the first of  
17    November.

18                  ACTING PRESIDENT MEIER:     Call the  
19    roll.

20                                (The Secretary called the roll.)

21                  THE SECRETARY:        Ayes, 46.

22                  ACTING PRESIDENT MEIER:     The bill  
23    is passed.

24                  THE SECRETARY:        Calendar Number  
25    103, by Senator Skelos, Senate Print 1170, an

1 act to amend the Criminal Procedure Law, in  
2 relation to the period of limitation.

3 ACTING PRESIDENT MEIER: Read the  
4 last section.

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

7 ACTING PRESIDENT MEIER: Call the  
8 roll.

9 (The Secretary called the roll.)

10 THE SECRETARY: Ayes, 48.

11 ACTING PRESIDENT MEIER: The bill  
12 is passed.

13 THE SECRETARY: Calendar Number  
14 104, by Senator Rath, Senate Print 1513, an  
15 act to amend the Penal Law, in relation to  
16 endangering the welfare of a child.

17 ACTING PRESIDENT MEIER: Read the  
18 last section.

19 THE SECRETARY: Section 2. This  
20 act shall take effect on the first of  
21 November.

22 ACTING PRESIDENT MEIER: Call the  
23 roll.

24 (The Secretary called the roll.)

25 THE SECRETARY: Ayes, 48.

1                   ACTING PRESIDENT MEIER:     The bill  
2     is passed.

3                   THE SECRETARY:        Calendar Number  
4     105, by Senator Rath, Senate Print 1517, an  
5     act to amend the Penal Law, in relation to  
6     establishing the crimes of attempting to lure  
7     or entice a child.

8                   ACTING PRESIDENT MEIER:     Read the  
9     last section.

10                  THE SECRETARY:        Section 2. This  
11     act shall take effect on the first of  
12     November.

13                  ACTING PRESIDENT MEIER:     Call the  
14     roll.

15                                   (The Secretary called the roll.)

16                  THE SECRETARY:        Ayes, 48.

17                  ACTING PRESIDENT MEIER:     The bill  
18     is passed.

19                  THE SECRETARY:        Calendar Number  
20     107, by Senator Rath, Senate Print 1521, an  
21     act to amend the Penal Law, in relation to  
22     assaults committed in the presence of certain  
23     children.

24                  ACTING PRESIDENT MEIER:     Read the  
25     last section.

1 THE SECRETARY: Section 2. This  
2 act shall take effect on the first of  
3 November.

4 ACTING PRESIDENT MEIER: Call the  
5 roll.

6 (The Secretary called the roll.)

7 THE SECRETARY: Those recorded in  
8 the negative on Calendar Number 107 are  
9 Senators Andrews, Hassell-Thompson, and  
10 Montgomery. Ayes, 47. Nays, 3.

11 ACTING PRESIDENT MEIER: The bill  
12 is passed.

13 THE SECRETARY: Calendar Number  
14 108, by Senator Robach, Senate Print 1619, an  
15 act to amend the Penal Law, in relation to  
16 consecutive sentences.

17 ACTING PRESIDENT MEIER: Read the  
18 last section.

19 THE SECRETARY: Section 2. This  
20 act shall take effect on the first of  
21 November.

22 ACTING PRESIDENT MEIER: Call the  
23 roll.

24 (The Secretary called the roll.)

25 THE SECRETARY: Ayes, 50.

1                   ACTING PRESIDENT MEIER:     The bill  
2     is passed.

3                   THE SECRETARY:        Calendar Number  
4     125, by Senator Maziarz, Senate Print 1136, an  
5     act to amend the Public Authorities Law, in  
6     relation to the allocation of replacement  
7     power.

8                   ACTING PRESIDENT MEIER:     Read the  
9     last section.

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

12                  ACTING PRESIDENT MEIER:     Call the  
13     roll.

14                                (The Secretary called the roll.)

15                  ACTING PRESIDENT MEIER:     Senator  
16     Maziarz, to explain his vote.

17                  SENATOR MAZIARZ:        Thank you very  
18     much, Mr. President.

19                                This is an extremely important bill  
20     for economic development in all of Western  
21     New York. There are approximately 44  
22     companies located in Niagara and Erie counties  
23     which employ in excess of 24,000 manufacturing  
24     employees.

25                                I just want to publicly acknowledge

1 the work that Senator Volker, Senator Rath, my  
2 colleagues from Western New York -- Senator  
3 Stachowski -- have done on this bill.

