NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

May 4, 2005

12:07 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.

Everyone present please rise and repeat with me the Pledge of Allegiance.

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

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

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

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Tuesday, May 3, the Senate met pursuant to adjournment. The Journal of Monday, May 2, 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.

The Secretary will read.

THE SECRETARY: The Governor returned, without Executive approval, Senate Bill Number 2, entitled "An act to amend the State Finance Law."

THE PRESIDENT: Senator Bruno.

SENATOR BRUNO: Madam President, I move to lay said bill, as vetoed by the Governor, on the table.

THE PRESIDENT: So ordered.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Bruno.

SENATOR BRUNO: Madam President, I believe there is a resolution at the desk by Senator Bonacic. I would ask that the title be read and move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Bonacic, Legislative Resolution Number 1693, honoring Bernadette Reichle upon the occasion

of receiving the Education Award from the Sarah Wells Girl Scout Council and the YWCA of Orange County at the 2005 Tribute to Women of Achievement of Orange County.

THE PRESIDENT: The question is 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 Bruno.

SENATOR BRUNO: Madam President, there is another resolution at the desk, by Senator Larkin. I would ask that it be read in its entirety and move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Larkin, Legislative Resolution Number 1694, commemorating the 60th Anniversary of VE-Day, Victory in Europe during World War II, to be observed on Thursday, May 5, 2005.

"WHEREAS, It is the sense of this Legislative Body that those who give positive definition to the profile and disposition of our American manner, do so profoundly strengthen our shared commitment to the exercise of freedom; and

"WHEREAS, Attendant to such concern, and fully in accord with its long-standing traditions, it is the intent of this Legislative Body to commemorate the 60th Anniversary of VE-Day, Victory in Europe during World War II, to be observed on Thursday, May 5, 2005, at the New York State World War II Memorial in Albany, New York, with a special ceremony; and

"WHEREAS, New York State officials and veterans from across the state will gather to observe this important anniversary to instill in all citizens a greater understanding and appreciation of the selfless sacrifice of the brave individuals who served their country during World War II; and

"WHEREAS, VE-Day was a triumph that silenced the guns of war that had laid claim to death and devastation across the continent

for nearly six years; and

"WHEREAS, It was the extraordinary courage of a special generation of Americans and the passion for freedom of our Allies that would defeat an evil regime and keep alight the flame of liberty; and

"WHEREAS, The dedication and sacrifices of these extraordinary Americans who served during World War II ensured our continued role as a nation which embodies the ideals of democracy and is a defender of liberty for peoples throughout the world; and

"WHEREAS, This Legislative Body is very pleased to have this opportunity to express its gratitude to the veterans of World War II for their tremendous sacrifices made for our nation and for the benefit of all Americans; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to commemorate the 60th anniversary of VE-Day, Victory in Europe during World War II, to be observed on Thursday, May 5, 2005; and be it further

"RESOLVED, That copies of this resolution, suitably engrossed, be transmitted

to veteran organizations in New York State."

THE PRESIDENT: Senator Larkin.

SENATOR LARKIN: Thank you, Madam President.

You know, this is a year that we're going to -- as far as history goes, is going to say a lot for us. But fifty [sic] years ago, combat in Europe stopped. Tomorrow, here in the State Capitol, there will be a ceremony honoring what happened fifty years ago.

Fifty years ago the concern was how explosive Europe would be, how explosive the Pacific would be. But yet our armed forces, joining with our allies, convinced the Germans that this was the end of the road.

While it was a joyful occasion, there were many tearful occasions, because many of our units that had served in combat took a step back, and they thought of the people that they served with, the men and women -- starting in North Africa, going to D-Day, crossing the line and taking in Berlin -- and they remembered those who made the supreme sacrifice in order to allow this day to happen.

It was a glorious day for us. It set in pattern what we had hoped would be the end of all wars, of which we know it never took place.

This resolution is a small piece of paper. But to our veterans groups who will celebrate this day -- in our chamber, there are three of us who served in World War II: The dean, Senator Marchi, four years United States Navy; to my right, Caesar Trunzo, infantryman; and this little kid from South Troy, Your Honor, served with them too.

