NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

May 23, 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: With us this afternoon to give the invocation is the Reverend Peter G. Young, from Blessed Sacrament Church in Bolton Landing, New York.

REVEREND YOUNG: Let us pray.

Dear Lord, we ask Your presence and blessings on our time together in this chamber. We have come together on how we can assist our citizens of New York State and the welfare of our community. We learn from each other to grow in spirit and in character, to find Your will for our lives and for our neighborhoods.

We thank You for the opportunity in this country, in this Senate, to assemble ourselves at any time, at any place, to discuss our concerns as citizens. We are

mindful that many in our world do not enjoy such freedom.

Grant us the wisdom to carry out our decisions with Your will. Bless us as we continue to work and to conduct our business with dignity and sensitivity.

Amen.

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate, Sunday, May 22, the Senate met pursuant to adjournment. The Journal of Saturday, May 21, 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.

Report of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Madam President.

On behalf of Senator Larkin, I wish to call up Calendar Number 587, Assembly Print Number 5939.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 587, by Member of the Assembly Towns, Assembly Print Number 5939, an act to amend the General Business Law.

SENATOR FUSCHILLO: I now move to reconsider the vote by which this Assembly bill was substituted for Senate Print Number 2474 on April 20th.

THE PRESIDENT: The Secretary will call the roll upon reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 37.

SENATOR FUSCHILLO: I now move that Assembly Bill Number 5939 be recommitted to the Committee on Cities and the Senate bill be restored to the order of Third Reading Calendar.

THE PRESIDENT: So ordered.

SENATOR FUSCHILLO: I now offer the following amendments.

THE PRESIDENT: The amendments are received.

SENATOR FUSCHILLO: On behalf of Senator Golden, I wish to call up Calendar Number 677, Assembly Print Number 6878.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 677, by Member of the Assembly Lopez, Assembly Print Number 6878, an act to amend the Real Property Tax Law.

SENATOR FUSCHILLO: I now move to reconsider the vote by which the Assembly bill was substituted for Senate Print Number 3977 on May 3rd.

THE PRESIDENT: The Secretary will call the roll upon reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 37.

SENATOR FUSCHILLO: I now move that Assembly Bill 6878 be recommitted to the Committee on Housing, Construction and

Community Development, and the Senate bill be restored to the order of Third Reading Calendar.

THE PRESIDENT: So ordered.

SENATOR FUSCHILLO: I now offer the following amendments.

THE PRESIDENT: The amendments are received.

SENATOR FUSCHILLO: Madam President, amendments are offered to the following Third Reading Calendar bills:

Page number 43, Calendar Number 612, Senate Print 2223;

On behalf of Senator Padavan, on page 44, Calendar Number 637, Print Number 2721;

On behalf of Senator Leibell, on page number 55, Calendar Number 788, Senate Print 4762;

On behalf of Senator Volker, page number 66, Calendar Number 898, Senate Print Number 4343;

On behalf of Senator Robach, page number 67, Calendar Number 913, Senate Print Number 4400;

On behalf of Senator LaValle, page number 73, Calendar Number 969, Senate Print Number 4333;

On behalf of Senator Meier, page number 59, Calendar Number 826, Senate Print Number 3158A.

THE PRESIDENT: The amendments are received, Senator.

SENATOR FUSCHILLO: I now move that these bills retain their place on the order of Third Reading Calendar.

THE PRESIDENT: So ordered.

SENATOR FUSCHILLO: Thank you.

THE PRESIDENT: You're welcome, Senator.

Senator Skelos.

SENATOR SKELOS: Madam President, there are two resolutions at the desk. I ask that the titles be read and move for their immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Leibell, Legislative Resolution Number 1962, honoring Donald Long upon the occasion of his

designation as the Circolo da Vinci Italian-American Organization's 2005 Person of the Year on May 25, 2005.

And by Senator Leibell, Legislative Resolution Number 2008, honoring Isabelle Toub upon the occasion of her retirement after 30 years of dedicated service to the Putnam County District Attorney's Office.

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

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolutions are adopted.

Senator Skelos.

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

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 128, by Senator Padavan, Senate Print 403, an act to amend the Administrative Procedure Act,

in relation to denial.

