NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

June 1, 2005

3:05 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, Tuesday, May 31, the Senate met pursuant to adjournment. The Journal of Monday, May 30, 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.

Motions and resolutions.

Senator Meier.

SENATOR MEIER: Thank you, Madam President.

On behalf of Senator Winner, please place a sponsor's star on his bill, Calendar Number 1170.

THE PRESIDENT: So ordered.

SENATOR MEIER: Thank you, Madam President.

On behalf of Senator DeFrancisco, I wish to call up his bill, Print Number 4847, recalled from the Assembly, which is now at the desk.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 865, by Senator DeFrancisco, Senate Print 4847, an act to amend Chapter 231 of the Laws of 1998.

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

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

(The Secretary called the roll.)

THE SECRETARY: Ayes, 40.

SENATOR MEIER: Madam President, I now offer the following amendments.

THE PRESIDENT: The amendments are received.

SENATOR MEIER: Thank you, Madam President.

THE PRESIDENT: Senator Bonacic.

SENATOR BONACIC: Thank you, Madam President.

On behalf of Senator Spano, I offer the following amendments on page number 55, Calendar 1033, Senate Print Number 5115, and

ask that the bill retain its place on the Third Reading Calendar.

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

SENATOR BONACIC: Continuing, Madam President, on behalf of myself, on page 50, I offer the following amendment to Calendar Number 978, Senate Print Number 5175, and ask that that bill retain its place on the Third Reading Calendar.

THE PRESIDENT: That amendment is received, and that bill will also retain its place on the Third Reading Calendar.

SENATOR BONACIC: Thank you, Madam President.

THE PRESIDENT: You're welcome.

Senator Meier.

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

THE PRESIDENT: Yes, there are, Senator.

SENATOR MEIER: Could we have the substitutions read.

THE PRESIDENT: The Secretary

will read.

THE SECRETARY: On page 5, Senator Golden moves to discharge, from the Committee on Rules, Assembly Bill Number 7709 and substitute it for the identical Senate Bill Number 5298, Second Report Calendar 1292.

On page 8, Senator Nozzolio moves to discharge, from the Committee on Rules, Assembly Bill Number 7410B and substitute it for the identical Senate Bill Number 4356B, Second Report Calendar 1322.

On page 17, Senator Flanagan moves to discharge, from the Committee on Rules, Assembly Bill Number 5209 and substitute it for the identical Senate Bill Number 2803, Third Reading Calendar 330.

On page 20, Senator Skelos moves to discharge, from the Committee on Crime Victims, Crime and Correction, Assembly Bill Number 2664 and substitute it for the identical Senate Bill Number 493A, Third Reading Calendar 410.

On page 22, Senator Alesi moves to discharge, from the Committee on Rules, Assembly Bill Number 7534 and substitute it

for the identical Senate Bill Number 2397, Third Reading Calendar 482.

On page 30, Senator Alesi moves to discharge, from the Committee on Rules, Assembly Bill Number 3156 and substitute it for the identical Senate Bill Number 966A, Third Reading Calendar 654.

On page 30, Senator Golden moves to discharge, from the Committee on Rules, Assembly Bill Number 6878A and substitute it for the identical Senate Bill Number 3977A, Third Reading Calendar 677.

On page 31, Senator Maziarz moves to discharge, from the Committee on Rules, Assembly Bill Number 748 and substitute it for the identical Senate Bill Number 4806, Third Reading Calendar 686.

On page 34, Senator Morahan moves to discharge, from the Committee on Rules, Assembly Bill Number 7089 and substitute it for the identical Senate Bill Number 1502, Third Reading Calendar 740.

On page 37, Senator Leibell moves to discharge, from the Committee on Rules, Assembly Bill Number 7458 and substitute it

for the identical Senate Bill Number 5167, Third Reading Calendar 790.

On page 43, Senator Hannon moves to discharge, from the Committee on Rules, Assembly Bill Number 8105 and substitute it for the identical Senate Bill Number 4331, Third Reading Calendar 876.

On page 47, Senator Farley moves to discharge, from the Committee on Rules, Assembly Bill Number 329A and substitute it for the identical Senate Bill Number 290A, Third Reading Calendar 931.

On page 48, Senator Robach moves to discharge, from the Committee on Rules, Assembly Bill Number 6424 and substitute it for the identical Senate Bill Number 3357, Third Reading Calendar 940.

On page 55, Senator Maltese moves to discharge, from the Committee on Rules, Assembly Bill Number 4362 and substitute it for the identical Senate Bill Number 2178, Third Reading Calendar 1027.

On page 58, Senator Rath moves to discharge, from the Committee on Rules, Assembly Bill Number 3796 and substitute it

for the identical Senate Bill Number 4880, Third Reading Calendar 1069.

On page 59, Senator Robach moves to discharge, from the Committee on Rules, Assembly Bill Number 7195 and substitute it for the identical Senate Bill Number 2873, Third Reading Calendar 1078.

On page 65, Senator Seward moves to discharge, from the Committee on Rules, Assembly Bill Number 8166 and substitute it for the identical Senate Bill Number 4095, Third Reading Calendar 1147.

On page 66, Senator Larkin moves to discharge, from the Committee on Rules, Assembly Bill Number 7649 and substitute it for the identical Senate Bill Number 4641, Third Reading Calendar 1157.

On page 67, Senator Robach moves to discharge, from the Committee on Rules, Assembly Bill Number 8182 and substitute it for the identical Senate Bill Number 5345, Third Reading Calendar 1167.

On page 70, Senator Seward moves to discharge, from the Committee on Rules, Assembly Bill Number 7695 and substitute it

for the identical Senate Bill Number 4422, Third Reading Calendar 1189.

On page 72, Senator Balboni moves to discharge, from the Committee on Rules, Assembly Bill Number 7959 and substitute it for the identical Senate Bill Number 5403, Third Reading Calendar 1207.

On page 73, Senator Morahan moves to discharge, from the Committee on Rules, Assembly Bill Number 8052 and substitute it for the identical Senate Bill Number 4874, Third Reading Calendar 1223.

On page 75, Senator Marcellino moves to discharge, from the Committee on Rules, Assembly Bill Number 8291 and substitute it for the identical Senate Bill Number 5436, Third Reading Calendar 1234.

And on page 77, Senator Flanagan moves to discharge, from the Committee on Rules, Assembly Bill Number 966 and substitute it for the identical Senate Bill Number 2797, Third Reading Calendar 1253.