So we can reflect back. Most of all, we'll reflect the great times of having it end. Because those troops that were in Europe were making preparation to join us in the South Pacific, 86th Blackhawk. And people recognized, without the action in Europe, the devastation that would have been on us in attacking Japan; there would have been millions more killed.

So as we joyfully celebrate things of spring and all, I think we all ought to take a moment and reflect how lucky we are that we had men and women in our nation that

were willing to fight to preserve freedom.

Madam President, I'd like to open up the resolution to all to join us, because it is a rightful thing to do.

Thank you.

THE PRESIDENT: The question is 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.

Any member who does not wish to be a cosponsor of this resolution please notify the desk.

Senator Bruno.

SENATOR BRUNO: Madam President, are there any substitutions at the desk?

THE PRESIDENT: Yes, there are, Senator.

SENATOR BRUNO: Can we take up those substitutions at this time.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: On page 4, Senator Larkin moves to discharge, from the Committee on Agriculture, Assembly Bill Number 6428 and substitute it for the identical Senate Bill Number 1964, First Report Calendar 690.

On page 8, Senator Marchi moves to discharge, from the Committee on Transportation, Assembly Bill Number 5779 and substitute it for the identical Senate Bill Number 2940, First Report Calendar 735.

On page 13, Senator Spano moves to discharge, from the Committee on Investigations and Government Operations, Assembly Bill Number 7294 and substitute it for the identical Senate Bill Number 5074, First Report Calendar 789.

On page 43, Senator Bruno moves to discharge, from the Committee on Finance, Assembly Bill Number 2, and substitute it for the identical Senate Bill Number 1, Third Reading Calendar 597.

And on page 51, Senator Maltese moves to discharge, from the Committee on Codes, Assembly Bill Number 6285B and

substitute it for the identical Senate Bill Number 1872B, Third Reading Calendar 798.

THE PRESIDENT: Substitutions ordered.

Senator Bruno.

SENATOR BRUNO: Madam President, can we at this time take up the noncontroversial reading of the calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 187, by Senator Marchi, Senate Print 1841, an act to amend the Not-for-Profit Corporation Law, in relation to not-for-profit corporations.

SENATOR BRUNO: Lay it aside for the day.

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

THE SECRETARY: Calendar Number 304, by Senator Larkin, Senate Print 414, an act to amend the Insurance Law, in relation to providing.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 329, by Senator Little, Senate Print 1184, an act to authorize certain health care professionals.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This act shall take effect July 20, 2005.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 437, by Senator Meier, Senate Print 3567, an act in relation to authorizing the reopening of retirement plans.

THE PRESIDENT: There is a

home-rule message at the desk.

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 471, by Member of the Assembly Lavelle, Assembly Print Number 5475, an act to amend Chapter 395 of the Laws of 1978.

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 PRESIDENT: Senator Schneiderman, to explain your vote.

SENATOR SCHNEIDERMAN: Yes, Madam President.

I'm voting no on this piece of legislation. This is a bill originally passed

in 1973 in response as to an explosion on Staten Island which killed 40 people. The explosion was of a liquid natural gas tank.

I voted against this in the past because it has been ascertained that there was a defect in the particular truck, the particular tank. It had nothing to do with the safety of liquid natural gas, which in fact is very important for powering clean engines.

And unfortunately, this piece of legislation, which was enacted in response to that tragedy, is a ban on the siting of facilities for transporting and storing liquid natural gas in the City of New York. It imposes a tremendous burden. It increases pollution in the city. And I believe it's a continued reaction to a problem that, while it was a great tragedy, is not really addressed by this piece of legislation.

So I sympathize with anyone still bearing the scars of the tragedy in 1973. I understand Senator Marchi's commitment to this. But liquid natural gas is a safe product, it is a good product for the

environment, and we should end the ban on liquid natural gas facilities in the City of New York.

So I will be voting no, Madam President.

THE PRESIDENT: You will be recorded as voting in the negative.

The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 471 are Senators Balboni, Breslin, Duane, Gonzalez, L. Krueger, C. Kruger, Montgomery, Onorato, Parker, Schneiderman, and Serrano.