4 But I especially want to thank the  
5 chairman of the Senate Energy Committee, who  
6 did an excellent job in shepherding this bill  
7 through the Energy Committee and educating us  
8 a whole lot about the replacement power  
9 process. And it could not have been done  
10 without the good work of Senator Wright.

11 And Senator Spano, from Westchester  
12 County, played a very important role in making  
13 sure that this bill got to the floor today  
14 too.

15 Thank you, Mr. President. I vote  
16 aye.

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

19 Senator Rath, to explain her vote.

20 SENATOR RATH: To explain my  
21 vote.

22 For those who might wonder what  
23 replacement power is, if you can imagine a  
24 powerhouse of a power project sliding down  
25 into the Niagara Gorge a number of years ago,

1 and the power that was lost to the companies  
2 that used that in order to be competitive.  
3 Because, after all, they were right there at  
4 the seat and the heart of where power was  
5 generated in New York State in those days.

6 And so replacement power became an  
7 item that was given to the companies who had  
8 power when the Schoellkopf plant slipped into  
9 the Niagara Gorge. And so that has been an  
10 extraordinarily important part of the business  
11 plan of many companies in Western New York.

12 And thanks to everyone who made  
13 this a reality and made it happen, because  
14 there are a lot of people who will continue to  
15 work because companies will make decisions to  
16 expand, they will make decisions to move on  
17 and do more with their business plans as a  
18 result of maintaining this replacement power,  
19 which they've had almost since time  
20 immemorial, since that first Schoellkopf plant  
21 was built.

22 And the rates have gone up, but  
23 they have always been favorable to the  
24 companies who were the first companies on the  
25 Niagara Frontier who believed in this new

1       gimmick called electricity and put it into  
2       their buildings.

3                   Thank you.

4                   ACTING PRESIDENT MEIER:     Senator  
5       Rath will be recorded in the affirmative.

6                   Senator Volker, to explain his  
7       vote.

8                   SENATOR VOLKER:     Briefly, Mr.  
9       President.

10                  I took a pretty severe beating on  
11       this bill at one point.  And I want to thank  
12       Senator Maziarz, who did an excellent job with  
13       this bill.  And I want to also thank Senator  
14       Wright, who worked very hard to make this a  
15       reality.

16                  And also, in an attempt -- and by  
17       the way, this has always been the law.  It is  
18       under the federal charter.  It dates back  
19       to -- John Daly and myself worked on this  
20       many, many years ago, the late Senator John  
21       Daly.

22                  The problem back in Buffalo was  
23       that they didn't really understand what this  
24       was completely all about.  And they also  
25       didn't realize that there's another 146

1 megawatts of power that has disappeared from  
2 Western New York because a number of plants  
3 have left the area.

4 They all, by the way, left in  
5 the -- before the last ten years, contrary to  
6 people's feeling lately. We haven't been  
7 losing plants, thank God.

8 But I want to thank Senator Maziarz  
9 and Senator Wright for what they have done.  
10 And we still hope -- this bill we expect to  
11 pass the Assembly, and we also expect the next  
12 bill that was sponsored by Senator Wright,  
13 relating to the North Country, to also pass  
14 the Assembly.

15 I vote aye.

16 ACTING PRESIDENT MEIER: Senator  
17 Volker will be recorded in the affirmative.

18 Announce the results.

19 THE SECRETARY: Ayes, 54.

20 ACTING PRESIDENT MEIER: The bill  
21 is passed.

22 THE SECRETARY: Calendar Number  
23 126, by Senator Wright, Senate Print 1393, an  
24 act to amend the Public Authorities Law, in  
25 relation to the allocation of preservation

1 power.

2 ACTING PRESIDENT MEIER: Read the  
3 last section.

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

6 ACTING PRESIDENT MEIER: Call the  
7 roll.

8 (The Secretary called the roll.)

9 THE SECRETARY: Ayes, 55.

10 ACTING PRESIDENT MEIER: The bill  
11 is passed.

12 Senator Skelos, that completes the  
13 noncontroversial -- oh, I'm sorry.

14 Senator Wright.

15 SENATOR WRIGHT: To explain my  
16 vote on the bill we just passed.

17 ACTING PRESIDENT MEIER: Without  
18 objection. Senator Wright, to explain his  
19 vote.

20 SENATOR WRIGHT: Let me first say  
21 that I'm very pleased that we were able to  
22 pass both pieces of legislation this  
23 afternoon.

