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NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

April 5, 2005

3:06 p.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

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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

1 and have our hearts rely on You.

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

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

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

17 Amen.

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

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

1 Paul II into the arms of God.

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

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

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

17 Amen.

18 THE PRESIDENT: Reading of the
19 Journal.

20 THE SECRETARY: In Senate,
21 Monday, April 4, the Senate met pursuant to
22 adjournment. The Journal of Sunday, April 3,
23 was read and approved. On motion, Senate
24 adjourned.

25 THE PRESIDENT: Without

1 objection, the Journal stands approved as
2 read.

3 Presentation of petitions.
4 Messages from the Assembly.
5 Messages from the Governor.
6 Reports of standing committees.
7 Reports of select committees.
8 Communications and reports from
9 state officers.

10 Motions and resolutions.

11 Senator Skelos.

12 SENATOR SKELOS: If we could
13 return to reports of standing committees, I
14 believe there's a report at the desk.

15 THE PRESIDENT: Reports of
16 standing committees.

17 The Secretary will read.

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

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

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

1 Insurance Law.

2 Both bills ordered direct to third
3 reading.

4 THE PRESIDENT: Senator Skelos.

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

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

9 (Response of "Aye.")

10 THE PRESIDENT: Opposed, nay.

11 (Response of "Nay.")

12 THE PRESIDENT: The report is
13 adopted.

14 Senator Skelos.

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

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

22 (Response of "Aye.")

23 THE PRESIDENT: Opposed, nay.

24 (No response.)

25 THE PRESIDENT: The Resolution

1 Calendar is so adopted.

2 Senator Skelos.

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

7 THE PRESIDENT: The Secretary
8 will read.

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

14 THE PRESIDENT: Senator Skelos.

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

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

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

24 (Response of "Aye.")

25 THE PRESIDENT: Opposed, nay.

1 (No response.)

2 THE PRESIDENT: The resolution is
3 adopted.

4 Senator Skelos.

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

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

13 The Secretary will read.

14 THE SECRETARY: By Senator
15 Marcellino, Legislative Resolution Number
16 1205, commemorating the 100th Anniversary of
17 the National Audubon Society.

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

20 Go ahead, Senator.

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

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

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

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

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

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

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

6 They ought to be congratulated for
7 perpetuating this great organization.
8 Membership is nearly 50,000 members, with
9 30 chapters. It is a fantastic group. We've
10 done much good legislation together.

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

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

1 (Laughter.)

2 SENATOR MARCELLINO: Madam

3 President, the Audubon Society is to be
4 congratulated. May they be there at least
5 another hundred years to preserve and protect
6 our environment. God bless you.

7 Thank you.

8 THE PRESIDENT: Senator Golden.

9 SENATOR GOLDEN: Thank you, Madam
10 President.

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

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

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

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

1 Garrison Beach and Marine Park.

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

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

15 Thank you again, Carl Marcellino.

16 THE PRESIDENT: Senator Andrews.

17 SENATOR ANDREWS: Thank you,
18 Madam President.

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

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

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

15 And once again, congratulations to
16 the Audubon Society.

17 THE PRESIDENT: Senator Johnson.

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

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

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

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

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

19 Thank you.

20 THE PRESIDENT: Thank you,
21 Senator Johnson.

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

1 excellence and dedication to environmental
2 interests.

3 Congratulation and best wishes to
4 the Audubon Society.

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

7 (Response of "Aye.")

8 THE PRESIDENT: Opposed, nay.

9 (No response.)

10 THE PRESIDENT: The resolution is
11 adopted.

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

14 (Applause.)

15 THE PRESIDENT: Senator Skelos.

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

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

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

25 The Secretary will read.

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

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

9 (Response of "Aye.")

10 THE PRESIDENT: Opposed, nay.

11 (No response.)

12 THE PRESIDENT: The resolution is
13 adopted.

14 Senator Skelos.

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

19 THE PRESIDENT: The Secretary
20 will read.

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

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

4 (Response of "Aye.")

5 THE PRESIDENT: Opposed, nay.

6 (No response.)

