NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

May 21, 2007

3:08 p.m.

REGULAR SESSION

LT. GOVERNOR DAVID A. PATERSON, President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT WRIGHT: The Senate will come to order.

I ask everyone present to rise and recite with me the Pledge of Allegiance.

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

ACTING PRESIDENT WRIGHT: The invocation today will be given by the Reverend Peter G. Young, Mother Theresa Community in Albany.

Father.

REVEREND YOUNG: Thank you, Senator.

Dear God, we are proud to welcome Michael Brown, speaker of the Ontario Assembly, to the Senate chamber.

And we know that You, ever living God, as we gather here in this Senate chamber as members representing our constituents to provide leadership for all our New York State citizens, that You will guide us with Your spirit and enlighten our minds and guide our actions, that we may be united in love and bring to fulfillment the work of government

for the greater honor and glory of God and of our citizens.

Amen.

ACTING PRESIDENT WRIGHT: Reading of the Journal.

THE SECRETARY: In Senate, Sunday, May 20, the Senate met pursuant to adjournment. The Journal of Saturday, May 19, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Nozzolio.

SENATOR NOZZOLIO: Mr. President, I have five resolutions at the desk. I ask that their titles be read and that I have the

opportunity to speak on those resolutions collectively.

ACTING PRESIDENT WRIGHT: The Secretary will read.

THE SECRETARY: By Senator Nozzolio, Legislative Resolution Number 2351, commending Kyle Dake upon the occasion of capturing the 2007 New York State Wrestling Championship.

By Senator Nozzolio, Legislative Resolution Number 2354, commending Alex Ekstrom upon the occasion of capturing the 2007 New York State Wrestling Championship.

By Senator Nozzolio, Legislative Resolution Number 1744, commending Ben Hall of Victor High School upon the occasion of winning the 2007 Section 5 New York State Track and Field Championship in the 3,200-Meter Run.

By Senator Nozzolio, Legislative Resolution Number 2355, commending Tyler Marlow upon the occasion of capturing the 2007 New York State Wrestling Championship.

And by Senator Nozzolio, Legislative Resolution Number 2353,

congratulating Williamson High School student-athlete Brian Miller upon the occasion of his designation as the New York State Indoor Track Champion.

ACTING PRESIDENT WRIGHT: Senator Nozzolio, on the resolutions.

SENATOR NOZZOLIO: Thank you, Mr. President.

Mr. President and my colleagues, I rise with great honor to join in the recognition of five outstanding young individuals from the areas that I represent in New York State that are here in our State Capitol to be recognized as New York State athletic champions.

Mr. President and my colleagues, they are recognized as champions in both athletic competition as well as in the classroom. Kyle Dake, Alex Ekstrom, Ben Hall, Tyler Marlow, and Brian Miller have shown time and again that they are superb athletes, and I'd like to just briefly chronicle some of their accomplishments.

In winning state championships, Kyle Dake, first and foremost, took first

place in the 112-pound class in the 2007 New York State High School Wrestling Championships. He became the very first from Lansing High School as a wrestler to become state champion. The efforts of his coach, Doug Dake, and that his commitment are excellence are second to none.

I also should note that Kyle achieved, number one, the champion of the U.S. Coaches National High School Competition. Those indoor nationals were -- in effect, those Coaches Association nationals placed him number one of all wrestlers in the United States.

Congratulations to Kyle and congratulations to him as an exemplary representative of his school, community, and state.

Alex Ekstrom is a state champion, 125-pound weight class New York State wrestling champion. He is the first Palmyra-Macedon High School Red Raider to become a two-time Section 5 Class BBBB state wrestling champion and set a new record of 48 wins and one loss in the 2007 season.

That he too performed as our state representative in his weight class to the U.S. Coaches Association competition, and performed extremely well.

Ben Hall is an outstanding young man and a tremendous athlete. He placed first in the New York State Indoor Track and Field Championships held this last winter. That he was fourth in his final lap of his championship run, but through determination, grit and hard work he ended up winning the race and running the fastest last lap.

That he also competed in the Maryland Nike Indoor National Championships, representing our region, our state, and did extremely well.

Ben will be graduating in a few weeks and will attend Georgetown University.

Tyler Marlow was the 103-pound New York State wrestling champion. A sophomore at Palmyra-Macedon, that he was exemplary in his dedication and became New York State Champion in his weight class.

And lastly, Brian Miller, that he also, in running the last leg of the Section V

relay team, ran that in exemplary time. His coach, Coach Carl Comstock, is extremely proud of his young athlete, who became the first Williamson athlete ever to be named an overall state champion.

