NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

September 20, 2005

4:00 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, September 19, the Senate met pursuant to adjournment. The Journal of Sunday, September 18, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, may we please adopt the Resolution Calendar, with the exception of Resolution 2764.

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 Fuschillo.

SENATOR FUSCHILLO: Thank you, Madam President. There's a Resolution 2764 at the desk, by Senator Hannon. May we please have it read in its entirety and move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Hannon, Legislative Resolution memorializing Governor George E. Pataki to proclaim November 2005 as Lung Cancer Awareness Month.

"WHEREAS, Medical research is vital to the current health care needs of all citizens, and contributes to the advancement of future medical breakthroughs; and

"WHEREAS, In its early stages, lung cancer usually does not cause symptoms. When symptoms occur, the cancer is often advanced; and

"WHEREAS, Symptoms of lung cancer include chronic cough, hoarseness, coughing up blood, weight loss and loss of appetite, shortness of breath, fever without a known reason, wheezing, repeated bouts of bronchitis or pneumonia and chest pains; and

"WHEREAS, Smoking is one of the main contributors to lung cancer, with more than 87 percent of all lung cancer attributed to smoking tobacco. The more time and quantity you smoke, the greater your risk of

lung cancer. But if you stop smoking, the risk of lung cancer decreases each year as normal replace abnormal cells; and

"WHEREAS, After ten years, the risk drops to a level that is one-third to one-half of the risk for people who continue to smoke. In addition, quitting smoking greatly reduces the risk of developing other smoking-related diseases, such as heart disease, stroke, emphysema and chronic bronchitis; and

"WHEREAS, Radon is considered to be the second leading cause of lung cancer in the United States today. Radon gas can come up through the soil under a home or building and enter through gaps and cracks in the foundation or insulation, as well as through pipes, drains, walls or other openings; and

"WHEREAS, Radon causes between 15,000 and 22,000 lung cancer deaths each year in the United States -- 12 percent of all lung cancer deaths are linked to radon; and

"WHEREAS, Another leading cause of lung cancer is on-the-job exposure to cancer-causing substances or carcinogens. Asbestos is a well-known, work-related

substance that can cause lung cancer, but there are many others, including uranium, arsenic, and certain petroleum products; and

"WHEREAS, Peter Jennings, a New York City resident and veteran newsman of ABC 'World News Tonight,' died on Sunday, August 7, 2005, some four months after he announced on the air that he had been diagnosed with lung cancer; and

"WHEREAS, Each year, nearly 1.4 million people are diagnosed with cancer, and approximately 600,000 will perish from it. Though there are many types of cancer, none causes as much devastation as cancer of the lung. In 2005, the American Cancer Society estimates that 172,570 people will be diagnosed with lung cancer in the United States: 93,010 men and 79,560 women; and

"WHEREAS, Despite these staggering numbers, lung cancer receives insufficient awareness and attention from the research community. It is imperative for our society to concentrate on this particular matter; and

"WHEREAS, about 85 percent of lung cancer cases are diagnosed in later stages of

the disease. If detected early, research shows that the five-year survival rates could reach 80 percent; and

"WHEREAS, This Legislative Body urges all residents of New York State to make themselves more aware of the risk of lung cancer and to take measures to minimize those risks in an effort to promote better health and reduce the incidence of lung cancer; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to memorialize Governor George E. Pataki to proclaim November 2005 as Lung Cancer Awareness Month in the State of New York; and be it further

"RESOLVED, That a copy of this resolution, suitably engrossed, be transmitted to The Honorable George E. Pataki, Governor of the State of New York."

THE PRESIDENT: Senator Hannon.

SENATOR HANNON: Madam President, I just wanted to say that this resolution about memorializing the Governor to proclaim November as Lung Cancer Awareness Month is very important and we'd like to open this up

to cosponsorship by any of the other Senators.

THE PRESIDENT: Any Senator who does not wish to cosponsor this resolution, please notify the desk.

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 Fuschillo.

SENATOR FUSCHILLO: Madam President, there is another resolution at the desk, 2920, by Senator Paterson. May we please have it read in its entirety and move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Paterson, Legislative Resolution Number 2920, mourning the death of Sandra Feldman, former president of the American Federation of Teachers and nationally renowned union leader.

"WHEREAS, Sandra Feldman, president

of the American Federation of Teachers from 1997 to 2004, was recognized nationally as an ardent and passionate leader of a national union; and

"WHEREAS, Sandra Feldman's election as AFT president followed a distinguished 30-year career with the United Federation of Teachers as the 11-year president of this New York City 110,000-member local; and

"WHEREAS, Sandra Feldman was a tireless advocate for children, public education and the labor movement, and a powerful voice for the 1.3 million educators, healthcare professionals, public employees and retirees represented by the AFT, the nation's second largest union; and

"WHEREAS, Sandra Feldman was a nationally recognized champion of high academic standards, rigorous teacher training, universal preschool for young children and extended kindergarten for disadvantaged youngsters, redesigning schools for academic improvement and research-backed programs to raise student achievement; and

"WHEREAS, Sandra Feldman worked

with members of Congress and federal education officials to write the education law known as 'No Child Left Behind,' which imposed stricter performance standards on all schools receiving federal aid; and

"WHEREAS, Sandra Feldman worked to increase federal and state spending for programs for young children in a program called 'Kindergarten Plus'; and

"WHEREAS, Sandra Feldman, popularly known as 'Sandy,' was an effective advocate for the rights and concerns of nurses and healthcare professionals, working to bring public attention to the national nursing shortage, patient rights and adequate staffing levels in healthcare facilities; and

"WHEREAS, Sandra Feldman has been in the forefront of efforts in Congress and in state legislatures to support pro-education, pro-worker measures, and adequate funding and resources for pre-K through 12 and higher education and public services; and

"WHEREAS, Continuing her history of advocacy for civil rights and social justice that began in the 1960s as an activist in the

Freedom Rides and in the 1963 March on Washington for Jobs and Freedom, Sandra Feldman spoke out against all forms of discrimination; and

"WHEREAS, Sandra Feldman, aptly described as a 'visionary,' was born of humble means and grew up in a poor working-class neighborhood in Brooklyn, New York. She was the daughter of a milkman and a sickly woman who worked part-time in a bakery. She attended James Madison High School and studied English at Brooklyn College, where she immersed herself in socialist politics and civil rights activities; and

"WHEREAS, Sandra Feldman was a leading voice in the national and international labor movement as a member of the AFL-CIO Executive Council and a vice president of Education International, highlighting the needs of working professionals and promoting universal education for all children throughout the world; and

"WHEREAS, It is the sense of this Legislative Body to pay tribute to the lives

of those esteemed individuals of national renown who distinguished themselves through their life's work; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to mourn the September 18, 2005, death of our friend and ally, labor leader Sandra Feldman, and be it further

"RESOLVED, That a copy of this resolution, suitably engrossed, be transmitted to the family of Sandra Feldman."

THE PRESIDENT: Senator Paterson.

SENATOR PATERSON: Thank you, Madam President.

Sadly, I stand before you, Madam President, to mourn the death of Sandra Feldman, born in 1939, who died yesterday morning at 5:30, succumbing to cancer. After two or three successful fights, she was unable to stave off the last wave of cancer that claimed her body.

Sandra Feldman's distinct career started with her political participation when she was a student at James Madison High School. In her early twenties, she marched in

the famous Freedom Rides in the South, was arrested twice in civil disobedience, fighting for the rights of people who lived a long way from where she lived, although she was raised in a poor family in Brooklyn, New York.

Sandra went on to become the head of the United Federation of Teachers for 11 years, and then for 25 years head of the American Federation of Teachers, succeeding the late and very great Albert Shanker.

She was someone, to those of us who knew her very well -- and I knew her extremely well -- always thinking, always participating, always trying to find a way to make the world a better place.

There are a lot of very effective union leaders, but very few great ones. And as is in the case of greatness, it always involves some sort of acceleration to the needs of others, away from the personal interests of oneself or of the collective interests of those they serve.

In 1988, Sandra Feldman, at the time head of the United Federation of Teachers, agreed without any resistance to

setting up the Schools Under Registration Review, the SURR schools, even though it required the transfer of many teachers in the New York City public school system. Didn't always make her popular in the beginning for taking a stand like this, but the entire union came around this process and helped improve the education conditions for the 1.1 million schoolchildren of New York City.

It was activities such as that, time and time again, that made Sandra distinguished and made her the very great person who we memorialize and celebrate today.

It's sad that we would not be able to get the benefit of her wisdom, her thinking. But there was no one more dynamic, more articulate, more persuasive, more courageous, and more outspoken when an issue needed to be addressed.

And so I'd like to open the resolution to all of my colleagues on both sides of the aisle, where she was respected on both sides of the aisle and in every neighborhood she ever visited and in every place they ever heard about her. It is in

that spirit that I thank you for the time to reflect on one of my dear friends, and who would have been one of yours had you known her better.

Thank you, Madam President.

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

Senator Stavisky.

SENATOR STAVISKY: Madam President, I thank Senator Paterson for sponsoring this resolution. And I too knew Sandy Feldman, as well as her predecessor, Al Shanker. And they exemplified everything that's good in the trade union movement, but also everything that is good in education.

Sandy Feldman grew up in poverty, and she rose to become the national president of a major labor organization. But she wanted today's children to have the same opportunities that she had growing up, that education was the passport out of poverty. And I too mourn the passing of Sandy Feldman.

Thank you.

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 Fuschillo.

SENATOR FUSCHILLO: Madam President, there's a resolution at the desk, 2918, by Senator Golden and by Senator Trunzo. May we please have it read in its entirety and move for its immediate adoption.

THE PRESIDENT: The Secretary will now read Resolution 2918.

THE SECRETARY: By Senators Golden and Trunzo, Legislative Resolution Number 2918, urging the New York State Congressional Delegation to focus its efforts to increase the amount of contingency funding available for LIHEAP.

"WHEREAS, The federally funded Low-Income Home Energy Assistance Program (LIHEAP) allows New York State to help our most vulnerable population, eligible low-income and elderly residents, with their

home energy bills; and

"WHEREAS, As a result of the increasing home heating fuel costs, New York State residents are again expected to be confronted with significant increases in energy costs this heating season, thereby putting a drain on family budgets; and

"WHEREAS, Current estimates project substantial increases in fuel costs from last winter, which was one of the most costly heating seasons on record; and

"WHEREAS, According to the New York State Energy Research and Development Authority, the statewide weekly average price of home heating oil rose from $1.76 per gallon one year ago to $2.72 per gallon last week, an increase of 54 percent; and

"WHEREAS, Natural gas costs are also expected to show similar increases; and

"WHEREAS, Last year, New York State received $236 million in LIHEAP and $42.3 million from contingency funds, for a 2004-2005 total of $278.3 million, thus allowing New York to provide 969,662 benefits; and

"WHEREAS, Based on projections, if the national formula remains at $1.8 billion, New York's share would be $224 million, then New York would need $54 million to stay at 2004-2005 levels; and

"WHEREAS, Without an immediate increase in the contingency funding for LIHEAP, our ability to provide adequate support to the many eligible seniors and low-income families that need government assistance for something as basic as staying warm will be jeopardized; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to urge the New York State Congressional Delegation to focus its efforts to increase the amount of contingency funding available for LIHEAP; and be it further

"RESOLVED, That copies of this resolution, suitably engrossed, be transmitted to each member of the New York State Congressional Delegation."

THE PRESIDENT: Senator Golden.

SENATOR GOLDEN: Thank you, Madam

President.

I rise on this resolution to speak and ask that those who would like to go on this resolution, that it's opened up to all, and that the resolution be presented to the federal government, to our Congressional delegation, and that we be allowed, for the $1.8 billion that is allocated for HEAP that has been steady for the past two years, that that be increased.

We've put packages forward today for those that drive their cars, for gasoline, and the prices are off the chart. We're doing the same for home heating oil for our seniors in the State of New York. We need to do more for the population of the eligible low-income family and that senior that needs those dollars to be able to get through this winter.

We've seen the prices of heating oil from last year, from $1.76 to $2.72 per gallon. We see oil going up 35 percent this year and natural gas up 71 percent this year. We would ask that this resolution be moved forward, that our delegation proposes that the HEAP allocation be increased.

And if we were just to do the 2004-2005 to maintain status dollars for those programs, it would be 54 additional million dollars that we would need.

So I would hope that the federal government, our president and Congressional delegation will in fact pass this resolution and give due relief to the residents here, low-income residents here in the state of New York.

Thank you, Madam President.

THE PRESIDENT: On the resolution, 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 Fuschillo.

SENATOR FUSCHILLO: Madam President, will you please recognize Senator Krueger.

THE PRESIDENT: Yes. Senator Krueger.

SENATOR FUSCHILLO: Thank you.

SENATOR LIZ KRUEGER: Thank you, Madam President.

I rise to speak on a resolution we passed as part of the calendar a few minutes earlier. It was a resolution also urging the Congressional delegation of our state to institute policies which will reduce the country's dependence on oil.

The fact is that we are here to deal with energy and the costs of energy today. And like Senator Golden, I recognize that much of what needs to be done needs to be done at the federal level.

And so in addition to the proposals to urge our federal government to expand the funding for the LIHEAP program, which is desperately needed, in the resolution that we just passed a few minutes earlier as part of our calendar we also address in this resolution, quite a few of my Senate Democratic colleagues -- and I'm happy to open this up to all of the house for cosponsorship -- we're also urging the federal government to address the fundamental issue of

our dependence on foreign oil, which is a danger to the security of our state and nation, by finally doing a laundry list of work that needs to be done to protect all of us, in all fifty states, at the federal level.

