NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

May 31, 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, Monday, May 30, the Senate met pursuant to adjournment. The Journal of Sunday, May 29, was read and approved. On motion, Senate adjourned.

THE PRESIDENT: Without objection, the Journal stands approved as read.

Senator Skelos.

SENATOR SKELOS: Madam President,

there will be an immediate meeting of the Rules Committee in the Majority Conference Room.

THE PRESIDENT: There will be an immediate meeting of the Rules Committee in the Majority Conference Room.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Madam President.

Amendments are offered to the following Third Reading Calendar bills:

Sponsored by Senator Little, page number 29, Calendar Number 249, Senate Print Number 2778;

By Senator LaValle, page number 29, Calendar Number 268, Senate Print Number 2952;

By Senator Skelos, page number 35,

Calendar Number 410, Senate Print Number 493;

By Senator Nozzolio, page number 45, Calendar Number 655, Senate Print Number 1323;

By Senator Little, page number 45, Calendar Number 675, Senate Print Number 4014;

By Senator Maltese, page number 47, Calendar Number 695, Senate Print Number 2517;

By Senator Morahan, page number 54, Calendar Number 799, Senate Print Number 2701;

By Senator LaValle, page number 57, Calendar Number 842, Senate Print Number 1721;

By Senator Seward, page number 57, Calendar Number 855, Senate Print Number 2390;

By Senator DeFrancisco, page number 57, Calendar Number 862, Senate Print Number 4135;

By Senator Volker, page number 75, Calendar Number 1076, Senate Print Number 2415;

By Senator Skelos, page number 77, Calendar Number 1098, Senate Print Number 1999.

I now move that these bills retain their place on the order of third reading.

THE PRESIDENT: The amendments are received, and the bills will retain their place on the Third Reading Calendar.

SENATOR FUSCHILLO: Madam President, on behalf of Senator Maziarz, I wish to call up Senate Print Number 302, recalled from the Assembly, which is now at the desk.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 34, by Senator Maziarz, Senate Print 302, an act to amend the Highway Law.

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

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

(The Secretary called the roll.)

THE SECRETARY: Ayes, 49.

SENATOR FUSCHILLO: I now offer the following amendments.

THE PRESIDENT: The amendments are received.

SENATOR FUSCHILLO: Madam

President, on behalf of Senator Larkin, I wish to call up Senate Print 1398, recalled from the Assembly, which is now at the desk.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 450, by Senator Larkin, Senate Print 1398, an act to amend the Penal Law.

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

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

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

SENATOR FUSCHILLO: I now offer the following amendments.

THE PRESIDENT: The amendments are received.

SENATOR FUSCHILLO: Madam President, on behalf of Senator Libous, please place a sponsor's star on Calendar Number 602.

THE PRESIDENT: So ordered.

SENATOR FUSCHILLO: On behalf of Senator Morahan, I move to amend Senate Bill

Number 5258B by striking out the amendments made on 5/16 and 5/20 and restoring it to its original print number, 5258.

THE PRESIDENT: So ordered.

SENATOR FUSCHILLO: On behalf of Senator Nozzolio, I move to recommit Senate Print 3121A, Calendar Number 510 on the order of third reading, to the Committee on Investigations and Government Ops, with instructions to said committee to strike out the enacting clause.

THE PRESIDENT: So ordered.

SENATOR FUSCHILLO: Thank you.

THE PRESIDENT: Senator Spano.

SENATOR SPANO: Do we have any substitutions at the desk?

THE PRESIDENT: Yes, we do, Senator.

SENATOR SPANO: May we please have them read.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: On page 4, Senator Wright moves to discharge, from the Committee on Finance, Assembly Bill Number

7114A and substitute it for the identical Senate Bill Number 2529A, First Report Calendar 1275.

On page 4, Senator Little moves to discharge, from the Committee on Local Government, Assembly Bill Number 1600 and substitute it for the identical Senate Bill Number 3246, First Report Calendar 1280.

On page 6, Senator Saland moves to discharge, from the Committee on Banks, Assembly Bill Number 1911 and substitute it for the identical Senate Bill Number 2479, First Report Calendar 1305.

On page 13, Senator Saland moves to discharge, from the Committee on Consumer Protection, Assembly Bill Number 75 and substitute it for the identical Senate Bill Number 4225, Second Report Calendar 1180.

On page 15, Senator Balboni moves to discharge, from the Committee on Veterans, Homeland Security and Military Affairs, Assembly Bill Number 7517 and substitute it for the identical Senate Bill Number 5402, Second Report Calendar 1206.

On page 26, Senator Alesi moves to

discharge, from the Committee on Health, Assembly Bill Number 112 and substitute it for the identical Senate Bill Number 1074, Third Reading Calendar 112.

On page 31, Senator Larkin moves to discharge, from the Committee on Racing, Gaming and Wagering, Assembly Bill Number 7886 and substitute it for the identical Senate Bill Number 2634, Third Reading Calendar 314.

On page 33, Senator Robach moves to discharge, from the Committee on Civil Service and Pension, Assembly Bill Number 7616 and substitute it for the identical Senate Bill Number 3182, Third Reading Calendar 371.

On page 43, Senator Fuschillo moves to discharge, from the Committee on Consumer Protection, Assembly Bill Number 7710 and substitute it for the identical Senate Bill Number 4180, Third Reading Calendar 615.

On page 47, Senator Bonacic moves to discharge, from the Committee on Environmental Conservation, Assembly Bill Number 6827A and substitute it for the identical Senate Bill Number 3579A, Third Reading Calendar 705.

And on page 76, Senator Spano moves to discharge, from the Committee on Civil Service and Pension, Assembly Bill Number 6343 and substitute it for the identical Senate Bill Number 3487, Third Reading Calendar 1082.

THE PRESIDENT: Substitutions ordered.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could return to reports of standing committees, I believe there's a report of the Rules Committee at the desk. I ask that it be read.

THE PRESIDENT: Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Bruno, from the Committee on Rules, reports the following bill direct to third reading:

Senate Print 5493, by Senator Marcellino, an act to amend a chapter of the Laws of 2005.

SENATOR SKELOS: Move to accept the Rules report.

THE PRESIDENT: All in favor of

accepting the report of the Rules Committee please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The report is so 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 135, by Member of the Assembly Sweeney, Assembly Print Number 7688, an act to amend the Volunteer Ambulance Workers Benefit Law and the Volunteer Firefighters Benefit Law.

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, 55.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 305, by Senator Seward, Senate Print 1372, an act to amend the Insurance Law, in relation to creating.

THE PRESIDENT: 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, 55.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 327, by Senator Maziarz, Senate Print 978, an act to amend Chapter 433 of the Laws of 1997, amending the Public Health Law and others.

THE PRESIDENT: 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, 55.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 376, by Senator Nozzolio, Senate Print 516, an act to amend the General Municipal Law, in relation to participants.

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, 55.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 391, by Member of the Assembly Oaks, Assembly Print Number 6127, an act to amend the Parks, Recreation and Historic Preservation Law, in relation to designating.

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, 55.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 432, by Senator Saland, Senate Print 3192, an act to amend --

SENATOR MONTGOMERY: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 451, by Senator Volker, Senate Print 1524A, an act to amend the Criminal Procedure Law, in relation to expanding.

THE PRESIDENT: 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, 55.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 509, by the Senate Committee on Rules, Senate Print Number 3099, an act to amend the Tax Law, in relation to extending.

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, 55.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 545, by Senator Farley, Senate Print 3289A, an act to amend Chapter 386 of the Laws of 1996, amending the Education Law.

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, 54. Nays, 1. Senator Spano recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 587, by Senator Larkin, Senate Print 2474A, an act to amend the General Business Law, in relation to authorizing.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 598, by Senator Padavan, Senate Print 409, an act to amend the Executive Law, in relation to cooperation.

THE PRESIDENT: Read the last section.

SENATOR MONTGOMERY: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 693, by Senator Winner, Senate Print 4814 --

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

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

THE SECRETARY: Calendar Number 723, by Senator Padavan, Senate Print 3229, an act to amend the Criminal Procedure --

SENATOR MONTGOMERY: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 731, by Senator Volker, Senate Print 1219, an act to amend the Vehicle and Traffic Law, in relation to authorizing.

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, 55.

THE PRESIDENT: The bill is

passed.

THE SECRETARY: Calendar Number 735, by Member of the Assembly McLaughlin, Assembly Print Number 5779, an act to amend the Vehicle and Traffic Law, in relation to providing.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 90th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 748, by Senator Volker, Senate Print Number 3196A, an act to amend the Civil Service Law, in relation to resolution.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 752, by Senator Bruno, Senate Print 4654, an act to allow David Hammond to join the optional twenty-year retirement plan.

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, 55.

THE PRESIDENT: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Madam President, I believe Calendar Number 723 was laid aside inadvertently. If we could call it up at this time.

THE PRESIDENT: The Secretary will read Calendar Number 723.

THE SECRETARY: Calendar Number

723, by Senator Padavan, Senate Print 3229, an act to amend the Criminal Procedure Law and the Penal Law.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator Montgomery, to explain your vote.

SENATOR MONTGOMERY: Yes, Madam President, to explain my vote.

I'm voting against this because it essentially creates the charge of -- a felony charge based on the fact that a person has, I believe, three misdemeanor counts.

And it really is -- I think goes very far. And you can get two or three misdemeanors in one incident, depending on how the arresting officer classifies whatever the incident represents to him or her. And as long as that sticks, you automatically have a felony charge.

With a felony charge, there are

hundreds of places where you cannot work in the State of New York. And so when we look at the statistics in New York City and people talk about 50 percent of the black men who are unemployed, a lot of them would fall -- a lot more would be unemployed if they fell within the purview of this legislation.

So I'm going to oppose this. And I invite my colleagues, particularly those who represent people who are naturally going to fall into this situation, should vote no with me.

Thank you. I'm voting no.

THE PRESIDENT: You will be so recorded as voting in the negative, Senator Montgomery.

The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 723 are Senators Dilan, Hassell-Thompson, L. Krueger and Montgomery.

