NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

May 8, 2007

3:07 p.m.

REGULAR SESSION

SENATOR JOSEPH A. GRIFFO, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT GRIFFO: The Senate will come to order.

I ask everyone present to please rise and repeat with me the Pledge of Allegiance to the Flag.

(Whereupon, the assemblage recited the Pledge of Allegiance to the Flag.)

ACTING PRESIDENT GRIFFO: Today we are pleased to have with us, for the invocation, Reverend Ron Stelzer, pastor of Our Savior Lutheran Church in Centereach.

Reverend.

REVEREND STELZER: Thank you.

Our Father in heaven, in the formative days of this nation Benjamin Franklin called our assembled leaders to begin each session with prayer, quoting from the Bible: "Unless the Lord builds the house, those who build it labor in vain. Unless the Lord watches over the city, the watchman stays awake in vain."

Today we recognize that without Your blessing our best efforts, our highest human wisdom, our vast resources are simply

not enough.

Remind us that we will always be one nation under God, not one over God or exempt from God. May we not put "In God We Trust" on the periphery of our lives, but front and center.

Grant us wisdom to do justice, love kindness, and walk humbly before our God. Preserve us from war, terror and civil strife, and help us to govern with the realization that one day we will not answer to the polling booths but stand before the judgment seat of Christ and long for your approbation: "Well done, good and faithful servant."

And thank You for loving this world full of lost mankind, subject to sin and its consequences, loving us so much that You sent us Your son, our Savior, in whose name I pray.

Amen.

ACTING PRESIDENT GRIFFO: Reading of the Journal.

THE SECRETARY: In Senate, Monday, May 7, the Senate met pursuant to adjournment. The Journal of Sunday, May 6, was read and approved. On motion, Senate

adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

The Secretary will read.

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

As a member of the Niagara Frontier Transportation Authority, Cesar A. Cabrera, of Buffalo.

ACTING PRESIDENT GRIFFO: Senator Johnson.

SENATOR JOHNSON: Move the nomination.

ACTING PRESIDENT GRIFFO: The question is on the nomination of Mr. Cesar Cabrera, of Buffalo.

Senator Stachowski.

SENATOR STACHOWSKI: Mr. President, I'd just like to rise to second the

nomination of Cesar Cabrera of Buffalo, a great community activist, long record of community involvement.

A voice for the community on this board will be very important and I think a real positive influence to a board that sometimes seemed to not have the best interests of the people of the community when they made some of their decisions.

So I'm very happy to have this opportunity to stand and commend the Governor for his appointment and congratulate Cesar on his new appointment to the NFTA board.

ACTING PRESIDENT GRIFFO: The question is on the nomination of Cesar A. Cabrera, of Buffalo, for appointment to the Niagara Frontier Transportation Authority.

All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT GRIFFO: Opposed, nay.

(No response.)

ACTING PRESIDENT GRIFFO: Mr. Cabrera is hereby confirmed. Congratulations and best wishes.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Farley.

SENATOR FARLEY: Thank you, Mr. President.

On behalf of Senator Maziarz, on page 10 I offer the following amendments to Calendar Number 102, Senate Print 105, and I ask that this bill retain its place on the Third Reading Calendar.

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

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could adopt the Resolution Calendar, with the exception of Resolutions 1942 and 1971.

ACTING PRESIDENT GRIFFO: All in favor of adopting the Resolution Calendar, with the stated exceptions, signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT GRIFFO: Opposed, nay.

(No response.)

ACTING PRESIDENT GRIFFO: The Resolution Calendar is adopted.

Senator Skelos.

SENATOR SKELOS: Mr. President, Resolution 1971, by Senator Golden, is at the desk. If we could have the title read and move for its immediate adoption.

ACTING PRESIDENT GRIFFO: The Secretary will read.

THE SECRETARY: By Senator Golden, Legislative Resolution Number 1971, honoring RoseMarie Carro upon the occasion of her designation as recipient of the New York State Senior Citizen of the Year Award.

ACTING PRESIDENT GRIFFO: Senator Golden.

SENATOR GOLDEN: Thank you, Mr. President.

It's a privilege to rise today and to talk about our New York State Citizen of the Year.

Many seniors have gathered around the state today in the Capitol, and they've honored seniors from each county across this great state. And there were two chosen. And today RoseMarie Carro, one of those chosen to be our Senior of the Year for the State of New York is up in the balcony, joined by her daughter Maria, son Michael, and her friend Mary Troise.

RoseMarie has made a difference. She's made a difference in the lives of people that live in the Marine Park area of Brooklyn and across the City and State of New York. It's the points of light that those seniors make, the difference they make each and every today in the lives of the families that live in our communities, and the volunteerism and the work that they do.

RoseMarie was born and raised in Brooklyn, New York, and she is a graduate of Sarah J. Hale Vocational High School. She married a great man, Carmine Carro, in 1956, and moved to Marine Park, where they raised their children.

While raising her family, she

continued her education at the City Tech College, majoring in hotel and restaurant management. Working for over 30 years in two family-owned businesses, Sweet Caroline Caterers and Madison Steak House, RoseMarie was the matriarch of the family business.

She continued her career in the food industry with the New York City Board of Education as a HACCP appointee, with a certificate from Cooks College at Rutgers College, until she retired in 2003.

For 24 years, she has been an active member of the Marine Park Civic Association, where she proudly holds the office of fourth vice president of the association.

She lost her husband recently, a great man, and the two of them were instrumental in helping to build the community of Marine Park and the different events that they would hold, whether it be the Haunted Halloween Walk or the Back to School Fair or Santa in the Park or the tons of events that they would do each and every year, year after year, to keep that community alive.

And when you look around the communities, you look for people and community groups that keep those communities alive. Because when those communities are alive, people are satisfied and happy and they want to live in a community that's on fire.

And she has definitely made a difference, RoseMarie. And she is not only active in being able to take care of Marine Park Civic, but she's also the treasurer of the Brigham Park Number 2 board of directors, where she started a senior group where they meet two days a week and have lunch.

She's also effective with the Active Adults, which is a new senior group which meets each and every week over in the Marine Park area. They don't want to be called seniors, so they call themselves "active adults" as they go around the city and they're instrumental in helping other seniors.

And we're very thankful for the work that she's been able to do as a member of the Resurrection Church and as a person that works at Beth Israel hospital, volunteering, and doing the same thing with the Crown

Nursing Home.

RoseMarie, we thank you, and we thank all the seniors that make a difference in our state. Thank you for being one of them.

(Applause.)

SENATOR GOLDEN: Thank you, Mr. President.

ACTING PRESIDENT GRIFFO: Thank you, Senator Golden.

The question is on the resolution. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT GRIFFO: Opposed, nay.

(No response.)

ACTING PRESIDENT GRIFFO: The resolution is adopted.

We congratulate RoseMarie. Our best wishes.

(Applause.)

ACTING PRESIDENT GRIFFO: Senator Skelos.

SENATOR SKELOS: Mr. President, Resolution 1942, by Senator Stavisky, is at

the desk. If we could have the title read, move for its immediate adoption, and Senator Stavisky would like to open it up for cosponsorship.

ACTING PRESIDENT GRIFFO: The Secretary will read.

THE SECRETARY: By Senator Stavisky, Legislative Resolution Number 1942, memorializing Governor Eliot Spitzer to proclaim May 2007 as Asian-American Heritage Month in the State of New York in conjunction with the National Asian Pacific American Heritage Month.

ACTING PRESIDENT GRIFFO: Senator Stavisky.

SENATOR STAVISKY: On the resolution, Mr. President.

This resolution congratulates the Asian-American community. And I am proud to say that I represent approximately 100,000 Asian-Americans in the 16th Senate district. They have come to the United States not speaking the language, having a different culture, but they have brought such a vibrancy and a vitality not only to the business

community, but they have enhanced the diversity and the social fabric of the entire state of New York.

And I say it many times, but I am very proud to represent so many Asian-Americans in the New York State Senate, as I know Senator Sabini is proud to represent those who live in the Jackson Heights, Elmhurst, Woodside area.

They have made such wonderful contributions to our state. They continue to do so. And I am invite anyone who wishes to join the resolution to do so.

Thank you.

ACTING PRESIDENT GRIFFO: On the resolution, all in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT GRIFFO: Opposed, nay.

(No response.)

ACTING PRESIDENT GRIFFO: The resolution is carried and is open for cosponsorship. If you do not choose to be a cosponsor, please notify the desk.

Senator Skelos.

SENATOR SKELOS: Mr. President, Resolution 2077 is at the desk by Senator Bruno. If we could have the title read and move for its immediate adoption.

ACTING PRESIDENT GRIFFO: The Secretary will read.

THE SECRETARY: By Senator Bruno, Legislative Resolution Number 2077, honoring Lee A. Bordick upon the occasion of his retirement as superintendent of the Lansingburgh Central School District, after many years of distinguished service in education.