Ayes, 47. Nays, 11.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 526, by Senator Larkin, Senate Print 2622, an act to amend the General Municipal Law, in relation to providing.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 180th day.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 541, by Senator Hannon, Senate Print 766, an act to amend Chapter 590 of the Laws of 2002, amending the Public Health Law.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 590, by Senator DeFrancisco, Senate Print 44, an act to amend the Real Property Law, in relation to real estate agency disclosure.

ACTING PRESIDENT MEIER: Read the

last section.

THE SECRETARY: Section 3. This act shall take effect January 1, 2006.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 593, by Senator Volker, Senate Print 160, an act to amend the Real Property Law, in relation to fees for home inspection examinations.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 12. This act shall take effect immediately.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number

597, substituted earlier today by Member of the Assembly Silver, Concurrent Resolution of the Senate and Assembly proposing amendments to Articles IV --

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT MEIER: Lay the resolution aside.

THE SECRETARY: Calendar Number 604, by Senator Farley, Senate Print 2220, an act to amend the Executive Law, in relation to designation of August 7th as "Family Day."

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 607, by Senator Little, Senate Print 2973, an

act to amend the Executive Law, in relation to including the Fulton chain of lakes.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 609, by Senator Spano --

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 632, by Senator Larkin, Senate Print 70, an act to amend the Vehicle and Traffic Law, in relation to authorizing the City of Newburgh.

ACTING PRESIDENT MEIER: There is a home-rule message at the desk.

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 798, substituted earlier today by Member of the Assembly McLaughlin, Assembly Print Number 6285B, an act to amend the Penal Law, in relation to enacting "Vasean's Law."

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 6. This act shall take effect on the first of November.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

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

SENATOR MALTESE: Mr. President, I rise to explain my vote.

Mr. President, I've been coming to Albany for a great many years now, and very rarely have I seen the agreement that we have in effect today to pass this legislation in this house. It's a situation that has risen as a result of a terrible tragedy, the loss of a little boy, the loss of a beloved little boy by a mother who cared very deeply about her only child.

And that mother is present in the chamber today. That mother has been present in the Assembly chamber for the passage of this same law.

That mother, together with her friend and neighbor -- that mother is Mrs. Monique Dixon. Her friend and neighbor is present here today, and that woman is Diana Reyes. Diana is the mother of another little boy, the best friend of little Vasean, who was in a coma shortly after the tragic accident.

That accident was a crime. That accident was among the very many accidents caused by drunken drivers behind the wheels of vehicles. This law is seeking to change the law and stop accidents like that, crimes like

that from happening in the future.

Not only does it change the law to create a rebuttable presumption that an assault, a vehicular assault or a vehicular homicide caused by a drunken driver was caused by a driver's intoxication or impairment, but it also increases the penalties to a felony in both cases, a very desired result.

Speaking as a former prosecutor myself, and deputy chief of the Homicide Bureau in Queens, it's very evident that the law over the years has been too lenient and has been taken advantage of by drunken drivers. It a pity, it is a shame that it took the death of a little boy to change this law and provide for a penalty that fits the crime.

Nothing can ever bring back that little boy, but certainly we in this chamber can pass this legislation. We in this chamber, as a result of the efforts of those two mothers who have lobbied extensively -- lobbied not only Speaker Silver, who has stepped up to the plate; lobbied the Governor of the State of New York, who has indicated

that he will sign this legislation; lobbied Majority Leader Bruno, who was sympathetic to this case from the very first and has watched carefully as this case has progressed and indicated his acceptance and support.

By the same token, in this house, this bill has been supported by my co-prime sponsor, Senator Toby Stavisky, eliminating any claim of partisan politics. Senator Dale Volker, our chairman of Codes, Assemblyman Joe Lentol, the Assembly chairman of Codes, have all cooperated to bring this bill before this house at a time at less than six months have expired.

The support that Mrs. Dixon and Mrs. Reyes have encouraged and obtained is absolutely incredible. They are present in the chamber today. I think it's fitting that they be here today to see this bill passed.

I vote aye.

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

Senator Stavisky, to explain her vote.

SENATOR STAVISKY: Thank you, Mr.

President.