Ayes, 51. Nays, 4.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 753, by Senator Robach, Senate Print 4768, an act to amend the Retirement and Social Security Law, in relation to disability benefits.

THE PRESIDENT: 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, 55.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 781, by the Senate Committee on Rules, Senate Print Number 4079, an act to amend the Tax Law, in relation to extending.

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, 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 784, by Senator Seward, Senate Print 4362, an act to amend the Tax Law, in relation to extending.

THE PRESIDENT: 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, 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 803, by Senator Alesi, Senate Print 2049, an act to amend the Business Corporation Law, in relation to allowing.

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, 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 808, by Senator Morahan, Senate Print 3039 --

SENATOR SCHNEIDERMAN: Lay it aside, please.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 816, by Senator Leibell, Senate Print 4537, an act to amend the Not-for-Profit Corporation Law, in relation to maintenance.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 60th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 925, by Senator Balboni, Senate Print 2577, an act to amend the Public Authorities Law,

relation to the term of office.

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, 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 928, by Senator Saland, Senate Print --

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

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

THE SECRETARY: Calendar Number 930, by Senator Bonacic, Senate Print 5210, an act to amend Chapter 555 of the Laws of 1989, amending the Public Authorities Law.

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, 58.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 971, by Senator Alesi, Senate Print 2785, an act to amend Chapter 413 of the Laws of 2003 amending the Labor Law.

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, 58.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1064, by Senator Spano, Senate Print 4155, an act to amend the Vehicle and Traffic Law, in relation to enacting the "Ambrose-Searles move over act."

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 6. 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 1097, by Senator Saland, Senate Print 5280, an act to amend Chapter 505 of the Laws of 1985, amending the Criminal Procedure Law.

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, 58.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1100, by Senator Spano, Senate Print 3129, an act to amend the Local Finance Law, in relation to bonds and notes of the City of Yonkers.

THE PRESIDENT: There is a

home-rule message at the desk.

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, 58.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1138, by Senator Skelos, Senate Print 5363, an act to amend Chapter 138 of the Laws of 1998, amending the Navigation Law.

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, 58.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1327, by Senator Marcellino, Senate Print 5493, an act to amend a chapter of the Laws of

2005, amending the Vehicle and Traffic Law.

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 Marcellino, to explain your vote.

SENATOR MARCELLINO: Yes, Madam President.

This bill is an extender. We passed the same bill about a week or so ago. And now we have found that, in looking at the papers, 17 individuals since January have died as a result of hit-and-runs. Just last week, in a three-day stretch, three more died from hit-and-run incidents.

It is time that we took serious action. We don't feel we can wait until November 1st, when this bill would normally go into effect. Hence this bill that we're doing today moves the time that this bill will take effect to immediately.

As soon as it is passed in the

other house and signed by the Governor, this will become law and law enforcement can take some serious action against those who would put all of us at risk by doing drugs and driving or drinking to excess and driving. We want to stop this process, so that's the purpose of this particular bill.

Thank you. I'm voting aye.

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

Senator Sabini, to explain your vote.

SENATOR SABINI: I'm voting aye as well, and I want to compliment Senator Marcellino.

Upon returning to the district this weekend, I had what all of us in public life know is one of your least happy stops, this -- when a tragedy occurs in your district and you have to attend the wake or funeral of a family who's the victim of a tragedy.

I had the unfortunate task of visiting a family where the mother and child were both killed and a joint wake was held. And needless to say, to see the human tragedy

in front of you in that magnitude, to see a man's entire family wiped out, someone who had come to this country to make a better life for his family, and then to see the family wiped out by a hit-and-run driver -- we need strong action like this, and I commend Senator Marcellino on moving the deadline up so we can send a strong message to people that hit-and-run accidents will not be tolerated.

Thank you.

THE PRESIDENT: You will recorded in the affirmative, Senator Sabini.

Senator Savino, to explain your vote.

SENATOR SAVINO: Yes, Madam President. I also want to commend Senator Marcellino for this bill.

At the age of 8, I was hit by a car around the corner from my house. And I -- and the driver attempted to run, but he got caught. Luckily, the police were on the next corner and they saw the entire accident. I spent 4 1/2 months in the hospital, and my mother spent 4 1/2 months there every day, neglecting her other children.

And I was lucky enough that I survived and that I went on to recover. And the person who hit me was held accountable through the insurance process, but not through the criminal process. He should have been prosecuted, but the law did not support it at the time.

So I commend you for bringing this so that other families -- not everybody dies of a hit-and-run. There are families who are crippled by this. There are children who are hurt, elderly people who are hurt who spend months and sometimes years in the recovery process.

So I support this bill strongly, and thank you for bringing it.

THE PRESIDENT: You will be recorded as voting in the affirmative, Senator.

The Secretary will announce the results.

THE SECRETARY: Ayes, 60.

THE PRESIDENT: The bill is passed.

Senator Skelos, that completes the

noncontroversial reading of the calendar.

SENATOR SKELOS: Thank you, Madam President.

If we could go to the controversial reading of the calendar.

And please ring the bells to alert the members that we are about to commence the calendar.

THE PRESIDENT: The Secretary will ring the bells, and the members should return to their seats so we can begin the calendar.

The Secretary will read the last section.

THE SECRETARY: Calendar Number 432, by Senator Saland, Senate Print 3192, an act to amend the Education Law.

SENATOR MONTGOMERY: Explanation.

THE PRESIDENT: Senator Saland, an explanation has been requested.

SENATOR SALAND: Thank you, Madam President.

Madam President, this is a bill which has twice in the past three or four years passed this house unanimously.

What the bill proposes to do is to say that certain schools -- and currently there are some 28 so-called consortium schools, schools which belong to the New York Performance Standards Consortium -- would continue to have the benefit of a variance or waiver which they received back in 1995 from former Education Commissioner Sobel. That variance was renewed for one year in the year 2000.

There was commissioned by the current commissioner, Commissioner Mills, a so-called blue-ribbon panel which was supposed to evaluate the consortium schools, also referred to in this bill as portfolio performance schools, and also, at the same time, to propose some type of evaluation of the Regents.

Well, in fact, at the conclusion of their deliberations, that panel of some six members, four of whom I believe were consultants for the Education Department, they basically came forward and said there should be such an evaluation and that, in effect, was their recommendation.

And to this day, no such evaluation of either these schools nor the Regents has yet to occur.

What this bill does is to say that the students currently enrolled, if they were enrolled as of the 2000-2001 year, would be required, as they currently are, to pass the English Regents. Those who entered in 2002 for the 2002-2003 year would also be required to pass the English Regents -- I'm sorry, the math Regents.

And the commissioner would be required to develop a portfolio performance-based alternative assessment which would measure, in effect, the equivalent knowledge and skill for each of the Regents areas. And among the conditions that would have to be met would be that those assessments would measure the state learning standards for each of the respective content areas or Regents areas.

This bill I guess in some respects encapsulates a battle that's been going on in this country for many, many years and is currently certainly the source of many of the

concerns raised by No Child Left Behind.

What this bill says is high stakes -- there are some students who do not necessarily perform well in high-stakes testing situations. Those students may choose to opt to take some other means of education. The consortium offers that means of education by a performance-based system, what at times some people refer to as a portfolio-based system.

The results seemingly are rather impressive. Many of you may have received a fact sheet. That fact sheet, which members of the consortium were handing out, that fact sheet talks about the fact that they, the consortium, their 28 schools send more students to college, nearly 88 percent, compared to 70 percent of so-called Regents schools. They have lower dropout rates, about half the dropout rate in the public school system.

And they go on to say that only 15.6 percent of the students entering consortium schools meet state standards in English. They ultimately outperform their

Regents counterparts on the English Regents 77.4 percent to 72.7 percent.

I fear that this has become very territorial. What has happened is those who are, in effect, in a position to call the shots here in the education world -- whether it be the commissioner, whether it be the Regents -- I think feel somewhat put upon by this proposal. They feel that their Regents standards should be, to the exclusion of any other means of education, the tool by which we educate children.

Many of these very same themes echo in No Child Left Behind. And we certainly have seen much of the criticism that has surrounded No Child Left Behind, not only in this state but really virtually throughout the country.

So this is merely an effort to recognize that there are other means by which children can be educated other than --

THE PRESIDENT: Go ahead, Senator. Just to get some order.

SENATOR SALAND: -- other than so-called high-stakes, one-size-fits-all

testing.

It recognizes the fact that these schools at one time actually received a waiver to pursue this course of education. Assuming the data is correct, and I have no reason to dispute it, they seem to be doing a very fine job of educating the students for whom they are responsible to educate.

And I see no reason why we should not continue to pursue this means for those students who are currently taking advantage of it and for those who may wish to follow. This would permit this particular alternative educational program or programs to continue through the year 2008.

Hopefully we can have the kind of evaluation, both of the Regents and of the consortium schools, that many had thought was going to be forthcoming some five or six years ago. There's no reason to basically turn your back on what by all appearances seems to be a very successful means of educating children.

THE PRESIDENT: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Madam

President. I would like to ask if the sponsor would yield to a question, just for clarification.

THE PRESIDENT: Senator, will you yield for a question?

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Montgomery.

SENATOR MONTGOMERY: It is my understanding, Senator Saland, that the bill proposes, in addition to extension of the waiver, that it would direct the commissioner of State Education Department to develop a portfolio assessment system which would then be offered to districts throughout the state.

SENATOR SALAND: I believe I referred to that, although perhaps not as extensively as you did.

What that assessment would be would be a means of measuring that the students who availed themselves or the school that availed themselves of this type of an educational tool would have to demonstrate, to the satisfaction of the standards or assessment established by

the commissioner, that in fact they were receiving the equivalent of the education that -- the equivalent of the Regents education that enabled them to attain the learning standards.

SENATOR MONTGOMERY: Madam President, if I may continue to inquire of Senator Saland.

THE PRESIDENT: Senator Saland, will you yield for a question?

SENATOR SALAND: Yes.

THE PRESIDENT: You may proceed, Senator Montgomery.