7 THE PRESIDENT: The resolution is
8 adopted.

9 Senator Skelos.

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

12 THE PRESIDENT: Senator Bonacic.

13 SENATOR BONACIC: Thank you,
14 Madam President.

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

20 On those three votes, if I could
21 have voted: Senator LaValle's bill, Senate
22 Number 838A, I would have voted in the
23 affirmative; Senator Volker's bill, Senate
24 3256, I would have voted in the affirmative;
25 and, last but not least, Senator Skelos' bill,

1 Senate 3157, I would have voted in the
2 affirmative.

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

5 SENATOR BONACIC: Thank you,
6 Madam President.

7 THE PRESIDENT: You're welcome.
8 Senator Skelos.

9 SENATOR SKELOS: Would you please
10 recognize Senator Parker.

11 THE PRESIDENT: Senator Parker.

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

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

24 Thank you.

25 THE PRESIDENT: The record will

1 so reflect your statement, Senator.

2 Senator Skelos.

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

6 THE PRESIDENT: The Secretary
7 will read.

8 THE SECRETARY: Calendar Number
9 348, by Senator Volker, Senate Print 3272, an
10 act to enact the Criminal Procedure Law Reform
11 Act of 2005.

12 SENATOR SCHNEIDERMAN: Lay it
13 aside.

14 THE PRESIDENT: The bill is laid
15 aside.

16 THE SECRETARY: Calendar Number
17 372, by Senator Maziarz, Senate Print 3214, an
18 act to amend the Civil Service Law, in
19 relation to leaves of absence.

20 THE PRESIDENT: Read the last
21 section.

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

24 THE PRESIDENT: Call the roll.

25 (The Secretary called the roll.)

1 THE SECRETARY: Ayes, 59. Nays,
2 1. Senator Meier recorded in the negative.

3 THE PRESIDENT: The bill is
4 passed.

5 THE SECRETARY: Calendar Number
6 377, by Senator Fuschillo, Senate Print 1430,
7 an act to authorize the French Speaking
8 Baptist Church.

9 THE PRESIDENT: Read the last
10 section.

11 SENATOR SKELOS: Lay it aside for
12 the day.

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

15 The Secretary will announce
16 Calendar 372 results.

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

21 THE PRESIDENT: The bill is
22 passed.

23 THE SECRETARY: Calendar Number
24 381, by Senator Flanagan, Senate Print 2186,
25 an act to amend the Real Property Tax Law, in

1 relation to authorizing.

2 ACTING PRESIDENT MORAHAN: Read
3 the last section.

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

7 ACTING PRESIDENT MORAHAN: Call
8 the roll.

9 (The Secretary called the roll.)

10 THE SECRETARY: Ayes, 60.

11 ACTING PRESIDENT MORAHAN: The
12 bill is passed.

13 THE SECRETARY: Calendar Number
14 404, by Senator Volker, Senate Print 3273, an
15 act to amend the Mental Hygiene Law, the
16 Correction Law, and the Criminal Procedure
17 Law.

18 ACTING PRESIDENT MORAHAN: Read
19 the last section.

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

22 ACTING PRESIDENT MORAHAN: Call
23 the roll.

24 (The Secretary called the roll.)

25 ACTING PRESIDENT MORAHAN:

1 Announce the results.

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

5 ACTING PRESIDENT MORAHAN: The
6 bill is passed.

7 THE SECRETARY: Calendar Number
8 415, by Senator Nozzolio, Senate Print 1324,
9 an act to amend the Correction Law, in
10 relation to requiring.

11 SENATOR SCHNEIDERMAN: Lay it
12 aside.

13 ACTING PRESIDENT MORAHAN: The
14 bill is laid aside.

15 SENATOR SKELOS: Lay it aside for
16 the day.

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

19 THE SECRETARY: Calendar Number
20 419, by Senator Spano, Senate Print 3126, an
21 act to amend the Executive Law, in relation to
22 establishing.

23 ACTING PRESIDENT MORAHAN: Read
24 the last section.

25 THE SECRETARY: Section 2. This

1 act shall take effect immediately.

2 ACTING PRESIDENT MORAHAN: Call
3 the roll.

4 (The Secretary called the roll.)

5 ACTING PRESIDENT MORAHAN:
6 Announce the results.

7 THE SECRETARY: Ayes, 60.

8 ACTING PRESIDENT MORAHAN: The
9 bill is passed.

10 THE SECRETARY: Calendar Number
11 427, by Senator Flanagan, Senate Print 3517,
12 an act to amend the Election Law, in relation
13 to providing.

14 ACTING PRESIDENT MORAHAN: Read
15 the last section.

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

18 ACTING PRESIDENT MORAHAN: Call
19 the roll.

20 (The Secretary called the roll.)

