NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

March 31, 2006

10:35 a.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, Thursday, March 30, the Senate met pursuant to adjournment. The Journal of Wednesday, March 29, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT MORAHAN: 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 Bruno.

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

ACTING PRESIDENT MORAHAN: Yes, there are, Senator.

SENATOR BRUNO: I would request that we make them at this time.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: On page 24, Senator Johnson moves to discharge, from the Committee on Finance, Assembly Bill Number 9554C and substitute it for the identical Senate Bill Number 6454C, Third Reading Calendar 496.

And on page 26, Senator LaValle moves to discharge, from the Committee on Finance, Assembly Bill Number 9908 and substitute it for the identical Senate Bill

Number 6696, Third Reading Calendar 522.

ACTING PRESIDENT MORAHAN: Substitutions ordered.

Senator Bruno.

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

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: By Senator Parker, Legislative Resolution Number 4339, honoring the American Federation of Teachers Black Caucus, New York State Chapter, upon the occasion of hosting its Fourth Annual Scholarship Dinner Dance.

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

(Response of "Aye.")

ACTING PRESIDENT MORAHAN: Nay?

(No response.)

ACTING PRESIDENT MORAHAN: The resolution is adopted.

Senator Bruno.

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

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: Calendar Number 493, Senate Budget Bill, Senate Print 6451A, an act making appropriations for the support of government: Legislature and Judiciary Budget.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 44.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 495, Senate Budget Bill, Senate Print 6453C --

SENATOR SCHNEIDERMAN: Lay it

aside.

ACTING PRESIDENT MORAHAN: The bill is laid aside.

THE SECRETARY: Calendar Number 496, substituted earlier, Assembly Budget Bill, Assembly Print Number --

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT MORAHAN: The bill is laid aside.

THE SECRETARY: Calendar Number 499, Budget Bill, Senate Print 6457C, an act to amend the Social Services Law and others.

SENATOR SCHNEIDERMAN: Lay it aside.

ACTING PRESIDENT MORAHAN: The bill is laid aside.

THE SECRETARY: Calendar Number 500, Senate Budget Bill, Senate Print 6458C, an act to amend the Education Law.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MORAHAN: The bill is laid aside.

THE SECRETARY: Calendar Number 502, Senate Budget Bill, Senate Print 6460C,

an act to amend the Tax Law.

SENATOR PATERSON: Lay it aside.

ACTING PRESIDENT MORAHAN: The bill is laid aside.

THE SECRETARY: Calendar Number 522, substituted earlier by Member of the Assembly Greene, Assembly Print Number 9908, an act to amend the Public Health Law.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Ayes, 44.

ACTING PRESIDENT MORAHAN: The bill is passed.

THE SECRETARY: Calendar Number 623, by the Senate Committee on Rules, Senate Print Number 7166, an act in relation to providing.

SENATOR SCHNEIDERMAN: Lay it

aside.

ACTING PRESIDENT MORAHAN: Read the last section.

Did they say lay it aside? Didn't hear it. Sorry.

Lay it aside.

You have to speak up, fellows.

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

SENATOR BRUNO: Mr. President, can we at this time have the controversial reading of the calendar, starting with Calendar Number 502.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: Calendar Number 502, Senate Budget Bill, Senate Print 6460C, an act to amend the Tax Law.

SENATOR PATERSON: Explanation.

ACTING PRESIDENT MORAHAN: Senator Johnson, an explanation has been requested.

SENATOR JOHNSON: Mr. President, this is a bill which enacts the various tax cuts and tax credits that are included in our

budget. And many things people have been asking about -- child credit; married taxpayers, taking away the marriage penalty; STAR rebates; New York City personal income tax credits; National Guard exemptions -- various things which we've all been looking for are in this bill.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Krueger.

SENATOR LIZ KRUEGER: Thank you, Mr. President.

If the sponsor would please yield.

ACTING PRESIDENT MORAHAN: Senator Johnson, will you yield?

SENATOR JOHNSON: Yes, Mr. President.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR LIZ KRUEGER: Thank you.

If, through you, Mr. President, the sponsor could explain, in the school tax relief STAR rebate program, which is estimated to cost the state of New York $805 million in revenue this year and $960 million in lost

revenue in the following year, what percentage of that revenue loss or tax rebate will go to people in the City of New York.

ACTING PRESIDENT MORAHAN: Senator Johnson.

SENATOR JOHNSON: Approximately 30 percent.

SENATOR LIZ KRUEGER: Approximately 30 percent.

SENATOR JOHNSON: Right.

SENATOR LIZ KRUEGER: Thank you.

If, through you, Mr. President, the sponsor would continue to yield.

ACTING PRESIDENT MORAHAN: Senator Johnson, will you continue to yield?

SENATOR JOHNSON: Yes.

ACTING PRESIDENT MORAHAN: The Senator yields.

SENATOR LIZ KRUEGER: Thank you.

And if, through you, Mr. President, the sponsor could estimate for me the total lost revenue in this year for these tax-cut proposals.

ACTING PRESIDENT MORAHAN: Senator Johnson.

SENATOR JOHNSON: Well, I don't call it lost revenue. I call it some fairness for the taxpayers of this state who are going to save on their tax bills and possibly survive for another year economically.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

SENATOR LIZ KRUEGER: I'm sorry, if through you, Mr. President, the sponsor could still give me an answer -- even if we disagree about whether we're saving the people of New York taxes or we're losing revenue -- what the estimated total change in revenue is from this bill.

ACTING PRESIDENT MORAHAN: Are you asking the Senator to yield again?

SENATOR LIZ KRUEGER: I'm sorry, Mr. President, yes.

ACTING PRESIDENT MORAHAN: Senator Johnson, will you continue to yield?

SENATOR JOHNSON: Yes, Mr. President.

For the fiscal year 2006-2007 it is 1.66 million -- billion. Billion, million -- a lot of zeros after it.

SENATOR LIZ KRUEGER: 1.66 billion, I think I heard?

SENATOR JOHNSON: That's correct, yes.

SENATOR LIZ KRUEGER: 1.66 billion.

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

SENATOR JOHNSON: Yes.

SENATOR LIZ KRUEGER: Thank you.

One of the new proposed tax reductions is Empire Zone qualified investments, which my projections show that would reduce state revenue by $50 million, not in the next fiscal year but rather in 2007-2008. This is based on people who invest over $500 million to qualify for additional credits.

Have we done any outyear analysis of how much this would grow in years beyond that first year? So it's $50 million, I believe, reduced state revenue for fiscal year 2007-2008, but there's no data I could find on how much this would grow over time. And this is the type of credit that would likely grow

significantly.

ACTING PRESIDENT MORAHAN: Thank you.

Senator Johnson.

SENATOR JOHNSON: I think your question was about the Empire Zone tax credits. Is that correct?

SENATOR LIZ KRUEGER: Yes. How much that would be projected to cost the State of New York in lost revenue beyond the first year, which I believe is a $50 million projected loss of revenue.

SENATOR JOHNSON: Yeah, that -- $50 million and possibly, altogether, $100 million over the following years.

SENATOR LIZ KRUEGER: Altogether a hundred million dollars is projected.

What on the year after that? I'm sorry, Mr. President, if through you -- I'm just trying to clarify.

ACTING PRESIDENT MORAHAN: The Senator continues to yield.

SENATOR JOHNSON: We cannot see beyond a couple of years right now.

SENATOR LIZ KRUEGER: I could not

hear the answer, Mr. President.

SENATOR JOHNSON: Okay, it's $50 million for 2007-2008. Nothing for the 2006-2007 budget. Only 2007-2008, $50 million. A hundred million in the outyears, in the succeeding years.

SENATOR LIZ KRUEGER: So I believe I'm hearing that it would be projected to be a hundred million annual after the first year? I apologize, I'm having a little trouble hearing.

SENATOR JOHNSON: It's not annual. That's the total amount of money we expect to be out in the outyears, a hundred million total. Not annually. That's the consecutive following years.

SENATOR LIZ KRUEGER: For 2006-2007 and 2007-2008 combined, you're anticipating a hundred million?

SENATOR JOHNSON: Well, 2006-2007 is really -- there's nothing anticipated in 2006-2007.

SENATOR LIZ KRUEGER: And $100 million in 2007-2008?

SENATOR JOHNSON: No, $50 million

in 2007-2008. And subsequently the total altogether would be $100 million. Period. Finito.

SENATOR LIZ KRUEGER: Thank you. Thank you, Mr. President.

On the bill, Mr. President.

ACTING PRESIDENT MORAHAN: Senator Krueger, on the bill.

SENATOR LIZ KRUEGER: Oh, if I could take one second. Thank you.

On the bill, Mr. President.

ACTING PRESIDENT MORAHAN: Senator Krueger, on the bill.

SENATOR LIZ KRUEGER: Thank you.

There are some reasonable tax cuts and tax credits that the State of New York should all explore making in each and every fiscal year. And there are some sections of this bill that I in fact can and do support, including the exemption of sales and use tax on clothing that we are not resuming on April 1, 2006, which follows through on a commitment we made to the people of New York over the last several years that we would finally end the sales tax at the state level

on clothing and footwear priced at $110.

There are continuations of changes here that would affect low-income housing. There's a proposal to eliminate the marriage penalty, which seems like a fair and equitable model for the people of New York State -- why should they continue to live under unequal treatment as to whether they are filing as living together, married, or not married?

There are a number of specific community-based tax credits that I think are important and valuable in this bill. I think the elimination of the S corporation differential will mean a great deal to small businesses in the State of New York, who frequently are ignored when it comes to tax credits or tax policy, while large corporations always seem to be at the table getting their advantages, through us in the Legislature, through tax reductions and tax credits. So the elimination of the S corporation differential seems like a long overdue change on behalf of tax fairness to smaller businesses in the state.

And yet there are so many tax

credits and rebates and cuts in this bill that I cannot justify to myself, both when we are facing outyear deficits -- and it is my understanding that these tax reductions increase in the outyears -- and when we are facing the situation where we are still expanding our cap to bond out more borrowing by the State of New York. We are borrowing, in this year's budget, for undefinable and undefined economic development and other projects. We continue to borrow even for operating costs, leaving our children and our grandchildren with even greater debt to face.

That the concept that we would pass a bill that would expand the STAR rebate program, which has been argued many times on the floor of this Senate as being inequitable and unfair based on where you live in the state of New York, whether or not you are a homeowner or a renter, whether or not you live in a part of the state that taxes through school taxes or a part of the state that taxes through local income taxes.

The fact that rather than evaluating where we have gone with Empire Zone

policies and the amount of tax reductions we already give to businesses in Empire Zones -- this bill would expand the category of Empire Zone qualified investments without our having done our homework to ask why do we continue to have open-ended tax credits for businesses who are established in particular areas of the State of New York or who do certain types of work as opposed to other businesses -- that I find it hard to justify voting for this bill.

It's going to leave us in a larger deficit structure in the outyears. It's going to require that we borrow more money, increasing our deficit and our debt levels. It's going to leave us with less money to address the fundamental questions of education funding, healthcare funding, public protection, public transportation funding.

No one ever wants to vote against a bill that says "I'm giving you tax cuts." And as I've said for the record, some of the changes in this bill I think are good and justified. But overall, I don't believe we can justify this package of tax credits and special-use exemptions. I don't accept the

fact that we're sticking nontax revenue language into this bill and the language bill, including dealing with the Quick Draw lottery game extender.

And so I find myself in a position where I feel that I will have to vote no on this legislation and hope my colleagues will consider the dangers faced by going down this road.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator. Senator Krueger will be recorded in the negative.

Any other Senator wishing to be heard?

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Just to sum up, Mr. President.

There are great things in this bill. I note that we're eliminating the sales tax on clothing under $110, which is something that was not in the original bill, one-house bill that the Majority passed. Senator Paterson explicitly raised it in the process of negotiations, which is, I think, a tribute

to the openness of the process in some respects.

This has the tax credit for film production, which is tremendously important for an industry that's very important to people all over the state of New York.

But I must say that the net result of this bill -- which has had an extraordinary, extraordinary impact on politics because it has united the right and the left, every fiscal monitor from the Manhattan Institute on the right, to the Fiscal Policy Institute on the left, in saying this creates a $10 billion deficit over the next two years -- we can't fund our schools, we can't fund our healthcare programs, we can't keep raising spending and cutting taxes. It's just not a balanced budget in the true, meaningful sense of the word.

And I therefore feel that I am also constrained to vote no.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Senator Schneiderman, thank you. You will be recorded in the negative.

Senator Savino.

SENATOR SAVINO: Thank you, Mr. President.

Not to disagree with my colleagues that this is not a perfect bill and we are not addressing all the state's needs, there are some really good things in this bill. And for myself and for Senator Marchi, I can point to one thing that is critically important, and that is the elimination of the sales tax on shoes and clothing under $110.

For those who represent border communities like Staten Island, where we lose thousands of shoppers every day who go over the bridge to New Jersey and they buy their clothes there and they buy their cigarettes there and they buy their liquor there and they buy their gas there -- our residents, our retailers in Staten Island and South Brooklyn can no longer continue.

So this bill I'm going to support for that reason. And also for the Empire State child credit. There are thousands of people in this state whose families will benefit, money will go back into their pockets

so they can use it to improve the lives of their families. So I'm going to support this bill.

Thank you.

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

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 MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Announce the results.

Senator Parker, to explain his vote.

SENATOR PARKER: To explain my vote, Mr. President.

Actually, I rise, unfortunately, to vote against this revenue bill, for many of the same reasons that Senator Krueger and Senator Schneiderman have outlined. So I'm not going to kind of go through the motions

again about all the issues.

But it's certainly important for us to create a real balanced budget. Back-door borrowing is tantamount to, you know, buying groceries on a credit card. And we are really not just hurting ourselves and our state, but we're also hurting our future generations, our young people, our children, our grandchildren.

But more than that, we right now hurt all of the children of this state by not having a revenue formula that takes into account the Campaign for Fiscal Equity lawsuit, which the courts have demanded that we take care of by tomorrow. This budget does not in fact do that.

And so again, also on those grounds, I vote no.

ACTING PRESIDENT MORAHAN: Thank you, Senator Parker. You will be recorded in the negative.

Senator Sabini, to explain his vote.

SENATOR SABINI: Thank you, Mr. President.

There are lots of good things in

this revenue bill, but there's also some things that I don't agree with. But I like to talk about process all the time, because process really dictates the road we travel here in Albany.

And we've been here since January and doing almost unanimous calendars on seemingly noncontroversial bills. And yet in this particular piece of legislation, there are about seven or eight really controversial, one could argue good and bad things in this, and yet they're presented to us as a package. It's a package that is fiscally out of whack.

And what we should be doing as Legislature is preparing for a day like this by taking up these issues individually, taking up brownfield tax credits, taking up movie production tax credits, taking up the sales tax elimination on clothing and the childcare credit.

And I understand that the process here is that you sort of throw everything in and force people to vote this way. And that's good for the two majorities in the two houses. But I don't think it's good for the people of

the State of New York. I think, as Senator Parker said, we are borrowing today to stick the bill on folks tomorrow. I don't think that's particularly right.

And while there are many things in this bill I agree with, I think the process is wrong. I'm glad we're getting it done on time, but that doesn't make it any righter.

I'm going to be voting no.

ACTING PRESIDENT MORAHAN: Thank you, Senator Sabini. You will be recorded as voting in the negative.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 502 are Senators L. Krueger, Parker, Sabini, and Schneiderman.

Absent from voting: Senator Connor.

Ayes, 56. Nays, 4.

ACTING PRESIDENT MORAHAN: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time take up Calendar Number

496.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: Calendar Number 496, substituted earlier today, Assembly Budget Bill, Assembly Print Number 9554C, an act making appropriations for the support of government: Health and Mental Hygiene Budget.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT MORAHAN: Senator Johnson, an explanation has been requested.

SENATOR JOHNSON: This is the budget bill for health and mental hygiene. It has, well, just everything you'd like to have in here about mental hygiene.

And I think the advocates have been here and they have done their work well. And we've added a lot of new things in here, for children, drug and alcohol programs, creative arts programs, parenting programs, substance abuse programs. I really can't -- even increased the personal needs allowances for people in mental hygiene.

