NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

March 30, 2005

11:55 a.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will please come to order.

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

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

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

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

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Tuesday, March 29, the Senate met pursuant to adjournment. The Journal of Monday, March 28, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Skelos.

SENATOR SKELOS: Madam President, I believe there are substitutions at the desk, if we could make them at this time.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: On page 7, Senator DeFrancisco moves to discharge, from the Committee on Judiciary, Assembly Bill Number 5770 and substitute it for the identical Senate Bill Number 1396, Third Reading Calendar 80.

And on page 8, Senator Bonacic moves to discharge, from the Committee on Commerce, Economic Development and Small Business, Assembly Bill Number 3627 and substitute it for the identical Senate Bill Number 1833, Third Reading Calendar 130.

THE PRESIDENT: Substitutions

ordered.

Senator Skelos.

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

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 92, by Senator DeFrancisco, Senate Print 35, an act to amend the Penal Law, in relation to the payment of reparation.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 150, by Senator Maziarz, Senate Print 691, an act to amend the Penal Law, in relation to the crime of obstructing firefighting operations.

THE PRESIDENT: Read the last

section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 294, by Senator Rath, Senate Print 1568, an act to amend the Penal Law, in relation to civil liability for false reporting.

SENATOR SABINI: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 382, by Senator Meier, Senate Print 2313, an act to amend the General Municipal Law, in relation to allowing school districts.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 383, by Senator LaValle, Senate Print 2599, an act to amend Chapter 668 of the Laws of 1977, amending the Volunteer Firefighters Benefit Law.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 387, by Senator Balboni, Senate Print 3095, an act authorizing the assessor of the County of Nassau to accept an application.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52. Nays, 1. Senator Bonacic recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 388, by Senator Fuschillo, Senate Print 3223, an act authorizing the Merrick Jewish Centre to retroactively apply.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52. Nays, 1. Senator Bonacic recorded in the negative.

THE PRESIDENT: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Madam President, if we can continue now with Calendar Number

397.

THE PRESIDENT: The Secretary will continue to read.

THE SECRETARY: Calendar Number 397, by the Senate Committee on Rules, Senate Print Number 3669, an act to amend Chapter 728 of the Laws of 1982.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator Krueger, to explain your vote.

Senator Schneiderman, to explain your vote.

SENATOR SCHNEIDERMAN: Thank you, Madam President. I know we look similar.

This piece of legislation, which is the language bill on economic development and environmental conservation, has some good things in it. But there are a lot of good things that are missing. And unfortunately, I think this house has taken a step in the wrong

direction with regard to several important environmental protection programs.

There were several proposals on the table before we closed the budget process for improving New York's wetland protection -- the Clean Water Protection/Flood Prevention Act, which is essentially included in the Assembly's budget resolution and Governor's Pataki's proposal in Article VII. Both proposals would improve New York's wetland protections, they just did so in different ways.

The Senate, unfortunately, has taken a stand against wetland protection. We removed this fix from the one-house budget bill. And it's not included in today's Article VII bill. So it's clear in this case that the Assembly and the Governor favor wetlands protection, and our house is standing in opposition.

There's also a fee increase for companies sending their legal proceedings to the Superintendent of Insurance, a doubling of the annual insurance license fee for property and casualty agents and for brokers and life

agents, from $20 to $40.

This is not as good an environmental bill as I believe it should be, and we all know that the most -- arguably the most important element of our environmental protection has been left on the table. I realize that there are still negotiations going on, and I'm hopeful that we will be able to resolve the problem with the Environmental Protection Fund.

The economic development portion of this bill makes some significant steps, and I'll speak more about that this afternoon when we get to the appropriation bill. But I still think it reflects a general lack of accountability in New York's economic development programs.

We do not have a guarantee that money invested by the state through either tax credits or direct loans or grants actually produces the jobs we need. And our system of economic development is really a low-road system of attempting a race to the bottom of reducing tax burdens and reducing regulations without stimulating the kind of high-road

economic growth the state needs.

Accordingly, for all those reasons, while there are some good things in this bill, I am going to be voting no on it. I think we'll have a more thorough discussion of those issues when we debate the appropriation bill later today after it's passed the Assembly.

But on balance, I think that this is a bill that falls far short of what we should be doing and makes a statement that I'm very disappointed with, that this house is not really keeping up with the Governor and the Assembly when it comes to environmental programs.

Thank you, Madam President.

THE PRESIDENT: Senator Krueger.

SENATOR LIZ KRUEGER: Thank you, Madam President. I rise to explain my vote.