The fact is that our oil and gas industry is so uncompetitive and highly concentrated that in the United States more than half of all oil-refining capacity and 62 percent of the retail gas market is controlled by five companies. And these costs have been skyrocketing long before Hurricane Katrina sent our prices even higher. And in fact, we estimate that the cost of heating oil this winter could be as high as 31 percent higher than last year.

We need our federal government to reverse itself on several of the actions it took in its new federal energy bill, which provided tens of billions of dollars in additional subsidies and tax breaks to oil, gas, coal, nuclear industry, rather than expanding our efforts to support investment in research and development for alternative sources of energy, including wind, solar,

geothermal, biomass.

We need our federal government, instead of continuing to subsidize the oil and gas industry, to create federal renewable portfolio standards that require electricity providers to include a minimum level of clean-energy resources in the electricity mix that they deliver to consumers. We need our federal government to expand our renewable energy production credit to make renewable energy cost-competitive for consumers.

We need to introduce greater energy-efficiency standards for appliances at the national level. We need to end tax breaks and subsidies for nonrenewable energy sources. We need to have a federal government that will require an increased mile-per-gallon standard for all vehicles.

We need to ensure that American consumers do not continue to be dependent on foreign oil or be fearful that our international policies or our national security is in the hands of the same companies that determine the prices we pay for both our gas and our home heating oil. We need to

ensure that the federal government substantially increases funding for public transportation and encourages smart growth.

And again, my resolution also calls for the federal government to expand the funding for the Low-Income Home Energy Assistance Program, which has been the most effective program at the federal level to help supplement the high cost of energy for low-income people throughout this country. But last year we ran out of money by May 27th and had to start turning people away.

So I want to thank my colleagues for their support in this resolution for continuing not only our work here in Albany today, but ensuring that the federal government and our delegation to Congress recognizes that a great deal of the work that needs to be done to ensure we truly address long-term and substantive energy problems for the people of the State of New York is dependent on whether our colleagues in Washington follow through on a list of issues that they so far have not seen fit to take seriously.

Thank you, Madam President.

THE PRESIDENT: Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, there will be an immediate meeting of the Rules Committee in the Majority Conference Room. And the Senate will stand at ease.

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

The Senate stands at ease.

(Whereupon, the Senate stood at ease at 4:27 p.m.)

(Whereupon, the Senate reconvened at 4:42 p.m.)

ACTING PRESIDENT MEIER: Senator Fuschillo.

SENATOR FUSCHILLO: Mr. President, may we please return to reports of standing committees. I believe there's a report of the Rules Committee at the desk.

ACTING PRESIDENT MEIER: Reports of standing committees.

The Secretary will read.

THE SECRETARY: Senator Bruno, from the Committee on Rules, reports the following bills:

Assembly Print 8834, by the Assembly Committee on Rules, an act to amend the Tax Law;

Assembly Print 7059, by Member of the Assembly Abbate, an act to amend the Retirement and Social Security Law;

Assembly Print 3163, by Member of the Assembly John, an act to amend the Workers' Compensation Law;

Senate Print 5846A, by Senator Wright, an act to amend the Tax Law;

2829A, by Senator Flanagan, an act to amend the Economic Development Law;

5155, by Senator Breslin, an act to amend Chapter 672 of the Laws of 1993, amending the Public Authorities Law;

5452, by Senator Bruno, an act to amend the Vehicle and Traffic Law;

5763A, by Senator Marcellino, an act to amend the Tax Law;

5965, by Senator Spano, an act to amend the Tax Law;

5966, by Senator Flanagan, an act to amend the Real Property Tax Law;

5967, by Senator Winner, an act to amend the Tax Law;

5968, by Senator Robach, an act to amend the Tax Law;

5969, by Senator Marcellino, an act to amend the Agriculture and Markets Law;

And Senate Print 5970, by Senator Hannon, an act to amend the Tax Law.

All bills ordered direct to third reading.

ACTING PRESIDENT MEIER: Senator Fuschillo.

SENATOR FUSCHILLO: Move to accept the report of the committee.

ACTING PRESIDENT MEIER: All in favor of accepting the report of the Rules Committee signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The report of the Rules Committee is accepted.

Senator Fuschillo.

SENATOR FUSCHILLO: Can we please have the reading of the noncontroversial calendar.

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

THE SECRETARY: Calendar Number 515, by the Assembly Committee on Rules, Assembly Print Number 8834, an act to amend the Tax Law and the State Finance Law.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: In relation to Calendar Number 515, the vote is ayes, 60.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1143, by Member of the Assembly John, Assembly Print Number 3163, an act to amend the Workers' Compensation Law.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1845, by Senator Wright, Senate Print --

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: In relation to Calendar Number 1991, Senator Flanagan moves to discharge, from the Committee on Rules, Assembly Bill Number 8506 and substitute it for the identical Senate Bill Number 2829A, Third Reading Calendar 1991.

ACTING PRESIDENT MEIER: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1991, by Member of the Assembly Weprin, Assembly Print Number 8506, an act to amend the Economic Development Law.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1992, Senator Breslin moves to discharge, from the Committee on Rules, Assembly Bill Number 7465 and substitute it for the identical Senate Bill Number 5155, Third Reading Calendar 1992.

ACTING PRESIDENT MEIER: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1992, by Member of the Assembly McEneny, Assembly Print Number 7465, an act to amend Chapter 672 of the Laws of 1993, amending the Public Authorities Law.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: In relation to Calendar Number 1993, Senator Bruno moves to discharge, from the Committee on Rules, Assembly Bill Number 5437 and substitute it for the identical Senate Bill Number 5452, Third Reading Calendar 1993.

ACTING PRESIDENT MEIER: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1993, by Member of the Assembly Canestrari, Assembly Print Number 5437, an act to amend the Vehicle and Traffic Law.

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

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MEIER: Senator Breslin.

SENATOR BRESLIN: Thank you, Mr. President.

I intend to vote for this legislation, as the City of Rensselaer deserves a parking permit in and around the railroad station. They have a home-rule message. Just as we've approved parking permits in Rochester, Rye, Pelham, Auburn, Tarrytown, and a host of other locations.

I've also had legislation in since 1998, 1999, and up to the present, looking for

parking permits so the homeowners in and around the Capitol and the Legislative Office Building can enjoy a quality of life. So I look forward to the time when the citizens of Albany can enjoy those same kinds of restrictions as this bill will provide to the City of Rensselaer.

I vote in the affirmative.

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

Announce the results.

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1081, by Member of the Assembly Abbate, Assembly Print Number 7059, an act to amend the Retirement and Social Security Law.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 6. This act shall take effect immediately.

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1994, by Senator Marcellino, Senate Print --

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 1995, by Senator Spano --

SENATOR PATERSON: Lay that aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 1996, by Senator Flanagan, Senate Print Number 5966, an act to amend the Real Property Tax Law.

ACTING PRESIDENT MEIER: Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT MEIER: The bill is passed.

THE SECRETARY: Calendar Number 1997, by Senator Winner, Senate Print 5967, an act to amend the Tax Law.

ACTING PRESIDENT MEIER: Read the last section.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 1998, by Senator Robach, Senate Print Number 5968, an act to amend the Tax Law.

ACTING PRESIDENT MEIER: Read the last section.

THE SECRETARY: Section 3. This act --

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 1999, by Senator Marcellino, Senate Print 5969, an act to amend --

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MEIER: Lay the bill aside.

THE SECRETARY: Calendar Number 2000, by Senator Hannon, Senate Print Number 5970, an act to amend the Tax Law.

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

Read the last section.

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

ACTING PRESIDENT MEIER: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT MEIER: The bill is passed.

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

SENATOR BRUNO: Mr. President, can we at this time return to motions and resolutions.

I believe I have a resolution at the desk, Number 2904. I would ask that at this time it be read in its entirety and move for its immediate adoption.

ACTING PRESIDENT MEIER: Motions and resolutions.

The Secretary will read.

THE SECRETARY: By Senator Bruno, Legislative Resolution Number 2904, sending deepest condolences to the victims of Hurricane Katrina and expressing solidarity with all individuals and organizations involved in the ongoing rescue and recovery efforts in the Southeastern United States.

"WHEREAS, The human toll resulting from the devastating, cataclysmic events of Hurricane Katrina and its aftermath will alter the course of the lives of countless families and require the efforts and support of Americans from across the United States to ensure the restoration of stability to all of the regions affected by the storm; and

"WHEREAS, This Legislative Body is deeply moved to send the deepest heartfelt condolences of the people of the State of New York to the victims of Hurricane Katrina and to express solidarity with all of the individuals and organizations involved in the ongoing rescue and recovery efforts in the

Southeastern United States; and

"WHEREAS, The coordinated efforts of state and federal governments in transporting hundreds of thousands of individuals to dry land has made evident the enormous challenge of ensuring that the displaced victims of Hurricane Katrina are provided the basic necessities of life in order to start their lives over again; and

"WHEREAS, The members of the New York State Senate collectively recognize the compassion of the individuals and organizations from the State of New York who have volunteered their efforts to help the victims of Hurricane Katrina; and

"WHEREAS, This Legislative Body commends the efforts of all those involved in the rescue and recovery, including the efforts of the SEMO (State Emergency Management Office), and the members of the National Guard from the State of New York, who have been and continue to be integral in restoring power and water to the affected areas, and in helping out in any aspect, bringing normalcy back to the lives of the victims; and

"WHEREAS, Furthermore, this Legislative Body recognizes the generosity and humanitarianism of the many New York families who have opened their doors to people displaced in the aftermath of the storm, as well as the universities and colleges that have opened their academic doors to students from the affected states; and

"WHEREAS, In addition to the human toll, Hurricane Katrina has resulted in extensive economic damage across the affected regions, the complete destruction of whole cities, towns and neighborhoods, private and public property, and countless businesses; and

"WHEREAS, This natural disaster is one of the worst in our nation's history, requiring a widespread need for food, supplies, tools, equipment, medicine, health care, law enforcement personnel, security services, public utility services, sanitation and waste disposal, cleanup of debris, property restoration and reconstruction; and

"WHEREAS, The destruction of historic neighborhoods and towns, where so much of the very story of America has been

written through the fusion of various cultures and traditions as people made their lives in those areas for generations, is a wound that all Americans will suffer for years as a result of this catastrophe; and

"WHEREAS, This Legislative Body recognizes the magnitude of this ongoing national tragedy, and with these words sends the message to all victims of Hurricane Katrina that the people of this great Empire State relate to the suffering that others endure in times of such devastation and recovery, and will remain steadfast in unity with them for as long as it takes to reunite their families, restore hope to their lives, and secure their future; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to send the deepest heartfelt condolences of the people of the State of New York to the victims of Hurricane Katrina, and to express solidarity with all of the individuals and organizations involved in the ongoing rescue and recovery efforts in the Southeastern United States."

ACTING PRESIDENT MEIER: Senator

Bruno.

SENATOR BRUNO: Mr. President, can we follow the normal custom of the house and open this resolution up to all members in the chamber.

And anyone that would prefer not to be on it, would you please just let the desk know.

Thank you, Mr. President.

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

All those in favor of the resolution signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT MEIER: Those opposed, nay.

(No response.)

ACTING PRESIDENT MEIER: The resolution is adopted.

Senator Bruno.

SENATOR BRUNO: And, Mr. President, I believe I have another resolution at the desk, 2921. I would ask that it also be read in its entirety and move for its

immediate adoption.

ACTING PRESIDENT MEIER: The Secretary will read.

THE SECRETARY: By Senator Bruno, Legislative Resolution Number 2921, paying tribute to the life and accomplishments of Simon Wiesenthal, internationally renowned Holocaust survivor.

"WHEREAS, This Legislative Body is moved to recognize and pay tribute to the life and accomplishments of Simon Wiesenthal for the courage and fortitude he displayed throughout his life; and

"WHEREAS, With his tremendous pride for his heritage, and his ceaseless work against hate and prejudice, Simon Wiesenthal benefited the world in immeasurable ways; and

"WHEREAS, A survivor of five Nazi death camps, Simon Wiesenthal died on Tuesday, September 20, 2005, at the remarkable age of 96, in Vienna, Austria; and

"WHEREAS, After being liberated from the Mauthausen death camp in May 1945, Simon Wiesenthal dedicated his life to tracking down Nazi war criminals and to being

a voice for the 6 million Jews who died during the onslaught. Between Simon and his wife, Cyla, they lost 89 relatives in the Holocaust; and

"WHEREAS, Through his work, Simon Wiesenthal brought to justice some 1,100 Nazi war criminals, including one-time SS leader Adolf Eichmann and the policeman who arrested Anne Frank; and

"WHEREAS, In addition, Simon Wiesenthal spent more than 50 years speaking out against neo-Nazism and racism, and remembering the Jewish experience as a lesson for humanity; and

"WHEREAS, Simon Wiesenthal was the recipient of numerous awards, including Austria's Golden Decoration of Merit, which was presented by President Heinz Fischer in June of 2005; and

"WHEREAS, This Legislative Body is proud to inscribe upon its records this memoriam for Simon Wiesenthal, whose legacy as the conscience of the Holocaust will long endure the passage of time; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to pay tribute to the life and accomplishments of Simon Wiesenthal, internationally renowned Holocaust survivor of Vienna, Austria; and be it further

"RESOLVED, That a copy of this resolution, suitably engrossed, be transmitted to The Simon Wiesenthal Centre in Israel."

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

(Response of "Aye.")

ACTING PRESIDENT FLANAGAN: Opposed, nay.

(No response.)

ACTING PRESIDENT FLANAGAN: The resolution is adopted.

Senator Paterson.

Senator Bruno.

SENATOR BRUNO: May I just offer, again, opening this resolution to the house. And anyone that would like to do otherwise than be on the resolution, please just let the desk know.

Thank you, Mr. President.

Senator Paterson.

