NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

April 11, 2006

11:05 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: With us this morning to give the invocation is Reverend Scott Harris, pastor of Grace Bible Church in Wappingers Falls, New York.

REVEREND HARRIS: Heavenly Father, our Creator, You in whom we have our being, in whom we breathe, I come humbly before You this morning asking Your grace and mercy on these who serve You in government, on these men and women whom You have declared to be Your servants.

You have entrusted upon them a great and awesome responsibility in making decisions that affect not only the lives of the millions of people in this State of New York, but those who are touched by the citizens of this state. Father, give them

wisdom to discern truth from error, right from wrong, that they may uphold justice.

Your word tells us as well that You have established government for the purpose of justice, to revenge upon those who practice evil. Your word tells us that they are Your ministers.

Father, I'd also ask You to give them a heart of compassion, to uplift the downtrodden. Again, I ask You to give Your servants the knowledge, the wisdom to make decisions that are, in all of these areas, fitting before you, that Your people may live tranquil and quiet lives before You in all godliness.

And then finally, Father, give them a spirit of cooperation, that they may do what is fitting before You and best for the people of this State of New York.

I ask this in the name of my savior, the Lord Jesus Christ, for Your sake and glory. Amen.

THE PRESIDENT: Reading of the Journal.

THE SECRETARY: In Senate,

Monday, April 10, the Senate met pursuant to adjournment. The Journal of Sunday, April 9, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

The Secretary will read.

THE SECRETARY: The Governor returned without executive approval Line Items 6 through 19 of Senate Bill Number 6450C, Chapter 50, entitled "An act making appropriations for the support of government: Public Protection and General Government Budget."

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Madam President, I move to lay said line items as vetoed by the Governor upon the table.

THE PRESIDENT: So ordered.

The Secretary will read.

THE SECRETARY: The Governor

returned without executive approval Line Items Number 20 through 21 of Senate Bill Number 6456C, Chapter 56, entitled "An act to amend the State Finance Law."

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Madam President, I move to lay said line items as vetoed by the Governor upon the table.

THE PRESIDENT: So ordered.

Reports of standing committees.

The Secretary will read.

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

As a member of the Metropolitan Transportation Authority, Andrew M. Saul, of Katonah.

THE PRESIDENT: Senator Johnson.

SENATOR JOHNSON: Move the nomination.

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

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The nominee is hereby confirmed.

Congratulations and best wishes. Andrew M. Saul of Katonah is here, and we wish you the very best in your new position.

(Applause.)

THE PRESIDENT: The Secretary will continue to read.

THE SECRETARY: As a nonvoting member of the Metropolitan Transportation Authority, Andrew Albert, of New York City.

As an alternate nonvoting member of the Metropolitan Transportation Authority, James F. Blair, of Ossining.

As a member of the New York Job Development Authority, David H. Feinberg, Esquire, of New York City.

As a member of the Genesee State Park, Recreation and Historic Preservation Commission, Dawn M. Keppler, of Medina.

As a member of the State Park, Recreation and Historic Preservation Commission for the City of New York, Pia Lindstrom, of New York City.

As a member of the Passenger

Tramway Advisory Council, Tom Sanford, of Ballston Spa.

As a member of the Board of Visitors of the Capital District Developmental Disabilities Services Office, Susan P. O'Connor, of Delmar.

And as a member of the Board of Visitors of the Central New York Developmental Disabilities Services Office, Mary E. Patricia, of Oneonta.

THE PRESIDENT: Senator Johnson.

SENATOR JOHNSON: Move the nominations.

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

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The nominees are all hereby confirmed.

The Secretary will read.

THE SECRETARY: Senator Johnson, from the Committee on Finance, reports the following bills direct to third reading:

Senate Print 7264A, by the Senate

Committee on Rules, an act to amend Chapter 50 of the Laws of 2006, enacting the Public Protection and General Government Budget.

And Senate Print 7265, by the Senate Committee on Rules, an act to amend the Social Services Law.

THE PRESIDENT: Without objection, the bills are all directed to third reading.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Skelos.

SENATOR SKELOS: Madam President, I believe there are substitutions at the desk, if we could make them at this time.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: On page 35, Senator DeFrancisco moves to discharge from, the Committee on Codes, Assembly Bill Number 8295 and substitute it for the identical Senate Bill Number 4842B, Third Reading Calendar 646.

Senator Bruno moves to discharge, from the Committee on Finance, Assembly Bill Number 10652A and substitute it for the identical Senate Bill Number 7264A, Third Reading Calendar 704.

And Senator Bruno moves to discharge, from the Committee on Finance, Assembly Bill Number 10653 and substitute it for the identical Senate Bill Number 7265, Third Reading Calendar 705.

THE PRESIDENT: Substitutions ordered.

Senator Farley.

SENATOR FARLEY: Thank you, Madam President.

On behalf of Senator Spano, I wish to call up his bill Print Number 2898, which was recalled from the Assembly, and it's now at the desk.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 456, by Senator Spano, Senate Print 2898, an act to amend the Penal Law.

SENATOR FARLEY: Madam President,

I now move to reconsider the vote by which this bill was passed.

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

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

SENATOR FARLEY: Madam President, I now offer the following amendments. It's not on here, but anyway I offer the following amendments.

THE PRESIDENT: The amendments are received, Senator.

SENATOR FARLEY: And I move that the bill be restored to the Third Reading Calendar.

THE PRESIDENT: The bill is so restored to third reading.

Thank you, Senator Farley.

SENATOR FARLEY: Thank you.

Madam President, on behalf of Senator Volker, I move to recommit Senate Print Number 3353A, Calendar Number 295 on the order of third reading, to the Committee on Health, with instructions to strike the enacting clause.

THE PRESIDENT: So ordered, Senator.

SENATOR FARLEY: Thank you.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Thank you, Madam President.

If we could adopt the Resolution Calendar, with the exception of Resolutions 4510, 4519, and 4569.

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

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The Resolution Calendar is so adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, could we have the title read on Resolution 4510, by Senator Marcellino.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Marcellino, Legislative Resolution Number

4510, commemorating the 36th Anniversary of Earth Day on April 22, 2006.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Madam President, could we adopt the resolution and open it up for cosponsorship.

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

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

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

Senator Skelos.

SENATOR SKELOS: Madam President, could we take up Resolution 4519, by Senator Maltese, have the title read, move for its immediate adoption, and open it up for cosponsorship.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator

Maltese, Legislative Resolution Number 4519, memorializing Governor George E. Pataki to proclaim April 23, 2006, as a Day of Remembrance for the Polish Martyrs of the Katyn Forest.

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

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

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

Senator Skelos.

SENATOR SKELOS: Could we take up resolution 4569, by Senator Maltese, have the title read and move for its immediate adoption, and then open it up for cosponsorship.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator

Maltese, Legislative Resolution Number 4569, commemorating the 91st Anniversary of the Armenian Genocide on Friday, April 21, 2006.

