NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

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April 5, 2005

3:06 p.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will please come to order.

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

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

THE PRESIDENT: With us this afternoon to give the invocation is the Reverend Karl Eastlack, pastor of Eastern Hills Wesleyan Church, in Clarence.

REVEREND EASTLACK: It's an honor to be here this afternoon, and especially to greet my home senator, Mary Lou Rath.

And let's just bow our heads and pray together, shall we.

Dear God, I want to first of all thank You that I can proclaim we are not alone today here, that there is a sense in which, while we are physical beings, we are also spiritual beings. And with that dual existence, we understand that You are present with us and we thank You for that. There have been many times that we've had to call on You

and have our hearts rely on You.

We thank You today that You are going to be with the McGee family in their time of loss and struggle. We pray that You would be what You are best: You are the God of comfort. Be that to her husband and family.

And we thank You that on this day, as this great body gathers to do the business of New York State, we thank You that You will grant to this body both a good head and a good heart, both to have wisdom and compassion and to serve our wonderful state with humility.

And so we ask You to come and help this proceeding be good, because we gather now in Your name.

Amen.

THE PRESIDENT: With us also this afternoon is the Reverend Peter Young, from Blessed Sacrament Church in Bolton Landing, who needs no introduction.

REVEREND YOUNG: As a request of the members: The blessed day of divine mercy, a day of blessed connections, our saintly bird of peace of peace flies to eternity, Pope John

Paul II into the arms of God.

Blessed is thy soul forever, the most traveled servant of God. Leaving a legacy of peace and freedom, a righteous man has accepted to die at the call of the divine.

Nine days of mourning begin. The whole world will mourn, the months to come, the great loss of the beloved philosopher, compassionate and humble intellectual, sublime teacher of solidarity for all of the circles of the whole world.

We learned about community and responsibility and about forgiveness, about loving our enemies and even those who hurt us. We mourn, we pray, and we celebrate his greatness and his reunion with God.

Amen.

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Monday, April 4, the Senate met pursuant to adjournment. The Journal of Sunday, April 3, 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: If we could return to reports of standing committees, I believe there's a report at the desk.

THE PRESIDENT: Reports of standing committees.

The Secretary will read.

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

Senate Print 3686, by Senator Flanagan, an act making an appropriations to the State Board of Elections;

And Senate Print 3937, by the Senate Committee on Rules, an act to amend the

Insurance Law.

Both bills ordered direct to third reading.

THE PRESIDENT: Senator Skelos.

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

THE PRESIDENT: All in favor please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(Response of "Nay.")

THE PRESIDENT: The report is adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could adopt the Resolution Calendar, with the exception of Resolutions 1120, 1205 and 1262.

THE PRESIDENT: All in favor of so adopting the Resolution Calendar please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The Resolution

Calendar is so adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could take up Resolution 1120, by Senator Bruno, have the title read and move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Bruno, Legislative Resolution Number 1120, honoring and recognizing Thomas Y. Hobart, Jr., for 33 years of service to labor throughout New York State.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: If we could adopt the resolution and put all the members on the resolution. If anybody wishes not to cosponsor it, they should notify the desk.

THE PRESIDENT: Any member who does not wish to cosponsor the resolution, please notify the desk.

All in favor of adopting the resolution please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could take up Resolution 1205, by Senator Marcellino, have the title read, move for its immediate adoption, and also open it up for cosponsorship.

THE PRESIDENT: Any member who does not wish to cosponsor the pending resolution, please notify the desk.

The Secretary will read.

THE SECRETARY: By Senator Marcellino, Legislative Resolution Number 1205, commemorating the 100th Anniversary of the National Audubon Society.

THE PRESIDENT: Senator Marcellino, I'll get order for you.

Go ahead, Senator.

SENATOR MARCELLINO: Thank you, Madam President. I do appreciate the order.

Madam President, this resolution is here to commemorate the 100th anniversary of one of the premier conservation groups in the

country. The National Audubon Society is well-known for all of the work that they've done for conservation, the environment, protecting and preserving our natural resources.

Everybody knows that they are here for our fine feathered friends and that they do protect birds. But they also, in so doing, protect the habitats in which these creatures live and survive. And by so doing, they make our world a better place, they make our communities and our environments more liveable.

It is a marvelous organization. Anytime you need help, one needs but to contact Dave Miller, their executive director, who's a fantastic person and a great fighter for the environment -- but also a reasoned individual, one you can talk to, one you can get advice from, one who understands how things work in a state capital, in a national capital, and in a local community.

He's all over, and he's everywhere. He's been a very good friend to me. As chair of the Environment Committee in the Senate,

I've been able to call on David and the Audubon Society for advice and help, and I've never been turned down and never been turned away, and the advice has always been fantastic.

They ought to be congratulated for perpetuating this great organization. Membership is nearly 50,000 members, with 30 chapters. It is a fantastic group. We've done much good legislation together.

Now, Madam President, I do know that we have a rule in the Senate that we're allowed to acknowledge people who are sitting in the gallery from an organization like this. And Lord knows I would never not obey the rules of the Senate.

But if I were a different person, I might acknowledge the presence of Constantine Sidamon-Eristoff, who's the chair of the Audubon Society; David Miller, the executive director; Margot Ernst; Geoffrey Cobb Ryan; Gini Stowe; Gladys Goldmann; Alice DelBosco; Oakes Ames; and Alex Zagoreos. If I mispronounced any names, it's the other guy that did it, it wasn't me.

(Laughter.)

SENATOR MARCELLINO: Madam President, the Audubon Society is to be congratulated. May they be there at least another hundred years to preserve and protect our environment. God bless you.

Thank you.

THE PRESIDENT: Senator Golden.

SENATOR GOLDEN: Thank you, Madam President.

I'd like to thank the sponsor of the resolution, Senator Marcellino, the chair of the Environmental Conservation Committee.

I'd like to thank my colleagues in recognizing this great anniversary today, the hundredth anniversary of the Audubon Society.

And I too would like to extend my welcome and thanks to the Audubon Society for being here today and welcome Alex Zagoreos, from Brooklyn, a member of the Audubon Society, on this very, very important day.

My district is home to many different species of birds. We have a substantial bird migratory path stretching along the Gateway National Park, right through

Garrison Beach and Marine Park.

And we have a unique feature in my district, in that along with the many different types of birds that you would never see in the inner city -- unless the Gateway National Park was there -- I have a strong green parrot population that actually exists year-round. And they do a fine job in maintaining that life span of the green parrot in my community.

And I'd like to thank the Audubon Society for making that possible and thank them again for being here this day celebrating their hundredth anniversary.

Thank you again, Carl Marcellino.

THE PRESIDENT: Senator Andrews.

SENATOR ANDREWS: Thank you, Madam President.

I'd like to join with Senator Marcellino and Senator Golden in congratulating the Audubon Society on their hundredth anniversary. Even though I come from a district known as Central Brooklyn, where you might not think we have that many birds and trees, we have one thing that's very

unique to our district, in that in a place known as Prospect Park we have the only Audubon Center in the East Coast located there, where people and tourists can come there and look through a virtual reality machine and pretend that they're one of the hawks, one of the few hawks that we have in Brooklyn.

So I just wanted to let all of my colleagues know that in Brooklyn we do have an Audubon Society, the only one -- Audubon Center, I should say, the only one on the East Coast. And all of you are welcome to come visit when you're in Brooklyn to see it.

And once again, congratulations to the Audubon Society.

THE PRESIDENT: Senator Johnson.

SENATOR JOHNSON: Madam President, I'd like to join in commemorating the hundredth anniversary of the Audubon Society.

As the predecessor chairman of the Environmental Conservation Committee, predecessor to Senator Carl Marcellino, I had the opportunity to apprehend Dave Miller

first. And it was a little job to convince him that Republicans could also be environmentalists, but once we got over that hump, we had a great relationship.