SENATOR PATERSON: Oh, thank you, Senator Bruno. Not just for the floor, but for your interest and forbearance in honoring Simon Wiesenthal, who today died at the age of 96, just in the last 24 hours, an internationally acclaimed Holocaust survivor and a person that chased down and pursued those who violated the lives, the families, and the dignity of others.

Living to such an old age, many of the people who he helped so much may not have survived to really understand how great Simon Wiesenthal was. As the resolution points out, he was honored by President Heinz Fischer in this year. And even in his waning years, he continued to speak out against injustice and to fight against all forms of hate and prejudice and particularly violence against others.

It's a part of world history that we can never forget. It's a part of world history that goes on even today in other parts of the world, and unfortunately struck this country in an attack, meaninglessly, on our

country that we just commemorated on the fourth anniversary of the attack on the World Trade Center and the Pentagon on September 11th.

So again, this is just a moment we should remember and a period in which we should fight, all of us together, to try to avoid it occurring any time in the future.

So I just wanted to thank Senator Bruno for offering this resolution. There's no finer person or person recognized all over the world for his humanity and his condemnation and fight against those who didn't practice the same.

ACTING PRESIDENT FLANAGAN: Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time return to the controversial calendar.

ACTING PRESIDENT FLANAGAN: The Secretary will read.

THE SECRETARY: Calendar Number 1845, by Senator Wright, Senate Print 5846A, an act to amend the Tax Law.

SENATOR SCHNEIDERMAN:

Explanation.

ACTING PRESIDENT FLANAGAN: An explanation has been asked for, Senator Wright.

SENATOR WRIGHT: Thank you, Mr. President.

The bill before us provides a biofuel tax credit for the production of biofuels in the state of New York. It's part of the Senate's energy package that's being advanced today to encourage the use of alternative fuels.

As I'm sure most everyone in this chamber is aware, we've advanced the idea of a biofuel tax credit in various budget discussions as well as in this past legislative session. Today we're advancing another alternative, and the purpose is really twofold: Number one, to provide for alternative fuel sources here in the state, to address our energy needs and review our dependence upon petroleum and foreign oil; but, secondly, to also stimulate the economy of the state.

Because as I know, most members

here in the chamber recognize that New York State banned MTBE and that ethanol is the appropriate substitute as an oxygenate. So we in fact have ethanol in our gasoline products now, produced elsewhere in the nation, not in the state of New York, thereby losing the jobs and the opportunities that New York could have.

So we have an opportunity to address our energy independence as well as provide economic advancement in the state.

ACTING PRESIDENT FLANAGAN: Senator Krueger.

SENATOR LIZ KRUEGER: Thank you. Could the sponsor please yield for a question.

SENATOR WRIGHT: I will.

SENATOR LIZ KRUEGER: Thank you.

Senator, in the spring when we were leaving session, you had a variation on this bill -- I'm sorry, I don't remember the number. Now, how does this bill differ from the bill that moved in this chamber either the last day of session or the day before, as I recall?

SENATOR WRIGHT: This bill would

provide the credit that is authorized, the fuel tax credit, which is 15 cents a gallon after production of 40,000 gallons, with a maximum tax credit of $2.5 million per taxpayer per year. That is one difference.

The second difference is the credit is available for a maximum of four years, but the credit may not lower the taxes below the minimum tax fixed by law. If in fact it does, it would be treated as a refundable overpayment of tax.

SENATOR LIZ KRUEGER: If, through you, the sponsor would continue to yield.

ACTING PRESIDENT FLANAGAN: Senator Wright?

SENATOR WRIGHT: Yes, I will, Mr. President.

SENATOR LIZ KRUEGER: Thank you.

And, Senator, one of my concerns on the last bill that we debated that you just referenced was my concern that not all alternative fuels are equal in the eyes of science. Do you share any of my concerns that ethanol has not proved to be as effective from a cost perspective or an environmentally

cleaner perspective than petroleum at this point in time and that, rather, we should be exploring biofuels and biodiesel options that don't include ethanol?

SENATOR WRIGHT: I'm aware of the science as it relates to ethanol. I'm also aware -- much of which is dated. I'm also aware of the new science, much of which is more recent, that addresses new technologies, and believe that biofuel alternatives, and there are a number of them, can in fact be companions in part of this, which is what our intent is, to reflect both ethanol and biofuels.

The reality is that ethanol is the predominant alternative and oxygenate currently being used, and New York should be benefitting from that use.

SENATOR LIZ KRUEGER: And I wanted to -- excuse me, Mr. President. If, through you, the sponsor would yield for an additional question.

ACTING PRESIDENT FLANAGAN: Senator Wright?

SENATOR WRIGHT: I will, Mr.

President.

SENATOR LIZ KRUEGER: Thank you.

This bill would provide this incentive per gallon regardless of the use of the fuel? This could be for vehicles or home heating, or is this specifically for vehicle fuel?

SENATOR WRIGHT: No, it can be used for both.

SENATOR LIZ KRUEGER: Thank you.

Mr. President, on the bill.

ACTING PRESIDENT FLANAGAN: Senator Krueger, on the bill.

SENATOR LIZ KRUEGER: Thank you.

I have to say I'm torn about this legislation because, on the one hand, I do think that there are many opportunities for expansion of biofuels that would be a win for the state of New York and the citizens of the state of New York, both from the perspective of decreasing our dependence on oil and on coming up with hopefully cleaner forms of fuel for our environment. And of course, in the long term, at least, hopefully being able to address some of the cost factors for the fuel

that we use in our homes and our vehicles.

And yet at the same time I'm torn, because the research for decades now of federal subsidies, particularly for ethanol, have resulted in large amounts of federal money and, in some states outside of New York, state money being used in this model as tax credits and as subsidies to producers, where we're not finding any decrease to environmental pollution from the product, we're not seeing decrease in costs for consumers.

And in some cases of research done, most recently by the General Accounting Office of the federal government, we're finding that the cost of an actual gallon of ethanol can be as high as $4 a gallon and be using a gallon of petroleum to produce a gallon of ethanol. Clearly not a win for the environment.

So I'm torn because I do think we need to be broadening our universe of alternative fuel. I do want us in the state of New York to be investing in successful or potentially successful models. And yet I don't want us to repeat the same mistakes of

the federal government, who has now used up billions of dollars of taxpayers' money underwriting an industry that has not been a win for the country or the environment; that is, the ethanol industry.

And so I've asked some questions. I appreciate the sponsor's responses and his continuing efforts to move us down the road of exploring these options. But for now, I'm afraid I will still continue to vote no because I am so concerned that we don't just simply run down the road of new subsidies for industries that won't actually be wins for our state.

Thank you, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Valesky.

SENATOR VALESKY: Mr. President, quickly on the bill.

I think this is a good piece of legislation that's before us today. I note in the sponsor's memo that he points out that there are 22 other states in the nation that are producing ethanol and other biofuels. And they have all, to a state, adopted a tax

credit or other incentive program to encourage biofuels production.

I have seen firsthand the State University of New York Environmental Science and Forestry program in Central New York. They are on the leading edge of production of biofuels. And I think we ought to be doing what we can here to encourage this industry.

I would also add, however, that I would hope that we have an opportunity to consider encouraging use of biofuels at the consumer end; perhaps a tax credit for those who would heat their homes partially with biofuels.

So I rise in support of this bill and encourage all of my colleagues to support this measure.

ACTING PRESIDENT FLANAGAN: Any other Senator wishing to be heard?

The debate is closed.

The Secretary will ring the bell.

Read the last section.

THE SECRETARY: Section 6. This act shall take effect immediately.

ACTING PRESIDENT FLANAGAN: Call

the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 1845 are Senators Duane, Hassell-Thompson and L. Krueger.

Ayes, 58. Nays, 3.

ACTING PRESIDENT FLANAGAN: The bill is passed.

THE SECRETARY: Calendar Number 1994, by Senator Marcellino, Senate Print 5763A, an act to amend the Tax Law.

SENATOR LIZ KRUEGER: Explanation.

ACTING PRESIDENT FLANAGAN: Senator Marcellino, an explanation has been asked for by Senator Krueger.

SENATOR MARCELLINO: Thank you.

Mr. President, the previous tax credit, the income tax credit for alternative fuel vehicles, expired at the end of the tax year 2004. There's likely to be a significant cost differential between traditional gasoline internal combustion engines and alternatively fueled vehicles. As a result, it will be

necessary to provide consumer incentives to promote their purchase.

Incentives should be available for the purchase of any property needed to refuel these environmentally friendly vehicles. These tax credits proved very successful, encouraging New Yorkers to purchase hybrid vehicles. Since the original credit was offered, there are more hybrid models available to consumers, and their price is so comparative to standard cars that there are now long waiting lists -- several months, in fact -- to purchase hybrid vehicles.

We hope this will provide another successful program along the lines of the hybrid vehicle program.

ACTING PRESIDENT FLANAGAN: Senator Krueger, why do you rise?

SENATOR LIZ KRUEGER: Thank you, Mr. President. If, through you, the sponsor would yield.

ACTING PRESIDENT FLANAGAN: Senator Marcellino, do you yield?

SENATOR MARCELLINO: Yes, I do.

SENATOR LIZ KRUEGER: Thank you.

I have to say overall I like the concept of this bill, but I do have a couple of questions.

What we're learning from hybrid vehicles is that while they cost to $7,000 to $10,000 more --

SENATOR MARCELLINO: Mr. President, I'm sorry, I'm having trouble to hearing the good Senator.

SENATOR LIZ KRUEGER: Certainly, I'll repeat. I think now my light's on. Hopefully that's better.

Hybrid vehicles are costing between $7,000 and $10,000 more than the nonhybrid version. But some of the research coming out shows that they're not necessarily saving significantly on fuel mileage.

And I was wondering whether there's anything in this bill that I didn't quite see when I read it that would actually mandate that the types of vehicles that we would define as "clean" for tax credit purposes would also have to meet some mile-per-gallon standard in order to receive a tax credit.

SENATOR MARCELLINO: Senator,

that's not part of this bill, but it is part of another bill that I have which would provide an incentive. The better the mileage, the better the performance, the better the incentive.

So we'll be looking for your support of our other bill as well as this very important bill.

SENATOR LIZ KRUEGER: Thank you. Mr. President, if the sponsor would continue to yield.

ACTING PRESIDENT FLANAGAN: Senator Marcellino, do you continue to yield?

SENATOR MARCELLINO: Yes.

SENATOR LIZ KRUEGER: Thank you.

I was also wondering whether this bill applies in any way differently for vehicles that are either made in the United States versus foreign vehicles or vehicles that at least are built under some collective bargaining agreement arrangement. Because of course there are also concerns about supporting the American car industry.

And perhaps with the tax credit that's targeted towards cleaner vehicles and,

as you said, hopefully vehicles with better miles per gallon, might there not also be an option to ensure that these types of tax credits are used to encourage the building of vehicles where American workers get jobs?

SENATOR MARCELLINO: It's a laudable ideal. But we're here to incentivize clean air, and that's what this energy bill does. Clean air and avoidance of reliance upon fossil fuels. Foreign fossil fuels.

SENATOR LIZ KRUEGER: Mr. President, on the bill.

ACTING PRESIDENT FLANAGAN: Senator Krueger, on the bill.

SENATOR LIZ KRUEGER: Thank you. I appreciate the Senator's comments.

And I will support this bill, although I would hope that my recommendations might be viewed as friendly amendments as we move forward with this legislation. That I think that any tax credits that we're offering for cleaner vehicles, whether they be what we now call traditional hybrids or other types of new clean fuels, will mandate a miles-per-gallon standard in exchange for the

tax credit.

And I would also urge the Senator to amend the bill to recognize the value of tax credits for vehicles that are built by American labor, at least partially.

So I'll support the bill, but I hope he'll consider amendments to it.

Thank you, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President, just briefly on the bill.

ACTING PRESIDENT FLANAGAN: Senator Montgomery, on the bill.

SENATOR MONTGOMERY: I want to join my colleague Senator Krueger in complimenting Senator Marcellino on this legislation. Although there are some areas that we would like to see some amendments, and I agree with that.

But generally I would like to say that this legislation, I think, sends a message that is very important from this Legislature, and that is that we want to see the corporate as well as the

individual-taxpayer community begin to utilize much more the kind of energy that is suggested in this legislation. And that if they do that, we are willing to give them some incentive and some tax break as a reward for doing that.

We believe, I think, this legislation indicates that we want to see energy efficient vehicles and those vehicles that use renewable energy sources as well, so that we can begin to clean up the environment in our state and especially in our city.

And let me just say, Mr. President, I represent a district where all of the buses in the borough of Brooklyn converge in my district. There are three areas in downtown Brooklyn where I represent that are three of the worst hot spots in the United States as it relates to traffic congestion and environmental pollution. So this is extremely important to me.

There are proposals -- in addition to the fact that I already have these hot spots, there are proposals that will increase that exponentially, because there will be

several thousand new units of housing, a 20,000-seat arena that is proposed for downtown Brooklyn. There are several million new square feet of commercial space and office space, and et cetera, within a 10-square-block area or smaller.

So besides the incredibly large overdevelopment that is going on, we're going to see traffic congestion that you could never imagine. It would never happen in your district. I know that, Mr. President. So obviously this is very important to me.

So I thank Senator Marcellino, because you're talking to people that I represent, as well as all of the constituents in the state of New York, that we in this Legislature want and intend to do something to make a clear statement about the fact that we want to clean up our environment, we want to be on the right side of global warming. We, the Legislature, the State Senate of New York State, wants clean air, clean-fuel vehicles to be utilized by all of the citizens of this state as well as our public authorities, as the MTA is already doing.

So I want to thank Senator Marcellino, thank you for listening. This is a very important bill, and I'm supporting it.

ACTING PRESIDENT FLANAGAN: Any other Senator wishing to be heard?

The debate is closed.

The Secretary will ring the bell.

Read the last section.