THE PRESIDENT: The question now is on the resolution. All in favor please signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

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

Senator Skelos.

SENATOR SKELOS: Madam President, there's a resolution at the desk by Senator Gonzalez. If we could have the title read and move for its immediate adoption.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Gonzalez, Legislative Resolution Number 4573, commemorating the 19th Annual Somos El Futuro Conference, to be held April 28-30, 2006, and

commending the creative talents of Carla Pinza as she is honored during the conference.

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: If we could adopt the resolution.

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

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, if you would recognize Senator Parker.

THE PRESIDENT: Senator Parker.

SENATOR PARKER: I believe there's a resolution at the desk, Resolution 4471.

THE PRESIDENT: The resolution has already been passed, Senator Parker. Would you like to speak on the resolution?

SENATOR PARKER: Yes, Madam President, on the resolution.

THE PRESIDENT: You may proceed

on the resolution.

SENATOR PARKER: Thank you very much.

As many of you know, one of the only really uniquely art forms to come out of the United States of America, if you may, is jazz. And on Friday, March 31, 2006, unfortunately we lost one of our great legends of jazz. Jazz has been something that's been integral not just for the African-American experience but for the American experience itself. And that legend is jazz saxophonist Jackie McLean. And Jackie McLean, at the age of 74, was recently lost to us.

Jackie McLean was born May 17, 1931, the son of a jazz guitarist in Harlem. He lived down the block from Bud Powell and Sonny Rollins, two other legends and, you know, built his craft on playing with those gentlemen.

He was somebody who gave a great deal to jazz and to American culture because he was able to not just imitate other people's styles, but he was able to create his own style, creating what's been known as free

jazz.

But he was somebody who understood where he had come from. So he had spent time studying with the great masters of his time, including Charlie Parker, who he emulated a great deal. He played with Miles Davis. He played with Art Blakey and the Jazz Messengers. Somebody who, in the New York tristate area, was often seen at places like the Village Vanguard.

But he was probably most known for his work not just as a performer, but also as a teacher. He left actually kind of in his midcareer, in the '70s, to go teach at the Hartt School of Music at the University of Hartford. And there he took a small music program and built a full degree program in jazz, where many renowned jazz artists still go and play and get teaching from.

We're going to miss Jackie McLean, not just because of his music and his performance but what he's done for our young people and what he's done not just for, again, African-American culture but what he's contributed to American culture.

Rest well, my fellow traveler on this journey of life. And thank you for all you've given us, not just for your music but also for your teaching.

THE PRESIDENT: The resolution was previously adopted.

Senator Skelos.

SENATOR SKELOS: Madam President, Resolution 3002, by Senator Fuschillo, was previously adopted. If we could have it read in its entirety and then recognize Senator Fuschillo.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Fuschillo, Legislative Resolution Number 3002, congratulating the Merrick/North Merrick Little League 12-year-olds Team upon the occasion of capturing the 2005 New York State 12-year-olds Little League Baseball Championship.

"WHEREAS, Excellence and success in competitive sports can be achieved only through strenuous practice, team play and team spirit, nurtured by dedicated coaching and

strategic planning; and

"WHEREAS, Athletic competition enhances the moral and physical development of the young people of this state, preparing them for the future by instilling in them the value of teamwork, encouraging a standard of healthy living, imparting a desire for success, and developing a sense of fair play and competition; and

"WHEREAS, the Merrick/North Merrick Little League 12-year-olds Team are the District 31 and Long Island 12-year-olds Little League Baseball Champions. They continued their winning streak on August 2, 2005, by defeating East Greenbush by a score of 10-5 to capture the New York State Championship; and

"WHEREAS, The athletic talent displayed by this team is due in great part to the efforts of Manager Paul Christopher and Coaches Dave Marcello, Ed Stalzer, Brooks Thomas, and Gary Weitzman, skilled and inspirational tutors respected for their ability to develop potential into excellence; and

"WHEREAS, The team's overall record is outstanding, and the team members were loyally and enthusiastically supported by family, fans, friends and the community at large; and

"WHEREAS, The hallmark of the Merrick/North Merrick Little League 12-year-olds Team, from the opening game of the season to participation in the championship, were a brotherhood of athletic ability, of good sportsmanship, and of honor, demonstrating that these team players are second to none; and

"WHEREAS, Manager Paul Christopher and Coaches Dave Marcello, Ed Stalzer, Brooks Thomas, and Gary Weitzman have done a superb job in guiding, molding and inspiring the team members toward their goals; and

"WHEREAS, Sports competition instills the values of teamwork, pride and accomplishment, and Manager Paul Christopher and Coaches Dave Marcello, Ed Stalzer, Brooks Thomas, and Gary Weitzman and their outstanding athletes have clearly made a contribution to the spirit of excellence which

is a tradition of their community; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to congratulate the Merrick/North Merrick Little League 12-year-olds Team, its members -- Joey Christopher, Justin Fields, Justin Harrison, Evan Krohn, Nick Marcello, Patrick Murphy, Josh Nigro, Joey Saladino, Robbie Stalzer, Jake Thomas, and Ross Weitzman -- Manager Paul Christopher, and Coaches Dave Marcello, Ed Stalzer, Brooks Thomas, and Gary Weitzman upon the occasion of capturing the 2005 New York State 12-year-olds Little League Baseball Championship; and be it further

"RESOLVED, That copies of this resolution, suitably engrossed, be transmitted to the Merrick/North Merrick Little League 12-year-olds Team, Manager Paul Christopher, and Coaches Dave Marcello, Ed Stalzer, Brooks Thomas, and Gary Weitzman."

THE PRESIDENT: Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Madam President.

You know, I feel like this is deja vu. Again, two years in a row, we're honoring the Merrick/North Merrick Little League team. Last year, my son was on the team, and it was a great day. And I want to welcome all the kids and their parents here.

But I want to congratulate them on their success. And I don't want to rub it in that they crushed East Greenbush, Madam President, to win the state championship. Not a good idea. But, you know, I just had to put that on the record book.

But I want to welcome all the kids and congratulate you on your success. One of the managers is here, Brooks Thomas.

But I want to compliment Paul Christopher, the manager of the team. Twelve months out of the year, when possible, if it's not raining or snowing, wherever we go in our community, when we drive by a baseball field, Paul is on the field. I don't know if it's your wife, Jeannie, telling you to get out of the house, get on the field, but you are always there.

And I have to compliment you

because when I went to the game out in Commack when they beat East Greenbush and won the state championship, what I saw was a team full of kids that understood sportsmanship, they understood respect for the other players. And you've done a great job.

And I'm going to ask all the kids to please rise, as my colleagues here in the Senate salute you on becoming the New York State champions. Congratulations, boys.

(Applause.)

SENATOR FUSCHILLO: Madam President, I do want to just note that two years ago East Greenbush did defeat this team. So, you know, this was a sweet victory last summer.