THE PRESIDENT: Substitutions ordered.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could adopt the Resolution Calendar, with the exception of Resolution 2216.

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

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The Resolution Calendar is so adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, if we could take up Resolution 2216, by Senator Rath, have the title read and move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Rath, Legislative Resolution Number 2216, congratulating 11-year-old Katie Brownell, who plays baseball in a boys Little League, upon the occasion of pitching a perfect game.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Move the

resolution, please.

THE PRESIDENT: All in favor of the resolution please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: If we could open that resolution up for cosponsorship. If anybody wishes not to sponsor the resolution, please notify the desk.

THE PRESIDENT: Any member who does not wish to cosponsor the last resolution please notify the desk.

Senator Skelos.

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

THE PRESIDENT: Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Johnson, from the Committee on Finance, reports the following nominations.

As a member of the Workers' Compensation Board, Candace Kellogg Finnegan, of Garrison.

THE PRESIDENT: Senator Johnson.

SENATOR JOHNSON: Move the nomination.

THE PRESIDENT: Senator Leibell.

SENATOR LEIBELL: Thank you, Madam President.

I'm very pleased to rise and support this nomination. I've had the good fortune to know Candace for some time and know her family and consider them to believe fine and dear friends. We're most fortunate that the Governor has sent this name up to us, because she is certainly well qualified to fill this very important position.

So I would ask, Madam President, that we move this nomination.

Thank you.

THE PRESIDENT: All in favor of the nomination of Candace Kellogg Finnegan, of

Garrison, for a term to expire December 31, 2010, on the New York State Workers' Compensation Board, please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The nominee is hereby confirmed.

And Candace Kellogg Finnegan is here present today.

Congratulations and best wishes to you on the Workers' Compensation Board.

(Applause.)

THE PRESIDENT: The Secretary will read.

THE SECRETARY: As a member of the Workers' Compensation Board, Robert M. Zinck, of Henrietta.

THE PRESIDENT: Senator Johnson.

SENATOR JOHNSON: Move the nomination.

THE PRESIDENT: All in favor of the nomination of Robert M. Zinck, of Henrietta, to be a member for a term to expire

December 31, 2007, on the New York State Workers' Compensation Board, please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The nominee is hereby confirmed.

And the nominee is here, Robert M. Zinck of Henrietta is here.

And we want to congratulate you and wish you success in your term.

(Applause.)

THE PRESIDENT: The Secretary will continue to read.

THE SECRETARY: As a member of the Metropolitan Transportation Authority, Francis H. Powers, of Staten Island.

THE PRESIDENT: Senator Johnson.

SENATOR JOHNSON: Move the nomination.

THE PRESIDENT: Senator Golden.

SENATOR GOLDEN: Thank you, Madam President.

I rise to second the nomination and

to move the nomination of Francis Powers to the MTA authority.

Francis is a good man. Frank grew up in Brooklyn, moved to Staten Island and went to Wall Street. He revolutionized the back offices of Wall Street and did a great job of moving Wall Street forward in the '70s and '80s.

He's also a remarkable man in all the work that he's been able to do in the not-for-profit world, in taking leadership roles and making them extremely successful.

So he'll be a great man for the MTA, and I hope that we move this appointment today.

Thank you.

THE PRESIDENT: Senator Marchi.

SENATOR MARCHI: Madam President, I was very pleased and delighted to see my colleague spring to his feet. Of course he's a lot younger than I am, with more spring in his feet. But he made a most felicitous nomination.

Frank Powers is a name that evokes and elicits respect around Staten Island. He

is known for his determination to get a job done. And he knows how important this is -- as does my distinguished colleague -- to Staten Island, to have someone in the metropolitan vehicle for realizing the dreams and the fidelity with which that area is served, be well-protected.

And we will be well-protected with Frank Powers. Frank Powers has been a leader in so many local matters, as chairman of the board of governors of the Staten Island Arts and Sciences, as president of the Staten Island Academy, board of trustees of St. Vincent Hospital.

Madam President, when you just examine the great variety that Frank Powers has meant, service of a particularly special flavor and effectiveness, it's not just an assignment to him, or an adornment. It's a challenge to bring to the people of that community the full service of the respect that it -- that they're entitled to have.

So I know that my colleague joins me, so that we have -- you will have two different arms out there cheering you on in

your efforts to do justice to an area which is far removed. We're out in the Atlantic Ocean, Madam President. We hope to have you down very often, even though we are out in the ocean. And I'm sure he'd be there to protect you.

In any event, I'm so pleased to see this nomination come to the floor. And not only what it means for the welfare of the people of Staten Island, but also it's a way of telling him that we are grateful for the service that he has rendered to that community over the years, important service, leadership services. And that that will be continued in an island that's out there in the middle of the Atlantic Ocean.

So I know that I'm enlarging on the vastness of the dimension of his responsibility. But that is as it should be, because I know it will be worthy of fulfillment, given his propensity for taking good care of the assumptions and really treasured opportunities that he recognizes for public service.

So again, Madam President, I know

that you will be presiding over a very fortuitous event, and we all rejoice in that fact.

THE PRESIDENT: Senator Montgomery.

SENATOR MONTGOMERY: Thank you, Madam President.

I rise to join my colleagues in seconding the nomination of Mr. Powers in particular, but certainly also Mr. Vrooman.

And in Mr. Powers' case, although he now unfortunately lives in Staten Island, he did reside in Brooklyn, Brooklyn is really his home, and he still has family members who are in my district. And so I really feel that I'm representing them.

On their behalf, I want to commend and congratulate you for this appointment. And I know of the extensive experience that you have and that you bring to the MTA. And certainly part of the greatness of New York City is related to the wonderful public transportation system that works 24 hours, seven days a week.

So this is a very, very important

appointment to all of us who represent New York City, but especially me in Brooklyn. And I look forward to working with you as you try to be creative, as creative as possible, in fixing this system so that we don't have the problems related to financing it, but also that we create an MTA that looks more like a public participation authority, that we work together as partners in all that you do.

So thank you and congratulations to you, Mr. Powers.

THE PRESIDENT: The question is on the nomination of Francis H. Powers, of Staten Island, for a term as a member of the Metropolitan Transportation Authority. All in favor please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The nominee is hereby confirmed.

And he is here today with his wife, Diane.

Congratulations and best wishes.

(Applause.)

THE PRESIDENT: The Secretary will continue to read.