October 22, 2004. That evening, little Vasean was hit by a drunken driver, and Angel Reyes was seriously injured. A lot has happened in the last -- just over six months, and it's happened because of the two women who are seated here in the chamber today.

But there are some other people also whom we must thank. Senator Maltese mentioned some of them. We thank Senator Bruno. I certainly thank Senator Maltese. I thank my Minority Leader, Senator Paterson, for his guidance and for his leadership on this issue.

And we thank the people in the Assembly, because without Assemblyman McLaughlin and Assemblywoman Nettie Mayersohn, Speaker Silver, and Joe Lentol, the Assembly chair of Codes, and Senator Volker, the chair of our Codes, we wouldn't be here at this point today.

Ms. Dixon and Ms. Reyes live in my Senate district. The accident occurred in my Senate district. It occurred right on the boundary of where -- in the street where

Assemblyman McLaughlin has one side of the street and Assemblywoman Mayersohn has the other side of the street. But it was their commitment and tenacity that brought us to this day.

We also ought to mention the editorial writers, because they were also very significant. We had major editorials in the Daily News, in Newsday -- Newsday did three editorials, the Daily News did two -- the community newspapers.

The people in the community who came up and who lobbied and who we went to court on so many occasions. They collected petitions and signatures and lent support to Ms. Dixon and Ms. Reyes in their fight. The people in the community should also be thanked.

But with all due respect, we wouldn't be here if it weren't for Monique Dixon and Diana Reyes, because they have become a vocal voice for the silent mothers who have lost children in the past. And to me, nothing can be worse than losing a child. They have shown the depth of a mother's love

for a child, by taking a tragedy and turning it into a positive result.

Many mothers have suffered similar tragedies. But we know that drinking and driving is a recipe for disaster. And Ms. Dixon has been able to channel her grief and her anger in a constructive manner, with positive results.

Monique Dixon vowed to change the law so that other mothers would not have to experience her anguish. In a little more than six months, they have accomplished the impossible.

The editorial writers love to say that we're dysfunctional, that we can't do something. Well, I must say, we finally got it right. We finally got it right in the Legislature. And I hope that this is a harbinger of what's going to happen in the future.

We thank you, my friends, my constituents, for what you have done. And this really is only the beginning of your fight. I know that you're not going to rest once this bill is signed into law. There are

many other things that you're going to do. And we thank you for being the conscience of the Legislature on this issue. You have spoken so eloquently and so effectively, and we are so grateful for everything that you have done.

And lastly, I can't help but think back to what happened yesterday, during the tribute to Pat McGee. So many people stood and said, "I never had a chance to say goodbye." And I think that was telling of what happens up here. So let us, when we leave here today, remember to say goodbye to our friends.

And to Monique and to Diana, we thank you very, very much for all you have done, but also for everything that you're going to do in the future.

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

Senator Golden, to explain his vote.

SENATOR GOLDEN: Thank you, Acting President.

I too rise to congratulate Serph

Maltese today, and the Senate for passing this bill today, and to congratulate Monique Dixon. Even though it's a sad day, losing your son, it is a great day for your son, for Angel Reyes, for all of the children of this great state.

There isn't a week that goes by that we don't open up the newspapers and we see somebody with a hit-and-run, somebody with a DWI, somebody killing another child in this city and state. It's wrong. And this Senate has passed, in the past three weeks, two laws that are going to deal with vehicle accidents and with driving while intoxicated.

We have a long way to go yet. In 2002, 1,500 people were killed by car accidents. That's leaving the scene, that's DWI, that's acting while under the influence of drugs, that's reckless driving, that's -- it's a combination.

We have to get serious about the accidents in this state, like we did with the crime of homicide and criminal crimes in this city and state. We dealt with that. We brought crime down across this city and state.

We have to do the same when it comes to vehicle accidents.

What percentage, what portion of those people being killed in this state are that of people that were drunk that left the scene of an accident and killed a child? Next week, I guarantee you we open up the Post or the Daily News and you will see another child killed, and the week after that, another person run down, and another week after that, another person run down. We have to get serious.