And many measures we sought to pass, we received the support of Audubon. Because we all know that birds, like other creatures, have to live in a natural environment to be successful and continue to be enjoyed by the populace. And he certainly helped us in every respect when I was the chairman, and he's still doing so.

And as you say, you can't acknowledge anybody, but if anybody named Dave Miller is in the audience, I want him to know that I appreciate what he did and how he has continued to work with my successor as the chairman.

Thank you.

THE PRESIDENT: Thank you, Senator Johnson.

And I would echo your sentiments. If Mr. Miller and Mr. Eristoff and company are in the audience, that certainly my work with Quality Communities was enhanced by their

excellence and dedication to environmental interests.

Congratulation and best wishes to the Audubon Society.

On the resolution, all in favor please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Best wishes for many, many, many more hundreds of years of your pursuits.

(Applause.)

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Madam President, there's a Resolution 1262, by Senator Larkin, at the desk. Could we have the title read and move for its immediate adoption.

And Senator Larkin would like to open that resolution up for cosponsorship.

THE PRESIDENT: Any member who does not wish to cosponsor this resolution, please notify the desk.

The Secretary will read.

THE SECRETARY: By Senator Larkin, Legislative Resolution Number 1262, mourning the death of Glenn Davis, former Army football star and winner of the 1946 Heisman Trophy.

THE PRESIDENT: On the resolution, all in favor please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, there's a Resolution 1271, by Senator Meier, at the desk. I ask that the title be read and move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Meier, Legislative Resolution Number 1271, honoring the Volunteer Center of the Mohawk Valley, Incorporated, and paying tribute to its 2005 Volunteer of Excellence Award recipients.

THE PRESIDENT: On the resolution, all in favor please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, would you please recognize Senator Bonacic.

THE PRESIDENT: Senator Bonacic.

SENATOR BONACIC: Thank you, Madam President.

At the session of April 4th I was marked absent and excused for three votes on the contested calendar as a result of touring, with the Governor, the flooding and the disaster in my Senate district.

On those three votes, if I could have voted: Senator LaValle's bill, Senate Number 838A, I would have voted in the affirmative; Senator Volker's bill, Senate 3256, I would have voted in the affirmative; and, last but not least, Senator Skelos' bill,

Senate 3157, I would have voted in the affirmative.

THE PRESIDENT: The record will so reflect your statement, Senator.

SENATOR BONACIC: Thank you, Madam President.

THE PRESIDENT: You're welcome.

Senator Skelos.

SENATOR SKELOS: Would you please recognize Senator Parker.

THE PRESIDENT: Senator Parker.

SENATOR PARKER: Madam President, I want to state for the record that my votes on Calendar 396, Senate Bill 3668, and Calendar 270, Senate Bill 551B, I erred in my vote.

Had the Senate permitted me to change my vote last Thursday, I would have changed my vote to be recorded in the affirmative on Calendar 396, the health and mental health appropriations bill, and to be recorded in the negative on Calendar 270, the legislative and judiciary budget.

Thank you.

THE PRESIDENT: The record will

so reflect your statement, Senator.

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 348, by Senator Volker, Senate Print 3272, an act to enact the Criminal Procedure Law Reform Act of 2005.

SENATOR SCHNEIDERMAN: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 372, by Senator Maziarz, Senate Print 3214, an act to amend the Civil Service Law, in relation to leaves of absence.

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, 59. Nays, 1. Senator Meier recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 377, by Senator Fuschillo, Senate Print 1430, an act to authorize the French Speaking Baptist Church.

THE PRESIDENT: Read the last section.

SENATOR SKELOS: Lay it aside for the day.

THE PRESIDENT: The bill is laid aside for the day.

The Secretary will announce Calendar 372 results.

THE SECRETARY: In relation to Calendar Number 372: Ayes, 57. Nays, 3. Senator DeFrancisco, Meier and Winner recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 381, by Senator Flanagan, Senate Print 2186, an act to amend the Real Property Tax Law, in

relation to authorizing.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the same date as Chapter 753 of the Laws of 2004.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 404, by Senator Volker, Senate Print 3273, an act to amend the Mental Hygiene Law, the Correction Law, and the Criminal Procedure Law.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 12. This act shall take effect the first of January.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN:

Announce the results.

THE SECRETARY: Ayes, 58. Nays, 2. Senators Duane and Montgomery recorded in the negative.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 415, by Senator Nozzolio, Senate Print 1324, an act to amend the Correction Law, in relation to requiring.

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT MORAHAN: The bill is laid aside.

SENATOR SKELOS: Lay it aside for the day.

ACTING PRESIDENT MORAHAN: The bill is laid aside for the day.

THE SECRETARY: Calendar Number 419, by Senator Spano, Senate Print 3126, an act to amend the Executive Law, in relation to establishing.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 427, by Senator Flanagan, Senate Print 3517, an act to amend the Election Law, in relation to providing.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 428, by Senator Flanagan, Senate Print 3604 --

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT MORAHAN: The bill is laid aside.

THE SECRETARY: Calendar Number 441, by Senator Skelos --

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

ACTING PRESIDENT MORAHAN: The bill is laid aside for the day.

THE SECRETARY: Calendar Number 446, by Senator Flanagan, Senate Print 3686, an act making an appropriation to the State Board of Elections.

ACTING PRESIDENT MORAHAN: Read the last section.

THE SECRETARY: Section 2. This act shall take effect April 1, 2005.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

SENATOR HASSELL-THOMPSON: Lay it aside.

ACTING PRESIDENT MORAHAN: The bill is laid aside.

THE SECRETARY: Calendar Number 447, by the Senate Committee on Rules, Senate Print 3937, an act to amend the Insurance Law, in relation to authorizing.

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT MORAHAN: The bill is laid aside.

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

SENATOR SKELOS: Thank you, Mr. President. If we could ring the bells at this time, and we'll start the controversial calendar within two minutes.

ACTING PRESIDENT MORAHAN: The Secretary will ring the bells.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could go to the controversial reading of the calendar and start with Calendar Number 428, by Senator Flanagan.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: Calendar Number 428, by Senator Flanagan, Senate Print 3604, an act to amend the Election Law, in relation to creating a statewide voter registration list.

ACTING PRESIDENT MORAHAN: Senator Flanagan, I believe an explanation has been requested.

SENATOR SCHNEIDERMAN: Explanation, please.

ACTING PRESIDENT MORAHAN: An explanation has been requested, Senator Flanagan.

SENATOR FLANAGAN: Thank you, Mr. President.

Very briefly, this bill for the first time creates a statewide voter registration list. This is going to combine all the information that are in our counties all across the state of New York.

There are a lot of details to the bill in terms of how the counties will interact with the state. But it is -- it's a very significant piece of legislation, it's one of the fundamental underpinnings of the

federal HAVA act from 2002.

And I think the most important thing to recognize is -- two things. One, we're trying to make sure that everybody who votes, that their vote counts the right way. This will give us an opportunity to look at statewide registrations and see whether or not we have duplicate registrations in one county versus another. And we haven't had that up until now. So that is a major, major change.

The second thing is that we are doing everything possible and directing the State Board of Elections -- and all of our members pay attention to this -- in terms of how we interact with the counties. This is not Big Brother, the State of New York, coming up from on high saying it's got to be our way or the highway.

There is language in this legislation which specifically says we will have the official statewide list but, to the maximum extent practical, if there are systems that are in place right now, if they can interface with the state system, that's the way it should be.

This is not in any way, shape or form a mandate or a burden on the counties. In fact, it's just the opposite. It's recognition of the issues they have to deal with, and frankly it'll be a way to help them save money.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: I apologize, Senator Flanagan. I ran out and had to run back in because I thought that we were going to do these in sequence. And so I had asked this bill to be laid aside.