THE SECRETARY: As a member of the Metropolitan Transportation Authority, Edward A. Vrooman, of Garrison.

THE PRESIDENT: Senator Johnson.

SENATOR JOHNSON: Move the nomination.

THE PRESIDENT: Senator Leibell.

SENATOR LEIBELL: Thank you, Madam President.

I rise also on Ed Vrooman. Ed Vrooman is being reappointed to a very important position. He has served for some time now and has served with great distinction as a member of this board. It's a difficult board to serve on. It's a complex one, and certainly one that is in the spotlight frequently, I think it's safe to say.

But we're grateful for your service, Ed. You've done a tremendous job. I would urge my colleagues to support this nomination. We need your continued efforts on that board.

THE PRESIDENT: The question is

on the nomination of Edward A. Vrooman, of Garrison, for a term as a member of the Metropolitan Transportation Authority.

All in favor please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The nominee is hereby confirmed.

And he is here today with his wife, Linda.

Congratulations and best wishes for success.

(Applause.)

THE PRESIDENT: The Secretary will continue to read.

THE SECRETARY: As commissioner of the State Insurance Fund, Eugene C. Mazzola, of Webster.

As banking member of the State Banking Board, Thomas Siciliano, of Commack.

As public member of the State Banking Board, Frederick N. Antalek, of Beacon.

As members of the Board of Trustees of the State University of New York College of Environmental Science and Forestry, Heidi J. Busa, of Skaneateles; Daniel Fitts, of Lake Placid; Gregory Harden, of McConnellsville; Robert E. Moses, of Marietta; and Stephen F. Sloan, of West Fulton.

As a member of the Advisory Council on Alcoholism and Substance Abuse Services, Peggy Pezzimenti Keller, of Olean.

As a member of the Minority Health Council, Ronald Perry, of New York.

As members of the Public Health Council, Robert W. Hurlbut, of Rochester, and Herbert H. Friedman, of Lawrence.

As a member of the State Hospital Review and Planning Council, Joseph A. Crisafulli, of Loudonville.

As a member of the Board of Visitors of the Central New York Developmental Disabilities Services Office, John P. McCrea, of Jamesville.

And as a member of the Board of Visitors of the Western New York Developmental Disabilities Services Office, Therese M. Mudd,

of Lewiston.

THE PRESIDENT: The question is on the list of nominees to be confirmed as read by the Secretary. All in favor please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The nominees are all hereby confirmed.

The Secretary will read.

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

Senate Print 5110A, by Senator Spano, an act to amend the Arts and Cultural Affairs Law.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Madam President, move to accept the report of the Rules Committee.

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 of the Rules Committee is 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 110, by Senator Hannon, Senate Print 758, an act to amend the Public Health Law, in relation to providing.

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 434, by Senator Young, Senate Print 3427, an

act in relation to adjusting certain state aid payments.

THE PRESIDENT: There is a local fiscal impact note 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, 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 549, by Senator Volker, Senate Print 4004, an act to allow a filing for state aid.

THE PRESIDENT: There is a local fiscal impact note at the desk.

Read the last section.

THE SECRETARY: Section 4. This act shall take effect July 1, 2005.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 650, by Senator Volker, Senate Print 4098A, an act in relation to adjusting certain state aid payments.

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 820, by Senator Leibell, Senate Print 4728, an act to amend the Not-For-Profit Corporation Law, in relation to dissolution.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

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

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 835, by Senator Farley, Senate Print 4299, an act to amend the Banking Law and the General Business Law, in relation to business.

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, 58.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 885, by Senator Farley, Senate Print 3566, an act to amend the Criminal Procedure Law, in relation to authorizing.

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 889, by Senator DeFrancisco, Senate Print 4022, an act to amend the Criminal Procedure Law, in relation to permitting.

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, 58.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 890, by Senator Volker, Senate Print 4023, an act to amend the Criminal Procedure Law and the Family Court Act, in relation to the delivery.

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, 58.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 892, by Senator DeFrancisco, Senate Print 4051, an act to amend the Criminal Procedure Law, in relation to service.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 895, by Senator Volker, Senate Print 4207, an act to repeal subdivision 6 of section 60.35.

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, 59.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 914, by Senator Robach, Senate Print 4401, an act to amend the Administrative Code of the City of New York, in relation to variable annuity.

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, 59.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 916, by Senator Golden, Senate Print 4699, an act to amend the Administrative Code of the City of New York, in relation to ensuring.

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, 59.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 917, by Senator Robach, Senate Print 4767, an act to amend the Administrative Code of the City of New York, in relation to transferred-contributors.

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, 59.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 924, by Member of the Assembly Bradley, Assembly Print Number 2619, an act to amend

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, 59.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 956, by Senator Little, Senate Print 4916, an act to amend the General Municipal Law, in relation to balancing.

THE PRESIDENT: Read the last section.

SENATOR LIZ KRUEGER: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 958, by Member of the Assembly Gunther, Assembly Print Number 1683, an act to amend the Real Property Tax Law, in relation to providing.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 967, by Senator Little, Senate Print 1183, an act to amend Chapter 30 of the Laws of 1985, relating to persons.

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, 59.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 968, by Senator Winner, Senate Print 2453, an act to amend the Education Law, in relation to

certain contracts.

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, 59.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 969, by Senator LaValle, Senate Print 4333A, an act to amend the Education Law, in relation to establishing.

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 Stavisky, to explain your vote.

SENATOR STAVISKY: To explain my vote, Madam President.

I thank Senator LaValle, in his

absence, for including representation by the minority on the commission, and I vote aye.

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

The Secretary will announce the results.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 980, by Senator Winner, Senate Print 1244, an act to amend the Alcoholic Beverage Control Law and the Vehicle and Traffic Law, in relation to the imposition.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57. Nays, 2. Senators Duane and Montgomery recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 982, by Senator Hannon, Senate Print 4569, an act to amend the Public Health Law and the General Business Law, in relation to requiring.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 120th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

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

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 991, by Senator Maziarz, Senate Print 208, an act to amend the Executive Law, in relation to creating and authorizing.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 4. This

act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1005, by Senator LaValle, Senate Print 5205, an act to amend the Executive Law, in relation to accreditation.

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, 59.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1016, by Senator Balboni, Senate Print 4985, an act to amend the General Business Law, in relation to payment.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 60th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1019, by Senator Fuschillo, 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 1023, by Senator Padavan, Senate Print 544A, an act to amend the Penal Law, in relation to possession.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 5. This act shall take effect on the first of November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1027, substituted earlier today by Member of the Assembly Abbate, Assembly Print Number 4362, an act to amend the Penal Law and the Administrative Code of the City of New York.