And I congratulate this Senate, all of us in the Assembly and the Senate, for passing these two bills, but we've got a long way to go yet in bringing traffic accidents down and dealing with this with a comprehensive approach. This is two of the five-point plan that the Governor had. We have to continue the other three points, and we have to go further to make sure that we start saving lives here in this great, great state.

So I thank you again, Monique, and I thank Diane for being here today, and the 60

or 70 kids that you brought with you yesterday to make your point. Congratulations, and God bless Vasean.

And I vote yes. Thank you.

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

Senator Malcolm Smith, to explain his vote.

SENATOR MALCOLM SMITH: Thank you very much, Mr. President.

And to Diane and Monique, I am sorry that you have to visit our chambers on this particular day and be acquainted with all of these members because of the tragedy that happened to both of your children.

However, you should rest and know that something good is coming out of this. While I know that does very little to support your heart, I do understand where your feelings are right now. Truthfully, to lose a loved one is probably the most difficult thing for anyone to have to deal with.

I am happy to hear, obviously, that Angel has come out of the coma, and that's a good thing. And we're hoping to hear some

good things about him. Obviously, God is not through with him and there is more purpose to his life.

I will tell you very much so, Monique, I know how passionate you were about this. Even when you were in church, you would make sure to try to lobby for this. And you saw here, with Senator Maltese and Senator Toby Stavisky, exactly what can happen in government when everybody is focused on making the right thing happen.

You should know that your commitment and your tenacity pushed this thing through for the last month or so, as you were up here and we saw you in the hallway and you were talking to everybody. And I know how you grabbed me by my neck a few times when we were in the hallway. That was a good thing, for both of you. And I love you both for that.

But please know that our prayers are going to be with each and every one of you for now and forever. And as this day passes, you know, as they say in the Bible, that, you know, weeping may endure for a night, but joy comes in the morning. And the joy that you

have this morning is knowing that we are all here supporting a bill that is a tribute to both of your children. But also know that the joy that you have this morning is that our prayers are going to be with you forever, and we love each and every one of you. God bless.

And I vote yes.

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

Senator Ada Smith, to explain her vote.

SENATOR ADA SMITH: Thank you, Mr. President.

I too would like to pay homage to my colleagues Senator Maltese and Senator Toby Stavisky, and to thank them. But most of all, to Monique and Diana.

And Monique, this is a very hard time because it is the week of Mother's Day. But think of it as your beautiful son looking down upon you giving you a gift of strength. May your strength continue. May you continue to push each and every one of us.

And when you look upon Angel, think

of him as being a reward for still being here, and continue to give him the love and the caring that he will need to go forward in life.

And I want to add my thanks to you for your diligence. And I look forward to working with you in any way possible to further those bills that we need to put forward so that young people will be safe in the streets of our city.

Once again, thank you. And I vote yes.

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

The Secretary will announce the results.

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill is passed.

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

SENATOR BRUNO: Mr. President, can we at this time take up the controversial reading of the calendar.

ACTING PRESIDENT MEIER: The

Secretary will conduct the controversial reading of the calendar.

THE SECRETARY: Calendar Number 597, substituted earlier today by Member of the Assembly Silver, Assembly Print Number 2, Concurrent Resolution of the Senate and Assembly proposing amendments to Articles IV and VII of the Constitution.

ACTING PRESIDENT MEIER: Members are asked to come into the chamber and take their seats.

The Secretary will ring the bells.

The resolution is before the house.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Yes, thank you, Mr. President. On the bill -- on the resolution, excuse me.

We have two budget reform resolutions before us today. I will be opposing the resolution that is before us now and supporting the second resolution.

I think that since this resolution was first passed, a lot has happened. The Silver v. Pataki decision was handed down, and the Legislature demonstrated this year that

even under the current system, in the wake of the Silver v. Pataki decision, we can get our job done, we can pass an on-time budget.

This resolution provides for a contingency budget, changes the budget process in several ways that I feel actually would be a detriment to moving forward as we all want to in this house to pass budgets as quickly as possible every year and to replicate our success this year.