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

ACTING PRESIDENT FLANAGAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT FLANAGAN: The bill is passed.

THE SECRETARY: Calendar Number 1995, by Senator Spano, Senate Print 5965, an act to amend the Tax Law.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT FLANAGAN: Senator Spano, an explanation has been asked for.

SENATOR SPANO: Thank you, Mr.

President.

This bill will assist our senior citizens with their heating bills this winter by providing a $100 personal income tax credit for renters who pay their own heat and with a $200 rebate check for those senior homeowners who are eligible for the advanced STAR benefit.

ACTING PRESIDENT FLANAGAN: Senator Schneiderman.

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

SENATOR SPANO: Yes.

SENATOR SCHNEIDERMAN: This bill actually appears to be divided into two sections.

The first, if I read it correctly, creates a tax credit of $100 for renters who pay the cost of heating their residence if they meet the age and income requirements. Is that correct?

SENATOR SPANO: Yes.

SENATOR SCHNEIDERMAN: And the second part of the bill provides an additional

$200 for senior citizens who qualify for the STAR energy rebate program. Is that correct?

SENATOR SPANO: Yes.

SENATOR SCHNEIDERMAN: And through you, Mr. President, the senior citizens who are eligible for the STAR program have to be homeowners who demonstrate they pay their heating bills; is that not correct?

SENATOR SPANO: The senior citizens who are tenants, yes, that's correct, they have to demonstrate they pay their heating bills.

SENATOR SCHNEIDERMAN: But I'm in the second section now, which relates to the $200 credit for people eligible for the STAR program.

SENATOR SPANO: Well, they're homeowners. Presumably they have to pay their heating costs. That's how it works in Westchester, anyway.

(Laughter.)

SENATOR SCHNEIDERMAN: I understand some people are getting their heating bills paid by their local representative.

(Laughter.)

SENATOR SCHNEIDERMAN: But through you, Mr. President, in all seriousness.

So this bill provides for an additional $200 a year for homeowners and an additional $100 a year for renters who pay their heating bills; is that correct?

SENATOR SPANO: Correct.

SENATOR SCHNEIDERMAN: Thank you, Mr. President. Thank the sponsor. On the bill.

ACTING PRESIDENT FLANAGAN: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: Something that is of concern to me, representing a very densely populated district where most of my constituents are renters, is what I believe to be a pattern, not just in this house but in the laws of the State of New York, that essentially amounts to discrimination against residents of the city and, in particular, discrimination against tenants.

And I'm disappointed that this bill that has the laudable purpose of providing a

assistance to people who are really hurt by the increases in oil prices continues that discrimination by saying if you're someone who's a homeowner and you pay your heating bill, you get $200; and if you are a renter and you pay your heating bill, you get $100.

So I really don't understand the basis for this discrimination. It doesn't have any provisions that ensure that the homeowners are paying more than the renters or any requirements of any kind that would appear to clarify what looks to me like straight-out discrimination against renters.

So I will be voting against this bill. And I want to make it clear that I support the purpose of providing additional assistance to seniors, but representing all of the tenants that I do, I cannot accept legislation that provides $200 if you're a homeowner and a poor senior who proves you're paying your heating bills and only $100 if you're even poorer and you can't afford to buy your own house.

So for that reason, Mr. President, I will be voting no.

ACTING PRESIDENT FLANAGAN: Senator Krueger.

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

ACTING PRESIDENT FLANAGAN: Senator Krueger, on the bill.

SENATOR LIZ KRUEGER: Thank you.

I share my colleague Senator Schneiderman's concern, but I must raise an additional issue of discrimination.

If you are a renter who doesn't pay your own heat because it is included in the cost of your rent, you get nothing in this bill. And I can guarantee you landlords will transfer their increased costs of heating fuel to their renters, because that's a legal and even rational business model. If my costs go up, I transfer those costs.

So tenants who don't pay their own heating bills but of course get heat in their apartments -- and that is the disproportionately largest population of renters in New York City. Most renters, at least in New York City -- I can't speak for the rest of the state -- heat is included in

the rent, but their rent will go up as their landlords' heating costs go up. This bill further discriminates against them, because they get nothing.

So I will also be voting against this bill because it is indeed a discriminatory bill in multiple ways.

Thank you, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Stavisky.

SENATOR STAVISKY: I will also be voting against this bill, because not only is it discriminatory against renters, it's also discriminatory against shareholders in a coop, condominium-unit owners. And they are unfortunately treated disgracefully, really, under the Real Property Tax Law, the classification system. And this is just another nail in the coffin of the cooperatives.

ACTING PRESIDENT FLANAGAN: Senator Valesky.

SENATOR VALESKY: Mr. President, I believe there's an amendment at the desk. I ask that the reading of the amendment be

waived and ask to be heard on the amendment.

ACTING PRESIDENT FLANAGAN: The reading is waived, and you may be heard on the amendment.

SENATOR VALESKY: Thank you, Mr. President.

I think we should be addressing the issue of heating costs for seniors or anticipated increases in heating costs for seniors this winter, but I am concerned that we are not addressing an issue that is equally important, one that directly impacts children and particularly schoolchildren.

I met yesterday with a superintendent in one of the school districts that I represent, and she was indicating to me that because of the anticipated increases in heating costs that they would be lowering the temperature in those classrooms in those school buildings by at least 2 degrees in the upcoming heating season.

So this amendment would create a New York State School District Energy Cost Stabilization Fund that would appropriate monies and direct the Commissioner of

Education to establish a grant program that would allow school districts to apply for funding to deal with increases in both transportation costs this year and in heating costs in school buildings.

I ask that the amendment be approved.

ACTING PRESIDENT FLANAGAN: On the amendment, those Senators in agreement please signify by raising your hands.

THE SECRETARY: Those recorded in agreement are Senators Andrews, Breslin, Brown, Diaz, Dilan, Duane, Gonzalez, Hassell-Thompson, Klein, L. Krueger, C. Kruger, Montgomery, Onorato, Oppenheimer, Parker, Paterson, Sabini, Sampson, Savino, Schneiderman, Serrano, A. Smith, M. Smith, Stachowski, Stavisky and Valesky.

ACTING PRESIDENT FLANAGAN: The amendment is not agreed to.

Any other Senator wishing to be heard?

Senator Diaz.

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

ACTING PRESIDENT FLANAGAN: On the bill, Senator Diaz.

SENATOR DIAZ: Most of my life, I have been working and dealing with senior citizens. I have seen senior citizens being discriminated. I have seen terrible things done to senior citizens. Right now, in the city of New York, Mayor Bloomberg changed a hot daily meal for a frozen meal.

And I see senior citizens struggling to pay their bills, their medicine, their rent. And when I hear my colleagues here talking about a discrimination that is done against other people, of course, of course I agree. Of course some people have been discriminated.

However, I cannot, honestly and humanly speaking, I cannot go and use the approach of if everybody doesn't get the whole thing, nobody gets anything. And anything that the senior citizens could get -- even though the bill is not perfect, and even though I agree with my colleagues that the bill discriminates against other people. But ladies and gentlemen, dealing and working with

senior citizens, I have to here honestly say that anything that I could get for senior citizens, anything that -- anything for senior citizens, especially in my district, I will vote for it.

So even though the bill is not perfect, I am voting for this bill, because it takes care of at least some senior citizens.

ACTING PRESIDENT FLANAGAN: Any other Senator wishing to be heard?

The debate is closed.

The Secretary will ring the bell.

Read the last section.

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

ACTING PRESIDENT FLANAGAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT FLANAGAN: Senator Wright, to explain his vote.

SENATOR WRIGHT: Thank you, Mr. President. To explain my vote.

I commend Senator Spano for his leadership on this legislation. Like some of my colleagues have suggested, I too would like

to be everything to everybody. Not only are schools going to face difficulty in terms of heating, hospitals are going to face difficulty in terms of heating, colleges are going to face difficulty in terms of heating. Most any institutional setting you can anticipate, as well as individuals with families, are going to face those problems this year.

We don't have enough money to deal with the problem. What we're trying to do is to take the windfall that's being derived from taxes, target it to our most vulnerable population to address a critical need in this state. It doesn't minimize the need of others, but it recognizes a critical need.

Relative to the school districts, one should recall that a school expense is a reimbursable expense. Many of them contract in advance and have prices already built in. The concern for school districts actually should be reflected next year, when we are reimbursing them for those expenses that they will be incurred as part of the state aid formula.

So I believe we've targeted what is facing the most critical need as we enter the heating season, our elderly population. I commend Senator Spano for his leadership and encourage support on this vote.

I'm voting aye.

ACTING PRESIDENT FLANAGAN: Senator Saland.

SENATOR SALAND: Thank you, Mr. President.

I too would like to join with Senator Wright in commending Senator Spano. I don't profess to be a construction engineer, but I do know the amount of heat that you require will, among other things, depend upon the size of your residence or dwelling, the heating efficiency of whatever that particular dwelling may be. And when I last checked, most homes were considerably larger than apartments.

And if I can use the experience of two of my children, both of whom reside in New York City, both of whom have their heat included in their rent, the size of their home or residence would be most modest in

comparison even to a 1500-, 1800-, or 2000-square-foot house that many of us find our seniors living in in our districts.

So there's absolutely nothing inequitable about the formula. The means by which there is a distinction made between those who reside in a residence that's been constructed in, probably, minimally 1500 to 1800 square feet -- few apartments, I think, would run in that range. And those that do, I don't necessarily think that their owners would be as concerned as a senior who might be on a fixed income who is making choices that many of us talk about time and again, whether to buy prescription drugs, whether to get fuel to heat their house, whether to lower the thermostat to some level that many of us might consider to be unsafe or unhealthy.

So I thank you, Senator Spano, and commend you for bringing this before us. And I vote aye.

ACTING PRESIDENT FLANAGAN: Senator Saland and Senator Wright will be recorded in the affirmative.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1995 are Senators Duane, Gonzalez, L. Krueger, Montgomery, Parker, Paterson, Schneiderman, Serrano, A. Smith and Stavisky.

Ayes, 51. Nays, 10.

ACTING PRESIDENT FLANAGAN: The bill is passed.

THE SECRETARY: Calendar Number 1997, by Senator Winner, Senate Print Number 5967, an act to amend the Tax Law.

SENATOR SCHNEIDERMAN: Explanation.

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

SENATOR WINNER: Thank you, Mr. President.

This legislation is a chapter amendment to a previous bill that we passed earlier this year to provide for tax credits for fuel cells. This changes the effective date of when that tax credit would be available, from July 1 of 2005 to January 1 of 2003, ostensibly for the purposes of not

penalizing those who have previously purchased this technology from the availability of that tax credit.

This has already been passed, I believe unanimously, in this house, the original bill. And this chapter amendment is at the request of the Tax Department and the Governor's office. And therefore I would urge your support.

ACTING PRESIDENT FLANAGAN: Senator Krueger.

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

ACTING PRESIDENT FLANAGAN: Senator Winner, will you yield?

SENATOR WINNER: Certainly.

SENATOR LIZ KRUEGER: Senator, the purpose of a tax incentive is to do what?

SENATOR WINNER: Well, Senator, I know that you and I have very differing viewpoints about taxation policy in New York.

Many people believe that the purpose of providing a tax incentive is to bring down the cost of a particular item so

that it would be more usable and therefore, in this instance, provide for the affordability of the equipment which in fact is designed to try to save energy in this state.

So I believe that could be one interpretation of what a tax incentive is for the purpose of.

SENATOR LIZ KRUEGER: Mr. President, on the bill.

ACTING PRESIDENT FLANAGAN: Senator Krueger, on the bill.

SENATOR LIZ KRUEGER: I pretty much agree with the sponsor, the purpose of a business tax incentive is to encourage a certain activity; in this case, to encourage the purchase of a fuel cell technology that will be efficient.

My problem with this legislation is I don't grasp the concept of a retroactive business tax incentive. These people already bought the equipment. They didn't apparently need the incentive of a tax reduction to encourage them to take a risk on new technology that we hope is more efficient from an energy and environmental perspective.

So while, if I was a businessperson and I bought something and then I learned that there was a sale on, I might wish I had waited for the sale, or if I was a businessperson and I had purchased something or just a consumer and then I discovered if I had waited I could get a tax incentive, I don't actually think the State of New York wants to go into the retroactive tax incentive business.

Because with all due respect to the people who bought these items before January 2005, I would assume the next group you would hear from is any other business or consumer who had purchased something before we passed a law, saying: Hello, me too, I want a retroactive tax incentive. And I don't know what my argument would be to vote no to them and yes to this group of businesspeople who bought their equipment before we changed the law.

So I think it's a very dangerous precedent for any of us. And with all due respect to this particular group of people who bought these fuel cells, they didn't need the incentive to convince them. They already

bought the items.

I have to vote no. And I have to urge my colleagues to think through the precedent being set if we say, If we pass any law and you like it and wish you'd gotten in on it and you want to retroactively, we could spend a lot of time and a lot of taxpayer money trying to reevaluate each decision we made and go backwards.

So I urge my colleagues, don't vote for this bill. And I'll be voting no.

Thank you very much. Thank you.

ACTING PRESIDENT FLANAGAN: Any other Senator wishing to be heard?

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 same date as a chapter of the Laws of 2005.

ACTING PRESIDENT FLANAGAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 1997 are

Senators Andrews, Diaz, Dilan, Duane, Gonzalez, Hassell-Thompson, L. Krueger, Montgomery, Parker, Paterson, Sabini, Sampson, Schneiderman, Serrano, A. Smith and Stavisky.

Ayes, 45. Nays, 16.

ACTING PRESIDENT FLANAGAN: The bill is passed.

THE SECRETARY: Calendar Number 1998, by Senator Robach, Senate Print 5968, an act to amend the Tax Law.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT FLANAGAN: Senator Robach, an explanation has been asked for by Senator Schneiderman.