THE PRESIDENT: Thank you, Senator. I was just about to mention that, but better that you say it than I do.

(Laughter.)

THE PRESIDENT: And you know, in everything in life, including in sports, it's important to be a gracious loser. So in that mode, I was happy to meet you earlier today and to have my picture taken with you.

Baseball is my son Justin's favorite sport. He played Little League and now plays varsity baseball. And I'm sure you guys are going to go on to great things, as evidenced by your successes already.

Congratulations and best wishes for continued success.

(Applause.)

THE PRESIDENT: Senator Skelos.

SENATOR SKELOS: Madam President, if we could take up the noncontroversial reading of the calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 631, by Senator Balboni, Senate Print 3174, an act to amend the General Business Law, in relation to itinerant vendors.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54. Nays,

1. Senator Maltese recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 630, by Senator Skelos, Senate Print 2726A, an act to amend the General Business Law, in relation to the sale of laser pointing devices.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 633, by Senator Flanagan, Senate Print 4987A, an act to amend the General Business Law, in relation to prohibiting the sale.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect on the 60th day.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator Duane, to explain your vote.

SENATOR DUANE: Thank you, Madam President.

This bill would ban the sale of salvia divinorum, which is a powerful hallucinogenic, and that's a good idea. But people who use such a product, I'm guessing, probably have a drug addiction. And I'm guessing that children who live with such a person live in a scary and chaotic household.

Let me give you an example of someone using salvia divinorum. Brett Chidester committed suicide -- he was 17 years old, he lived in Wilmington, Delaware -- and his family blames the drug. Brett was a straight A student who ranked top in his state in Spanish and was making plans for college and to buy his girlfriend roses for Valentine's Day.

On January 23rd, he put a charcoal grill inside a tent in his father's garage,

lit the grill, and crawled inside the tent. A suicide note described revelations that echo descriptions of salvia experiences posted by users to various salvia-related websites.

"How can I go on living after I learn the secrets of life?" he wrote. "It took me 17 years, but I finally figured it out. I can't tell you that here, because that kind of information can cause chaos."

Obviously some delusions there.

His mother, Kathleen Chidester, says her son bought salvia on a website. His father, Dennis, says police took salvia from his room. Kathleen says she believes Brett was depressed and used salvia because it was legal. His suicide note left no doubt in her mind that salvia had something to do with his death.

You know, it's obvious that Brett was using this drug and had a mental illness or that the drug created a mental illness. This drug manifests very dangerous and harmful behaviors, and they led to his suicide. He obviously needed mental health treatment, and obviously the people living in his household

now need mental health services as well.

But if he lived in New York State, he wouldn't be able to get the mental health and chemical addiction treatment that he needed.

And here we are, this is the end of another week in Albany, and the Senate has not yet passed Timothy's Law. We're going away for the holidays, and we're leaving this important bill behind. I don't understand why we don't pass this law. We need to pass Timothy's Law this session.

I vote yes, Madam President.

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

The Secretary will announce the results.

THE SECRETARY: Ayes, 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 639, by Senator Saland, Senate Print 465, an act to amend the Penal Law, in relation to custodial interference.

THE PRESIDENT: Read the last

section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 640, by Senator Saland, Senate Print 466, an act to amend the Penal Law, in relation to establishing.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56. Nays, 1. Senator Montgomery recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 642, by Senator Padavan, Senate Print 544A, an act to amend the Penal Law, in relation to possession.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 644, by Senator Winner, Senate Print 1428, an act to amend the Penal Law, in relation to the imposition.

SENATOR SCHNEIDERMAN: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 645, by Senator Spano, Senate Print 3743D, an act to amend the Penal Law, in relation to the

criminal sale.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 646, substituted earlier by Member of the Assembly Weinstein, Assembly Print Number 8295, an act to amend the Civil Practice Law and Rules.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 654, by Senator Trunzo, Senate Print 423, an act to amend the Vehicle and Traffic Law, in relation to speeding.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56. Nays, 1. Senator Duane recorded in the negative.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 655, by Senator Trunzo, Senate Print 424A, an act to amend the Vehicle and Traffic Law, in relation to form of number plates.

THE PRESIDENT: Read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 657, by Senator Padavan, Senate Print 1043, an act to amend the Vehicle and Traffic Law and the Administrative Code of the City of New York.

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

Read the last section.

THE SECRETARY: Section 3. This act shall take effect immediately.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 704, substituted earlier today by the Assembly Committee on Rules --

SENATOR SCHNEIDERMAN: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number

705, substituted earlier today by the Assembly Committee on Rules, Assembly Print Number 10653 --

SENATOR SCHNEIDERMAN: Lay it aside.

THE PRESIDENT: The bill is laid aside.

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

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

THE PRESIDENT: The Secretary will ring the bell.

The Secretary will read.

THE SECRETARY: Calendar Number 644, by Senator Winner, Senate Print 1428, an act to amend the Penal Law.

SENATOR SCHNEIDERMAN: Explanation.

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

SENATOR WINNER: Thank you, Madam President.

This is a very simple measure that

amends a section of the Penal Law that would require or authorize the suspension of a motor vehicle operator's license for an individual who has failed to provide a fine for the unlawful possession of marijuana.

This measure is thought necessary by the Magistrates Association and other judges who believe that due to the fact that there is no jailable offense for a violation of the underlying Penal Law, there is no sanction available to compel from a defendant the payment of the fine, and therefore these fines are often ignored.

More importantly, Madam President, any opportunity to compel that individual defendant into substance abuse treatment and the like is thwarted by the inability of the court to have any supervision over that defendant, because they cannot compel his performance with the sanctions of the court.

THE PRESIDENT: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Very briefly on the bill, Madam President.

Quite a few of us have opposed this

measure, although sympathetic to the concern about the difficulty collecting fines. Quite frankly, this seems to be a situation where we're cutting off our nose to spite our face. If you take away someone's driver's license, they can't get to a job to pay the fine, they can't get to substance abuse treatment even if they're in substance abuse treatment.

So as Senator DeFrancisco noted in a previous debate, there's got to be another remedy. There just is no coherent nexus between your driver's license and your failure to pay a marijuana fine. And in fact, taking away someone's driver's license penalizes the family, makes it harder for people to work, and really is not a way to move the process forward of trying to collect fines.

So with that problem still hanging out there, I will be once again voting no. Thank you.

SENATOR WINNER: Madam President.

THE PRESIDENT: Senator Winner.

SENATOR WINNER: Will Senator Schneiderman yield for a question?

THE PRESIDENT: Senator

Schneiderman, will you yield for a question?

SENATOR SCHNEIDERMAN: Yes.

SENATOR WINNER: Senator, do you believe that someone ought to pay a fine that's imposed by a court for violation of a section of the Penal Law?

SENATOR SCHNEIDERMAN: I believe people should pay fines.