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

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1035, by Senator Nozzolio, Senate Print 5289, an act to amend the Penal Law, in relation to the crime of aggravated harassment.

THE PRESIDENT: Read the last section.

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

November.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 1035 are Senators Duane, Hassell-Thompson, L. Krueger and Montgomery.

Ayes, 55. Nays, 4.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1042, by Senator Marcellino, Senate Print 3569, an act to amend the Environmental Conservation Law and others, in relation to establishing.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 16. This act shall take effect on the 180th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number

1051, by Senator Balboni, Senate Print 931, an act to amend the Vehicle and Traffic Law, in relation to aggravated unlicensed operation.

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, 58. Nays, 1. Senator Hassell-Thompson recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1058, by Senator Winner, Senate Print 3640, an act to amend the Vehicle and Traffic Law, in relation to towing of disabled vehicles.

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, 59.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1197, by Senator Bruno, Senate Print 4710, an act to amend the Highway Law, in relation to designating.

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, 59.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1205, by Senator Nozzolio, Senate Print 4358, an act to amend the Real Property Tax Law, in relation to veterans.

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, 59.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1234, substituted earlier today by Member of the Assembly Abbate, Assembly Print Number 8291, an act to amend the Retirement and Social Security Law and others, in relation to providing death benefits.

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, 59.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1328, by Senator Spano, Senate Print 5110A, an act to amend the Arts and Cultural Affairs Law, in relation to resale pricing.

SENATOR MONTGOMERY: Lay it aside.

THE PRESIDENT: The bill is laid

aside.

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

SENATOR SKELOS: Thank you, Madam President. If we could go to the controversial reading of the calendar.

THE PRESIDENT: The Secretary will read.

SENATOR SKELOS: Well, maybe we can ring the bells to alert the members first that we're going to the controversial calendar.

THE PRESIDENT: The Secretary will ring the bell, and the members should return to their seats.

SENATOR SKELOS: Madam President, can we begin the controversial reading of the calendar with Calendar Number 1328.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 1328, by Senator Spano, Senate Print 5110A, an act to amend the Arts and Cultural Affairs Law.

SENATOR SCHNEIDERMAN:

Explanation.

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

SENATOR SPANO: Madam President, this bill continues the current law on ticket scalping, with some changes, some changes that were meant -- that change the current law that currently hurts consumers in this state, that forces our consumers into back alleys to purchase tickets from the brokers.

So we extend the current law on venues less than 6,000 seats and put provisions in the law to increase the prices for the fees for ticket brokers. It puts protections in the law that currently do not exist for eBay or eTicket type of purchases or Internet sales.

THE PRESIDENT: Senator Schneiderman.

SENATOR SCHNEIDERMAN: If the sponsor would yield for a few questions.

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

SENATOR SPANO: Yes.

THE PRESIDENT: You may proceed,

Senator.

SENATOR SCHNEIDERMAN: This bill repeals the current limitation placed on the maximum price at which a ticket may be sold for an event at a venue with a seating capacity of 6,000 seats or greater, does it not?

SENATOR SPANO: That's correct.

SENATOR SCHNEIDERMAN: How does repealing the limitation on the maximum price at which a ticket can be sold help to protect consumers?

SENATOR SPANO: Currently, it's happening right now, Senator, there are -- what we did was, because we have a law that is -- that we're sandwiched between Connecticut and New Jersey, which has a free market, our consumers are purchasing these tickets, people are selling the tickets in violation of the law. Ticket brokers are operating outside of the state of New York or sometimes in the state of New York with an 800 number that might be located in New Jersey.

And this will provide some

protection for consumers. It's about free-market pricing with regard to venues with 6,000 seats or more. But it puts us in a level playing field with our neighboring states.

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

THE PRESIDENT: Senator Spano, do you yield for a question again?

SENATOR SPANO: Yes.

THE PRESIDENT: You may proceed, Senator.

SENATOR SCHNEIDERMAN: Well, if the objective is to have free-market pricing, why should we have a ticket scalping law at all? If the argument is that the free market works, why are we doing anything to try and limit the depredations of these insidious ticket scalpers in their back alleys?

SENATOR SPANO: Actually, it's an interesting debate. And it's a debate that we would like to engage you on if we can get the Assembly to concur.

There are many people on this side

of the aisle that are for a free market, that we should eliminate the entire law with respect to ticket brokers and allow the law of supply and demand to dictate the costs of the tickets.

This bill represents a negotiated agreement between the Assembly and this house that I think provides the protections for our consumers, that allows for our ticket brokers who are currently operating outside of the state of New York to come back into the jurisdiction of the state of New York, and puts in place some much-needed protections with regard to Internet sales and eBay sales as well.

SENATOR SCHNEIDERMAN: Thank you.

Through you, Madam President, if the sponsor would continue to yield.

THE PRESIDENT: Senator Spano, do you yield for a question?

SENATOR SPANO: Yes.

THE PRESIDENT: You may proceed, Senator.

SENATOR SCHNEIDERMAN: So I just want to make sure I'm not misunderstanding

what you're saying.

Is it your position that we should be moving more towards the deregulation of this market and that the compromise is that the Assembly insisted on some remaining protections?

SENATOR SPANO: It's my position that the current law is not working for the consumers, that this law provides a level playing field for consumers in this state, continues the current law with regard to ticket scalping for venues of less than 6,000, and puts some protections out there in place for the people who need that type of help.

SENATOR SCHNEIDERMAN: Thank you.

If the sponsor would continue to yield.

SENATOR SPANO: Sure.

THE PRESIDENT: Senator Spano does yield. You may proceed.

SENATOR SCHNEIDERMAN: This law has been in effect, I believe, since 1991. Have you held any public hearings on this issue of why we have this enforcement problem? Because it's really an enforcement problem,

you're saying people are just not complying with the law.

Have you had any hearings on this enforcement problem?

SENATOR SPANO: There were a number of hearings that were held by the Assembly committee that we were able to monitor.

We listened to and monitored testimony that was presented by representatives of the ticket brokers, by the Internet, StubHub, eBay, the theater district, Ticketmaster. All of those individuals presented testimony at that hearing, and we took all of that into account as we developed this legislation.

SENATOR SCHNEIDERMAN: Through you, Madam President. So the Assembly held hearings, but the Senate has not held hearings?