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

(Response of "Aye.")

ACTING PRESIDENT GRIFFO: Opposed, nay.

(No response.)

ACTING PRESIDENT GRIFFO: The resolution is carried.

Senator Skelos.

SENATOR SKELOS: Mr. President,

we have one substitution. If we could make it at this time.

ACTING PRESIDENT GRIFFO: The Secretary will read.

THE SECRETARY: On page 33, Senator Volker moves to discharge, from the Committee on Codes, Assembly Bill Number 7373 and substitute it for the identical Senate Bill Number 3908, Third Reading Calendar 646.

ACTING PRESIDENT GRIFFO: Substitution ordered.

Senator Skelos.

SENATOR SKELOS: Mr. President, now if we could go to the noncontroversial reading of the calendar.

ACTING PRESIDENT GRIFFO: The Secretary will read.

THE SECRETARY: Calendar Number 35, by Senator Morahan, Senate Print 568, an act to amend the Mental Hygiene Law.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call

the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 67, by Senator Volker, Senate Print 1263A, an act to amend the Penal Law, in relation to unlawful operation.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 307, by Senator Seward, Senate Print 806, an act to amend Chapter 340 of the Laws of 2005 amending the Insurance Law.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 339, by Senator Fuschillo, Senate Print 3543, an act to amend the General Obligations Law.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 374, by Senator DeFrancisco, Senate Print

2062, an act to amend the General Obligations Law.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 389, by Senator Farley, Senate Print 1810, an act to amend the Real Property Tax Law.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 390, by Senator Wright, Senate Print 2695B, an act to amend the New York State Defense Emergency Act.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 445, by Senator Larkin, Senate Print 2892, an act to amend the Racing, Pari-Mutuel Wagering and Breeding Law.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56. Nays, 2. Senators Duane and Padavan recorded in the negative.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 446, by Senator Larkin, Senate Print 2895, an act to amend the Racing, Pari-Mutuel Wagering and Breeding Law.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 447, by Senator Larkin, Senate Print 2939, an act to amend the General Municipal Law.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 449, by Senator Bonacic, Senate Print 462, an act to amend the Administrative Code of the City of New York.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 501, by Senator DeFrancisco, Senate Print 4038, an act to amend the New York City Civil Court Act.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 533, by Senator Volker, Senate Print 3877, an act to amend the Penal Law.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 534, by Senator Volker, Senate Print 3886, an act to amend the Criminal Procedure Law.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 547, by Senator Seward, Senate Print 2771, an act to amend the Tax Law.

ACTING PRESIDENT GRIFFO: There is a local fiscal impact note at the desk. Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 571, by Senator Saland, Senate Print 1465A, an act to amend the Real Property Tax Law.

SENATOR LaVALLE: Lay it aside, please.

ACTING PRESIDENT GRIFFO: Lay it aside.

THE SECRETARY: Calendar Number 579, by Senator Winner, Senate Print 3316A, an act to amend the Town Law.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 580, by Senator Alesi, Senate Print 34, an act to amend the Business Corporation Law.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 594, by Senator Larkin, Senate Print 423, an act to amend the Education Law.

ACTING PRESIDENT GRIFFO: Read the last section.

THE SECRETARY: Section 5. This act shall take effect on the 180th day.

ACTING PRESIDENT GRIFFO: Call

the roll.

(The Secretary called the roll.)

ACTING PRESIDENT GRIFFO: Senator Stavisky, to explain her vote.

SENATOR STAVISKY: To explain my vote.

I'm going to vote no on this bill. Much as I believe in economic development, and particularly in the Hudson Valley and other parts of the state of New York, I think this bill does not accomplish what it really intends to do. There are parts of it I think that are misleading.

For example, on page 2 it talks about a knife museum located in Orange, Sullivan or Ulster County which is devoted to the public exhibition, et cetera, of knives, and then it goes on, further down in that section, to say "which is not located in a city having a population of 1 million or more," obviously meaning New York City. This is superfluous.

Secondly, the bill talks about how various people working for the museum will have to be fingerprinted, but nowhere does it

say that if they come up with a positive hit on the fingerprints if the individual has been convicted of a felony, for example, that the person should be disqualified from employment or from operating such a knife museum.

And lastly, and what bothers me, is on page 2, subdivision 7, it says that the cutlery and knife museum shall be able to "sell automatic knives to further their activities to promote art, education, history and science," et cetera. I think this does not accomplish what it wishes to, and I vote no.

ACTING PRESIDENT GRIFFO: Senator Stavisky will be recorded in the negative.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 594 are Senators L. Krueger, Marcellino and Stavisky.

Ayes, 56. Nays, 3.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 609, by Senator Klein, Senate Print 2284, an act to amend the Tax Law.

ACTING PRESIDENT GRIFFO: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the first of the calendar month next succeeding the 90th day.

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 625, by Senator Bonacic, Senate Print 3445, an act to amend the Executive Law.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 628, by Senator Padavan, Senate Print 3420, an act to amend the General Business Law.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT GRIFFO: Can we have order, please, in the chamber.

The bill is passed.

THE SECRETARY: Calendar Number 645, by Senator Volker, Senate Print 3907, an act to amend the Civil Practice Law and Rules.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 646, substituted earlier today by Member of the Assembly Jaffee, Assembly Print Number 7373, an act to amend the Civil Practice Law and Rules.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 651, by Senator Lanza, Senate Print 4053, an act to amend the Penal Law.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 669, by Senator Saland, Senate Print 1466, an act to amend the Education Law.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 671, by Senator Seward, Senate Print 3687, an act to allow a filing for state aid.

ACTING PRESIDENT GRIFFO: Read the last section.

THE SECRETARY: Section 4. This

act shall take effect immediately.

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 673, by Senator Morahan, Senate Print 243, an act to amend the Executive Law.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 678, by Senator Flanagan, Senate Print 1258 --

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

Read the last section.

SENATOR DUANE: Lay it aside, please.

ACTING PRESIDENT GRIFFO: Lay it aside.

THE SECRETARY: Calendar Number 679, by Senator Skelos, Senate Print 3614, an act to amend the Correction Law.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 680, by Senator Skelos, Senate Print 3713, an act to amend the Correction Law.

ACTING PRESIDENT GRIFFO: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the 180th day.

ACTING PRESIDENT GRIFFO: Call

the roll.

(The Secretary called the roll.)

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

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 681, by Senator Golden, Senate Print 3718, an act to amend the Executive Law.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 715, by Senator Saland, Senate Print 2827, an act to amend the Agriculture and Markets Law.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 716, by Senator Young, Senate Print 3714 --

SENATOR SKELOS: Lay it aside for the day.

ACTING PRESIDENT GRIFFO: Lay it aside for the day.

THE SECRETARY: Calendar Number 728, by Senator Farley, Senate Print 849 --

SENATOR DUANE: Lay it aside, please.

ACTING PRESIDENT GRIFFO: Lay it aside.

THE SECRETARY: Calendar Number 737, by Senator Wright, Senate Print 4728 --

SENATOR DUANE: Lay it aside, please.

ACTING PRESIDENT GRIFFO: Lay it

aside.

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

SENATOR SKELOS: Mr. President, if we could go to the controversial reading at this time.

ACTING PRESIDENT GRIFFO: The Secretary will ring the bell and conduct the controversial reading of the calendar.

The Secretary will read.

THE SECRETARY: Calendar Number 571, by Senator Saland, Senate Print 1465A, an act to amend the Real Property Tax Law.

ACTING PRESIDENT GRIFFO: Senator LaValle.

SENATOR LaVALLE: Yes, on the bill, Mr. President.

It's a rare time that I disagree with my esteemed colleague Senator Saland on a piece of legislation. It is a piece of legislation that he has sponsored in the past and I have not supported in the past.

But I feel today that I wanted to rise to talk about this a bit, particularly at a time when school districts have received

historic state aid increases and yet at the same time have put in or proposed increases in school real property taxes. And we have talked about that, and there are many remedies that have been proposed to deal with that problem.

And speaking for myself, I have felt very, very strongly that school district -- we have a process under, I believe, Article 41 for the presentation of a budget, hearings. And the school district prepares a budget and then sends it to the voters for approval.

And that budget, they go through a very arduous process. Many districts have budget advisory committees, make proposals over an extended period of time going back into the cold winter days and months. And so the voters have a good idea of what teaching positions they need, what the equipment needs are, what the administrative needs are and so forth.

But one of the perplexing problems within a school budget has always been the issue of reserve funds and fund balances. And

school districts, it's a mentality -- because I remember, just digressing, when I was both a teacher and school administrator, people always said, you know: Squirrel away construction paper and writing paper. You never know when a budget is going to fail, so you've got to think ahead.

And so a lot of people in education have a mentality that you want to be like a squirrel, you want to put money away for some event that no one could think of.