I share some of my colleague's concerns that he raised about what we haven't done in this bill. I'll start off by saying some of the things I'm glad about in this bill. I'm glad that we took out of -- both out of appropriations and in language, that we took the money out of the Governor's budget

that would have been used for a sports stadium on the west side of Manhattan. And I'm glad that we actually put that money back into other uses, as opposed to pouring it into some other category of undefined slush funds that we so often do in the state budget.

So there are some good points about this bill. But I also have so many concerns about what we still did and what we still have not explained in this language bill.

For one, we continue to allow the Urban Development Corporation to, with almost no oversight or explanation, have $32 million for the Empire Development Fund working capital grants, another $32 million we ought to be asking far more questions about or asking whether we ought to be spending at all.

We continue to allow them to have additional lines that never get explained to us, either in appropriations or reappropriations. And my understanding is that there are huge amounts of reappropriations money through to UDC in this budget, as in previous budgets. And we should be doing a much better job of asking those

questions.

I'm also very concerned about the -- while I am pleased to some degree that we are taking on the challenges of what was NYSTAR, I am equally concerned that we are creating a new public benefit corporation, a new public authority, we're just not calling it that today. And we're talking about transferring approximately $90 million of what the Governor had proposed for his SPUR program, which I also did not support, into a new model.

But it's not clear to me the State of New York should be spending money on either. And my understanding is we may also be taking the $50 million of what would then be a defunct state agency, NYSTAR, and putting it into this public benefit corporation.

Again, the concern here that I continue to raise in every budget process is we hear constantly from businesses throughout New York State that they believe that their taxes are too high and that is a disincentive for them to come here or stay here, and that they don't have an even playing field. And

actually we hear, I think, most frequently from businesses that the primary goal for them is an even playing field.

And yet we in the State of New York continue to be taking taxpayers' money and putting it into what we call economic development funds or programs or foundations, where all we do is take taxpayers' dollars and in fact make the playing field less even with each of these. And the corporations and the businesses who can hire the most sophisticated attorneys and accountants figure out how they can get a piece of this.

But it's not necessarily in the best interests of actually ensuring more jobs for New York. And we continue to find ourselves in a situation where what we in the Legislature seem to be doing is actually establishing range wars between suburbs and cities, between towns on one side of a line versus another, specific deals for Company A, who has friends in the Legislature, and Company B, who doesn't.

And I think that there should be far more work done to really evaluate any of

these programs -- the new names, the old names, the NYSTAR versus the New York State Foundation for Science, Technology and Innovation, the questions of Excell and New York CEEs and regional innovation. Again, we come up with new names, we claim that they're new programs -- this year and last year's theme seems to be high technology -- but without really any information or, to be sincere, any knowledge about what actually works in economic development and doesn't.

And at the risk of losing my credentials as a liberal, I would argue that across-the-board tax reductions for businesses that treat everybody equally is a better model than any of these proposals that take taxpayers' dollars and pretend that we in government can have a positive impact on a market economy through our program under this name or our program under that name, and then again we never really evaluate the programs we created last year or the year before.

Jumping back to environmental issues within this bill, beyond economic development, Senator Schneiderman raised some

the concerns we ought to have about the Environmental Protection Fund and what will or will not happen. I want to reemphasize how disturbed I am that we are not addressing the Clean Water Protection/Flood Prevention Act issues in this bill.

It is confusing to me why the Senate, the Assembly and the Governor cannot come to agreement on something that we all say we agree on, and how important it is for us to truly evaluate and move forward with these wetland protections, and finally also that we could not come to agreement on language involving air fees and the potential that we now face of allowing polluters not to actually have to pay their fair share of the costs of being polluters and leave us in a situation where we are in a confused relationship with the federal government and their laws. And we should have addressed that in this bill also.

Since we're speaking briefly on the bill, I will skip the rest of my comments for now and perhaps save them for the appropriations bill. But I too, while there are good things in this bill, and things we

can be proud of, there are too many things missing and some things in there that I don't believe should be there. So I'll be voting no.

Thank you very much, Madam President.

THE PRESIDENT: Senator Krueger, you will be recorded as voting in the negative on this bill. And Senator Schneiderman as well.

Will the negatives please raise their hands.

THE SECRETARY: Those recorded in the negative on Calendar Number 397 are Senators Andrews, L. Krueger, Parker, Sabini, Savino, Schneiderman and A. Smith.

Ayes, 53. Nays, 7.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 398, by the Senate Committee on Rules, Senate Print Number 3670, an act to amend the Transportation Law and others.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 11. This act shall take effect only in the event of a chapter of the Laws of 2005.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator Schneiderman, to explain your vote.