SENATOR SPANO: What we did was monitor the work of the Assembly in the most efficient way that we can, learned from some of the testimony that was presented at their hearings.

SENATOR SCHNEIDERMAN: Thank you. Thank the sponsor.

Through you, Madam President, on the bill.

THE PRESIDENT: You may proceed on the bill.

SENATOR SCHNEIDERMAN: I'll take that as a yes.

The difficulty I have with this piece of legislation is that it essentially acknowledges that we have an enforcement problem, that people are violating a law designed to protect consumers, and says, Well, people are violating our law, so we have to give up.

The Senate has not held hearings on the issue. This law has been in effect a long time, and I think it does provide an important protection. This is an area in which, if you don't have any regulation, we know that it's possible for scalpers to buy up tickets to events and there's really no way to limit their activities.

If there's no law against them doing that and then reselling it, the problem

is likely, in my view, to become worse and not improve as a result of these changes.

We have a law that's in effect that clearly has enforcement issues. I would urge that the right course of action is for the Senate to conduct hearings focused on the enforcement issues and looking at other states where they have had more successful efforts to regulate ticket scalping.

But that this bill, just by repealing the maximum price, essentially is capitulation. And I don't think it's the best way to protect consumers. I think it is a step in the wrong direction.

And to the extent that my colleagues on the other side of the aisle in this house are advocating that we should end all the restrictions in this area altogether, I think this is an area of law, like antitrust law and other consumer protection laws, where some government intervention is necessary, because we're dealing here with a scarce resource.

I think consumers are entitled to some protection. I don't think ticket

scalpers should be able to buy up all the tickets to an event and then triple or quadruple the price. And therefore, because of these flaws, I think I'm going to be constrained to vote no.

I realize it's a difficult issue and that negotiating a bill out at the last minute makes life difficult. I don't know why we waited until the last minute. This is something that's been called to our attention by other public agencies, by the attorney general a long time ago, and it is something we should have dealt with before we were right up on the deadline.

So I will be voting no, Madam President. Thank you.

THE PRESIDENT: Does any other member wish to be heard?

Senator Krueger.

SENATOR LIZ KRUEGER: Thank you. If the sponsor would yield, please, to a question.

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

SENATOR SPANO: Sure.

THE PRESIDENT: You may proceed, Senator.

SENATOR LIZ KRUEGER: Thank you.

Just to clarify, what's the difference between the rules for a venue of over 6,000 and under 6,000 seats?

SENATOR SPANO: Over 6,000 is a free market.

Under 6,000 basically continues the current statute, with the exception of Internet and eTicket.

SENATOR LIZ KRUEGER: Madam President, if through you the sponsor would continue to yield.

THE PRESIDENT: Senator Spano, do you yield?

SENATOR SPANO: Yes.

THE PRESIDENT: You may proceed, Senator.

SENATOR LIZ KRUEGER: Thank you.

So you state that with the exception of Internet. So with Internet -- I'm sorry, I'm trying to phrase the question correctly.

If it was eBay, could they charge

anything they want for a ticket?

SENATOR SPANO: No, they can't.

SENATOR LIZ KRUEGER: They can't.

SENATOR SPANO: They cannot.

SENATOR LIZ KRUEGER: Madam President, if through you the --

SENATOR SPANO: If it's less than 6,000 venue. If it's over, yes.

SENATOR LIZ KRUEGER: Thank you. Just to rephrase.

So if it's a venue over 6,000 --

SENATOR SPANO: If it's a venue over 6,000, it's a free market.

SENATOR LIZ KRUEGER: It's a free market through the Internet.

SENATOR SPANO: It's a free market across the board.

SENATOR LIZ KRUEGER: Across the board.

Madam President, if, through you, the sponsor would continue to yield.

THE PRESIDENT: Senator Spano, do you yield?

SENATOR SPANO: Yes.

THE PRESIDENT: You may proceed,

Senator.

SENATOR LIZ KRUEGER: Thank you.

So as I read this, there's some differentiation. And perhaps it's my lack of understanding, which is why my questions aren't as good as I would like, that only the -- excuse me. Let me just read it.

That for Internet sales it would only be an Internet website managed by the operator of the place of entertainment to which the ticket is sold, and if the ticket was originally sold by the place of entertainment.

My point in that is there's -- the rules would be different for an eBay or a Liz-Krueger-sells-tickets website versus a Jets stadium website?

SENATOR SPANO: That language would cover -- basically cover Ticketmaster.

So if you have Madison Square Garden, Radio City Music Hall contract out with Ticketmaster to sell all of their tickets, that's the language that would encumber them under the statute.

SENATOR LIZ KRUEGER: Madam

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

THE PRESIDENT: Senator Spano, do you yield?

SENATOR SPANO: Yes.

THE PRESIDENT: You may proceed, Senator.

SENATOR LIZ KRUEGER: Thank you.

All right. So if it was a Telecharge or someone else who was contracted by the site, then they could charge anything they liked as long as it was a venue of greater than 6,000?

SENATOR SPANO: They would not be required to get a license, but they would still be covered under the statute for venues under 6,000.

SENATOR LIZ KRUEGER: And if they were over 6,000, then they could charge anything --

SENATOR SPANO: Free market. Free market under any condition over 6,000.

SENATOR LIZ KRUEGER: Okay. So thank you, Madam President. If the sponsor would continue to yield.

THE PRESIDENT: Senator Spano, do you yield?

SENATOR SPANO: Yes.

THE PRESIDENT: You may proceed, Senator.

SENATOR LIZ KRUEGER: Thank you.

So again, we're talking about venues over 6,000 it's free market. So if I went to a Telecharge site or to the location and I bought up 3,000 tickets, I could then sell them at any price I wanted, free market, over the Internet or standing on the street in front of the venue?

SENATOR SPANO: As long as you intend to use the tickets you purchase for personal use, you're exempt.

So in my case, where I have 16 children in my family, I might be -- I would not be suspect. In your case, you would be.

SENATOR LIZ KRUEGER: I could have a lot of friends.

SENATOR SPANO: It's not 18, no.

Eighteen is a key number in my life. Sorry. You know something about that, Senator Krueger.

(Laughter.)

SENATOR LIZ KRUEGER: Madam President, to refocus the question, if the sponsor would continue to yield.

THE PRESIDENT: Senator Spano, do you yield for a new question?

SENATOR SPANO: Yes.