And so when you look at a budget really closely and you question people about how many teachers do you have in a district -- and let's just pick a number, 13 -- you say, Gee, I note you've budgeted here for 15 positions. And you can do that with each and every category in a budget.

Now, I'm sure people do that in business and elsewhere, but there's one exception. The money and the trust is with the taxpayer. That's the taxpayers' money. And the trust should not be broken, that if you need 13 positions and that's what's in your budget, then you fund for 13 positions.

And of course if you are overfunding in that category, then you're going to provide for pension, health insurance and so forth.

So it's a long way of saying that there is, within a budget, plenty of wiggle room to take care of unexpected things that will face a school district.

There are also legitimate reserve funds -- capital reserve funds, equipment reserve funds -- and all of those also have a little room for the unexpected situation.

The fund balance, and this is one of the greatest abuses, right now, under the law, a school district can carry 2 percent. Under Senator Saland's bill, in 2007-2008 the budgets that people are voting on, they could carry 3 percent, and the following year, 2008-2009, 4 percent.

That money is sitting there. And it has been my contention that that money should be in the pockets of the hardworking taxpayers that we represent. It should not be sitting in a fund doing nothing.

In my Senate district there have been numerous school districts that have been

carrying fund balances that are incredible -- 20, 30 percent. Bridgehampton School District, they could not even put a percent because the fund balance was $4 million over the floor, the 2 percent limit, $4 million over. That money had to go back to the taxpayer. What is the penalty when a district does that? Nothing. Nothing.

In another piece of legislation I have, the Truth in Voting Act, we talked about this with the State Education Department. When this is abused -- and it's abused on a regular basis by school districts -- there is no penalty. So what do you do? So you catch a school district, you say, Okay, we're going to fine you a thousand dollars. Who are you penalizing? The taxpayer.

And so in the Truth in Voting Act we said simply you have to report this indiscretion, this breaking of the law to the voters in your district, to say "we have broken the law."

This legislation or similar legislation has been vetoed, on numerous occasions has passed here. But again, I rise

today and speak and ask, as I very infrequently do, that you not support this legislation because of the stresses between the taxpayer and the school district. And that money really belongs, as I have said, to the taxpayer and should not sit in a fund balance or otherwise.

Thank you, Mr. President.

ACTING PRESIDENT GRIFFO: Senator Saland.

SENATOR SALAND: Thank you, Mr. President.

Like my friend and colleague Senator LaValle, I am as loath to disagree with him as he might be to disagree with me. And I think in this particular case perhaps we can respectfully disagree.

What this bill does, Mr. President, as was alluded to by Senator LaValle, is to over a period of time of two years, starting with next year's budget, permit the fund balance of independent school districts to increase by 1 percent a year -- 2 to 3, 3 to 4 in the second year.

Some of us may well recall, over

the course of the past several years we saw the state's credit rating increase, in large part because of the improved health and increased amount of our fund balances. There is no entity other than school districts that I'm aware that has the ability of its constituents, its taxpayers, to express its distaste for any district that might choose to abuse its taxing authority.

And if in fact there was reason for a group of taxpayers within a particular school district to feel that this mechanism was being abused, I'm sure the school board as well as the school administration would feel the pain or wrath of those taxpayers.

There are expenses that school districts are forced to contend with, at times very unexpectedly. As recently as the past two or three years, there was an enormous spike in pension costs. Certainly the costs of healthcare remain unpredictable from year to year, but they never go down.

Fuel costs. We're now witnessing once again a spike in the cost of gasoline. That, I'm sure, will impact budgets. But

certainly the cost of fuel, the cost of energy, the cost of utilities -- these at times spike with little or no notice, with little or no sense of the ability to plan.

What a fund balance does and what it's intended to do is to enable the governing entity to sort of top those peaks and avoid the valleys, to try and keep things at a relatively level stream or playing field so as not to engage in sudden spikes and having to tax your constituents.

Are there abuses? I'm not aware but certainly take at face value the existence, as has been referred to by Senator LaValle. And to the extent that that occurs and this is not handled directly by those within that particular district at the polls, I think the appropriate way to deal with that is by way of some legislation to deal with those who would seek to have surplus funds that exceed whatever the lawful cap may be.

This provides for prudent planning. It's no different than any other level of government. We just went through a budget process where our planned reserves once again

were increased. People get good grades for having reserves. I mean, the Comptroller, the prior Comptroller, has said 2 percent is not adequate for purposes of a fund balance for a school district.

This basically enables far more prudent planning, and in a fashion that most government watchdogs would think would be an appropriate tool and in a fashion that will avoid short-term borrowing being forced upon school districts in times of unexpected expenditures and in a fashion that may well also result in them having the benefit of improved bond ratings.

So while I'm, as I said, loath to disagree with Senator LaValle, I must in this case. We've passed on two occasions during this decade a similar bill, only to have it vetoed by the Governor. And as far as I know, there's only been, at least at the last instance -- I don't recall the one several before -- there's only been one negative vote in both houses in opposition to this bill.

Thank you, Mr. President.

ACTING PRESIDENT GRIFFO: Is

there any other Senator wishing to be heard?

The debate is closed.

The Secretary will ring the bell.

Read the last section.

THE SECRETARY: Section 2. This act shall take effect July 1, 2008.

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT GRIFFO: Senator Sabini.

SENATOR SABINI: Mr. President, to explain my vote.

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

SENATOR SABINI: Even though I voted for this bill in the past, Senator LaValle made a very cogent argument, coupled with the fact that there was a front-page story in the New York Times the other day that despite the efforts of both houses on both sides of the aisle to increase school aid, the property taxes in many localities continue to rise.

So it looks like the flagrant

spenders in this state may not be people in this building but very often people in their school districts who, despite the fact that they're getting more money in their budgets -- thanks to increased state aid and thanks to the Governor and the Legislature -- continue to raise property taxes and inflate their budgets.

So I think the timing on this bill is bad. Even though I voted for it last year, Senator LaValle made some good points, and I'll be voting in the negative.

ACTING PRESIDENT GRIFFO: Senator Sabini will be recorded in the negative.

Senator Marcellino, to explain his vote.

SENATOR MARCELLINO: Yeah, Mr. President, I'm going to be voting aye on this bill, to support it. Not that I disagree totally with my colleague Senator LaValle, because I think he made some very good points. We should have seen, I think, even more decreases in school budgets this year as a result of the aid that we gave.

However, the points that Senator

Saland make are cogent and on target. The costs have risen for every area of a school and school budget. If there are misappropriations, if there are overinflating of budgets, that is the function of the Comptroller's office of this state.

That is why we passed a bill that I sponsored to require the Comptroller of the State of New York to audit every school district in this state. We gave him $3 million to do that, to hire staff to do that, to point out and find just the kind of egregious -- I won't call them errors, but misbudgeting that Senator LaValle pointed out that occurred in a district in his area.

The present legislation should eliminate this problem. If there are weak penalties, put up legislation to increase the penalties on the administrators who are misappropriating the funds so we don't punish the taxpayers. I agree with that.

However, this bill goes to a point that most school districts are suffering from, and that is the cost of repair, the cost of fuel, the cost of everything, and the

unnecessary and unplanned-for spikes that may occur.

So I vote aye on this legislation.

ACTING PRESIDENT GRIFFO: Senator Marcellino recorded in the affirmative.

Senator Volker.

SENATOR VOLKER: Mr. President, I feel a little awkward on this bill because I understand Senator LaValle's problem.

But the problem is that it appears, very honestly, that on Long Island they're paying no attention to the law. And in upstate New York, in my district -- by the way, it's interesting, I always love it when the New York Times tells us upstaters about taxes.

But I have to admit that most of my districts try to follow the law. And the problem is that by following the law, sometimes they get themselves in trouble. Because of the fact that by pouring all the money -- and sometimes I admit they spend too much money. But the good districts that follow the law sometimes are penalized.

And so the interesting problem is

that they are all, those districts that I call the good districts -- and I would point out to you that last year's school vote, not one budget was rejected in my district, first time I could ever remember, and it's because of the additional funding, the tax rates were down somewhat, and because of rebates, because people knew rebates were coming. There's no question that that was a factor.

And it's going to be a factor this year. It will be interesting to see -- and I have four counties, by the way, four counties in upstate New York.

But I do have to say as much as I agree -- and I think if I lived on Long Island, I'd certainly agree with Senator LaValle. But I live in an area that, frankly, really believes in the law. And therefore many of those districts are saying to me, We want to have the flexibility to make sure that we don't get caught up short with fuel costs and all the rest of the stuff.

In a way, I think that's fiscally responsible. So that's why I'm going to vote for this. But I certainly understand Senator

LaValle's problem.

And my colleagues from downstate -- whose taxes, by the way, are four to five times the taxes of my constituents in upstate New York -- and of course our people all think that their taxes are completely out of control. And the problem is they're high, but nowhere near as high as some of my colleagues in downstate New York. And we realize that.