I just have a couple of concerns, and I have not been -- I was not able to make the committee meeting today because of failure to be notified. Therefore, I did not have an opportunity to have discussed this bill in committee. That's why I just had a couple of things I wanted to know.

Are you aware of some of the --

ACTING PRESIDENT MORAHAN: Senator Flanagan, will you yield for a question?

SENATOR HASSELL-THOMPSON: Yes, would the Senator yield.

SENATOR FLANAGAN: Yes. Yes.

SENATOR HASSELL-THOMPSON: Thank you.

Senator, are you aware of some of the opposition to this particular bill, particularly by the Brennan Center and some of the other what we call good government groups?

SENATOR FLANAGAN: I would say that, yes, I am aware of the opposition. It is without merit and ill-founded.

SENATOR HASSELL-THOMPSON: Okay.

SENATOR FLANAGAN: Senator, I know that because all these issues were worked out in the conference committee on a bipartisan basis in both houses. And I'm very confident that we have provided adequate protection for the state, for our county boards of election and for every registered voter across the State of New York.

There are points in that memo that are just dead wrong. Their first memo was wrong, their second memo continues to be wrong. And if they want to hold themselves

out as good government groups, I think they have a more fundamental obligation to be conversant with state election law and federal law.

SENATOR HASSELL-THOMPSON: On the bill.

ACTING PRESIDENT MORAHAN: Senator Hassell-Thompson, on the bill.

SENATOR HASSELL-THOMPSON: One of the concerns that all of us have expressed at one time or another about HAVA is that there's a large segment of the population who will be disenfranchised from voting. Part of that group are those who lack sight. And we have requested for the last three years, as we have discussed HAVA, that we select a kind of voting machine and voting equipment that will allow those who lack sight to be included.

The other thing that I express some serious concerns about is that when we select voting machines, we want to be sure that we do so with a paper trail.

And again, I have not been -- I wasn't on the committee. This is not a criticism of the committee; I wasn't on the

committee. So I may be off base in terms of the concerns that I'm raising because these may be issues that were raised. So the reason I asked that this bill be laid aside was so that I could have the opportunity to express those concerns.

For two years we have been attempting to get a bill that would respond to those persons who are blind and who lack sight, and nothing that I have heard so far leads me to believe that the kind of equipment that we are leaning toward will in fact respond to those needs.

I am not suggesting that every machine does have to be equipped in this manner, but certainly every voting area should contain at least one for those persons who lack sight. And there has been nothing in the discussions to lead me to believe that that is an issue that's been addressed by the machines to which we are leaning.

So -- and I understand from one of my colleagues who does sit on the committee that that's still pending. But I also know that the window of opportunity is closing on

us very, very quickly. And I would like not to have that discussion off the table. I would hope that that discussion continues to be had.

If I had voted in committee, I would have voted without recommendation. However, I believe that I will be supporting the bill.

Thank you.

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

Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President. I would just like to ask if the sponsor would yield for a question.

ACTING PRESIDENT MORAHAN: Senator Flanagan, will you yield?

SENATOR FLANAGAN: Yes.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR MONTGOMERY: Senator Flanagan, I just want to ask a general question about the process by which the information that is entered is secured.

As you know, there's quite a bit of

detail in terms of information on each voter that the Board of Elections keeps. And it's my understanding that it's basically accessible by anyone anywhere in the world.

And so I'm just wondering if there was any addition in the legislation regarding the fact that that information should be somehow secured except for minimal information that is available and accessible by the public, since there's so many issues around identity theft in relationship to the Internet access.

So I'm just wondering if there's anything in this legislation that requires the Board of Elections to secure at least the private information that they keep on voters.

SENATOR FLANAGAN: I would answer in three different respects.

Under existing law, you can call my Board of Elections right now, find out when I was born, where I live, where I lived before, how many times I've voted, how I'm registered. All that is public information. That doesn't change. So that general type of information was available, is available now, and will

continue to be available under this bill.

There is language in the bill that allows for the State Board of Elections to coordinate identification with other agencies. But the primary concern that you raise is not addressed by the language in this bill per se. Right now there's a prohibition under federal law to release that type of privacy information that you're talking about. I don't want that given out, and I know you don't want it given out.

But right now, under existing federal law, that type of activity is prohibited.

SENATOR MONTGOMERY: And, Mr. President, just a comment and continue to --

ACTING PRESIDENT MORAHAN: Does the Senator continue to yield?

SENATOR FLANAGAN: Yes.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR MONTGOMERY: I realize that is the case, that the access to all information about all registered voters is available to anyone anywhere in the world who

can access the Board of Elections records.

And I guess my question is, did the committee, the conference committee see fit to place any restrictions, require that there be any restrictions vis-a-vis the federal law, as you say, or are we just continue to leave this information wide open? And now of course it's universal, because we now create one list as opposed to having at least, you know, locally based lists of voters.

So my question and my hope was that you would see fit to place some restrictions on it and to sort of secure the information a little bit better than we have done in the past.

But I'm supporting the legislation, at any rate. But it's just, I think, important that we consider the fact that we're all extremely vulnerable, I think everyone who becomes a registered voter, in terms of the possibility and the potential of identity theft.

So thank you, Mr. President.

ACTING PRESIDENT MORAHAN:

Senator Dilan.

SENATOR DILAN: Yes, thank you, Mr. President. On the bill.

ACTING PRESIDENT MORAHAN: Senator Dilan, on the bill.

SENATOR DILAN: I just rise to indicate that I'm the minority member on the HAVA conference committee. I believe on this bill we held about three public meetings where advocates were present. And at that time there appeared to be no opposition to this particular bill. And, you know, today we get a memo in opposition.

And I just really want to thank Senator Farley and Assemblyman Keith Wright, because this is an agreed-upon bill from the HAVA conference committee.

Thank you. And I'll be voting yes.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Krueger.

SENATOR LIZ KRUEGER: Thank you.

If the sponsor would yield, please, Mr. President.

ACTING PRESIDENT MORAHAN: Senator Flanagan, will you yield?

SENATOR FLANAGAN: Yes.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR LIZ KRUEGER: Thank you.

And I was also not notified in time of the Rules Committee today, so I'm sorry I could not be there to ask the questions.

One of the concerns that has been raised that I would just like clarification on is the process by which a voter would be purged out of a statewide voter registration system. My understanding is you will still continue to register to vote through your local board of election, and that information would be transferred there into a statewide system. Is that correct?

SENATOR FLANAGAN: Yes. Let me -- perhaps an example would be helpful.

SENATOR LIZ KRUEGER: Sure.

SENATOR FLANAGAN: Let's assume you are registered in New York County and then you register in Suffolk County. And now we have a statewide list, and that information is all compiled and put together and it's out there for everybody's review. The Suffolk

County Board of Elections would notify New York County that whomever that person is is now double-registered or dual-registered, however one may describe it.

What happens is that the person at the original place of registration would be placed on inactive status -- not purged, inactive status -- which lasts for up to four years. So anyone who thinks that we're just taking people off [snapping fingers] is wrong. There's specific language in the bill to protect against that.

There are three relevant sections, 5-708, 5-712 and 5-213, all of which tie into the National Voter Registration Act. So no one is just simply thrown out the door.

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

ACTING PRESIDENT MORAHAN: Senator Flanagan, will you continue to yield?

SENATOR FLANAGAN: Yes.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR LIZ KRUEGER: Thank you.

I appreciated the answer, and it does answer the question if it's a moving voter.

I'll use my own example to ask the question, then. So I've registered to vote or I believe I've registered to vote; I've filled out the information. And I'll use myself as an example. I am born Elizabeth Krueger. I am in the Social Security system for taxpayer ID as Elizabeth Krueger. I have been registered to vote as Liz Krueger since the year 2000. Prior to that, I was registered to vote as Elizabeth Krueger but, since I was planning to run for office under the name I've used my whole adult life, Liz, I was advised to change my voter registration to Liz, the name I was legally going to run as. Okay?