21 ACTING PRESIDENT MORAHAN:
22 Announce the results.

23 THE SECRETARY: Ayes, 60.

24 ACTING PRESIDENT MORAHAN: The
25 bill is passed.

1 THE SECRETARY: Calendar Number
2 428, by Senator Flanagan, Senate Print 3604 --
3 SENATOR SCHNEIDERMAN: Lay it
4 aside.
5 ACTING PRESIDENT MORAHAN: The
6 bill is laid aside.
7 THE SECRETARY: Calendar Number
8 441, by Senator Skelos --
9 SENATOR SKELOS: Lay it aside for
10 the day, please.
11 ACTING PRESIDENT MORAHAN: The
12 bill is laid aside for the day.
13 THE SECRETARY: Calendar Number
14 446, by Senator Flanagan, Senate Print 3686,
15 an act making an appropriation to the State
16 Board of Elections.
17 ACTING PRESIDENT MORAHAN: Read
18 the last section.
19 THE SECRETARY: Section 2. This
20 act shall take effect April 1, 2005.
21 ACTING PRESIDENT MORAHAN: Call
22 the roll.
23 (The Secretary called the roll.)
24 SENATOR HASSELL-THOMPSON: Lay it
25 aside.

1 ACTING PRESIDENT MORAHAN: The
2 bill is laid aside.

3 THE SECRETARY: Calendar Number
4 447, by the Senate Committee on Rules, Senate
5 Print 3937, an act to amend the Insurance Law,
6 in relation to authorizing.

7 SENATOR SCHNEIDERMAN: Lay it
8 aside.

9 ACTING PRESIDENT MORAHAN: The
10 bill is laid aside.

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

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

17 ACTING PRESIDENT MORAHAN: The
18 Secretary will ring the bells.

19 Senator Skelos.

20 SENATOR SKELOS: Mr. President,
21 if we could go to the controversial reading of
22 the calendar and start with Calendar Number
23 428, by Senator Flanagan.

24 ACTING PRESIDENT MORAHAN: The
25 Secretary will read.

1 THE SECRETARY: Calendar Number
2 428, by Senator Flanagan, Senate Print 3604,
3 an act to amend the Election Law, in relation
4 to creating a statewide voter registration
5 list.

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

9 SENATOR SCHNEIDERMAN:
10 Explanation, please.

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

14 SENATOR FLANAGAN: Thank you, Mr.
15 President.

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

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

1 federal HAVA act from 2002.

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

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

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

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

7 ACTING PRESIDENT MORAHAN: Thank
8 you, Senator.

9 Senator Hassell-Thompson.

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

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

22 Are you aware of some of the --

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

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

3 SENATOR FLANAGAN: Yes. Yes.

4 SENATOR HASSELL-THOMPSON: Thank
5 you.

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

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

13 SENATOR HASSELL-THOMPSON: Okay.

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

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

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

5 SENATOR HASSELL-THOMPSON: On the
6 bill.

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

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

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

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

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

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

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

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

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

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

9 Thank you.

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

12 Senator Montgomery.

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

16 ACTING PRESIDENT MORAHAN:
17 Senator Flanagan, will you yield?

18 SENATOR FLANAGAN: Yes.

19 ACTING PRESIDENT MORAHAN: The
20 Senator yields.

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

25 As you know, there's quite a bit of

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

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

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

17 SENATOR FLANAGAN: I would answer
18 in three different respects.

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

1 continue to be available under this bill.

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

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

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

17 ACTING PRESIDENT MORAHAN: Does
18 the Senator continue to yield?

19 SENATOR FLANAGAN: Yes.

20 ACTING PRESIDENT MORAHAN: The
21 Senator yields.

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

1 can access the Board of Elections records.

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

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

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

23 So thank you, Mr. President.

24 ACTING PRESIDENT MORAHAN:

25 Senator Dilan.

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

3 ACTING PRESIDENT MORAHAN:
4 Senator Dilan, on the bill.

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

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

17 Thank you. And I'll be voting yes.

18 ACTING PRESIDENT MORAHAN: Thank
19 you, Senator.

20 Senator Krueger.

21 SENATOR LIZ KRUEGER: Thank you.

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

24 ACTING PRESIDENT MORAHAN:
25 Senator Flanagan, will you yield?

1 SENATOR FLANAGAN: Yes.

2 ACTING PRESIDENT MORAHAN: The
3 Senator yields.

4 SENATOR LIZ KRUEGER: Thank you.

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

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

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

19 SENATOR LIZ KRUEGER: Sure.

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

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

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

13 There are three relevant sections,
14 5-708, 5-712 and 5-213, all of which tie into
15 the National Voter Registration Act. So no
16 one is just simply thrown out the door.