SENATOR SCHNEIDERMAN: Thank you, Madam President.

This, the transportation language bill, I must say came as a pleasant surprise in many respects to a lot of people who were transit advocates, as I was before I was in the Senate. I'd like to think I still am.

When the process began, there was a strong sense of, frankly, it doesn't go too far to say a sense of crisis in the MTA, reflected by the chair of the MTA board, Peter Kalikow, who should be credited with calling attention to this even though it was perhaps politically inconvenient at the time, to the advocacy groups from the Straphangers Campaign, the Regional Plan Association and others, all of whom pointed to something that I raised five years ago when we did the last

MTA capital plan, which is you can't expect the system to survive if you don't provide any money for a capital plan.

We put the MTA on the brink of bankruptcy when we passed the capital plan five years ago with a zero state contribution to capital. We forced the agency to issue $22 billion of bonds, which the agency now has to pay off out of operating expenditures. That was our fault. We still have a big hole to dig our way out of.

But I must say, I have to give credit to everyone who participated, this legislation is a step in the right direction. This legislation does provide permanent -- nothing is permanent, but repeated sources of revenue on a steady basis, dedicated taxes for the MTA to pay off debt. In fact, it provides slightly more than the minimum amount that the MTA made it clear they needed.

This also takes a step in the right direction, I believe, by taking state responsibility in the form of front-door debt away from the MTA. We cannot allow the agency to issue any more debt that is to be paid off

by fare-box revenues. That's killing our system. This is a crisis for every employer in the City of New York, for every business in the City of New York. You do not build an economy in this state with a transit system that is facing further service cuts and the downward spiral of bad service, decreased ridership and decreased revenues.

So this bill remarkably -- and I think it is much improved since the Senate passed a one-house bill some weeks ago -- this bill takes on front-door debt, state support for the MTA, provides tax revenues. And I know that this is a hard lift, for people to raise taxes in this atmosphere. So I have to give tremendous credit to those who made it possible.

There were -- I must say regional prejudices exist. And I don't like them, but they exist. And I must say that there was some sense of people in the downstate area saying: Well, what's the story with this new Transportation chair? Is he one of these roads and bridges are more important than transit guys?

And the answer is in this bill. The answer is no. He's covered roads and bridges and transit. I, as a former attorney for the Straphangers Campaign, don't find any basis for suing anybody in this legislation, and that's really an extraordinary failing on my part.

I will continue to review it, Madam President. But in the interim, I'm going to vote yes. And I encourage everyone else to vote yes.

THE PRESIDENT: You will be so recorded as voting in the affirmative, Senator Schneiderman.

Senator Sabini, to explain his vote.

SENATOR SABINI: Thank you, Madam President.

I too want to say that the finished product that's the result of this bill is a good one, and I commend Chairman Libous and the other conferees for realizing -- it took a little while, but for realizing that not only can the MTA not continue to pay operating expenses through bonding -- that's what got

New York City in trouble several decades ago -- but also that the need was real, that Chairman Kalikow was not asking for pie-in-the-sky stuff but rather just making sure that the system ran in a condition that gets workers to work and people to their destinations safely and reliably. If we don't have a safe and reliable transit system within the downstate region, the economy of this state would be in peril.

So while the amounts of money and attention to things in the MTA isn't perfect, I think it was a good collaborative effort. There were people on the conference committee who were looking out for commuter railroads, for roads and bridges upstate, for upstate transit systems and for the MTA. And I think that the final process turned out to be one that was a good one.

And I want to echo the comments of Senator Schneiderman and commend Chairman Libous on his work and our colleagues in the Assembly for their work on this. It's not perfect; I wish there was more money for expansion. I don't think that the end-result

dollar figure for the Second Avenue subway makes it any closer to being a reality. I know people don't like to hear that. But I'm concerned about the federal commitment on so small a dollar figure.

But on the whole, we're a lot better off than we were two weeks ago, and I'll be voting in the affirmative. Thank you.

THE PRESIDENT: You will be recorded as voting in the affirmative, Senator Sabini.

Senator Spano.

SENATOR SPANO: Thank you, Madam President. To explain my vote.

Nothing has been more important to a commuter when you can meet them in a railroad station and they're standing there waiting for a train and it doesn't show up. Or it does show up in the summer and it's hot and there's no air-conditioning. Or it shows up in the winter and it's cold because there's no heat.