And that's about it. And if you want to read the rest, I have it here.

ACTING PRESIDENT MORAHAN: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

I rise in support of this bill. And it is a tribute to the process we've just gone through that the Legislature has restored the devastating cuts proposed in the Executive Budget to our healthcare system. As we are arguing in the case of education, you don't grew the economy of this state, you don't provide for our future in the long term if people don't have healthcare and people don't have access to a good public education in every part of the state.

This bill takes a significant step on the healthcare front. I will be voting in the affirmative.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Any other Senator wishing to be heard?

Senator Montgomery.

SENATOR MONTGOMERY: Yes, just briefly, Mr. President.

I want to commend the legislative leadership for making sure that we do have funding in this budget. The Legislature did put back funding that was missing from the Governor's budget for school-based health clinics, and that's very good. I'm very happy about that.

However, I was hopeful that we would invest in school-based health clinics much to a much larger extent because, as we know, there are many issues facing young people and we in the State of New York need to have an obligation, I think, to invest in making sure they have the best quality of life that we can afford.

So I would have hoped for a much larger increase in school-based health clinic funding. But I'm indeed happy that we did not lose and that in fact we did increase that funding.

So thank you, I'll be voting yes.

ACTING PRESIDENT MORAHAN:

Senator Malcolm Smith.

SENATOR MALCOLM SMITH: Thank you, Mr. President. I too also will be supporting this bill.

But I do want to underscore what Senator Montgomery said about the school-based healthcare facilities. That is a critical area, especially for many of the schools in the City of New York. I am hopeful that we will next year put more money into that particular area.

But in addition, Mr. President, the fact that we have unresolved the area around the inspector general for Medicaid, which is so critical to us. And we're talking about the need for revenue; clearly, there's an area, with Medicaid fraud somewhere approaching $44 million. We need to make sure that issue is settled. I'm hopeful that we will do that in the remainder of our session before June.

I will be supporting this bill, but I did want to underscore the concern of Senator Montgomery, which I do agree with in terms of the school-based healthcare

facilities.

Thank you.

ACTING PRESIDENT MORAHAN: Senator Oppenheimer.

SENATOR OPPENHEIMER: Thank you. We seem to be hopping on Velmanette Montgomery's initiative here.

But if we are talking about ways to control our spending for medical needs in our state, we really have to look much, much closer at school-based health clinics. We are putting in money for the Big Four school districts in this bill, but there are so many areas in our state where there is high need and poor medical attention.

We are trying to focus now, taking a new direction. We're looking at preventive medicine. What better way than having it right in the school? We talk about the huge incidence now of diabetes, and we talk about the inactivity of our children. What better way than to have the healthcare provided for them -- along with, I would add, very important to me, a nutrition component, which would be taught in every elementary school,

middle school, and high school. Because until our students understand the importance of nutrition, they are not going to get a handle on the growing problem of obesity.

So we really have to take a close look at this. Because one of the problems we have in delivering healthcare, particularly to children, is that the parents have to take off time from their jobs to bring the student to whatever doctor is their family doctor. Here, the healthcare is right in the school. All they have to do is walk down the corridor.

So I think it's just very economically sound for us to put a much bigger investment in child-based -- in school-based health clinics.

Thank you.

ACTING PRESIDENT MORAHAN: Thank you, Senator Oppenheimer.

Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President. I guess I'm explaining my vote -- or on the bill.

This is a great budget, especially as it pertains to mental health. And there

are a lot of good things in here. And I want to commend the chairman, Senator Morahan, on his fine work.

But there is something missing. And what's missing is the appropriation for a facility to confine pedophiles under a civil commitment law that is still being worked on. And it's unfortunate, because this house had made the commitment to put the appropriation in the bill, but the Assembly refused to because the Assembly refuses to agree on a civil commitment law.

We can't go much longer without putting a law on the books. We are putting in jeopardy women and children. This house, under Senator Volker's leadership, Senator Bruno's leadership, has worked very, very hard to try to get the Assembly to come to the table.

And I'm hoping, Mr. President, that after the budget deliberations are over, that they will come to their senses and understand the importance of a civil commitment law in this state so that dangerous pedophiles are taken off of our streets and put in a facility

that is secure so that our women and our children are safe. That's what's missing here.

So I would hope that once this bill is passed -- and it's a great piece of legislation -- that we will be able to get the Assembly to come to their senses before we adjourn this year and make a commitment on civil commitment.

ACTING PRESIDENT MORAHAN: Thank you, Senator Libous.

Senator Ada Smith.

SENATOR ADA SMITH: Thank you, Mr. President.

I too join with my colleague Senator Montgomery in praising the addition to school-based health. That is something that this side of the aisle has advocated for for the last 18 years that I've been here.

And I'm pleased to see that in the mental health there are initiatives that will benefit communities such as mine.

But I would be neglectful if I did not add that until we have what we once had in the '60s, health care in the housing

developments where many of us represent, we will not have complete healthcare. The healthcare clinics that were in these housing projects were accessible and of a low fee for residents or no fee. And when we can return to that, we will have a much better healthcare system in the State of New York.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Andrews.

SENATOR ANDREWS: Thank you, Mr. President.

I would like to commend this body for what they have done as relates to healthcare. But like my colleague Senator Montgomery and others, I'd like to point out some inequities in some of the things that we are doing today.

First, as stated earlier, school-based healthcare is very important, especially for a district where I come from, where in the last four years two hospitals have closed. And those two hospitals, in closing, they have also eliminated the OB-GYN services related to those hospitals. And to

another hospital, the OB-GYN services have been closed.

And with that in mind, it raises a question to me why have we not increased the WIC program. Because as we all know, preventive healthcare is one of the best ways to deal with healthcare. And infant mortality is increasing in my district. And with the closing of the OB-GYN at one hospital and then the closing of the hospital that also had OB-GYN services, that has created a very difficult health disparity in my district.

Also with that in mind, it would seem to me that we want to deal with community-based health programs and expand that, because of the fact that we're losing hospital beds and losing hospitals.

And in closing, another concern that has been brought up to me by my constituents is the concern of mental health for the homeless and the fact that this state has not increased the mental health housing for the homeless in this state.

So even though these things have not been addressed properly, I still will be

voting yes on this bill.

Thank you.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Debate is closed.

Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Senator Hannon, to explain his vote.

SENATOR HANNON: Thank you, Mr. President.

I wanted to address the fact that what the Legislature has done with this health budget I think is monumental. We have addressed serious issues confronting the health of 18 million New Yorkers.

We have addressed the stability of the nursing home industry by taking on the rebasing that was initiated in this house last year when we passed a one-house bill.

We have addressed the problem

created by the federal government with the pharmaceutical drug program by extending the wraparound for the people who used to get drugs from Medicaid and now are dependent on Medicare, a major initiative that we had to do.

We have addressed the hospital industry by not only restoring the cuts but by taking a good look at the emergency room rates, which, under the recent federal action in their Deficit Reduction Act, would have had an adverse effect if we had not acted to increase the rates -- and an adverse effect more so, I would submit, than all of the other, smaller delivery systems such as school-based health clinics.

In other words, what we have done is addressed the major needs of New Yorkers. And along the way, we were able to reach agreement with the other house and with consumer advocates and with the hospital industry in regard to how we're going to handle charity care for people who don't have insurance or are not otherwise covered, in terms of notifying them about the fact that

it's available, about the procedures to handle it, about the eligibility, and finally as a reporting system to the state. And we've done that on a uniform basis so that it can be the same wherever a patient might be in the state and know what to ask for.

So I want to commend the leadership for this. This has been a very arduous task, and I think it has been a very successful one.

Thank you.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Parker, to explain his vote.

SENATOR PARKER: Thank you, Mr. President.

First, let me congratulate this body on the great work that was done on this part of the budget as relates to health and mental hygiene.

But I want add my voice to the chorus led by Senator Montgomery in regards to school-based health clinics. They're of critical importance in my district and across the city, and we really need to take up the

mantle of leadership on this and do more as relates to our young people and healthcare.

However, this part of the budget being part of the total part of the budget still does not deal with the issue of the Campaign for Fiscal Equity lawsuit. We are still about to be entirely in contempt of a court order that demands us to put more money in in terms of the operational aid and to change the fundamental formula by which school finances are in fact decided in the city.

And so, like on previous bills, despite the good work that I think is done by this bill, I'm forced to vote no.

ACTING PRESIDENT MORAHAN: Senator Diaz, to explain your vote.

SENATOR DIAZ: Thank you, Mr. President.

As ranking Minority member in Mental Health, Mental Retardation and Developmental Disabilities, I would like to express my appreciation to the chairman of the committee, Senator Morahan, and to all the members of the committee.

Because even though, ladies and

gentlemen, we are not getting everything that we asked for and even though we are going to go back to our different communities and there are going to be some groups and some sections that will be maybe dissatisfied because we cannot achieve everything, but the work, the tenacious work, the commitment of all the members in the Mental Health, Mental Retardation and Developmental Disabilities, the chairman of the committee, and everybody that worked on it, made me proud to be a member of this committee.

So I thank all of you members, again, the chairman and the staff of the committee, because the work done, I repeat, was something very difficult, very deep. And as the ranking Minority member of the committee, I'm proud to have been part of that committee. And again, I thank all of you.

And those of you like me that might be going back to our communities to face some groups that will be dissatisfied, hey, I think that we did a good job, I think that we achieved something great in the mental health budget, and the majority of everything that we

wanted to do are there.

So, Mr. President, thank you. And I'm voting yes.

ACTING PRESIDENT MORAHAN: Thank you, Senator Diaz.

Senator Marcellino.

SENATOR MARCELLINO: Yes, Mr. President. I also wish to stand up and say congratulations to the people who did the negotiations for this particular bill, led by Senator Hannon on our side. This was a fantastic budget.

In particular, I want to thank for the restoration and the increase in the aid to early diagnosis, prevention and control of diabetes. There's over a million dollars in this particular budget bill for that program. And that is one of the leading causes of health concerns to young people, our children. Diabetes is on the rise. It's one of the fastest-increasing health problems we have in the country. And this will go a long way towards helping us deal with that problem in this state.

And I wish to thank and vote aye.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Announce the results.

THE SECRETARY: Ayes, 60. Nays, 1. Senator Parker recorded in the negative.

ACTING PRESIDENT MORAHAN: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you please call up Calendar Number 499.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: Calendar Number 499, Senate Budget Bill, Senate Print 6457C, an act to amend the Social Services Law and others.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT MORAHAN: Senator Johnson, an explanation has been requested.

SENATOR JOHNSON: Yes, Mr. Chairman. This is the Article VII bill which implements the mental health budget which we just passed for the 2006-2007 fiscal

year.

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

Debate is closed. Ring the bells.

Read the last section.

THE SECRETARY: Section 97. This act shall take effect immediately.

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Senator Parker, to explain his vote.

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

This being the companion language bill to the previous bill, again I put forward my objections regarding CFE and the fact that this budget does in fact not deal with the court order, does not in fact provide for high-needs districts anywhere around the state, but particularly in New York City, where the court has ordered to us deal with that.

So again, I vote no.

ACTING PRESIDENT MORAHAN:

Senator Parker will be recorded in the negative.

Announce the results.

THE SECRETARY: Ayes, 60. Nays, 1. Senator Parker recorded in the negative.

ACTING PRESIDENT MORAHAN: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you please call up Calendar Number 623.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: Calendar Number 623, by the Senate Committee on Rules, Senate Print Number 7166, an act in relation to providing for the administration of certain funds and accounts.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT MORAHAN: Senator Johnson, an explanation has been requested.

SENATOR JOHNSON: This is a bill which is sort of a cleanup bill. It allows for the administration of various funds and

accounts of the state in order to implement the budget. It includes transfers between various funds of the state and bonding authority for projects authorized in the state's five-year capital bill.

It essentially is a wrap-up bill of all the other bills that need a little wrapping up.

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

Debate is closed.

Are you going to be explaining your vote, Senator?

SENATOR MALCOLM SMITH: Yes, I just want to explain my vote, Mr. President.

ACTING PRESIDENT MORAHAN: Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Senator Malcolm Smith, to explain his vote.

SENATOR MALCOLM SMITH: Yes,

Mr. President. I wanted to thank the Legislature in particular.

As you know, there's been some great discussion about New York State and this portion of the country potentially being the next portion of the country that has a major disaster when it comes to weather.

The area that I represent in Queens, which is the Far Rockaway area, is an area that has a peninsula. That at this point we are taking a lot of time to go over practices and procedures on how actually to move people off the peninsula.

I would just ask my colleagues to be mindful of the fact that this is something that we all need to consider. I appreciate the Legislature in their effort in making sure that there are some resources as we do this entire cleanup piece. That piece of $5.7 million is very important to an area in Queens, which is the Rockaway area, as we prepare for potential disasters that may happen in that part of the state.

Thank you.

ACTING PRESIDENT MORAHAN: Thank

you, Senator.

Senator Parker, to explain his vote.

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

Again, I rise to object to even the fiscal plan. The state financial plan in its totality again just refuses to deal with the issue of the Campaign for Fiscal Equity lawsuit. We have not met our legislative obligation. We have not met our fiscal obligation. And we have -- as we stand here and cast these votes for some things that are very, very good, we've failed the 1.1 million schoolchildren today who are in our classrooms in New York City with inadequate resources.

So again, I'm forced to vote no.

ACTING PRESIDENT MORAHAN: Senator Parker will be recorded in the negative.

Senator Krueger, to explain her vote.

SENATOR LIZ KRUEGER: Thank you, Mr. President.

I too have decided I will vote no

on this bill, because it expands debt caps for the State of New York for various public authorities, and despite the efforts of my conference to urge us to address the problems of overwhelming debt for the State of New York, the continuing growth of debt, and no evaluation done by this Legislature this year to explore any of the proposals that have been made to put limits on debt, to put limits on how much we continue to borrow and for what purposes.

I am quite sure there are many items individually in this bill that I can and will support, and of course I will not change the outcome of the vote today. But given the fact that we continue to refuse to deal with the ridiculous level of debt that this state continues to leave to the next generation and the generation after without being prepared to evaluate how we should be changing our approach to borrowing and debt, I find myself unable to vote for a bill that would yet again raise the cap on debt, allowing us to continue our bad practices of more and more borrowing without asking the hard questions.

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

ACTING PRESIDENT MORAHAN: Senator Krueger will be recorded in the negative.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 623 are Senators L. Krueger, Parker, and Sabini.

Ayes, 58. Nays, 3.

ACTING PRESIDENT MORAHAN: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you please call up Calendar Number 500.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: Calendar Number 500, Senate Budget Bill, Senate Print Number 6458C, an act to amend the Education Law.

SENATOR SCHNEIDERMAN: Explanation.

ACTING PRESIDENT MORAHAN: Senator Johnson, an explanation has been requested.

SENATOR JOHNSON: Calendar Number 500 is the Article VII implementing bill for the appropriations for education.

ACTING PRESIDENT MORAHAN: Senator Oppenheimer.

SENATOR OPPENHEIMER: I'm rising because I think there's an amendment at the desk, and I'd like to waive its reading and explain it.

ACTING PRESIDENT MORAHAN: The amendment is waived, and you will be heard on the amendment.

SENATOR OPPENHEIMER: Thank you.

This is a budget amendment that deals with CFE, which is a very important issue to not only myself but some of my colleagues. Indeed, some of us were on the original amicus brief that was filed 13 years ago, so we've been with this for quite a while now. And we went on it because there were decades of underfunding and neglect that left many parts of our education system in a state of crisis back then.

And then we had the first decision from the courts five years ago, and then

another decision after that was appealed, and then another decision after that was appealed. And so here we are now with a decision just about a week ago. And our continued failure, in light of the Appellate Division's ruling, really leaves the entire Legislature in contempt of court.

And I don't think it's responsible for us to do more appeals and --

SENATOR SALAND: Mr. President, could I ask, please, that there be some order in the chamber. I'm having a difficult time hearing Senator Oppenheimer, and I'd like to hear her.

Thank you very much.

ACTING PRESIDENT MORAHAN: Can we have a little order in the chamber, please. Senator Oppenheimer has the floor.