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

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

22 SENATOR FLANAGAN: Yes.

23 ACTING PRESIDENT MORAHAN: The
24 Senator yields.

25 SENATOR LIZ KRUEGER: Thank you.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 SENATOR FLANAGAN: Yes.

20 ACTING PRESIDENT MORAHAN: The
21 Senator yields.

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

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

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

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

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

19 SENATOR FLANAGAN: Yes.

20 SENATOR LIZ KRUEGER: Thank you.

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

23 ACTING PRESIDENT MORAHAN:

24 Senator Flanagan, will you continue to yield
25 for Senator Krueger?

1 SENATOR FLANAGAN: Yes.

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

5 SENATOR LIZ KRUEGER: Thank you.

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

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

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

15 On the bill, Mr. President.

16 ACTING PRESIDENT MORAHAN:
17 Senator Krueger, on the bill.

18 SENATOR LIZ KRUEGER: Thank you.

19 I appreciate Senator Flanagan's
20 responses to the questions.

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

25 But I also recognize that this went

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

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

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

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

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

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

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

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

10 Thank you, Mr. President.

11 ACTING PRESIDENT MORAHAN:

12 Senator Schneiderman.

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

16 ACTING PRESIDENT MORAHAN:

17 Senator Flanagan, will you yield for a brief
18 question by Senator Schneiderman?

19 SENATOR FLANAGAN: Yes.

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

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

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

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

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

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

14 SENATOR FLANAGAN: Senator
15 Schneiderman, I would suggest that the
16 relevant sections of the Election Law include
17 5-708 and 5-213.

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

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

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

1 SENATOR FLANAGAN: Yes.

2 SENATOR SCHNEIDERMAN:

3 Absolutely.

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

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

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

18 ACTING PRESIDENT MORAHAN: Is
19 this a question, Senator?

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

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

24 SENATOR FLANAGAN: Yes.

25 ACTING PRESIDENT MORAHAN: The

1 Senator yields, Senator Schneiderman.

2 SENATOR SCHNEIDERMAN: Thank you.

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

9 SENATOR FLANAGAN: Yes.

10 SENATOR SCHNEIDERMAN: Okay.

11 Thank you, Mr. President. Thank the sponsor
12 for his responses.

13 On the bill, Mr. President.

14 ACTING PRESIDENT MORAHAN:

15 Senator Connor.

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

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

20 ACTING PRESIDENT MORAHAN:

21 Senator Schneiderman, on the bill.

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

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

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

20 Thank you, Mr. President.

21 ACTING PRESIDENT MORAHAN: Thank
22 you, Senator Schneiderman.

23 Senator Connor.

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

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

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

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

25 But I think if I've hit any theme

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

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

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

25 You get the voter list. That's who

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

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

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

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

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

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

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

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

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

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

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

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

25 ACTING PRESIDENT MORAHAN: Thank

1 you, Senator Connor.

2 Senator Balboni.

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

7 ACTING PRESIDENT MORAHAN:

8 Senator, are you on the bill?

9 SENATOR BALBONI: On the bill.

10 ACTING PRESIDENT MORAHAN: Thank
11 you.

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

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

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

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

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

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

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

24 Thank you, Mr. President.

25 ACTING PRESIDENT MORAHAN: Thank

1 you, Senator.

2 Any other Senator wish to be heard?

3 The debate is closed.

4 The Secretary will ring the bell.

5 Read the last section.

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

8 ACTING PRESIDENT MORAHAN: Call
9 the roll.

10 (The Secretary called the roll.)

11 ACTING PRESIDENT MORAHAN:

12 Announce the results.

13 Senator Flanagan, to explain his
14 vote.

15 SENATOR FLANAGAN: Thank you, Mr.
16 President.

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

1 do today. So that's number one.