SENATOR SCHNEIDERMAN: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 182, by Senator Maltese, Senate Print 1156, an act to amend Labor Law and the Education Law, in relation to prohibiting public universities.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 43.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 298, by Senator Farley, Senate Print 2859, an act to amend the Banking Law, in relation to the requirement for licensure.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the first of January.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 45.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 299, by Senator Farley, Senate Print 2860, an act to amend the Banking Law, in relation to enforcement.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 45.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 368, by Senator Libous, Senate Print 3421, an act to amend the Vehicle and Traffic Law, in relation to driving while intoxicated.

THE PRESIDENT: Read the last

section.

THE SECRETARY: Section 45. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 47. Nays, 2. Senators Duane and Montgomery recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 474, by Senator Marcellino, Senate Print 665, an act to amend the Vehicle and Traffic Law, in relation to increasing the parameters.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator DeFrancisco, to explain your vote.

SENATOR DeFRANCISCO: Yes, please.

I think that it's important to do all we can to keep our roads safe from people who are going to be either intoxicated by alcohol or drugs.

But I think this bill -- and the only reason I'm voting no is that this bill provides an unreasonable standard by which the police officer I don't think could possibly ever be able to adhere to in stopping someone, because it talks about no person shall operate a motor vehicle while the person's ability to operate the vehicle is affected to any extent.

So I don't know how that would be interpreted. I don't know what objective evidence you could show that -- it's just too broad and too vague, and I think it would be unenforceable.

So I'm going to vote no on it.

THE PRESIDENT: Senator DeFrancisco, you will be recorded as voting in the negative.

The Secretary will announce the results.

THE SECRETARY: Ayes, 50. Nays, 2. Senators DeFrancisco and Montgomery

recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 480, by Senator Alesi, Senate Print 2272, an act to amend the Vehicle and Traffic Law, in relation to additional penalties.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51. Nays, 1. Senator Montgomery recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 481, by Senator Young, Senate Print 2285, an act to amend the Vehicle and Traffic Law, in relation to providing.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the same date and in the same manner as Section 2 of Chapter 673.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51. Nays, 1. Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Excuse me. Ayes, 50. Nays, 2. Senators Duane and Montgomery recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 483, by Senator LaValle, Senate Print 2450, an act to amend the Vehicle and Traffic Law, in relation to increasing.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the first of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 514, by Senator Spano, Senate Print 3378, an act to amend the Tax Law, in relation to creating a direct payment permit.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 548, by Senator LaValle, Senate Print 37 --

SENATOR BRUNO: Lay it aside for the day.

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

THE SECRETARY: Calendar Number 606, by Member of the Assembly Sweeney, Assembly Print Number 3981, an act in relation

to redistributing 2004 bond volume allocations.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 633, by Senator Maziarz, Senate Print 203, an act to amend the Vehicle and Traffic Law, in relation to increasing penalties.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the first of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51. Nays, 1. Senator Montgomery recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 636, by Senator Alesi, Senate Print 2273, an act to amend the Vehicle and Traffic Law, in relation to extending.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50. Nays, 2. Senators DeFrancisco and Sabini recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 671, by Senator Little, Senate Print 3846, an act to amend the General Municipal Law, in relation to taking of billboards.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51. Nays, 1. Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Madam President, thank you.

With your indulgence and the indulgence of my colleagues here in the Senate, I would like to just interrupt and pause here in our important deliberations to acknowledge and recognize one of our colleagues here in the chamber, Senator John J. Marchi, who celebrated his 84th birthday last Friday.

(Standing ovation.)

SENATOR BRUNO: Thank you. And, see, Senator Marchi brings people to their feet constantly and continually.

And Senator Paterson had the good planning to plan his birthday on exactly the same day. So happy birthday to Senator

Paterson, May 20th.

(Standing ovation.)

SENATOR BRUNO: Now, Madam President, when Senator Paterson has been here serving, as Senator Marchi is, the longest-serving legislator in the entire United States of America as he sits here, in any legislative body.

Now, you think about that, with all of us that think that we have some seniority in this place. This is the senior man in the United States legislatures.

And he is committed, dedicated, just a public servant who personifies the words. We say that, Billy, but we mean it. He is a public servant. And he is a role model to you and to Senator Farley, certainly to Senator Paterson, and Senator Smith, and to me.

And, John, we're indebted to you for that.

Now -- and Senator Diaz. Of course Senator Diaz.

And what you don't know, probably, many of you, is that John was always a

fighter, always a fighter. Light heavyweight boxer in his youth, and he still is ready to go four or five rounds at the drop of a hat.