SENATOR LIZ KRUEGER: I don't have nearly as many cousins as Senator Spano, Senator Sabini.

So clarify for me, the difference was between personal use and for resale? Because my understanding is if it's free market you're saying I could buy 3,000 tickets and not say it was for personal use and resell them.

SENATOR SPANO: We extend the current law as it relates for personal use. We don't put any additional definition for personal use in this extender of the law, but it's covered under current law.

SENATOR LIZ KRUEGER: So we're not talking -- excuse me. Madam President, through you, if the sponsor would continue to yield.

SENATOR SPANO: Yes.

THE PRESIDENT: He does yield, Senator. You may proceed.

SENATOR LIZ KRUEGER: So freely admitting it's not for personal use, it's for a venue over 6,000, if I go and buy 3,000 tickets or 300 tickets for $25 each, with this law I could sell them for whatever the market would bear?

SENATOR SPANO: For a venue over 6,000. You would have to obtain a license.

SENATOR LIZ KRUEGER: I would have to obtain a license.

SENATOR SPANO: And it would be a free market.

SENATOR LIZ KRUEGER: Okay. And so I could -- if, through you, Madam President, the sponsor would continue to yield.

THE PRESIDENT: Senator Spano, do you yield for another question?

SENATOR SPANO: Yes.

THE PRESIDENT: You may proceed, Senator.

SENATOR LIZ KRUEGER: Thank you.

And I could do that through Internet or through on the street, in any way I wished to sell those tickets and at any price?

SENATOR SPANO: As long as it's over 6,000, it would be a free market. In any way that you choose to purchase the ticket.

But if you purchase tickets of 3,000, you would have to apply for a license within the jurisdiction that you apply.

SENATOR LIZ KRUEGER: Okay. Madam President, if through you the sponsor would continue to yield.

THE PRESIDENT: Senator Spano, do you yield?

SENATOR SPANO: Yes.

THE PRESIDENT: You may proceed.

SENATOR SPANO: Over 6,000 is a free market.

No, I was anticipating your question.

(Laughter.)

SENATOR LIZ KRUEGER: I think the floor is still mine.

Would I have to collect sales tax

on my resale of those and submit those to the locality and the state?

SENATOR SPANO: If -- the statute is silent on the issue. But if it's for personal use, I'd say no.

That would be a Taxation and Finance issue. I would presume that you would have to pay sales tax if a sales tax is applicable.

SENATOR LIZ KRUEGER: Madam President, if through you the sponsor would continue to yield.

THE PRESIDENT: Senator Spano, do you yield?

SENATOR SPANO: Yes.

THE PRESIDENT: You may proceed.

SENATOR LIZ KRUEGER: Thank you.

Would I, when I filed as a business -- because again, I'm not assuming I'm using my 3,000 tickets for personal use -- and I'm filing with the state, do I have any other rules that I have to follow other than I have filed with the state and I can buy as many tickets as I want and do whatever I want with them as long as it's a venue large than

6,000 seats? Are there any other rules I'd have to follow?

SENATOR SPANO: There are no other restrictions in this proposed statute.

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

THE PRESIDENT: You may proceed on the bill.

SENATOR LIZ KRUEGER: Thank you.

I'm not sure the sponsor's answers clarified my questions. I do recognize that we have a dilemma with other states who haven't had anti-scalping laws, and we do, and that there's a game that gets played, particularly in the world of the Internet, where when one state has a set of rules and another state doesn't but you can transact all of your business through non-state-specific Internet sites, that you end up perhaps with unfairness between states or, more likely, cheating going on between people who pretend to be in a state that doesn't license or make illegal scalping compared to a state such as New York that has.

But I can't accept an argument that

we should pass a law that says whoever can get there with the biggest amount of money on the first day for any event should have the right to get all of the tickets and then charge whatever fees they choose to add on for them.

I think that there's a structural imbalance between what the performer may actually be being paid for performing at said venue, based on the expectation of ticket sales and estimated ticket sales. I think there are serious tax questions about who would be tracking and collecting the tax on a ticket being legally scalped for $300 or $500 versus the $100 price on the ticket.

I think there's an almost implied bias against the consumer, who's just the individual who wants to go out and see a sports event or a musical event or, I suppose, a theater event at a very large venue above 6,000 seats, versus someone who is a sophisticated Internet operator who might be able to corner the market on all of the seats or all the desirable seats and then in fact charge enormous amounts of money that did not go back to either the venue operator or to the

performers or the employees of that venue.

While I respect the concept that free market has advantages, for any number of reasons, over government regulation, and it's certainly easier not to have government regulation, this bill makes me extraordinarily uncomfortable. Because I think at the end of the day what we will see is enormously increased costs for tickets to venues where neither the performers receive the higher income, the operators of the venue receive the higher revenue, but certainly the consumers end up paying higher tickets or are locked out of their opportunities to see things simply because they couldn't pay these higher fees.

I don't know if we can come up with better models of regulation for addressing some of the problems that were outlined as the reason for this law. I am very disturbed that we're being asked to deal with this literally at the date of the deadline of the existing law, and without an opportunity for more discussion and more evaluation and more options.

But I have to say in my heart I

feel this is an anti-consumer bill where somebody will make a lot more money but it will be neither the performers at these venues or the people running these venues at the disadvantage and at the cost of consumers. So I'll vote no, and I hope my colleagues will join me.

Thank you, Madam President.

THE PRESIDENT: Senator Sabini.

SENATOR SABINI: Thank you, Madam President.

If the sponsor would yield for a couple of questions.

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

SENATOR SPANO: Yes.

SENATOR SABINI: I actually worked on this issue when I was a member of the New York City Council. And I am for free market on this. I think that we -- New York State and New York City have sort of missed the boat on this.

The sponsor outlined conditions that exist in New Jersey and Connecticut. There are people operating right now within

New York with New Jersey telephones. And with the Internet now, it's very hard to police anyone.

But I think it's important with the change, particularly since this bill addresses venues of more than 6,000, the change in the sports economy. And for my colleagues that don't know what's going on in the sports economy, the Yankees are talking about making a stadium with fewer seats so they can sell more luxury boxes. So there will be fewer seats for people.

The Jets, if they ever get their stadium, will probably be asking for something called a personal seat license, which would take me an hour to explain, but basically you'll have to pay a fee in order to buy a ticket. Ever.

So there are going to be fewer tickets available for people. And I see the only way for the common person to get tickets to choice events that they want to is through ticket brokers. So I actually think this is in many ways pro-consumer.