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

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

16 ACTING PRESIDENT MORAHAN: Thank
17 you, Senator Flanagan.

18 Announce the results.

19 THE SECRETARY: Ayes, 59.

20 Senators absent from voting:
21 Senator Nozzolio.

22 ACTING PRESIDENT MORAHAN: The
23 bill is passed.

24 THE SECRETARY: Calendar Number
25 348, by Senator Volker, Senate Print 3272, an

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

3 SENATOR VOLKER: Mr. President.

4 ACTING PRESIDENT MORAHAN:

5 Senator Volker, I don't know if there was an
6 explanation asked for.

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

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

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

25 Senator Schneiderman.

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

4 SENATOR VOLKER: Why, certainly.

5 ACTING PRESIDENT MORAHAN:
6 Senator Volker, will you yield?

7 SENATOR VOLKER: I certainly
8 will.

9 ACTING PRESIDENT MORAHAN: Thank
10 you.

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

15 "SENATOR SCHNEIDERMAN: Thank you.

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

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

25 "SENATOR VOLKER: It is possible,

1 yes. I think I know what you mean.

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

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

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

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

23 "SENATOR SCHNEIDERMAN: Thank you.

24 "Mr. President, on the bill.

25 "ACTING PRESIDENT MEIER: Senator

1 Schneiderman, on the bill.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 Was --

8 ACTING PRESIDENT MORAHAN:

9 Senator Schneiderman, is there a --

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

14 SENATOR VOLKER: No.

15 Mr. President, the reason --

16 ACTING PRESIDENT MORAHAN:

17 Senator Volker.

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

1 it would be helpful.

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

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

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

1 to get compromises.

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

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

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

24 ACTING PRESIDENT MORAHAN: Thank
25 you, Senator.

1 Any other Senator wish to be heard?

2 Senator DeFrancisco.

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

5 Would the sponsor yield to a
6 question?

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

9 SENATOR VOLKER: Certainly,
10 Senator.

11 ACTING PRESIDENT MORAHAN: The
12 Senator yields.

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

16 SENATOR VOLKER: Really?

17 SENATOR DeFRANCISCO: Yes.

18 SENATOR VOLKER: I'm sorry.

19 (Laughter.)

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

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

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

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

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

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

12 SENATOR DeFRANCISCO: You've
13 answered the question.

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

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

20 (Laughter.)

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

23 Senator Schneiderman.

24 SENATOR SCHNEIDERMAN: Thank you.
25 Briefly on the bill.

1 ACTING PRESIDENT MORAHAN:

2 Senator Schneiderman, on the bill.

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

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

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

25 But in the absence of that, some

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

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

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

10 The debate is closed.

11 The Secretary will ring the bell.

12 Read the last section.

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

15 ACTING PRESIDENT MORAHAN: Call
16 the roll.

17 (The Secretary called the roll.)

18 ACTING PRESIDENT MORAHAN:
19 Announce the results.

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

1 Absent from voting: Senator
2 Nozzolio.

3 Ayes, 44. Nays, 14.

4 ACTING PRESIDENT MORAHAN: The
5 bill is passed.

6 The Secretary will read.

7 THE SECRETARY: Calendar Number
8 446, by Senator Flanagan, Senate Print 3686,
9 an act making an appropriation to the State
10 Board of Elections.

11 SENATOR SCHNEIDERMAN:
12 Explanation.

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

16 SENATOR FLANAGAN: Thank you, Mr.
17 President.

18 This is an appropriation bill for
19 \$7.7 million. It is a required state match
20 from the State of New York, which will allow
21 us to access approximately \$153 million
22 additional from the federal government in
23 addition to the \$66 million that we have right
24 now.

25 Our action on this bill has to be

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

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

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

21 ACTING PRESIDENT MORAHAN: Thank
22 you, Senator.

23 Senator Schneiderman.

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

1 ACTING PRESIDENT MORAHAN:

2 Senator Schneiderman, on the bill.

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

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

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

1 area.

2 Thank you, Mr. President.

3 ACTING PRESIDENT MORAHAN: Thank
4 you, Senator Schneiderman.

5 Any other Senator wish to be heard?

6 The debate is closed.

7 The Secretary will ring the bell.

8 Read the last section.

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

11 ACTING PRESIDENT MORAHAN: Call
12 the roll.

13 (The Secretary called the roll.)

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

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

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

1 take.

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

10 Thank you.

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

14 Announce the results.

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

18 Ayes, 59.

19 ACTING PRESIDENT MORAHAN: The
20 bill is passed.

21 The Secretary will read.

22 THE SECRETARY: Calendar Number
23 447, by the Senate Committee on Rules, Senate
24 Print 3937, an act to amend the Insurance Law,
25 in relation to authorizing a loan to the

1 Workers' Compensation Security Fund.

2 SENATOR SCHNEIDERMAN:

3 Explanation.

4 ACTING PRESIDENT MORAHAN:

5 Senator Seward, an explanation has been
6 requested by Senator Schneiderman.

7 SENATOR SEWARD: Certainly, Mr.
8 President.

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

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

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

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

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

1 conditions.