I believe that we passed statutes saying you should collect sales tax on Indian reservations; that law should be followed. I believe that when the Legislature passes laws or overrides a veto, that the executive branch should follow the law. So there are a lot of things I believe in that other people don't believe in, but I certainly believe you should pay a fine.

My point is that this, I believe, as a practical matter, will make it less likely that someone will be able to pay a fine and will penalize the person's family also. I think there's got to be a more creative approach to this than taking away a driver's license.

SENATOR WINNER: Well, Senator, I

also believe in the three examples that you brought up as well.

But my problem here is that the Magistrates Association and others have indicated that this is a widespread problem whereby these fines are repeatedly ignored. And therefore, I believe that sanctions imposed by a court under the appropriate circumstances should be adhered to by those individuals.

And I'm hopeful that maybe you have a suggestion as to how we can get those determinations and orders by the court to be adhered to. In particular, I wonder what your response is to the suggestion by the Magistrates Association that many of those individuals really need the sanction of the court to ensure that they have substance abuse treatment.

And also, with regard to driver's licenses, that's a particularly treasured piece of right that the individual possesses. And I believe that with that in jeopardy, there will be more of an opportunity to have that individual adhere to that order of the

court.

SENATOR SCHNEIDERMAN: Well, I don't think anyone here has any question that there's a problem getting people to pay fines in this and other areas.

The point that I think some of us have tried to make on both sides of the aisle -- and the reason this bill has no support, I don't think, in the Assembly -- is that this is a not a practical solution to the problem. This is not going to make it more likely that people will get substance abuse treatment, will be able to continue in their jobs.

We're not just looking at this in some abstract sense. I mean, you can cut off people's hands also. That's not a practical solution. Taking away a driver's license is not the way to get someone who has a substance abuse problem back on the track to being a productive member of our state, taking care of their family, going to their job, going to substance abuse treatment.

You know, we favor more access to substance abuse treatment. Senator Duane is

speaking about the need for us to pass a law to guarantee that people have help with any mental health problems that they might encounter.

Our objection is simply practical here. This is not the way to address a problem which we all agree exists. We're sympathetic to the problem of collecting the fines. It's not limited to this particular type of offense. We have problems collecting fines, child support, a lot of things.

There are different approaches. This one, taking away a driver's license, simply is not a practical solution to the problem, in our view, and that's why I'm voting no. But certainly not for any lack of sympathy with the problem.

SENATOR WINNER: Senator, I think my specific question is: What sanction do you feel would be appropriate under these circumstances? I don't think that you're probably suggesting that we have the opportunity to jail these individuals.

And also, with regard to driver's licenses, Senator, we take them away from

people who don't pay their child support. I wonder whether or not you feel that having them taken away under those circumstances is creating too much of a hardship for those individuals.

SENATOR SCHNEIDERMAN: I think -- I mean, I'm happy to have this discussion. This is the kind of discussion we should have in committee if we had such discussions in committee. And I'd be happy to talk to the sponsor about it.

I do not think that taking away driver's licenses is a very effective way to compel compliance with the law. And in fact, I think it does penalize family members under a variety of circumstances.

So I don't think that getting people out of the system -- and this also comes up in the context of the rights of undocumented immigrants. We want everyone to have a driver's license, to be in the system, to be able to get to and from work or to substance abuse treatment. If someone has a substance abuse problem, let the judge order that they go to substance abuse treatment. I

understand that this is a difficult problem, but this is not a practical solution. I would suggest --

SENATOR WINNER: Senator, I don't think it's --

SENATOR SCHNEIDERMAN: If I could just finish, I would suggest that rather than take everyone's time on a spring day, we should recommit this bill to Codes and continue the discussion there under the auspices of the great arbiter of criminal justice remedies, Senator Volker.

But with that, you know, I'm happy to engage in further discussion outside the chamber today. I'm just not sure how much we're advancing the debate, since this is not going to pass the Assembly and we do have some more pressing matters to take up this afternoon.

THE PRESIDENT: Senator Winner, do you want to ask Senator Schneiderman to yield again, or you're all finished?

SENATOR WINNER: No, I'm very confident that we'll be moving forward in a direction that is different from where Senator

Schneiderman wishes to lead us. Thank you.

THE PRESIDENT: Senator Stavisky, I believe, wanted to speak.

SENATOR STAVISKY: If the sponsor would yield for, really, one question which has been partially answered.

SENATOR WINNER: Certainly.

THE PRESIDENT: Senator Winner does yield.

SENATOR STAVISKY: I have voted for this in the past.

You mentioned child support as being one of the conditions for -- or lack of payment of child support as one of the conditions for taking away the driver's license. Are there any other circumstances under which -- any other crimes under which this would apply? In other words, are there any other situations --

SENATOR WINNER: Well, there's certainly violations of the motor vehicle law regarding losing driver's licenses.

SENATOR STAVISKY: Aside from those.

SENATOR WINNER: Whether there

are other ones, I'm not familiar with them right now.

SENATOR STAVISKY: Oh, okay. Thank you.

THE PRESIDENT: Senator Connor.

SENATOR CONNOR: Thank you, Madam President.

While I certainly have concerns about imposing penalties that are unrelated to the actual wrong that a person has committed, whether it's not paying a fine or whatever, it seems to me we have done that in the past. And the perfect example is child support enforcement, which I supported that legislation which resulted in, you know, if someone violates an order for child support, you lose your driver's license.

Certainly in this instance, you know, I've heard a discussion among my colleagues here talking about the need for we want to get somebody in substance abuse programs and so on. If that be the case, if the person has a serious substance abuse problem, I can actually see more relationship between that and their driving privilege than

in other instances. Because, you know, there is -- if the person is not paying their fine, not complying with court orders for treatment, there is a possibility that they could actually do harm driving a motor vehicle until they are treated.

So I'm not quite so offended by this bill, since we've gone down that road before. I suspect that when someone gets a notice that their license is being revoked, it will be kind of a wake-up call to get in there and pay the fine and do something about it. And, you know, you can't exist without either a driver's license or an ID from Motor Vehicles these days. It's -- you know, we've had those debates about ID, identification.

So I'm going to vote for this, because it seems to me I think to some good effect we've used this penalty in the past for those who are in violation or not paying child support. So the fact is on the books, and I think all of us supported it, is this penalty is used of revoking a driver's license in the case of child support. So I don't see what's wrong with this bill either.

Thank you.

THE PRESIDENT: Senator Diaz.

SENATOR DIAZ: Thank you, Madam President. Would the sponsor yield for one or two questions, please.

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

SENATOR WINNER: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator.

SENATOR DIAZ: Senator, I'm reading the bill. It says the bill provides for the suspension of a driver's license of a person convicted of unlawful possession of marijuana who fails to pay a fine imposed by the court.

Would this apply also for those that are convicted and fail to pay the fine for possession of heroin?