24 As you all recognize, it was last  
25 session that we passed a combined bill that

1 had both provisions for Western and Northern  
2 New York together. And that, unfortunately,  
3 was not taken up by the Assembly. And they  
4 said to us: We want separate bills.

5 So we have worked cooperatively  
6 with Senator Volker, Senator Maziarz,  
7 Senator Spano, and of course Senator Bruno,  
8 who shepherded both bills through this house  
9 so that we are in a position to deliver what  
10 the Assembly indicated they were seeking, and  
11 that was to provide parity, fairness and  
12 equity to both Western and Northern New York,  
13 which are homes to the largest generating  
14 hydrofacilities in the state.

15 They have paid the cost over the  
16 years in terms of lost property, lost taxes.  
17 And they're entitled to the energy, they're  
18 entitled to the jobs that you have put in  
19 statute.

20 Thank you very much.

21 ACTING PRESIDENT MEIER: Senator  
22 Wright is recorded in the affirmative, and the  
23 bill is passed.

24 Senator Schneiderman.

25 SENATOR SCHNEIDERMAN: To explain

1 my vote.

2 ACTING PRESIDENT MEIER: Without  
3 objection. Senator Schneiderman, to explain  
4 his vote.

5 SENATOR SCHNEIDERMAN: Thank you,  
6 Mr. President.

7 I appreciate the effort that has  
8 gone into these bills. I would like to note  
9 that energy costs are a major impediment to  
10 economic growth throughout New York State and  
11 that the Governor's proposed budget allocates  
12 only \$75 million for a one-year extension of  
13 the Power for Jobs program.

14 I hope that we will -- and there  
15 have been meetings and proposed legislation in  
16 the past in this house and in the Assembly.  
17 But I hope this year we will take the  
18 opportunity to provide something other than  
19 uncertain one-year funding for piecemeal  
20 programs, and not simply limit our energy cost  
21 reduction efforts to certain geographic areas.

22 I think that the effort that has  
23 gone into these bills demonstrates how  
24 difficult it is even to operate on a piecemeal  
25 basis. But throughout Central New York,

1 throughout the suburbs of New York City there  
2 is a need for low-cost power. And the best  
3 way to address that is with a comprehensive  
4 set of programs particularly focusing on the  
5 Power for Jobs program.

6 I hope we will be able to do better  
7 than the Governor's proposal for a \$75 million  
8 one-year shot in that critical program in this  
9 year's budget.

10 Thank you, Mr. President. I vote  
11 in the affirmative. And I hope we will have  
12 more bills like this to deal with as the  
13 session comes along.

14 ACTING PRESIDENT MEIER: Senator  
15 Schneiderman votes in the affirmative, and the  
16 bill is passed.

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

19 SENATOR SKELOS: Thank you,  
20 Mr. President. If we could go to the  
21 controversial reading at this time.

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

25 THE SECRETARY: Calendar Number

1 98, by Senator Volker, Senate Print 878, an  
2 act to amend the Criminal Procedure Law.

3 SENATOR SCHNEIDERMAN:

4 Explanation.

5 ACTING PRESIDENT MEIER: Senator  
6 Volker, an explanation has been requested.

7 SENATOR VOLKER: Mr. President,  
8 this is a bill that passed last year and  
9 received some questioning.

10 What this bill does, very quickly,  
11 is to allow the testimony of a police officer  
12 which was taken under oath to be admitted in a  
13 grand jury proceeding as long as there is an  
14 affidavit in relation to it.

15 And I might add that there are  
16 certain restrictions. If there was an  
17 adversarial examination of such officer  
18 previously conducted in regard to this  
19 offense, a transcript of that examination must  
20 be submitted.

21 And I pointed out last year that if  
22 the -- in the interests of justice, of course,  
23 any judge can order a person brought before  
24 the grand jury. The idea of this is to try to  
25 avoid unnecessary expense.

1                   The second thing is, and probably  
2                   the most important -- because I think most of  
3                   the time the law enforcement officer will  
4                   probably testify before the grand jury  
5                   anyways -- is in relation to business records.  
6                   And that's where the big savings is.

7                   A lot of law enforcement officers  
8                   are asked to come in and confirm business  
9                   records. And I did that myself many years  
10                  ago. You bring in a -- for instance, a -- I'm  
11                  trying to think of something you bring in. A  
12                  copy of an accident report. Or there's a  
13                  whole series of things that you might bring  
14                  in.