And many women and many men have nicknames, by the way, obviously. And women sometimes have the added complication of hyphenated last names through marriage or different use of maiden name and married name. In my case, it's a different first name.

If someone did a run through a centralized database, as I assume they would,

to search for -- either to put me on as -- let's say I hadn't registered and I was registering under Liz Krueger, and they found another person, Elizabeth Krueger, under the same Social Security ID, would it throw me out or would it contact my local board for clarification, and then would my local board contact me?

I mean, what would happen in this system to someone who appeared to be two different names attached to the same Social Security number and the same address, the same date of birth, the same ED/AD?

SENATOR FLANAGAN: It's very hard to run for election. Just getting one's name straight is a challenge, let alone getting registered and getting out there to vote.

I would respectfully suggest two things. I don't think a person would be thrown out. I think, worst case, they might be placed on inactive status. You are matching numbers. And I know this is -- this is part of the answer.

One of the things that's going to have to be done in conjunction with this

legislation is that the State Board of Elections is going to have to promulgate rules and regulations for the proper implementation and administration of this legislation. That will be subject to a public comment period, as you well know. That will be subject to a vote of the state board. And I would imagine that there's going to be a fair amount of interplay and dialogue on those subjects.

Do I think somebody in your example would be thrown off the list? No.

SENATOR LIZ KRUEGER: Perhaps because of my being in elected office.

I'm sorry, Mr. President, if, through you, the sponsor would continue to yield.

ACTING PRESIDENT MORAHAN: Senator Flanagan, would you continue to yield?

SENATOR FLANAGAN: Yes.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR LIZ KRUEGER: I thought my own example was not as complex as it could be, because I could have then used a married name, which many women of course change their

name through their voter histories when they marry or may become widowed or divorced and go back to using their maiden name.

I guess the simpler question is, is there a mechanism in this bill that requires that to prior to being actually purged or at the time that I am put on inactive, am I, the voter, notified that there was disagreement about my existence as a voter? Or do I not learn that until I next go to vote and at that time discover that I am, quote, unquote, inactive and cannot vote on the machine?

SENATOR FLANAGAN: My belief is that you would be notified.

SENATOR LIZ KRUEGER: So it's your understanding in the bill that they would have an obligation to notify the voter when they put them on inactive?

SENATOR FLANAGAN: Yes.

SENATOR LIZ KRUEGER: Thank you.

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

ACTING PRESIDENT MORAHAN: Senator Flanagan, will you continue to yield for Senator Krueger?

SENATOR FLANAGAN: Yes.

ACTING PRESIDENT MORAHAN: The Senator continues to yield to you, Senator Krueger.

SENATOR LIZ KRUEGER: Thank you.

Just to follow up, would it be the state board that would be obligated to notify me? Or would they contact the local board and the local board would have to notify me?

SENATOR FLANAGAN: I believe it would be the local board that would be notifying you.

SENATOR LIZ KRUEGER: Thank you. Thank you, Mr. Sponsor.

On the bill, Mr. President.

ACTING PRESIDENT MORAHAN: Senator Krueger, on the bill.

SENATOR LIZ KRUEGER: Thank you.

I appreciate Senator Flanagan's responses to the questions.

This is complicated. These are complicated issues. And I appreciate that we have been notified by several good government groups that they have concerns with this bill.

But I also recognize that this went

through a fairly lengthy process and a conference committee in both houses, and that there are not easy answers to these questions.

I appreciate Senator Flanagan's point that much of this needs to be dealt with through regulation and through public comment and hopefully through oversight of both houses of the Legislature to ensure that the real test of the bill that will pass today is how we implement it. And that our goal is to ensure that people are not wrongly denied their right to vote, that they have every opportunity to register, that they are notified if their registration is not going through or if at some point in time some match in some way between the state database and other sources leads the state to reevaluate whether they have good standing as a voter in one location in New York State.

So while I am sure that this is not a perfect bill, and these are complex issues even before we get to some of the complex issues in other bills some of my colleagues mentioned, that with hesitation I will support this bill and hope that the glitches that we

might find as we go through this will be addressed through regulation and very careful oversight. Because there's not one of us who wants to imagine that we put in place a system that discouraged people from being able to vote or wrongly refused one someone the right to vote.

So in my optimism that we need to move forward with a statewide database and that we can never all come to agreement on every issue, I will support the bill.

But again, I hope that we all remember the test questions we ought to ask ourselves, either in our own lives with our own experiences or those of our constituents. Because I would also argue people with surnames from certain ethnicities will have more likelihood of being caught up in matches and confused. Women are more likely to have confusion over time about their name identification, because we're more likely technically to be changing our name over time. And even something as simple as using a nickname as opposed to your full name in registering to vote may create new hurdles for

us to make sure that as we discover the problems, we fix them in good faith, we fix them in a way that errs on the side of allowing people to vote rather than erring on the side of throwing them off a centralized database.

So with some hesitation about some of the things that can go wrong, I will vote for the bill.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President. If the sponsor would yield for a brief question.

ACTING PRESIDENT MORAHAN: Senator Flanagan, will you yield for a brief question by Senator Schneiderman?

SENATOR FLANAGAN: Yes.

SENATOR SCHNEIDERMAN: This has been discussed indirectly before, but I just want to clarify it.

What is the provision for providing notice to a voter before they are removed from voter registration under this legislation?

Would this provide that if the card is sent to someone and it comes back, that that person is then purged? Or are there additional provisions?

SENATOR FLANAGAN: I'm sorry, could you repeat that question?

SENATOR SCHNEIDERMAN: The question relates to the notice requirements before voters are removed from the voter registration list.

What notification efforts are made to contact a voter before their name is removed?

SENATOR FLANAGAN: Senator Schneiderman, I would suggest that the relevant sections of the Election Law include 5-708 and 5-213.

SENATOR SCHNEIDERMAN: Thank you, Mr. President. If the sponsor would continue to yield.

SENATOR FLANAGAN: If I could just add to that --

ACTING PRESIDENT MORAHAN: Senator Flanagan, will you continue to yield through the chair?

SENATOR FLANAGAN: Yes.

SENATOR SCHNEIDERMAN: Absolutely.

SENATOR FLANAGAN: I guess my main point would be in adopting this legislation, we're setting up parameters for a number of different things which are complementing existing provisions of law. We're not changing the notification. We're not changing the removal process.

And as I said before in response to Senator Montgomery, some of the privacy protections, that's under existing law. We're not changing that. So some of the things complement what already exists.

SENATOR SCHNEIDERMAN: So to clarify, you're saying that the --

ACTING PRESIDENT MORAHAN: Is this a question, Senator?

SENATOR SCHNEIDERMAN: Yes, it is, if the sponsor would continue to yield.

ACTING PRESIDENT MORAHAN: Do you continue to yield, Senator?

SENATOR FLANAGAN: Yes.

ACTING PRESIDENT MORAHAN: The

Senator yields, Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you.

Then this does not change the current requirements regarding notification before voters are removed from the list. It does provide that the board will consider additional regulations in this area; is that correct?

SENATOR FLANAGAN: Yes.

SENATOR SCHNEIDERMAN: Okay. Thank you, Mr. President. Thank the sponsor for his responses.

On the bill, Mr. President.

ACTING PRESIDENT MORAHAN: Senator Connor.

Oh, I'm sorry. I thought you were finished.

SENATOR SCHNEIDERMAN: That's okay. Briefly on the bill.

ACTING PRESIDENT MORAHAN: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: I think my colleagues have raised some of these questions. Some of them were raised before in the conference committee process.

I do have a concern, particularly about the issue of removing voters from the registration lists. We've had problems with this in various districts around the state, of people, for one reason or another, cards being returned and then their names being taken off the list. So I do hope that the process as we go forward will address it. I think that the door is open to that happening, as Senator Flanagan has explained.