I vote aye.

ACTING PRESIDENT GRIFFO: Senator Volker to be recorded in the affirmative.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 571 are Senators Bonacic, Connor, Diaz, Fuschillo, Gonzalez, Hassell-Thompson, Huntley, Klein, L. Krueger, LaValle, Parker, Perkins, Rath, Sabini, Savino, Serrano, Stavisky and Stewart-Cousins. Also Senator Schneiderman.

Absent from voting: Senators Adams and Sampson.

Ayes, 39. Nays, 19.

ACTING PRESIDENT GRIFFO: The bill is passed.

The Secretary will read.

THE SECRETARY: Calendar Number 678, by Senator Flanagan, Senate Print 1258, an act to amend the Executive Law and the Criminal Procedure Law.

SENATOR MONTGOMERY: Explanation.

ACTING PRESIDENT GRIFFO: Senator Flanagan, an explanation, please.

SENATOR FLANAGAN: Thank you, Mr. President.

Briefly, this bill allows counties to impose fees for administration, for drug testing fees and for electronic monitoring fees.

It is an outgrowth of opinion by the Attorney General back in 2003, then-Attorney General Eliot Spitzer. And he found this practice, that had been started and imposed by counties throughout the state of New York, to be illegal. And actually, I'll read a quote, because I think it is quite helpful.

Back in 2003, Attorney General Spitzer requested that the State Legislature change the law, saying that "This is sound

public policy and the State Legislature should take steps to explicitly grant local governments the authority to adopt such measures."

ACTING PRESIDENT GRIFFO: Thank you, Senator Flanagan.

Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President. I would respectfully disagree with Attorney General Spitzer, who was Attorney General, I believe, when that quote was made.

And the reason that I do is the reason that I've offered in the prior debates on this. I continue to oppose it because, one, I think that when we are talking about probation, we're often talking about young people, because they tend to receive probation, often, hopefully as an alternative to incarceration. And, two, because it is very onerous, because we're now up to almost $5,000, and this is -- these fees are being imposed on a population that is the least able to afford these fees.

So, Mr. President, I will continue,

along with a number of my colleagues who have in the past opposed this, including Senators Connor, Diaz, Dilan, Duane, Krueger, Parker, Sabini, Sampson, Schneiderman, Serrano, Minority Leader Smith, Stavisky, Hassell-Thompson, and Gonzalez. And Krueger.

Thank you, Mr. President.

ACTING PRESIDENT GRIFFO: Thank you.

Senator Diaz.

SENATOR DIAZ: Thank you, Mr. President. Mr. President, through you, would the sponsor yield for one question or two?

ACTING PRESIDENT GRIFFO: Will the sponsor yield to a question?

SENATOR FLANAGAN: Yes.

ACTING PRESIDENT GRIFFO: Senator Diaz.

SENATOR DIAZ: Thank you.

Senator Flanagan, this piece of legislation calls for someone that is in jail and is supposed to come out on probation to pay a fee?

SENATOR FLANAGAN: There's a

possibility of three different fees. One is for an administration fee, up to $30; one is for a drug testing fee of up to $8 per day; and the other is for an electronic monitoring fee, which could be up to $8 a day as well. It doesn't have to be all three, it could be any one.

SENATOR DIAZ: Would Senator Flanagan still yield for another question.

ACTING PRESIDENT GRIFFO: Senator Flanagan, are you willing to yield to another question?

SENATOR FLANAGAN: Yes.

ACTING PRESIDENT GRIFFO: Senator Diaz.

SENATOR DIAZ: What would happen to someone that cannot pay those fees?

SENATOR FLANAGAN: Senator Diaz, I'm going to the glasses now.

Page 2 of the bill, line 40: "The probation department shall waive all or part of such administrative, drug testing and electronic monitoring fees where, because of the financial circumstances of the probationer or releasee, the payment of said fee would

work an unreasonable hardship on the probationer or releasee, his or her immediate family, or any other person who depends on such person for financial support."

The fee can be waived.

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

ACTING PRESIDENT GRIFFO: Senator Diaz, on the bill.

SENATOR DIAZ: Again, I think that every day I say this, I try to remind you of the same thing here, that I represent the 32nd Senatorial District. I don't represent a district where people make a lot of money. I represent a poor district.

And for one of those members of my district or in any area of New York, a poor area, to come out of jail, poor people that have to pay $8 a day -- $8 a day, you know how many containers of milk could a family buy with $8 a day? And now you're imposing -- you know, sometime I'm with you guys. But this time, you know, this is something very -- very -- very hard for me to understand that to impose a person that already paid their dues

to society, is coming out, now they have to be charged $8 a day? For how long? For how long? Even for one or two days, this is something that is not -- it's not feasible.

I think that, Senator Flanagan, with all due respect, this is an ill-advised bill which I ask my fellow Senators not to support. There are people out there that cannot afford this kind of pressure. And this is another way of telling people in my community --

ACTING PRESIDENT GRIFFO: Senator Flanagan, for what reason do you rise?

SENATOR FLANAGAN: Would Senator Diaz yield to a question.

ACTING PRESIDENT GRIFFO: Senator Diaz, will you yield to a question from Senator Flanagan?

SENATOR DIAZ: Should I?

ACTING PRESIDENT GRIFFO: Yes. Senator Flanagan.

SENATOR FLANAGAN: Senator Diaz, perhaps I'm --

SENATOR DIAZ: Do I have to? Wait, wait, wait. Let me -- let me -- I'm

sorry, I wasn't paying attention.

SENATOR FLANAGAN: In response to your original question, I read you express language in the bill that allowed for a hardship waiver if someone does not have the financial means or support to pay these fees. There is clear authority for someone who is financially incapable of paying to have the fees waived. You do understand that?

SENATOR DIAZ: Mr. President, through you.

ACTING PRESIDENT GRIFFO: You have the floor, Senator Diaz.

SENATOR DIAZ: Who determines who is incapable of paying? Because in my community -- you don't understand my community, Senator. Who will determine a person that cannot afford $8 a day? This is not that easy. It's not that easy.

SENATOR FLANAGAN: Are you asking me a question?

SENATOR DIAZ: I'm asking you a question. Who will determine that?

SENATOR FLANAGAN: Okay. The probation department will determine that.

SENATOR DIAZ: Oh. Oh, oh (laughing). I used to go to Lehman College in the Bronx, and in my philosophy class there was a teacher from Spain that used to say "Children of my heart" -- let me say it in Spanish. [in Spanish] In English it says: "Children of my heart, that blue sky, that ain't blue and it ain't the sky."

So, you know, a lot of people are telling us who -- who could pay and who could not pay. You go to my community, we got poor people there. Even in the Medicaid, one cents or two cents -- there are people dying that cannot even buy food. There are people that have to decide to buy food or to buy medicine, whatever. And you're trying to impose another burden on them?

Come on, Senator, you know you could do better than this.

SENATOR FLANAGAN: Mr. President, if Senator Diaz would continue to yield.

ACTING PRESIDENT GRIFFO: Senator Diaz, will you continue to yield to a question from Senator Flanagan?

SENATOR DIAZ: I might be getting

myself into trouble, but I have to say yes.

ACTING PRESIDENT GRIFFO: Yes, Senator Flanagan.

SENATOR FLANAGAN: A comment and a question. While my Spanish is certainly not as proficient as yours, I understood it in both Spanish and English in terms of what you were saying.

But I would offer to you that there is also a cap of $600 on the drug testing and $900 on the electronic monitoring, so there's an additional cap.

But my question to you is, do you believe that anybody should have to pay any fees for probation?

SENATOR DIAZ: No, no, I don't believe that, because people already pay their dues. I mean, they committed a crime, they committed an action, they went in front of a judge, they were found guilty, they were sentenced by the society to pay for their crimes. That's it.

SENATOR FLANAGAN: Senator Diaz, do you agree with our present law that allows for the imposition of probation fees for

DWI-related offenses? Because that's present law. So do you disagree with that law? Do you believe that those people should not have to pay any fees?

SENATOR DIAZ: We're talking about --

SENATOR FLANAGAN: I'm talking about present law. If I take your argument to its next step, you would then also say that DWI fees should not be imposed on anybody.

SENATOR DIAZ: I'm talking about Bill Number 678. That's what we're referring to now, Bill 678 that we're about to vote yes or no. So I would concentrate on this bill and talk about this bill. And I'm saying this bill is wrong for my community.

ACTING PRESIDENT GRIFFO: May I ask my fellow Senators to please address their questions to the chair.

SENATOR DIAZ: Mr. President, I asked my question and I'm going to take my seat now.

ACTING PRESIDENT GRIFFO: Senator Flanagan, is that okay? Very good.

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President. Would the sponsor yield for a brief question.

ACTING PRESIDENT GRIFFO: Senator Flanagan, will you yield for a question?

SENATOR FLANAGAN: Yes.

