NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

May 9, 2005

3:10 p.m.

REGULAR SESSION

LT. GOVERNOR MARY O. DONOHUE, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will please come to order.

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

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

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

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

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Sunday, May 8, the Senate met pursuant to adjournment. The Journal of Saturday, May 7, 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.

ACTING PRESIDENT MEIER: Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Mr. President.

On behalf of Senator Volker, on page number 37 I offer the following amendments to Calendar Number 468, Senate Print Number 918, and ask that said bill retain its place on Third Reading Calendar.

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

Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, on behalf of Senator Maziarz, I wish to call up Senate Print Number 976, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: Calendar Number 120, by Senator Maziarz, Senate Print 976, an act to amend the Highway Law.

ACTING PRESIDENT MEIER: Senator Fuschillo.

SENATOR FUSCHILLO: I now move to reconsider the vote by which the bill was passed.

ACTING PRESIDENT MEIER: Call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

SENATOR FUSCHILLO: I now offer the following amendments.

ACTING PRESIDENT MEIER: The amendments are received.

Senator Bruno.

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

ACTING PRESIDENT MEIER: Yes, there are.

SENATOR BRUNO: I move we accept the substitutions.

ACTING PRESIDENT MEIER: The Secretary will read the substitutions.

THE SECRETARY: On page 4, Senator Morahan moves to discharge, from the Committee on Mental Health and Developmental Disabilities, Assembly Bill Number 2972 and substitute it for the identical Senate Bill Number 2704, First Report Calendar 800.

ACTING PRESIDENT MEIER: Substitution ordered.

Senator Bruno.

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

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: By Senator Morahan, Legislative Resolution Number 1767, honoring Marie Solange Francois upon the occasion of her designation as recipient of the 2005 Outstanding Contribution by a Senior Citizen Award.

ACTING PRESIDENT MEIER: On the resolution, all those in favor signify by

saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The resolution is adopted.

Senator Bruno.

SENATOR BRUNO: Mr. President, I believe there's a Resolution 1748, by Senator Golden. I would ask that the title be read and move for its immediate adoption.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: By Senator Golden, Legislative Resolution Number 1748, honoring Clarence and Jeannie Soule upon the occasion of their designation as recipients of the 2005 Senior Citizens of the Year Award.

ACTING PRESIDENT MEIER: The question is on the resolution. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The resolution is adopted.

Senator Bruno.

SENATOR BRUNO: Mr. President, I believe there's another resolution by Senator Golden, Number 1749. I ask that the title be read and move for its immediate adoption.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: By Senator Golden, Legislative Resolution Number 1749, memorializing Governor George E. Pataki to proclaim May 2005 as Older Americans Month in the State of New York.

ACTING PRESIDENT MEIER: Senator Golden.

SENATOR GOLDEN: Thank you, Acting Chairman.

I rise today to speak with pride about the resolution proclaiming May as Older Americans Month.

For over forty years, the month of May has been recognized as Older Americans Month, to honor and celebrate the merits and

achievements of our nation's senior citizens. Older Americans Month is celebration of our past, our present and our future. It is a time to commemorate the exceptional contributions that older Americans have made and continue to make to the welfare and achievements of our nation.

In 1963, there were 17 million. Today, that number has doubled. And as 77 million baby boomers approach retirement age, Older Americans Month serves as a reminder to all of us of the challenges that the future holds. In New York, older Americans will soon outnumber children, for the first time ever in this great state.

Older Americans Month is our opportunity to celebrate the changing face of aging and to pay tribute to senior citizens for all they have done to strengthen our state, our nation, and our world.

It is my honor to commemorate May 2005 as Older Americans Month in the State of New York, and I'd like to also open up that resolution to all of my colleagues.

And there are some of New York

State's best sitting up above us here. Two of New York State's six interstate commissions dealing with water pollution and water supply are here today. They are the Interstate Environmental Commission, IEC, and the Delaware River Basin Commission, DRBC.