I also have to say to my friends, colleagues and clients in the good government groups, we've had a long process here. And we got to get input on these things before the day it comes to a vote after a lengthy conference committee process, ladies and gentlemen. I love you all, but this is not good enough for us to be able to effectively address these issues.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator Schneiderman.

Senator Connor.

SENATOR CONNOR: Thank you, Mr. President.

Let me say I have a little experience with elections and election law. And in fact, as Senator Krueger was telling her story, I'm reminded that the lead case was a former colleague here, in a case called Gumbs against Markowitz, when his opponent thought he should be thrown off the ballot for running as Marty instead of Martin.

So Marty Golden, Senator Golden should pay attention to that. It was a key case. We can style ourselves as Marty and not have our rights to the franchise jeopardized. That case went to the Court of Appeals, believe it or not.

But I've read the memo in opposition, and frankly it reflects -- and I think it arises, frankly, from skepticism and a lack of trust in the Legislature when it comes to Election Law matters. Which historically may be correct. It may be -- they may be right to look askance at anything we're trying to do, because the press has said over the years that the Election Law is self-serving.

But I think if I've hit any theme

on this floor of Election Law bills over the years, it's been the fact that, no, there are underlying policies behind the Election Law that aren't just simply incumbency protection or somehow or other designed to keep the vote down.

The bill that's before us, Mr. President, is a fine -- it's not every perfect thing that I'd like to see in a bill, but it's perfectly fine. It's a vast improvement over what we've had, and it does comply with HAVA. Some of the things I'm most concerned about, we have no choice. HAVA is federal law, and we must conform to it.

So that's just -- and I've said on this floor before, oh, providing Social Security numbers was a great concern. No one is proposing to make that public. When I read this memo that talks about privacy concerns and wants no information released except in connection with an election, I say to myself the people who wrote this can't understand how campaigns operate. They must be totally ignorant of how people run for office.

You get the voter list. That's who

you talk to. That's whose doors you knock on. That's who you mail to. Yeah, if you're running for president, you may just buy TV ads. But the reality is, when you're running for local offices, you work from the voter list.

And the voter lists have always been public. And indeed, I suggest that in the earliest days of our country, and in fact before we were a state, they were more public than they are now. They're public now if you go to the Board of Elections or you go to a list compiler and you purchase them or you go to the Board of Elections and examine them.

The original idea, the list of electors was literally posted on the front of the general store or on a public place or outside of City Hall where people used to congregate, because they didn't have television and other things to distract them, and they would read the list.

And it needs to be public because some of our safeguards against fraud are the ability of any other voter to challenge anybody on the list. Long before the

election. You can't wait until Election Day or whatever if you're going to get them disenrolled.

But that ability of people to self-police the franchise-holders has been there for hundreds of years. And to suggest that somehow or other names and addresses of voters and their age should not be publicly available just shows a total absence of understanding about how elections actually operate and how the system has operated for all those years.

To say that there's -- for example, oh, there's no backup, I can't imagine that boards of elections are going to throw out the registration form they get. They don't now. I don't imagine they're -- so there's a statewide, electronic statewide voter list. You can still -- and you can do it now. You have cases of distinct board of elections. If you didn't like the list they were using, you would have people back in county boards of elections looking up the primary record, the thing the person actually signed, to contest what the State Board of Elections was telling

you. We've been doing this for years that way. There is a backup.

The fact that it may not -- this bill may not say there has to be a backup or whatever, I'm sure it doesn't say you have to shred the form that the voter fills out. And we certainly aren't allowing voters yet to register over the Internet, although I've seen proposals in newspapers about allowing people to register and vote over the Internet.

There's going to be a piece of paper. And nobody is suggesting it's not an official record that should be kept, albeit at the county level. And that's a better check on the statewide list, that there is a duplicate record or a backup record or supporting record in the county board of elections in a different location.

So I think the objections I read here either miss the mark, they miss the mark, or they're really nitpicking. It's a perfectly fine bill.

So, Mr. President, I'm going to support this bill. Thank you.

ACTING PRESIDENT MORAHAN: Thank

you, Senator Connor.

Senator Balboni.

SENATOR BALBONI: Mr. President, just quickly. Two points on this issue. The first is that this bill represents the work of a --

ACTING PRESIDENT MORAHAN: Senator, are you on the bill?

SENATOR BALBONI: On the bill.

ACTING PRESIDENT MORAHAN: Thank you.

SENATOR BALBONI: This bill represents the work of a newcomer to the issue of elections. And Senator Flanagan has spent innumerable hours being the shuttle diplomat between this house and the other, trying to work out the language that would be acceptable to all sides. And, frankly, there should be a collective tip of our hats to him and his work on this issue. He's truly become an expert.

But the other point I want to make is that I was in Washington, D.C., yesterday, and I was in a briefing with members -- Congressional staff on the issue of federal encroachment on states' rights. And of course

one of the issues we talked about was the Help America Vote Act and how this has really taken away some of the purview that the states have always traditionally enjoyed.

And during the course of my discussion with members of House staff, it was brought to my attention: Well, you're a fine person to speak, Senator Balboni, you come from a state that is only one of a handful of states that have not complied with HAVA.

Again, this moniker of not being able to get our acts together. But I assure you, it's not because of John Flanagan.

Unfortunately, folks, we stand to stand to lose a lot of money. We also stand to be the laughingstock of this nation if we can't get it through our heads that the nation stands behind a free and fair election system. That came from the ashes of the Florida recount during the 2000 presidential election.

It's time to move on this, put politics aside. Take this issue, pass it, make it law.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank

you, Senator.

Any other Senator wish to be heard?

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 MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

Senator Flanagan, to explain his vote.

SENATOR FLANAGAN: Thank you, Mr. President.

Three points I want to make relative to Senator Schneiderman's comments. I failed to mention that one of the remedies that's available if someone feels that this has not worked properly is the preceding bill. The administrative complaint is brand-new. Never had it before. You can file, you can call, you can write, you can do a whole bunch of things under this new law that you couldn't

do today. So that's number one.

To Senator Hassell-Thompson, I understand everything you said relative to machines. With all due respect, that's not part of this bill. But it is part of our discussions within the conference committee.

And the third and final thing is this is a good bill. It's not a perfect bill, it's a good bill. It addresses what we need to do, it complies with HAVA, and it underscores some of the continuing work we need to do to make sure that we not only get the federal money but that we distribute it to the people who are actually going to be running our elections.

ACTING PRESIDENT MORAHAN: Thank you, Senator Flanagan.

Announce the results.

THE SECRETARY: Ayes, 59.

Senators absent from voting: Senator Nozzolio.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 348, by Senator Volker, Senate Print 3272, an

act to enact the Criminal Procedure Law Reform Act of 2005.

SENATOR VOLKER: Mr. President.

ACTING PRESIDENT MORAHAN: Senator Volker, I don't know if there was an explanation asked for.

SENATOR VOLKER: Senator Schneiderman and I have had a discussion on this bill. It is the Criminal Procedure Reform Act of 2005. Actually, I think it started out 2000. Maybe it was '99.

What happened is we passed some changes some years ago, I think on agreement with the Assembly, in relation to changes in the Criminal Procedure Law. What this bill represents are basically five areas that were not agreed upon at that time relating to cases in the Court of Appeals that were not dealt with at the time.

Senator Schneiderman and I have had a discussion about this, and Senator Schneiderman would like to offer his version of some of the objections that he's had in the past to this bill.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President. If the sponsor would yield for a question.

SENATOR VOLKER: Why, certainly.

ACTING PRESIDENT MORAHAN: Senator Volker, will you yield?

SENATOR VOLKER: I certainly will.

ACTING PRESIDENT MORAHAN: Thank you.

SENATOR SCHNEIDERMAN: Senator Volker, were you present in this chamber on or about June 9, 2004, when the following colloquy took place?

"SENATOR SCHNEIDERMAN: Thank you.