Mr. President, please join with me in welcoming these state champions to the State Capitol and to our Senate chamber.

I'd also like to mention some family, friends, coaches and mentors who are here with these fine athletes.

Kyle Dake is accompanied by his father and coach, Doug, and mother, Jodi Dake, who's clerk treasurer of the Village of Lansing.

Alex Ekstrom is accompanied by his mom and dad, Bob and Lynn, as well as Coach Brian Quick and the athletic director from Pal-Mac, Fred Ciaburri.

Ben Hall is accompanied by his mom and dad, Donna and Jeff Hall; his grandma from Waterloo, New York, Diana Freezee; and coach and mentor of Victor athletes, Belinda O'Brien.

Tyler Marlow is accompanied by Pam

and Ken VanKoevering, who are his parents; his coach, Brian Quick; and Athletic Director Fred Ciaburri.

And lastly, Brian Miller is here with his mom, Debbie; Darryl Boyce, his grandfather; and Carl Comstock, his coach.

Mr. President, these are not just exemplary athletes, these are fine young men, leaders who are molded by our New York State school system to be just that, leaders of tomorrow. And as such, Mr. President, I thank you for welcoming them to this historic Senate chamber and congratulating them on being genuine state champions.

Thank you, Mr. President.

ACTING PRESIDENT WRIGHT: Thank you, Senator Nozzolio.

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

(Response of "Aye.")

ACTING PRESIDENT WRIGHT: Opposed, nay.

(No response.)

ACTING PRESIDENT WRIGHT: The resolutions are adopted.

On behalf of Senator Nozzolio and all of the members of the New York State Senate, to the athletes and their family members, we welcome you to the Capitol, we extend our congratulations and our recognition. And by virtue of the adoption of these resolutions, you are now part of the history of the State of New York.

Enjoy your stay here in the Capitol. Welcome.

(Applause.)

ACTING PRESIDENT WRIGHT: Senator Libous.

SENATOR LIBOUS: Mr. President, would you recognize Senator Marcellino for the purpose of an introduction, please.

ACTING PRESIDENT WRIGHT: Senator Marcellino.

SENATOR MARCELLINO: Thank you, Senator Libous.

Mr. President, it is my high honor to introduce to the members of this body Michael A. Brown, who is the speaker of the Legislative Assembly of Ontario, and his wife, Lynn. They're visiting us today, taking a

tour. They're visiting with the Council of State Governments.

And Michael understands what we do. He is one who has had the problem, if you will, or pleasure -- it depends upon the day, I'm sure -- of leading a legislative body in their endeavors to do the right thing for their constituents.

He's also accompanied by Karyn Leonard, the director of interparliamentary and public relations of the Legislative Assembly of Ontario, and her husband, Ken.

So I would ask that we give him and them the appropriate award and acknowledgment from the New York State Senate.

(Applause.)

ACTING PRESIDENT WRIGHT: Thank you, Senator Marcellino.

Mr. Brown, welcome. We're very glad to have you join us here today. And as a colleague, I'm sure you can appreciate the nature of these deliberations. As your neighbor to the south in the North Country, welcome again to the Capitol.

Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President. If we could go back to resolutions, please, there's a resolution by Senator Kruger. And could its title be read only.

ACTING PRESIDENT WRIGHT: The Secretary will read.

THE SECRETARY: By Senator C. Kruger, Legislative Resolution Number 2288, commending Yaakov and Rivka Kornreich upon the occasion of their designation by Young Israel of Avenue J as the Guests of Honor at its 28th Annual Dinner on May 20, 2007.

ACTING PRESIDENT WRIGHT: This resolution was previously adopted by the Senate on May 16th.

Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President. I believe there is a Resolution Number 2384 by Senator Perkins. Could it be please read in its entirety.

ACTING PRESIDENT WRIGHT: The Secretary will read the resolution.

THE SECRETARY: By Senator Perkins, Legislative Resolution Number 2384,

mourning the death of Yolanda Denise King.