SENATOR ROBACH: Yes, Mr. President. This --

ACTING PRESIDENT FLANAGAN: Senator Robach, can I interrupt for a second. We just need a little bit of quiet.

Senator Robach.

SENATOR ROBACH: In response to the large spike in gasoline costs that we've all experienced across the state, this bill would be an immediate response to that, and a

direct one to consumers, which would cap state and local taxable receipts of motor fuel and diesel motor fuel at $2 a gallon, eliminating the windfall to some governments who estimated their receipts at $2.

This keeps that money with the people who I believe deserve it, all of our constituents, but at the same time does not interrupt any government programming. It's estimated it would be about 8 to 10 cents a gallon, $400 million in aggregate, and roughly between $150 to $225, almost in a rebate form, if you would, per annum for the average two-car household in New York State.

ACTING PRESIDENT FLANAGAN: Senator Schneiderman.

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

ACTING PRESIDENT FLANAGAN: Senator Robach, will you yield?

SENATOR ROBACH: I will.

SENATOR SCHNEIDERMAN: How is sales tax on motor fuel and diesel motor fuel collected in the State of New York?

SENATOR ROBACH: Similar to other products. It's the only portion of gas that is taxed on the cost, not on the gallon itself. I.e., because I think this is the question you want, if you estimated the average cost of gas would be $2 in New York, you would roughly collect 16 cents in some counties -- 20 cents in others, if there's a local portion -- on that $2 purchase.

Now, with gas going $3 and above, that would become 10, 12 cents higher unanticipated revenue for states and localities. I guess -- I hope that answers your question. That's how it's taxed, on volume.

SENATOR SCHNEIDERMAN: Actually, I appreciate it, but my question is a little different.

My concern with this legislation is that I don't see any mechanism in this bill that requires any of the savings to be passed on to consumers.

So my question is, is it not the case that sales tax on motor fuel and diesel motor fuel is collected from wholesalers when

they accept delivery of a shipment of fuel?

SENATOR ROBACH: I think that won't change, that's correct, how it will be collected. But now it will only be capped at $2 rather than at the higher amount.

SENATOR SCHNEIDERMAN: And through you, Mr. President, what requirement is there in this bill that the wholesaler will charge any less for the fuel as they pass it along to the retailer? If it's here, please point it out to me.

SENATOR ROBACH: I am very hopeful that, like other bills we've done to protect consumers, as they become aware of that, the demand will be high.

And I also think that while they don't absolutely have to, just like other taxes that are imposed on gasoline, the public would be aware of it. Obviously, in the bottom-line price, there's no 100 percent guarantee. But I think most people would absolutely adhere to that.

And my guess would be as long as some retailers were doing that, to remain competitive, the rest would follow suit. That

would be my hope.

SENATOR SCHNEIDERMAN: And through you, Mr. President, I asked about whether there is anything to require wholesalers to pass along the savings that they benefit from by not having to pay the sales tax to retailers.

Is there any requirement here that the retailers, to the extent it is passed through to them, pass that savings through to the consumers?

SENATOR ROBACH: I don't think that there's -- whenever you're in a free marketplace, there's no guarantee. But I think, given our history, what's gone on in the large public scrutiny of those gas prices, I believe it will.

And also I think, as part of all of our jobs, I think we should also educate the public on what we're trying to do.

And I believe, from talking to retailers at the local level, they're not only in support of this bill but plan on passing along that saving. Because just like I, from my constituents, who have heard complaints,

issues, concerns, with the cost to working men, women, families and businesses, they've heard that at their retail establishments as well.

So while I cannot assure you 100 percent, as can't be done in any retail situation, I do think the likelihood is tremendously high. And I for one will be doing all I can to make sure the public, the media, and consumers are aware of it and it gets passed on at the pump.

I would just add to this, without this I absolutely know where the money will go -- to the State of New York, not to our constituents, not to our taxpayers, with zero percentage. And I, at least for one, am very much opposed to that idea. I don't think it's necessary for us to take more money than we anticipated from those people and their families.

SENATOR SCHNEIDERMAN: Through you, Mr. President, if the sponsor would yield for one more question.

ACTING PRESIDENT FLANAGAN: Senator Robach, do you continue to yield?

SENATOR ROBACH: Of course.

SENATOR SCHNEIDERMAN: Is there any mechanism provided, in this bill or anywhere else in the law, for any agency, state or local, to monitor whether or not this benefit to -- that clearly provides a benefit to the wholesalers, whether or not any of this benefit or what portion of this benefit is provided to the retailers and whether they, in turn, pass it on to consumers?

SENATOR ROBACH: Several overlap places. As exists now, from Weights and Measures to make sure that portion's right, to the Attorney General, who has some regulatory powers over that, as well as the Department of Taxation, to make sure everything from posting to collection is done properly.

SENATOR SCHNEIDERMAN: Thank you, Mr. President. Thank the sponsor. On the bill.

ACTING PRESIDENT FLANAGAN: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: There's a related bill that's, I guess, the next bill we're going to be addressing that I'm going to

attempt to offer a helpful suggestion in the form of an amendment on.

I think the problem with this legislation, which to me is a fundamental flaw, is what the sponsor has just acknowledged. Sales tax on motor fuel is paid by wholesalers when they take delivery of the fuel. That's it. There is no mechanism in the State of New York for monitoring whether they pass along any savings in sales tax to a retailer. It doesn't exist in the Attorney General's office. The price-gouging statute, which I will talk about later, doesn't apply to this situation.

Quite simply put, we are at the mercy of the oil industry. And I note that even Senator Bruno, on August 24th, when we were talking about the possibility of price gouging, said that -- stated that he was very concerned about oil businesses that are making up -- quote, making up to 58 percent more profits than they made last year.

We are in a situation where people are saying that, oh, because of the hurricane, oil prices have gone up. And yet if you

actually look into the evidence of this small portion of the oil supply that was disrupted by the hurricane, it looks very different. And our great U.S. Senator Schumer today actually addressed this issue and raised it and talked about it at the federal level.

If we are going to address the issue of increased prices, I think we have to ask a fundamental question. Is the oil industry playing straight with us, or are they taking advantage of a situation just to rack up profits unnecessarily because the supply has not been seriously diminished?

Now, I am going to offer a suggestion in the form of an amendment to Senator Marcellino's bill. What we really need to do is amend our price-gouging statute to give the Attorney General and local authorities jurisdiction to do this. In the absence of that -- and the sponsor can correct me if I'm wrong -- there is no provision of state law that provides for any punishment of any kind for wholesalers and retailers that just simply take the benefit of a sales tax reduction and don't pass it along to the

consumers. There is no downside.

And if you're relying on the oil industry to be free of collusion in the area of oil prices, I would urge you that this is probably the worst industry in the United States to pin those noble hopes on.

So I would suggest that absent a mechanism to monitor whether the tax is being passed through, absent a mechanism to deter the wholesalers and retailers from just keeping the money, what we're doing really is putting a lot of money -- and we know this is the case -- in the pockets of people in the oil business. Maybe the consumers would get some benefit from this; I don't know how much it would be. The sponsor has acknowledged he doesn't know how much there would be a problem.

We can do better than this. We should be looking at a way to ensure that price gouging is not taking place in our state. There are legal steps we can take. I'm going to talk about one later. But without that, I think this is a flawed approach to solving this very, very serious

problem.

Thank you, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Balboni.

SENATOR BALBONI: Mr. President, I think that as I've listened to my colleagues' discussion of this issue it's very difficult to be sitting here in the chamber and listen to the arguments against an effort to try to reduce the ultimate amount of gas taxes that people pay.

Because what we're missing is what all of us experienced when Katrina hit, as you drove around our neighborhoods and you had 90-cent-to-a-dollar increases overnight for the gas stations. And I don't know about you guys, but I sat around saying, Where's the AG? Where are the people who are going to look at price gouging? Where are all these different people who are going to take a look at how to protect the consumer? And you know what? Nobody was around.

Now we have a nice piece of legislation that at least talks about governmental intervention in an area that

obviously has demonstrated the fluctuations and the volatility that is going to continue to plague us.

And, Senator Robach, this is an excellent idea. It's the time for the idea. Because unfortunately, even though we've seen a reduction in costs recently, what we're also seeing is that there's huge volatility.

And the last thing -- you know, what we also don't ever do in this chamber, because it's against our interests, we don't look to the laws that are currently on the books. It is my belief that many of the laws that are currently on the books are not being used effectively to try to curb some of the abuses.

For example, nobody is talking about antitrust. Antitrust applies to gasoline stations and wholesalers. I mean, nobody talks about that. And yet it's just a coincidence that four stations on every corner seem to have the exact same gas price? You know, we don't talk about these things. But in the bigger context, we ought to be.

And of course, at the end of the

day, we should remember the angst that hit all of us when we just said it's just darn unfair that people are capitalizing on somebody else's misery.

I plan on voting in favor of Senator Robach's well-thought-out bill.

Thank you very much.

ACTING PRESIDENT FLANAGAN: Senator Paterson, why do you rise?

SENATOR PATERSON: Mr. President, if Senator Balboni would yield for a question.

ACTING PRESIDENT FLANAGAN: Senator Balboni, will you yield?

SENATOR BALBONI: Yes, I will.

SENATOR PATERSON: Senator Balboni, you said you're going to vote for the legislation, and then you gave all the arguments to vote against it.

Now, let me elaborate on that. You just talked about all the prices that went up simultaneously, the antitrust action, the issue of what would be apparent price gouging. You bypassed the Governor's office, which could have declared a state of emergency and blamed it on the Attorney General's office --

but we're going to let that go, because we understand.

SENATOR BALBONI: But actually, if I might, I just disagree with your premise. I don't think there would have been a basic declaration of an emergency.

SENATOR PATERSON: Well, then, in that case the Attorney General's office couldn't act.

SENATOR BALBONI: Mr. Speaker -- Mr. Speaker? Sorry.

(Laughter.)

SENATOR BALBONI: Mr. President, through you.

Going back to my days in the Assembly. It's because I'm sitting next to Winner. It's Winner's fault.

ACTING PRESIDENT FLANAGAN: Senator Balboni.

SENATOR BALBONI: Mr. President, perhaps the gentleman was involved in conversation, but I had actually said that this is the basis for the prosecution. Because if you go back to the business law and you take a look at what constitutes price

gouging and how you set up your investigation to prove that, this -- all of the things we've talked about in fact empower the Attorney General to do this very kind of action.

SENATOR PATERSON: All right, Senator. Then if the Senator would yield for a question.

ACTING PRESIDENT FLANAGAN: Senator Balboni, do you continue to yield?

SENATOR BALBONI: Yes, I do.

SENATOR PATERSON: Senator, what's your explanation for why, between August 29th and September 2nd right here in New York State, right in this area, the prices of oil went up from $2 to $3.48, and in New York City the prices went at high as $3.80?

SENATOR BALBONI: What is my explanation for that?

SENATOR PATERSON: What was the intervening cause, which is the effect that the prices went up?

SENATOR BALBONI: Senator Paterson, and I mean this with all due respect, but perhaps you and I can engage in a

discussion as to the effect of the mercantile exchange on the establishment of the prices on a market-based economy for gasoline. At which time, though, we would probably talk about things that happen six months down the line.

The question here is how can any retailer or wholesaler justify the increase of 90 cents on product that's already in the tank.

SENATOR PATERSON: Exactly.

SENATOR BALBONI: You know, and so part of that is also, though, long range. As you go forward, how do you protect the consumer? The cap is the way to do that right now, because it provides a break on the price costs.

SENATOR PATERSON: Senator Balboni.

SENATOR BALBONI: Yes.

SENATOR PATERSON: You've just asked me my own question back.

(Laughter.)

SENATOR PATERSON: So I'm going to answer it for you.

SENATOR BALBONI: I don't think I

asked the question. And if I did, I withdraw the question.

(Laughter.)

SENATOR PATERSON: Serving with you for eight years now, that is the best decision you've ever made.

(Laughter.)

SENATOR PATERSON: Mr. President, on the bill.

ACTING PRESIDENT FLANAGAN: Senator Paterson, on the bill.

SENATOR PATERSON: Senator Schneiderman laid out, I think, quite constructively the way in which taxes are paid and the fact that there's really no enforcement of this type of sales tax. So in other words, in concept, Senator Robach's concept is very good. But we don't have the enforcement capability to ensure that it actually happens.

The reality is that the same individuals who raised the price of oil are the same ones who faith has shown that they will now not just pocket the tax increase to go along with the skyrocketing rates that they

collected in the last three weeks.

So the first time it happens, we feel shame. But the second time, it's shame on us if we're going to give the same entities the decision-making capacity to determine whether or not they want to pass what would be these savings along to the consumer when, in fact, if they were concerned about consumers or anybody at a very difficult time and in a crisis in this country, they went right ahead and raised the prices.

As Senator Balboni pointed out, they sold you the same gas that was in their tank at $2 the week before for nearly $4 the week after. The same people did it. Now we're going to give them an extra opportunity by affecting the sales tax, which gives them a greater pool of resources to deal with.

Now, first of all, the estimate is $200,000 savings to the state if the -- $200 million, I'm sorry, and the local government another $400 million if they opt in. There are 9 million cars in New York State. So that would be, by my calculations, $44 per car. So a two-car household wouldn't

get a $150 to $200 savings, as Senator Robach is suggesting. It would be $88. So, first of all, it's only half as effective as the sponsor is claiming that it would be.

But, secondly, I don't think it's going to be effective at all. Because the issue as -- in terms of the savings, why we would want the money to go to the state rather than, I presume, to the companies, is because the same legislation that we're passing today that would inure to the benefit of consumers would raise costs to the state at the exact same amount that we'd be saving with a sales tax. I get that from the Syracuse Post-Standard of September 2nd.