From the IEC, we have Chairperson Judith Baron, who is a New York commissioner of IEC; Executive Director Howard Golub; and Assistant Executive Director Boris Rukovets.

From the DRBC, we have the secretary and assistant general counsel Pam Bush.

Thank you for being here today.

ACTING PRESIDENT MEIER: The question is on the resolution. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The resolution is adopted.

Senator Bruno.

SENATOR BRUNO: Mr. President,

can I suggest to Senator Golden, if there be no objections, that we put the members in the chamber on this resolution.

SENATOR GOLDEN: No objection, sir.

SENATOR BRUNO: Thank you, Senator Golden.

And if anyone would like not to be on it, please let the desk know at your own discretion.

ACTING PRESIDENT MEIER: Those members wishing not to be on the resolution please inform the desk.

Senator Bruno.

SENATOR BRUNO: Mr. President, I move to take from the table Senate Bill Number 2, as vetoed by the Governor.

ACTING PRESIDENT MEIER: So ordered.

SENATOR BRUNO: Mr. President, I now move to override the veto of the Governor of Senate Bill Number 2.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: Calendar Number

1, by Senator Bruno, Senate Print Number 2, an act to amend the State Finance Law and others.

ACTING PRESIDENT MEIER: The bill is before the house.

Senators, ought the same become a law notwithstanding the veto of the Governor?

The Secretary will read the last section.

THE SECRETARY: Section 39. This act shall take effect immediately.

ACTING PRESIDENT MEIER: The Secretary will call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEIER: The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1 are Senators Andrews, Breslin, Diaz, Duane, Hassell-Thompson, L. Krueger, Montgomery, Parker, Savino, Schneiderman, Serrano and Stavisky.

Ayes, 47. Nays, 12.

ACTING PRESIDENT MEIER: The motion to override the Governor's veto is carried.

Senator Bruno.

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

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

THE SECRETARY: Calendar Number 203, by Senator LaValle, Senate Print 685A, an act to amend the State Finance Law, in relation to commodities.

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, 59.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 266, by Senator Morahan, Senate Print 2751A, an act to amend the Mental Hygiene Law, in relation to patients.

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, 59.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 318, by Senator Fuschillo, Senate Print 3344, an act to amend the General Business Law, in relation to proceedings.

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, 59.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number

343, by Senator Volker, Senate Print 3117, an act to amend the Penal Law, in relation to unlawful operation.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

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

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. Nays, 1. Senator Bonacic recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 389, by Senator Winner, Senate Print 1387, an act to amend the Parks, Recreation and Historic --

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 456, by Senator Larkin, Senate Print 2348A, an act to amend the Penal Law, in relation to cemetery desecration.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 10. This act shall take effect on the 180th day.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 521, by the Senate Committee on Rules, Senate Print Number 3644, an act to amend the Tax Law, in relating to extending.

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, 59.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 572, by Senator Marcellino, Senate Print 3764, an act in relation to granting active-duty status.

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, 59.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 579, by Senator Spano, Senate Print 3282, an act to amend the Labor Law, in relation to lists of independent contractors.

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.)

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

SENATOR MONTGOMERY: Yes, Mr. President, briefly to explain my vote.

This is a very important bill. I'm very happy to see this on the calendar. I hope that it becomes law.

And to the sponsor, it's not only a problem for union -- trades union people, but

it's a huge problem for minority- and women-owned businesses.

And so if the contractor is forced to list the subcontractors and independent contractors, that I think would be helpful to keep them from hiding and providing false information as it relates to minority- and women-owned contractors.

So I fully support this and certainly will be voting yes. Thank you.

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

The Secretary will announce the results.

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 580, by Senator Trunzo, Senate Print 3358, an act to amend the Labor Law, in relation to requiring employers.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 3. This

act shall take effect on the 30th day.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 596, by Member of the Assembly O'Donnell, Assembly Print Number 7254, an act to amend the Estates, Powers and Trusts Law, in relation to the effect of dispositions.