SENATOR MONTGOMERY: Okay, Senator Saland, does that mean, then, that you have also included a budget item, per the assessment of the commissioner, as to what such a process would cost?

SENATOR SALAND: There will be a cost.

Quite candidly, I will say this rather unabashedly, the Ed Department has played fast and loose with the facts, including some of the characterizations regarding NCLB and including what they view as

being the fiscal consequences. Their budget note that they presented said there would be $7.9-plus million in fiscal impact. We would say that it would be about $3 million more than that.

They certainly have the ability to begin that process. And if for any reason they don't have the adequate funds as we progress through the calendar year, we certainly would have the ability in the next budget cycle to make those funds available to them. So this would not fail for lack of the ability to provide funding.

SENATOR MONTGOMERY: Through you, Madam President, if Senator Saland would continue to yield.

THE PRESIDENT: Senator Saland, do you continue to yield?

SENATOR SALAND: May I also point out that there is a two-year delay on the effective date. So, you know, this is not going to hit them between the eyes.

THE PRESIDENT: You may proceed, Senator Montgomery.

SENATOR MONTGOMERY: Yes. Does

this mean, then, that we would be -- since we have not raised or included the funding for the CFE, does that mean, then, that we're now pitting CFE funding for CFE with your proposal to create an alternative assessment?

SENATOR SALAND: I wouldn't think so. It confounds me how you could come to that conclusion.

I mean, in the scheme of the comparison of CFE and this issue, you're not talking pocket change, you're talking -- you're not even talking pennies by comparison. We're not talking $19-plus billion, we're talking about the ability to provide a mechanism that will evaluate students. That's all.

And we're asking that the commissioner establish the protocols by which that will occur. And the commissioner has said that that's going to cost nearly $8 million. We've asked Senate Finance to take a look at it, and they say the number is more closely aligned to $5 million.

And as I mentioned before, I stand prepared to assist the commissioner if that's

an issue in his next year's budget. But the likelihood is it won't be an issue until the following year's budget because of the effective date.

SENATOR MONTGOMERY: Thank you, Senator Saland.

Madam President, on the bill.

THE PRESIDENT: You may proceed.

SENATOR MONTGOMERY: While Senator Saland says that the money is not important and anyway we won't have to worry about it until the effective date of the legislation, clearly if, in fact, the bill passes and the commissioner is instructed to begin to develop this tool, I would assume that the money is going to be needed to even begin the process.

And while Senator Saland certainly refers to perhaps we'll spend $4 million as opposed to $7 million or $5 million as opposed to $10 million, whatever, however the -- he says that the commissioner is playing fast and loose, we will need some money for this. And it's not included in the legislation.

So I'm not sure that we won't get

to the point and then Senator Saland will say: Well, you find the money, take it out of somewhere else and CFE, whatever else there is. You find the money, because the legislation says you have to do this.

So I just wanted to point that out. That is certainly a weakness in this bill.

I'm opposing this proposal. And one of the things that Chief Justice Earl Warren said when he issued the Brown decision was that separate is not equal. So I say to you, my colleagues, today, different is not equal.

Now, I am all in favor of alternative assessments. And I think that there are a number of young people who certainly would not be able to sufficiently effectively be able to pass these assessments. But as we are finding, since we set the bar at the Regents diploma level, more and more young people, particularly young people of color in New York City, are passing the Regents.

So the idea that they couldn't do it, which was the attitude that a lot of people had -- unfortunately, even educators

had in past years -- doesn't hold, does it? Because many of them are actually passing it.

And in fact, in past years when we had some other kind of diploma and then we had the Regents, it still was two different systems of education. Many students were not even offered the opportunity to pass the Regents -- to take the Regents, let alone being prepared to pass it.

So it wasn't that the students couldn't do it, it was that people assumed, because maybe of their social status, their parents, where they lived, whatever other indicators that people used to determine who can possibly meet the standards bar. And it was not true.

But clearly 90 percent of the young people in New York City came out with a diploma that was second-class to the Regents.

Now, we are, as the Legislature, recreating the same situation. How can we in good conscience be doing this in this century, at this time, when our young people have to compete with the whole world, not only with people in their own country but people all

over the world?

And so we're creating a second-class system. And the reason that I say we're creating a second-class system is because we are -- not only are we extending the waiver for the few schools that are now the alternative schools, appropriately, but we are extending it statewide and making it a standard of graduation while we leave in place the Regents.

Now, I say to you either you have one standard and everybody understands that there is an alternative to graduation, but that alternative clearly is not the same as the standard that everybody else is going to use to measure people -- we all should understand that -- or we shouldn't have a Regents, we should all have the portfolio system. This way, everybody is measured by the same thing.

I think this creates an opportunity for us to once again go back to a system where some people are portfolio students and others are Regents and you know who is going to fall under what rubric.

Now, I just remind my colleagues that every education leader in our state and city are opposing this process. And I just want to read from the chancellor's memo. It says: "The current Regents learning standards represent an enormous investment of time and human and material resources. They reflect years of careful consultation by the Board of Regents with a broad cross-section of experts and educational stakeholders in an open and transparent process."

They are aligned with the educational standards developed by the Regents. And I know that many people in here don't want the Regents at all; they would like to do the whole education system by politics, by political fiat. But we do have the Regents. And in fact, the Regents standards are held by a lot of the people around the country. Many educators say we have very high standards, and they praise us.

In addition, the Department of Education has done a lot of work with different groups in different districts to make a transition to higher standards. And I

suggest that if in fact the schools that we're talking about that are clearly alternative schools, and they have a mixed record of success -- certainly some of them are very successful, others are successful to the same extent as the charter schools are successful, to the same extent as public schools generally are successful -- that the State Ed Department, the commissioner has agreed to work with them.

I would hope that we would leave this important decision to people in the Department of Education, in higher education, the chancellor, the education leaders around the state. Why don't we let them do what they are paid to do and that they have the experience to do? That they believe in young people, that they hopefully won't be politicized to the point where they are willing to throw out the standards of the Regents because that's no longer -- that's no longer politically correct. Never mind, we don't have a statewide way of comparing if my students, students in my district can compete with students in Senator Saland's district or

Senator Johnson's district or anybody in here.

If my students pass the Regents and your students pass the Regents, then I can be assured reasonably that my students are on the same par with yours. But if my students pass the assessment and yours do the Regents, what are you going to say to me? You're going to stand up and try to tell me that there's something wrong with my students.

So, Madam President, I'm opposed to this. I think that it moves us backward, educationally speaking. We went through years and years and years of debate and work around establishing a statewide standard, especially in light of the Brown versus the Topeka Board of Ed. It's the same issue. As long as we have a second-class standard of measurement for one group or for one part of the state and another standard for the other part of the state or the other group, we are in violation of Brown versus Board of Ed.

So I would ask if Senator Saland and my colleagues would reassess this. At least we should limit it to those schools that already have the waiver, give them a little

bit more time. But they should be required to work with the commissioner to move into the standardized bar of measurement.

Now, if they can't do it, then we can talk about what is an alternative. But I do not support giving the authority to districts around the state, especially to broadening this so that it becomes part of our educational system so, once again, we in the Legislature would be responsible for legislating a second-class, two-tiered education system.

I oppose it, Madam President. I'll vote no.

THE PRESIDENT: Senator Stavisky.

SENATOR STAVISKY: Madam President, if the sponsor would yield to a number of questions.

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: Senator Saland will yield for a question.

SENATOR STAVISKY: Through you, Madam President.

I heard you describe to Senator

Montgomery the fact that the State Education Department would have to develop an assessment program for the portfolio-based schools. And yet, from what I understand, it's simply a plan. There's no enforcement.

If they're going to have rules and regulations, then they should be followed. And it's my understanding that this bill does not require the portfolio schools to accept the SED regulations. Is that correct?

SENATOR SALAND: That is not correct.

This requires -- this bill has a 2008 sunset.

SENATOR STAVISKY: I'm sorry, I can't hear you.

SENATOR SALAND: This bill is good through 2008. It requires the commissioner to prepare the means by which the portfolio performance schools can be assessed, trying to equate apples to apples, holding their assessment to the standards of the learning standards.

Failure to do that -- failure to do that, if you can't be evaluated and if you

can't meet the learning standards, then you would be treated as would any other school in any other location in any place in this state. If you don't have the ability to provide the education that's required either by your standards as measured by the commissioner's evaluation, then -- you've heard of things called SURR schools? You've heard -- I mean, there are consequences for failure to do that.

SENATOR STAVISKY: Then they'd be on the SURR list.

SENATOR SALAND: This is not a means by which accountability can be avoided.

And let me just add, I certainly understand Senator Montgomery's passion. But the fact of the matter is is that much of what she was alluding to has little or nothing to do with this bill.

And I might also add, and I'm looking at a report, the demographics of the students currently attending these consortium schools, as provided to me in a report, nearly 61 percent are eligible for free lunch, 19.4 percent are white, 27.6 percent black, 43.5 percent Hispanic, and 9.6 percent Asian

and others. So it certainly is a very diverse group of students that are attending these schools.

And again, as a very practical matter, why do people use standardized tests? Why is the government -- NCLB, the government gives you a choice of tests. People use standardized tests because they're the cheapest, they're the easiest to grade, and they can be done far more efficiently than can a portfolio-based type of performance analysis.

So there would be no pell-mell rush into portfolio-based performance analysis were this bill to become law, simply because, in part, of the fiscal constraints.

SENATOR STAVISKY: Madam President, if the Senator would continue to yield.

THE PRESIDENT: Senator Saland, will you continue to yield?

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator, with a question.

SENATOR STAVISKY: Following up on what you just said, then there are alternatives to the portfolios, the -- what is it, the international baccalaureate, the SAT, that special advanced placement, SAT II, the Advanced International Certificate of Education, the Cambridge exam. Why is the portfolio program superior to these other types of tests?

SENATOR SALAND: I'm not proposing that they are. I'm merely saying that they're providing, by the data given me, which is not -- I have not seen disputed, they provide a quality education and they do it in a fashion that has a much higher college attendance rate than the other schools in our state.