SENATOR OPPENHEIMER: So I think it would be irresponsible to keep waiting for more court action.

And anyway, the court action ignores the state, it just deals with New York City. And I think our problems are much bigger than just New York City. And I think

we all feel that continued failure is jeopardizing New York's economic future, as more and more students are graduating without the skills they're going to need for our high-tech economy, and they will be more and more dependent on government support rather than building them up so that they can get higher-wage jobs.

We know the statistics. We know that 71 percent of our high school students are graduating after five years. That means there's 29 percent that aren't. And in New York City we know the statistic is worse, which is 53 percent of our students are graduating after five years. And that leaves almost half of our students not graduating.

So we don't seem to have much choice. We have to make a move now. And I think that the responsible solution applies to the standards of the CFE decision, and we believe it should be for every district, not just New York.

We happen to have, it is true, the highest average per-pupil spending in the United States. However, as we know, our

poorest districts get much, much less than our richest districts. And I believe we have the largest gap between our richest and our poorest districts of any state in our country. Maybe we're second or third, but we're right up there near the top.

So what we are proposing, we Senate Democrats -- and I should mention, before I get to that, that for many years we have been advocating for a good capital program for New York City. And I want to thank Senator Bruno, and you folks on that side and this side, for coming to a recent solution to that problem. And I just wanted to make sure that that was understood. I do appreciate what you have come to do for something that we really have advocated for for so many years.

But we do need a true statewide solution, and we need to provide those funds to the high-needs urban, suburban and rural districts in every corner of this state. And those of us that come from suburban areas know that even though we have many high-wealth districts, school districts, within our counties, we have some really deplorably poor

districts within our county. And that's pretty new advent, within the last decade or two that we've seen this. But these are things that we must address.

So we think what is required, we Senate Democrats, is a multiyear plan and a change in the distribution formula to reflect the needs of some of these school districts. So we think that we must revamp the state aid formula; establish a base level of aid per student; adjust for the number of poor students; take into account tax effort; take into account sparsity for some of our upstate, less dense communities; and also take into account regional costs, which particularly hit those of us in suburbia.

Then we have to fund this new formula, which is proposed in this amendment, and we have to fund it appropriately. Only then, I think, can we close this gap that I mentioned earlier between our richest and our poorest school districts.

So the amendment before us in the current bill -- well, as I have said, you have taken care of very nicely the problems that

the CFE court decision put before us as far as the capital needs. So I'll only look at the need to increase our operating aid by $1.1 billion.

And also, because this does not fulfill the CFE lawsuit requirement, because it only adds in New York City, $400 million -- which is a substantial amount of money. But to meet the CFE requirement -- and indeed, it has been said by several groups that just keeping up with inflation and keeping things as it is in New York City would require $1.1 billion this year. And that's from the Educational Conference Board. They say we would need to boost it 1.076 billion just to stay even in New York City.

So our proposal -- I'll try and do this briefly -- it would fulfill the CFE case, it would provide a $1.15 billion increase in operating aid for New York City the coming year, it would provide $580 million for the Big Four school districts in operating aid -- actually, our plan goes over four years, but the Big Four school districts we feel are in such dire shape that we have to put it in in

this first year.

This dramatically helps increase funding for our high-needs rural, suburban, and small city school districts. And for those of us in districts of higher wealth, we're not going to do the Robin Hood that was so feared by so many. We are putting in this 2 percent increase every year for each of these school districts of higher wealth.

It places more of the increase in school funding with the state. And that, of course, helps with the property tax burden that we all are -- well, everyone is complaining about, because it is burdensome. And it just more fairly distributes the school funding costs.

For example, in the Big Four city school districts, we would cover -- under this proposal, 78 percent of their costs would be covered by the state. In the high-needs urban suburban districts, about 70 percent would be covered by the state. In the high-needs rural districts, we're planning on 74 to 75 percent would be covered by the state. And in New York City, we would be covering less. It

would be 55 percent of the costs, and the city would be providing the rest.

So this is what we put before you. We think it is reasonable. And we hope we hear from you soon.

Thank you.

ACTING PRESIDENT MORAHAN: Senator Stavisky.

SENATOR STAVISKY: Mr. President, on the amendment.

ACTING PRESIDENT MORAHAN: On the amendment.

SENATOR STAVISKY: As Senator Oppenheimer indicated, the court case came down about five years ago, but this has been a problem in New York State as far as back as I can remember. We had the famous Fleischman Commission, we had the Levittown court case, we had challenges in the federal courts under the equal protection provisions of the federal Constitution. But it wasn't until a lawsuit was brought in State Supreme Court that we've had the possibility of some relief.

What's happening is that the -- the famous word is "the formula." The problem is

very few people understand the formula. There's an excellent story in today's New York Times that discusses this issue of the formula. But there really is no formula. It's a series of calculations that are made when the decision -- when the determination is made as to what monies are going where. In other words, they're making the allocation -- they're making the result fit the allocation. It's like making the crime fit the punishment rather than the reverse.

It seems to me that a child in Buffalo should have the same education as a child in Montauk and the child in Plattsburgh as in Staten Island, and that where a child is born should not determine the kind of education, the quality of the education that a child receives.

In other words, the allocation of funds should be determined upon -- should be determined by need, not geography. It should be statewide in nature. There should be regional cost factors, because it really does cost more to educate a child on Long Island than it did does in the North Country. And

yet that child is -- both children are entitled to a sound, basic education. And that does not mean an 8th grade education. It means a sound, basic education that prepares the child to enter society.

The allocation should be simple, so that more than six people can understand it. The method of distributing education should not have such reliance on the property tax, because some of our suburban communities are being taxed unfairly. The reliance on the property tax, I think, is a serious mistake.

I support the amendment. I think that this is an excellent, excellent step because it helps everyone in this chamber, unrelated to political considerations. This is a formula that will help everybody in this chamber, and I urge its adoption.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Senator Breslin.

SENATOR BRESLIN: Thank you, Mr. President.

I applaud Senator Oppenheimer for bringing this amendment to this body. This

amendment is not about upstate versus downstate. It's not about rich versus poor. It's not about black versus white. It's about what's right versus what's wrong.

As a lawyer, we're taught to obey the Constitution. And 13 years ago a lawsuit which we now refer to as CFE was brought to the courts of the State of New York. Thirteen years later, with a Court of Appeals mandate and direction, this body is still not obeying the law.

When that lawsuit was commenced, over half the members of this Senate weren't here. A whole generation of children have been bypassed, a whole generation. Our Constitution requires that our children be given a basic education. The Court of Appeals determined that that did not exist in the City of New York. And it doesn't exist in Buffalo, it doesn't exist in Rochester, it doesn't exist in Syracuse, it doesn't exist in Yonkers, and we turn our back.

This amendment changes all of that. It outlines a formula that would allow those cities -- and it goes beyond the Big Four. It

touches cities like Albany, Watervliet, and Cohoes, in my district. It's the equalizer. It's recognizing a wrong and providing a right.

But it's the 800-pound gorilla. This body has not addressed it. This Legislature has not addressed it. And unless and until we take our responsibility, change the way we do things for our children, we should hold our heads in shame.

This amendment covers it all. I urge every member, both on the Republican side and I know my brothers and sister on the Democratic side are with this -- this finally tackles equality. It finally addresses the whole educational system. Each of us have districts in upstate that are very wealthy, that do more than more than a good job of educating our children. And sometimes when you go into those schools you're embarrassed because you've been to the schools that don't have that opportunity, where those children will not have an opportunity to succeed in life. And again, unless and until we address that need, we hold our heads in shame.

I urge everyone in this body to consider this amendment and vote in the affirmative.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator Breslin.

Senator Saland.

SENATOR SALAND: Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: On the amendment?

SENATOR SALAND: On the amendment, Mr. President.

I certainly listened with great interest to all of those who rose in favor of the amendment. I must confess, between the noise in the chamber and the softness of Senator Oppenheimer's voice, I couldn't quite hear everything she had to say.

But the concluding comments by Senator Breslin, he was using the term "body" and "Legislature" interchangeably. I'm a little troubled by that. This house has time and again expressed its willingness, its eagerness to negotiate a statewide high-needs

solution to CFE. We have met with, until most recently, utter indifference in the other house.

As recently as this negotiated budget, we attempted to negotiate a statewide operating aid solution for multiple years, and our friends in the Assembly did not want to go there. So either they wanted to keep the issue or they preferred to have the issue, to the extent it would be negotiated to closure, resolved under another governor. But this house was ready, willing, able and eager to negotiate a multiyear solution.

CFE's solution is no longer in the courts, if you take the Appellate Division decision. Because what the court did, very clearly, it vacated the referee's report. It says it is clearly in the decision, it says it in that portion of the decision in which it modifies the order of the trial court. So all of those subtexts effectively have been obviated by the Appellate Division decision.

That's not to say that they have not said there are things for us to do. But I take great faith and great heart in the fact

that they recognize that we're the ones to do it. They have said this is for the Governor and the Legislature. We have said, since the very get-go, this is for the Governor and the Legislature.

So I'm not troubled at all by what the Appellate Division has said. I am, however, troubled by some of the things I hear, that I heard as recently, I believe, as yesterday. I've seen it in some literature that has come out under the CFE/AQE banner. I was a little surprised -- I wasn't surprised by AQE, I was a little surprised by CFE. I sort of expect a certain amount of misinformation from AQE, but I expect CFE to be a little higher standard.

There's talk about this being unconstitutional, the formulas are unconstitutional. Now, out of the words of the former executive director of CFE, Mr. Rebell, Mike Rebell, who's also counsel in this case, he has acknowledged, he acknowledged it publicly at the hearings held, the joint hearings, the budget hearings of the Senate Finance and Assembly Ways and Means

Committee a couple of years ago, he acknowledged that the formulas are not unconstitutional.

The Court of Appeals has not said the formulas are unconstitutional. They may have said they're unwieldy, they may have said they're not transparent enough, but clearly they're not unconstitutional.

So when Senator Paterson, who I have nothing but regard for -- I've enjoyed the opportunity to debate him on several occasions on one or another issue -- stood up and talked about unconstitutionality either yesterday or the day before, I was rather taken aback, because I just held him to a higher standard. Whether his counsel is giving him bad advice or whether he hadn't read the cases himself, I do not know.

The proposal here talks about using a professional judgment model. It talks about combining it with the successful schools model. It doesn't tell us whether they're using an efficiency filter. An efficiency filter is something that the Regents used with their successful school model.

And what the Regents will tell you, and they've said it publicly, it's a matter of record, is that in order to attain a sound, basic education, you don't have to be spending as much money as, for example, districts in Senator Oppenheimer's district. They elect to spend a lot of money.

Our system, I would hope people would realize, is a progressive system. The wealthiest decile gets somewhere in the area of about $1,300. The poorest decile gets somewhere in the area of $9,500. About 80 to 85 percent of what the state provides is wealth-driven. So it's not like we're being arbitrary in how these monies are apportioned.

If in fact you don't have an efficiency filter, the Regents conclude that you will be spending more money than you need -- not me, the Regents -- more money than you need to provide a sound, basic education, and that's why they use the efficiency filter.

So I'm not sure -- there's nothing in here that tells me whether there's an efficiency filter. It just says they want to use both the successful schools and the

professional judgment model. And for those of you who don't know, Judge DeGrasse threw out the professional judgment model. He rejected it. He went to a successful schools model. He changed the weighting to get to the same number, but he threw out the professional judgment model.

So I'm troubled by the idea that somehow or other this measure is viewed as a panacea. I understand the politics. I still believe that the decisions for these types of matters reside within both houses of this Legislature and with the Executive.

We dealt with the capital issue, we dealt with it in a fashion which I believe the city obviously has a great comfort level with. I believe that was a win-win. It provided the money that the mayor sought for his capital plan, and it provided it at less dollars than the mayor was demanding initially from the state. So the state won, the city won. It was negotiated. It wasn't imposed by a court.

I truly believe and have said from the very get-go that it's not for the courts to make these type of decisions. There's no

precedent for it. The court doesn't even talk in terms of trying to justify a precedent for it other than what you might find in the referee's report -- which, as I said, has been vacated, not even relied upon to that extent by Judge DeGrasse.

But I'm at a loss to figure out how much money we're talking about in this proposal, where the money is going to come from. We are the entity that is responsible for appropriating those dollars. And certainly the idea of a statewide approach is not novel. It is something we all embrace. The question is, as always, what are the details in getting there.

So I oppose this amendment. I believe that, number one, in part its procedural underpinnings have been in part gutted by a combination of Judge DeGrasse and the recent Appellate Division decision. I believe that the kinds of dollars that are being suggested -- and I don't know if Senator Oppenheimer suggested amounts, but I've heard from other advocates amounts -- are amounts that are beyond the bounds.

I believe that notwithstanding Senator Oppenheimer's comments -- and I had the opportunity to look -- the formula for sparsity has been tinkered with to basically reduce the formula to make it harder to drive money to rural districts. Notwithstanding the fact that there's talk, I can only point to whatever page this is, Subsection F, which changes "sparsity count" to "sparsity factor." You increase the denominator, you don't change the numerator, the percentage has to be lower.

So at this late date, on March 31st at five minutes to 12:00, to go through this exercise, as well-intentioned as some might want it to be, certainly is an exercise in political gamesmanship and one which I'm not going to embrace and will certainly be opposing, Mr. President.

Thank you.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Malcolm Smith, on the amendment.

SENATOR MALCOLM SMITH: Thank you, Mr. President.

On an unrelated matter, unfortunate information. As I sat here, I received a message that Senator Byron Brown's mother passed away last night. And I would hope that my colleagues would take the time after this session to reach out to Senator Brown, extend your condolences to him, as obviously this is a very sensitive time for him.

With regard to the amendment that Senator Oppenheimer has put forward and has labored a great deal on this matter -- and I do note that Senator Oppenheimer is from Westchester County, which is outside of New York City, and her passion and interest on this matter is clear by what she represented a moment ago -- I would ask that my colleagues understand that this whole CFE decision goes to more than just the underpinnings of procedures and court rulings. It goes to where we see ourselves as a society, how we see what we like to consider as the "new New York State" position around how do we treat the children of this state.

The new New York State needs to be sensitive to the fact that New York State by

itself cannot stand alone. We need to understand the new New York State represents a group of individuals who are no longer competing just with New York State children.

I've had the pleasure, as well as some of my other colleagues, of traveling around this world -- China, India -- over the last several years. And I will tell you, Mr. President, that the new New York State has to begin to think differently on how we go about educating our children. Senator Golden talks about it all the time when he talks about charter schools and tax credits. And that is, we've got to be able to make sure that our children have the mental capacity to compete, not just with each other here, but to understand that as they sit in the classroom there is someone from Asia that sits there, there is someone from India, there is someone from China, there is someone from Europe.

And if we don't position our children in a place where they have the ability to think and to grasp ideas and to come up with concepts that will allow them to contribute not only to their own well-being,

but to the well-being of this state -- the new New York State has to be able to make a commitment.

And I understand this -- the billion dollars that we offered to capital improvement. That's a good thing. There's no question about that. But there is no question while you build it, they're going to come. And if you build it and there is no place -- or I should say, the children that come there are not prepared to undertake the teachings that they're going to be given with the resources that we need to give them, which is what Senator Oppenheimer is talking about in her amendment, we're going to be in a very troubled situation.

There is no question there is a direct link between the children of this state, how they're educated, and the criminal justice system in terms of where our children end up going. We can no longer afford to pay for the children in the criminal justice system because the cost, as all the actuaries have determined, as well as all the educational economists, does not balance out.

So we have to make sure, Mr. President, that in this new New York State that we prepare our children in such a way that their minds can give back to society what we give to them in the way of teaching. We've got to make sure that they are educated. There's no question about it. It's just that simple.

Our children today, if not educated, will not make sure that as we stand in these halls that they are adequately trained to stand here behind us. We are not going to be here that long. We may have five, 10, maybe 12 years at the most, out of all of us. But if we do not begin to put aside what some might consider party differences -- and I know from time to time people will say, well, I'm Democrat, I'm Republican.