So now when we look at what certainly appeared to be price gouging -- because if it wasn't, I'd sure like to know an example of what is -- we recognize that the hurricane, as both Senator Schneiderman and I believe Senator Balboni also really pointed out, had nothing to do with it. The rigs in the New Orleans area probably lost somewhere between 150,000 and 200,000 barrels of oil during that period, something approaching

nearly about 2 percent of the oil that is distributed around this country every day. When oil comes out of the ground to the time it gets in the gas tank, that's approximately a 4-month period of time. So there was nothing that should have promulgated that kind of effect.

Even the large rigs like the Shell rig, which controlled about 250,000 barrels of oil a day, wasn't even affected by the hurricane. You would have needed something with five times the effect on production to even get to 5 percent of the nation's production of oil daily. Our country produces about 20 million gallons of oil a day -- barrels of oil a day.

And so when we come after the fact and create this sales-tax incentive, we are really not addressing the major issues. If we were going to come back here and send a message to the federal government today, the message that we've got to send the federal government is that there may be a limited time that we can act on these fuels and oil reserves before they start to run out.

We have used, as a globe, about 1 trillion barrels of oil since it started being produced in the mid-19th century. Oil first started to be produced in 1859. The United States' oil production increased gradually until it hit about 10 billion barrels of oil a day midway through the year 1970. That number has come down ever since. Now it has dipped slightly below 5 billion barrels of oil a day.

And so with that decrease in production, the amount of use in this country is now 30 billion barrels per year. So when you look at the comparison, we are getting less and spending more.

By those calculations, we've got to determine how much fossil fuel and oil is left in our earth. If it is 2 trillion barrels, as many have suggested, then we've already used up half the supply. As you get to the bottom of the supply, it becomes more and more expensive to produce the oil. So this is a crisis that some people feel is so paramount that we would actually run out of the fossil fuel in the year 2029.

Our own government's energy experts say that I'm wrong, there's actually 3 trillion barrels of oil, of which we've used one, beneath the earth's surface. If that's the case, it would only add about 18 years to the expectancy before the oil actually runs out.

So what we're going to have to do is to find alternative fuels that extend this time until we can find the alternative fuel that would actually solve this crisis and make the conversion. But the conversion itself would take a number of years.

And that's what we need our colleagues in Washington to focus, that the issue is one that is time-sensitive. The ideas of wind, of solar power, of hydrothermal fuels are good, but they can't, as oil can, just go straight for production. Their effectiveness is measured by their ability to extract hydrogen from water.

Hydrogen is the lightest element in -- at least one of the lightest elements that we have. No matter how well you try to contain it, 3.4 percent of it escapes. That's

the best we've ever done. So therefore, any kind of use of hydrogen fuel at this point is really not going to be cost-effective. It would cost, and this is probably the first time I've ever used this term here on the floor, trillions of dollars to build the types of pipelines that we now pump oil to pump hydrogen.

So as you can see, it is probably not as effective as we think in terms of a conversion. What we're going to have to do is a conservation, a little at a time, to actually preserve and prolong our oil supply.

But the tax, the sales tax that we're proposing here today is not going to benefit us unless we can guarantee that the money gets in the hands of the consumer. I think that Senator Schneiderman illustrated that when you look at that system, there's nothing to guarantee that it's actually going to work.

So it's really my feeling, standing here today, that it was a good idea for us to come back. I commend Senator Bruno for bringing us back to discuss this. Together we

can implore the federal government that this is probably the most serious issue we can be facing now, when most of the other available oil around the globe is in the hands of many of our enemies.

And so I don't think that a sales tax would be in any way beneficial when the decision-making capacity of what the price of oil is is still something that we have no real ability to influence. And we just saw an example of that during the crisis last month.

ACTING PRESIDENT FLANAGAN: Senator Morahan.

SENATOR MORAHAN: Thank you, Mr. President. Would the sponsor yield for a question?

SENATOR ROBACH: Yes, I will.

SENATOR MORAHAN: Senator Robach, every year we vote to give a sales-tax holiday just before we open up the schools so that our consumers and our people can deal with the sudden need to buy a large amount of clothing. So we take it into our agenda to give a tax holiday for several weeks, or two weeks.

How is that any different on the

enforcement issue? How do we guarantee in that situation, which we unanimously vote for, that that tax gets back to the consumer?

SENATOR ROBACH: Correct, it's absolutely the same. That bill that we do to try and hold down the cost of clothing to folks would be exactly the perfect analogy.

We have no control over what the cost of the product is, but we can control what the cost of the tax is. In an attempt, again, to make that more additional beneficial to the consumers and our constituents.

SENATOR MORAHAN: So a retailer -- may I continue, Mr. President? Will the sponsor continue to yield?

ACTING PRESIDENT FLANAGAN: Senator Robach?

SENATOR ROBACH: I will.

SENATOR MORAHAN: So in other words, a retailer selling shoes or any other garment or footwear under $110, knowing that we're going to come out with this tax abatement, if you will, for the sales tax, could up their price, couldn't they?

SENATOR ROBACH: They could,

hypothetically. Absolutely.

SENATOR MORAHAN: Okay. Mr. President, will the sponsor continue to yield?

ACTING PRESIDENT FLANAGAN: Senator Robach, do you continue to yield?

SENATOR ROBACH: I will.

SENATOR MORAHAN: So in other words, it would be the marketplace now, the competition, that probably would hold a retailer down from trying to raise his price a little bit to, you know, capitalize --

SENATOR ROBACH: Absolutely. There is no question. Comments on what absolute guarantee rigidity is not there. But we would hope that the consumer would be somewhat aware of that and would put that pressure on.

In the case of gas, there is no question, Senator Morahan, that there are websites now that are posting gas. When gas was $2 a gallon, even I myself was not that particular at which corner I bought gas at. At the higher price, you can bet your life I now shop around for the lowest cost.

And I believe if we implemented

this, just like clothing or anything else, people would shop around for the lowest cost and would force the marketplace to adhere and past that savings on to the consumer.

SENATOR MORAHAN: Thank you, Senator.

SENATOR ROBACH: You're welcome.

ACTING PRESIDENT FLANAGAN: Senator Padavan.

SENATOR PADAVAN: Part of my reason for asking to speak was to make the very point that the Senator Morahan did.

Last year, at the request of the City of New York, we eliminated the sales tax on clothing and shoes of $110 or less. We did it unanimously, as I recall. And yet no one raised the question on the floor as to how we were going to stop Nike, as an example, of increasing their price to the retailer an amount equivalent to the reduction in the sales tax that we were providing.

No one raised that issue. The reason you didn't, and the reason it's not an issue today, is a competitive market.

Now, Senator Paterson, I know you

understand the commodities market a lot more than you indicated in your remarks. Commodities are sold not on the price of today, but the price of tomorrow, which could be months or years, in some cases. But generally it's months. Which is why most building owners, apartment owners, lock in a price, they lock in a price that they're going to pay for the coming heating season.

Now, if the wholesale price in the marketplace has gone crazy because of a hurricane or whatever the factors may be, then that wholesaler gets stuck holding the bag. And the owner of the building, the apartment building, as an example, pays that price.

However, I do agree with you that people can take advantage of the situation and disagree with you in terms of what exists out there to deal with those problems.

The Attorney General has found it possible -- and we applaud him -- to crack down on the securities industry, the insurance industry, and a whole bunch of others who were doing things at the expense of the consumer, adversely. People are going to jail. People

are paying huge fines.

And there is no doubt in my mind that he could crack down on the commodities industry, I don't care if it's oil or wheat or soybeans or hog jowls, crack down on that industry if they were taking advantage of the marketplace.

As a matter of fact, I think Senator Fuschillo has a bill in to increase the magnitude of those penalties that currently exist under law in terms of civil action.

The marketplace -- this was mentioned earlier today by Senator Bruno -- the marketplace will also provide a vehicle to ensure that this reduction, in terms of the retail price vis-a-vis the sales tax, is passed along to the consumer.

Last week I filled up a tank of gas, I think I paid $3.49. Today I filled up a task of gas before I left for Albany, and it was $3.07. What happened? What happened? Well, the futures contracts went down, number one, if I heard correctly on the radio and elsewhere. Well, they may go back up again.

But nevertheless, they went down between that week-and-a-half time frame.

One gas station on that corner competes with another gas station on that corner. Sunoco over there, Mobil over there. And 10 cents is a fair amount on a gallon. And if you're driving down the avenue and you see that one's 10 cents less than this one, where are you going to go? You're going to save the 10 cents, obviously. And so that will be another way of dealing with the issue.

Is it a hundred percent foolproof in every respect? No. No more than it was when we eliminated the sales tax on clothing and shoes. But there are enough vehicles out there -- the Attorney General, the State Tax Department, Department of Consumer Affairs, both state and city, all of those folks certainly have the authority to jump into the issue if people are taking advantage of it.

ACTING PRESIDENT FLANAGAN: Senator Volker.

SENATOR VOLKER: Mr. President, I just -- and I realize it's very tempting to talk about price gouging and all that sort of

thing. I used to be chairman of Energy some years ago. I spent some time with the Federal Energy Regulatory Commission. And I spent, of course, a lot of time -- I've been in the Legislature here for almost 34 years. You know, what you said, David, was very fascinating. You gave a lot of very good information.

But let me tell you what really caused -- and when somebody says that the hurricane, the worst natural disaster in the history -- some could argue in the history of the world -- by the way, if that Category 5 storm ever hit the levees in Holland, they would break. I just have to tell you that there doesn't seem to be an understanding, there were about 30 refineries that went down.

The problem in this country is thanks to the Clean Air Act, the federal government has total control of this issue. We don't have control of it. The Clean Air Act said everybody in this country now, whether you need it or not, has to have some additive in their gas. That means that all sorts of different refineries have to refine

different kinds of gas. That's a killer. That's the real reason we have this problem. We don't need ethanol in our -- we have some cleanest air in Western New York in the world right now. It's silly, but then on the other hand the Clean Air Act says you got to have something in there.

But the bigger problem is we haven't built a new refinery in 15 years. When you say why haven't the prices gone down, because about 12 or 15 refineries went back online -- but I'm just reading the refineries right here. ConocoPhillips, Bell Chase, Louisiana; 247,000, no power, major damage. ExxonMobil, 187,200, no power, water damage. They haven't even gotten to a couple of these refineries yet. They can't get to them. The media that sat in New Orleans and moaned about the hurricane didn't realize there were four states involved. It's such a terrible disaster that the energy industry is in chaos.

And one more thing I hesitate to tell everybody. The issue of what the price is going to do is going to be determined in the next three days, two days. If this

hurricane that's now a Hurricane 4, unfortunately -- it's up to 4; it could be a 5, Rita -- which is going by, apparently, Florida but headed straight for Houston, if it misses Houston, the price of gas, I will tell you, will be at $2.30 by next week. But if it hits Houston, it will be back up to three-something, whatever. Because the problem is a supply problem.

We don't have -- we have plenty of oil. We can't refine it fast enough. And if we don't deal with that -- the environmentalists have turned this whole thing into a mess of epic proportions. We have not built a refinery in 15 years. And the other house has refused to let us pass siting legislation because it's too sensitive.

The real reason for all these numbers doesn't have to do -- and I disagree with you, Senator Paterson. There's enough oil, I'm told, for the next century. On the other hand, what we're doing is by this stupid oil stuff we're now tapping into the natural gas problem.

One thing I will say, for the

economy of upstate New York this has been great. Coal is moving at a pace we have never seen before. And you can't believe how many industries have switched over to coal. And of course there's this myth that coal is dirty. It's not dirty in any plants in this state. You can't build a dirty plant anymore. It's impossible.

But I think the real point is to blame the oil people for this, when their refineries are down all over the place and when they can't get the flow of gasoline into places, is very nice, it looks good, but it doesn't make sense. The truth is, the market reflects the real reliability of oil. And the real reliability of oil right now, with the refineries down, is in deep, deep trouble.

Iraq doesn't matter. Iraq's not a big supplier of us anyways. That's the myth about Iraq. It hasn't been for a long time. We don't get much -- we use Canadian, we use all kinds of oil. But the problem is you can have all the oil you want, but if you can't refine it, what the hell good is it?

ACTING PRESIDENT FLANAGAN:

Senator Paterson, why do you rise?

SENATOR PATERSON: Mr. President, if Senator Volker does not agree with me after this, I'm just going to kill myself.

SENATOR SCHNEIDERMAN: Big supporter of the death penalty.

ACTING PRESIDENT FLANAGAN: Senator Paterson, are you asking Senator Volker to yield or are you on the bill?

SENATOR PATERSON: Say again?

ACTING PRESIDENT FLANAGAN: Are you asking Senator Volker to yield --

SENATOR PATERSON: Yes.

ACTING PRESIDENT FLANAGAN: -- or are you on the bill?

SENATOR VOLKER: I know you won't do what you just said. Go right ahead.

SENATOR PATERSON: See, Senator Volker, I think the -- when you explain the refineries that you're talking about, that's their annual production. And you explained it well.

But what I'm trying to explain to you is that if you divide that over a year, because it's a few weeks that they've been out

of service, and you take the end product and you add all those end products up, it only comes out to, at the most, about 300,000 barrels.

And I'm going to tell you who I'm citing as my reference on this. It's President Bush. Because when they went to President Bush and they asked him to use the National Strategic Petroleum fund, which has 320 million barrels of gas, he was very reluctant to use it because he knew that the stream of oil during that time was relatively uninterrupted. I'm not going to be shrill and say that it wasn't a problem, but it wasn't a problem that should have ignited that kind of reaction.

Do you see what I'm saying?

SENATOR VOLKER: I see what you're saying.

But I'm looking at the numbers here, and the plants that are down go to a million barrels a day. Just what I'm looking at here. I don't know where that information you had came from.