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, 59.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 608, by Member of the Assembly Bing, Assembly Print Number 4762, an act to amend the

Executive Law, in relation to posting.

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, 59.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 620, by Senator Volker, Senate Print 3822, an act to amend the Penal Law, in relation to the causing of death.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 6. This act shall take effect on the 90th day.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 644, by Senator Robach, Senate Print 4131, an act to authorize Joseph Palermo to transfer certain prior service.

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, 59.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 651, by Senator Maziarz, Senate Print 23, an act to amend the Correction Law, in relation to authorizing.

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, 59.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 660, by Senator Nozzolio, Senate Print Number 507, an act to authorize the Village of Victor to convey certain parklands.

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

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 664, by Senator Morahan, Senate Print 3350, an act to amend the Real Property Tax Law, in relation to providing.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect on the first of January.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 665, by Senator Golden, Senate Print 3543, an act to authorize the Muslim American Society to file an application.

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. Nays, 1. Senator Bonacic recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

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

SENATOR SKELOS: Thank you, Mr.

President. If we could go to the controversial reading at this time.

ACTING PRESIDENT MEIER: Members are asked to come to the chamber for the controversial reading of the calendar.

The Secretary will sound the bells.

The Secretary will conduct the controversial reading of the calendar.

THE SECRETARY: Calendar Number 389, by Senator Winner, Senate Print 1387, an act to amend the Parks, Recreation and Historic Preservation Law and the General Municipal Law.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT MEIER: Senator Winner, an explanation has been requested by Senator Schneiderman.

SENATOR WINNER: Thank you, Mr. President.

This is a very simple bill that provides for expansion of the current law regarding the ability of volunteers to participate in adopt-a-park municipal activities, whereby they can clean up

municipal parks for the benefit of the taxpayers and those that would like to utilize those parks.

The bill would also authorize, with regard to the existing adopt-a-park legislation or law, which went into effect in 1991, it would allow volunteers to enter into a --

ACTING PRESIDENT MEIER: Excuse me, Senator Winner.

Can we have some quiet in the chamber. It is very difficult to hear Senator Winner.

Senator Winner.

SENATOR WINNER: Thank you, Mr. President.

It would allow municipalities to enter into agreements with volunteers for the purposes of maintaining and enhancing municipal-owned parks, including remediating vandalism, preserving wetlands, cleaning and maintaining park property, and establishing and maintaining access to nature trails, dog runs, planting and maintaining flower beds and other, you know, all-American-type activities

that I'm sure that I would be absolutely astonished that anybody could be opposed to.

So with those great purposes in mind, the only thing that this wouldn't allow would be to allow somebody to sue somebody, sue one of the municipalities if they happen to fall down in the park. And I'm sure that's why there's great consternation on the part of those that would have opposition to this bill, because, you know, we all know that those targets of opportunities to get thirds are diminishing all the time.

And so under those circumstances, for the purposes of establishing increased volunteerism, preserving and enhancing our municipal parks, and all those other good government purposes, I would urge the adoption of this measure, which has passed in the last legislative session.

ACTING PRESIDENT MEIER: Senator Schneiderman.

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

We've debated this bill. Senator Winner is new here, but this bill is not.

And, I guess, you know, as the old expression goes, you have to take the bitter with the sweet when you inherit things.

The reason that many of us have opposed this bill in the past is very simple. Section 3, on the second page of this bill, essentially creates a two-tier system of civil liability for the parks of the State of New York. It states that no city, town or village which would ordinarily be responsible for maintaining a park shall be liable for damages suffered by any persons resulting from the actions or activities of volunteers or groups that Senator Winner has identified.

So in other words, if you're in a park and you're walking along and a parks department employee has negligently left their chainsaw running and you're injured by it, then you could sue the municipality. If you walk through and a volunteer has negligently left their chainsaw running and you're injured by it, you couldn't sue.