"WHEREAS, It is the practice of this Legislative Body to record the passing of certain individuals, recognizing them for their valued contributions to their community, their profession, and their heritage; and

"WHEREAS, Attendant to such concern and fully in accord with its long-standing traditions, it is the intent of this Legislative Body to mourn the death of Yolanda Denise King, eldest child of Dr. Martin Luther King, Jr., and Coretta Scott King, in Santa Monica, California, on May 15, 2007, at the age of 51; and

"WHEREAS, Yolanda Denise King, who pursued her father's dream of racial harmony through drama and motivational speaking, was an actress, author, producer and advocate for peace and nonviolence, who was known and loved for her motivational and inspirational contributions to society; and

"WHEREAS, Yolanda Denise King, 'Yoki' to her family, was born on November 17, 1955, in Montgomery, Alabama, where her father was then preaching. Considered by many to be

the first daughter of the civil rights movement, she lived with and through much of the turbulence and trauma of the struggle; and

"WHEREAS, She was just two weeks old when Rosa Parks refused to give up her seat on a bus, leading to the Montgomery bus boycott spearheaded by her father. On January 30, 1956, when she was 10 weeks old, the King family home was bombed when her father attended a boycott rally. Fortunately, neither she nor her mother was injured when the device exploded on the front porch. And she was only 12 years old when her father was assassinated in Memphis, Tennessee, in 1968; and

"WHEREAS, It was 7-year-old Yolanda and her brothers and sister her father had in mind when, in 1963, he spoke the words now familiar to the entire world: 'I have a dream that my four little children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character'; and

"WHEREAS, Yolanda King was a 1976 graduate of Smith College in Northampton,

Massachusetts, where she majored in theater and Afro-American studies. She also earned a master's degree in theater from New York University and, in 2002, received an honorary Doctor of Humane Letters degree from Marywood University; and

"WHEREAS, A warm and gentle person, Yolanda King was a torchbearer for her parents and a committed activist member in her own right. She never wavered from her own lifelong commitment to nonviolent social change and justice for all and found her own way of expressing that commitment through drama; and

"WHEREAS, Yolanda King lived in California. She was a talented actress, founded and ran her own production company, Higher Ground productions, and appeared in numerous films and television productions, including 'Ghosts of Mississippi,' 'Odessa,' 'Death of a Prophet,' 'Hopscotch,' 'JAG,' and 'Any Day Now.' She also played Rosa Parks in the miniseries 'King,' recently released on DVD, and was the associate producer of the 1984 television production 'A Celebration of

Life: A Tribute to Martin Luther King, Jr.' and

"WHEREAS, She was a member of the board of directors of the Martin Luther King Jr. Center for Nonviolent Social Change, the official national memorial to her father, and was a founding director of the King Center's Cultural Affairs Program. She served on the Partnership Council of Habitat for Humanity, was a member of the Southern Christian Leadership Conference, a sponsor of the Women's International League for Peace and Freedom, and held a lifetime membership in the NAACP; and

"WHEREAS, Yolanda King's death came less than a year and a half after her mother, Coretta Scott King, died in January 2006 after battling ovarian cancer and the effects of a stroke, a struggle which prompted Yolanda to work with the American Heart Association to raise awareness about strokes, especially among African-Americans; and

"WHEREAS, During this year's observance of Martin Luther King Day in January 2007, the first since her mother's

death, she proudly delivered a tribute to her parents, performing a series of solo skits at her father's Ebenezer Baptist Church in Atlanta, including, among others, a recounting of a girl's first ride on a desegregated bus and of a college student's recollection of the 1963 campaign to desegregate Birmingham; and

"WHEREAS, She also urged the audience to be a force for peace and love, to remember that America has not yet achieved peace and racial equality, and to use the King holiday each year to examine their own beliefs about prejudice; and

"WHEREAS, Yolanda King is survived by her brothers, Martin Luther King III and Dexter Scott King, and her sister, the Reverend Bernice Albertine King, and many friends and admirers; and

"WHEREAS, Yolanda King's life is a reflection of her commitment to social change and justice and equality for all, and her many contributions will surely endure as an inspiration to others; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to honor the

memory of Yolanda Denise King and to celebrate her life, and be it further

"RESOLVED, That copies of this resolution, suitably engrossed, be transmitted to the family of Yolanda Denise King, with the deepest condolences of this Legislative Body."

ACTING PRESIDENT WRIGHT: Senator Perkins, on the resolution.

SENATOR PERKINS: Thank you very much, Mr. President. I want to thank you and the leadership for having read this resolution in its entirety.

They say that we are all products of our times, and no one could exemplify that more than Yolanda, who has lived her life in quite an exemplary role, particularly in terms of representing the legacy of not just her father but also of her mother, both of whom were obviously leaders in the civil rights movement and the movement to move this country to higher ground.