And I can run off a laundry list of some of the schools that they're attending, and they're rather -- that the graduates are attending, and it's a rather impressive list of schools.

SENATOR STAVISKY: Following up on that, in other words, we can assume, then, that there are alternatives to the portfolio

schools, it's just that you prefer to use portfolio rather than rely on these alternative tests.

SENATOR SALAND: If it's working.

And the easiest way to have resolved that issue would have been to do what had been proposed some five or six years ago, do the evaluation. That's what this panel recommended. The evaluation was never forthcoming. It was just stone-cold stopped.

Now, I would think, unless you're so wedded to the idea that everything has to be one size fits all and it's my way or the highway, that you would consider what's going on in these schools if they're delivering a fine product.

And that fine product is a student, in some instances a student who may have not fared well in elementary school, who comes into this new educational environment and seems to blossom, blossoms well enough that the vast majority of these students are going off to college, a claim that we can't make in all our schools.

SENATOR STAVISKY: Madam

President, if the sponsor would continue to yield.

THE PRESIDENT: Senator Saland, will you yield?

SENATOR SALAND: Yes, Madam President.

SENATOR STAVISKY: You mentioned the fact that the assessments are working well. What is there in the program that permits the assessment of a child in School A and the assessment of a child in School B to have -- to be comparable? In other words, free of bias, et cetera.

SENATOR SALAND: Senator Stavisky, you've raised an excellent question.

SENATOR STAVISKY: Thank you.

SENATOR SALAND: You've truly raised a question that goes in part to the very heart of a substantial portion of this bill.

And that's what we're asking the commissioner to do. I'm not qualified. I couldn't evaluate School A and School B. I believe that the commissioner, if not capable of doing it himself, has the ability to

harness the right resources to make that happen.

Now, understand, this is not a process that we're inventing in New York. This process is used in several other states and used exclusively in the state of Nebraska, and they comply with No Child Left Behind. Their entire system is portfolio-based, and they comply with No Child Left Behind.

So when I hear that a performance, slash, portfolio-based system will not comply with No Child Left Behind, I say that's a little divorced from reality.

SENATOR STAVISKY: Madam President, if the sponsor will continue to yield.

THE PRESIDENT: Senator Saland, do you yield?

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: You may proceed.

SENATOR STAVISKY: You mentioned the state of Nebraska. But closer to home, the Rand Corporation did a study of the state of Vermont. Are you familiar with that study?

Because that study showed that the portfolio assessment tests were not reliable and were not valid.

Would you comment on that?

SENATOR SALAND: I only know in a passing fashion of reference to that study.

And again, one of the very reasons that you see language in this bill in Section 3 on page 2 is to try and deal with that issue, is to require the ability to do some type of an assessment.

I wouldn't want a student in my district and a student in Western New York, or one in the city and one in the Adirondacks, to be gauged differently. And I do believe that the commissioner should have the ability to accomplish that.

If they can do it elsewhere, I don't understand why we can't do it here.

SENATOR STAVISKY: Then, Madam President, my last question.

THE PRESIDENT: Senator Saland, will you yield for a final question?

SENATOR SALAND: Yes, Madam President.

THE PRESIDENT: You may proceed with your final question.

SENATOR STAVISKY: The final answer.

You're relying on the Commissioner of Education to do so many of these assessments to provide for the ground rules for assessing the portfolio --

SENATOR SALAND: Excuse me, Senator. I heard you as far as "you're relying on the commissioner," and then I didn't hear what you said after that.

SENATOR STAVISKY: I'm sorry. I'm sorry.

You're relying on the Commissioner of Education to perform -- to provide the ground rules, the background, the basis for which to judge the various schools. And yet from what I understand, the schools are not required to follow the commissioner's rules that he's going to promulgate. And yet you're relying again and again upon the commissioner to do these things at a cost to be determined.

How can you -- why, in your judgment, has the Commissioner of Education

been leading the charge against this bill?

SENATOR SALAND: Would you like me to answer that tactfully, or would you like me to answer that question?

(Laughter.)

SENATOR SALAND: I'll give you A or B.

SENATOR STAVISKY: Excuse me, Senator. This is a multiple choice test and --

(Laughter.)

SENATOR SALAND: Let me be polite and say there's a bit of territoriality involved here.

The commissioner is committed to his vision, which is a one-size-fits-all vision. Everybody takes the same test.

I believe, Senator Stavisky, you may have attended at least one of the hearings I held in '03 when we looked at the Regents standards. We held three hearings around the state, and there was some very interesting testimony which went to the very heart of does that type of high-stakes testing really educate a child or teach a child to pass a

test, and is the child any better off when he or she comes through that process than they might have been if they went through a system such as a portfolio-based system.

Now, the commissioner at one time was an advocate of the portfolio-based system when he was in Vermont, and now he's an advocate of this far more rigid standards-based system. And I don't know why the two can't coexist.

I think, for practical reasons, most will probably continue -- practical being financial -- to use the type of Regents exam or any type of high-stakes exam. And in no small part, the advent of No Child Left Behind requires us to pursue that as well.

But where students can flourish under another system, why not give them that opportunity? Particularly if the commissioner continues to have oversight. And if I didn't think the commissioner would have oversight, this bill wouldn't be here, because he should have oversight.

And there are students -- there are only 16,000 students in the whole system in

this type of system right now.

SENATOR STAVISKY: Thank you, Madam President.

Let me -- very briefly on the bill.

THE PRESIDENT: You may proceed.

SENATOR STAVISKY: I still have misgivings about this. I think the cost, this is money that could be used for the CFE decision, certainly. We really don't know what the cost is going to be.

Secondly, studies have shown that the alternative assessments are often of dubious value.

Third, that there are alternatives, as I said, to the portfolio assessment program.

And lastly, I believe, along the lines of what Senator Montgomery said, I believe that every child can learn and every child can pass these exams. And to think otherwise is to almost demonstrate that children don't deserve an education, when they do deserve one, they deserve the very best.

The children in the portfolio assessment schools can do as well or better

than young people taking the Regents exams. I think Senator Saland indicated that.

I think we're insulting the whole educational system when we don't demand the very best. I think it's up to us to ask that the students do well. We're spending a lot of money to help them, and it seems to me that these are kids who can learn and they should learn because when they graduate they're going to have a diploma that's worth something.

Thank you, Madam President.

THE PRESIDENT: Senator LaValle.

SENATOR LaVALLE: Thank you, Madam President. I'm going to speak on the bill hopefully in a very succinct way.

The first question that we should as members ask ourselves is why is a bill like this before us. Why is a bill that deals primarily with a matter, an administrative matter before an agency, that they should be dealing with what kinds of tests are being used in this state?

As we all know, because we've discussed this in our committees, both in Higher Education and Education in years gone

by, is whether a measure can be developed where all students could at the same time get over the bar.

And this is a matter that the Board of Regents and the commissioner have doggedly said, We are not going to change the standard, we are moving ahead, and it's more important that we have a standard of success.

And by the way, all the members here have individually, collectively said we support higher standards. In one of the memoranda, it talks about New York raised standards to make sure students get the knowledge and skills they need for jobs, college, and a more complex world.

We believe in that. We've said that. We've written speeches on that. It is at the core of our existence in why we support education, so that students can be competitive in the marketplace and have a good job and raise a family. And we don't move away from that.

But the department has been unwillingly to move in a rapid way to understand that not everyone learns at the

same level. We didn't all walk at the same time. We didn't learn to read at the same time. We weren't potty-trained at the same time. There are differences. And so our education system must accommodate those differences.

Albeit it's not something that I'm in agreement, but our society is moving towards standardized tests. That's the way it is, and I accept it. But I don't accept, as the sponsor, and I've devoted my whole life to truth in testing -- that I believe, and we've shown this empirically, that standardized tests are not free from bias. They have gender bias, ethnic bias, racial bias. They are biased.

But the testing people say everything's fine, there's no bias in our tests. And then, after having said that, they change their mind and they say, Well, we're doing a better job in removing those biases.

Oh, wait a minute. You said some years ago that there was no bias. Now you say you're doing a better job.

And so I think that while we are on

a pathway to have certain standards, have standardized tests, but I think we're really fooling ourselves if we believe that everyone at a point in time can go over that bar in the same way.

This is something that should not really be decided statutorily, legislatively. But you know something? Senator Saland is going to have a wake-up call. He was very gentlemanly in his response to Senator Stavisky's question. This is something that the Board of Regents and the commissioner should be working out, not the Legislature.

But I am going to support this legislation because I think we need to send a message to the department and say: Wake up. Treat children who may be different in a way that they can get over the bar and achieve and be successful.

I'm going to support this legislation. Thank you, Madam President.

THE PRESIDENT: Senator Oppenheimer.

SENATOR OPPENHEIMER: Thank you.

This issue has raised a lot of

passion, and I think that it's wonderful that we're able to have this kind of discussion openly between ourselves.

I think some of the things I've been listening to -- and I've been listening very carefully to what everyone's been saying -- I think that this bill probably would be the answer to some of the things that we're talking about.

You were talking about learning differences, Senator LaValle, and you're right, this would accommodate to that. There are people who learn at different times in different ways. Surely myself; I'm dyslexic. I learned in a different way. Not that I wasn't able to achieve, but I had a different way of learning.

I think the statement that we want to see, that everybody -- we know that everybody can learn. That is a basic foundation of our education system in New York now. And if you say that everybody can learn, then you have to look at what has been produced by these schools.

These schools are largely

occupied -- the few schools that we have in New York State now that offer alternative assessments, they are largely in lower-income areas. They are children that probably would not have fared well in the normal school -- in other words, the general school system -- but because they went into this type of a school, they came from disadvantaged backgrounds and have yet turned around to have higher outcomes, higher outcomes than most of the rest of our school systems are producing.

They're sending more children to college. What more applicable standard or maximum line would you have than that these children are going to college at a greater rate than the lower-income children who are not served by them in those districts?

The question I have -- and I guess I should ask Senator Saland a question, if you would. Will the Senator yield?

SENATOR SALAND: Yes, Mr. President, I yield.