So it creates a two-tier system which really just doesn't make any sense, frankly. It's something that I don't think is

going to become law, because it's of this sort of provision which is not really so much an anti-civil justice provision as it is an irrational provision.

If anything, I would think that we would be more concerned that volunteers might be negligent, might do things that might cause injury because they're volunteers, they're not professional employees, they don't have the training, they're not subject to the jurisdiction that public employees would be in performing their duties.

And yet this law would counterintuitively set up a situation in which, if volunteers commit negligence acts and you're injured -- the public should not have to worry about whether their park is maintained by parks employees or by volunteers. If you're injured and there is fault, you should have the same right to sue.

I personally -- and we may have a disagreement over whether the civil justice system is a good thing, whether it helps make the world a safer place to have securities lawsuits and to have tort actions against

people who commit negligent acts. I happen to think the civil justice system is an important part of our economic structure and the system of justice in this country, and Senator Winner may disagree.

But I don't think there's a coherent argument that we should have a two-tier system of justice in parks where your right to recovery depends on whether a particular act was performed by a volunteer or a park worker, which would be the effect of this bill.

So I think it's -- I think that this is not a bill that's going to become law soon. And I would suggest that if we want to move forward with adopt-a-park programs and other programs like this, that we take out this sort of irrational poison pill and move ahead.

In the absence of that, Mr. President, I will once again be voting no on this piece of legislation.

Thank you.

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

Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Mr. President.

Each year that this bill has come to the table, I have stood and perhaps said the same thing, and that is that in principle I am very supportive of adopt-a-park projects. But I continue to have the same concern as my colleague Senator Schneiderman that there is no liability coverage for volunteers.

I remember being involved in a community organizational project for our community, and one of our volunteers got his hand -- lost a couple of fingers in helping us to set up this amusement area that we were preparing for the children. And we had no coverage for the volunteers, and we had to sustain a lawsuit. And of course we had to encourage the lawsuit, because the person didn't -- he was not insured.

I'm not only a proponent of adopt-a-parks, but I have created them in my own community in the past, and they are very important for the involvement of public/private sector participation. And

certainly it takes the weight off of government in terms of how we fund different projects that we do, whether it's adopt-a-highway or adopt-a-park.

I would like to hope that the sponsor of this bill would look at the liability issues so that we can all support this bill and make sure that there is passage, because there are too many good things in this bill for us to lose it based upon the issue of liability.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Hannon.

SENATOR HANNON: Yes, Mr. President.

I think the provision of the bill that the floor leader for the Minority has pointed out, which he articulated very well, points out an essential flaw in his argument. He talks about two-tier. The point is that there is activity that is not going on now because people will not volunteer because they're afraid of liability.

So to anybody who's worried about

what's happening now, they don't have to worry; it's not taking place. But by giving people a status that if they volunteer, come in and benefit society in general and the people who are users of this facility, then the activity will occur. But you're not going to have it unless you give them some type of protection.

So, yes, it may not happen, but the trouble is, who will suffer? It will be the residents of this state who won't have the help, won't have the volunteers that go out there to try to better the facilities for the rest.

Thank you.

ACTING PRESIDENT MEIER: Senator Connor.

SENATOR CONNOR: Thank you, Mr. President.

You know, I've debated over the years all these various little twists and exemptions and carve-outs that different legislation has attempted with respect to the liability of tortfeasors.

And the reality is that, and I've

said it before, any exception that doesn't relate to the duty of care owed to the public, the relationship between the tortfeasor and the injured person and the conduct, the actual conduct, whether it was negligent or not, ought not be allowed.

The old example for years and years and years in New York City, when Mayor Koch was mayor, he pushed very, very hard for municipal liability exemptions. And the classic example was we then, and until recently, had private buses operating under franchise in New York City as well as the City Transit Authority buses.

And I've said it before, to the person who got run over by the negligent driving of a bus, what does it really matter whether the person behind the wheel was a public employee or a private employee? It should be the conduct, it should be the duty of care anyone driving a bus or operating it owes to the public, and that particular conduct.