So it was a sad moment when she passed, and at such a young age. But then it is not how long we live, but how well we live. And she lived a life that I think both her

mother and father and all of us, really, are proud of, as an American, as someone who understood not only the civil rights movement but her need to make a contribution to it.

So those young people who join us here today, they have had the opportunity to be a part of this Senate as it recognizes one of the great moments in this country's history through the legacy that she represented in terms of the civil rights movement.

And so thank you very much. And thank you for the honor of having been able to recognize her here today. Thank you.

ACTING PRESIDENT WRIGHT: Thank you, Senator Perkins.

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

(Response of "Aye.")

ACTING PRESIDENT WRIGHT: Opposed, nay.

(No response.)

ACTING PRESIDENT WRIGHT: The resolution is adopted.

Senator Libous.

SENATOR LIBOUS: Mr. President,

would you please recognize Senator Farley.

ACTING PRESIDENT WRIGHT: Senator Farley.

SENATOR FARLEY: I have some very exciting things, some motions.

On behalf of Senator Trunzo, Mr. President, I move that the following bill be discharged from its respective committee and be recommitted with instructions to strike the enacting clause. That's Senate Print 5776.

ACTING PRESIDENT WRIGHT: So ordered.

SENATOR FARLEY: Mr. President, I offer amendments to the following bills:

Senator LaValle, page 37, Calendar 409, Senate Print 3305;

Senator Larkin, page 46, Calendar 606, Senate Print 1047;

Senator Skelos, on page 47, Calendar Number 640, Senate Print 435;

Senator DeFrancisco, on page 48, Calendar Number 661, Senate Print 39;

Also for Senator Trunzo, on page 56, Calendar Number 799, Senate Print

2694;

For Senator Fuschillo, on page 60, Calendar Number 870, Senate Print 5543;

And last, for Senator Maziarz, on page 29, Calendar Number 121, Senate Print 948.

Mr. President, I ask that these bills retain their place on the Third Reading Calendar.

ACTING PRESIDENT WRIGHT: The amendments are received and adopted, and the bills will retain their place on the Third Reading Calendar.

Senator Libous.

SENATOR LIBOUS: Mr. President, if we could attend to the noncontroversial calendar, please.

ACTING PRESIDENT WRIGHT: The Secretary will read the noncontroversial calendar.

THE SECRETARY: Calendar Number 484, by Senator Alesi, Senate Print 4080, an act to amend Chapter 413 of the Laws of 2003 amending the Labor Law.

ACTING PRESIDENT WRIGHT: Read

the last section.

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

ACTING PRESIDENT WRIGHT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT WRIGHT: The bill is passed.

THE SECRETARY: Calendar Number 562, by Senator Robach, Senate Print 4167, an act to repeal paragraph (e) of subdivision 4 of Section 209 of the Civil Service Law.

ACTING PRESIDENT WRIGHT: Read the last section.

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

ACTING PRESIDENT WRIGHT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT WRIGHT: The bill is passed.

THE SECRETARY: Calendar Number 710, by Senator Robach, Senate Print 2977, an

act to amend the Executive Law, in relation to longevity in title.

ACTING PRESIDENT WRIGHT: Read the last section.

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

ACTING PRESIDENT WRIGHT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT WRIGHT: The bill is passed.

THE SECRETARY: Calendar Number 782, by Senator Robach, Senate Print 5295, an act to amend the Civil Service Law, in relation to negotiability.

ACTING PRESIDENT WRIGHT: Read the last section.

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

ACTING PRESIDENT WRIGHT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT WRIGHT: The

bill is passed.

THE SECRETARY: Calendar Number 783, by Senator Skelos, Senate Print 5406, an act to amend the Retirement and Social Security Law, in relation to providing prior police service credit.

ACTING PRESIDENT WRIGHT: Read the last section.

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

ACTING PRESIDENT WRIGHT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT WRIGHT: The bill is passed.

THE SECRETARY: Calendar Number 841, by Senator DeFrancisco, Senate Print 4876, an act to amend the Estates, Powers and Trusts Law, in relation to an order for the purposes of conducting paternity testing.

ACTING PRESIDENT WRIGHT: Read the last section.

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

ACTING PRESIDENT WRIGHT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53. Nays, 1. Senator Maltese recorded in the negative.

ACTING PRESIDENT WRIGHT: The bill is passed.

THE SECRETARY: Calendar Number 882, by Senator Maziarz, Senate Print 501, an act to amend the County Law, in relation to wireless communications surcharges.

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

Read the last section.

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

ACTING PRESIDENT WRIGHT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT WRIGHT: The bill is passed.