ACTING PRESIDENT GRIFFO: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Senator Flanagan, there was a question and Senator Montgomery raised an issue, the suggestion that this bill was in fact supported by the Governor.

This is not in fact a Governor's program bill, is it, Senator Flanagan?

SENATOR FLANAGAN: No.

And through you, Mr. President, in case it was not clear, I made a reference to 2003, by then-Attorney General Eliot Spitzer. I never suggested for a second that this was a Governor's program bill in any way, shape or form. I spoke to his comments as the Attorney General.

Maybe I'll go out on a limb and suggest that if he supported it as Attorney

General, he would probably do the same thing as Governor. But I don't want to pretend to speak for the Governor.

SENATOR SCHNEIDERMAN: Thank the sponsor for his answer. On the bill.

ACTING PRESIDENT GRIFFO: Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: I think that we're dealing with an area in which people are evolving and consciousness is evolving on this issue. It is clear now that even the conservative Republican president, George Bush, has begun to speak about reentry as a priority, developing programs so people who get out of prison can reenter society, become productive members of society. Again, this is a theme that is coming up over and over again.

And I believe that our conference, many of us believe that New York State is behind the curve on the issue of reentry. We have to get the barriers out of the way to let people who have served their debt to society under some of the stiffest sentences in the country reenter. What works for everyone is

to make sure that people do not commit further crimes -- that's a crime-reduction strategy; that they can get back together with their families, get jobs -- that's an economic development strategy; that they can educate themselves and that they can become helpful members of their community -- that's a community empowerment strategy, and that's a strategy that helps poor communities of color such as those represented by Senator Diaz, Senator Montgomery, and myself.

I think that this bill is a throwback to a time when thinking was very different and people thought it's all about punishment, let's punish them as much as we can and, when they get out of prison, let's punish them some more.

It seems like a small amount of money, but it is hard enough -- you know, think about the unemployment rates for young men of color in our society. Three, four times that of young white men in our society. And then add to that what about the young men of color who have a criminal record. Boy, it's hard to get a job, it's hard to support

your family.

And yet we, through this bill, would impose an additional burden that would make it harder for those courageous souls who do want to straighten up their life and reenter.

This is an outdated bill, ladies and gentlemen. I respect Senator Flanagan's sincerity on the issue, and I think the concern for local governments should be dealt with by ensuring that the state fund the underfunded probation departments and provide additional resources, provide educational and counseling resources to prisoners. But punishing the prisoners further has not worked, will not work.

Let's give everyone a fair shot at reentry into society. It's the right way to go. It's better from a criminal justice point of view, it's better from a social point of view, and it is better to try and reflect the fact that sometimes the blue sky is not the blue sky, but there are always a few people who are willing to reach out and do better no matter what the obstacles.

And I think that until we're able to address all these other issues, it would be prudent for us to vote no against this bill and against imposing additional burdens on people getting out of prison in New York State. Let's give everyone a chance to succeed.

Thank you, Mr. President.

ACTING PRESIDENT GRIFFO: Senator Hassell-Thompson, on the bill.

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

Part of what I wanted to present was presented by Senator Schneiderman. But another aspect of concern that I have is that yes, the bill speaks to the fact that if people cannot afford that it would be -- consideration would be given or it would be waived.

However, in the real world, Senator Flanagan, I have worked with some young men who are on probation and on parole. And in order to -- in your probation, you have to pay $30 a month. And the law says if you can't afford to pay, that should be waived or

adjusted. However, his parole officer, his probation officer has made that a condition of his probation and has said if he fails to pay it, he will violate him.

And so in the real world it doesn't matter what this law says. You're not in that office telling that probation and that parole officer what the law says. They have discretion, and they use that discretion in any way that they choose. And many of these young men continue to be violated because they cannot pay these fees.

I do not believe that the State of New York should bear all costs, no. So don't ask me that question, because I will answer it for you. But what I will tell you is that we sit here and we talk about the numbers of positions and jobs and employment opportunities that young men returning to our communities cannot have. They cannot be barbers, they cannot be beauticians.

Every day, practically, we commit them to going back to prison because the employment opportunities are minimal. And the more minimal the opportunities, the more

minimal the salaries.

So in the process of those salaries, when they pay their parole and probation costs, and then you want them now to pay for drug testing -- what else is it that you want them to pay?

And so my concern to you and to all of us is that somehow we need to look at the real world when we sit here in these very comfortable seats and talk about how we're going to affect the lives of people that we will never meet, that we will never see, and who will never impact our lives directly.

Thank you, Mr. President.

ACTING PRESIDENT GRIFFO: Senator Robach.

SENATOR ROBACH: Yes, Mr. President. I rise to support this bill.

This is interesting to me. But I think we have to clarify some points here, first and foremost. This is for probation, not for parole. This is not about reentry, this is about people that don't go to jail in lieu of that. So oftentimes -- the DWI analogy that was given was very good.

I think this is, I guess, what you want to focus on. I would think that this would be something that would actually be more onerous on those people who violate the law that have the ability to pay that perhaps would be more likely -- maybe, perhaps -- to be suburban rather than urban, to say to them as a relief to the taxpayer and the overburdened system, This is a mechanism to let you pay and take a little bit more responsibility for the crime that you have perpetrated.

I think this makes all the sense in the world. I would love to have a bill that says everyone that chooses to drink and drive, even though they don't hurt somebody -- because it will be a different charge -- we're going to make you not only take that punishment in the fine you're going to have to pay, but pay for the attached cost.

I think when the Attorney General at the time said that statement, that's exactly what he was trying to address. When people have the ability to pay, to take that burden off the system that's paying for it

now, you would do that. I think that one could even make the argument it would give government more money to spend on preventive side things rather than other things to go right after the affected communities that are in there.

So I'm really not disagreeing. I guess that when I look at what this focuses on, what it does is -- I don't think we're trying to already -- the purpose of this isn't to more aggressively go after the downtrodden or those that don't have the ability to pay, I think it's to free up more money and put more money back in the system from those offenders that do have the ability to pay. And that's why I'm going to support the bill.

I applaud Senator Flanagan. I think in other areas where we've done that, it's helped accomplish the goal and put more personal responsibility on people that have the ability to pay. And for those reasons, I will support the bill.

Thank you, Mr. President.

ACTING PRESIDENT GRIFFO:

Senator Adams, on the bill.

SENATOR ADAMS: Would the sponsor yield for a question.

ACTING PRESIDENT GRIFFO: Senator Flanagan, would you yield for a question from Senator Adams?

SENATOR FLANAGAN: Yes.

ACTING PRESIDENT GRIFFO: Senator Adams.

SENATOR ADAMS: First, probably unlike my colleagues, I find the bill to have some attractive points. I just need some clarity on some aspects of the bill.

Those who cannot pay, is there a mechanism to ensure that there's a standard? Or is it discretion for probation to decide if they're going to pay or not?

SENATOR FLANAGAN: The rules and regulations regarding that conduct have to be promulgated. Is it set out, is there a standard in the bill specifically? No.

SENATOR ADAMS: The fees, would the fees --

ACTING PRESIDENT GRIFFO: Senator Adams, please address the chair.

SENATOR ADAMS: I'm sorry. Would

the sponsor please yield for another question.

ACTING PRESIDENT GRIFFO: Senator Flanagan, do you yield for an additional question?

SENATOR FLANAGAN: Yes.

SENATOR ADAMS: The fees that are paid, would that go into a fund for victims, or would it just go into a fund for probation, a general fund for probation?

SENATOR FLANAGAN: It is to go directly into county for local probation services. It can't be used by the State of New York to offset any other money that otherwise would go to that county. So it's directly into local probation services.

SENATOR ADAMS: On the bill.

SENATOR FLANAGAN: It is supported by NYSAC. I have a specific memo, not an updated one. This was supported by Westchester County in a very extensive memo, again by CSEA, by NYSAC as well.

ACTING PRESIDENT GRIFFO: Thank you, Senator Flanagan.

Senator Adams, on the bill.

SENATOR ADAMS: On the bill.

You know, there is a real concern about those who are on probation and can't afford to pay any additional fees. And we don't want to put people in a state to continue crimes.

But there is a concern that I believe in. And we have a tendency sometimes to forget the guys that play by the rules. And it is always my belief that we almost have abandoned the nine-to-five guy, the guy who plays by the rules. He may not have enough to buy a loaf of bread, but you know what, he'll put another hour in so he can. He's not doing a stickup, he's not doing a robbery. And I think we're moving away from just dealing with that everyday nine-to-five guy.

And when someone decides not to play by the rules, life is supposed to be challenging, and he must understand there's a responsibility for his crime. And I don't think merely, unlike what my counterparts stated, that after someone serves time in a correctional facility that he has paid his dues. No, he hasn't. I think there's more you have to do. There needs to be some

consolation to the victim.