But as Senator Breslin says, this should not be a party matter. This shouldn't be a matter of what party you're from. It should be a matter of I have a son, I have a daughter, you have a son, you have a daughter. Whether they are downstate or upstate, at some point in time they are going to be sitting

across from or debating with or negotiating with some other child around this state that is either in a position of management or in the position of employee or in the position of scientist, doctor, or perhaps even a teacher.

But if we do not prepare them, if we do not prepare them in such a way that they can contribute, those debates, those discussions will not be going on with children from this state, they will be going on with individuals around the world, on the other side of the planet. Which means that we as a state will not have done our job.

So, Mr. President, all I'm saying is that this amendment that Senator Oppenheimer has introduced is a heartfelt one, is one that took time. She has worked with staff members, she has worked with people that crunch numbers, she has talked to people around the state. This is not an emotional submission of an amendment. This is an amendment that goes to the actual heart of what needs to happen in this state if we consider ourselves to be legislators that are concerned about the well-being of this

state -- and I know we are.

There is no doubt in my mind that there is no one in these chambers that does not have the best interests of children. I can look at Senator Bonacic, I know he has that interest. I can look at Senator Marchi, I know he has that interest. I look at Senator Diane Savino, I know she has that interest. Senator Diaz, I know he has that interest. Senator Schneiderman, I know he has that interest. Senator Spano, I know he has that interest. We all share that common interest.

What needs to happen at this point is we all need to share the one goal that is important to this body. And that is that we make sure that our children are adequately educated. This is a down payment on the operating side, no question about it -- I mean on the capital side, no question about it. But we now need to take that next step.

Everything -- and everyone knows when it comes to business or anything else, you have phases by which you operate. Phase one is this capital money that we're doing. A

great amount of money, wonderful that you give New York City, through the transitional finance authority, the ability to float bonds in the future to do that construction.

But now with the facilities, and now that there will be rehab, what are we going to do about what we put inside there? We can't put people who do not have the ability and do not have the resources to be educated.

So, Mr. President, I ask my colleagues, I all those that are listening to the sound of my voice to take the time, take the moment, think this through. This is a good time for us, there's no question. We're doing a lot in the state budget. But Senator Oppenheimer's amendment is one that requires the support of this full body. There should be no question about her desires, her interests, the reason and the purpose behind her amendment. And we should be proud to endorse that amendment and vote on it unanimously.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

It's the rules of the house, just to point them out -- I'm going to recognize Senator Parker to address the amendment. However, there's a half-hour allowed on each side of the aisle for this, and we have about five minutes left for you, Senator Parker.

SENATOR PARKER: Thank you very much. I'll be brief.

Four score and seven years ago --

(Laughter.)

SENATOR PARKER: No, I really just want to stand up to add my voice to those who are supporting this amendment. This amendment is really, really critical.

And one of the lessons that we learned here in this body today I want people to pay attention to, because -- and Senator Saland gave us the opportunity to learn it. When you don't have the answer to the problems, talk about the complexities of the issue.

So let me make it real basic. The children of the city of New York right this moment receive $2,000 less per child compared to every other child in the state of New York.

There is not one member outside of New York City who would allow that for one day, let alone for twenty years. This has been something that's been going on for far too long. Five years ago the court decided this. We spent the entire beginning of the year talking about protecting children, talking about, you know, the crimes and how do we protect children from sexual predators. And we all said yes, we need to do that. That was important, and this house overwhelmingly passed those bills.

Now, when you get a real chance to do something for the children of New York State by simply -- you know, nothing complicated. Put money into it, money that everyone has agreed the city needs and deserves. What everybody has also said is look, we recognize that New York City is not the only high-needs district in this state.

And so, yes, we're not only willing to help New York City, but let's help Brookhaven and Mount Vernon. And let's help Yonkers, let's help Albany, Syracuse, Binghamton, Buffalo, and Rochester. Let's put

money in all -- and also all the rural districts that I've not mentioned. Let's put money into all the districts around the state that need the money so that we can make sure that people in this state have the ability to get what they most need, which is a full-time job at a living wage with benefits. Because education is the single most important factor in economic viability and the life of this state and the people in it.

Thank you.

ACTING PRESIDENT MORAHAN: Thank you, Senator Parker.

Senator Sabini, on the amendment.

SENATOR SABINI: Thank you, Mr. President. On the amendment.

I heard an earlier speaker say at this late date we shouldn't be doing this. This lawsuit, the Campaign for Fiscal Equity, was filed 13 years ago. The decision was rendered four years ago. So we are late. We're late in complying with it.

The economic future of the city of New York and for other underperforming school districts is at stake. I come from a district

where people come from all of the world, from Pakistan, Peru, the Philippines. And our rate of dropout amongst English-language learners is now at 50 percent. That will continue to grow.

Senator Parker said it very correctly, there is a lack of funding to the high-needs school districts, no matter how you change it. It was said earlier that the court decision says that it's up to us. There are lawyers on both sides that agree with that or disagree with that. If it is up to us, we have to do the right thing. And the right thing is to prioritize the high-needs districts.

Senator Oppenheimer's amendment has school runs that many of us got before we got the school runs of the actual bill that detail where the dollars will go. What we're doing here by the original proposal that this amendment seeks to correct is playing political stall-ball. We have a governor who's leaving, we have an election coming up. The City of New York is declaring victory, and that's good. We got something out of it by

getting more capital aid. But I'm sure they'll be back next year to get more operating aid to put teachers and desks and books into the classrooms we're going to construct.

But the sad thing is we're abrogating our responsibility to the children moving through the system. They don't come back. Or if they do come back, they come back on programs that require more job training, public assistance, and the things we don't like to pay for.

So, Mr. President, I'm proud to support Senator Oppenheimer's amendment and plan to vote in the affirmative.

ACTING PRESIDENT MORAHAN: Thank you, Senator Sabini.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

We've reached the time limit, I believe, in speaking on the amendment. However, we will be speaking about the underlying bill. And I hope that any of my colleagues who need to call into contrast the

solution offered by Senator Oppenheimer's plan and her amendment and the lack of a solution offered by the underlying bill will speak at that time.

I join my colleagues in strongly urging everyone on both sides of the aisle to vote for this amendment. The details are there. The money is spelled out in more detail than we usually get in education bills that we vote on here. And the problem, as my colleagues have articulated, is undisputable.

So I'm in strong support of this amendment, as are my colleagues here. And we hope that we will get some support from the other side of the aisle. The Oppenheimer plan is the best long-term solution that has come to the floor in this house this year, and I believe in many years.

And the rest of you who have more to say, we can be speaking on the bill and raise many of the same issues. I realize our time is up. I urge everyone to vote yes, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator Schneiderman.

Senator Saland, on the amendment.

SENATOR SALAND: Just briefly to close, Mr. President.

I would merely note that this measure was not part of the Assembly budget package, wasn't part of their one-house package, has never seen the floor, as best as I can determine, in the Assembly.

But I'm particularly troubled by a comment, if I heard it correctly, that Senator Parker made. And I understand his passion. But if in fact I heard him correctly, he said the City of New York gets $2,000 less than any other district in the state. That is just a total misstatement.

New York City is an average-wealth district. And what that would mean would be about half the districts in the state get more, and about half the districts in the state get less.

It's one thing for passion, it's another thing maybe for my hearing. I apologize, Mr. President, if that's what you were alluding to.

Thank you, sir.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Padavan, on the amendment.

SENATOR PADAVAN: Thank you, Mr. President. I'm going to be very, very brief.

I could ask Senator Oppenheimer if this amendment is being introduced in the Assembly, but I know the answer. No, it's not. This is a one-house effort. It's a political vehicle to raise various, various points relevant to this issue. And that's fine if you want to do that. I find it somewhat distasteful using education as a political vehicle, using our kids to advance political agendas.

But let's get to some of the facts that I think are important. If someone were to drop into this chamber and not know anything about anything we're talking to, they would come away with somewhat of a distorted view as to what has been going on in the City of New York relevant to education.

Now, I asked the Department of Education to provide me with specific numbers

which I think are important for us to understand. If you go back to 2001, total state funds were a little over $5.5 billion. What are they in this budget? Over $6.6 billion. A significant increase over that period of time.

The total amount of money being spent in the City of New York as a result of our additions and the additions that the city has provided -- basically because of the maintenance of effort provision we mandated upon them -- is over $17 billion. Now, if you divide that by 1.1 million children, you do the arithmetic. Some of these things that I've heard said over here just don't ring true at all.

Now, are we spending enough? Well, that's a good question. And I guess various educators and individuals and taxpayers and experts would come up with different conclusions. I know in my own district I have schools that are performing at or above grade level, 90-some-odd percent of the kids in a given school. And yet in that same senatorial district, I have other schools that are doing

very poorly. Yet they're getting the same amount of money. The teachers are being paid the same.

What's the difference? Parents. Parents who get involved. So money isn't the entire solution. But yet we recognize the need for money to make up for that failure in certain households for parental involvement and all of those things that make a difference in a child's life, particularly as it relates to how they fare in school.

If you look at the total amount of state aid we're providing as a percentage of the total going into the City of New York, it's 39.3 percent. 39.3 percent of the total state aid package is going into the City of New York. Operating. I'm not including capital, totally aside.

What is the percentage of our pupil population? It's 37.1 percent. So now where are we? We are providing a percentage of state aid in excess, by approximately 2 percent, of the number of pupils in the City of New York.

Now, how did that happen? Because

it wasn't so when you go back to 1993, when the CFE case was first initiated. We were not getting an appropriate share. Everyone acknowledges that fact. But over that decade or more, slowly but surely, we have been increasing state aid to our city and we have been eliminating, with surety and with purpose and with commitment, that disparity of numbers which shortchanged our kids.

But when you're dealing with this budget, you can't say that anymore. It's just not factually correct. And if you don't trust what I'm telling you, you go to the Department of Education or the chancellor's office and say "give me the numbers." I've got it right here.

Now, again I repeat the rhetorical question: Is it enough? And in many, many parts of our city, it's still not enough. And how we get to that optimum level of every disadvantaged child, socioeconomic environments which disparage your ability to get a good education? How do we deal with all of those issues? I'm not smart enough to answer that question. Maybe some of you are.

But I do know that this budget and what this Finance Committee did, and what Senator Saland did, along with Cathy Nolan in the Assembly -- which you sat at, Senator Oppenheimer, and I don't recall you not voting for our plan, the one we all came together and advanced. Because it's a good plan, and it goes a long way to getting where we want to go to be.

So let's stop playing politics with this issue, my colleagues. Let's get down to the basic issue. We've got a good education budget here. We're doing a lot of good things in all kinds of areas, from special pre-K to some of the things you've already noted in a positive vein. And let's move on and get this thing done.

ACTING PRESIDENT MORAHAN: Thank you, Senator Padavan.

SENATOR OPPENHEIMER: Can I just have one minute?

ACTING PRESIDENT MORAHAN: Senator, you can speak on the bill.

SENATOR OPPENHEIMER: Okay.

ACTING PRESIDENT MORAHAN: On the

amendment, those Senators in agreement please signify by raising your hands.

THE SECRETARY: Those recorded in agreement are Senator Andrews, Breslin, Connor, Coppola, Diaz, Dilan, Duane, Gonzalez, 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 MORAHAN: The amendment is not agreed to.

Senator Oppenheimer, on the bill.

SENATOR OPPENHEIMER: I just wanted to respond to a couple of things that were said.

For me, this is really not a political issue. For me, I have been working with Mike Rebell for 13 years, and --

SENATOR MARCELLINO: Mr. President, if I could ask Senator Oppenheimer to speak up. I'm unable to hear her.

SENATOR OPPENHEIMER: My problem is I have a deep voice and it doesn't carry. But I will try and make it carry. If I may.

I was just saying that for me it isn't a political issue, because I have been working with Mike Rebell for 13 years, having met with him, having attended meetings with him and opened conferences.

And it is something that I do feel strongly about. And I don't feel that anybody should be against a transparent formula that everybody could understand. None of us understand the current formula. And it has, you know, specific things in it so that we know exactly how the distribution is going to be done, and it is going to be done according to need. I think we all have to agree with that. And we should all agree also that we need a multiyear plan.

It just seems like it's very logical and very simple. And in my opinion, yes, it is substantial money. But my feeling has always been that you're either paying now or you're paying later. So many of our young people in prison have not graduated, the vast majority have not graduated from high school. And I think if they had graduated, they might have been able to find employment and they

might not be in prison and they might not have taken those drugs. I'm willing to take that gamble.

And I think with the education, that we could certainly be the Empire State in a global economy. And I'm not sure we will be without this kind of a measure.

Thank you.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator LaValle, on the bill.

SENATOR LaVALLE: Thank you, Mr. President.

I'm going to speak about two issues, one dealing with education and in the second part I want to talk about higher education.

I want to thank Senator Saland for his presenting to this body an accurate reading of the appellate decision and what it does. Sometimes we've been blinded by headlines and stories that, when you compare the two, have nothing to do with the truth.

I want to thank Senator Padavan for accurately talking about the numbers and what

the numbers do. Because, once again, those are accurate, the numbers that he has been given show an accurate portrayal of what the city is getting and what the students are receiving.

I think that every member, all 62 members, regardless of where they live, education is one of the most important issues to them. The investments that we make in the education part of the budget are really second to none, other than maybe healthcare. It's all about investments in our future, investments in our children. We should not be caught up with the politicization of the formula or what is there or not there.

This body has always been called, and I believe, a deliberative body. And we should be dealing with the facts, not with mirage. Now, the state aid formulas are very, very complex. They have changed over time. Years ago when I was a staff member, in 1974, Governor Malcolm Wilson at that time asked that all of the categorical aid formulas that had been part of the Diefendorf formula be stripped, and we did that. But there was a

chairman in the Assembly who over a period of time, Assemblyman Jose Serrano, who very carefully and surgically built categorical aid formulas so that the city would benefit at that particular point in time.

We are now in a different point in time, and those people who are the afficionados of state aid formulas now are talking about foundation formulas. And quite honestly, at this point in time foundation formula probably is more relevant than the hodgepodge of what we have.

But when we talk about multiyear formulas, things change. Every single year a school district that was growing no longer has growth aid. The equalization rates change in a particular area, and it hurts certain school districts.

So the state aid formula every year, with a small P, there are politics of the state aid formula. And what it -- what drives that are all the members who are trying to protect and trying to drive the most aid to their school districts.

So I congratulate Senator Saland

and all the staff and Assemblywoman Nolan for really putting together, in a very difficult environment, a state aid formula that I think does about as much good as a formula can do in a very diverse state.

But what is always upsetting to me is that -- when we drift from the facts. And when we drift from the facts, we begin to split ourselves apart in a state, and that is not a healthy thing. But because where we can come together and be united, where we are, that every child in this state needs to have a quality education regardless of where they live. And that should be our focus, and not playing to building headlines that do us no good.

On the second issue of higher education, I am very, very proud of what we did, and the hard work that the staff, the higher ed staff did. The higher ed budget is probably the best that it has been in several decades.

And one of the things that we protected, the SUNY and CUNY operating budgets. We've ensured that the independent

sector has ample funds. We've increased monies to our community colleges. And we created something I think is very special, a part-time aid program that will really help single parents and hardworking individuals who want to lift themselves up beyond where they are today.

And I think, when we look at this higher ed budget, that part-time aid program, across all three sectors -- SUNY, CUNY and the independent sector -- will really be one of the highlights that we should be very, very proud of. We made reforms, we put in accountability measures. So I think it's a very, very good program.

One of the things that we put in is some oversight on the community colleges. And I'd just very, very briefly say that the community colleges are the gateway to higher education for so many individuals. And when I look at the aid that we give, increases in base aid, each and every year the tuitions keep going up. And so there are some oversight provisions in language here that I hope will get our community colleges to

continue to provide the depth and breadth of courses that students in our local communities need but, at the same time, be ever so vigilant of the increases in the tuition that the students pay.

So I will be voting in the affirmative on this bill, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Saland.

SENATOR SALAND: Thank you, Mr. President.

Mr. President, I merely rise in support of this measure. It represents the culminations of some very trying and challenging negotiations. Several people have alluded to the fact that this was worked out closely, obviously, with the Assembly, with the chair of the Assembly committee, Cathy Nolan.