"In connection with the issue of identification of a defendant, I just want to clarify something that I believe would be possible if this bill were to become law.

"Does this legislation in fact provide that a third party, someone other than the person who did the original identification, could testify that the identification took place?

"SENATOR VOLKER: It is possible,

yes. I think I know what you mean.

"One of the interesting issues is when one of the witnesses dies who has made the identification in a statement or whatever, and a third party was there -- and you are right, and I'm the first to admit that. What we're trying to do here is to, in the interests of justice, to allow certain evidence in.

"Now, remembering that the judge always has the right in a criminal case, in the interests of justice, to exclude such evidence if the evidence for one reason or another doesn't follow the usual train of evidentiary thought.

"I realize, by the way, that any defense attorney worth his salt [at this point, looking over to Senator Balboni] wants to have a face-to-face confrontation. But in certain cases, that can't be done . . .

"So what you say is true. I believe that that could happen.

"SENATOR SCHNEIDERMAN: Thank you.

"Mr. President, on the bill.

"ACTING PRESIDENT MEIER: Senator

Schneiderman, on the bill.

"SENATOR SCHNEIDERMAN: I'd like to thank the sponsor once again for his explanation of this legislation.

"I hope that we will move along and have different Criminal Procedure Acts to discuss in the future, since this is starting to move into the oldie-but-goodie status of one-house bills.

"The problem that I just raised with the sponsor is, I think, a fundamental problem that many of us have with this legislation. This bill, in essence, allows someone to say: Well, there was a lineup, and Senator Hassell-Thompson identified Dale Volker as the perpetrator, but later at the trial to have a third-party person -- as I happened to be driving with Senator Hassell-Thompson that day -- that I could testify, even though I never was a witness to the crime: Oh, yes, Senator Hassell-Thompson identified Dale Volker as the perpetrator.

"No ability to cross-examine the person who did the actual identification. And we know, and I know from my own experience as

a lawyer, that there is nothing shakier than a case based on eyewitness testimony in many circumstances . . .

"Eyewitness identification is very powerful with a jury, extremely powerful with a jury. But people make many, many mistakes. And there have been many cases of false identification.

"I would also suggest -- and I think this was suggested in a prior year's debate -- that with our modern ability to videotape, perhaps we can avoid this problem altogether . . .

"The other question, for the need for defendants to be present at every phase of a trial -- including, as Senator Volker referred to, the voir dire -- is important. There are some lawyers who essentially use the voir dire as their opening argument. There are circumstances under which what goes on at the voir dire could be very, very important to the case.

"And we're in a period of time in our society, with the evolution of DNA evidence, people being exonerated for crimes

that they were convicted of, where there's a lot of doubt about the criminal justice system . . .

"And I think in those circumstances it is more important than ever that defendants be allowed to be present, so they can at least see what's happening and not be convicted with the belief that their lawyer sold them out . . .

"So I would note, in fact, that when you're talking about giving prosecutors rights to appeal preclusion orders, we've seen very recently someone we know well who was really worn down by prosecutorial activity that just went on and on and on and forced him to spend a tremendous amount of money and borrow money. And those kinds of abuses are possible also.

"So I vote no. I think we can come up with better ways to amend the Criminal Procedure Law. I appreciate Senator Volker's tireless efforts to address the problems in the system. I don't think this bill addresses them in a way that we really should be supporting.

"And I encourage everyone else to vote no in the hopes that we will come up with some other formulation of these reforms -- perhaps not this year, but perhaps before we have to see this reprinted as the Criminal Justice Reform Act of 2005."

Was --

ACTING PRESIDENT MORAHAN: Senator Schneiderman, is there a --

SENATOR SCHNEIDERMAN: And my question to the sponsor is, are there any additions, omissions or corrections you would like to add?

SENATOR VOLKER: No.

Mr. President, the reason --

ACTING PRESIDENT MORAHAN: Senator Volker.

SENATOR VOLKER: -- actually I had spoken to Senator Schneiderman, in the past we've talked about the fact that a number of these bills that have passed this house over the years, that in effect we could probably read the past transcript into the testimony, into the -- into the other -- in fact, we'll give you last year's testimony if

it would be helpful.

But he does make a good point, and that is that what we are doing here is addressing actually five issues. And he did outline what he described in last year's debate. Which, by the way, was essentially the same debate as the year before. Because the year before, we argued some of the same things. The problem is, I think, the year before that, we took 2½ hours.

The point I think we're trying to make is that these are issues that need to be discussed. Unfortunately, they only get discussed in this house. And one of the things that many of us are going to try to do, by the way, before this year is out, now that we -- thank God, we passed the budget on time, that this house persisted, that some of these issues we are going to deal maybe separately with the Assembly on, but to try to resolve some of these issues in a compromise manner.

Because there are some of these issues I think that are more an issue of defense attorneys versus the prosecution. It's very difficult in our system these days

to get compromises.

So I thank you, Senator Schneiderman, for pointing out that what we are doing here is a bill that we've had before. It's not something new; it's been around for years. It is part, though, of a process that I think we need to try to deal with the Assembly on, because it is something I think very important.

What these bills do is to try to deal with, frankly, Court of Appeals decisions which people like myself and a lot of us believe, frankly, are decisions that inalterably end up with some defense attorneys doing very, very well, because the new trials and all the rest of the things.

And we talk about our system; our Court of Appeals may be the most defense-oriented Court of Appeals in the country. And I think our problem is that it's incumbent upon us to deal as a legislature with these issues and not let the Court of Appeals of this state make these decisions.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Any other Senator wish to be heard?

Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes, if I might have a moment here.

Would the sponsor yield to a question?

ACTING PRESIDENT MORAHAN: Senator Volker, will you yield for a question?

SENATOR VOLKER: Certainly, Senator.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR DeFRANCISCO: It's been a long, long time since I've done any defense work.

SENATOR VOLKER: Really?

SENATOR DeFRANCISCO: Yes.

SENATOR VOLKER: I'm sorry.

(Laughter.)

SENATOR DeFRANCISCO: I do mostly plaintiff's legislation now, in the civil arena.

So I have a question on page 2, line 28, talking about a question of law as preserved for purposes of appeal with respect

to a claim violation of subdivision one of such section in the absence of a timely protest in accordance with Section 470 of the Criminal Procedure Law.

What is the procedure, a protest procedure? I'm not familiar with that.

SENATOR VOLKER: The protest is an objection. And some sort of an objection.

And as you know, what the problem is here that the courts have said that even if you don't make --

SENATOR DeFRANCISCO: You've answered the question.

SENATOR VOLKER: Oh, I'm sorry. Okay. I apologize.

SENATOR DeFRANCISCO: So I just wanted to thank the sponsor for yielding, because he obviously has much more experience in defense work than I do.

(Laughter.)

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

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you. Briefly on the bill.

ACTING PRESIDENT MORAHAN:

Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: I think the point Senator Volker and I are trying to make here is very clear. We now are done with the budget and everyone is saying, Great, now we can do other legislation.

We have a significant pile of one-house bills that pass this house year after year. We have a pile of bills that pass the Assembly year after year on other issues. If we truly want to fulfill Senator Balboni's dream of overcoming our reputation as a gridlocked, dysfunctional legislature, it's time to start working on it. We shouldn't be debating the same bills five, six, eight, ten years in a row. Let's break out of this pattern.

Perhaps if we made it a misdemeanor -- or Senator Volker would probably want it to be a felony -- the willful resubmission of a one-house bill, we could come up with more creative ways to advance the process.

But in the absence of that, some

effort is necessary to move beyond this repetitive debate. And I would note that the lengthier debate was ended quite quickly after Senator Dollinger retired.

Thank you, Mr. President. I will be voting no and encourage everyone else to vote no.

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

The debate is closed.

The Secretary will ring the bell.

Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 348 are Senators Andrews, Connor, Diaz, Duane, Gonzalez, Hassell-Thompson, L. Krueger, Montgomery, Parker, Paterson, Schneiderman, Serrano, A. Smith and Stavisky.

Absent from voting: Senator Nozzolio.

Ayes, 44. Nays, 14.

ACTING PRESIDENT MORAHAN: The bill is passed.

The Secretary will read.

THE SECRETARY: Calendar Number 446, by Senator Flanagan, Senate Print 3686, an act making an appropriation to the State Board of Elections.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT MORAHAN: Senator Flanagan, an explanation has been requested.

SENATOR FLANAGAN: Thank you, Mr. President.

This is an appropriation bill for $7.7 million. It is a required state match from the State of New York, which will allow us to access approximately $153 million additional from the federal government in addition to the $66 million that we have right now.

Our action on this bill has to be

done in conjunction with the administrative complaint procedure in order for us to get the money. You can't do one or the other; you have to do both.

This bill is critically important, and people really need to understand this point. HAVA is a great idea. And it's a great idea because the federal government is willing to give us almost $220 million. But if we don't meet the requirements of HAVA in terms of accessing the money, we still have to meet HAVA. So we're going to have to pay for the machines out of state funds if we can't come to an agreement.

This appropriation is extraordinarily important to us getting moving and adopting a statewide list and providing for machines, for poll worker training, all those different aspects. We need to get going on this. This bill will get us going.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Schneiderman.

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

ACTING PRESIDENT MORAHAN:

Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: This bill was the bill that came out of the Rules Committee today. And I realize there were there was some problem about notice going out, which problem is being addressed.

However, I would suggest that this bill is what we used to say back in the corporate legal world is a no-brainer. We have to get the federal money. We have to pass this, whatever our issues are with the tales of the HAVA bills that are coming out of the conference committee. It is absolutely essential we pass this immediately. We get our eligibility for the $150 million in federal funds.

Again, I'd like to thank the sponsor for his work, Senator Dilan and the others who participated in this process. We now move forward to another phase of the proceedings where we will have met the requirements of the federal government and receive not everything we deserve from Washington, but at least our share in this

area.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator Schneiderman.

Any other Senator wish to be heard?

The debate is closed.

The Secretary will ring the bell.

Read the last section.

THE SECRETARY: Section 2. This act shall take effect April 1, 2005.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Senator Flanagan, to explain his vote.

SENATOR FLANAGAN: Mr. President, in explaining my vote I just want to add one other thing.

In the last couple of weeks we've obviously all been consumed with the budget. And unfortunately my colleague Assemblyman Wright, our colleague, his father had passed away. Our conference committee had lapsed and had not been reconstituted. There was some concern about the direction we may or may not

take.

Right before these bills started, I had a conversation with Senator Bruno, and he is speaking with Speaker Silver. I believe that we will be starting the conference committees effective again next Monday, to complete the work that needs to be done on HAVA so that we can get the money and we can get the elections going in the right way.

Thank you.

ACTING PRESIDENT MORAHAN: Thank you, Senator. You will be recorded in the affirmative.

Announce the results.

THE SECRETARY: Those Senators absent from voting on Calendar Number 446: Senator Nozzolio.

Ayes, 59.

ACTING PRESIDENT MORAHAN: The bill is passed.

The Secretary will read.

THE SECRETARY: Calendar Number 447, by the Senate Committee on Rules, Senate Print 3937, an act to amend the Insurance Law, in relation to authorizing a loan to the

Workers' Compensation Security Fund.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT MORAHAN: Senator Seward, an explanation has been requested by Senator Schneiderman.

SENATOR SEWARD: Certainly, Mr. President.

This bill is designed to prevent the insolvency of the Workers' Compensation Security Fund. And it does that by providing funding via loans from either the assets of liquidation estates or, upon some very specific and specified conditions, loans from the assets of the Property/Casualty Insurance Security Fund.

Now, the aggregate amount, the dollar amount of any such loans shall not exceed $70 million under this legislation. And under the proposal, the Superintendent shall have the authority to increase the workers' compensation assessment from 1 to a maximum of 2 percent, with one-fourth of any of these assessments going to the repayment of the loans to the fund.

Now, it's very significant that this legislation also sets forth the reprioritization of claims regardless of whether the particular liquidation was commenced. This provision is included to ensure that policyholders -- that is, injured workers -- always take precedence over any other creditors. This is added protection for injured workers.

Now, in addition to all this, the Superintendent is required under this legislation to provide the Legislature with a report concerning the capacity and future demands of the various funds, including a study by an independent actuary. And that would be -- the first report to us would be later this year.

Now, these changes that I've outlined are necessary because the Workers' Compensation Security Fund, which was really created to be a safety net for injured workers who happen to be, certainly through no fault of their own, be carried by carriers that had become insolvent. And this security fund continues to pay claims under those

conditions.

The problem is the security fund is slated to be drawn down to zero by the end of this week. So action is needed. So in the absence of this remedial legislation, payments to the workers' compensation claimants from this security fund will cease.

So that's the explanation on this legislation, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator Seward.

Senator Savino.

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

ACTING PRESIDENT MORAHAN: Senator, on the bill.

SENATOR SAVINO: The Workers' Compensation Security Fund was created in 1939 to pay workers' compensation claims to injured workers in the event that their carriers became insolvent. Funding for the workers' compensation fund comes from quarterly assessments on workers' compensation carriers writing business in New York State equal to 1 percent of each insurer's net premiums, and

distributions from insolvent insurance companies' estates and investment income.

The fund is currently in jeopardy. It is set to go bankrupt in less than one week. There are currently three other major workers' compensation insurance carriers in this state that are also on the verge of bankruptcy. This is a crisis situation that workers are facing.

Without this legislation, the fund will be unable to meet its obligations to injured workers, who are unable to collect from their insurance carriers which are on the verge of bankruptcy.

And while this is a one-house bill, the AFL-CIO and other interested parties are urging all of us to support this piece of legislation as we go forth and try and resolve the differences between this bill and the Assembly's bill.

And for that reason, I am voting in favor of this bill and I urge all of my colleagues in this chamber to do so. Injured workers are depending upon us to fix this system as quickly as we possibly can.

ACTING PRESIDENT MORAHAN:

Senator Krueger.

SENATOR LIZ KRUEGER: Thank you.

If the sponsor would please yield.

ACTING PRESIDENT MORAHAN:

Senator Seward, if you would yield for Senator Krueger.

SENATOR SEWARD: Certainly, Mr. President.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR LIZ KRUEGER: Thank you.

I appreciate my colleague's point, which I think Senator Seward also made, that this fund is on the verge of bankruptcy.

And this is a proposal in this bill, as I read it, that would borrow money from another source of funding to bail out this fund temporarily.

But am I correct to understand that this bill would do nothing to deal with the underlying problem that we don't have adequate funds going into the Workers' Compensation Security Fund? So is this just a temporary bailout, or is there some cure to this problem

inherent in this bill?

SENATOR SEWARD: Well, Mr. President, I think the longer-term relief is part of this legislation in two ways.

Number one, it authorizes the Superintendent to increase the assessments up to a maximum of 2 percent for the repayment of the loans and to provide for longer-term viability of the fund.

And, secondly, the legislation calls for the Superintendent -- it actually requires the Superintendent to provide the Legislature with a report concerning the capacity and the future demands anticipated -- as Senator Savino had mentioned some potential future demands on the fund -- providing us with a report, including a study by an independent actuary.

So that based on that information, which would be available to us later this year, we as a Legislature then could make some -- potentially some longer-term changes that would put the funds, in the long term, in a much more viable position.

ACTING PRESIDENT MORAHAN: Thank

you, Senator.

Senator Krueger.

SENATOR LIZ KRUEGER: On the bill.

ACTING PRESIDENT MORAHAN: Senator Krueger, on the bill.

SENATOR LIZ KRUEGER: Thank you.