I would like to see something like this go into a fund to go to those victims of crimes -- rape, robbery and burglary -- and how they are impacted, not just to go into a general fund. I would be more enthused to support a bill like this if we do more for the victim. And those who commit crime, particularly victim crimes, predatory crimes that scar the life of people long before the physical wounds heal -- the emotional and psychological wounds last a lifetime.

And so a bill like this I would be more inclined to support if we do more for the victim and send the statement that those men and women all over the state that play by the rules should not have to compensate the requirements that others may do to fulfill their obligation of probation.

Not going to jail for committing a crime and having to pay to take a urine test, to pay to take a drug test or to offset the cost to the public, those funds that can go into some real programs in my own community I'm in support of. I would rather we have

more to deal with victim services, to ensure that victims that are victims of crime are compensated in some way.

That is not lined out, as I just learned today, so that is the reason I will not support the bill at this time. But if a bill is ever introduced that would include funds that are taken from persons who commit crimes that go into a fund for victims and victim services, I would be more than happy to support a bill of that nature. But at this time I will not support it.

ACTING PRESIDENT GRIFFO: Senator Krueger.

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

So my colleagues have made many points today, back and forth. I do want to just correct one thing. The bill is both for people on probation and conditional release. So in fact it is people -- as Senator Schneiderman pointed out earlier and Senator Hassell-Thompson pointed out, it would both be probation people and people who are being released from prison under the conditional

release category.

But I guess I want to raise an additional point here, as someone who spent many years of her life working with government benefits programs for low-income people and working in low-income communities. One, to highlight several things that were said today.

When someone, whether they are on probation or they are coming out of prison and they are poor, what the research shows is the most effective model for making sure they don't go back to a life of crime, they don't go back into the system, is to ensure that they have the opportunities to get good jobs and meet their economic obligations to themselves and their families and their community.

So I worry that from an operational perspective what we will be doing with this kind of legislation is actually putting a fairly high tax on the lowest-income people, who are the in fact parolees and people coming out of prison, and that the win would not actually be ours.

I respect Senator Adams' point

about where the money would go. I would be hesitant to do a math equation right now, but I suspect if you actually did the analysis of the cost to the local probation organizations in each county, and they had to do the math on what it would mean to set up a system to do an evaluation of each possible candidate who might have to pay or might be asking for an exemption, there would be a significant administrative cost for operating that approval or rejection process.

There would be a significant cost in trying to collect the money and making the decisions about how you would go about collecting money. Certainly in social service agencies and in government we have learned that when you take an emergency grant and you turn it into a loan that must be repaid, the costs of collecting that money back often exceed the cost if you had just exempted it in the first place.

Ironically, we've even discovered that with the school meals program, where, rather than collect a cost per day for a meal, the school systems can actually save money by

not collecting any cost for the meals because it's more expensive to administer the program than to collect the quarters and the dollars from the children.

So I would also wonder whether we would really actually see any significant savings or revenue to the localities, while I know we'd be setting up an administratively complex system that would cost us money to set up. And I particularly worry that we would be ending up then either putting people back into prison because they failed their conditional release when they couldn't pay their money, or we ended up increasing the number of people who --

ACTING PRESIDENT GRIFFO: Senator Flanagan, why do you rise?

SENATOR FLANAGAN: If Senator Krueger would yield for a question.

ACTING PRESIDENT GRIFFO: Senator Krueger, would you yield to Senator Flanagan?

SENATOR LIZ KRUEGER: If I could just finish my sentence, I'd be happy to answer the Senator's question in a moment.

Thank you. I would also be

concerned -- thank you -- that we'd end up actually having people put into institutional settings because of their inability to pay or to meet the obligations of this new administrative setup.

So I think that Senator Flanagan's intention with this bill is to say if you were guilty of something, you should pay some of the cost. And I fear the way this is set up, that wouldn't be the outcome, and we would be creating an additional penalty for exactly the type of people who the win for us is if they go into their communities, they get good-paying jobs, they become taxpayers, and the win back into the coffers of government is the tax revenue they can pay us when they accomplish their goals of becoming the wage earners I know that Senator Flanagan and I both want them to be.

And now I'd happy to answer any questions, Senator.

ACTING PRESIDENT GRIFFO: Senator Flanagan.

SENATOR FLANAGAN: Thank you, Mr. President.

Senator Krueger, following up on something that Senator Hassell-Thompson said as well, you are aware that there are provisions in this bill that these fees cannot be imposed as a condition of probation? So the scenario you described about somebody being returned and institutionalized based on the fact that they haven't paid is inapplicable. There's specific language in the bill against that.

ACTING PRESIDENT GRIFFO: Senator Krueger.

SENATOR LIZ KRUEGER: Thank you. Thank you, Senator Flanagan.

I think my concern -- and I don't want to speak for Senator Hassell-Thompson. Obviously she can herself -- is the point about in real life how are decisions made by a system as to whether somebody is released, is not released, has been concluded to fail the tests of the program or not.

So yes, I see the language that says that there's supposed to be an undue hardship category and a process for, I guess, almost the equivalent of a fair hearing

process or an administrative judicial proceeding to make your argument for hardship.

But I think my concern is, and I think my colleagues' -- not to speak for them -- concern is that in real life it's much more likely that somebody would just have the box checked off that they failed to meet the proof for themselves that they couldn't pay.

ACTING PRESIDENT GRIFFO: Senator Krueger, will you continue to yield?

SENATOR LIZ KRUEGER: Of course, Mr. President.

SENATOR FLANAGAN: Thank you, Mr. President.

I would respectfully offer that, in this context of the real world that everyone seems to be bringing up, are you aware that counties were running programs like this for a number of years and then the Attorney General said, You can't do this anymore, so you need to get state legislation? Are you aware of the fact that there were counties all across the state running these programs?

ACTING PRESIDENT GRIFFO: Senator Krueger.

SENATOR LIZ KRUEGER: No, Mr. President, I'm not aware of that.

May I ask the sponsor why the Attorney General ended that program.

ACTING PRESIDENT GRIFFO: Will the sponsor yield for that question?

SENATOR FLANAGAN: Because that's the reason we have the bill. He said they didn't have explicit state authorization to do so.

And there were two primary objectives here: To make the counties whole so they wouldn't have budget deficits created as a result of losing money. But the other point is that this allows them to continue a program that many of them started in good faith.

So I would ask you another question.

ACTING PRESIDENT GRIFFO: Senator Krueger, will you yield to Senator Flanagan?

SENATOR LIZ KRUEGER: Certainly I will, Mr. President.

ACTING PRESIDENT GRIFFO: Senator Flanagan.

SENATOR FLANAGAN: You talked about some different programs separate from probation. And I look and think, okay, this is not some brain trust idea that emanated from office of Senator Flanagan, this is the New York State Association of Counties who had come to us with an idea on programs they were actually running, that they were working on where they had an administrative setup where they were collecting fees and they were actually implementing programs about which you have raised some fears and concerns.

I listen to the people and my colleagues listen to the people who are actually running the programs. So there's quantifiable evidence, there's an experience that demonstrates how it works.

And I can also tell you that in a memorandum -- it is not updated, I will be very clear -- but from Westchester County, from Andrew Spano, talking about the hardship provisions in particular, that the administrative fee that they had been allowed to impose since 1993, the county had never gone after anybody for failure to pay that

fee, that the hardship provisions work.

So I'm taking this from the standpoint that we have people in the field in the real world, like Senator Hassell-Thompson referenced, who are running these programs or were running these programs and knew how to do it every day. I'm going to rely on the expertise of the people in the field who knew how to do it and were actually doing it and they're now actually coming and asking for state authorization to, frankly, do it the right way.

ACTING PRESIDENT GRIFFO: Senator Krueger.

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

ACTING PRESIDENT GRIFFO: On the bill.

SENATOR LIZ KRUEGER: Thank you.

I would be very interested in seeing the reports that you have referenced. I have not seen them. And interested in, I suppose, the economic analysis of what happened in the counties that were running

these programs, what the size of the counties were, what people they were applying them to. As you point out, it was pre-your proposed legislation, so I suspect it was different models in different counties.

So I will remain as a no vote on your bill today. But I would be very interested in seeing the materials, the findings from the different counties of the economics of it for them, what rules they followed, in order to evaluate whether in fact, in fairness, your arguments have been proven by the trials of different counties.

But for now I'll stand with the argument that I think that really the goal of both when we make a decision to put someone on probation rather than put them into jail, when we make the decision to have a conditional release, in recognition of the fact that statistically the vast majority of people who are both in our prisons and are on probation are exceptionally poor, that it does not -- the research that I am familiar with does not lead me to conclude that quote, unquote, a high tax on the poorest people who have gotten

themselves into trouble with our criminal justice system is ultimately in the best interests of trying to make sure that we not only keep people following our laws and out of our very expensive institutional settings but that we support them to become the hardworking nine-to-five, to use Senator Adams' reference, participants in our communities that we hope they can be, that we want them to be.