THE SECRETARY: Calendar Number 887, by Senator DeFrancisco, Senate Print 2709, an act to amend the Town Law and the

Village Law, in relation to the office of town or village justice.

ACTING PRESIDENT WRIGHT: Read the last section.

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

ACTING PRESIDENT WRIGHT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT WRIGHT: The bill is passed.

THE SECRETARY: Calendar Number 890, by Senator Maziarz, Senate Print 3609, an act to authorize the City of North Tonawanda.

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

Read the last section.

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

ACTING PRESIDENT WRIGHT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT WRIGHT: The

bill is passed.

THE SECRETARY: Calendar Number 894, by Senator Skelos, Senate Print 4489, an act to authorize the Hebrew Academy of the Five Towns and Rockaway to file an application.

ACTING PRESIDENT WRIGHT: Read the last section.

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

ACTING PRESIDENT WRIGHT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53. Nays, 1. Senator Bonacic recorded in the negative.

ACTING PRESIDENT WRIGHT: The bill is passed.

THE SECRETARY: Calendar Number 902, by Senator Little, Senate Print 5368, an act to amend the General Municipal Law, in relation to posting copies.

ACTING PRESIDENT WRIGHT: Read the last section.

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

ACTING PRESIDENT WRIGHT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT WRIGHT: The bill is passed.

THE SECRETARY: Calendar Number 904, by Senator Flanagan, Senate Print 5504, an act to authorize Pederson-Krag Center of New York to file an application for exemption.

ACTING PRESIDENT WRIGHT: Read the last section.

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

ACTING PRESIDENT WRIGHT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 51. Nays, 3. Senators Bonacic, Rath and Robach recorded in the negative.

ACTING PRESIDENT WRIGHT: The bill is passed.

THE SECRETARY: Calendar Number 907, by Senator Winner, Senate Print 1721, an act to amend the Alcoholic Beverage Control

Law and the Vehicle and Traffic Law, in relation to the imposition of driver's license suspensions.

ACTING PRESIDENT WRIGHT: Read the last section.

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

ACTING PRESIDENT WRIGHT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 52. Nays, 2. Senators Duane and Montgomery recorded in the negative.

ACTING PRESIDENT WRIGHT: The bill is passed.

THE SECRETARY: Calendar Number 910, by Senator Morahan, Senate Print 3974, an act to amend the Mental Hygiene Law, in relation to the surrogate decision-making program.

ACTING PRESIDENT WRIGHT: Read the last section.

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

ACTING PRESIDENT WRIGHT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT WRIGHT: The bill is passed.

THE SECRETARY: Calendar Number 919, by Senator Flanagan --

SENATOR DUANE: Lay it aside, please.

ACTING PRESIDENT WRIGHT: Lay it aside.

THE SECRETARY: Calendar Number 920, by Senator Maltese, Senate Print 3538, an act to amend Chapter 154 of the Laws of 1921, relating to the Port Authority of New York and New Jersey.

ACTING PRESIDENT WRIGHT: Read the last section.

THE SECRETARY: Section 2. This act shall take effect upon enactment into law by the State of New Jersey.

ACTING PRESIDENT WRIGHT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT WRIGHT: The bill is passed.

THE SECRETARY: Calendar Number 923, by Senator Hannon, Senate Print 4663, an act to amend the Not-for-Profit Corporation Law, in relation to authorization.

ACTING PRESIDENT WRIGHT: Read the last section.

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

ACTING PRESIDENT WRIGHT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT WRIGHT: The bill is passed.

THE SECRETARY: Calendar Number 924, by Senator Fuschillo, Senate Print 4802, an act to amend Chapter 672 of the Laws of 1993, amending the Public Authorities Law.

ACTING PRESIDENT WRIGHT: Read the last section.

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

ACTING PRESIDENT WRIGHT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT WRIGHT: The bill is passed.

THE SECRETARY: Calendar Number 931, by Senator LaValle, Senate Print 3905, an act to amend the Education Law, in relation to meetings of councils of state-operated institutions.

ACTING PRESIDENT WRIGHT: Read the last section.

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

ACTING PRESIDENT WRIGHT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT WRIGHT: The bill is passed.

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

SENATOR LIBOUS: Thank you, Mr. President.

If we could call a Rules Committee meeting in Room 332 and have the Senate stand temporarily at ease.

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

The Senate will stand at ease.

(Whereupon, the Senate stood at ease at 3:40 p.m.)

(Whereupon, the Senate reconvened at 3:50 p.m.)