15                  In this case, instead of doing  
16                  that, you can give an affidavit, a sworn  
17                  affidavit, relating to your connection with  
18                  whatever that document is and whatever that  
19                  accident report or whatever it is.

20                  Savings on this could be very  
21                  substantial.

22                  ACTING PRESIDENT MEIER:        Senator  
23                  Schneiderman.

24                  SENATOR SCHNEIDERMAN:        Thank you,  
25                  Mr. President.

1                   Would the sponsor yield for one  
2                   brief question.

3                   SENATOR VOLKER:       Certainly.

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

6                   The Senator yields.

7                   SENATOR SCHNEIDERMAN:     What is  
8                   the estimated cost saving from the portion of  
9                   this bill that would eliminate the need in, as  
10                  you pointed out, in some cases for police  
11                  officers to testify as live witnesses in a  
12                  grand jury?

13                  SENATOR VOLKER:       The State Police  
14                  estimates \$150,000.

15                  I think they're awfully  
16                  conservative. I would probably say close to a  
17                  million dollars in total. Because this is not  
18                  just State Police officers, this is for law  
19                  enforcement officers.

20                  I would have to say that the  
21                  overtime amounts -- and some police officers,  
22                  by the way, are not particularly happy with  
23                  this legislation, because obviously they make  
24                  quite a bit of money in overtime costs and so  
25                  forth.

1                   And in some of the cities, two  
2                   cities in particular that I'm aware of, this  
3                   could save two cities in particular a lot of  
4                   money. Because the grand jury proceedings are  
5                   blocked up a lot by law enforcement officers  
6                   that are brought in to testify.

7                   SENATOR SCHNEIDERMAN:     Thank you.  
8                   Through you, Mr. President, on the  
9                   bill.

10                  I agree with Senator Volker's point  
11                  about the business records issue. I do think  
12                  that it is something that really is a pro  
13                  forma part of testimony in front of a grand  
14                  jury or at a full trial. That's a commonsense  
15                  proposal that would save money in the state.

16                  However, I cannot bring myself to  
17                  vote for this bill because of the second  
18                  provision. And this was discussed in the  
19                  debate last year, and I think this is  
20                  tremendously important.

21                  It is not -- we should be very,  
22                  very cautious about proposals to save  
23                  relatively small amounts of money in the  
24                  context of the state budget by reducing the  
25                  due process protections for the citizens of

1           this state.

2                       And I think that the grand juries  
3           are the creatures of prosecutors already. You  
4           know, the expression that you can get a grand  
5           jury to indict a ham sandwich if you want to  
6           is not that far off. I've been a witness in  
7           grand jury proceedings, and it is something  
8           where the prosecutor controls the flow. They  
9           move it along very quickly, usually.

10                      The one thing that in my mind is  
11           the most critical thing that the grand jurors  
12           actually bring to the process is their ability  
13           to evaluate the credibility of witnesses.  
14           Grand jurors do have the power to ask  
15           questions of witnesses or to discuss the  
16           testimony of witnesses.

17                      And I think that for us to have a  
18           one-sided fix with the goal of saving \$150,000  
19           or \$250,000 or \$300,000 in a \$105 billion  
20           state budget I think is tremendously  
21           shortsighted. In a democracy that provides  
22           for due process of law, we should be very  
23           cautious about trying to save money by  
24           reducing the ability of grand jurors to assess  
25           the credibility of a witness.

1                   If a police officer wants to come  
2                   in in a controversial case seeking an  
3                   indictment of a defendant, one of the things  
4                   that in my mind is most critical is to allow a  
5                   jury and allow a grand jury to assess the  
6                   credibility of that witness.

7                   This would allow a prosecutor to  
8                   make a determination: You know, I don't think  
9                   that police officer makes a very good witness.  
10                  He looks like he's nervous, he's lying. I'm  
11                  going to try and cross every T and dot every I  
12                  under this provision to keep him out. But if  
13                  I do have a police officer as a witness I  
14                  think is going to make a good witness, I'm  
15                  going to use him.

16                  It puts too much power in the hands  
17                  of prosecutors. It is too quick a fix of a  
18                  problem that I don't think is really an  
19                  enormous problem. We're going to be debating  
20                  on Wednesday a death penalty statute that  
21                  costs hundreds of millions of dollars for us  
22                  to try to move forward a procedure that has  
23                  resulted thus far in massive expense and  
24                  actually no executions of anyone.