It might be one thing if we only had one option to change the budget process, but there is a far superior bill on the calendar today, a far superior resolution on the calendar today, Senate 3195, that has already passed the Assembly, that surgically addresses the issues raised in the Silver v. Pataki decision, that changes the most offensive part of that decision, from my point of view as a legislator, which is allowing the Governor to avoid his responsibility to change the law through independent pieces of legislation and to put language that changes the law into appropriations.

This current resolution I think

monkeys with the process in a way that is not necessarily productive. There's a big downside to a contingency budget. It gives the power of delay to whichever house, whichever party to the negotiations wants to delay. And I think it would be a mistake to pass it given the history of the last year, given the Silver v. Pataki decision, and given the fact that we now have a far better bill before us.

So I'm going to vote no on this bill and encourage everyone to vote yes on the next bill, Senate 3195. I think that that legislation, if you examine it, is the surgical strike to deal with the balance of power issues raised in Silver v. Pataki. This bill changes things that don't necessarily solve the problem and could in fact make it far worse.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Bruno, to close.

SENATOR BRUNO: Mr. President -- and thank you, Senator Schneiderman.

We gave first passage to this

budget reform. And second passage allows this issue to go before the public in a referendum in November. That's what it does.

The Assembly passed this, I believe, in January. So all we're talking about here is second passage, take a referendum and let the people decide whether or not they want this form of budget reform put in place so that we will have a budget on a date certain.

This year we did some extraordinary things. There's no assurance we'll be able to do those same extraordinary things next year. This, with public approval, gives us some assurances.

So I would encourage my colleagues to vote for second passage and give the constituency of this state an opportunity to vote on true reform, budget reform.

ACTING PRESIDENT MEIER: On the concurrent resolution, the Secretary will call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEIER: Senator Oppenheimer, to explain her vote.

SENATOR OPPENHEIMER: Yes. I'm going to be voting for this, because I was on the budget reform conference committee that proposed this. And I feel that it is something that should be supported.

But I have to put a big "but" in here. If we are not going to override in the long run the Governor's veto of the implementing legislation, I see no value in going to the hard work that we all are going to do to try and pass this constitutional amendment.

So I think -- I think I would have to feel -- I mean, I am going to vote for it. But I would feel so much more comfortable if I knew that we were going to stand together and override the Governor's veto of the implementing legislation, which in a way is absolutely required for Section 1 through 35 and also Section 38. So that's useless if we don't have the override.

I'm voting yes.

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

Senator Volker, to explain his vote.

SENATOR VOLKER: Mr. President, I -- you know, one of the Governor's people I ran into this morning said: "Don't hurt us too bad." I said, "Well, I'm not going to hurt you bad at all."

I understand, by the way, if I'm even thinking about being Governor, I would oppose this. That's why I think the Attorney General doesn't like this.

But, ladies and gentlemen of the Senate, a main reason why we have been late for 20 years has to do with the total erosion by the Court of Appeals of this house's power to deal with budgets.

This is not an issue, by the way, a Republican and Democrat issue. This is an issue that involves the right of the people of this state to make a decision on whether we should be able to run a democratically -- and by democratic, I'm talking about a democracy type of system.

This is what this is all about. When it goes on the ballot, we should be out

there making sure that the people understand that when they vote for us, that they are voting for us to handle the budget in an equal manner. And that's what this is really all about.

So not only am I voting yes, I'm urging all my colleagues to look at this as something that is important for all of us as democratically elected legislators.

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

Senator Bonacic, to explain his vote.

SENATOR BONACIC: Thank you, Mr. President.

I'm voting yes on this constitutional change. I'm very disappointed for any member in this chamber who's voting no, considering how most of the members voted on the first constitutional passage. I think it was unanimous.

What has happened between the first vote and now? I think the mandate that we all heard in the last election was loud and clear. It was bipartisan. From Democratic

constituents, Republican constituents, and everybody in between: We're sick and tired of late budgets.

This constitutional amendment is a statutory trigger that will automatically mandate timely budgets. And for anyone that votes no on this resolution is saying to the public: We really don't want timely budgets and, number two, we don't even want to hear your vote on a referendum in November of whether or not you want timely budgets.

Thank you, Mr. President.

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

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 597 are Senators Breslin, Duane, Gonzalez, Hassell-Thompson, L. Krueger, Montgomery, Parker, Savino, Schneiderman, Serrano, A. Smith and Stavisky.