Those are just very anecdotal reasons why it's so important for us to come up with a multiyear capital plan that provides

real relief in terms of on-time performance in the efficiency of the railroad, making sure that we encourage people in the metropolitan area and the suburban counties to utilize our commuter railroad system, and at the same time pay attention to keeping our fares down.

We should give credit to the chairs of our Transportation Committees, recognizing that we do have to make tough decisions with regard to finding the revenues to pay for the efficiencies that are so necessary. But that's what we get paid the little bucks for, to be up here to make those tough decisions, to stand up for those commuters who are working hard, who leave early in the morning, get home late at night and frankly don't have time to reach out to us and say, Make sure our trains are running on time.

It's our job to represent them up here, and that's what we're doing very effectively with the passage of this entire package today.

I vote aye.

THE PRESIDENT: You will be so recorded, Senator Spano, as voting in the

affirmative.

Senator Libous.

SENATOR LIBOUS: Madam President, thank you.

And I want to thank my colleagues for all the effort and hard work that went into this five-year transportation plan.

And as the new chairman of the Transportation Committee, I got a crash course right away over the first couple of months, and certainly I want to thank the staff for their help and effort.

But what we accomplished here, and we should all be very proud, is a five-year plan that both is very effective when it comes to supporting the MTA, which is critically important to our state, and a highway, road and bridge program, along with rail, for freight, and aviation. And those components are critical for keeping our state in the forefront for economic development.

You know, as I said in some of the earlier meetings when we were first given this budget, if we looked at the amounts of money that were proposed, the dollar amounts were

frozen. They were the same as the last five years. And we all know and recognize that costs have gone up, the cost of labor has gone up, certainly gasoline and fuel costs have gone up, concrete -- I can go on and on -- steel. And in order to put New York State in the forefront, we needed to make a commitment.

Now, part of this plan is a $2.9 billion bond issue. And I bring that up because it's critical. We all decided that we did not want to do any back-door borrowing, that the right way to do this was to take it to the voters -- because we cared about accountability, accountability is the key word here -- and let the voters decide. But we will sell to them the proposal so that they can see, unlike 2000 -- unlike 2000, when they were asked to vote on a bond and didn't know what was going to be in it. That will not be the case this time. And then they can make the decision as to how we move forward in supporting this great transportation system that we have in New York State.

So, Madam President, I am very honored to stand here today and certainly

support this proposal. And again, I would like to thank the staff, the Senate staff that has been very supportive to me, and certainly all of my colleagues, those who served in the committee and those in this room who have been supportive.

THE PRESIDENT: Senator Libous, you will be recorded as voting in the affirmative.

Senator Wright.

SENATOR WRIGHT: Thank you, Madam President. Just to quickly explain my vote.

I want to extend my congratulations to Chairman Libous, because this bill is about jobs, creating jobs, because roads and bridges are essential throughout upstate New York.

And while I appreciate my colleague's prior comments about the balance, and that's certainly something we strove to achieve, and I want to credit the joint conference committee on having achieved that balance, the bottom line is transportation is critical to the economy of upstate New York. It's all about jobs, particularly in our rural regions, where we literally will drive a half

an hour, 45 minutes to be gainfully employed.

So we appreciate the effort, and we've seen the adverse impact that the cost of inflation has had on our ability to maintain and improve our roads and bridges.

So I'm very supportive of the leadership demonstrated here in this house to recognize the roads and bridge commitment and, more importantly, look forward to seeing it, over the course of the next five years, improve the upstate economy.

I'll be voting aye.

THE PRESIDENT: Senator Wright, you will be recorded as voting in the affirmative.

Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Madam President. Just to explain my vote.

THE PRESIDENT: To explain your vote.

SENATOR HASSELL-THOMPSON: I will in fact be voting for the bill. And I've heard all the accolades that everybody has given each other, and the patting on the back.

But I still think that I would like to interject the concern that I have that this bill will authorize the MTA to bond out its pension obligations. That needs to be addressed, and at least it needs to go on the record so that everybody knows that that's what's happening.

We are not able to do -- unfortunately, because we are not able to do two generals in the election in November, that this will not go before the public. But I think that we ought to -- we ought -- this is a bailout, no question. We are bailing out MTA.

And all of us who know -- the portion of the district that I represent in the Bronx is a surface district. Therefore, we need our buses. We need them to be in more than good repair. In Westchester County, as we have seen these several weeks, with this bus strike, what it means to the working class and the communities.

So certainly I am one who is not supportive of making sure that all of our transportation systems work and work well and

that we do whatever it is that we're supposed to. But when we find ourselves bailing out our authorities in this manner, I just think that it raises a specter that is not a behavior that I would like to see us continue to do.