But I would look forward to seeing the materials from you, Senator.

Thank you, Mr. President. I'll vote no.

ACTING PRESIDENT GRIFFO: Senator Volker, to close.

SENATOR VOLKER: Mr. President, I just want to say, you know, Senator Krueger, you should vote no on this. And there's a reason. Because your district is one of the only districts in the entirety of New York City where anybody ever collects any fines.

The truth is that New York City is virtually totally exempt from fines and fees. And I have never heard -- Senator Hassell-Thompson, it was interesting to listen

to you talk about probation officers. It's an automatic waiver in New York City. We pass these rules and regs and all this stuff saying that you can charge somebody who can afford it extra fines and fees. The one place that this is never collected is New York City. It's no secret.

The truth is, it's collected from Senator Flanagan's district and mine and places where people that can afford it -- most of whom never went to jail, by the way, because most of these people are probation people. They go in for a hearing, whatever. And instead of sending them to jail, they get put on probation. Not parole, probation.

Now, I want to thank Senator Diaz for defending Paris Hilton. Because this is the classic bill that would be used against someone like Paris Hilton. And I mean that.

And what the judge did in the situation with Paris Hilton was get tired of just letting her walk in, pay a fine or whatever, and said: Wait a minute, you're going to do more than just do the kind of things you've been doing. You're going to go

to jail.

Now, this bill, by the way, if she was going to get on probation, she'd still have to pay all kinds of other things, because of course she'd have to be drug tested and all sorts of -- I mean, I would think.

At any rate, what I'm trying to point out is, this is not for poor people. This is for drug people and people who can afford to pay the fees. These are people all over the place.

You asked the process. The process is you go before the judge and he says "Okay, forget it," in the city. That's what happens. I have the numbers. We've had them for years. People don't pay assessments and fines downstate, because most of the judges pay no attention.

Virtually throughout New York City, except occasionally in Manhattan -- and that's true because they get some really wealthy people occasionally there, just as occasionally we do in Buffalo and places like that.

I think there's a rule down here, I

think for some time, to pay fees and so forth, but they just ignored it.

My point is that what someone says -- and I believe in reentry and all that sort of stuff. In fact, I'm doing legislation on that. This has nothing to do with reentry. This has to do with some people that keep violating the law and getting breaks who don't have to pay for a lot of the things that my constituents, my county, my city and your city, are paying, because they don't want to pay them.

It isn't poor people. It's wealthier people, middle-income people that have the money. In some cases, wealthy people.

The problem is we feel so badly for poor people, who it really doesn't apply to, that we forget that in many cases the drug people are not poor people. Especially sellers. Who, by the way, in this state, in New York City, probably get more breaks than any sellers of drugs in the nation. In the city.

It's been no secret for a long

time, you got to get arrested dozens of time before you ever go to jail. You go on probation or eventually you go on parole. And then you get in trouble, and if you don't have to pay for all the stuff that happens after that, why, you're fine.

You think that it has poor people involved. Not true. Just not true. We have the numbers in from the city, and they're staggering about the amount of assessments and penalties that are never collected. Now, we're not saying that they should collect all of them. But there is a culture that's developed that says we're just not going to do it because it's not worth it. And that costs probation millions and millions and millions of dollars --

ACTING PRESIDENT GRIFFO: Senator Diaz, why do you rise?

SENATOR DIAZ: Would Senator Volker yield to a question, please.

ACTING PRESIDENT GRIFFO: Senator Volker, will you yield to a question from Senator Diaz?

SENATOR VOLKER: Yeah, I guess

so. I'm supposed to be summing up, but yeah.

SENATOR DIAZ: Senator, I need for you to explain to me again when you say "drug people" in this bill, what do you mean exactly.

SENATOR VOLKER: What I mean is especially sellers, people that sell drugs that have money and go on probation in New York City rather than go to jail. Because that's what happens to a lot of people in the city.

Now, Senator, let me finish by saying there's a provision in this bill that you didn't see. It says Senator Diaz's district is not included in this bill. And the reason I say that is because the poor people in your district will never have to pay it.

SENATOR DIAZ: Do not get angry at me.

ACTING PRESIDENT GRIFFO: Senator Diaz.

SENATOR DIAZ: Can the Senator yield for another question.

ACTING PRESIDENT GRIFFO: Senator

Volker, will you yield for another question?

SENATOR VOLKER: Yes, I yield.

SENATOR DIAZ: Are you willing to tell the sponsor, to ask the sponsor of the bill --

SENATOR VOLKER: I'm not the sponsor. He's the sponsor. Senator Flanagan.

SENATOR DIAZ: Are you willing to ask the sponsor of the bill to draft the bill exclusively for drug dealers, rich drug dealers? Are you willing to do that?

SENATOR VOLKER: So you're saying if somebody shoots somebody and has gotten probation, that we shouldn't include them in this bill?

SENATOR DIAZ: Will the sponsor -- would the Senator --

ACTING PRESIDENT GRIFFO: Would you like Senator Volker to yield or Senator Flanagan, Senator Diaz?

SENATOR DIAZ: No, I'm talking to Senator Volker.

ACTING PRESIDENT GRIFFO: Senator Volker, will you yield to another question from Senator Diaz?

SENATOR VOLKER: I yield.

ACTING PRESIDENT GRIFFO: Senator Diaz.

SENATOR DIAZ: Senator Volker, we are dealing with this bill. You are the one bringing in rich drug dealers in this equation. So I'm saying the bill, okay, includes everybody. But if you want to do the bill exclusively for those rich drug dealers, I will support it.

SENATOR VOLKER: I'm sure you would, yeah.

SENATOR DIAZ: I will support it.

SENATOR VOLKER: Sure.

SENATOR DIAZ: But we're talking about the other people, the people -- the parents, the father, the mother. You know, someone that really commit a crime, went to jail, is coming out --

SENATOR VOLKER: No.

SENATOR DIAZ: -- is coming out --

SENATOR VOLKER: Most of these people are not coming out. They're on probation.

ACTING PRESIDENT GRIFFO: Senator Diaz, Senator Volker has the floor. You've asked your question.

SENATOR VOLKER: You're misinterpreting this bill. I am telling you that this bill is for people on probation, basically. This is not parole. They don't come out of jail.

SENATOR DIAZ: I'm -- I'm --

SENATOR VOLKER: Most of the people on probation --

ACTING PRESIDENT GRIFFO: Senator Diaz, you're out of order. He's answering the question.

SENATOR DIAZ: Could the Senator --

ACTING PRESIDENT GRIFFO: You would like to address another question, Senator Diaz?

SENATOR DIAZ: Yes, Mr. President.

ACTING PRESIDENT GRIFFO: Senator Volker, will you yield for another question?

SENATOR VOLKER: Yes, I will.

ACTING PRESIDENT GRIFFO: He will

yield, Senator Diaz.

SENATOR DIAZ: I just want, Mr. President, to be clear, because Senator Volker brought to the floor rich drug dealers, making believe, making believe that we are in favor of letting the rich drug dealers get away and implying, implying that the bill is made for rich drug dealers --

ACTING PRESIDENT GRIFFO: What is your question, Senator?

SENATOR DIAZ: I'm trying to clarify -- I just want to the Senator to clarify, to be clear, to answer to me clearly --

ACTING PRESIDENT GRIFFO: Address it in the form of a question, please, Senator Diaz.

SENATOR DIAZ: Okay. Senator Volker, will you please be clear enough and explain to the viewers that are watching you that this bill is not only for drug dealers and that when you refer to the drug dealers, the rich drug dealers, you are not implying that we are here protecting drug dealers.

SENATOR VOLKER: Of course not.

Senator, may I just point out something. I was pointing out that it could do that. I am pointing out to you, Senator -- I don't know about viewers, all I know is reality, in the real world. And the real world is it could apply to wealthy drug dealers, is all I'm saying.

It applies to all sorts of people, but primarily it applies to people with money. Because if you don't have money, you're not involved in it, because automatically it's waived. He gave you what it says.

And I'm telling you in your district, I bet you that not one cent of fines and fees and so forth has been collected over the years, because judges just don't do it. And it's -- in fact, it's a little frustrating, because I have poor people in my district too.

Senator, you don't realize, you don't understand the criminal justice in New York City. I'm sorry.

ACTING PRESIDENT GRIFFO: Senator Diaz, you must allow the Senator to continue to answer the question before interruption.

Do you have a further question? Do you have a further question, Senator Diaz?

SENATOR DIAZ: I have a clarification here. Can I?

ACTING PRESIDENT GRIFFO: No, you cannot. You are asking a question. You rose to ask a question.

Senator Volker has the floor, is speaking on the bill.

SENATOR DIAZ: Thank you.

ACTING PRESIDENT GRIFFO: Senator Volker, on the bill.

SENATOR VOLKER: And I shouldn't, I suppose, get excited. But I got to tell you something. We've got to live in the real world.