ACTING PRESIDENT MEIER: Senator Saland yields.

SENATOR OPPENHEIMER: I went from

on the bill to a question.

In developing an accountability standard, which I think is absolutely essential, I guess the question I would have is, how applicable will it be generally to education?

Do you think there will be a mass move towards this in spite of the fact that it is more complex, more time-consuming for the school districts to have them assessed? Do you think that there would be a mass movement towards this and away from the more simple Regents standards? I mean more simple in the evaluation of them.

SENATOR SALAND: I can only offer you my own opinion. It's based purely on conjecture.

My sense is that it would be something that would not be significantly subscribed to, simply because it is a far more costly system, I would believe, to administer and also to create the kinds of evaluations that you would have to do.

I just -- I would assume that for many, particularly in the world in which we

live now, when you're talking about independent school districts that have budgets that are constantly, every year, put to the challenge, I would think that they would be hard-pressed to go into a system that had the potential to be that much more costly.

SENATOR OPPENHEIMER: Thank you, Senator Saland.

So I think I'll just say a couple more things on the bill.

Certainly all of us would be alarmed and horrified to think of Regents standards being thrown out. They have done so much good for our state. And we see children that in the past would have been cast away and now, lo and behold, they are passing the Regents standards because we have said that this is something that we require in our state to graduate.

But if we can create accountability standards for alternatives, I think that is something -- as a humanist, that is something that all would want. Because we are all different. If we can all at least measure up to the accountability that is necessary to

require -- that would be required for graduation from high school, then we could see that people who are different and learn differently will be able to achieve and go on to college.

Which is really what we are hoping for, that we can send our young people to college. Because we all know that a college education is what's going to be required for them to work in this 21st century.

So I think in no way do we want to see the Regents standards in any way diminished, but we want to see an alternative. So far the alternative has really just been -- mostly, at least -- in our low-income areas. But I can assure you that I represent some school districts that are definitely at the opposite end of that spectrum, and there is nothing that Scarsdale would not like better than having alternative assessments where they think it is appropriate.

It isn't appropriate in all circumstances. But where there is a need for those of us who are not enormously fond of charter schools, principally because of the

way they are funded -- the fact that they're innovative and creative I do appreciate. I do not appreciate that they are being funded out of my property tax dollars.

But this is a way, in my mind, to have an alternative to a charter school within a school district. And I think this is really an answer for us. So I will be supporting this.

ACTING PRESIDENT MEIER: Senator Liz Krueger.

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

I want to thank Senator Saland for the work he's done on this bill, because it has been controversial, as we've seen today, but it is critically important.

And many of my colleagues have spoken passionately on both sides, and so I'll just highlight some of my own feelings, having visited these schools, having several in my own district.

Parents are choosing portfolio schools because they're working. They're working for their children. They are being

successful, they are moving on, graduating, going to college, staying in college, and, in fact, meeting all of the standards we say we hope for for all of our children.

Not every child is the same. They don't learn the same way. All of us in this room, if we sat here, would admit if we were the good test-takers in our lives or the bad test-takers. We now know as adults it didn't necessarily mean anything in relationship to our ability to accomplish, to become elected officials in the State of New York. But we know who we are. We know which of us did will on tests and which didn't, which of us figured out other ways to move through the educational system, which of us specialized in taking classes in college where you wrote papers rather than having to take exams.

Which of us would admit, even if we were good on tests, that we forgot the information within three days after taking the test? And what is the real test of education? Whether you know how to learn how to learn.

And what we're finding from the data in the portfolio schools is that these

children are learning how to learn, and how to move on and figure out ways to continue their own education through college and through careers. And that's the real measure of education.

I empathize with State Education Department's desire to have a one-size-fits-all system. It's easier to administer. It's easier to measure. But it doesn't reflect the reality of the fact that our children are not one size fits all or one way to learn is the only way to learn.

These schools deserve the evaluations that will show that they are successful, because they are. I come from a city where we encourage small schools. We encourage charter schools. We encourage magnet schools. Portfolio schools are one other model that is being successful for children in my city and in other cities around the state.

And I also want to raise the point that we should not have the illusion that because it appears on one piece of paper that more children are getting higher scores on the

Regents exams every year, that that's the right measure of success. Because if you look at the data, we know that we have a dropout rate that is increasing every year. We know that New York State's graduation rate is appalling, and that three independent studies put the graduation rate at approximately 60 percent of the children in the cohorts entering high school.

We know that New York State has the lowest graduation rate in the Northeast and the Midwest combined. We know, at least in the City of New York, that teachers and principals in some schools counsel their students to drop out rather than flunk the tests and lower the passing averages in those schools.

So in fact, portfolio schools are working, while the system is broken. We should be evaluating everyone carefully. We should not be lowering the standards for any child, because that's flunking them and flunking ourselves. But these schools have so much to contribute to the education of our children. They are proving themselves every

day. It is our job to make sure that we successfully evaluate and measure.

But you don't need everyone teaching to test, and you don't need high-stakes testing as your only measure to establish that you are accomplishing your goals of providing the children of this school good quality education.

I encourage my colleagues, those who will vote yes today and those who will vote no, go visit portfolio schools. Go talk to the teachers, the principals, the parents, the students. Go look at the data of what is happening in those schools. They are being successful. We are not failing these children. We are not throwing them away. We are recognizing that one size does not fit all and this is a model that is working.

I hope my colleagues will vote yes. Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Diaz.

SENATOR DIAZ: Thank you, Mr. President.

Mr. President, would the sponsor

yield for a question, one or two.

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

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DIAZ: Senator Saland, do you know that the worst students -- I mean, the ones that does poorly -- are the black and Hispanic, especially in the City of New York?

SENATOR SALAND: I'm sorry?

SENATOR DIAZ: Do you know that our students, black and Hispanic students, they are all the time doing worse than other students?

SENATOR SALAND: I know that the predominant number of failing schools are located in the City of New York.

SENATOR DIAZ: Mr. President, should I go ahead or --

ACTING PRESIDENT MEIER: Do you want Senator Saland to yield for another question?

SENATOR DIAZ: Yes.

ACTING PRESIDENT MEIER: Senator Saland, do you yield for another question?

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR DIAZ: Senator Saland, would you agree that we always should be trying to do the best for those students that are left behind, especially black and Hispanic students?

SENATOR SALAND: I think your question was we should do the best for --

SENATOR DIAZ: Do you agree that we all should be doing the best we can to be sure that black and Hispanic students do better in school?

SENATOR SALAND: We certainly should be doing all we can for students of all colors and all ethnicities.

And based upon what you said previously, black and Hispanic students are not performing as well in some instances as we would like, particularly in the city.

SENATOR DIAZ: Thank you.

If -- I have some statistics here that was handed to me by Senator Krueger. And it shows that the African-American students are doing better and the Latinos are doing better in consortium schools than public schools, than regular schools.

If that is so and these schools are working, especially -- schools should be working for every student, for everyone. But I'm concerned with the black and Hispanic students in my district. So if these consortium schools are doing as good as I see in these statistics, Senator Saland, could you please tell me, why are we discussing this?

SENATOR SALAND: Why are we closing this?

SENATOR DIAZ: Discussing this. Discussing.

SENATOR SALAND: Oh, discussing.

Earlier in my remarks I made some reference to the demographics of the student population in these consortium schools. And a little less than 20 percent of the students are white, and the balance of the students are African-American, Hispanic, and what was

termed Asian and others.

These are the same students who are going to college, according to the data, which is yet to be disputed from any source, at a rate of some 87 percent. That's an astounding number.

So that bespeaks, I would think, volumes for the fact that they are doing a very good job with those that they are educating. So I would concur with the conclusion that you've brought me to.

SENATOR DIAZ: Mr. President, will the Senator yield for another question.

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

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT MEIER: The Senator yields.

SENATOR DIAZ: If these consortium schools are doing so good, especially to minority students, why would you think anybody would go against this bill?

SENATOR SALAND: That -- that's a very difficult question to answer.

As I said earlier, I think some of it relates to territoriality. I think some of it relates to interpretation of data, which I find troublesome. I mean, to infer that somehow or other this does not comply with No Child Left Behind, I find that extremely troublesome.

There's some other data that I've seen in some of the materials that have gone out over the course of the past week or so that I find equally troublesome.

The long and the short of it is, is that this challenges the model that the Regents and the Commissioner of Education believe to be the appropriate model. It gives no credence to the fact that children, students do learn differently, and some of them have obviously flourished under this system.

Why you would want to eliminate this alternative, particularly in the absence of the evaluation that had been recommended back in the year 2000, is beyond me. If you don't believe it works, then do the evaluation and establish as a matter of fact that it

doesn't work. I think that would probably fly in the face of the data that will be produced. But why don't you put it to rest by having the evaluation?

And at the same time, as has been previously recommended, why don't you evaluate the Regents standards? Do them both simultaneously. And do it with a panel of experts that will not come to the table with any degree of what I'll call parochialism or prejudice.

SENATOR DIAZ: Thank you.

Mr. President, on the bill.

ACTING PRESIDENT MEIER: Senator Diaz, on the bill.

SENATOR DIAZ: When we campaign to get elected, we promise our communities that we will do our best to improve education, we promise our communities that we will do our best to be sure that our children are not left behind, and we promise that we will do our best to be sure that we do whatever is possible so our children get a good education.

It is strange to me -- it is strange to me, and I cannot understand why

every time that something works, something that works on behalf of our minority students gets opposition.

When there is a push for charter schools -- charter schools have proven to be good for our students, for our communities. Some people don't want that to happen. They don't want our students in the black and Hispanic community to find and have the equal opportunities for them to improve.

When it comes to consortium schools, they're doing good for our communities, for our children. Some people don't want that.

So some of the people that don't want what's good for our students, they always cite, they always bring the question of money. Oh, because money, because we're here.

Well, ladies and gentlemen, I think that if we are going to educate the black and Hispanic children -- every children. But again, I'm concerned with the black and Hispanic children in my district. If we are going to educate them, money should not be an issue. Money should not be questioned.