Thank you, Madam President.

THE PRESIDENT: You will be recorded as voting in the affirmative -- in the negative, excuse me, Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: No, no, no, I'm voting in the affirmative.

THE PRESIDENT: That was my original understanding.

SENATOR HASSELL-THOMPSON: Thank you.

THE PRESIDENT: So you will be so recorded as voting in the affirmative.

The Secretary will announce the results.

THE SECRETARY: Ayes, 60.

THE PRESIDENT: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Madam President, we are not going to go to the controversial calendar at this time. So the Senate will stand at ease until 2:30 p.m.

THE PRESIDENT: The Senate now stands at ease until 2:30 p.m.

(Whereupon, the Senate stood at ease at 12:32 p.m.)

(Whereupon, the Senate reconvened at 3:22 p.m.)

ACTING PRESIDENT ROBACH: Senator Skelos.

SENATOR SKELOS: Mr. President, before we start the controversial calendar, number one, if we could have the bells rung at this time.

ACTING PRESIDENT ROBACH: The Secretary will ring the bells.

SENATOR SKELOS: Also, an announcement that there will be a meeting of the Elections Committee in Room 816 of the LOB immediately following session.

ACTING PRESIDENT ROBACH: There will be a meeting of the Elections Committee in Room 816 immediately after session.

SENATOR SKELOS: Just for the members, again, the bells are ringing, and we will commence the controversial calendar.

I believe Senator Fuschillo has a motion.

SENATOR FUSCHILLO: Mr. President, on behalf of Senator Morahan, on page number 14 I offer the following amendments to Calendar Number 259, Senate Print Number 1965, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT ROBACH: The amendments are received, and the bill will retain its place on the Third Reading Calendar.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we can now start with Calendar Number 294, by Senator Rath. I believe the Minority laid it aside, asking for an explanation.

ACTING PRESIDENT ROBACH: The Secretary will read.

THE SECRETARY: Calendar Number 294, by Senator Rath, Senate Print 1568, an act to amend the Penal Law.

ACTING PRESIDENT ROBACH: Senator Rath, an explanation has been requested.

SENATOR RATH: Surely.

This bill came about as a result of a prank that was played in one of the schools in my district maybe six or eight years ago. An envelope with white powder was placed, and of course a phone call was made. And this was really before the anthrax scares that we're all so familiar with. And the emergency vehicles rushed out, and all of the people were deployed in case this was a real circumstance and there was a serious threat.

Well, as I said, it was kids and it was pranksters. And the dollars had been spent in order to get the emergency responders there. And fortunately there were no incidents or real problems; no one was hurt. But there was, of course, a lot of cost for the emergency responders to go out.

And this bill allows the municipality or other providers of emergency services to seek restitution for their costs if something like this happens in the future.

ACTING PRESIDENT ROBACH: Senator

Duane.

SENATOR DUANE: Thank you, Mr. President. If the sponsor would yield.

ACTING PRESIDENT ROBACH: Senator Rath, will you yield?

SENATOR RATH: Surely.

SENATOR DUANE: Under present law, is not a victim entitled to go to the Crime Victims Board to get -- to be reimbursed for expenses?

SENATOR RATH: Yes, there are, Senator. And you're correct on the term "victim." But having a municipality or a first-responder unit as a victim is a different way of approaching the term "victim." And this piece of legislation clears that up.

SENATOR DUANE: And through you, Mr. President, if the sponsor would continue to yield.

ACTING PRESIDENT ROBACH: Senator Rath, will you yield?

SENATOR RATH: Surely.

SENATOR DUANE: I'm wondering, then, if perhaps taxes are actually the

funding stream that should be used to reimburse a victim.

SENATOR RATH: The feeling when we drafted the bill was that knowing that it might come back at their parents if kids did stuff like this, that it would act as a deterrent. And that we need to have a reliable source of revenue. And so coming back at the parents or the responsible parties was the feeling when we drafted this bill.

SENATOR DUANE: Through you, Mr. President, if the sponsor would continue to yield.

ACTING PRESIDENT ROBACH: Senator Rath, will you continue to yield?

SENATOR RATH: Surely.

SENATOR DUANE: I'm hoping that the sponsor could take me through the process of what happens now, in the absence of this law being passed and put into effect.

SENATOR RATH: Without this going into effect, the municipality would have to pay for any kinds of circumstances that were to happen to the responders or their equipment.

SENATOR DUANE: And through you, Mr. President, if the sponsor would continue to yield.