But I want to outline a couple of

hypotheticals that I still don't know the answer to, after having discussed it with the sponsor and discussing it with staff.

You can now set up a ticket -- if this bill becomes law, you could set up a ticket brokerage firm in New York State licensed under the State of New York under the supervision of the Attorney General. Is that correct?

SENATOR SPANO: That's correct.

SENATOR SABINI: If the sponsor would continue to yield.

THE PRESIDENT: Senator Spano, do you yield?

SENATOR SPANO: Yes.

THE PRESIDENT: You may proceed, Senator.

SENATOR SABINI: Under this bill now, I understand that the Yankees or the Mets or other teams, the Bills, could put their tickets on their own website for resale at an unlimited cost. That's correct?

SENATOR SPANO: There's nothing to prevent that, that's correct.

SENATOR SABINI: Does this bill

allow the website commonly known as StubHub, which allows season ticketholders to put their tickets up for resale toward a third-party website, which is currently operating right now, I believe in the State of New York?

SENATOR SPANO: It would facilitate the resale of tickets for a competitive bidding process between third parties, which is StubHub.

SENATOR SABINI: StubHub. EBay?

SENATOR SPANO: EBay, a bit different, but yes.

SENATOR SABINI: Okay. If the sponsor would continue to yield, Madam President.

SENATOR SPANO: Yes.

THE PRESIDENT: The sponsor yields. You may proceed.

SENATOR SABINI: If you were selling tickets on craigslist, which happens now, which is a personal website that people buy and sell stuff without an intermediary, just through, in effect, like an ad in the back of a newspaper, but you were doing it in a big volume way that, you know, would be sort

of hard to track on craigslist, would you be able to do that legally under this bill?

SENATOR SPANO: Yes.

SENATOR SABINI: If you registered as a broker.

SENATOR SPANO: Yes. And they would be exempt from the bill.

SENATOR SABINI: So if someone put tickets up for sale on craigslist under this -- if this bill were to become law, and you weren't listed as a broker, I just said, Gee, I've got extra Mets tickets, I want to sell them quickly, I'll put them on craigslist, would be that illegal under this bill?

SENATOR SPANO: Craigslist would be exempt and not covered by the statute.

SENATOR SABINI: Not covered by the statute. So it would be illegal, if this bill passed, to do that?

SENATOR SPANO: No, it would be legal.

SENATOR SABINI: It would be legal.

SENATOR SPANO: Yes.

SENATOR SABINI: Even though it's not a competitive bidding process.

SENATOR SPANO: Yes.

SENATOR SABINI: Okay. Thank you, Madam President.

THE PRESIDENT: Does any other member wish to be heard?

SENATOR SPANO: As long as it's over 6,000.

THE PRESIDENT: Senator Krueger.

SENATOR LIZ KRUEGER: If the sponsor would yield to an additional question, please.

THE PRESIDENT: Senator Spano, do you yield?

SENATOR SPANO: Yes.

THE PRESIDENT: You may proceed, Senator.

SENATOR LIZ KRUEGER: Thank you.

The answer you just gave to Senator Sabini raised another question for me.

So if I sold my tickets on craigslist -- I bought tickets for $100 each to some event in a venue greater than 6,000, and I didn't want to use them or decided to

sell them on craigslist to Senator Sabini, he bought them from me for $500 each, then he went to the event but it was canceled, and so he had the tickets and they canceled, he's out -- they'll give him back $100 face value on the ticket and he's out the other $400? Is that part of the risk of the free market in ticket sales?

SENATOR SPANO: Let me try to clear up the confusion.

SENATOR LIZ KRUEGER: Okay.

SENATOR SPANO: We have a chapter amendment that will be coming on this bill on Monday that is in print now -- but our only way of doing it today would be to do it with a message, so we're doing it Monday. It would clear up the issue of craigslist and would -- and when we talk about the resales between third parties, those resales would be exempt.

SENATOR LIZ KRUEGER: I'm sorry. Madam President, if through you the sponsor would continue to yield.

SENATOR SPANO: If I could continue.

SENATOR LIZ KRUEGER: Please.

SENATOR SPANO: The -- as we mentioned to Senator Sabini, on StubHub, which is a competitive bidding process between third parties, the -- eBay is basically the same type of principle. On this issue, it's somewhat different, and we'll handle that in our chapter amendment that will be coming Monday.

SENATOR LIZ KRUEGER: Madam President, if through you the sponsor would continue to yield.

THE PRESIDENT: Senator Spano, do you yield?

SENATOR SPANO: Yes.

THE PRESIDENT: You may proceed.

SENATOR LIZ KRUEGER: Thank you. And perhaps I'm just not understanding the language you're using, I apologize.

So you're saying in eBay or a StubHub or craigslist, they all fall into the same category that will be dealt with with the chapter amendment and --

SENATOR SPANO: They would all fall into the same category because they're all dealing with purchases between third

parties.

SENATOR LIZ KRUEGER: Okay. And when that comes out, if I've paid a third party $500 for tickets but the third party only paid the venue $100, and there's some cancellation, will I always be out that whatever supplemental cost I paid above and beyond the ticket price?

SENATOR SPANO: The language of the bill requires that Internet operators would have to make refunds if the person does not get what they're entitled to. So that's a current part of -- a change in the law that doesn't exist for the new way of selling tickets that are out there through the Internet.

SENATOR LIZ KRUEGER: Madam President, on the bill. I guess on the future chapter amendment.

THE PRESIDENT: You may proceed on the bill.

SENATOR LIZ KRUEGER: I thank the Senator for his clarification.

I'm sorry, it raises another red flag to me that in an attempt to, quote,

unquote, go to a free-market system, under this bill we're actually increasing the buyer-beware factor in third-party purchase of tickets through the Internet to a much higher level.

Because I'm not at all clear how the State of New York would regulate or ensure that if I bought tickets at a price greater than the ticket price through a third party and then the venue canceled whatever event -- and it certainly happens, for a variety of different reasons -- that I, the consumer, would ever have a way to get back the actual price I paid for these tickets.

I can't imagine a scenario where the State of New York will send police out to the other email address on eBay or craigslist or Senator Sabini's knowledgeable StubHub model.

And that we're actually creating even added problems for consumers, and create a whole new category of potential fraud on behalf of third-party sellers and people trying to buy tickets in a new market that we will have created that we call a free market

but that will be to some degree an unregulated national Internet market.