It is a product which represents the most -- represents the largest increase in state aid to education in the history of this state. And at the same time, among the below-the-line items, we have a significant

increase, which was an initiative of this house, in library aid. Again, something which has not occurred in quite some time.

So I just want to say that there's little or no reason -- in fact, virtually no reason whatsoever -- for anybody to be voting against this particular measure. At least to the extent that they might have concerns about the education portion, $1.1 billion is a significant amount of money in anybody's league and certainly is going to be critically important to children regardless of whether they be in New York City, in Poughkeepsie, in Jamestown or Plattsburgh. It's essential that we continue our commitment to children.

And at the same time, these additional dollars certainly going are to go a considerable distance to mitigate the otherwise painful property-tax increases that in the absence of this might be imposed upon people.

And lastly and most importantly, this budget is going to be on time and it's going to enable all of those independent school districts, every one of those school

boards, to be able to contemplate what they're getting, know what they're getting in state aid and appropriately plan their budgeting.

And I would hasten to add in that vein, had the amendment been adopted, we would have had a serious problem. Because under our rules -- and I would merely call attention to page 24 of our rules -- you would see that were an amendment to be adopted were it not offered by a sponsor, it would have to go back to committee for ten days.

So effectively, by pursuing the amendment, seeking to pass the amendment, I would assume you were asking that we delay the timely adoption of the budget. Which I would hope nobody really would have wanted to see accomplished.

Thank you.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Bonacic.

SENATOR BONACIC: Thank you, Mr. President.

Let me started by thanking Senator Bruno for his leadership on the education

budget, but also two of our colleagues in particular who carried the heavy burden.

First, Senator LaValle, on the higher education budget. And we thank him for his work on that and for the product that he's delivered. And secondly, certainly Senator Saland, who, you know, worked in the trenches many long hours in an exemplary fashion. And we thank him for his hard work for the product that he produced.

I would like to also start with what Senator Paterson said when this session first began. He was kind enough to point to my legislation, in his opening remarks of the session, where we talked about finding an alternate of funding education. And we believe we have to be more reliant on the income tax, a means-based tax, and less reliant or not reliant at all on the property tax, which is a housing tax.

In many parts of the state, the school property tax is the difference between homeownership or renting. In Orange and Ulster Counties, people who've bought their homes years ago, maybe for $185,000, now it's

much more expensive, they're paying $8,000 or more in school property tax. Over the course of a mortgage, not only will be you paying the principal twice with the interest, but probably three times because of the property tax.

This budget continues the state commitment to public education. And it provides some relief for property owners. But in my view, in a manner which fundamentally changes the way we have to finance education, we didn't address it.

What is a good thing, there will be a commission formed that will look at the very thing that some of us have been talking about, and they will report back by September or October that maybe we should be thinking of a different way for the future.

Now, education is always a contentious issue. We all care about kids; nobody is going to dispute that. There is not a single one senator here who doesn't care about his kids in his district. And maybe we care more about the kids in our district who we represent because we're their voice. But

when we're a senator, we have to care for all of the kids. That's who we are, a state legislative body.

There was a move initially by Assembly Bill 100, which by the way doesn't exist anymore, which would have driven 92 percent of the capital aid to the city. I have nothing against the city, nothing against the kids in New York City. Born there, went to school there, went to law school there, grew up there, so I care about the city and those children too.

But as a father and grandfather, I support all the students and a distribution which has to always be fair and equitable. And I think some of the senators who spoke eloquently were saying the same thing. We're not sent here simply to do what the loudest voices scream for. We're not simply here to do what a judge suggests is the minimum. We're sent here to do what's right.

There are people in this state would choose to litigate for more aid for their kids. That is their right. I suggest, however, it is our obligation and our duty to

legislate more for all the kids. We have done that in this budget, in a bipartisan fashion, and I thank you all for that.

I vote yes, Mr. President. Thank you.

ACTING PRESIDENT MORAHAN: Thank you, Senator Bonacic. You will be recorded in the affirmative.

Senator Liz Krueger.

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

ACTING PRESIDENT MORAHAN: Senator Liz Krueger, on the bill.

SENATOR LIZ KRUEGER: Well, I have to say it would have been a much better bill if you -- if we had won our amendment.

And I'd like to respond to some of the things that were said, because people are getting up and using a lot of rhetoric that there's political gamesmanship involved with the Senate Democrats attempting to come up with a fair funding formula for the children throughout the state of New York at the last minute.

So for the record, I got the runs

for the proposal before us today at 10:22 this morning for a 10:30 session. So the question of how do you actually do this in advance and do your homework in advance is a challenging one for all of us. I don't know when my colleagues on the other side of the aisle knew the information, but I received a copy at 10:22 for a 10:30 session.

And then I hear my colleagues saying yet again, debating the CFE lawsuit, who said what when. The Senate Democrats are attempting, through what we're doing today, to say it doesn't actually matter where we are in the lawsuit. What matters is where we are in delivering fair funding for the children of the state of New York, not just the children of New York City, which is the only locality that the CFE lawsuit addresses, but rather the children throughout the state of New York.

And in fact we don't have fair and equitable funding for our children, because under the current scenario -- and by the way, we do nothing with the funding formulas this year. We continue the unfair shares model of distribution of state funds for operating

costs. But today in New York State, while we're the third in the nation in average education spending per child, we have the largest gap between wealthy and poor districts in this country, and we have the third largest funding gap between districts that serve large minority populations and districts serving few students of color.

And so when one of my colleagues, I believe Senator Padavan, got up and said we get more money in percentage than we have children, that's not an accurate statement. Because while we can debate, as Senator Saland has, the different interpretations of the efficiency models versus other accountability models for how you would redraw fair funding formulas in the State of New York, there's no question that it's not simply per child but, rather, an evaluation of various categories of need.

And I heard someone say that the Regents haven't recognized the formula model that we are using today in our alternative proposal. But we know the Regents have proposed dramatic increases in the dollar

amounts for operating funds for schools in the state of New York. They've put out their own report. We know that the Regents have said the current funding formula is unfair and unjustified and continuing forward with a shares model does not address fairly all the children of the state of New York.

And I heard questions from my colleagues that I'm not sure have been answered, so I want to just go over them. Our proposal that was rejected and would have made this a much better bill would have provided $2.6 billion in additional operating aid. It would have fulfilled the CFE case obligations, at least as a down payment, because of the statewide standards used. It would have provided a $1.15 billion increase in operating for New York City schools, provided over $580 million for the Big Four school districts in operating aid, an average increase of 68.2 percent.

It would have dramatically increased funding for high-needs rural, suburban and small city school districts. It would have held harmless lower-need districts

so all districts received an increase of at least 2 percent. It would have placed more of the increases in school funding with the state, which would have helped to provide local property tax relief throughout the state of New York.

Senator Bonacic is right when he talks about the unfairness of the property tax costs in various parts of the state, and we recognize that. And while he and I might not agree today, I think he and I do agree that ultimately we have to evaluate the tax venture structure in the state of New York and the differences between how different counties and localities pay for fundamental basic education items and other items.

And I heard my colleagues, some of them, saying that we were doing this for little purposes. We are standing in the Capital of the State of New York. What is it that we do here that is not political? This is a political process and a policy process.

Senator Oppenheimer moved forward with an amendment that would in fact address fundamental unfairness in the funding

categories of school aid in the state of New York for every child. To argue that there is no political process that gets us here today is a ridiculous statement. Or we're all in the wrong business, one or the other.

I think that the Mayor and the Assembly did a good job in their arguments to try to get us more. Unfortunately, they couldn't get far enough, which is why we're standing here today trying to highlight that we have still not fulfilled our mission or a commitment to the children and fair funding in operating monies.

And I heard a colleague ask how would we pay for this education funding. And so as I try so often to do, I try to answer the questions raised. In the next bill, the appropriations bill, we're going to vote for or against $188 million for professional sports teams. If you add up the Empire Zone dollars that we have already approved, including earlier today in the revenue bill, the State of New York loses $646 million a year under the Empire Zone model, which is fundamentally inequitable to both small

businesses and various districts throughout the state.

If we hasn't passed the STAR rebate program maybe an hour ago in the revenue bill, we'd have another $900 million.

If we ever, ever opened up this book and took a hard look at it, the New York State Expenditure Report, the third portion of the budget, we could debate billions of dollars of money that we never do that we exempt certain special-interest categories in the state of New York from paying. I just puddle out two: IDA sales tax exemptions, $83 million. Have we really done the homework we should on how IDAs operate in the state of New York and how they have the authority, without elected power, to exempt people from taxes?

Crude oil petroleum, $45 million tax exemption. As we have debated on this floor, but I don't believe resolved, why are we doing tax exemptions for an industry we're supposed to be discouraging from expanded use of? You're supposed to decrease dependence on petroleum, we all are, and yet we continue to

provide tax exemptions.

Yesterday I spoke out about the fact that we were reappropriating $2 billion, over $2 billion in the state budget for MOU agreements from previous years that have never been determined, never made public, and never spent.

So if I just add up the list I mentioned, I could get us $3.73 billion that I would argue are a better use of the taxpayers' money if we were to invest that in education.

So in fact, there are good parts of this legislation. And I will talk more on the appropriations bill itself. But please don't accept the argument that we have finished our assignment for fair funding for public education. Please don't get caught in the endless details of he said/she said on the CFE decisions in any given day. We didn't need a lawsuit to know what was right for the children of the state of New York, and so we shouldn't be waiting to figure out those questions to do what's right for the children of New York.

We can pay for this. Education

should be a higher priority. I'm not saying we didn't make some progress this year. The capital construction monies will be critical. But even there, there are questions about the distribution and how we will be paying for them over the long term because, again, we're bonding out large sums of money again.

But again, I urge my colleagues don't walk away and truly believe we did our jobs on this. And I want to thank Senator Oppenheimer for her work on this, and I'm sorry that we're not passing a bill that includes her analysis.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Diaz, on the bill.

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

I heard one of my colleagues saying the State of New York will win with this budget and the City of New York will win. I heard that said by one of my colleagues here.

Well, the question is not if the state will win or if the city of New York will

win. The question here is will the children in public schools located in the black and Hispanic community win.

So when someone says the state will win, the city will win, that has some kind of clue there. Maybe there is some kind of something that we could say yes. But my question is, again, will the children in my district win? And the answer is no, I'm afraid not.

I'm afraid -- I'm afraid that the children in my district and the children in the black and Hispanic districts will continue to be left behind, will continue to be ignored, and will continue to be begging for more.

The Comptroller of the State of New York, Alan Hevesi, recently issued a report stating that the money allocated to do away with overcrowding in the city schools was diverted and used somewhere else.

Every year since I'm here, we have been voting for more money for the City of New York, and now we are dealing with CFE. And when we talk about CFE, the Bible teaches

me to give credit where credit is due. And I want to -- I intend to give some credit here.

CFE has been fought by black, Hispanic -- and when you go to the City Council in the City of New York, the people fighting for CFE, black and Hispanic and a few others. When you go to the New York State Assembly, in the Assembly chambers, black and Hispanic fighting for CFE money. When you come to this body, mostly the same.

I have to commend and I have to tell everyone, either people listening or watching or whatever, that in this chamber we have to be grateful for the work done by Senator Eric Schneiderman. He and I, we disagree most of the time. But I have to say, I have to say that now that everybody is salivating with the CFE money and how much money is going to go to the city, I have to say that the City of New York owes to members of the chamber, to this conference, the Minority conference, and to Senator Schneiderman, because Senator Schneiderman has been there giving his legal support and fighting since day one.

Saying that, saying that, I have to say that I'm afraid -- I'm concerned that the one-plus billion dollars that is going to the City of New York for education will never get to our community. When you see all the groups protesting and fighting for educational money, you could look at the color of their faces and you will see that the majority are brown and black faces. When they come to my office to lobby, brown and black faces. When they go to the city, in all the demonstrations that I see, black and brown faces.

And you know what is the travesty of all of this? You know what is the thing that really gets me? That there are going to be elected officials that have been opposing this and that have done nothing to get the money, and their districts will be benefiting more than my district.

You know what the travesty is? The travesty is that the City of New York for years is getting money, with the pretext of we need money to educate our children because children have to be educated, and they always use the black and Hispanic children to show

our suffering, our need. But when the money gets there, our schools, our districts are always the same.

And let me tell you that when we here send money to the city and the mayor and the chancellor and everyone gets the money, they distribute the money according to the city school districts. Here in this chamber, we only see the city as one district, one school district. And when we vote and fight for the money, the money goes to the city as one school district.

It would be nice, Senator Smith, Senator Schneiderman, it would be nice if we could sit here: Now, the money is going to go to these districts. But we can't do that. We can't do that. The money is going to go to one school district, the City of New York. One school district.

Now the chancellor and the mayor want to get the -- oh, money. And they're going to sit down and they're going to cut the pie there, and they're going to decide which school district gets the money. And we have nothing to do and we have no say in that. We

fight for the money, we protest for the money, we use our children and our suffering to get the CFE money. But when the money gets to the city, one school district, the City of New York, and the City of New York sends the money to whatever they want.

I hope, I wish, and I pray that next year, next year when I come back here, if I come back -- and I hope to come back. And, Senator Smith, with all due respect to you, you said that we're going to be here 10, 15 years. I'm planning to be like Senator Marchi.

(Laughter.)

SENATOR DIAZ: So next year --

(Laughter.)

SENATOR DIAZ: When we come back next year I hope, Senator Schneiderman, that I could come here and stand here in this chair and say: My district was benefited, the mayor of New York took care of the black and Hispanic districts. The chancellor took care of the black and Hispanic districts. Ladies and gentlemen, let's fight for more money, more money, more money.

But I'm tired of fighting for more money, I'm tired of fighting for more money, I'm tired of people using my children, my district, my suffering, my pain -- I'm tired of that. When is it that we're going to decide that that money, education money, is going to go specifically for the district that needs the money?

So all the work that Schneiderman has done, all the work that the people in the CFE, all the people have done for many years to get this money, then we say -- excuse me, I hope you understand what I'm trying to say -- then I say, for what?

Are we really caring about children? Is the City of New York really going to care of the black and Hispanic districts? Is this money going to be earmarked for the South Bronx, for Harlem, for Brownsville, for the areas that we really need? Are we going to do that? No.

They are salivating. Give me the money, give me the money. Show me the money. Well, Mr. Mayor, Mr. Chancellor, we are now showing you exactly what you asked. We're

showing you some money. Show me now how caring you are about my children in my district, about the children in the black and Hispanic community districts. And next year, next year I hope to come here and say the mayor of the City of New York, the chancellor of the City of New York and other people in the City of New York took care of us blacks and Hispanics finally.

Mr. President, I am voting for this bill. Yes, I am. I'm not getting $2 billion. We're not getting $5 billion. But we're getting enough money now to take care of some children in the South Bronx, in Harlem, and to take care of some school districts in the black and Hispanic community. I hope that we do that, and then we'll talk about it.

So mucho gracias. Ha sido un placer [it has been a pleasure].

ACTING PRESIDENT MORAHAN: Thank you, Senator, for your good wishes.

Senator Malcolm Smith, on the bill.

SENATOR MALCOLM SMITH: Thank you, Mr. President.

I do want to just raise one item

which is sort of an ancillary piece to this particular operating aid bill, and it goes to all of the businesses in the state. We are going to be spending in this first year, according to the legislation that we passed, $2.6 billion. In our language bill on the economic development, we had a piece for minority businesses, a disparity study, we talk about an ombudsman. And I would just hope that many of the members around this chamber remember that, particularly in upstate New York, where they're suffering, there are small minority- and women-owned businesses up there. They're going to have $800 million to improve the schools up there. They need to ensure that those businesses get a fair shot of that money.

In our city, I hope that all my colleagues will recognize in the city of New York we have a large number of minority- and women-owned businesses, there will be $1.8 billion spent on improving those schools, building construction. That is a lot of resources that can be spent and articulated in such a way that minority- and women-owned

businesses do get a part of that.

So I would only raise that so that my colleagues remember, in addition to the discussion around educating our children, as part of this new New York we need to make sure that the other side of the coin -- that is, our businesses -- have an opportunity to participate. Not just some of the larger developers, who are quite frankly very good friends, but let's make sure that the small minority- and women-owned businesses in Tioga County, Onondaga County, just like in Brooklyn and Queens and Suffolk County, have an opportunity to participate in that $2.6 billion.