Whatever it takes, whatever it takes to educate and to get them to be educated should be done.

So I suggest that we should stop this debating here and let's vote for this bill that has been good to our communities. And anything else that comes to this floor that is in favor to our children, we should stop debating. If it's good, let's do it.

Thank you.

ACTING PRESIDENT MEIER: Senator Hassell-Thompson.

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

It is very rare that I'm -- that I will ever speak, probably, in opposition to some of my colleagues, particularly to Senator Montgomery. We started out together in childcare, in early childhood education back in the 1970s. And we have pretty much always been in accord in terms of how we see education.

Some of the Senators are saying that they don't understand the need for discussion. On something as important as

this, there's always a need for discussion. Primarily because regardless as to what side we're on, somewhere in the middle of the debate is where truth lies. And hopefully, with enough debate, we can find it.

I don't try to look for things that are wrong with bills. I always try to look for what's right. And at the heart of it and on the face of it, at least, the face of it says to me that the results of the consortium schools show that our youngsters are doing better. That they enter with scores lower than those citywide, but that at the end and their performances in college shows that this is an alternative that works and tends to work for a significant number of students.

And I, like Senator Diaz, have to be very concerned about what happens in our public schools, because in my district they are predominantly children of color.

Having said that, I become concerned that I continue to be bombarded by people -- by parents, particularly, as well as associations -- who are looking to put their children into alternative school

methodologies. Last week several, at least 20 parents came from the district to talk about different charter schools that are working for their kids.

Now we're having the discussion about consortium schools, portfolio schools. What I have said to them, and what I want to say here, I'm not sure whether the Legislature, as Senator LaValle says, should be the driving force. But I can tell you that parents are asking the State of New York to do something different for their children, because their children are failing.

And one of the reasons that we don't see the kind of lowered scores on the Regents in terms of failures is because most of our kids are dropping out before they take the Regents exams. And if you were to factor those dropouts, you would see that the numbers are skewed.

Our children are failing. An example that I continue to use that disturbs me -- and I feel when we have these kinds of discussions, we push our school districts to believe that one methodology works for all

children, and I know that it does not.

There were children in a particular school district where only DISTAR was being taught. And the results said that 70 percent of the children who studied the DISTAR method were successful, they passed. The question of those of us as parents of children who were not doing as well and were failing was, what happens to the 30 percent of the children that don't do well?

And they said that this school district is only prepared to spend money for one system, and so therefore all children must learn under that system. And they were satisfied that the 70 percent who were passing could pass. But that meant that that was the process by which we were already leaving 30 percent of the children behind.

There were not these kinds of alternative programs to put those children in, and many of those children continued to fail. And by ninth grade, many of them were being socially promoted because they could not read and they could not spell at all.

When we believe that one system is

the only way in which we can help our children, we do a disservice. I am, on the face of this, supportive of this bill. But I am telling you that in the State of New York, we must begin the dialogue that says that public school as we have known it is failing our children in the 21st century. And we must begin to talk about what is it that we are prepared to do to change it.

And we cannot do it one bill at a time. We cannot do it one system at a time. There has to be a discussion that says if we are committed to the success of our children, then we cannot take the public school that was developed in the 18th century and apply that methodology to the 21st, because the requirements of our children into the future are very different. And I am tired of jobs going to India and the Far East because our children have to be retaught in order to be successful.

We have a job to do, a big job. I will support you, Senator Saland, on this bill. But I would like all of us to begin the dialogue that says that the State of New York

is failing its children and has to do something different from what it does.

ACTING PRESIDENT MEIER: Senator Schneiderman.

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

This has been one of the best debates that we've had since I've been here, both on the floor and the discussions off the floor. But in my mind, we're really talking about, looking at this bill and listening to my colleagues, three separate issues. And I think we should keep them in mind as distinct issues.

First, we have 28 schools in this consortium, not 44 -- for some reason, the Education Department is including in it other schools who have dropped out or are no longer in the consortium -- 28 schools that, if you look at their statistics, are doing a good job. Should we preserve these as alternative schools within the public system for students who opt in? That's question one.

Question two is, should those schools, the existing portfolio schools, be

required to submit to a state -- standardized state measurement of the portfolio-based schools that will be developed by the commissioner? That's in Senator Saland's bill. That's the second issue. Now they have their own assessments that each school is doing somewhat differently.

And the third question is, should we make this portfolio system available to other school districts and expand?

And I would submit to you, my colleagues, these are three separate questions that must be kept separate. Because I think what we're in danger of doing here today, if we vote against this bill, is putting out of business some schools that perform a very good function for thousands of students who otherwise might drop out of school who are opting into an alternative school, as Senator Hassell-Thompson pointed out, with scores, at the time they go from regular schools to the portfolio schools, lower than the standards, and they graduate uniformly with scores that are higher. Higher graduation rates, higher college-bound rate.

So I would suggest that preserving these 28 schools is important. There is no dispute as to the data. They are doing a good job. And in particular, I mean, it's -- I find the thing that bothers me in some respects the most is this. I went to some high-stakes schools, and I assure you of this. The children of the rich have a lot of alternative schools available to them. There is no rich kid who doesn't test well who can't find some fancy prep school with the flakiest proposals imaginable to get you into a fancy college.

In the public school system, which is under attack -- it has been accused of not being creative enough -- we have a set of schools that are doing this, that are providing for poor children the kinds of alternatives that, if we get rid of these schools, will only be available to the children of the very rich. That, to me, would be a great failure on our part if we put these schools out of business that are performing this service. The statistics are unassailable.

It also seems to me that the second part of Senator Saland's bill is pretty hard to argue with. I think the portfolio schools, if they want to stay in this business, should have a standardized state test. And the portfolio schools, showing their good faith, I suppose, are telling us to pass a bill that empowers their arch-enemy, the commissioner, to develop the standards. So you know he's not going to develop trivial standards for them. He wants them all to fail. He's going to have much tougher standards than the Regents.

This bill lets the commissioner develop standards, but Senator Saland requires that the alternative assessments shall be at least as rigorous as the corresponding required state assessment. So that part of the bill I think is also pretty hard to dispute.

I really think that when we come down to it, most of the concerns I've heard are about the third part of the bill, which allows alternative assessments, as meeting the commissioner's rigorous standards, to be

available for other school districts.

And there is a concern that is not a trivial concern, because it's based on some substantial history that has been raised by Senator Montgomery and others. This is not to be dismissed lightly. This is a tendency in this country, and we've seen it in special education, we've seen it a lot of places.

But I would suggest to you, ladies and gentlemen, that we're better off keeping these alternative schools, preserving the 28 schools that are working, getting a statewide assessment that will be guaranteed to be rigorous because the commissioner is going to be putting it together, and then dealing with this issue of how rapidly these are allowed to expand in a different context. I think that's something we should be able to address separately.

But it would be a shame to adjourn this session not having passed this bill or an alternative bill that deletes the requirement for this to be available in other schools in New York State. We can revisit that at a later date. Because that would put out of

business schools that are clearly doing a good job and providing to the children of the poor alternatives for kids who don't just fit in into the one-size-fits-all system that are currently only available to the children of the very rich in some states and would be only available to the children of the very rich in New York were we to reject this legislation.

So I'm going to vote yes, Mr. President. I encourage everyone to vote yes, with the understanding that this issue of expansion should be addressed at a later date.

Thank you.

ACTING PRESIDENT MEIER: Does any other member wish to be heard on the bill?

Debate is closed, then.

The Secretary will ring the bell.

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.)

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

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

I've listened to my colleagues, and I certainly do agree -- I'm very happy to hear particularly Senator LaValle, because the principles that he espoused are certainly my principles.

I have two degrees in education. Certainly early childhood was my special consideration. And in my years and years of experiences with young children that I've worked with, I found very, very, very few that were not bright on an equal par with any child anywhere in the world.

But it was once they went into this huge place, like a dark or a white hole, whatever you call it, however you -- it used to be the black hole. It's now the white hole.

ACTING PRESIDENT MEIER: Give me a second, Senator Montgomery.

SENATOR MONTGOMERY: They went in there, and they came out different.

And part of the problem was that people had low expectations of these children.

And I know plenty of people, even up until today, who say that they go to their so-called college counselor or they go to the counselor in the school and they're told, "You're not college material, so you don't worry about getting ready for college."

This is still happening. Unfortunately, none of us want to deal with it or admit it, but it's the truth.

And I've gone to high school speak-outs where I'm speaking to high school students, and the first thing they ask: Why do we have this affirmative action program when we get ready to go to college? We don't agree with that.

These are high school children who didn't yet get out to become bigoted in their way of thinking, but yet they don't like affirmative action. They don't like the concept of it.

So we have all of these forces moving against certain children. Why don't we have these alternative schools in all of the districts of the Republican members over there? Which one of them will hold their hand

up and say, I have these schools, I want these schools in my district?

Why don't they have them? What happens to your children who can't pass the tests? What happens? Do you mean to say that everybody in this room -- nobody over on the Republican side has any of these children who can't pass the tests and they need these alternative assessments so that half of their children won't have a high school diploma that anybody recognizes?

No, they don't have them. They're not asking for them. They're not supporting them. So this is not for everybody. This is for children who are in my district.

ACTING PRESIDENT MEIER: Senator Montgomery, how do you vote?

SENATOR MONTGOMERY: I know, my two minutes are up.

But you see, I want to point out to you, Mr. President, that I believe this is not for every child. It's not for every district. It's for districts like I represent.

And I don't want my children, the children that graduate from my schools to be

any less prepared and to have any kind of assessment that is looked upon in any way that is different from anybody else in this room.

I vote no.

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

Senator Balboni, to explain his vote.

SENATOR BALBONI: Mr. President, in explaining my vote I'd like to make two quick observations.

One, this debate has a lot of very positive comments for Senator Steve Saland. I think the point of that is that here in the Legislature you get a chance to become an expert in something. And Steve Saland has become an expert in education. He has taken a look at this program, he's put forward a very good idea and concept, and everybody I think has recognized it one way or the other.