He has focused on educational issues from pre-K up through higher ed. He has done more things than we have time to relate in terms of his career.

Do you know, Friday, to the administration's credit, they inaugurated the maiden voyage of the ferry going from the Island to the city, the John J. Marchi Ferry. Which is --

(Applause.)

SENATOR BRUNO: -- to anyone's knowledge, the first time ever in the country that such a dedication that taken place.

Now, John, that is a singular honor.

And not just here in this state, not just in the country, but in Italy John got the Commander of Merit award for distinguished service, the highest award that they give in the Republic of Italy to any individual that is not a citizen in Italy in the world.

And there aren't too many people

that have been recognized in that way. I'm still waiting for a call.

(Laughter.)

SENATOR BRUNO: But, John, you -- well, so is Senator Spano. So is Senator Fuschillo. When you have -- Senator Balboni is still striving. Senator LaValle. I know George Onorato. Okay?

But, John, I'm on my feet really to say thank you. Thank you for your friendship. Thanks for being a colleague to everyone here in this chamber.

And we're not going to go on; I know Senator Paterson has an observation and some comments that he would like to make.

And, Madam President, I would ask that he be recognized with all of your indulgence here, because we really, we have a giant here in this chamber in the presence of Senator Marchi.

And happy birthday, literally, John, on your 84th, and we look forward to the next 84 with you.

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Thank you,

Madam President.

For some of you who may work here or even some of you who are new in terms of your service to the chamber, you should know that Senator Marchi has served with distinction here since 1956.

And in 1969 he was the -- he was a candidate for mayor of the City of New York, and many Democrats, including Democrats in our Democratic family, voted for Senator Marchi.

And it has to do with his belief in government and his belief in people, his ability to look at issues 10 and 20 years before other people did.

When I came here in the end of 1985, the beginning of 1986, at the time he was the chair of the Senate Finance Committee. And I remember once an incident, seriously, where we were debating the pension funds that were invested in South Africa from New York State's pension funds.

And Senator Marchi got up and he said that they had polled black South Africans and that 25 percent of them believed that the apartheid system as it stood should be

overthrown, and 75 percent supported it.

And I got up behind him and I said that in South Africa it is actually illegal to take a public stand against the government, so I'd like to find out who those 25 percent were who said that and give them a special commendation for the risks that they took.

At the end of the session I came outside the door right here, and I saw Senator Marchi standing there. And of course he's been a family friend of ours for a number of years, and I knew I had said something and I knew I was in big trouble.

And Senator Marchi said to me: "I wasn't aware of that ordinance in South Africa. You're absolutely right, and in my debate I'll never use it again."

And I can't say that that's happened any other time that I've served here. But then again, maybe that's the only good point that I've made since I've been here.

(Laughter.)

SENATOR PATERSON: The reality is that his long-term service is only exceeded by his outstanding character. He has always put

his truths above all other issues and all other things. He's gone forward whether people agreed with him or not, with his integrity as his only banner.

And that is how I honor Senator Marchi, who I'm privileged enough to be born on the same day, a little -- a few years later.

But I would suggest that I'm happy as well because if they can name a stadium for Senator Bruno and a ship for Senator Marchi, I like that they have my name on a parking space here in Albany.

Thank you.

(Applause.)

THE PRESIDENT: Senator Marchi.

SENATOR MARCHI: Well, I -- no one has ever accused me of being without a word. But I am genuinely moved.

The reason I'm back here, of course, is found in the presence of each and every one of you right around this chamber, all of you.

Joe Bruno, of course, has been a dear friend. Well, he was a light heavyweight

himself, and we compared notes. I would hardly care to match my fists now with him.

And -- but I really, really treasure every single moment. And you, Dave, over there, you -- I -- your family. I mean, this goes back family-wise before you, those ahead of you. These have all been friends of mine.

And you [to President], well, you're such a wonderful person to look at.

(Laughter.)

SENATOR MARCHI: I have an advantaged place here. I say this in the presence of my wife up there.

But in any event, I am very -- very grateful, very grateful for the companionship of the people that I have found here. Never once have I ever been disappointed. Never once. You've all been generous. You've all been very kind. You're all productive. You all have something to say of great value.

And this is something which serves you in good stead, because without it you would not have -- you would have an echo chamber in any other circumstance. But you

don't have it here. We don't have an echo chamber. We have people who are human and who will react, and react in very eloquent and very fruitful ways.