SENATOR RATH: Surely.

SENATOR DUANE: Again, it seems to me that funds which are held by a municipality, school, fire district, fire company or other entity, they already have funds which are paid for from tax dollars. And I'm again wondering why it is that they -- it seems that they have the opportunity to double-dip now.

SENATOR RATH: If, in the circumstances that I described a few minutes ago in my district, if there had been a serious physical injury to a responder or there had been a piece of equipment that was damaged, or even the fact that if it's a hazmat unit that goes out, some of the pieces of equipment, clothing, et cetera, that they use, they can use them only once.

And this indeed was a prank. And the message here is that pranksters are not allowed to get away with this kind of activity.

SENATOR DUANE: And through you, Mr. President, if the sponsor would continue to yield.

ACTING PRESIDENT ROBACH: Senator Rath, will you continue to yield?

SENATOR RATH: Surely.

SENATOR DUANE: I would put forward that false alarms, though, you know, ranging from unpleasant to dangerous, responding to them is actually part of the job of responders, of a fire department or an emergency vehicle. So why is it that we would take this kind of situation and set it aside for an exceptional use of the law and remuneration to a victim?

SENATOR RATH: When this piece of legislation was drafted -- again, in response to a circumstance in my district -- there are other ways, as you point out, that the costs could be recouped.

But this would put in place what I feel is a much better way of recouping the cost because it is a message of deterrence to anyone who thinks that they can place a bomb or an envelope that looks like anthrax or do

anything that would cause a first-responder unit to rush to the scene, with the possible jeopardy of life and limb, because someone thinks it's funny or they want to get a day off of school or they want to scare a whole community by sending -- let's say someone sent white envelopes filled with a dusty substance to every one of us. I think we would be very concerned about what would happen if we had to shut down state government in order to have everything cleaned and checked through. Who would pay for it?

If someone is convicted. Please note that this is if someone is convicted.

SENATOR DUANE: Mr. President, on the bill.

ACTING PRESIDENT ROBACH: On the bill.

SENATOR DUANE: I believe that we already have deterrents in place for offenders, and I would even say that the deterrents that are in place for juvenile offenders are already extremely sharp and harsh.

And in fact that a juvenile doesn't

get the chance to go to Family Court and have that judge decide whether or not he or she should keep the case in their courtroom -- instead of the system that we have here where a young person is sent to criminal court and the criminal court judge gets to make the decision -- I think is frankly inhumane and not -- I think it's something that should be changed in our law.

But that potential for harsh penalty that could be given out by a criminal court judge I believe is a strong enough deterrent.

I've said this before, that I believe that the reason we pay taxes is exactly to pay for these kinds of situations -- false alarms, emergencies, whatever the situation is. That's what we pay our taxes for. You know, crime victim remuneration is meant for person-on-person crimes, not property crimes. And that has been our philosophy, and I don't see any reason to change it.

I could also see a situation where the family of a kid who had to -- when there

was, you know, a large expense to the response, that kind of money could bankrupt a family.

I believe that the deterrents in place are beyond more than adequate to deter a young person from committing this kind of crime. And for that reason, I'm going to vote no on the bill, both because, as I say, I think that's what our tax dollars should be used for, and also because I think we should be -- that we should not be piling on our already too harsh laws against young people.

Thank you, Mr. President.

ACTING PRESIDENT ROBACH: Does any other member wish to be heard on the bill?

The debate is closed.

The Secretary will ring the bell.

Read the last section.

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

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 294 are

Senators Andrews, Duane, Hassell-Thompson, Montgomery and Parker.

Ayes, 56. Nays, 5.

ACTING PRESIDENT ROBACH: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, I believe there's a substitution at the desk, if we could make it at this time.

ACTING PRESIDENT ROBACH: The Secretary will read.

THE SECRETARY: In relation to Calendar Number 271, Senator Johnson moves to discharge, from the Committee on Finance, Assembly Bill Number 555C and substitute it for the identical Senate Bill Number 555E, Third Reading Calendar 271.

ACTING PRESIDENT ROBACH: Substitution ordered.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you please call up Calendar Number 271 at this time.

ACTING PRESIDENT ROBACH: The Secretary will read.

THE SECRETARY: Calendar Number 271, substituted earlier, Assembly Budget Bill, Assembly Print Number 555C, an act making appropriations for the support of government.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT ROBACH: Senator Johnson, an explanation has been requested.

SENATOR JOHNSON: This is the budget bill companion to 3669, which passed yesterday or earlier today.