And Senator Hassell-Thompson, you talked about the real world. And I agree with you that there probably are some probation officers, and you should know, who do things. That can be overruled. There's no question about it, because it happens constantly if they want to do it. Now, if the people have money, that's true, they got a problem.

I believe in reentry. I believe in

helping wherever we can. But I also don't believe in fooling ourself into thinking that a bill like this has anything to do with people that can't afford to pay the fees. Of course it doesn't.

This is aimed primarily at people who can afford to pay the fees and can be made to make sure that the regular taxpayers, whoever they are, rich or poor, end up funding for those people. That's what it's about. That's why the Senator is talking -- that's why NYSAC supports it, that's why all these people support it.

The problem is we seem to say, Ah, those poor people. Well, the poor people are not paying. And that's not wrong. I'm not saying they should. But I think we have to realize that this is a real world. It's not a political world. In a political world, we don't have to do any of this stuff. And that's what many people, unfortunately, in the City of New York are saying.

Let's not say that maybe they have to pay. But that's not the real world. The real world is different. And a lot of

constituents don't seem to understand what really happens in the criminal justice system. That's all I'm saying. That's why Senator Flanagan's bill makes a lot of sense.

ACTING PRESIDENT GRIFFO: Debate is closed.

The Secretary will ring the bell.

I mentioned earlier, Senator Schneiderman, that Senator Volker would be closing. Would you like to explain your vote?

SENATOR SCHNEIDERMAN: Thank you, I would like to explain my vote. But I'll wait till we ring those bells.

ACTING PRESIDENT GRIFFO: Thank you, Senator.

Read the last section.

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

ACTING PRESIDENT GRIFFO: Senator Schneiderman, to explain his vote.

SENATOR SCHNEIDERMAN: Thank you, Mr. President. Very briefly.

This was another good debate. We're starting to get into the spirit here.

I do want to take Senator Volker's

admonition that we get back into the real world. And, my colleagues, the real world is not a world in which people get probation for shooting someone, with all due respect to my esteemed colleague, leader, and personal hero, Senator Volker. The real world is not a place where rich people deal street drugs.

I mean, you know, I'm sorry, I -- you know, Senator Liz Krueger has a lot of bad people in her district, but there are not a lot of street drug dealers on the Upper East Side of Manhattan. Rich people have other ways to steal money and to engage in criminal activities.

The truth of the matter is this. The only people who will be hurt by this bill are poor people who are on probation and hopefully some of them -- and we know some of them, from all of the statistical evidence, are trying to get their lives back together.

It is not true that all the fees are waived for everyone who's poor. If you look at the section of this bill, which I would urge the sponsor to edit if he wants to revisit the issue, all it says is that the

determination of whether the fee shall be waived shall be made by the probation department based on regulations to be promulgated.

There's no procedure with judges. This could be arbitrarily done, there could be mistakes made. And even if people have a job at the point the determination is made, they may lose that job. This hurts people trying to get back into society. It is punitive. The only people affected are the poor people who are on probation.

I realize there are some rich people who -- Paris Hilton types -- but it is a very small number. The overwhelming number of probationers in the State of New York are poor people of color. I do understand how the criminal justice works in New York City, and that is an unassailable truth.

I vote no, Your Honor. Oh, excuse me, Mr. President.

(Laughter.)

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

And let's call the roll now.

SENATOR DIAZ: Hello.

ACTING PRESIDENT GRIFFO: We're calling the roll now.

(The Secretary called the roll.)

ACTING PRESIDENT GRIFFO: Senator Diaz, to explain his vote.

SENATOR DIAZ: Thank you, Mr. President. Or should I join my colleague and call you Your Honor?

I just want to say that, you know, even though in words the bill says that it is not established to be a condition for probation, I just want all of you to know that last year the probation department -- probation officer came to me because now, as Senator Hassell-Thompson said, they are paying $30. The people on parole, they're paying $30. And they are forcing -- the department is forcing the parole officers to collect those fees.

And what happens is that they have put a quota, a quota on probation officers to collect the fees. And the probation office has stopped doing their duties as probation

officers, and now they've become collectors. They've become collectors.

And we passed a bill here in the Senate, I sponsored the bill, my son has sponsored the bill in the Assembly, it passed, and Governor Pataki vetoed it last year. But I'm afraid that this bill also will do the same, putting another burden on parole officers. And parole officers have enough work to do supervising parolees and not being -- collecting money and making that part of their duties as a quota, as a quota. So they are forcing people to do it.

And -- and with all due respect to all of you and to the sponsor, this bill will affect poor people. Poor people that are not drug dealers, poor people that are not criminals per se, that kind of criminal. They made a mistake, they come on parole and probation, and they're going to be forced to pay money that they don't have.

And that's why, Mr. President, I'm voting against this bill and I'm asking everybody else to vote against this bill. This is a not-good bill.

ACTING PRESIDENT GRIFFO: Senator Diaz to be recorded in the negative.

Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Well, actually, Mr. President, I just raised my hand to vote no. But I will take this opportunity to make this final comment.

It's very interesting, Senator Volker, that you talked about the fact that these are not poor people that we're targeting. And yet to my knowledge the rich drug dealers that you're talking about very rarely, if ever, use the product. Okay? And so that they're not the ones that need drug testing. But rather, it is users who get drug-tested.

And the other thing is that I would be more than happy to bring you receipts, Senator Volker, from some young men that I know in my district, including my nephew, who has to pay his $30 a month. And this bill does in fact say releasees. Releasees. I read the bill. And so to tell me that it's only probation is not accurate. And reading is fundamental, even for me.

ACTING PRESIDENT GRIFFO: Senator Flanagan, to explain his vote.

SENATOR FLANAGAN: Thank you, Mr. President.

It's certainly an enlightening discussion. In the context of the real world, I want to share that I learned something new today. Senator Volker, I never knew this before, is obviously a Paris Hilton fan.

(Laughter.)

SENATOR VOLKER: It's true. Absolutely.

SENATOR FLANAGAN: In relation to this bill, I think this points up, in my estimation, some fundamental differences. I listened very carefully and very clearly to the comments of my colleagues. But this bill didn't go on, you know, overnight. This bill was discussed, it was vetted, it was brought by the New York State Association of Counties.

And yes, I have correspondence and I have documentation from people who have nothing to do with the area I represent, statewide organizations weighing in in favor of something like this. And frankly, I also

have had discussions with the probation director in Suffolk County, have correspondence of their strong support, because they are administering the programs.

So for anyone to suggest that somehow this is only going after poor people, I couldn't disagree more. There's specific language in the bill, which people don't seem to want to pay attention to, that allows for a hardship waiver. And for anyone to suggest that, oh, we're only going after poor people, that's just ridiculous.

The whole point of the bill is to make sure that a practice that had been started by the counties that was running well and operating smoothly and efficiently is now done in a legal way. It's to help our counties. It's to make sure that they don't have deficits.

And frankly, on a policy basis, I think our constituents, no matter where you live in the State of New York, it's common sense and they would support it.

Thank you.

ACTING PRESIDENT GRIFFO:

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 678 are Senators Adams, Breslin, Connor, Diaz, Dilan, Duane, Gonzalez, Hassell-Thompson, Huntley, L. Krueger, Montgomery, Parker, Perkins, Sabini, Sampson, Schneiderman, Serrano, Smith, Stavisky and Stewart-Cousins.

Absent from voting: Senator Wright.

Ayes, 39. Nays, 20.

ACTING PRESIDENT GRIFFO: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, would you please lay aside for the day Calendar 737.

ACTING PRESIDENT GRIFFO: The bill is laid aside for the day.

SENATOR SKELOS: And also on Calendar Number 728, with the consent of the Minority, if we could take it off the controversial calendar and put it on the noncontroversial calendar.

SENATOR DUANE: Yes.

ACTING PRESIDENT GRIFFO: So ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 728, by Senator Farley, Senate Print 849, an act to amend the Social Services Law.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT GRIFFO: The bill is passed.

Senator Skelos.

SENATOR SKELOS: Mr. President, is there any further business to come before the Senate?

ACTING PRESIDENT GRIFFO: Senator Farley has a motion.

Senator Farley.

SENATOR FARLEY: Senator Skelos, thank you for taking that off controversial.

On behalf of Senator Robach, Mr. President, I move to amend Senate Bill 3097A by striking out the amendments made on April 23rd and restoring it to its original print number, which is 3097.

ACTING PRESIDENT GRIFFO: So ordered.

Senator Skelos.

SENATOR SKELOS: Mr. President, there being no further business to come before the Senate, I move we stand adjourned until Wednesday, May 9th, at 11:00 a.m.

ACTING PRESIDENT GRIFFO: On motion, the Senate stands adjourned until Wednesday, May 9th, at 11:00 a.m.

(Whereupon, at 4:58 p.m., the Senate adjourned.)