So I don't want to outrun my presence here. I'm very, very -- very moved by what has taken place. And it can't go on much longer, but it's been very, very sweet right straight through.

And I say God bless all of you, each and everybody within the range of my voice and vision. Because you have been so generous, so kind. And I always felt that was the dominant sentiment of this chamber.

Don't ever lose it, because it reinforces all of you. And it should, because you are -- you enrich this state by your presence here.

So thanks, thanks so much.

(Standing ovation.)

THE PRESIDENT: The Secretary will continue to read.

THE SECRETARY: Calendar Number 699, by Senator Fuschillo, Senate Print 4888A, an act to amend the General Business Law, in

relation to requiring.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

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

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 721, by Senator Flanagan, Senate Print 2807, an act to amend the Penal Law, in relation to definitions.

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, 57. Nays,

1. Senator Montgomery recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 725, by Senator Golden, Senate Print 3433, an act to amend the Penal Law, in relation to endangering the welfare of a child.

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 Hassell-Thompson, to explain her vote.

SENATOR HASSELL-THOMPSON: Yes, thank you, Mr. President.

Senator Golden is to be commended. We have been struggling tremendously in this session, and for the last three years, to try to put together a series of child protective bills. And this particular piece is what I

consider to be the hallmark of all of the sexual assault bills that we have together tried to pass.

I want to commend him, and I thank him for his generosity also in attempting to include me on the -- as a cosponsor of this particular bill, something that doesn't happen often enough in these chambers.

But I want to publicly thank him for his efforts and certainly for the legislative initiatives that he has attempted to put forward.

I will be voting yes.

ACTING PRESIDENT MEIER: Senator Hassell-Thompson will be recorded in the affirmative.

The Secretary will announce the results.

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

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 734, by Senator Nozzolio, Senate Print 2286,

an act to amend the Vehicle and Traffic Law, in relation to the application.

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, 58.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 739, by Senator Nozzolio, Senate Print 4015, an act to amend the Highway Law, in relation to designating.

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 778, by Senator Little, Senate Print 4012, an act to amend the Tax Law, in relation 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, 58.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 843, by Senator Flanagan, Senate Print 2152, an act to authorize the State University of New York to lease and contract.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 4. This act shall take effect immediately.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56. Nays, 2. Senators Maziarz and Spano recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 858, by Senator Trunzo, Senate Print 143, an act to amend the Real Property Law, in relation to the failure.

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 864, by Senator Skelos, Senate Print 4381, an act to amend the Uniform Commercial Code, in relation to conversion.

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, 56. Nays, 2. Senators Connor and Duane recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 934, by Senator Little, Senate Print 1050, an act to amend the County Law, in relation to authorizing wireless.

ACTING PRESIDENT MEIER: There is a local fiscal impact note 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 938, by Senator Saland, Senate Print 2512, an act to amend the County Law, in relation to wireless communications.

ACTING PRESIDENT MEIER: There is a local fiscal impact note 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 939, by Senator Balboni, Senate Print 2967A, an act authorizing the assessor of the County of Nassau to accept 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, 57. Nays, 1. Senator Bonacic recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 941, by Member of the Assembly Errigo, Assembly Print Number 6853, an act to amend the Village Law and the Public Officers Law, in relation to residency.

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 943, by Senator Farley, Senate Print 4029, an act to authorize the County of Schenectady to issue.

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

Read the last section.

THE SECRETARY: Section 6. 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 944, by Senator Fuschillo, Senate Print 4087, an act authorizing the Bethel Christian Church to file.

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 Bonacic recorded in the negative.

ACTING PRESIDENT MEIER: The bill

is passed.

THE SECRETARY: Calendar Number 946, by Senator Trunzo, Senate Print 4140, an act authorizing the assessor of the Town of Islip.

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 Bonacic recorded in the negative.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 949, by Senator Skelos, Senate Print 4517, an act to authorize Young Israel of Hewlett.

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 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.

ACTING PRESIDENT MEIER: The Secretary will ring the bells.

The Secretary will conduct the controversial reading of the calendar.

THE SECRETARY: Calendar Number 128, by Senator Padavan, Senate Print 403, an act to amend the Administrative Procedure Act, in relation to denial, suspension and revocation.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT MEIER: Senator Padavan, Senator Schneiderman has requested an explanation.

SENATOR PADAVAN: Senator

Schneiderman, your memory is much better than you give yourself credit for. You asked me that same question last year. You expect a different explanation?