The second observation is that there is a lot of disdain in this room for the Regents. A lot of people don't trust the Regents. And maybe it's because a lot of their actions borders on arrogance, that they

think they know it all and will tell everybody.

And I would argue that many of us in this room have a lot better feel for what's going on in our school districts than the Regents do. And, frankly, Commissioner Mills would do a lot better to pay more attention to what Steve Saland says.

Having said that, in 2000 there was a program that was created for waivers. And during -- since that time in 2000, standards were supposed to be developed for those programs that were going to be outside of the standard testing. They were not developed.

Likewise, there were assessments that were developed that were standardized. And when they first came in, particularly two years ago, people in my district were very nervous. They said, What does this mean? Are we going to be able to truly judge people on a standard across the state?

Well, two years later the people in my district are very comfortable with the standards. As a matter of fact, I've received information from my neighbors who say, You

know what? At least we know now some gauge of how our schools are doing across the board and for everybody. And so as much as it pains me, I think we should give this program a little more of a chance.

So I am going to reluctantly, in a very close call that should not be interpreted by anybody in this legislature or outside of it as a supportive statement of the Regents generally, I'm going to vote against the bill.

Thank you, Mr. President.

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

Senator Stavisky, to explain her vote.

SENATOR STAVISKY: Mr. President, the responsibility for setting the standards and for the programs -- for the assessment of alternative programs lies with the Regents.

I agree with what Senator LaValle said. But because the policymaking part of the State of New York, we have vested the power in the Regents and not in the Legislature, I vote no.

ACTING PRESIDENT MEIER: Senator

Stavisky will be recorded in the negative.

The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 432 are Senators Balboni, Brown, Gonzalez, Marcellino, Montgomery, Morahan, Padavan, A. Smith, Stachowski and Stavisky.

Those Senators absent from voting on Calendar Number 432: Senator Sampson.

Ayes, 50. Nays, 10.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 598, by Senator Padavan, Senate Print 409, an act to amend the Executive Law.

ACTING PRESIDENT MEIER: Senator Schneiderman.

SENATOR SCHNEIDERMAN: In an effort to speed things up, we will forego the explanation since Senator Padavan has explained this bill so eloquently for the last couple of years.

This is a bill that would require police agencies of New York State and of the

municipalities of New York State to provide specific forms of cooperation with the Immigration and Customs Enforcement Service.

Specifically, this would require that any person who is arrested by a local police officer in New York State who is, quote, reasonably suspected, close quote, of being present in the United States in violation of federal immigration laws, that the law enforcement agency, the local agency shall attempt to verify that person's status and report the results of that verification.

The problem many of us have with this bill is very straightforward. We are in a situation now where we're grappling with what to do with the many undocumented immigrants who are here in our state and in our country.

The way to deal with them, in the view of many of us, is not to pretend they're not there. We have communities that have large numbers of immigrants, and many of them don't have their papers.

We should not make that large group of people, a group of people who are going to

do everything possible to avoid contact with police officers, not report crimes, not be willing to testify as witnesses.

And furthermore, this bill doesn't even require that the person arrested, that it be a lawful arrest. I mean, I suppose you could bring a wrongful arrest action from Santa Domingo or Shanghai where you were deported to. But it just says if you are arrested, a police officer can engage in, you know, the most random sort of arresting procedure.

But once you're arrested, the police officer has the authority to determine your status -- not just the authority, the obligation to determine your immigration status and report you.

So this is something that in a very difficult area, in an area with tremendous potentials for abuse, would escalate the potential for abuse, in my view.

And it would also, I think, have a very detrimental effect on our law enforcement officers. I can assure you that law enforcement officers have a hard enough time

getting people to cooperate with them as it is. You're not going to have any cooperating witnesses in communities with lots of immigrants if you pass this piece of legislation.

So I am going to vote no, as I have in the past, and urge other people to vote no.

I appreciate the sponsor's forbearance so that we can speed this up.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Mr. President. On the bill.

I recognize that there are some people who view the local law enforcement as being foot soldiers in our war on terrorism. But I have two concerns with respect to this perspective.

The first is that such a development would certainly make illegal immigrants wary of cooperating with police. This puts illegal immigrants, who are already at risk, at greater risk for exploitation.

My second concern is that the

inquiries police would be required to make under this legislation could lead to racial profiling. I'm sure that that's not the sponsor's intent and he does not intend to put into law any provisions that would result in racial profiling. However, the absence of language specifically prohibiting racial profiling concerns me.

Therefore, I urge the sponsor to consider amending this bill to specifically prohibit racial profiling and perhaps consider Senator Paterson's Senate Bill 1599, which does three things: prohibits police officers from using racial or ethnic profiling; requires the collection of data on traffic and street stops; and authorizes the Attorney General to seek injunction relief where a law enforcement agency has been found to have engaged in racial profiling.

Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Parker.

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

We have in front of us today

another in a long list of anti-immigrant bills by Senator Padavan. And I'm not clear where the motives necessarily come from. I know that all of us are concerned with security, particularly in back of 9/11. But let me suggest that this is not the way to handle it.

Let me suggest that, you know, let's pretend that this country, I don't know, is a country of immigrants. Let's pretend that, you know, our whole debate about the school system actually gets started because we have a large number of immigrants in the country who, you know, we are looking to help become better acclimated to this country.

Let's pretend that we now, in New York City, have more immigrants than we've ever had in the history of the city, and that has had some significant impacts on us. Mostly good. But when we look at many of the things that we take for granted about the uniqueness of this state and the uniqueness of New York City in particular, many of which come from the contributions of immigrants.

And so for us post-9/11, when we ought to be paying more attention to our

security, to then turn that attention to security into an anti-immigrant measure actually falls into the hands of the terrorists.

We are now in a place where everybody is looking at each other wondering what everybody's status is. And if for some reason you were not born on the shores of the United States, that all of a sudden that you are suspected of being a criminal and treated thus.

We have a police department in New York City that's been trying its best, I think has done a fairly good job, is overworked. And here we are about to vote on legislation -- and hopefully not pass it, but voting on legislation that would in fact significantly increase their workload. In fact, I would say probably triple it, by one piece of legislation, if in fact they are mandated to check out every person's status.

This is not what we should be doing. We should not be creating anti-immigrant measures. We should not be making the citizens and the people who live in

my district -- because be clear, for every person that you think or who may be undocumented, they are attached to people who are actually citizens in our districts. And in my district in particular.

And you are not going to only find lack of cooperation, as both Senator Schneiderman and Senator Hassell-Thompson have indicated, from noncitizens, you're going to also find lots of uncooperation in many communities with the police from citizens who are looking to protect loved ones, neighbors and friends.

We need to be very, very, very, very careful because we are really treading very closely to eliminating the very liberties that we are seeking to protect by increasing security in this country.

And so I am voting no. I'm asking that my colleagues vote no and that we look at some other ways to make sure that we have the security in this country that we all need and deserve.

ACTING PRESIDENT MEIER: Senator Liz Krueger.

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

We had an extensive debate last year, and I just want to highlight again my concerns. And I share the concerns of my colleagues that we are making a demand on police with the passage of this bill that is unrealistic to expect.

I have a district that is considered a low-crime district, and yet I can tell you that one of my number-one complaints from my constituents is that there are not enough police on the streets to deal with quality-of-life crimes and other issues that they deal with every day, and they are frustrated.

And I can tell you that in other parts of the City of New York with higher crime rates, there are even greater concerns that police are not there in the right numbers to address the needs of communities.

And so we would be putting a new mandate on our police that I don't believe is realistic to place on them.

And we would also, I think,

particularly in communities of diversity in our major cities in this state, be creating a system where people would be afraid to send their children to school, afraid to go out on the streets, afraid that if they were accused of any kind of misdemeanor crime that they would suddenly be under a federal investigation on their immigration status.

And I share the concern of my colleague Senator Parker when he talks about you pick up a teenager for a misdemeanor, and under this law you may find yourself in a situation where adults are being ordered out of the country and U.S. citizen children are being left behind. This is not a model we should be encouraging through this law.

I respect Senator Padavan's arguments from previous debates that if people break the law, they are supposed to pay the price. But I have to say that mandating that anyone arrested who's not by definition found guilty, simply arrested of any crime, as low a misdemeanor as one could imagine in our sentencing charts -- that anyone arrested for a misdemeanor charge could find themselves and

their families facing deportation is too big a price for us in the state to pay for our desire to ensure that our federal immigration laws are followed.

And so I will be voting no on this bill. Thank you, Mr. President.

ACTING PRESIDENT MEIER: Senator Brown.

SENATOR BROWN: Thank you, Mr. President.

I have voted no against this bill -- voted no to this bill in the past, and I'm going to vote no again today because I just don't feel that it's necessary to legislate this. I think that the process is working.

I can only indicate two weeks ago, in Buffalo, the U.S. Bureau of Customs and Immigration Enforcement was able to apprehend 206 people, 146 of them that were violent criminals, illegal aliens, and those 206 people were deported from the country.

So the system is working. I don't think it's necessary to add this layer of legislation to make the system work.

I will say, though, that, you know, being someone of Caribbean descent, I think if someone is in the country illegally, that is wrong. And I don't seek to protect people who are in the country illegally, but I will say that I do believe that the system is working, that we don't need this layer of bureaucracy.

It is important that we protect our homeland security, but I don't think this is necessary to do so.

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

Debate is closed, then.

The Secretary will ring the bell.

Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 30th day.

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 598 are Senators Andrews, Brown, Connor, Diaz, Dilan,

Gonzalez, Hassell-Thompson, L. Krueger, C. Kruger, Montgomery, Oppenheimer, Parker, Paterson, Sabini, Schneiderman, Serrano, A. Smith, M. Smith and Stavisky.

Those Senators absent from voting: Sampson and Wright.

Ayes, 40. Nays, 19.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 808, by Senator Morahan, Senate Print 3039, an act in relation to requiring the Port Authority of New York and New Jersey.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT MEIER: Senator Morahan, Senator Schneiderman has requested an explanation of Calendar 808.

SENATOR MORAHAN: Thank you, Mr. President.