By the way, one of the reasons why

the gas prices have been going down is that the president waived the regulations on the EPA so that they don't have to refine separately. We're getting some gasoline now that is not -- probably doesn't have any ethanol in it. Because the president wisely realized that if he didn't do that, the price would go up even higher. The media, because they don't understand any of this stuff, didn't understand it.

But I think, David, the problem is the distribution in this country is so tight that if you knock down 12 refineries, that's half the country, almost. I mean, there's no way that you can avoid that.

And the reason, by the way, that other countries haven't -- the price hasn't been as high is because our country is the one affected by these refineries. The other countries aren't seeing the enormous escalation in prices we're seeing, and that's because this is a local problem.

You can't have the worst disaster in the history of this country -- which is exactly what just happened. It makes the

tsunami and all that stuff look like a small storm, comparatively. This is four states. It is a horrendous disaster that is going to take years to fix up. And part of the thing we've got to fix up is our whole energy industry.

ACTING PRESIDENT FLANAGAN: Senator Parker.

SENATOR PARKER: Mr. President, I believe there's an amendment at the desk.

ACTING PRESIDENT FLANAGAN: That's correct, Senator Parker.

SENATOR PARKER: I ask that the reading of the amendment be waived, and I ask to be heard on the amendment.

ACTING PRESIDENT FLANAGAN: The reading is waived, and you may be heard on the amendment.

SENATOR PARKER: Thank you very much, Mr. President.

I want to begin by thanking Senator Robach for a good attempt to address this crisis. I think that this disaster that Hurricane Katrina brought on us affected people in many different ways. I think that

this is one of the things that people did not, in fact, factor in.

And, quickly, it led to a great deal of not just panic emotionally but also a significant stress as it relates to people's pocketbooks. We are looking at significant increases to consumers, not just in fuel costs but home heating this winter. It's going to have a significant impact on things like school districts, who are going to have a high cost of fuel in terms of school buses. You know, we're looking at the cost of this, you know, rising into several billions as we look at it nationally.

And I think that, you know, this was a good attempt to -- this bill was a good attempt to give some relief to consumers quickly such that they won't have sticker shock, as I got when I drove through my district and saw prices jump quickly from around $2.50 to $3.80.

However, I think that it doesn't go quite far enough. And what my amendment does, it explicitly authorizes and empowers all localities in New York State, if they choose,

the option of providing the same type of exemption from the local sales tax for any fuel price exceeding $2 per gallon. So in the same -- just like we're saying do it for the state, we're also now providing an opportunity for localities who also provide taxes onto fuel to also provide those same kind of relief for consumers.

And so I ask my colleagues who are so interested in providing relief to consumers to vote for this amendment and allow not just the state tax to be relieved but also the taxes that localities add also to be relieved with this amendment.

ACTING PRESIDENT FLANAGAN: On the amendment, these Senators in agreement please signify by raising your hands.

THE SECRETARY: Those recorded in agreement are Senators Andrews, Breslin, Brown, Diaz, Dilan, Duane, Gonzalez, Hassell-Thompson, Klein, L. Krueger, C. Kruger, Montgomery, Oppenheimer, Parker, Paterson, Sabini, Sampson, Savino, Schneiderman, Serrano, A. Smith, M. Smith, Stachowski, Stavisky and Valesky.

ACTING PRESIDENT FLANAGAN: The amendment is not agreed to.

Any other Senator wishing to be heard on the bill?

Senator Krueger.

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

Although our conversation has been all over the place and not exactly on the bill, but I do have to revisit a couple of the points that were made on the floor during the fascinating debate.

For the record, I think it was Senator Morahan who made the argument that this kind of sales tax relief is not unlike sales tax relief that we give for clothing before school. Well, one of the differences, in fact, is --

ACTING PRESIDENT FLANAGAN: Senator Krueger, would you suffer an interruption?

SENATOR LIZ KRUEGER: Certainly.

ACTING PRESIDENT FLANAGAN: Just trying to get some quiet.

Senator Krueger.

SENATOR LIZ KRUEGER: Thank you, Mr. President.

One, sales tax on clothing is actually something we encourage people to buy. And technically, petroleum products are something we're supposed to be discouraging people from using. So the argument about the tax incentives again are not the same.

Second, the way we collect our tax on gas is very different than the way we collect our sales tax on clothing. And going back to Senator Schneiderman's earlier point about how would we ever document or prove whether consumers received the tax reduction, it's different because, on gas, the wholesaler pays the tax up front, based on the --

ACTING PRESIDENT FLANAGAN: Senator Krueger.

Thank you.

SENATOR LIZ KRUEGER: Thank you.

The reason there's a difference in the analogy of sales tax on clothing and shoes and sales tax collection on gas is the gas market is different and the wholesaler, not the retailer, pays the tax up front, based on

the market price of gasoline at the time they receive the delivery. Then the retailer pays the difference in prepaid sales tax by the wholesaler and the actual sales price when the price is above the projected price.

It is not an X percent over whatever the label says on the clothing store or the shoe store for buying a product. So in fact, you couldn't track it the same way. It's not a parallel analogy.

And again, are we talking about wanting to create a giant infrastructure involving AGs and DAs and tracking down who did what price at 6500 different gas stations in New York State, 90 percent of which are independently owned?

We also know that the price issue in gas actually doesn't have much to do with the retailer at any of these 6500 different gas stations and has everything to do with the commodities market, as Senator Padavan attempted to bring up in his discussion, and the mercantile exchange market, and the spot market for gas prices versus contracts.

And what we really need to be

addressing -- and unfortunately we're not, with this bill -- is the fundamental question of who is controlling these gas prices, why are they skyrocketing out of control, doesn't really have anything to do with Hurricane Katrina. Senator Volker made very eloquent arguments about that.

But in fact we know from our own research and from our own energy experts in New York State that New York State's gasoline supply was already in the tank, so to speak, at least a four weeks' supply, when Katrina hit. The prices didn't go up the next day, the day after, the day after that because of Katrina.

And it didn't go up starting with Hurricane Katrina. Oil prices more than tripled since late 2001, before Hurricane Katrina. Between '99 and 2003, average household expenditures on gasoline, heating oil and natural gas increased more than 35 percent, and yet industry costs did not increase during this period, leading to record profits.

If the gas price in New York State

remains at the current average of $3.25 a gallon, New York drivers will be paying $7.2 billion more than they did last year for gasoline, a $7.2 billion increase to New York drivers.

So even if I supported this bill -- and, Senator Robach, I'm sorry, I cannot -- a $100 million savings on a new cost of $7.2 billion is not addressing the problems of the cost of gas in this state and for our citizens.

And if the costs of oil and gas remain at historically high levels, the cost of almost all other consumer products in all the sectors of our economy are going to be affected. So I ask at the close, I suppose, of this special session, what are we really doing to address this problem for our state?

Again, five major oil companies control 62 percent of the retail gasoline market, and 10 companies control close to 80 percent of our oil refinery capacity. Between 1997 and 2002, 34 major oil and gas companies merged into 13, 15 refining companies merged into seven. And the federal

government's U.S. Government Accounting Office found in 2004 that these mergers, increased market concentrations, resulted in higher gasoline prices.

A small number of firms dominate and control our market. It is inelastic. And they control what goes into the market and what we pay. The extremely high barrier to entry into the market makes it impossible for competitors to compete or offer lower prices. And the companies in control are making a killing at our expense.

The U.S. Federal Trade Commission concluded in 2001 that oil companies intentionally withheld supplies of gasoline from the market as a tactic to drive up prices as a profit-maximizing strategy. It can't come as a shock to us here in 2005 that they're doing the exact same thing because of Katrina. They're holding back supply to increase the cost. Have we not remembered Enron and the electricity story of California? It's exactly the same story.

And it's not hard to prove. The profit margins of our top five oil companies

have increased in the second quarter of 2005 by double digits. ExxonMobil went up 32 percent the second quarter of 2005. British Petroleum, up 37 percent. Shell, up 35 percent. Chevron, up 12.8 percent. And ConocoPhillips, up 55 percent. We're going to pay $7.2 billion more for gas in this state this year than last year because these companies have figured out how to control the market and the prices. And, frankly, having a debate with about whether somebody would keep 4 cents more in their pocket if we pass this law does nothing to address this.

The federal government has allowed this to take place. They have allowed the oil industry to take control in a monopoly model of our gas and petroleum industry. There is not necessarily that much we can do at the state level, to go back to my earlier statements this morning -- excuse me, earlier this afternoon. The federal government has to act, and they have to act in the right direction.

And yet there are just a few things we can do here today. We can follow up with

price gouging. And we can work together to demand that federal laws change and we take back the power of the people over the costs of their energy.

And it is outrageous -- and I repeat, outrageous -- that this is all documented by federal reports that the profit margins are skyrocketing, and we're arguing over 4 cents a gallon and who might actually collect it if we pass this law.

So I'm sorry, Senator, I know you have a good goal here. But this bill will not address the problem of the state and, in fact, will probably create a new set of regulations we won't be able to implement, negatively impacting small businesses. And we've talked about the problems of small gas station owners here before. Most of them are independents. They're not the guilty parties and they're really not the culprits, as angry as we all might be at having to fill up our cars at these ridiculous prices.

We have to look at the big picture, and the big picture is a federal picture and questioning why we allow so few to control the

prices and the destiny for so many.

I'll vote no on this bill, but I hope we will return to this chamber to really focus on the long-term issues of energy pricing in this state.

Thank you, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Valesky.

SENATOR VALESKY: Mr. President, briefly on the bill.

ACTING PRESIDENT FLANAGAN: Senator Valesky, on the bill.

SENATOR VALESKY: Thank you, Mr. President.

I have listened intently to arguments on both sides of this issue. After all, this is probably the single reason why we are here today on this twentieth day of September.

I'm sure many of you have heard from your constituents about this issue, probably more than any other issue over the last month and even before. Even before the hurricane, high gas prices throughout the summer and going back into the spring.

This is a bill that I think we ought to be supporting because our constituents are demanding that we take action. Of course the federal government needs to take a more aggressive role. But the people that I hear from don't want to hear the blame game. They want to know that their elected officials at the federal level, at the state level are doing all that they can to do something about high gas prices.

I have, in my role as ranking member of the Senate Agriculture Committee, spent a great deal of time this summer visiting family farms, talking with members of the agricultural industry, the number-one industry in the state of New York. And to a person, they have told me the kind of impact that these high fuel costs are having on their ability to do business.

Senator Robach indicated to us earlier in this debate the average cost for all of us. But for a family farmer who is struggling to make ends meet, you can imagine, as they harvest their crops this fall, the kind of impact that these high fuel prices

have.

This bill, is it the perfect bill? I don't know if it's the perfect solution. But it is something that we ought to be doing here in the State of New York. I certainly encourage all of my colleagues on both sides of the aisle to support this measure today.

Thank you, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Wright.

SENATOR WRIGHT: Thank you, Mr. President.

As the chair of the Energy Committee, I found this debate for the last half hour extremely enlightening. But as someone a lot smarter than me once said: It's the taxes, stupid. That's what we're talking about, our taxes.

The State of New York does not control global consumption. The State of New York does not control global prosperity. The State of New York doesn't control the refinery capacities. So everything that makes up the cost of the product is essentially beyond the control of New York State -- and

not just the State of New York, but the other 49 states as well. It has to be addressed, as has been pointed out, at the federal level.

What Senator Robach has rightfully attacked is what we can control here in the State Legislature, the taxation. That's what this is about. Do you or do you not want to cut the taxes to the people of this state when it comes to their gasoline? I do. That's what my constituents want. They are tired of an escalating tax that increases every time the volatility of the gasoline price changes.

What Senator Robach appropriately suggests is a flat tax, a flat tax that is fixed, a flat tax that is capped, a flat tax that does not grow and therefore, as consumers, we will not pay that tax. And I for one understand if a tax is high and a tax is low, I'm paying less tax.

I'm willing to rely on the competitive market to make sure I get treated fairly, as well as all of the agencies that already exist. We don't need another federal program or another state program to cut New York State taxes. We can do that right

here. It's simple. Cut them. And by doing so, we will reduce the price of gasoline some 10 cents.

I don't know about you, but in my neck of the woods it was $3.65 not a couple of weeks ago. And I spent an awful lot of time, as did most of my constituents, trying to find how I could save a nickel, let alone a dime. And a dime on every gallon adds up when you're driving 40 miles a day back and forth to work, when you're doing it every day. When you drive to car to get to church, when you drive a car to go to your high school basketball game.

Everything we do in rural New York involves a car. And every time you use that vehicle, you're consuming gasoline. And at 10 cents a gallon, we're saving our taxpayers money.

I frankly don't understand why it took us so long. It's a relatively simple issue this afternoon. We eliminated sales tax on energy-efficient appliances earlier this afternoon by a 61 to zero vote, because we're all in favor of energy efficiency. And we

eliminated that tax without a problem. Now, when it comes to taking care of somebody's principal costs in terms of gasoline in rural areas of this state, we debate whether or not we're going to receive it.

I believe we're going to receive it. I believe if we have the opportunity to cut the tax, take the opportunity now. And in doing so, that will further enable us to look out for the seniors. Because let's not forget, we've already approved that program. Earlier this afternoon we agreed that the windfall would pay for the heat program to our seniors. But we don't get it if we don't cut the tax.

So let's get about the business. I encourage all my colleagues, look at what we're dealing with. We're talking about cutting taxes. All the other global competitive issues will get sorted out, but not by the New York State Legislature and not this afternoon. What we can do is what we are capable of doing, and that is reducing this tax. I'm fully prepared to vote yes anytime anybody else is.

Thank you, Mr. President.

ACTING PRESIDENT FLANAGAN: Senator Parker.

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

ACTING PRESIDENT FLANAGAN: Senator Parker, on the bill.

SENATOR PARKER: Thank you.