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

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

10 ACTING PRESIDENT MORAHAN: Thank
11 you, Senator Seward.

12 Senator Savino.

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

15 ACTING PRESIDENT MORAHAN:
16 Senator, on the bill.

17 SENATOR SAVINO: The Workers'
18 Compensation Security Fund was created in 1939
19 to pay workers' compensation claims to injured
20 workers in the event that their carriers
21 became insolvent. Funding for the workers'
22 compensation fund comes from quarterly
23 assessments on workers' compensation carriers
24 writing business in New York State equal to
25 1 percent of each insurer's net premiums, and

1 distributions from insolvent insurance
2 companies' estates and investment income.

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

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

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

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

1 ACTING PRESIDENT MORAHAN:

2 Senator Krueger.

3 SENATOR LIZ KRUEGER: Thank you.

4 If the sponsor would please yield.

5 ACTING PRESIDENT MORAHAN:

6 Senator Seward, if you would yield for Senator
7 Krueger.

8 SENATOR SEWARD: Certainly, Mr.
9 President.

10 ACTING PRESIDENT MORAHAN: The
11 Senator yields.

12 SENATOR LIZ KRUEGER: Thank you.

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

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

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

1 inherent in this bill?

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

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

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

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

25 ACTING PRESIDENT MORAHAN: Thank

1 you, Senator.

2 Senator Krueger.

3 SENATOR LIZ KRUEGER: On the
4 bill.

5 ACTING PRESIDENT MORAHAN:
6 Senator Krueger, on the bill.

7 SENATOR LIZ KRUEGER: Thank you.

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

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

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

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

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

17 So I'll vote for the bill, but I
18 want to highlight a couple of issues. This is
19 not a solution. That 1 percent to
20 2 percent -- and thank you very much, Senator
21 Seward, for highlighting that -- may give us
22 some additional funds, although it's
23 questionable whether it would be enough to pay
24 back what we're borrowing and make reasonable
25 payments on an ongoing basis to ensure that

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

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

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

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

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

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

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

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

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

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

15 Thank you, Mr. President.

16 ACTING PRESIDENT MORAHAN: Thank
17 you, Senator Krueger.

18 Any other Senator wish to be heard?

19 The debate is closed.

20 Ring the bells.

21 Read the last section.

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

24 ACTING PRESIDENT MORAHAN: Call
25 the roll.

1 (The Secretary called the roll.)

2 ACTING PRESIDENT MORAHAN:

3 Announce the results.

4 Senator Seward, to explain his
5 vote.

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

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

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

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

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

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

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

19 I vote aye, Mr. President.

20 ACTING PRESIDENT MORAHAN:

21 Senator Seward will be recorded in the
22 affirmative.

23 The Secretary will announce the
24 results.

25 THE SECRETARY: Ayes, 59.

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

3 ACTING PRESIDENT MORAHAN: The
4 bill is passed.

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

7 SENATOR SKELOS: Thank you, Mr.
8 President.

9 Is there any housekeeping at the
10 desk?

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

13 SENATOR SKELOS: Would you please
14 recognize Senator Schneiderman.

15 ACTING PRESIDENT MORAHAN:
16 Senator Schneiderman.

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

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

23 The Secretary will read.

24 THE SECRETARY: Senate Print
25 2445, by Senator Schneiderman, an act to amend

1 the Penal Law.

2 SENATOR SCHNEIDERMAN: Thank you.

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

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

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

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

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

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

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

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

22 Thank you, Mr. President.

23 ACTING PRESIDENT MORAHAN: Thank
24 you, Senator Schneiderman.

25 All those Senators in favor of the

1 petition out of committee please signify by
2 raising your hand.

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

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

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

16 ACTING PRESIDENT MORAHAN: The
17 petition is not agreed to.

18 Senator Skelos.

19 SENATOR SKELOS: Thank you, Mr.
20 President.

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

1 would be appreciated.

2 And there being no further business
3 to come before the Senate, I move we stand
4 adjourned until Wednesday, April 6th, at
5 11:00 a.m.

6 ACTING PRESIDENT MORAHAN: On
7 motion, the Senate stands adjourned until
8 Wednesday, April 6, the year 2005, at
9 11:00 a.m.

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

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