Well, we have a dilemma, because we've got a fund that's about to go bankrupt and then we've got perhaps a short-term solution, if it's legal, borrowing funds from another fund. Unless that's not legal, and then we can borrow from a different fund, the Property/Casualty Security Fund.

Although my understanding is maybe we can't borrow from that because we've got another fund, the Motor Vehicle Liability Security Fund, that might also be going bankrupt. We might need to borrow those other monies for that.

We have a serious problem. We have all these funds about to go bankrupt, and it's my understanding that the State Insurance Department didn't even notify anyone in either house of the Legislature until January 21st

that they discovered that this workers' compensation fund was on the brink of bankruptcy.

So I appreciate the need for us to do a bill sooner rather than later to address this problem. But I hope all of my colleagues agree with me that we have a much bigger problem than a temporary trading monies out of different funds to bail out one entity. We've got potentially a whole series of funds overseen by the State Insurance Department where we don't have the money to cover the debt, and we don't have a State Insurance Department that's apparently staying on top of things effectively enough to even notify us in a reasonable time to deal with that issue.

So I'll vote for the bill, but I want to highlight a couple of issues. This is not a solution. That 1 percent to 2 percent -- and thank you very much, Senator Seward, for highlighting that -- may give us some additional funds, although it's questionable whether it would be enough to pay back what we're borrowing and make reasonable payments on an ongoing basis to ensure that

this fund doesn't find itself on the verge of bankruptcy in a year or two years again.

We are assuming we can borrow from Peter to pay Paul, hoping that Peter's got the money for as long as we need it to borrow it for Paul, but not really sure about that either.

And I suppose the issue that is different between the Assembly version of the bill, A7008, and the Senate version, 3937 -- which I hope can be rectified, but I'd like to highlight -- is the Assembly proposal is that the Comptroller examine the Insurance Department liquidation bureau's administration to evaluate what is going on and how come they couldn't figure this out until literally it was on the verge of bankruptcy.

So I appreciate Senator Seward's proposal that it's an independent actuary to make the determination and report, through the Insurance Department, to us. But I think, with all due respect, they flunked the test of being able to keep track of their own numbers and to meet their obligation to the Legislature and the people of New York to make

sure we knew about this long before we were on the verge of a bankruptcy where we wouldn't be able to pay injured workers their weekly workers' compensation checks.

And that the Assembly's proposal for the Comptroller's office to examine the books and the Insurance Department's internal procedures for overseeing these funds is a better and more independent mechanism for evaluating this.

In both bills they call for reports to the Legislature. I frankly would be much more comfortable if an outside auditor, the Comptroller's office, was asking the questions and reporting to us rather than a division within the State Insurance Department. Which, again, I'm not saying it's their fault that the fund didn't have adequate money. But I am saying there's something wrong when we only learn about it because they seemed to discover the problem literally right before bankruptcy was going to occur.

And again, I just highlight for us, for those of us who may not follow the intricacies of all these different security

funds that the state oversees or operates, that we may have serious fiscal problems in a variety of these funds, and we don't yet have long-term answers for them. And we can't pass this bill and simply think the problem has gone away. At best, it is a short-term solution, and it's not even the best of the short-term solutions.

So I will vote for the bill, but I hope the Senate and Assembly will come to quick agreement and compromise. And I do hope that we will seriously look at having the Comptroller's office play a role in asking the questions and getting us the answers we need.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator Krueger.

Any other Senator wish to be heard?

The debate is closed.

Ring the bells.

Read the last section.

THE SECRETARY: Section 7. This act shall take effect immediately.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

Senator Seward, to explain his vote.

SENATOR SEWARD: Mr. President, very briefly to explain my vote.

I appreciate the support of my colleagues for this legislation. It's very, very critical to maintain that claims be paid to these injured workers who are being covered by these insolvent insurance companies.

And I would just point out that the clock is ticking and we have been working with the Assembly and labor and others. We're really down to a couple of quick issues. I think Senator Krueger had highlighted one or two.

I believe that because we include the actuarial study under this legislation, it's totally unnecessary to involve the Comptroller. We will have an independent actuarial study that will give us the data, the information that we need to proceed in the future.

And the other issue is the fact that our legislation that we're passing here today, unlike the current bill in the Assembly, includes a backstop, and that is the Property/Casualty Insurance Security Fund. So that in the event, for whatever reason -- litigation or whatever reason -- the funds are not available through the liquidation estates, the legislation we're passing today has a backstop so those injured workers will be protected and their claims will be covered.

This is a very, very important feature in our bill that the Assembly bill lacks.

So we're all voting for this bill today, and we are really voting in the best interests of injured workers in this state who need to have their claims paid.

I vote aye, Mr. President.

ACTING PRESIDENT MORAHAN: Senator Seward will be recorded in the affirmative.

The Secretary will announce the results.

THE SECRETARY: Ayes, 59.

Those Senators absent from voting on Calendar Number 447: Senator Nozzolio.

ACTING PRESIDENT MORAHAN: The bill is passed.

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

SENATOR SKELOS: Thank you, Mr. President.

Is there any housekeeping at the desk?

ACTING PRESIDENT MORAHAN: There is no housekeeping at the desk.

SENATOR SKELOS: Would you please recognize Senator Schneiderman.

ACTING PRESIDENT MORAHAN: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President. I believe I have a motion at the desk. I'd like to have it called up at this time.

ACTING PRESIDENT MORAHAN: There is a motion at the desk.

The Secretary will read.

THE SECRETARY: Senate Print 2445, by Senator Schneiderman, an act to amend

the Penal Law.

SENATOR SCHNEIDERMAN: Thank you.

This is a motion to bring to the floor a bill to renew and expand New York State's ban on assault weapons.

On February 15th of this year at the Hudson Valley Mall, just an hour south of here, someone opened fire with an assault weapon that was a perfectly legal weapon under our current ban, spraying bullets and creating a catastrophic state of crisis that lasted for hours in the mall.

We know that the federal assault weapons ban on which our state ban is modeled was flawed. It grandfathered in existing weapons and banned specific weapons by name rather than identifying the characteristics that are necessary -- it identified several characteristics, but it did not identify the characteristics that are really necessary to limit the use of assault weapons.

The gun industry responded, as they often do, by immediately starting to produce assault weapons that evaded the ban by knocking off weapons that were explicitly

prohibited under the ban. They called them names like AB-10, standing for "After Ban 10," and the PC Rifle, for "Politically Correct Rifle."

The gun industry, in its cynicism, has flooded the market with new assault weapons. This legislation would close this critical loophole. It would bring the state's intent when we passed our assault weapons ban to bear on the existing legislation.

One in five law enforcement officers is killed with an assault weapon. There are numerous cases of police chiefs, sheriff's departments and other law enforcement officials calling for an expansion of the ban.

We can do this. We should do this. I would urge that everyone support this motion, bring it to the floor this year and make New York a safer state for all of us by expanding the assault weapons ban.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator Schneiderman.

All those Senators in favor of the

petition out of committee please signify by raising your hand.

SENATOR PADAVAN: Mr. President, may I explain my vote?

ACTING PRESIDENT MORAHAN: This is a canvass of agreement, Senator Padavan. Unless you want to vote.

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

ACTING PRESIDENT MORAHAN: The petition is not agreed to.

Senator Skelos.

SENATOR SKELOS: Thank you, Mr. President.

On behalf of Senator Larkin, I just would like to remind the membership that tomorrow is West Point Day. And if the members could be in the chambers at 11:00 when we start, to pay due respect to our cadets, it

would be appreciated.

And there being no further business to come before the Senate, I move we stand adjourned until Wednesday, April 6th, at 11:00 a.m.

ACTING PRESIDENT MORAHAN: On motion, the Senate stands adjourned until Wednesday, April 6, the year 2005, at 11:00 a.m.

(Whereupon, at 4:45 p.m., the Senate adjourned.)