Again, I want to take the opportunity to thank the sponsor of this bill for really having some vision about how we relieve, give some financial relief to taxpayers and to consumers. Because, you know, as we all agree, that's one of the things we love to do.

And I certainly respect the chairman's perspective on this. As the ranker on Energy and Telecommunication, we've had a great opportunity to talk about these issues and I'm glad to say that we more often agree than not. I think this is one of those rare times that we're going to disagree.

And I'm moved by the fact that we have not paid attention to what's really happening. We're looking at the doughnut

hole. You know, everybody's concentrating on the doughnut hole; nobody's looking at the doughnut. And the real doughnut here is that Hurricane Katrina did not cause prices to jump.

And in fact, what we ought to be doing and what we have not done here, ladies and gentlemen, is that we have not gone after, you know, price gougers. We have not put forth a bill, we have not had any significant debate on what do we do about price gouging, which is what caused a jump in 24 hours of 70 to 80 cents statewide. And until, in fact, we do that, we're not really dealing with what we have to deal with.

I also want to challenge two of the comments made by my colleagues across the aisle, one of which is this idea that we have a competitive market in the fuel industry. There is not a competitive market. And you have to really, you know, pull out the Fortune 500 and figure out that half these companies, including Sunoco, Mobil and Exxon, are owned by the same company. There is no competitive market.

And so when you talk about the difference between what we're doing when we are giving people taxes back on clothes underneath $110 and what we're doing here, it is apples and oranges. Because we're talking about a very competitive retail market as relates to retail clothing items and a noncompetitive market when you're talking about fuel companies.

The second thing is that I would disagree with Senator Wright as it relates to this idea that in fact cutting a tax in this particular case is going to give us a windfall. In fact, I don't understand how you cut taxes and get a windfall. This is the same kind of problem as led us into a multi-trillion-dollar deficit on the national level.

And in fact I argue that if we're going to talk about, you know, doing the enhanced STAR or giving money to LIHEAP, we in fact ought not to -- which is what the Manhattan Institute has said, what every other major energy analyst around the country has said. In fact, cutting the local taxes in

fact would be the wrong way to go.

And so by cutting the local taxes, how do you create a windfall when you're not collecting money? At most, what you're going to do is raise people back up to the level at which they're consuming that's now dropped because people can't afford to drive their cars.

But to address that all of a sudden we're going to have people running to the pumps just because we've cut, you know, maybe 4 cents that they may not even get -- because I, frankly, don't the same trust that Senator Robach and Senator Wright have in the fuel industry that they're going to be passing these taxes on to the consumers right as soon as we pass this bill.

And so for those reasons, I'm going to be voting no on this bill.

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

Debate is closed.

The Secretary will ring the bell.

Read the last section.

THE SECRETARY: Section 3. This

act shall take effect on the 30th day.

ACTING PRESIDENT FLANAGAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT FLANAGAN: Senator Sabini, to explain his vote.

SENATOR SABINI: Thank you, Mr. President.

I listened to the debate on this issue, and I was torn because I do feel that while essentially there is a difference between this and suspending the sales tax, because it's paid -- the sales tax is paid by the purchaser, not by the provider, as it is in gasoline.

But in listening to some of the debate, including the debate that -- or the reasons that my colleague Senator Valesky raised, and understanding that many of our residents in New York State do depend on the auto for the necessities of life -- going to the store, going to school, picking up any essential items to conduct their lives -- that essentially he's right, this makes life a little better for those people. And that's

why we're supposed to be in government, to make things a little better for people.

So while I don't think this is the ultimate silver-bullet solution, I think it is better than not doing it, and I share his assertion that this will make things a little better for New Yorkers no matter where they are.

I'd also like to remind my colleagues, as the ranker on the Transportation Committee, that we have a bond issue coming up. And one of the ways to conserve fuel, the bond issue will do twofold: Increase mass transit and make the current roads we have more fuel-efficient.

And we should be urging New Yorkers and urging editorial boards and urging interest groups to support that bond issue, since we're the ones who helped put it up before the voters. That will go a long way to saving energy as well.

So I'll be voting aye. Thank you.

ACTING PRESIDENT FLANAGAN: Announce the results.

THE SECRETARY: Those recorded in

the negative on Calendar Number 1998 are Senators Andrews, Breslin, Diaz, Dilan, Duane, Gonzalez, Hassell-Thompson, L. Krueger, Parker, Paterson, Schneiderman, A. Smith and Stavisky.

Those Senators absent from voting on Calendar Number 1998: Senator Onorato.

Ayes, 47. Nays, 13.

ACTING PRESIDENT FLANAGAN: The bill is passed.

THE SECRETARY: Calendar Number 1999, by Senator Marcellino, Senate Print 5969, an act to amend the Agriculture and Markets Law.

ACTING PRESIDENT FLANAGAN: Senator Smith.

SENATOR ADA SMITH: Thank you, Mr. President. Will the sponsor yield for a couple of questions?

ACTING PRESIDENT FLANAGAN: Senator Marcellino, will you yield?

SENATOR MARCELLINO: Yes.

SENATOR ADA SMITH: Thank you.

Senator Marcellino, are you familiar with high-volume service stations?

SENATOR MARCELLINO: I believe there are several in my district.

SENATOR ADA SMITH: Are you aware that many of these stations receive four and five loads of gas per day?

SENATOR MARCELLINO: I do not know of any station that receives four and five deliveries on a daily basis.

SENATOR ADA SMITH: Well, there are many in the City of New York.

Will the sponsor yield for another question?

ACTING PRESIDENT FLANAGAN: Senator Marcellino, do you continue to yield?

SENATOR MARCELLINO: Yes, I do.

ACTING PRESIDENT FLANAGAN: Senator Smith.

SENATOR ADA SMITH: Are you aware that in penalizing the service stations for their volume that these prices would inevitably be passed on the next day rather than that same day, since you're only limiting it to one price hike per day?

SENATOR MARCELLINO: Senator, the State of New Jersey, the State of

Pennsylvania, the State of Connecticut all have this legislation now in law -- including the State of Wisconsin, all have the legislation in law.

The gasoline in New Jersey, Connecticut, and Pennsylvania -- I don't know about Wisconsin -- all lower than New York State. All less expensive. They've incurred no closings, they've incurred no problems in keeping the stations moving. They have high-volume stations there too. There seems to be no difficulty in those other states. So I don't see any difficulty here.

The trick is to put some stability for the consumer, so if he has to in some cases fill up twice a day, as some people do, because they travel extensively as part of their jobs -- if they have to fill up twice a day, they should see the same price of gas from the morning to the night.

SENATOR ADA SMITH: Would the sponsor yield for one more question?

ACTING PRESIDENT FLANAGAN: Senator Marcellino, do you continue to yield?

SENATOR MARCELLINO: Yes, I do.

ACTING PRESIDENT FLANAGAN: Senator Smith.

SENATOR ADA SMITH: Senator Marcellino, are you also aware that on each delivery there is a difference in pricing?

SENATOR MARCELLINO: Yes, I am.

SENATOR ADA SMITH: Would the sponsor continue to yield?

SENATOR MARCELLINO: Yes.

SENATOR ADA SMITH: Well, who should bear it, the small service station owner, who is our constituent as well --

SENATOR MARCELLINO: Yes. Yes, that person is. And they're a victim too of the greed of the oil companies. I won't contest that. That's a fact. They're victims as well.

But the consuming public who has to depend on gasoline to deliver milk, to deliver bread, to support their school districts, the municipalities, all have to pay for that. The price of food is going up. And there was an article in the paper recently about a fear of inflation due to rapidly increasing gasoline prices impacting the price of a gallon of

milk.

I think we need some stability to this system.

SENATOR ADA SMITH: Will the sponsor yield for one last question.

ACTING PRESIDENT FLANAGAN: Senator Marcellino?

SENATOR MARCELLINO: Sure. Absolutely.

SENATOR ADA SMITH: And I want to say that I agree that the consumer should not be punished.

Therefore, wouldn't you agree that we should be putting this penalty on the distributor or the trucker rather than the small businessperson?

SENATOR MARCELLINO: If I could take care of BP and Sunoco and Conoco and all the other guys in the New York State Legislature, I certainly would love to do that. But I don't think it's within our purview to deal with them.

We can control prices at the pump and prevent gouging at the pump. I had it in my district, prices going up three and four

times a day. Not because of three and four deliveries a day. The New Jersey Turnpike, same thing. They're high-volume dealers. And so is the New York State Thruway, they're high-volume. They're not jacking the price up, and in many cases they'll pump the gas for you.

SENATOR ADA SMITH: On the bill.

ACTING PRESIDENT FLANAGAN: Senator Smith, on the bill.

SENATOR ADA SMITH: Thank you, Mr. President.

We're going to have disreputable people no matter where, and in all lines of business. But I believe that as legislators we have a responsibility to punish those that are responsible. And in this instance it is not the small businessperson who may have a gas station, but it is the distributor or the trucker that should bear the burden of this fine. And it certainly should not be our consumers.

Thank you.

ACTING PRESIDENT FLANAGAN: Does any other Senator wish to be heard?

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President. I believe there's an amendment at the desk. I ask that the reading of the amendment be waived and that I be heard on the amendment.

ACTING PRESIDENT FLANAGAN: The reading is waived, and you may be heard on the amendment.

SENATOR SCHNEIDERMAN: Thank you.

I have to say that, as Senator Paterson and several others have noted, for better or worse, this session has raised the level of debate and awareness and consciousness of the state's substantial energy problems.

I do not believe that some of the bills that have come before us will accomplish their intended result, but I don't think there's any question that on both sides of the aisle we are attempting to take actions to actually reduce energy prices, to encourage alternative sources of energy.

However, my amendment that I'm offering today, which really relates to

Senator Marcellino's bill and also to Senator Robach's bill that we discussed earlier, provides a change in law that we can make that would have a substantial effect, I believe, on the real problem.

This amendment would amend the price-gouging statute of the State of New York so that the Attorney General and district attorneys in this state can actually enforce the law and prevent price gouging.

Now, the problem with the price-gouging statute as it's currently drafted is that it requires, first of all, the Governor to declare a state of emergency and that it has no criminal provision in it of any kind limiting its use to the Attorney General's office.

This amendment would change the law in two ways. And Senator Robach has expressed hope that distributors would pass reductions in the sales tax along to consumers. We've heard from everyone out in the wake of this monumental price increase that there appears to be some portion of it that is not due to the hurricane, that is due to profiteering in

the wake of the hurricane.

So I would suggest to you -- and this is in all sincerity -- on the other side of the aisle, we should in our house amend the price-gouging statute to make it easier for the Attorney General to take action and to provide a criminal penalty for price gouging. I'm just suggesting a violation, but that gives jurisdiction to the state's district attorneys. These are the people who will be able to monitor whether or not distributors are profiteering or they're passing the savings along.

Absent this, Senator Marcellino's bill and Senator Robach's bill are toothless tigers. There is no enforcement mechanism, there is no monitoring mechanism.

And I would suggest to Senator Balboni, who has expressed an interest in the powers of the Attorney General's office, that in fact the price-gouging statute is not something that can currently be used by our sitting Attorney General or by future attorneys general unless we amend it.

So this is an honest proposal,

ladies and gentlemen. Maybe we're not going to do it today, because I get the feeling that our amendments seldom prevail. But I would suggest that someone over there take it and submit it and take a look at it. This is something we can do to prevent price gouging.

And there is no question, I believe, in the mind of anyone here that even if there were some other causes of the price increases, there were people increasing prices far more than they needed to because of their own increased costs. That's something we can stop. That's something we can do something about.

I hope that everyone will support this amendment. Let's change the price-gouging statute and provide some teeth to the laws that we're attempting to change today.

Thank you.

ACTING PRESIDENT FLANAGAN: On the amendment, those Senators in agreement please signify by raising your hands.

THE SECRETARY: Those recorded in agreement are Senators Andrews, Breslin,

Brown, Diaz, Dilan, Duane, Gonzalez, Hassell-Thompson, Klein, L. Krueger, Montgomery, Oppenheimer, Parker, Paterson, Sabini, Sampson, Savino, Schneiderman, Serrano, A. Smith, M. Smith, Stachowski, Stavisky, and Valesky.

ACTING PRESIDENT FLANAGAN: The amendment is not agreed to.

Any other Senator wish to be heard on the bill?

Debate is closed.

The Secretary will ring the bell.

Read the last section.

THE SECRETARY: Section 2. This act shall take effect one week after it shall have become a law.

ACTING PRESIDENT FLANAGAN: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

Those Senators absent from voting on Calendar Number 1999: Senators C. Kruger and Onorato.

ACTING PRESIDENT FLANAGAN: Senator Paterson, why do you rise?

SENATOR PATERSON: If we could reopen the roll call, there might be a couple of members who want to vote no.

ACTING PRESIDENT FLANAGAN: The Secretary will read the roll call.

THE SECRETARY: In relation to Calendar Number 1999, those recorded in the negative are Senators Paterson, Schneiderman and A. Smith.

Absent from voting: Senators C. Kruger and Onorato.

Ayes, 56. Nays, 3.

ACTING PRESIDENT FLANAGAN: The bill is passed.

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

SENATOR BRUNO: Mr. President, is there any other business that should come before us at the desk?

ACTING PRESIDENT FLANAGAN: No, Senator Bruno.

SENATOR BRUNO: There is none?

ACTING PRESIDENT FLANAGAN: There is none.

SENATOR BRUNO: There being no

further business to come before the Senate, I would move that we stand adjourned, subject to the call of the leader, intervening days to be legislative days.

And have a safe passage, all of you.

Thank you, Mr. President. Move we adjourn.

ACTING PRESIDENT FLANAGAN: The Senate stands adjourned at the call of the Majority Leader, intervening days to be legislative days.

(Whereupon, at 7:19 p.m., the Senate adjourned.)