SENATOR WINNER: Senator, this is specifically for the marijuana statute. It wouldn't be applicable for heroin, because a heroin possession --

SENATOR DIAZ: So the answer is

no?

SENATOR WINNER: Allow me to answer, Senator.

A violation for a possession of heroin statute inherently authorizes the court to impose a jail sentence. The difference between this section and the heroin possession section is that there's no jail authorized by the court -- or authorized by the statute to be imposed upon that defendant. So under those circumstances, it's an entirely different circumstance.

The court is saying right now that because it is not a jailable offense, a fine -- the failure to pay the fine carries no sanction, and therefore it can be readily ignored.

SENATOR DIAZ: So through you, Madam President, would he still -- would the good Senator still yield for me.

THE PRESIDENT: Would the Senator yield for another question, Senator Winner?

SENATOR WINNER: Yes, Madam President.

THE PRESIDENT: He yields,

Senator.

SENATOR DIAZ: So you're telling me that there is no way, no how, that a person that is found in possession of heroin would ever be fined? He or she will always be put in prison? No one would be fined?

SENATOR WINNER: Senator, I indicated, I believe, in my response that a person who is sentenced to a fine for the possession of heroin has another sanction available to him if in fact he fails to pay that fine, and that is jail.

SENATOR DIAZ: Time out.

My question -- this bill applies to a person that is found guilty of possession of marijuana and fails to pay the fine. My question, a simple question, if a person is found guilty of possession of heroin and is fined and he or she fails to pay the fine, would this apply to them?

SENATOR WINNER: No, it would not, Senator.

SENATOR DIAZ: Would the sponsor continue to yield.

THE PRESIDENT: Senator Winner,

will you yield for another question?

SENATOR WINNER: Yes, Madam President.

THE PRESIDENT: You may proceed, Senator Diaz.

SENATOR DIAZ: If a person, he or she is found guilty of the possession of crack and she or he fails to pay that fine, would this apply to them?

SENATOR WINNER: Senator, the whole purpose, again, of this statute is to authorize a sanction in the event that you have a fine imposed for violation of a marijuana possession statute.

In those instances that you've cited, there is another sanction available in the event that you've failed to pay the fine. And that is the court can put you in jail.

In this statute, if you don't pay the fine for marijuana, the court can't do anything to you. And that is why the Magistrates Association members have written me in a number of correspondence to ask me to put this bill in so that they can have the ability to have a sanction for failure to

comply with their court order. It's a very simple statute.

SENATOR DIAZ: And I must --

SENATOR WINNER: But it has nothing to do with crack, it has nothing to do with heroin, it has nothing to do with anything other than a marijuana offense under the Penal Law.

SENATOR DIAZ: I'm just playing Columbo here.

THE PRESIDENT: Senator Diaz, do you wish to proceed on the bill?

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

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

SENATOR WINNER: Yes, Madam President.

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

SENATOR DIAZ: Okay. If a person is found guilty and fails to pay the fine for marijuana possession, would that person become a fugitive of the law or not?

SENATOR WINNER: Senator, again, for the sake of repetition, if in fact they don't pay the fine, there's nothing that they can do to him.

Except maybe if he had another violation of the same statute and you went before that same judge the second time, he might say: You know, I remember you from the last time you were in here, and you didn't pay my fine, so therefore maybe I'm going to get even with you under those circumstances.

But the statute does not authorize any type of a sanction whatsoever for failure to pay the fine.

SENATOR DIAZ: So one last question.

THE PRESIDENT: Senator Winner, will you yield for one last question?

SENATOR WINNER: Madam President, I will yield for one last question.

THE PRESIDENT: He does yield.

SENATOR DIAZ: So anyone that is listening to us could go and sell marijuana and could expect that if they're found guilty and they don't pay the fine, nothing will

happen to them?

SENATOR WINNER: Senator, did you say "sell marijuana" or did you say "possess marijuana"?

SENATOR DIAZ: Possession of marijuana. Nothing happens to them if they are found guilty and they are fined by the court and they fail to pay the fine, nothing happens to them?

SENATOR WINNER: For the small amount that constitutes a violation for which the underlying statute does not call for imprisonment or any jail time, yes, you are correct, nothing can happen to them.

Thank you, Senator.

SENATOR DIAZ: Nothing can happen to them.

Okay, thank you, Madam President.

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

Senator Krueger.

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

So I listened to the debate, and I was reading through the penal code sentencing

charts. And there's endless numbers of misdemeanors that involve fines. So I empathize with my colleague's frustration that -- what happens if you don't pay your fine. And I would assume that those frustrations must be out there across the board on many, many different issues in the state.

And there was a question raised, I believe by Senator Winner in a dialogue, about what could we do instead of taking people's driver's license. Because I share my colleague Senator Schneiderman's concern that taking someone's driver's license, particularly outside the city of New York, decreases their ability to get to work to get the wages to continue to pay things, including their fines.

So in answer to the question what else could we do, I might simply suggest to the sponsor that we could use the powers of the Legislature to garnish wages or to intercept tax refunds and credits, which would get the money to the courts but would not put us in a situation where we're establishing a

precedent of selecting specific misdemeanor fines and going after driver's licenses.

Which in this case the driver's license has no correlation to the crime, but again would address the question perhaps of your magistrates in Steuben County and perhaps in other counties that they should be able to draw down this money.

Certainly garnishment of wages and interception of tax refunds is used by the State of New York in many different circumstances. So I suppose I'd propose this as an alternative remedy to the dilemma, because, again, this proposal doesn't seem to be moving forward in the other house.

And even though I did vote for this bill last year, having heard the discussion and realizing what I think is the flaw in taking someone's ability to get to work and earn an income away from them because they failed to pay a fine, that I think garnishment and interception of tax credits and refunds might be a better model to address the problem. So I'll be voting no this year.

Thank you, Madam President.

THE PRESIDENT: Senator Connor.

SENATOR CONNOR: Thank you, Madam President.

You know, once upon a time, 1975, I believe it was, '76, a historic moment took place in this chamber. A bill passed by one vote. The late Senator Abe Bernstein -- I see some of my colleagues who were -- was brought -- I wasn't here -- was brought in, literally, had had an amputation and was brought from the hospital in here to cast the deciding vote.

The vote was to decriminalize the possession of small amounts of marijuana; in street lingo, a joint or two. Now I'm hearing a debate that's confusing everything, and it's upsetting, because this was historic. New York passed historic legislation. This was a much more conservative body then, it was much more conservative times, yet that passed. And it passed at a time when, through the late '60s and early '70s, a lot of youth were being stigmatized for precisely that.

So when I hear a colleague talk about misdemeanors and crimes, it is not a

crime, it is not a misdemeanor. A misdemeanor is a crime. Possession of small amounts of marijuana is not a crime, it is what is known as a violation.

Violations are very minor things. They do not result in a criminal conviction. They are not a crime. You can answer the question, when you apply for a job, "Have you ever been convicted of a crime?" The answer is no. "Have you ever been arrested for a crime?" The answer is no.