25                  To save \$150,000, \$200,000,

1           \$250,000, even a million dollars by removing  
2           the due process protection of allowing grand  
3           jurors to assess the credibility of a police  
4           witness I think is a mistake.

5                        I'm going to vote no, and I  
6           encourage everyone to vote no. I hope we can  
7           separate out the first portion of this bill,  
8           because I do think that's something that would  
9           have substantial support everywhere, in this  
10          house and in the other house. But until we do  
11          that, Mr. President, I will be voting no.

12                       Thank you.

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

15                       Debate is closed, then.

16                       The Secretary will sound the bells,  
17          please.

18                       (Pause in proceedings.)

19                       ACTING PRESIDENT MEIER:     Read the  
20          last section.

21                       THE SECRETARY:       Section 5. This  
22          act shall take effect on the first of  
23          November.

24                       ACTING PRESIDENT MEIER:     Call the  
25          roll.

1 (The Secretary called the roll.)

2 ACTING PRESIDENT MEIER: Senator  
3 DeFrancisco, to explain his vote.

4 SENATOR DeFRANCISCO: I'm going  
5 to vote no on this bill, largely for the  
6 reasons that Senator Schneiderman mentioned.

7 It's one thing to put in business  
8 records, but it's another thing, especially --  
9 any witness, whether it's a police officer or  
10 not, when in restricting the time that an  
11 affidavit could be presented to when the  
12 officer actually knows these things from  
13 personal knowledge or witnessed the  
14 occurrence. What more important witness would  
15 there be?

16 And I just think that if this is  
17 allowed, then there's really no purpose for  
18 the grand jury. And maybe we should, if we  
19 want to save money, start thinking about  
20 abolishing the grand jury, because otherwise  
21 it will have no real purpose if we start  
22 allowing witnesses to testify, in quotes, by  
23 affidavit.

24 I vote no.

25 ACTING PRESIDENT MEIER: Senator

1 DeFrancisco will be recorded in the negative.

2 Announce the results.

3 THE SECRETARY: Those recorded in  
4 the negative on Calendar Number 98 are  
5 Senators Andrews, Breslin, DeFrancisco, Diaz,  
6 Gonzalez, Hassell-Thompson, L. Krueger,  
7 Montgomery, Paterson, Savino, Schneiderman,  
8 and A. Smith.

9 Ayes, 43. Nays, 12.

10 ACTING PRESIDENT MEIER: The bill  
11 is passed.

12 Senator Skelos.

13 SENATOR SKELOS: Mr. President,  
14 is there any housekeeping at the desk?

15 ACTING PRESIDENT MEIER: Yes, we  
16 do have a motion, Senator.

17 Senator Fuschillo.

18 SENATOR FUSCHILLO: On behalf of  
19 Senator Saland --

20 ACTING PRESIDENT MEIER: Just a  
21 second, Senator.

22 Can we have some order in the  
23 chamber.

24 Senator Fuschillo.

25 SENATOR FUSCHILLO: Thank you,

1 Mr. President.

2 On behalf of Senator Saland, on  
3 page number 16 I offer the following  
4 amendments to Calendar Number 133, Senate  
5 Print Number 478, and ask that said bill  
6 retain its place on Third Reading Calendar.

7 ACTING PRESIDENT MEIER: The  
8 amendments are received and adopted, and the  
9 bill will retain its place on the order of  
10 third reading.

11 Senator Montgomery.

12 SENATOR MONTGOMERY: Yes, Mr.  
13 President. Had I been in the chamber when the  
14 Calendar Number 96 was voted by this body, I  
15 would have voted no. I believe it was voted  
16 on Wednesday.

17 ACTING PRESIDENT MEIER: The  
18 record will so reflect, Senator.

19 SENATOR MONTGOMERY: Thank you.

20 ACTING PRESIDENT MEIER: Senator  
21 Skelos.

22 SENATOR SKELOS: Mr. President,  
23 there being no further business to come before  
24 the Senate, I move we stand adjourned until  
25 Tuesday, March 8th, at 3:00 p.m.

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ACTING PRESIDENT MEIER: On  
motion, the Senate stands adjourned until  
Tuesday, March the 8th, at 3:00 p.m.  
(Whereupon, at 3:43 p.m., the  
Senate adjourned.)