This bill addresses the remains that are in the Fresh Kills Landfill, or part of Staten Island, that were extracted from the World Trade Center.

The World Trade Center Families for

Proper Burial have asked, have requested, pleaded for an appropriate place for the remains of their loved ones who were killed on that terrible day on 9/11.

New Jersey has passed a similar bill asking the Port Authority to find -- they want them buried in the World Trade Center itself. Our bill asks that the Port Authority and the two governors of the states find a suitable location, either in New York or New Jersey, for a more cemetery-like sitting. We are in contact with New Jersey, who is now discussing the merits of changing their bill to match ours.

That's about it.

ACTING PRESIDENT MEIER: Senator Schneiderman.

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

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

SENATOR MORAHAN: Yes, Mr. President.

ACTING PRESIDENT MEIER: The

sponsor yields.

SENATOR SCHNEIDERMAN: This is obviously an extremely sensitive set of issues that are raised by this legislation.

Through you, Mr. President, could the sponsor tell us what portion of the 1.2 million tons of materials that were brought to Fresh Kills from the World Trade Center site would have to be moved to comply with this bill? It simply says -- it refers to the ash without defining how much ash is in Fresh Kills that would have to be moved.

SENATOR MORAHAN: That's really not known specifically.

However, we do have a letter that was written in July of 2004 saying about 360 to 480 --

ACTING PRESIDENT MEIER: There are members conversing in the chamber whose voices can be heard above those of the members who are debating. It's really disrespectful to the members, and it makes it difficult for the stenographer.

Can we have some order, please.

Senator Morahan.

SENATOR MORAHAN: The City of New York, in response to the Families for Proper Burial, estimated 360 to 480,000 tons.

SENATOR SCHNEIDERMAN: Thank you.

And through you, Mr. President, if the sponsor would yield for another question.

ACTING PRESIDENT MEIER: Senator Morahan, do you yield?

SENATOR MORAHAN: Yes, I do.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR SCHNEIDERMAN: Has there been any environmental assessment of the danger to the people in Staten Island or New Jersey for digging up this 360,000 to 480,000 tons of ash, with asbestos and other substances in it from the World Trade Center site?

SENATOR MORAHAN: I don't know of any study. But I would assume that those studies, environmental studies, would have to be performed before these remains would be moved or as they are removed.

SENATOR SCHNEIDERMAN: Thank you.

One final question, through you,

Mr. President.

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

SENATOR MORAHAN: Yes, I do, Mr. President.

ACTING PRESIDENT MEIER: The sponsor yields.

SENATOR SCHNEIDERMAN: So this legislation would not in any way require or even -- or indicate in any manner that the ash should be moved to Lower Manhattan? This provides an open-ended period of time through which the governments of New York and New Jersey and the Port Authority could determine where to put this monument; is that correct?

SENATOR MORAHAN: That is correct.

Initially the families had lobbied for the location at the World Trade Center or in the downtown area. Recognizing that that bill would not be successful in the State Legislature, they have compromised, if you will, or they have modified their position, asking for another suitable cemetery-like

setting.

And their concern is not that it's even in New York City; it could be in New Jersey, for that matter. Because there are families from both states who were impacted.

SENATOR SCHNEIDERMAN: Thank you.

Thank the sponsor for his answers.

Briefly on the bill.

I applaud Senator Morahan's efforts to deal with the ongoing difficulties that many of the families of World Trade Center victims are going through with regard to everything from benefits and insurance to being able to set up sites for appropriate grieving and for proper burial.

However, I just can't see how, in practical terms, it makes any sense for us to unearth 360,000 to 480,000 tons of ash and by-products of the World Trade Centers. We know there's a lot of asbestos and ground glass and other things in there that are very dangerous.

It's a tragedy that they don't have, if any, remains of the victims. But

granting something where you just move this huge portion of an entire landfill to some other location doesn't seem to me to be a practicable solution.

So I will be voting no, with an understanding that this is a difficult problem and we have to deal with the issue of finding an appropriate site for a memorial to the victims.

I just don't think that dumping half a million tons of ash into that site is going to make it any easier to be an appropriate site, do any good to the victims, and certainly pose danger to the people of Staten Island.

So I will be voting no, Mr. President.

ACTING PRESIDENT MEIER: Senator Morahan.

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

I appreciate the concerns expressed by Senator Schneiderman, I truly do.

And although many of these families have been compensated with money, many of them

have had other issues unresolved. To lose one in such a way as they lost that person or that loved one that day brings up all sorts of other horrors in the middle of the night, not knowing where the remains are or knowing that they're in a landfill. It's only something that someone who has experienced this horrific loss can truly appreciate.

And I recognize the herculean task that would be required to accomplish this bill in its entirety. But I think, for the peace of mind of the families of over 2,000 people, almost 3,000 people who perished that day, this is an investment, this is a matter of respect, and I would appreciate a unanimous vote for the families of the World Trade Center horror.

Thank you.

ACTING PRESIDENT MEIER: Senator Liz Krueger.

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

I certainly respect Senator Morahan's goals with this bill. And as the Senate district that lost the greatest number

of people at the World Trade Center, I certainly speak to people regularly in my own district who lost family members and people they worked with and people they knew and their neighbors, and went to more memorials than I perhaps can hazard to guess at this point.

I also have a husband who spent weeks after the World Trade Center down as an auxiliary fireman going through these remains and sifting through the dirt. And I can tell you what a horrifying experience it was for everyone who worked there and volunteered there to try to piece together as best they could remains for family members who were so desperate to find out whether they could get confirmation of whether someone they loved was alive or had been found.

And yet I find that I can't support this bill, Senator Morahan, because there isn't a solution written in this bill. And perhaps there isn't a solution because we truly can't come to one.

I know for a fact that the City of New York and the uniformed officers and the

volunteers spent months and months and months trying to do their best to collect the remains of the people who died in the World Trade Center disaster. I know that they failed because it was impossible. And I don't know that we in the Legislature, or anyone, can ever make these families whole.

But I don't think an open-ended bill that says you move all of this dirt and remains too fine to sift through at this point to another location for an alternative memorial to the one proposed by the City of New York to be built at Fresh Kills, a memorial that is designed to be a living remembrance of the people who were lost at the World Trade Center, is a better answer than the one that is being offered today by the City of New York.

I would certainly be open to alternative proposals as they come forward from the governors of both states, since New Jersey also appears to be very interested in dealing with this issue. But I would urge everyone to look at the proposal that has been currently made by the City of New York to

develop a living memorial and earthwork monument, an expanse of wildflower meadow on Staten Island where these remains and this dirt currently are placed.

And if we can't agree on that location, then let's talk through further what best meets everyone's needs, when in fact the answer is we will never address the real needs. Because what we're dealing with is the pain of so many families and so many people who lost the people that they loved and who will never forget them. And there is no ultimate satisfactory answer to this.

But I fear that passage of this bill ends a proposal that is yet to be fully explored for Staten Island, without coming up with an alternative that would meet the needs better of the survivors.

So I'll be voting no. But I appreciate very much the work you're doing on behalf of the families who are crying out continually for more resolution to these unresolved issues.

Thank you, Mr. President. I'll be voting no.

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

Debate is closed, then.

The Secretary will sound the bell.

Read the last section.

THE SECRETARY: Section 3. This act shall take effect upon enactment into law by the State of New Jersey.

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 808 are Senators Connor, Dilan, Gonzalez, L. Krueger, Marchi, Onorato, Oppenheimer, Sabini, Savino, Schneiderman, A. Smith and Stavisky.

Absent from voting on Calendar Number 808: Senators Sampson and Wright.

Ayes, 47. Nays, 12.

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 at the desk?

ACTING PRESIDENT MEIER: We have some motions, Senator Skelos.

SENATOR SKELOS: If we could make them at this time.

ACTING PRESIDENT MEIER: Senator Farley.

SENATOR FARLEY: Thank you.

On behalf of Senator Saland, on page 76, Calendar 1091, Senate Print 2890, I offer the following amendments and I ask that the bill retain its place.

ACTING PRESIDENT MEIER: The amendments are received, and the bill will retain its place on third reading.

SENATOR FARLEY: On behalf of Senator Winner, I offer the following amendments to, on page 47, Calendar 693, Senate Print 4814, and I ask that that bill retain its place.

ACTING PRESIDENT MEIER: The amendments are received, and the bill will retain its place on third reading.

SENATOR FARLEY: On behalf of Senator Marcellino, I offer the following amendments to the bill on page 31, Calendar Number 315, Senate Print 1286A, and I ask that that bill retain its place.

ACTING PRESIDENT MEIER: The amendments are received, and the bill will retain its place on third reading.

SENATOR FARLEY: Mr. President, on page 46, on behalf of Senator Seward, I offer the following amendments to Calendar 682, Senate Print 4061A, and I ask that that bill retain its place.

ACTING PRESIDENT MEIER: The amendments are received, and the bill will retain its place on the order of third reading.

SENATOR FARLEY: Mr. President, I wish to call up Senator LaValle's bill, 2963, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT MEIER: Just a second. I mean, I can't hear.

If you have a conversation, take it outside.

Senator Farley.

SENATOR FARLEY: Thank you, Mr. President.

I wish to call up Senator LaValle's bill, 2963, which was recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: Calendar Number 316, by Senator LaValle, Senate Print 2963, an act to amend the General Business Law.

SENATOR FARLEY: Mr. President, I now move to reconsider the vote by which this bill was passed.

ACTING PRESIDENT MEIER: Call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

SENATOR FARLEY: Mr. President, I now offer the following amendments.

ACTING PRESIDENT MEIER: The amendments are received.

SENATOR FARLEY: Thank you.

ACTING PRESIDENT MEIER: Senator Skelos, that completes our business.

SENATOR SKELOS: There being no further business to come before the Senate, I move we stand adjourned until Wednesday, June 1st, at 3:00 p.m. Thank you.

ACTING PRESIDENT MEIER: On motion, the Senate stands adjourned until Wednesday, June the 1st, at 3:00 p.m.

(Whereupon, at 5:33 p.m., the Senate adjourned.)