And this is a budget bill that has the money for all the Article VII factors in the other bill: transportation, economic development, and environmental conservation.

Thank you.

ACTING PRESIDENT ROBACH: Senator Krueger.

SENATOR LIZ KRUEGER: Thank you. On the bill.

ACTING PRESIDENT ROBACH: On the bill.

SENATOR LIZ KRUEGER: So again the dilemma, assuming we are passing this bill

today and it's agreed upon in both houses, as we know, that we made some progress from the original Governor's proposal.

I am delighted to see that we have restored the funding for housing preservation programs, both urban and rural, in the State of New York. It's a critically important program in every community.

I am very pleased that we put in $25 million capital for expanded housing programs. Last year we all felt very good when we put $57 million in, only to see the Governor veto those monies out.

So it is with optimism, I suppose, that I hope that those monies will remain in the budget when there is a formal agreement made. Because in fact, for the record, the State of New York has increased its funds to expand affordable housing by technically, statistically nothing for the last twenty years. Occasionally we get another million here or a million there.

But I don't believe there's anyone who the State of New York who doesn't recognize the importance of expanding the base

of affordable housing and the crisis level that it is at, not only in my City of New York but in the Hudson Valley and in Long Island and in other sections of the state.

And so the fact that I am pleased to see $25 million additional in capital money to expand potential models for affordable housing is in some degree a statement also of my disappointment that in the 21st century, after decades of failing to address the problems we ought to of expanding affordable housing and in fact replicating successful programs, that in fact the best we can do today is putting back some money for housing preservation that was lost last year and putting $25 million into capital that I hope we will see staying in the budget after we complete a three-way negotiation with the Governor.

And yet I want to talk about the fact that there's so much more we should be doing in housing and that we're not. And there's no other section in the budget where we're going to see any additional money for housing.

One, we actually have documentation that when you talk about economic development, one of the models that works is building housing. It creates immediate jobs in construction. It creates long-term revenue to communities through expanded -- an expanded housing base of taxpayers. It ensures that working people can remain living in communities where they hope to work.

It is one of the real issues that the business community looks at when they make decisions about whether to move into an area of the state or leave an area of the state: Is there housing that their workers can afford.

And as I often explain to businesses in my own community when I tell them why they should care about the affordability of housing, I explain, one, that if they don't have any workers who can afford to live near them, they won't have good workers. And, two, if everybody is spending all their disposable income on housing, whatever it is that they, the business, are trying to sell, nobody will have any money to

buy it from them.

So the fact is when we talk about economic development, and we do a lot of that in the state budget, there's very few areas where I actually find myself agreeing with the model of spending taxpayers' dollars to support specific parts of the economy through a business model. But building housing is one of the places that has in fact been documented, time in and time out, to have a multiplier effect and is a win-win for all of our communities.

So I'm basically making this speech saying what a shame that we only see $25 million in the state budget for additional housing, after decades of seeing no increases. What a shame that if we spent more time really looking at the monies we spend in our budget, that we might not find that some of the monies we've decided to spend in other ways we should be spending on expansion of housing.

We should be looking at a Mitchell-Lama II program. We should be looking at expanding the successful New York/New York supportive housing programs

that we have talked about for years but not put any money in, that addresses the needs of not only expanding affordable housing but also addressing the needs of people who are on SSI and SSD, people who are mentally ill, people who are coming out of our prisons, people who are on the streets of our towns because they're homeless.

And so what a shame that that's all we're talking about, $25 million. And yet I appreciate that it's there.

I also think that this bill doesn't go far enough in a number of other areas that we had talked about earlier today when we were dealing with language bills. Again, I supported the transportation bill, but no one should imagine that we've done enough four public transportation. And that we're still not going to be facing the problems that those of us who live in New York City know our constituents face every day. Our fares go up on our buses and our subways, our token booth clerks aren't there anymore, increasing safety problems underground. And we seem to have breakdowns in our system on a daily basis.

So we also, in this appropriations bill, are addressing some of the capital needs of public transportation, but please don't think that anyone should go home saying we solved that problem. We did not. We -- as I think one of my colleagues said earlier today, we averted perhaps a major crisis, but we have not addressed what we should.

So I am struggling about whether to vote for the bill, because it doesn't go far enough in important areas. And yet it is better than the bill that we voted on I believe two weeks ago. It is better than the bill that the Governor offered us.

So I will vote for this bill with hesitancy, having realized that a budget done on time is perhaps -- even a bad budget done on time is better than a bad budget many months late. And perhaps we have more opportunities over the next few months to go back and look at the progress we made and the progress we failed to make and deal with some of those issues between now and the end of session.