Thank you.

ACTING PRESIDENT MORAHAN: Thank you, Senator Smith.

Senator Sampson.

SENATOR SAMPSON: On the bill.

I just rise in support of this bill. This bill has done some fantastic things.

But at the same time, you know, as Senator Diaz really put it, it's not about us

trying to get headlines, it's not about us trying to use education as a political vehicle. It's about the frustration that we all face in making sure that the funds that we give to our school districts are administered to our children. And it's the frustration every day when we come into our districts and we see our constituents, we see their children telling us that they don't have this, they don't have these resources. This is the dilemma that we face.

You know, when we started this session we talked about we wanted to protect our children against pedophiles. We wanted to protect our children against bullies. But we are saying we want to protect our children and give them the maximum opportunity to get the best education possible.

Every year we talk about and we tell all our children in our district, get educated, go to school, because education is the vehicle where they can uplift themselves. But the frustration that we face is even when we put money in, sometimes it doesn't go where it needs to be.

So on this side of the aisle it's not about politics, it's all about expressing our frustration that when money is given to our communities, we want to make sure that all students, whether you're black, brown, green or yellow, have an advantage, that we all want our children to have an advantage to do better than what we have done.

So I rise in support of this bill, and I want to congratulate Senator Saland and also Senator Oppenheimer for working hard, and also Senator LaValle for working hard. Because education is the only component where we can really shorten the divide that is in our communities.

Thank you very much, Mr. Chairman.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Ada Smith.

SENATOR ADA SMITH: Thank you, Mr. Chairman. I mean Mr. President. I'm on the "chairman" today.

I must commend the other side of the aisle for the hard work that they put into this bill, and especially for the long overdue

capital aid.

But like the other Senator Smith, that capital aid cannot benefit our communities if our children do not have the opportunity to learn, because they will not have the opportunities to partake of the benefits of being a contractor or even a subcontractor.

And we as a Legislature cannot continue to fail these young people, because it's their economic future that's at stake. And as we continue to underfund these programs and the schools in my district, the students continue to graduate ill-prepared. But more than likely, three-quarters of them do not graduate because they do not have the proper tools. They're sitting in classrooms that are overcrowded. They're being taught by teachers who are not prepared.

And no matter what we do here today, I know there's never enough money. But we are under a court mandate, and I believe that this is the one thing that we should have done in the budget. And in good conscience, I don't know how we can possibly vote for a bill

that continues to shortchange the children of the City of New York.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Montgomery, on the bill.

SENATOR MONTGOMERY: Yes, Mr. President. I want to also commend the Governor for some of the proposals that came from his budget and are continued by the Legislature, agreed to by the Legislature.

And I want to especially thank Senator LaValle, Senator Saland. Some of the pieces in the higher ed budget, especially under the higher ed opportunity programs, the increases there are extremely encouraging and important. Because those programs in the universities and colleges supplement and complement some of the missing pieces in the high schools and middle schools and are extremely important in that respect, as well as to the college students themselves.

And I am especially pleased that we have new initiatives to enhance the capacity of teachers and middle schools to provide math, science, technology, engineering

programs for young people. So there are some very good things in this budget, some things that I think are extremely important and I'm very supportive of.

I am also unhappy that we're not living up to the standards vis-a-vis the CFE court decision. However, Mr. President, I do want to point to one piece in this budget that makes me extremely unhappy.

And that is on page 750 and 751 in this budget there is a list of items, and these items are not necessarily related to education, though some of them are. They're capital items under the rubric of economic development and other projects. They are supposed to be projects for colleges and universities, for public recreation, for arts and cultural facilities, and et cetera.

However, there is one of these that does not fit under any of those areas, and that is on line 41. It's Atlantic Yards Railway-Nets Project, $33 million.

Now, as you know, this is a project that has been proposed, yes, but it has not been negotiated as a part of the communities

concerned. There are many concerns that have been expressed vis-a-vis the project having no comprehensive independent cost/benefit analysis. So we don't know exactly what is the benefit, and we -- those of us who live in that area, who have not been able to negotiate with the developer based on community concerns, believe that it will cost us way more than it will benefit.

There is no general project plan for this, as is required. There has been no environmental impact statement. We do not know what the extraordinary costs are going to be. So this $33 million is a down payment on an unknown project that has not been agreed upon, has not been finalized in terms of the state's commitment to fund it, yet we have money in here. And those capital funds come directly out of education funds.

Many of us in here have needs in our districts for school construction projects way overdue. There is a high school missing in my district because we don't have the funds to pay for it. Yet we are asking the State of New York to bond for $33 million, and over

30 years it will increase the cost of debt service to our state by $2.5 million a year.

So, Mr. President, this is an outrage. This is an absolute outrage. I think that we have a better use of our funds. We should not be asking our citizens to finance and support this kind of a project, especially since there's no way for the elected officials who represent that area to be involved in the negotiations, because it's been done entirely in the dark.

So this is wrong. And so even though I am totally and completely in support of the education funding and the bill is good and has good things in it, I cannot in good conscience vote because this item is just absolutely unacceptable.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator Montgomery.

Senator Stavisky.

SENATOR STAVISKY: Mr. President, I am delighted that the current bill accepted my floor amendment, which unfortunately was defeated when the one-house bill came before

us. I had proposed a $35 million increase in funding for SUNY and CUNY to provide additional full-time faculty because the percentages of full time faculty at both SUNY and CUNY are at an all-time low. At SUNY, for example, it's below 60 percent, and I think that's absolutely wrong.

The measure before us has an increase of $45 million for SUNY and CUNY. And I find that to be just indicative of the excellent, excellent higher education budget that is before us.

There are many other excellent parts -- the part-time Tuition Assistance Program, the increases in the educational opportunity programs, et cetera.

I want to mention one other item that's in this budget, and that's an appropriation which affects my district of $74,700,000. It's to permit bonding for the new Shea Stadium. I understand that the Shea Stadium proposal will -- the money will be used for site preparation, particularly to put in sewers, to prepare the parking lot for construction. The new Shea Stadium is going

to be officially unveiled -- or the proposal, the plans, I believe next week. And I think this is an excellent advance in terms of economic development.

And because of the higher education portions, because of the way it affects my district, I intend to vote for this bill. But I must say I am terribly disappointed that the issue of operating aid is not addressed.

I find myself in great difficulty voting against a bill that I believe to be unconstitutional. The courts have held that the method of distributing educational monies is unconstitutional. I think we've got to make a better effort to address that issue, the issue of the Campaign for Fiscal Equity lawsuit, not as it affects New York City but as it affects every child in this state.

But on balance, Mr. President, I will vote yes.

ACTING PRESIDENT MORAHAN: Thank you, Senator Stavisky.

Senator Schneiderman, to close.

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

I'd like to follow up on Senator Stavisky's last comment, because there is a great deal that is good in this bill. Some of it has been addressed by my colleagues. Certainly the capital aid, the resolution of that problem, which is an important component of the CFE decision, we must recognize the work done by Mayor Bloomberg in order to get us there. Thanks to the mayor on that issue. He targeted it, he made it a political point, he used some muscle, and we're there.

The MWBE, higher ed, other good things in this bill. But let's come back to the issue that divides this house today, which is operating aid.

And I would suggest, my colleagues, we're not fooling anyone. You know, when it's in the newspaper, ladies and gentlemen, it's in The New York Times, it's in editorials in Syracuse, we're not fooling anyone when we tell the people of this state that we're doing everything we can to fund high-needs school districts, that we're providing the operating aid we need, we've dealt with the problem.

We've dealt with the problem? Look

at the statistics from this year. In the city of New York, 53 percent of our children graduate in five years. That's now. In the four biggest cities outside of New York -- Buffalo, Rochester, Syracuse and Yonkers -- 55 percent of our children graduate in five years. Is that doing our job?

This budget -- according to the Education Conference Board, this bill before us provides just enough money to keep up with inflation, $1.1 billion. And about $1 billion is necessary to keep up with inflation in the area of operating aid.

In the city of New York, where my daughter is in public school, in the grades 4 through 6 this year -- this is a recent statistic -- 57,000 kids in three grades are in classes of 30 or more.

So let's not engage in Orwellian rhetoric and tell people we've solved the problem. We've got a problem. Senator Diaz was absolutely right. We have poor children whose dreams are being crushed every year because of our failure to provide operating aid.

The second issue I need to address, and I don't want to spend a lot of time on this, is this notion that we keep saying, oh, we're not under a court order to stop violating the New York State Constitution, and that somehow makes it true.

You don't have to go through the very first section of the Court of Appeals decision, original decision affirming justice DeGrasse in the Campaign for Fiscal Equity case, clearly ruling for the plaintiffs on the claim that, quote, the state has violated the mandate of the constitution, quote, by establishing an education financing system that fails to afford New York City's public schoolchildren the opportunity guaranteed by the constitution.

This is an unconstitutional situation. It requires courage, it requires honesty. We are in violation of the constitution. The Appellate Division ruling, which has been distorted all over the place in the debate here today, ladies and gentlemen, states clearly -- this is the order of the court to us -- We must act by April 1st, and

contrary to the dissent's characterizations, this directive -- I'm quoting -- does not merely urge the Governor and Legislature to consider taking action, they are directed to take action. The matter for them to consider is whether $4.7 billion or $5.63 billion or some amount in between is the minimum additional annual funding to be appropriated for the city schools.

That is the court telling us by April 1st we are to find something, at least $4.7 billion a year, with a phase-in program.

Finally, ladies and gentlemen, this again Orwellian effort to blame the Assembly. The Assembly this year passed a multiyear plan, Assembly Bill 10256. It's there. They have a plan that is a multiyear plan. I think Senator Oppenheimer's plan is a better plan, but they passed a multiyear plan.

The place we can't get this done is the Senate. The Governor even has stood by his figure, because it came from the defendants, of $4.7 billion a year every year needed for operating aid for the city's schools. The problem is here, ladies and

gentlemen.

So let's dispense with the rhetoric. This issue is not going away. You've heard my colleagues. It's something we feel passionate about. It's personal for me. The Campaign for Fiscal Equity was formed by the parents in my district. We still have overcrowded schools, we still have underfunded schools. Reverend Diaz, Senator Diaz is absolutely correct that the poorest districts, the minority districts, are not necessarily getting the money when we do get it. That is an issue that has been documented over and over again.

This year, in a special report by the Education Trust, they found this. In the state of New York the districts with the smallest portion of minority students, black and Hispanic students, on average are getting $10,197 per student. The districts with the largest portion of black and Hispanic students in New York State this year are getting $7,778 per student.

Is that something that enables us to tell our constituents we're doing

everything we can? I don't think so. We are in violation of the State Constitution. We are in violation of fundamental morality that says every child, regardless of race, regardless of the community you grow up in, is entitled to a sound, basic education.

Senator Oppenheimer's plan would resolve that. The bill before us today does not deal with the issue of operating aid. We are going to be coming back to this again and again and again. There's a lot of good stuff in this bill. Some of us feel we have to vote no. Some of us are going to vote yes and raise the objection.

But I would my urge our colleagues and Senator Saland, who I know is always ready for negotiation and discussion, this issue will be here next week when we reconvene and it will be here every year until we fairly fund the high-needs school districts.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator Schneiderman.

Senator Saland, to close.

SENATOR SALAND: Thank you,

Mr. President.

I certainly am loath to prolong what has been, I think, a very healthy expression by both sides of the aisle about their sentiments about (a) this budget and (b) CFE. But I feel constrained to address at least some of the things that Senator Schneiderman mentioned in his closing remarks.

I would respectfully disagree that -- and clearly there's little or no authority anywhere other than the hyperbole of some of the advocates that would tell you that the Court of Appeals has ruled the State of New York's funding formula to be unconstitutional.

Clearly they said that the State of New York failed to abide by its constitutional obligation to provide a sound, basic education in certain schools in the City of New York. That is the constitutional issue that was framed by the Court of Appeals, and that's what was sent back to initially Judge DeGrasse to determine what the cost of funding that sound, basic education would be and to establish the accountability mechanism that

would ensure that those dollars were spent appropriately and in a fashion that benefited those children.

With regard to the Appellate Division decision, now I have an approximate -- it's not the reported copy, but about 50 pages' worth of decision here, of which about 30 are the majority opinion and about 20 are the dissent. On page after page after page after page the majority relays that it believes that there are things that are appropriately for the Legislature and things that are appropriately for the courts, emphasizes the importance of the separation of powers, and takes great, great pains to say that this is a matter for the Legislature.

And it goes on, at least again in my copy, at page 29 -- and it's the same language that you heard from Senator Schneiderman earlier. After it directs that Judge DeGrasse's order be modified on the law and the facts to vacate the confirmation of the referee's report that directs that in enacting a budget for the fiscal year commencing April 1, 2006, the Legislature and

the Governor consider -- and I emphasize the word "consider." And I've had occasion to say time and again that that word is not my word, it's the court's word.

And certainly "consider" is, I think, consistent with the idea that there is a separation of powers, there are functions for the court and functions for the Legislature and the Governor -- and consider as within the range of constitutionality required funding for the New York City school district, and goes on to say, as demonstrated by the record, in an amount of $4.7 billion to $5.63 billion.

It also in that section goes on to talk about capital, and again couches its decision in terms of a $9.179 billion award and does that by also adding language, I believe something to the effect of -- and I can't get to it -- "or otherwise satisfies the city schools."

I would merely submit to you that the interesting thing about this from a professional context, when you read all the decisions, I was saddened on the part of the

state to read that the defendant, the Governor, as represented by the Attorney General, never proffered any evidence to refute the CFE proposal with respect to capital, which regrettably is tantamount to a default. But nonetheless, it was a bit troublesome to read that in the decision.

But be that as it may, that's what we have to deal with and that's what I believe we've effectively dealt with.

So I would merely conclude by pointing out a couple of other things. Number one, it's one thing to pass a multiyear budget bill. We have done that in this house. The Assembly has done it in their house. It's a vastly different thing to try and negotiate or, on the other side of the coin, to refuse to negotiate a multiyear bill to deal with this CFE issue.

One is public, one is for purposes perhaps of attaining the public high ground for purposes of being able to posture to the folks in a particular constituency. But where the rubber hits the road and people want to come to the table, it's, as I've said

previously, awfully lonely to be there by yourself.

And I don't quite recall the statistic that Senator Schneiderman made reference to earlier. And if I'm incorrect, I'll be very happy to stand corrected. But I think he talked about a disparity in funding in school districts in which there are significant amounts of minority students.

And you heard me mention a bit earlier that within the deciles of state aid, the highest -- which might include some of the districts, perhaps, in districts such as you might find in Westchester, in districts perhaps such as you might find in Nassau or on Long Island -- get the lowest amount. I mean, it is a progressive system.

So if you're an average district, as New York City is, you fall somewhere in the middle. If you're an upstate district, a poor rural district in which you're getting $9,000, perhaps, and 90 percent or more of your funding, or something close to 90 percent, or mid to high 80s is coming from the state, well, in those districts you're not going to

find, for whatever reason, as high of a minority population as you might find further downstate or in some of our larger urban areas or in some of our suburban areas. That's just a function of demographics.

So I'm not quite sure what validity that data offers in terms of finding some kind of meaningful sample. It basically is saying in New York there are some very poor rural districts that receive a lot of money that don't have many minority students. And I have no idea what the data would tell me on the other end -- it wasn't offered -- as to what happens in some of those more affluent districts that are receiving some relatively modest amounts of state aid.

With that, Mr. President, I will once again indicate my support for the bill, and thank you for your patience.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Debate is closed.

The Secretary will read a substitution.

THE SECRETARY: Senator Johnson,

from the Committee on Finance, moves to discharge Assembly Bill Number 9558B and substitute it for the identical Senate Bill Number 6458C, Third Reading Calendar 500.

ACTING PRESIDENT MORAHAN: The substitution is ordered.

Ring the bells.

Read the last section.

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

ACTING PRESIDENT MORAHAN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN: Senator Bonacic, to explain his vote.

SENATOR BONACIC: Thank you, Mr. President.