It's why a kid with a joint today gets a desk appearance ticket. It's like getting a ticket for parking. It is not a crime. So to say the other penalties for the other misdemeanors we should use here -- it's not a misdemeanor. The other misdemeanors are crimes.

And, Madam President, that was an important change in the law. I understand what Senator Winner is doing now. It's so took the stigma out of it that there's no way to even enforce a $50 or $100 fine.

So I'm supporting this legislation, but I'd just like the record to be straight.

Anything you read in the Penal Law about misdemeanors has no application here.

Thank you, Madam President.

THE PRESIDENT: Senator Diaz.

SENATOR DIAZ: Thank you, Madam President. Would -- Madam -- Madam President, through you.

THE PRESIDENT: Senator Diaz, you have the floor.

SENATOR DIAZ: Yeah, through you, will Senator Connor yield for a question.

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

SENATOR CONNOR: Certainly.

SENATOR DIAZ: Senator Connor, Senator Winner just said -- and we all heard, and you also said it now -- that it is a small quantity of possession of marijuana. And that is not a crime, according to you.

SENATOR CONNOR: It is not a crime. According to the law, Senator.

SENATOR DIAZ: It is not a crime?

SENATOR CONNOR: Nope.

SENATOR DIAZ: So if it is not a crime, and the court and the law will do

nothing to anyone that doesn't pay the fine, why do you want to take the license away?

SENATOR CONNOR: Senator --

SENATOR DIAZ: I'm surprised you voted for this. Thank you.

SENATOR CONNOR: Senator, I'll give you another example. Parking ticket. It's not a crime. A parking ticket in the City of New York is not a crime.

It can cost you -- a $100, $125 fine. If you don't pay a parking ticket in New York City, you can't be put in jail for that. You haven't committed a crime. But they will collect that fine. And how do they do that? Oh, they suspend your motor vehicle registration if you don't pay it over time. I mean, they can do other things, too, like come and find your car and tow it away and keep it.

So the idea that you in effect put people on notice who haven't paid the fine doesn't offend me. I know it's going to happen. If you don't pay the $50 fine for having a joint and you get a notice in the jail saying your license is going to be suspended, you're going to go pay the $50

fine. That will be the end of it. Nobody can put you in jail, nobody can put handcuffs on you.

SENATOR DIAZ: Madam President, through you --

THE PRESIDENT: You have already spoken twice on this bill, Senator Diaz.

SENATOR SCHNEIDERMAN: Senator Diaz can ask a question. Senator Connor still has the floor.

Oh, I'm sorry, Senator Diaz still has the floor because Senator Connor was questioning him.

SENATOR DIAZ: I'm waiting.

SENATOR CONNOR: Madam President, Senator Diaz still has the floor, I believe.

THE PRESIDENT: Senator Diaz.

SENATOR DIAZ: Okay, thank you, Madam President.

Through you, Madam President, will Senator Connor yield for another question.

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

SENATOR CONNOR: Yes, Madam President, gladly.

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

SENATOR DIAZ: If a person fails to pay a parking ticket in New York City, would they suspend their license?

SENATOR CONNOR: They can. They usually suspend --

SENATOR DIAZ: No, no, no, I'm not asking if they can or not. Will they suspend the license?

SENATOR CONNOR: No, they suspend the registration of the motor vehicle and they lose their motor vehicle insurance.

SENATOR DIAZ: Would they suspend their license --

SENATOR CONNOR: And if they drive the car, then they lose their license.

SENATOR DIAZ: Will you please restrict yourself to answer my question.

Would they suspend that license, yes or no?

SENATOR CONNOR: Well, I'm sorry, Madam President, I'm entitled to answer a question on the floor in any way I choose. It's not cross-examination where I have to

answer yes or no. And I'm certainly not a hostile witness to Senator Diaz.

(Laughter.)

SENATOR CONNOR: In fact, we're very good friends, Madam President.

SENATOR DIAZ: Oh, and getting better.

SENATOR CONNOR: So let me answer it my way.

And my way is they will suspend your motor vehicle registration. They will suspend, therefore, your motor vehicle insurance. And if you don't address that, you will eventually get a notice saying your driver's license is suspended because you don't have insurance on the unregistered vehicle that you have.

So yes, parking tickets in New York City can ultimately lead to the loss of a driver's license. They are not crimes. That's the ultimate step. Usually they've towed your car away first, or they've seized your bank account. And they do a lot of other nasty things. But they get those fines paid. Even though the underlying violation is just

that, it's a violation. It's not a crime, it's not a misdemeanor.

A misdemeanor is a crime. And possession of marijuana or illegal parking is not a crime.

Thank you.

THE PRESIDENT: Senator Padavan.

SENATOR PADAVAN: Thank you, Madam President.

THE PRESIDENT: You're welcome.

SENATOR PADAVAN: Very briefly.

There are a handful of Senators in this chamber today who were here in 1976 when we adopted the Marijuana Reform Act that Senator Connor has referred to. It was a very difficult debate. There were some of us, Senator Volker and I and others, who felt there was a better way of dealing with the issue to take away stigma associated with a criminal conviction that young people would have, yet at the same time providing some reason to keep kids away from drugs.

We failed in that initiative. We were concerned that the use of marijuana, because it would be nothing more than a minor

violation with a fine, would increase among young people who would say, Well, it's no longer a crime. And even if we get caught, it really doesn't amount to much.

And we were right. Marijuana use, particularly among young people, increased significantly in the years that followed.

Now, what Senator Winner is doing here, he's providing a mechanism that can be very, very beneficial. The thing that young people value perhaps more than anything else is their driver's license. And what he's saying to them and others, number one, you don't pay the fine -- and of course underlying that is having received the violation for marijuana use -- you're going to lose your driver's license. And that can be a way of keeping them away from drugs.

And Senator Connor is also correct when he points out, along with DWI, driving while under the influence of drugs is a very, very unfortunate thing that occurs all too often in our society today and can be very dangerous to everyone. So there is a connection between driving and drug use; in

this case, marijuana.

So obviously this is the right thing to do. And I thank Senator Winner for his efforts at doing it. And a lot of history -- we could talk about by the hour about the Marijuana Reform Act. But nevertheless, I think this is a good bill and ought to be enacted.

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

Then the debate is closed.

The Secretary will ring the bell.

ACTING PRESIDENT ROBACH: Read the last section.

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

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT ROBACH: The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 644 are Senators Diaz, Dilan, Duane, Gonzalez,

L. Krueger, Montgomery, Parker and Schneiderman.

Those Senators absent from voting: Senators Breslin, DeFrancisco and Paterson.

Ayes, 47. Nays, 8.

ACTING PRESIDENT ROBACH: The bill is passed.