Thank you, Mr. President.

ACTING PRESIDENT ROBACH: Can we have a little order in the chamber, please.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you.

I concur in much of what Senator Krueger said. I would also like to add that I'm very happy that we have made improvements in several areas over the bills passed in the Senate, the one-house bills, a few weeks ago. We have restored money for the Hudson River Park that was not in the bill we voted on before. We've restored money for brownfields.

Obviously the most significant gap here, in addition to the issues that Senator Krueger raised, is the Environmental Protection Fund. And I will support this legislation with the understanding that we are going to continue negotiations, that we are not going to consider the budget complete until we have dealt with that critical issue. I gather that is our position in this house. I'm confident that's the position of the Assembly.

What the Governor proposed, what's unacceptable, I'm supportive of the

Legislature attempting to do a better version. But we cannot honestly say we have finished the budget in the area of environmental protection until we address that issue.

So I will support this bill, but with the understanding that we are going to deal with the looming problem of the need to address most of the environmental issues that we address in this Legislature through the EPF. Let's get that on the table, let's keep the negotiations going. And whatever is going on on the second floor, we can't allow this session to end without funding this critical program.

Thank you, Mr. President. I will be voting yes.

ACTING PRESIDENT ROBACH: Does any other member wish to be heard on the bill?

The debate is closed.

The Secretary will ring the bell.

Read the last section.

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

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT ROBACH: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, is there any further business to come before the Senate?

ACTING PRESIDENT ROBACH: There is none.

SENATOR SKELOS: If you would recognize Senator Schneiderman for a petition and bill out of committee.

ACTING PRESIDENT ROBACH: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

I have a motion at the desk. I would like to have it called up at this time.

ACTING PRESIDENT ROBACH: The Secretary will read.

THE SECRETARY: Senate Print 1967, by Senator Schneiderman, an act to amend the Workers' Compensation Law.

SENATOR SCHNEIDERMAN: Thank you.

Mr. President and colleagues, this is a motion to bring to the floor a bill to raise the maximum payment for workers' compensation claims from $400 per week to the state's average weekly salary and to raise the disability payment from $170 per week to the state's average weekly salary.

We have attempted to address some issues relating to the working poor in this state. But until we deal with the inadequate workers' compensation and disability payment system, we are leaving millions of New Yorkers in danger every day of being thrown into poverty. You cannot support a family on $400 a week.

If you are in most other states in the country, you have a wage that is equal to or greater than the average weekly salary, calculated based on the statewide average. In New York, in New York we now are at the bottom of the pile. The workers' compensation benefit currently is 51 percent of the average weekly wage.

Now, if you look at states that we consider ourselves to be more progressive

than, in many cases, Mississippi is at 64 percent; Arizona, 57 percent; Georgia, 55 percent. New York's maximum benefit, which hasn't changed since 1992, puts us at the bottom of the barrel. When you compare the cost of living in this state to the amount we pay in workers' compensation, it is the worst in the country.

We can't adjourn this session without dealing with this issue. We did last year raise the minimum wage, which resulted in immediate benefit to millions of New Yorkers. This year let's change the workers' compensation and disability system. It is lower than any of the neighboring states. And quite frankly, as both a matter of economic policy and a matter of morality, it's an obscenely low amount.

This is a high priority for the state AFL-CIO. It is a high priority for many members of the clergy in this state. And as we did with the minimum wage, it's time to make a change.

We haven't changed it since 1992. Let's address it this year. I urge everyone

to support this motion, bring this bill to the floor. Let's change the workers' compensation and disability laws this year and send a message that New York State is not attempting to grow businesses on the backs of disabled workers. That is a travesty.

And if you put money into these people's pockets, I assure you, it's all spent right here in New York, so it's good for the economy as well.

Thank you, Mr. President. I urge everyone to vote yes.

ACTING PRESIDENT ROBACH: All those Senators in favor of the petition please signify by raising your hands.

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 ROBACH: The petition is not agreed to.

Senator Skelos.

SENATOR SKELOS: Thank you, Mr. President. There will be a conference of the Majority tomorrow at 10:00 a.m.

And there being no further business to come before the Senate, I move we stand adjourned until Thursday, March 31st, at 11:00 a.m.

ACTING PRESIDENT ROBACH: On motion, the Senate stands adjourned until 11:00 a.m. Thursday, March 31st.

There will be a Majority conference tomorrow at 10:00 a.m., and session will start at 11:00 a.m.

(Whereupon, at 3:56 p.m., the Senate adjourned.)