When I spoke on the bill, I had talked of a commission looking into an alternate means of funding education other than the property tax. I've just been advised that that provision has been deleted in the Assembly education bill, which is going to be voted on later today.

Needless to say, I'm very

disappointed. But I would like to say that the challenge to change the way we fund education is going to have to rest with us in this house.

And I would welcome the support of any senator who wants to work with me and our other colleagues in attaining this goal of finding an alternate means of funding education.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator Bonacic.

Senator Stachowski, to explain his vote.

SENATOR STACHOWSKI: Mr. President, I just rise in support of this bill. I'm planning on voting for it.

I think that with the largest increase that we've ever had for education, albeit it not enough for the court case, it will be very helpful in the districts. And all the school districts that I represent, they're looking forward to it.

The higher education institutions are tickled with the treatment that they got

in this year's budget. It's so good to see some full-time positions going back into SUNY after years of trying to get that done.

And to help with all the other programs we help with in education this year, I think it's a credit to the people in the Legislature and I congratulate everybody involved in the conference committees.

Thank you.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Parker, to explain his vote.

SENATOR PARKER: Thank you, Mr. President.

I'm unfortunately going to have to vote no on this bill. I think there's a lot of good things, particularly as it relates to higher education, that's being done.

But I've heard people say that they believe these provisions that are being made here in the language bill and then later on in the budget bill are going to somehow fulfill the requirements of CFE. No one can possibly think that. This is nothing further from the

truth.

The lawsuit and the problems that we deal with fundamentally have to do with the formula. It is unfair for New York City's schoolchildren that denies them really an access not just to an education now but to really be a productive future. And I'm really saddened by that.

And I really think we need to do much better than we're doing. I think that the members, you know, who live in New York City, you know, really ought to oppose this measure. This bill does not take us nearly where we need to be on school finance.

My only regret in voting no on this is I only have one no vote to cast for the children of New York City, my district, and the children of the state.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes, I think that -- I too rise in favor of this bill.

And I think it's very important not

only to recognize that this is a record spending on education, but as people are going around the state criticizing the Senate and the Assembly how much they spent on this year's budget, I think it's really important to note that if we did not use the surplus in a responsible way by aiding the school districts to educate our children, then the alternative was astronomical property-tax increases throughout the state.

So I think it's not only a wonderful thing for all our children throughout the state, but also this bill substantially relieves the pressure on local property taxpayers in the State of New York. And I think for both reasons it was a wise use of a substantial portion of the surplus that the State of New York had this year.

I vote aye.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Meier.

SENATOR MEIER: Thank you, Mr. President. Briefly to explain my vote.

I don't want to lose sight of the

fact that within this budget we fund a number of programs under the Office of Children and Family Services. And earlier this year the attention of this body and of this whole state was riveted by the tragic case of Nixzmary Brown and by some other cases around this state where some children were horribly and tragically abused and even murdered.

And this Senate has been responsive to that ongoing concern, and we've reacted in a very positive way. Contained in this budget bill is additional money for Child Protective Services, additional money for people and for technology so that we can reduce Child Protective Service worker caseloads. There's additional money in here to extend and expand the services of child advocacy centers, which are on the front lines in a very child-friendly way, a multidisciplinary approach to combatting child abuse, and additional supports out there for child protective workers and for those who are mandatory reporters.

These are positive investments in protecting the children of this state and

particularly those who are really without friends, without anyone to look after them. It's something this Senate should be proud of, because these were Senate initiatives.

Mr. President, I vote aye.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 500 are Senators Duane, Parker, Sabini, Savino, Schneiderman, Serrano, and A. Smith. Also Senator Montgomery.

Ayes, 53. Nays, 8.

ACTING PRESIDENT MORAHAN: The bill is passed.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time take up Calendar Number 495.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: In relation to Calendar Number 495, Senator Johnson moves to discharge, from the Committee on Finance,

Assembly Bill Number 9553C and substitute it for the identical Senate Bill Number 6453C, Third Reading Calendar 495.

ACTING PRESIDENT MORAHAN: The substitution is ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 495, Assembly Budget Bill, Assembly Print Number 9553C, an act making appropriations for the support of government: Education, Labor and Family Assistance Budget.

SENATOR MONTGOMERY: Explanation.

ACTING PRESIDENT MORAHAN: Senator Johnson, an explanation has been requested.

SENATOR JOHNSON: Yes, Mr. President.

Well, you know, we've had quite a long conversation on the Article VII bill, which of course included all the appropriations under this bill. The explanations by Senator Saland and Senator LaValle about higher education and elementary education, and all the other conversations, demonstrated to me that everyone here knows

what's in this bill. And I'm sure they're going to support it.

Thank you.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Any other Senator wish to be heard?

Senator Krueger.

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

ACTING PRESIDENT MORAHAN: Senator Krueger, on the bill.

SENATOR LIZ KRUEGER: Thank you.

Well, this is the appropriations language for education, labor, family assistance. So not to belabor the previous debate, while I ultimately voted for the language bill, clearly I'm on record that we failed to do what we were supposed to in operating aid for education or for addressing fair funding formulas or meeting our obligations to the courts.

But having said that, and having the same concerns within this bill, I would like to highlight some issues within this bill, the good and the bad.

I want to applaud the fact that this is a good bill for higher education. It holds the line on tuition for CUNY and SUNY. It restores the Governor's TAP cuts. It enhances TAP to include funding for eligible part-time students. It provides an additional $167 million for SUNY and CUNY operating aid. It increases funding for the state's community colleges. It increases opportunity programs funding by 10 percent. It increases funding for full-time faculty at SUNY and CUNY. It increases funding for independent colleges through Bundy aid. And it has a long list, totalling $700 million, in capital grants to help SUNY and CUNY campuses move forward with the desperate need they have for construction efforts, both to upgrade their buildings to be 21st century buildings for higher education and also to deal with the fact that they have growing student populations and some of them have literally outgrown their campuses. So that's the good news.

I think also good news is the fact that we expanded money for public libraries, both in aid to public libraries and in library

construction. We've talked about school construction in the previous debate and the fact that there's $1.8 billion more for the City of New York, $400 million for more high-needs school districts outside the city, and $400 million for remaining school districts to be distributed on a per-pupil basis.

But I would like to highlight, there's a little flaw with the concept of distributing construction money on a per-pupil basis, because it makes the assumption that you're all starting at the same place. And of course we know that in various high-needs versus low-needs districts in the state of New York, we're not starting at the same place place. So under this formula, school districts that have no additional need for expanded school space will still get a per-pupil allotment for school construction.

So again, just for the record, school construction distributed under unfair funding formulas is no better for the State of New York than school operating monies distributed under an unfair funding formula.

In the Office of Children and Family Services -- and Senator Meier already got up to speak about some of the issues, and he's done a very good job as the chair of that committee. And I am very, very happy that yet again the Legislature has, I think for the fourth year, rejected the Governor's ill-thought-through proposals to have full family sanction, do away with earned income disregards for people on public assistance who are working. We have rejected his proposals to take income support away from families who have SSI household members, whether it be adults or children, people with special needs who are disabled. And under the Governor's proposal, we would have been reducing the income to these desperately poor families with special-needs family members.

Again, we have rejected any number of the Governor's bad proposals and reinserted the funding to make sure that these policy changes don't go forward.

I do want to highlight, however, that we have yet to address the fundamental question of what happens with $1.3 billion in

TANF federal appropriations. And I know that we'll be coming back to deal with these issues. But again, the limitations of our ability to change the Governor's budget resulted in our simply removing that $1.3 billion surplus in TANF, as opposed to having serious debate over how it is spent. And we must come back to the table and discuss that, hopefully starting next week.

I would also like to highlight that there is a section of this bill -- excuse me, I have to not skip over the fact that I am disappointed we continue to expand the STAR rebate program and accept the Governor's aid to localities STAR program in its entirety.

Again, my colleagues often talk about the unequal burden of property taxes, often forgetting some parts of the state have local income taxes as well as property taxes. But we also often gloss over the fact that we have a system where we've got an inequitable reimbursement system on property taxes, called the STAR program, that dramatically shortchanges both people in cities and particularly renters versus homeowners, who

are most likely to be in the large cities of the state of New York and are disproportionately our lowest-income New Yorkers.

So in fact expansion of the STAR program continues to inequitably rebate monies that we then do not have in the state budget and continues to shift our state taxation policy in the whole from a progressive to a regressive model of taxation, which affects people in every single one of our districts. It's driven by whether or not your income is higher or lower. And in a regressive tax model, which the State of New York has and continues to move towards, lower-income New Yorkers are disproportionately burdened with a higher share of taxes compared to their income than higher-income New Yorkers. And this bill fails to address or attempt -- it doesn't even attempt to address the inequity there.

I'd now like to bring my colleagues' attention to the last pages of this bill, starting at page 739. Because starting at page 739, we stop dealing with

education, labor and family assistance appropriations, even though that's the title of the bill, and we go into a series of chapter amendments to other bills we did earlier in the week and large sums of money to be bonded out for various economic development operating and capital projects.

And so one of my concerns is what's it doing in this budget bill? I'll tell you the answer. We know the answer. These were the items that were left to the last minute for the mother ship to make determinations on. All the other bills had already gone to print, and so this was the only bill left to deal with any of these issues on.

I just think it's a questionable model of budgeting to put all the other items that were unresolved into the final pages, starting at page 739 and going through page 755, for those of you who might not have read all through the budget bills, that this is where we're dealing with hundreds of millions of dollars of additional money.

Could I ask for -- Mr. President. Could I ask for a little more quiet, please,

Mr. President.

(Laughter.)

ACTING PRESIDENT MORAHAN: Take the conversations out of the chamber, please. A little respect for Senator Krueger as she closes her speech on the bill.

SENATOR LIZ KRUEGER: I hope my colleague is okay.

For the record, no one's laughing at my request for order. There was something else going on in the chamber.

Thank you, Mr. President. To continue.

ACTING PRESIDENT MORAHAN: What page are we on here?

(Laughter.)

SENATOR LIZ KRUEGER: Thank you, sir. They were laughing at my request for order? Oh, all right.

So in this bill we do add $475 million for capital projects requested by the Governor. We do have $387 million additional line items in capital project appropriations. We do have $15 million for energy conservation, $15 million for something

called an International Nanotechnology Photovoltaic Center.

Here's my questions to us all, Mr. President. Even though it's line-itemed out, there is far more money line-itemed out in this budget bill than in previous years. And I applaud the fact that we're not doing memorandum of understanding budget language this year. I take it as a personal victory, after my raising these concerns over and over again, that despite the fact that we reappropriated $2.3 billion in MOU deals the other day, there are no new MOU deals in this year's budget.

I would be happier if we hadn't created in its stead some new language where, rather than MOUs to be determined at a later date by agreement by three individuals, MOUs that we, the public and the Legislature, can't get access to copies of, we've replaced that with new language. Quote, from page 751: "other projects to be determined pursuant to a plan to be developed by the Temporary President of the Senate in consultation with the Director of the Budget," "other projects

to be determined pursuant to a plan to be developed by the Speaker of the Assembly in consultation with the Director of the Budget."

It's certainly a different model than MOUs, but I don't think I would argue it's a better model in budget policy to simply have lump-sum amounts of money in the millions of dollars that will be no doubt borrowed and will be determined through a plan. Do we have a legal definition of a plan within the budget? We never had a legal definition of an MOU within the state budget.

I also stand to publicly say that I don't think the State of New York should put money into private, for-profit sporting facilities. I've said it over and over again, and I will continue to make the argument that in the absence of adequate money for schoolchildren, for hospitals and healthcare, for public transportation and for public safety, I can see no justification for a $33 million capital line item for the next project in Brooklyn. I can see no justification for a $5 million line item for a -- excuse me, I forgot the name of the

group -- for the Rochester Rhinos. I can see no -- no disrespect to the team.

I can see no justification for $74.7 million for the Mets in Queens. I can see no justification for $74.7 million for the Yankees in the Bronx. These are private, for-profit sporting facilities. Just as I spoke out against any special deals for the Jets last year, I would argue this is a not good use of taxpayers' money.

I will also raise one more question to be thought through by my colleagues. Many of these line items are to private companies. There's $20 million for an ethanol factory, $15 million for a nanotechnology photovoltaic center. Apparently we are in the venture capital business here in New York State. So I ask the question, do our constituents get shares in the company? Do we get royalties to return to our constituents? Do we share in the patents for any scientific discoveries that private companies are making in the state of New York with our taxpayers being investors, without their actually having gotten out and chosen to be investors?

There can be arguments for state money for economic development. I will be the first one to say there can be justification. But if we're taking taxpayers' dollars and we're investing it in private entities whose goal, as it should be, is a bottom-line profit, where is our return on that investment and how do we justify to the people of New York that we take their tax dollars, give them to private companies, the shareholders will hopefully make money and jobs will be created but a significant percentage of the investment and investors may get nothing on the deal?

So because of the right things that are in this budget appropriation bill, I will vote for it. But for the record, there are very serious questions about other items in this bill, what they're for, and why they are in a bill that is labeled "legislative education, labor and family assistance appropriation bill."

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Serrano, on the bill.

SENATOR SERRANO: Thank you, Mr. President.

While I echo the concerns of my colleagues on the disturbing numbers on school funding, I rise today to speak on a very important issue to myself and to the colleagues in my conference, and that is the funding in this bill for the arts and the cultural community in the state of New York.

We all know in this chamber that the arts and culture, not only in the city of New York but throughout the state, is a tremendous economic generator. It provides jobs in communities, it provides educational opportunities. But more importantly, it is an economic engine and it helps communities come out of poverty and it helps generate a tremendous amount of revenue for the State of New York.

I have old numbers, so they've grown since then. But according to the Alliance for the Arts, in 1997 the arts and the cultural community generated $13.4 billion in economic activity and 175,000 jobs

statewide.

It is one of our largest resources. It is one that we should be investing more in. Because more than it being a pillar of our society, it is a tremendous resource and a commodity for the state of New York.

And I ask my colleagues to consider the fact that we are not doing nearly enough for the arts and culture in this state and that we should think about how we can do better for arts. With the firm understanding, as we saw with Senator Rath's roundtables over the summer, tourism roundtables throughout the state, that we have a tremendous resource untapped and we should do better.

Thank you.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Any other Senator wishing to be heard?

The debate is closed.

Read the last section.

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

ACTING PRESIDENT MORAHAN: Call

the roll.

(The Secretary called the roll.)

ACTING PRESIDENT MORAHAN:

Senator Balboni.

SENATOR BALBONI: I rise, Mr. President, because we have come to the end of the process and I believe that we should not relegate the commentary on our proceedings to the press or the so-called reformers. Their views are seen through the prism of cynicism. And a quick scan of the last few days' press reveals their desire to tear down our results regardless of the positive impact that they may purvey.

They decry this budget as spending too much, with debt rising too fast, yet not enough spending on education and with healthcare costs out of control. This list, my colleagues, are the gripes du jour. I refer to them in this way not to demean their merits -- they are important issues -- but because they constitute a continuous series of complaints which emerge and fade year to year.

Gone from this year's list, you may note, are the cries of last year: There will

be a huge deficit if you spend like this. There is no transparency in the process. The state has unreasonably burdened local governments with mandated costs.

These issues are gone and forgotten. We have one of the largest surpluses in our state's history, over $4 billion. That has not warranted any mention during our budget proceedings. We have a budget before us that was negotiated in public. It has been on our desk for three days, and we are passing it in the light of day and on time. And we are providing a record amount of aid to our localities.

And it is this surplus which has enabled us to do this. Yet instead of applauding us for our stewardship, our tax cuts are decried as de minimis in effect and political in motivation.

But let us not engage in this exercise of cynicism. Let us instead, for once, celebrate, and celebrate the fact that we have done this all together, because of the surplus we have. And that together we have decided as a state that we should give back

some of the surplus to the overburdened, overworked, and overtaxed residents of this state.

And this is a wholly appropriate decision on our part, given our place in history, which, again, we never really refer to. New York was the first among the colonies. It has been one of the continuous leaders in our nation. And this decision marks for us the decision that we choose hope over despair and hope for the process of this state and for our future.

I vote yes on this budget, as an affirmation of what we can do when we decide to do it.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator. You shall be recorded in the affirmative.

Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Mr. President. That's certainly a tough act to follow. I feel like rising and applauding my colleague Senator Balboni.

But we've come a long way since

January 4th, when Senator Bruno stood up on the floor, and I'll quote his words, when he recognized what has to be done. "The people look to us to be representative of their needs, in education" -- now I have his attention -- "in healthcare, in the infrastructure of this state, in the energy costs, in the prescription drug costs. It goes on and on and on. And yes, to the tax ramifications that affect the quality of their lives."

"We recognize the pain out there for the people on fixed incomes, for people on moderate and low incomes, and that we must be responsive to their needs."

I can look at all these papers on my desk, as we all can, and look at significant tax cuts, educational aid, the continuing caps on Medicaid costs that will save counties throughout this state, and on and on and on. And despite the criticism that I heard today on the floor of specific line items, the commitment to invest in the future of the state was made: a vision for growth, a vision for excellence, and a vision for all

future generations.

I'll be voting aye.

ACTING PRESIDENT MORAHAN: Thank you, Senator. You will be recorded in the affirmative.

Senator Savino.

SENATOR SAVINO: Thank you, Mr. President.

You know, it's at moments like this that I wish that we had the privilege that the Governor does, that we could vote for the parts and improve the parts of the budget we like and vote against the parts that we don't.

About a month ago I actually voted against every one-house bill that was put forward on the budget. And in the past month there's been a lot of work done by the members of this body, in conjunction with the Assembly, in an open budget process, and we have made incredible progress. And for that, I thank all of you.

And I voted for every budget bill that came before me today, with the exception of this one. And I'm disturbed by the fact that I have to vote no, and I'll tell you why,

because it's really a good bill on a lot of levels. There's a lot of good stuff in this.

As Senator Meier pointed out, the increase in aid to the Office of Children and Family Services will allow for caseload reduction in child welfare and greater training and increases in family preservation, a lot of good things there.

There's a lot of good things in the higher education budget. We've managed to preserve TAP at its current level. We've managed to prevent tuition increases. We have appropriated $9 million for the College of Staten Island, which serves the needs of my district and Senator Marchi's. We've increased aid to the Kingsboro Community College by $4.5 million, serves the needs of many of us in Brooklyn.

And on school construction capital, that's $6.5 billion is going to allow us to be able to do a couple of things in Brooklyn and Staten Island, in my district. In Sunset Park, there's a 1600-seat high school that has been in the planning stage for years that will alleviate the overcrowding in high schools

around my district, Senator Montgomery's, Senator Andrews', Senator Parker's, and Senator Golden's. That high school will finally get built now.

But across the bridge in Staten Island, I have two of the most overcrowded high schools in the city of New York. Curtis High School is at 162 percent capacity, 162 percent. There's no new high school being planned for Staten Island. Tottenville High School is at 113 percent capacity. There's no new high school planned for the south shore of Staten Island, in spite of the fact that Staten Island is one of the fastest-growing counties in the state of New York.

And I cannot ignore that without additional operating aid, we are not going to be able to address the needs of those schools. We're not going to be able to address the needs of Fort Hamilton High School, which is 150 percent capacity. We need to address those needs. We need to give the City of New York more operating money, as we have been directed by the Court of Appeals to do so. This budget does not do that.

And I cannot in good conscience ignore that we have been directed by the court to provide that money to the City of New York to address the operating needs in the districts that aren't going to get capital construction projects. I cannot in good conscience vote for this bill, and for that reason I'm voting no.

ACTING PRESIDENT MORAHAN: Thank you. You will be recorded in the negative.

Senator Parker.

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

I want to just first congratulate this body on, I know, a lot of hard work on a lot of people's parts. And on this particular bill, I want to congratulate Senator LaValle and Assemblyman Ron Canestrari, who worked together on higher education. This is really remarkable what we've been able to do. Both as a CUNY professor and a member of PSC-CUNY, I know how important this is going to be for all the CUNY schools and the SUNY schools around the state. Holding the line on tuition, making sure that the TAP was restored

and that we have both accessibility and access for higher education is really, really critical.

However, what I'm afraid of is that the problem is that we're not going to be able to fill the seats in higher education at CUNY and SUNY because we won't have people who are eligible coming out of public schools because we have not done a great job there.

And I think that Senator Balboni is right, that this is a historical moment. It is a very historical moment right now; we ought to remember it. Because right now we're casting our votes to defy a court order. We're casting our votes to be in contempt of court of the Court of Appeals of State of New York.

You're right, we're making history. And we're sending a signal to our young people and to the children particularly of New York City that not only don't we care about your education and your life chances going forward, but we don't care about the courts and what they say. Essentially what we've said is, you know, fine, you want a lawsuit, try to get the

money. And I think that's the wrong message, certainly not the message I want to be sending today.

And I think again that Senator Balboni is right, that we can do anything at all that's possible if we just decide to do it. Everything in Albany is a matter of will. And right now what we are being told is that you will not fund education, you will not listen to the court order, you will not provide the proper resources for the young people of the city of New York or the high-needs districts around the state.

And I think, you know, if people want to fall back, you know, and declare victory, and the mayor is happy to do so, if he's for some reason cut a deal with anybody in this Legislature about not providing operational dollars, shame on him. Because at the end of the day, there are things that we need to be doing in addition to building buildings right this minute. We need to be providing more money for English-language learner programs, we need to be finding more money for after-school programs, more money

for art, music and dance and athletics in our schools as regular parts of the curriculum so our children can be well-rounded and we're not just teaching to the test. There's things that we need to be doing in terms of providing more language courses and more science courses and mathematics courses in our classrooms right this minute.

And so I have to vote no, despite the fact that we've done some good things with this budget.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

Senator Volker.

SENATOR VOLKER: Mr. President, very quickly.

I want to thank Senator Bruno, my colleague here Senator LaValle, Senator Saland.

I have to tell you, I've been here -- this is my 34th budget. And I can never remember, in all my years -- by the way, Senator Parker, New York City is getting more money for schools than it has ever gotten in the history of this state. I believe that

school construction operation in New York City will probably take 20 years to use up all the money, the capital that's here. It's no secret they can't build schools fast enough. They're way behind in their numbers. It's a huge problem. And unfortunately, that's something the mayor should deal with because it's been a problem for years.

Let me just say that as far as my region is concerned, Western New York, we've never received anything like the help that's here. I don't believe I have ever been part of a budget that provided the kind of money we have, and not only provided the enormous amount of tax cuts but there's something in this budget I can't remember the last time.

As far as I know, there's not one single tax increase in this budget, and I don't believe there's one fee increase that I'm aware of. And when Joe Bruno says no taxes and no fees, he means it. And I'll tell you, we had to do some wiggling to do that, particularly in criminal justice, I can tell you. But we took his advice.

Finally, let me say one thing more,

and that is there was another big reason why Senator Bruno had to get this done on time. And I want to thank, by the way, the Governor, because the Governor is coming into Buffalo today to announce an on-time budget. I don't think I'm going to be there, but I really appreciate him coming into Buffalo to announce the on-time budget.

But let me just say the other reason that he needed to get it on time is because there's a particular person in this chamber who needs desperately to be in Indianapolis on Monday. He's one of the idols of my life. He sits right there.

He's going to be one of the officials in the final NCAA game in Indianapolis. Which means he's one of the best officials in the country. There's three officials, I think, and they're supposed to be the best in the country. And I just want to say to John Cahill, he's my -- I admire him immensely.

(Applause.)

SENATOR VOLKER: Obviously, I vote aye.

ACTING PRESIDENT MORAHAN: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 495 are Senators Duane, Montgomery, Parker, Sabini, Savino, Schneiderman, Serrano and A. Smith.

Ayes, 53. Nays, 8.

ACTING PRESIDENT MORAHAN: The bill is passed.

(Cheers, applause.)

ACTING PRESIDENT MORAHAN: Senator Paterson.

SENATOR PATERSON: Thank you. Thank you.

(Laughter.)

SENATOR PATERSON: I think we have discussed the substantive issues. And I'd just like to use this moment to turn the camera inward and thank Senator Bruno for all of his cooperation and help during the budget negotiations.

He's made a lot of great decisions. Maybe the greatest was appointing yours truly to the general conference committee and letting me participate in the last two

budgets, both of which passed on time. Now I'm leaving, and I wish you all luck.

(Laughter.)

SENATOR PATERSON: I would also like to thank Senator LaValle, Senator Volker, the very kind remarks that Senator Bonacic made about alternatives to education.

I thought honestly that the education debate here was among one of the most substantive and really outstanding persuasion on both sides of the aisle.

I would say that if I'm ever in danger -- if we restore the death penalty, if I'm ever in danger of going to the electric chair, I'm going to have Senator Saland at my side. And I don't think they'll ever, ever put me away. Even though I disagree with him, I admire the way he works around the constitution to make his points.

And -- but seriously --

(Laughter.)

SENATOR PATERSON: Seriously, he's a very good friend of mine and has comported himself very well, with a lot of passion and conviction.

And I was very proud of those in the Senate Minority, everyone who discussed and debated this budget.

My only regret is I bet Senator Bruno -- obviously not a financial bet, we'd never do that -- but bet him we'd be done by 1:30, and we're not. And so as not to delay the proceedings any further, defense rests, Mr. President.

(Laughter.)

ACTING PRESIDENT MORAHAN: Senator Bruno.

SENATOR BRUNO: Thank you, Mr. President. Thank you, Senator Paterson. And thank you to my colleagues here in the Senate.

Senator Paterson kept looking at his watch while Senator Krueger was talking.

(Laughter.)

SENATOR BRUNO: And I notice it didn't do any good. It didn't do any good.

ACTING PRESIDENT MORAHAN: Everybody was looking at their watch.

(Laughter.)

SENATOR BRUNO: But you know

what, Mr. President and colleagues? This is truly a proud moment for all of us.

You look at the clock, the sun is shining, it's a beautiful day. Father Young yesterday gave us credit in the Senate for the sunshine and the beautiful weather. We accept that fully. I think that was in our budget bill.

(Laughter.)

SENATOR BRUNO: Like everything else was that's of great consequence to the people of this state.

But you know what? Really, we can be proud, all of us can be proud, because what we are doing today, on time, truly is responsive to the needs of the people of this state.

This is the Empire State, something that all of us relate to and are proud of. The people in this state are proud to be part of New York State. We are accountable to the people. And what we're doing here in our way is being accountable, being responsible, helping people who can't help themselves, as their representatives.

We're investing in education, breaking records. That's our present and that's our future. We're investing in healthcare, where people have a right to feel good about themselves, to be well, to take care of their children, to take care of their loved ones and their neighbors. We have a responsibility in society to do that. And we're doing that, and we're stepping up and we're doing it right.

People have a right to expect an infrastructure, and we're investing in that. All of the other things are in this budget -- and it's 112-plus, maybe 400 million, four -- $112.4 billion. And it's kind of amusing, because the numbers keep changing depending on where they come from, whether it's the Budget Division on the second floor, the Assembly, the Senate.

But colleagues in the Senate, be proud, because we're always right. We're always right. And what we are doing here today is right. Senator Paterson said it right, so many of you said it. There isn't much more to say on the substantive part of

what we're doing.

Just understand that some of you, you feel very strongly about some of what we're doing. Some of you feel compelled to kind of focus on a negative part of 112.4 billion, in the action or in the inaction. But just be thankful, those of you that have some negativity about any part of this, that the collective judgment of this house saves you, saves you from yourselves.

(Laughter.)

SENATOR BRUNO: So be thankful for that, okay, because you'll go out there and you'll take full credit for everything that we're doing.

(Laughter.)

SENATOR BRUNO: There won't be anybody there to debate you. And that's as it should be. Because the one thing that we all respect, people have a right, you know, to express themselves, tell it like it is from their own point of view. Don't have to be right, but we respect people's rights to say what's on their minds and how they feel. That's what we're elected to do.

I believe there are 211 legislators functioning in this state today, and all of us can be proud because we have collectively done this. We didn't do it by ourselves. None of us have done any part of this. We have been involved in the most open, public process in government in the history of this state. And that's something for us all to be proud of.

So I want to thank my colleagues, my colleagues in leadership here, all of my colleagues on this side, my colleagues on that side. Because today, right now, there's only one side, and that's our side here and the right side on behalf of the people of this state.

And I want to thank Speaker Silver and all of his colleagues there that relate to doing the good things that we're doing.

And I want to thank the Governor for touring the state and applauding us for having the second on-time budget. There are some things that some people get right. And that's one thing that they're getting right, that this is the second on-time budget.

We're going to have some

differences as we go over this next week or two. There are going to be some differences. It's going to be publicly negotiated, publicly debate. And when it's all said and done, we're going to do the best things that we can for the people of this state. That's what governing is all about, differing. Just differing. And negotiating. And you compromise. And by compromising, you accomplish something.

We have accomplished a great deal today. And as much as I might try, I feel that I have said all the things that are necessary for me to say, and thank you, and being proud. And I just cannot talk as long as Liz Krueger. I just can't.

(Laughter.)

SENATOR BRUNO: So, Mr. President, I want to just conclude and wish you a healthy, safe passage as we go on into this beautiful weekend, feeling good about yourselves, everybody here that participated.

ACTING PRESIDENT MORAHAN: Senator, I couldn't help but note that Senator Krueger was just looking at her watch.

(Laughter; applause.)

SENATOR BRUNO: I noticed that the president was looking at his.

(Laughter.)

SENATOR BRUNO: Mr. President, yes, you need to be relieved up there?

(Laughter.)

SENATOR BRUNO: No, he's comfortable. He's comfortable, Dean.

Any other business at the desk?

ACTING PRESIDENT MORAHAN: Yes, we have some housekeeping, Senator.

SENATOR BRUNO: Would you please take care of that.

ACTING PRESIDENT MORAHAN: Senator Nozzolio.

SENATOR NOZZOLIO: Thank you, Mr. President.

On behalf of Senator Volker, on page number 14, I offer the following amendments to Calendar Number 295, Print Number 3353, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT MORAHAN: The amendments are received, and the bill will

retain its position on the Third Reading Calendar.

Senator Bruno.

SENATOR BRUNO: Mr. President, can we at this time recognize Senator Schneiderman.

ACTING PRESIDENT MORAHAN: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

There is a motion at the desk. I would like to have it called up and speak very briefly on it.

ACTING PRESIDENT MORAHAN: The Secretary will read.

THE SECRETARY: Senate Print 1576A, by Senator Schneiderman, an act to amend the Education Law.

SENATOR SCHNEIDERMAN: This is a motion to bring to the floor the Unintended Pregnancy Prevention Act.

This bill, which passed this house but which we failed to override the Governor's veto on before, would make it possible for New York State to provide access to emergency

contraception to thousands of women presently denied access by allowing nurses and pharmacies to dispense it without first requiring a doctor to write a patient-specific prescription.

This bill will prevent thousands and thousands of unwanted and unintended pregnancies. It is not RU-486. It is something that prevents pregnancy, does not terminate pregnancy.

I would urge my colleagues that we should not allow another year to go by with thousands of women being forced to get pregnant when they do not want to. In the words of President Clinton, abortion should be safe, legal and rare. This bill will keep it more rare. And the Senate is the place where we need to bring the bill to the floor and muster the votes to override.

Senator Spano sponsors a similar bill. It has passed this house before. And I would urge all of my colleagues to vote for this motion. Let us this year pass the Unintended Pregnancy Prevention Act and let us override, if necessary, a gubernatorial veto.

Thank you, Mr. President.

ACTING PRESIDENT MORAHAN: Thank you, Senator.

All those Senators in favor of the petition out of committee please signify by raising their hands.

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

ACTING PRESIDENT MORAHAN: The petition is not agreed to.

Senator Bruno.

SENATOR BRUNO: Mr. President, there being no further business to come before the Senate at this time, I would move that we stand adjourned till Monday, April 3rd, at 3:00 p.m., intervening days to be legislative days.

Thank you.

ACTING PRESIDENT MORAHAN: On

motion, the Senate stands adjourned until Monday, April 3rd, 3:00 p.m., intervening days to be legislative days.

(Whereupon, at 2:17 p.m., the Senate adjourned.)