THE SECRETARY: Calendar Number 704, substituted earlier today by the Assembly Committee on Rules, Assembly Print Number 10652A, an act to amend Chapter 50 of the Laws of 2006, enacting the Public Protection and General Government Budget.

SENATOR SCHNEIDERMAN: Explanation.

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

SENATOR JOHNSON: Yes, Mr. President.

This is a budget cleanup bill. The budget bills had various technical changes that required certain changes to be made to satisfy the Governor, who felt that some of our provisions were unconstitutional, though we don't believe they were. And this bill

just cleans those up. This is the appropriations bill to provide that change in law, make everything, we feel, constitutional and legal.

ACTING PRESIDENT ROBACH: Senator Schneiderman.

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

This bill and the following bill are technical cleanup bills to a budget that has been thrown into a sea of uncertainty by the executive branch. However, I recognize this is an effort by the Legislature simply to make technical corrections and come into compliance with other areas of the law. I will therefore be voting in the affirmative.

Thank you, Mr. President.

ACTING PRESIDENT ROBACH: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President. I would like to ask the sponsor for an explanation, through you.

ACTING PRESIDENT ROBACH: He's already given an explanation. Do you have a question?

SENATOR MONTGOMERY: Excuse me. Would you yield for a question, Senator?

ACTING PRESIDENT ROBACH: Senator Johnson, will you yield for a question?

SENATOR JOHNSON: Yes, Mr. President.

ACTING PRESIDENT ROBACH: Senator Montgomery.

SENATOR MONTGOMERY: All right. Senator Johnson, I note that there is an additional $33 million in capital project appropriation for the Atlantic Yards Railway redevelopment project. My question is, is this an additional 33, making the total 66 million in capital project funding for Atlantic Yards?

SENATOR JOHNSON: It is an additional 33 million, yes, it is.

SENATOR MONTGOMERY: So it's 66.

Through you, Mr. President, I'd like to ask Senator Johnson to yield for another question.

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

SENATOR JOHNSON: Yes, Mr.

President.

ACTING PRESIDENT ROBACH: Go ahead, Senator Montgomery.

SENATOR MONTGOMERY: Senator Johnson, for years going out, for the next 30 years, assuming that the way that we will raise this money is through bonding -- is that how it's going to be?

SENATOR JOHNSON: Normally, yes, that would be the case.

SENATOR MONTGOMERY: Do we then know what will be the additional cost for raising that money? And how will that additional cost be paid for?

In other words, I'm trying to find out what is the cost of raising $66 million for this particular project and who will pay for it.

SENATOR JOHNSON: Well, of course, any bonds which are issued by the state are paid through the state. We don't know what the terms are at this point. We don't know the terminology, we don't know the interest rates that might exist. So it's pretty hard to say.

But let's say every other thing which we feel is a good economic development project is paid for, ultimately, through the budget.

SENATOR MONTGOMERY: So, Mr. President, just one further question if Senator Johnson would yield.

ACTING PRESIDENT ROBACH: Senator Johnson, will you yield?

SENATOR JOHNSON: Yes, Mr. President.

ACTING PRESIDENT ROBACH: Senator Montgomery.

SENATOR MONTGOMERY: So, Senator Johnson, assuming that the state will pay, this will add an additional how much to our state debt payment once this $66 million is bonded out?

SENATOR JOHNSON: I know you're concerned about the state debt, as I am, and the federal debt, et cetera. It looks like we'll never get paid up; right? And we kind of worry about that.

But this is so infinitesimal in comparison to the state debt that's out there,

I don't feel that anyone here would notice it. It wouldn't make that much of a difference.

But it would help create jobs and keep the economy going in that area, which is really important to all of us, probably bringing in more money that way.

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

ACTING PRESIDENT ROBACH: Senator Montgomery, on the bill.

SENATOR MONTGOMERY: Yes. I note that Senator Johnson has indicated that this would be a very minor -- so minor of an addition to our debt service that we would not notice. But certainly I will notice, and I think the taxpayers of the State of New York will notice.

It's going to add to our debt payments quite substantially, especially when it's added on to all of the other proposed capital bonding that was going to be required vis-a-vis this budget.

And let me just say this. There is currently -- since this project is in my district, I have not been convinced of the

balance in terms of the economic development benefits versus what we're putting into it in terms of tax dollars by citizens in the State of New York.

So I don't believe that this is such an important economic development. There could be some other economic development projects that would benefit us much, much more. So I think that this is really an inappropriate use of taxpayers' dollars.

And certainly it's going to require my son and Senator Johnson's children and grandchildren to pay this kind of debt, that they will notice. Because to the extent that they are not able to benefit from a prosperous state economy, based on the fact that we've saddled them with debt for the next 30, 40 years, they're going to notice. And I don't think it's fair, and it's not right.

So I'm voting no on it.

ACTING PRESIDENT ROBACH: Thank you, Senator Montgomery.

Are there any other Senators wishing to be heard?

Senator Krueger.

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

ACTING PRESIDENT ROBACH: On the bill.

SENATOR LIZ KRUEGER: Thank you.

And I'll address this on both of the cleanup bills at once.

Some of us voted for some of the budget bills and against some of the budget bills. I am certainly in that situation. And yet we are in a situation where we have sort of one shot at cleanup bills on all of these budget bills.

We also have, I think, the added dilemma that we're being asked to vote for cleanup bills on budget bills that we're still waiting to learn about vetoes from the Governor. He has sent down one set of vetoes on some of the budget bills but still has a clock ticking for additional vetoes.

So it's my understanding that regardless of where we go today on these budget cleanup bills -- and I assume, of course, that they'll pass -- we don't really know what the outcome of any of this will be,

both because we're still awaiting vetoes and there are already vetoes that come down that don't match with these cleanup bills.

And I've also been advised that under constitutional rules, we only have one shot at these cleanup appropriation and language bills. So we might realize later we should have waited a little longer to see where the Governor was going.

But having said that, I want to highlight for the record that while I will vote for these bills, there are many issues that we still have not addressed in the budget this year. And perhaps since we're going to be dealing with vetoes, overrides, constitutional challenges, there might still be time to have serious discussion from a policy perspective, if not a dollar perspective, on some of these issues.

One, I continue to be extraordinarily concerned that we pass budgets that authorize hundreds of millions of dollars for back-door borrowing for projects that may not even be known, better yet be proven to be generators of long-term economic activity. We

continue to bond out these back-door borrowing deals so that the public will end up paying a much higher rate in the long term and will, in my opinion, have little if no participation in knowing how we're spending these monies, having an opportunity to share their views, and in fact in many cases, especially dollars and bonds and borrowing that go through public authorities, the Legislature may have no oversight role.

My colleague Senator Montgomery highlighted just one issue, $66 million in borrowing for one sports project in her district. I guess I find it interesting that at least in the cleanup bills we've discovered that we actually, by mistake, authorized $300 million instead of $150 million for two other sports complexes, so we're taking back 150 million. I guess a big oops.