In terms of the insuring the volunteers, as Senator Hannon pointed out, or

getting volunteers to volunteer, there's a simple answer to all this. It's called insurance. It's called indemnification. The municipality, if they want the program, can indemnify and they can buy insurance.

Now, you say is such insurance available. Well, once upon a time, about ten years ago when I became leader in this conference, we had a campaign committee. And when I started, we had no insurance policies, and when I left we had half a dozen of them.

And one of them, I recollect -- and I assume it's still in effect; I would hope so -- insured volunteers in campaigns and their conduct. I.e., if a campaign volunteer injured someone, it covered that.

So there is insurance you can buy. If you're going to be responsible about running the program -- and I would think any municipality with a parks department would -- you buy insurance. And then you go ahead. That way you protect the public, just as they're protected if it were a municipal employee's negligence, by the fact that the municipality probably self-insures in those

cases. It may not. They may have insurance.

The answer is insurance, Mr. President.

ACTING PRESIDENT MEIER: Senator Sabini.

Senator Sabini waives.

Any other Senator wish to be heard?

The debate is closed, then.

The Secretary will ring the bells.

Members are asked to come to the chamber for a vote.

Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 180th day.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

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

SENATOR WINNER: Very briefly, Mr. President.

The arguments in opposition to this bill with regard to opening up the whole liability debate is precisely not really what this bill is about. That debate is already

over. That's been in the law since 1991 and 1985, when we had the adopt-a-highway program. All this is doing is adding the State of New York and its parks to the existing statutory scheme of escaping from liability.

And the argument with regard to insurance is just as specious. The reason why we don't have anybody doing this is because they can't afford the insurance. And therefore, that's the reason why the volunteers who want to participate in this good government opportunity are being foreclosed by municipalities who don't have and can't afford the insurance to cover those activities.

So, Mr. President, this legislation ought to be passed, due to the fact that all it does is add the state park system into the already existing municipal parks that are already allowed to have these adopt-a-park programs.

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

Senator DeFrancisco, to explain his vote.

SENATOR DeFRANCISCO: I think the older you get, the -- you start losing some brain cells. Because I've voted consistently against this bill, and I find my name as a cosponsor.

(Laughter.)

SENATOR DeFRANCISCO: And it must have been one of those late evenings.

So I'd like to vote no. And if there's a procedural way to remove myself as cosponsor, I would like that to happen too.

ACTING PRESIDENT MEIER: Senator DeFrancisco will be recorded in the negative.

Senator Volker, to explain his vote.

SENATOR VOLKER: Mr. President, to explain my vote.

I just do want to say that anyone who leaves a running chainsaw has got another problem.

(Laughter.)

SENATOR VOLKER: So I think that might be an intentional tort. I don't think you can escape liability from that. So I think that maybe that's a little specious.

But in any case, I happen to agree with Senator Winner. And I certainly understand the reason for the opposition to this.

But I have to say that the cost of insurance would drop a ton if we could get rid of some of these situations that I think lend more to trial lawyers' importance than anything else.

I vote aye.

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

The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 389 are Senators Andrews, Brown, Connor, DeFrancisco, Duane, Gonzalez, Hassell-Thompson, Klein, L. Krueger, Onorato, Parker, Sabini, Savino, Schneiderman, Serrano, A. Smith, Stachowski, and Stavisky. Also Senator Montgomery.

Ayes, 40. Nays, 19.

ACTING PRESIDENT MEIER: The bill is passed.

Senator Skelos, that completes the

controversial reading of the calendar.

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

ACTING PRESIDENT MEIER: There's no further business at the desk.

SENATOR SKELOS: There being no further business to come before the Senate, I move we stand adjourned until Tuesday, May 10th, at 3:00 p.m.

ACTING PRESIDENT MEIER: On motion, the Senate stands adjourned until Tuesday, May 10th, at 3:00 p.m.

(Whereupon, at 3:48 p.m., the Senate adjourned.)