SENATOR SCHNEIDERMAN: You never know.

SENATOR PADAVAN: No, that's all right, it's a rhetorical question.

Mr. President, this bill, which I just indicated we have discussed on several other occasions, would provide for the suspension or revocation of a license issued by any state agency for a period of not greater than five years, permissively, on the basis of two violations of federal law dealing with the hiring of unauthorized aliens.

Simply put, if some company in this state that has a license, or an individual, who has violated federal law, found guilty of a very serious crime of knowingly -- and I underline the word "knowingly" -- hiring an illegal alien, a state agency that licenses that entity may revoke or suspend that license and, in so doing, cannot do it for any more than five years.

That's what this bill does. I think the reasons are obvious. We can't have licenses in this state to companies who are in all kinds of activities, hundreds of different licenses, some in very sensitive areas, critical areas -- we can't have people running those companies with a state license knowingly, repetitively violating federal law, having been found guilty of hiring illegal aliens.

ACTING PRESIDENT MEIER: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you. Through you, Mr. President, if the sponsor would yield for a few brief questions.

ACTING PRESIDENT MEIER: Senator Padavan, do you yield for a question?

SENATOR PADAVAN: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR SCHNEIDERMAN: Is the requirement that this be an intentional violation of the law anywhere in this statute? Because I don't see it.

SENATOR PADAVAN: The federal

statute that we referred to in the body of the bill is a statute that indicates knowingly. Meaning that a company knowingly hired an illegal alien, has been found guilty of knowingly hiring an illegal alien.

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

ACTING PRESIDENT MEIER: Senator Padavan, do you continue to yield?

SENATOR PADAVAN: Yes.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR SCHNEIDERMAN: But my understanding of the federal law is that there are various ways you can prove -- you can meet the evidentiary standard for these federal statutes, including a pattern; that there's not actually a requirement, as the sponsor is implying, that someone actually admit on the stand "Yes, I knew it and I did it anyway."

Is it not the case that under these federal statutes you can find violations through proof other than someone admitting that they knowingly violated the law?

SENATOR PADAVAN: Whether someone admitted that they violated the law or not is irrelevant. They were found guilty of violating the law.

And the law specifically refers to knowingly hiring an illegal alien. That's federal statute. And it's referred to in the bill by section.

SENATOR SCHNEIDERMAN: Thank you. Through you, Mr. President -- or, actually, on the bill.

Thank the sponsor for his answers. Even better than last year's.

ACTING PRESIDENT MEIER: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: But the reason we ask for explanations and we continue to inquire into one-house bills that we see over and over again is because sometimes there is a hope that we may learn from the debate in a previous year and make some modifications.

The reason that many of us have a problem with this bill is very simple. And there are really two reasons. Some of us disagree with the whole thrust of the

legislation, that this is essentially a punitive measure intended to make life more difficult for immigrants who are here who don't have papers, who are trying to work and support their families. Some people have an issue with that; some people think they shouldn't be here.

But the second reason that many of us oppose this bill is that this is -- even if you agree that we should take all steps necessary to stop these people from working and supporting their families, this legislation is about as uneven and irrational an approach as you can take.

What this legislation does is says that any agency may deny, suspend or revoke a license. So one agency might decide we're going to suspend people's licenses, and the next agency may say, Ah, we're not going to.

You may have dry cleaners under investigation -- because keep in mind, this is New York State. We license everything. You want to run a motion picture projector? You need a license. You know, the vestiges of the big government eras here still have to fade.

So state agencies in New York really can go after pretty much any type of small business -- or not. They can go after one business for reasons that are not required to be stated, and the business next door they may leave alone.

So this is a bill guaranteed to produce an arbitrary system where some people are being prosecuted, some people are having their licenses suspended, and some people aren't.

Second of all, I realize that the language of the federal statute suggests that this should be a knowing violation, but there is no requirement of proof that this be a knowing violation.

What we're talking about here is a small business that within a five-year period may have hired two individuals who did not have working papers. And that business at any time could be prosecuted by an agency and lose its license, or maybe it won't be. That's the system that would be set up under this legislation.

So I respectfully submit that even

if you appreciate and agree with the goal of the bill, this is not a workable system. This is not a fair system. This is not going to produce any sort of rational approach by the agencies of the State of New York to dealing with this issue.

So I would suggest that perhaps, before we visit this bill again, some editing is required.