But it raises the question to me again of why is the State of New York borrowing so much money for private sports complexes when we have basically no new money in this budget for creation of affordable housing or new significant housing initiatives

in the State of New York.

While we put money in for capital funds for schools, we did not address operating aid for our schools in this budget. We did not make our aid formulas transparent or equitable.

We did not reform Empire Zones or require accurate accounting of the state costs per job created, and if there are actually any jobs created, although we expanded, in several sections of these bills, the authority of Empire Zones and expanded the number of businesses who might be able to participate in these yet unreformed models of tax exemptions and credits.

We have still failed to adequately extend the Power for Jobs program, preventing businesses from going into multiyear contracts or even addressing the question of why you could actually lose money through NYPA in the Power for Jobs program.

We have failed to address many issues on the environment. We have not funded the Environmental Protection Fund. We have failed to include wetlands protection. We

have failed to include adequate funding for community preservation.

We have failed to adequately invest in family planning services or to increase desperately needed monies for food and nutrition programs, including the Women, Infants and Children program in this state.

We have not completed our work, despite the fact that we are at a moment where we're being asked to clean up the undone business of the budget.

So for the record, while I will vote for these cleanup bills because of some of the things in them, we haven't technically finished the cleanup, we've just used up our opportunity to go back and revisit the questions. So I will vote yes. But again, for the record, there is so much better we could be doing for the State of New York.

Thank you Mr. President.

ACTING PRESIDENT ROBACH: Are there any other Senators wishing to be heard?

Debate is closed.

The Secretary will ring the bell.

The Secretary will read the last

section.

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

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: In relation to Calendar Number 704, ayes, 54. Nays, 1. Senator Montgomery recorded in the negative.

Absent from voting: Senators Breslin, DeFrancisco and Paterson.

ACTING PRESIDENT ROBACH: The bill is passed.

THE SECRETARY: Calendar Number 705, substituted earlier today by the Assembly Committee on Rules, Assembly Print Number 10653, an act to amend the Social Services Law.

ACTING PRESIDENT ROBACH: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

This is the language bill that accompanies the appropriation bill we just voted on. I will be voting in favor of it,

for the same reasons that I articulated earlier, although subject to some of the same concerns stated by Senator Krueger, that we will have, for better or worse, another opportunity to address budget issues this year.

But for the moment, I think cleaning up the language and coming into compliance with other areas of the law is the right thing to do. So I'll be voting in the affirmative.

Thank you.

ACTING PRESIDENT ROBACH: Thank you, Senator Schneiderman.

Read the last section.

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

ACTING PRESIDENT ROBACH: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: In relation to Calendar Number 705, ayes, 55. Nays, 0.

Those Senators absent from voting: Senators Breslin, DeFrancisco and Paterson.

ACTING PRESIDENT ROBACH: The

bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, is there any further business at the desk?

ACTING PRESIDENT ROBACH: There is none.

Senator Stachowski.

SENATOR STACHOWSKI: Mr. President, I move the following bills be discharged from their respective committees and be recommitted with instructions to strike the enacting clause: S1734.

ACTING PRESIDENT ROBACH: So ordered.

SENATOR STACHOWSKI: Thank you.

SENATOR SKELOS: Mr. President, would you please recognize Senator Parker.

ACTING PRESIDENT ROBACH: Senator Parker.

SENATOR PARKER: Mr. President, I believe I have a motion at the desk. I'd like to have it called up at this time.

ACTING PRESIDENT ROBACH: The Secretary will read.

THE SECRETARY: Senate Print

6722, by Senator Parker, an act to amend the Energy Law.

ACTING PRESIDENT ROBACH: Senator Parker.

SENATOR PARKER: Thank you, Mr. President.

This bill is modeled after a bill that was reported from the Assembly Energy Committee just last week, and it restates and amends Article VI of the Energy Law that governs state energy planing.

Under this legislation, a state energy planning board would be responsible for analyzing and authorizing energy planning policy and developing a state energy plan in a reliable study over four years.

ACTING PRESIDENT ROBACH: Excuse me, Senator Parker.

If we could just get a little order in the chamber. We're almost done here. Thank you.

Continue, please.

SENATOR PARKER: Thank you, Mr. President.

As you know, we have a serious

issue in this state as it relates to energy. Planning is really one of the missing parts of what the debate has not encompassed, and we really need to get there. This bill actually does that.

Since its expiration on December 31, 2001, the state has been without any long-range planning mechanism for our state energy needs, which is critically important in these times of escalating prices, supply disruptions, and the critical need for New York State to move from fossil fuel dependence to clean energy independence.

This bill establishes a state energy planning board that will be responsible for facilitating all energy planning for the state. Prior to the development of a final energy plan, the board is required to hold a series of public hearings and opportunities for public comment and will include long-range plans from all New York electricity providers and distributors.

Under this plan, based on an analysis of electricity demand forecasts, energy supply sources, transmission facilities

and regional market analysis, the board shall adopt a state energy plan. This legislation will upgrade the expired state energy planning process by requiring the state energy plan to include an elimination of the lease cost means of meeting the state's energy needs by including, but not limited to, looking for alternative ways to meet energy needs other than through construction of large central station power plants.

The legislation also will provide a mechanism to replace old, inefficient and heavy polluting facilities. Additionally, the bill requires the New York Power Authority and the Long Island Power Authority to participate in the planning process and to submit periodic strategic operational and capital plans.

Because fossil-fuel-burning plants and nuclear power plants are major pollution sources, they require significant environmental scrutiny. Reauthorization of Article VI is necessary to make sure that our energy planning policies and programs include a cost/benefit analysis and risk assessment of energy supply sources.

The energy planning process in this bill includes a requirement that current policies and programs minimize public health and environmental impacts. An environmental justice analysis and the identification of policies and programs that maximize cost-effectiveness, energy efficiency, and conservation, including the use of renewables.

With greater focus on efficiency, conservation and renewable energy sources, this bill will help New York to develop a comprehensive energy plan that is cognizant of economic pressures as well as environmental concerns.

I'd like to ask everybody in this house to go on record in supporting energy planning for this state, and so I urge a yes on this motion. Thank you.

ACTING PRESIDENT ROBACH: All those Senators in favor of the petition out of committee please signify by raising your hands.

THE SECRETARY: Those recorded in agreement are Senators Connor, Coppola, Diaz, Dilan, Duane, Gonzalez, Klein, L. Krueger,

Montgomery, Oppenheimer, Parker, Sabini, Sampson, Savino, Schneiderman, Serrano, Stachowski, Stavisky and Valesky.

ACTING PRESIDENT ROBACH: The petition is not agreed to.

Senator Skelos.

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

Happy holidays to all.

ACTING PRESIDENT ROBACH: On motion, the Senate stands adjourned until Monday, April 24th, at 3:00 p.m., intervening days being legislative days.

(Whereupon, at 12:35 p.m., the Senate adjourned.)