Ayes, 47. Nays, 12.

Absent from voting on Calendar Number 597, Senator Connor.

ACTING PRESIDENT MEIER: The

concurrent resolution is adopted.

THE SECRETARY: Calendar Number 609, by Senator Spano, Senate Print 3195, Concurrent Resolution of the Senate and Assembly proposing amendments to Article VII of the Constitution.

ACTING PRESIDENT MEIER: Senator Schneiderman.

SENATOR SCHNEIDERMAN: I would like to quote the words of the great Ron Stafford: This is a good bill.

Thank you, Mr. President.

(Laughter.)

ACTING PRESIDENT MEIER: Senator, Senator Stafford would have called it a resolution, but it was close enough.

(Laughter.)

ACTING PRESIDENT MEIER: Senator Liz Krueger.

SENATOR LIZ KRUEGER: Thank you, Mr. President. On the bill.

Excuse me, on the resolution. Thank you, Senator Gonzalez.

So we do have two before us today, and I'd like to start with my support for this

bill by pointing out where I disagree with my colleague Senator Bonacic.

Why could we not vote for S1 this year when we voted for it last year? And I think the answer is that because some things have changed. In fact, since then we have had a legal decision, Silver v. Pataki, through the Court of Appeals, which clarified the role of the Governor and the Legislature in the budget.

And I think institutionally for the Legislature, both parties, both houses, we didn't like that decision. But it did clarify some of the debates within the existing constitution and the fight at hand between what we can do to reform the budget.

I also think that Senator Bonacic is right; we have heard from voters. They demand better of us. They want on-time budgets. They want good budgets. They want reform in Albany. And I would like to give them all of that.

But I think it is reasonable to say that in a year since we had the budget conference committee, and we passed S1

originally in both houses, that we have become more educated about what we can and cannot do with reforming the budget in a way that meets our obligations to our voters.

And so I'm perfectly comfortable standing here today saying that while I voted for S1 last year, I realized during that time, because it was open to sunshine and public discussion, and we've heard from our constituents, we've heard from the Court of Appeals, we've heard from newspapers and editorial boards, we've had open discussions -- at least I have, with public forums in my own district about what our constituents or my constituents want -- that it's okay to say that that was a try but perhaps not the best we could do.

And that in fact I also believe that the bill we're now discussing, A4630, Silver, and 3195 here in the Senate, is a better attempt.

And you are right when you point out, and I think Senator Bruno did, that S1 would go to the voters this November and this constitutional amendment couldn't possibly go

to the voters until as early as 2007.

I do think it's important to get it right when you're changing the Constitution of the State of New York and just not say it was the best you could do at one moment in time. Although I do believe this will go, this will pass -- excuse me, S1 passed, and it will go to a referendum of the voters this year, and we'll see, we'll see whether the voters say this was good enough for us.

But I see no problem with our reflecting back that maybe it wasn't good enough, that maybe this version is better. I have real concerns about the contingency budget model in S1, as I did last year, even though I voted for the bill and raised concerns about the bill last year.

I would argue that this bill also doesn't complete the task of reforming the budget process. And I wish that the bill we're now discussing also included, in addition to the improved changes for the constitution, I wish that this bill included a requirement that budget bills be on our desks at least 10 days before we pass them.

Because, let's face it, it is the most important bill or group of bills we pass each year, and there should be a healthy amount of time for the public and for legislators to know what are in those bills before we vote on them.

I wish that this bill did include a structure for an independent budget office, because I do think that is an important entity for us to create in the state that assure that we actually have valid, nonpolitically-biased numbers on revenue coming into the State of New York each year.

I do wish that we had more detail in this bill about the necessity to itemize and detail the appropriations items in the budget in simple English language.

I do wish that this constitutional amendment required that we follow standardized government accounting procedures. It is infuriating, as a resident of New York City, that I know that my city budget must follow standard accounting procedures, on orders from the State of New York, but that the state's own budget doesn't have to follow those rules.

I think that's an appropriate issue for a constitutional amendment.

I wish that we had standing budget committees on an ongoing, formal way with conference committees. Not because it was a popular idea this year and so we did them but no guarantee we'll continue to do them.