And so my concerns are doubled. So again, I urge my colleagues to think about this before they vote for this bill.

Thank you, Madam President.

THE PRESIDENT: Does any other member wish to be heard?

Then the debate is closed.

The Secretary will ring the bell.

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1328 are Senators Diaz, Dilan, Duane, L. Krueger, LaValle, Morahan, Padavan, Parker, Paterson, Schneiderman, Serrano, M. Smith and Valesky.

Those Senators absent from voting: Connor, Gonzalez, Sampson and A. Smith.

Ayes, 44. Nays, 13.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 956, by Senator Little, Senate Print 4916, an act to amend the General Municipal Law, in relation to balancing.

THE PRESIDENT: Read the last section.

SENATOR LIZ KRUEGER: Explanation.

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

SENATOR LITTLE: Thank you, Madam President.

Frequently we have one municipality which proposes a project within another municipality which has zoning ordinances. This bill would require a balancing of public interests in reference to these projects which are located in more than one jurisdiction. And the bill basically codifies a Court of Appeals decision in 1988 which said that you need to balance the powers out.

And what the bill does is establish a procedure with nine factors that need to be

considered when one project is within another, as to whether it has to comply with the zoning code or whether it can be exempt from that.

This bill is out of Rural Resources. It passed the Senate last year, under the sponsorship of our late Senator McGee, 59-0.

THE PRESIDENT: Senator Krueger.

SENATOR LIZ KRUEGER: Thank you, Madam President.

Thank you for the explanation.

If the Senator -- excuse me, if the sponsor would yield for a question.

THE PRESIDENT: Senator Little, do you yield?

SENATOR LITTLE: Yes, certainly.

THE PRESIDENT: You may proceed.

SENATOR LIZ KRUEGER: Thank you. I'm still confused about scalping tickets for the moment.

Actually, I like this bill. And I'm wondering, as it's envisioned, would it apply also if public authorities were attempting to encroach on a local town or municipality with a --

SENATOR LITTLE: It possibly could.

SENATOR LIZ KRUEGER: It would apply to public authorities as well.

SENATOR LITTLE: For instance, within my district I have the Olympic Regional Development Authority. If they were going to build a venue within one of the municipalities.

And it also would apply for an airport authority, development authority building an airport.

SENATOR LIZ KRUEGER: Thank you.

Madam President, if the sponsor would continue to yield.

THE PRESIDENT: Senator Little, do you yield?

SENATOR LITTLE: Yes, I yield.

THE PRESIDENT: You may proceed, Senator.

SENATOR LIZ KRUEGER: Thank you.

And would this bill in any way affect the use of eminent domain to override or work around zoning issues at the local level? Do you know if it would have an impact

on --

SENATOR LITTLE: I believe the bill applies to whether or not the municipality that is building within another municipality is exempt from the building code or not. That's all.

SENATOR LIZ KRUEGER: Thank you.

Thank you, Madam President. On the bill.

THE PRESIDENT: You may proceed on the bill.

SENATOR LIZ KRUEGER: Thank you.

I am delighted to support Senator Little's bill. I'm not sure it goes far enough from my perspective, but I'm very interested in seeing when colleagues from other parts of the state that very often have rural communities, more often than the experiences that we have in New York City, find themselves with the same kind of problems we have in New York City, where we've got different levels of government encroaching and in fact knocking down local municipal positions and rules in order to accomplish goals that they feel are bigger than the

concerns of a local town or municipality.

In the City of New York just in the last few months, I can talk to you about situations where in Brooklyn we have eminent domain and zoning exemption issues with the MTA. In Senator Velmanette Montgomery's district, we have issues of eminent domain and exemptions from zoning. Arguments being made for the Jets stadium in Senator Duane's district, near my own district. We have fights in my own district with the MTA over whether a large building that would potentially be explosive should be located right near St. Patrick's Cathedral, raising many concerns for me in my district and certainly the Catholic Diocese of Manhattan.

We've got too many entities, public authorities and levels of government, that they define anything as the public good, regardless of what the purpose is for, and then feel that they have the right to exempt themselves from zoning codes or the participation of the local community or local government.

So perhaps, if I was to recommend

amendments to your bill for a later date, I would lay out some more specific examples of what should and shouldn't be allowed without local participation in the items that you do list out, to highlight some of the ways that local governments should and local communities should have the right to be participants in changes in the use of their lands.

And I hope that this Legislature will move forward with further exploration of legislation that would require local participation prior to eminent domain use by public authorities, clarification of the public good when selling or trading off government land, involvement by communities and their local governments in zoning discussions and environmental reviews, and so many other areas.

So I am very glad to see that there is -- not parallel problems, because nobody wants problems, obviously, in their communities, but recognition that the State of New York should look seriously at how we use our own authority to sometimes bulldoze over our local governments and our local community

needs.

So I am happy to support the bill and hope everyone here will vote for it.

Thank you, Madam President.

THE PRESIDENT: Does any other member wish to be heard?

Then the debate is closed.

The Secretary will ring the bell.

Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: The Secretary will announce the results.

THE SECRETARY: Ayes, 57. Nays, 0.

Those Senators absent from voting on Calendar Number 956: Senators Connor, Gonzalez, Sampson and A. Smith.

THE PRESIDENT: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Madam President, is there any further business to come before

the Senate?

THE PRESIDENT: Could we please have order in the chamber.

Senator Skelos, we do have a motion.

SENATOR SKELOS: There is further business?

THE PRESIDENT: Yes, we do.

SENATOR SKELOS: Can we conduct this business at this time.

THE PRESIDENT: Senator Nozzolio.

SENATOR NOZZOLIO: Thank you.

Madam President, I wish to call up Print Number 2636, recalled from the Assembly, which is now at the desk.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 226, by Senator Rath, Senate Print 2636, an act to adjust.

SENATOR NOZZOLIO: Madam President, I now move to reconsider the vote by which this bill passed.

THE PRESIDENT: We need order in the chamber. Thank you to the members.

The Secretary will call the roll upon reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

SENATOR NOZZOLIO: I now offer the following amendments.

THE PRESIDENT: The amendments are received.

Senator Skelos.

SENATOR SKELOS: Madam President, there being no further business to come before the Senate, I move we stand adjourned until Thursday, June 2nd, at 11:00 a.m.

THE PRESIDENT: There being no further business, on motion, the Senate stands adjourned until Thursday, June 2nd, 11:00 a.m.

(Whereupon, at 4:26 p.m., the Senate adjourned.)