And I also suggest that this legislation really runs against, goes against the grain of what I think is an emerging sense in this country that we have to have a different approach to the millions of illegal immigrants working among us, serving with us that we interact with every day, other than just trying to get rid of them. That's not going to work. President Bush recognizes that's not going to work.

The struggle that we're going through now over the question of the Real ID Act that was passed by the federal government reflects this same issue.

But I would suggest that the approach that we end up taking, that we must

take is that we have to come to some accommodation with the reality that we depend on illegal immigrants in this country for many, many things. They're here, they're not going away.

As with the Real ID Act, I think it's a mistake to make the Department of Motor Vehicles responsible for enforcing the immigration laws.

This legislation we're voting on today would make every small business in the state responsible for enforcing the immigration laws. And I respectfully submit that that is not, whether you're looking at it from a human rights point of view or a pro-business point of view, the kind of law we should be passing.

So I will be voting no once again. And I look forward to having a conversation hopefully next year about a modified bill.

And once again, though, I appreciate Senator Padavan's bringing the important issues of immigrants' rights to the attention of the house.

Thank you.

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

Senator Padavan.

SENATOR PADAVAN: Briefly, Mr. President. I don't want to exacerbate this thing.

Several things that Senator Schneiderman said are just factually incorrect.

The bill says the suspension can't be any more than five years, not that the violation of federal law was within five years. But it says, as far as the federal law is concerned, two or more violations. A company knowingly was found guilty, convicted in a federal court of having violated federal statutes.

The second part of your statement was that they are now going to be made responsible to enforce federal law. The fact is they are already. You cannot knowingly hire an illegal alien and not be in violation of federal law. That's your responsibility.

Now, let me say, in a broad sense, we have millions of people come to this

country every year as immigrants. They come here legally, they come on visas, they come as students, they get green cards. Many of them become citizens. And that's simply great. That's what made this country what it is.

Your suggestion that people can come here illegally, be employed illegally, that company get a license to employ that individual indirectly and nothing should be done about it, just is somewhat akin to it being illogical.

SENATOR SCHNEIDERMAN: Mr. President, will the sponsor yield for a question.

SENATOR PADAVAN: No more questions. Just take the vote.

SENATOR SCHNEIDERMAN: No more questions. Well --

ACTING PRESIDENT MEIER: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you.

Just to respond briefly, I stand corrected. This is even worse than I stated. There is no time limit for the two violations. This could be within an eight-year period, a

10-year period, a 12-year period. So I appreciate Senator Padavan's calling that to our attention.

And I do think that on the fundamental issue we may have a disagreement over what the policies of our government should be towards the millions of undocumented immigrants here. And that is a philosophical issue which we can debate.

I respectfully submit, however, that this piece of legislation, which does provide a penalty for businesses that don't inspect and go through the paperwork of every possible employee, is punitive in nature towards the businesses as well as towards the immigrants. And I encourage everyone to vote no.

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

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 2. This

act shall take effect on the first of November.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEIER: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 128 are Senators Andrews, Connor, Diaz, Dilan, Duane, Hassell-Thompson, L. Krueger, C. Kruger, Montgomery, Paterson, Sabini, Savino, Schneiderman, Serrano, A. Smith and Stavisky. Also Senator M. Smith.

Ayes, 41. Nays, 17.

Those Senators absent from voting on Calendar Number 128: Senators Oppenheimer and Parker.

ACTING PRESIDENT MEIER: The bill is passed.

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

SENATOR SKELOS: Thank you, Mr. President.

Is there any further business?

ACTING PRESIDENT MEIER: We have a substitution, Senator.

SENATOR SKELOS: If you could make it at this time.

ACTING PRESIDENT MEIER: The Secretary will read the substitution.

THE SECRETARY: On page 54, Senator Spano moves to discharge, from the Committee on Investigations and Government Operations, Assembly Bill Number 6328 and substitute it for the identical Senate Bill Number 3921, Third Reading Calendar 775.

ACTING PRESIDENT MEIER: Substitution ordered.

Senator Skelos.

SENATOR SKELOS: Mr. President, there being no further business to come before the Senate, I move we stand adjourned until Tuesday, May 24th, at 3:00 p.m.

ACTING PRESIDENT MEIER: On motion, the Senate stands adjourned until Tuesday, May 24th, at 11:00 p.m.

Let's correct the record. The Senate stands adjourned until tomorrow at 3:00 p.m.

(Whereupon, at 3:59 p.m., the Senate adjourned.)