I wish that we had to itemize out, under the constitution, reappropriations and off-budget items so that we had a full and clear understanding, and our constituents did, of all the dollars in the budget.

So even the bill I'm about to support I don't believe is a perfect bill. I actually think we could do even better as we move forward.

So I will be voting for this bill today. I hope my colleagues will. And I think that technically our constituents may have two bites at the apple when it comes to referendum votes over the next few years. And that the time in between will give us an opportunity to better explain to the people of New York what goes into and makes a good budget, not just an on-time budget, and that

we have a lot of lifting to do to explain to constituents the technical differences between differing constitutional amendment proposals.

So I will be voting yes.

Thank you very much, Mr. President.

ACTING PRESIDENT MEIER: Does any other Senator wish to be heard on the resolution?

Then the debate is closed.

Senators are asked to be in their seats for a vote.

The Secretary will ring the bell.

On the concurrent resolution, the Secretary will call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT MEIER: The concurrent resolution is adopted.

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

Senator Bruno.

SENATOR BRUNO: Mr. President, I would suggest that we stand in recess in the Senate for 20 minutes and return at twenty after 1:00, back in session, and would ask our

conference to join in our conference room immediately upon recess.

And would suggest we recognize Senator Gonzalez.

ACTING PRESIDENT MEIER: Senator Gonzalez.

SENATOR GONZALEZ: Mr. President, there will be an immediate meeting of the Minority Conference in Room 314.

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

Immediate meeting of the Minority in the Minority Conference Room.

The Senate stands in recess until 1:20 p.m.

(Whereupon, the Senate stood in recess at 1:00 p.m.)

(Whereupon, the Senate reconvened at 2:31 p.m.)

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT ROBACH: Senator Skelos.

SENATOR SKELOS: Mr. President, if we could return to motions and resolutions,

I believe Senator Libous has a motion to make.

ACTING PRESIDENT ROBACH: Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

Mr. President, on behalf of Senator Spano, I wish to call up his bill, Senate Print 3195, which is now at the desk.

ACTING PRESIDENT ROBACH: The Secretary will read.

THE SECRETARY: Calendar Number 609, by Senator Spano, Senate Print 3195, Concurrent Resolution of the Senate and Assembly.

SENATOR LIBOUS: Mr. President, I now move to reconsider the vote by which this bill was passed and ask that the said bill be restored to its place on the Third Reading Calendar.

ACTING PRESIDENT ROBACH: The Secretary will call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT ROBACH: Senator

Libous.

SENATOR LIBOUS: Mr. President, I move to discharge this bill from the Committee on Finance, Assembly Print Number 4630, and substitute it for the identical bill.

ACTING PRESIDENT ROBACH: Substitution ordered.

SENATOR LIBOUS: I now move that the bill be restored to the Third Reading Calendar.

ACTING PRESIDENT ROBACH: So ordered.

The Secretary will read Calendar 609.

THE SECRETARY: Calendar Number 609, by Member of the Assembly Silver, Assembly Print Number 4630, Concurrent Resolution of the Senate and Assembly.

ACTING PRESIDENT ROBACH: Call the roll on the resolution.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT ROBACH: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Mr. President, I believe there's a resolution at the desk by Senator Leibell. I ask that the title be read and move for its immediate adoption.

ACTING PRESIDENT ROBACH: The Secretary will read.

THE SECRETARY: By Senator Leibell, Legislative Resolution Number 1695, honoring Joel Seligman upon being named the Mount Kisco Chamber of Commerce's 2005 Citizen of the Year.

ACTING PRESIDENT ROBACH: All those in favor of the resolution signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT ROBACH: Opposed, nay.

(No response.)

ACTING PRESIDENT ROBACH: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Mr. President, there being no further business to come before the Senate, I move we stand adjourned until Monday, May 9th, at 3:00 p.m., intervening

days being legislative days.

ACTING PRESIDENT ROBACH: On motion, the Senate stands adjourned until Monday, May 9th, 3:00 p.m., intervening days being legislative days.

(Whereupon, at 2:34 p.m., the Senate adjourned.)