ACTING PRESIDENT GRIFFO: The Senate will come to order.

Senator Libous.

SENATOR LIBOUS: Mr. President, can we return to reports of standing committees.

I believe there's a Rules report at the desk that needs to be read at this time.

ACTING PRESIDENT GRIFFO: The Secretary will read the report of the Rules Committee.

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

Senate Print 5848, by Senator Skelos, an act to amend the Executive Law;

5888, by Senator Lanza, an act to amend the Executive Law;

5892, by Senator Saland, an act to amend the Education Law;

And Senate Print 5902, by Senator Padavan, an act to amend the Penal Law and others.

All bills ordered direct to third reading.

ACTING PRESIDENT GRIFFO: Senator Libous.

SENATOR LIBOUS: Mr. President, could we go back to the noncontroversial calendar, I believe Calendar Number 919, by Senator Flanagan, and take it up at this time.

Mr. President, could I move to accept the report of the Rules Committee before we do that.

ACTING PRESIDENT GRIFFO: Most certainly.

We have a motion to accept the report of the Rules Committee. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT GRIFFO: Opposed, nay.

(No response.)

ACTING PRESIDENT GRIFFO: The Rules Committee report is accepted.

SENATOR LIBOUS: Mr. President, 919 is on the controversial calendar. So could you please ring the bell.

ACTING PRESIDENT GRIFFO: The Secretary will ring the bell for Calendar Number 919.

And the Secretary will read.

THE SECRETARY: Calendar Number 919, by Senator Flanagan, Senate Print 3491A, an act to amend the Public Authorities Law and others.

SENATOR DUANE: Explanation, please.

ACTING PRESIDENT GRIFFO: Senator Flanagan, for an explanation.

SENATOR FLANAGAN: Yes, Mr. President. Thank you.

This bill, I would respectfully offer, is in addition to the good work that

was done in 2005 by Senator Leibell, Assemblyman Brodsky and the Legislature in conjunction with Governor Pataki. We take some of those standards, some of those principles, and frankly I think we move them forward.

And I would offer a couple of observations and speak to several components within the bill that I think are important for the Senate's consideration.

Probably the most notable portion of this bill is the creation of an independent authority budget office. We changed the statute from 2005 so we make it very clear that the authority budget office will now be separate and distinct, that it will not be under the control and jurisdiction of the Executive department, so frankly it can be as it was intended to be, an independent authority budget office.

In that context, we also provide for some rules and regulations in terms of how that director will be chosen. It's a five-year term. It's a panel that makes that determination. And that director can only be

removed for cause.

In addition to that, we take some of the principles that were enunciated in 2005 through hearings and corporate governance principles that were espoused by Ira Milstein, and we take that further. We bring it into this year. We had an hearing earlier this year with the Assembly on issues involving corporate governance.

And I think what we offer is getting to that next plateau, talking about a fiduciary duty, establishing what the standards may be, allowing the authority budget office to promulgate rules and regulations to effectuate the mission, making sure that our public authorities actually come up with mission statements, that they have to provide information not only to the Legislature but to the authority budget office so that they can do a critical and fair analysis of public authority operations in the State of New York.

And if you go back just a couple of years, I may be off by a little bit, but there are roughly 733 public authorities in the

State of New York. They control over $113 billion of debt. So we are talking about real money, and we are talking about a separate government that we are frankly trying to control.

So we have an independent authority budget office, we have a director that is chosen in a new and particular way, we have a whole set of standards that have to be adhered to. We also allow for subpoena power. We give the authority to publicly warn and censure. We also allow for the Comptroller to approve contracts, and we set a standard so that the Comptroller has discretion below a certain amount. But beyond a certain amount, the Comptroller has to take a look at authority contracts.

And finally, we offer two other things. One is the whole concept of a fiduciary duty. We do have challenges not only in the capacity in which we serve, but when you're looking at public authorities on a state and local basis, we want to remind people of who they are, what they're there for, and the fact that they are there to serve

the public interest.

By setting standards, making people sign an oath, making them realize that they have to adhere to those standards, we're hopefully raising the bar in the context of that discussion.

And last but by no means least, we offer whistleblower protection to people who would help ferret out corruption, waste and fraud in our public authorities.

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

Senator Perkins.

SENATOR PERKINS: Yeah, would the Senator yield for a question?

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

SENATOR FLANAGAN: Yes.

ACTING PRESIDENT GRIFFO: Senator Perkins.

SENATOR PERKINS: Senator Flanagan, I'd like to know if this legislation addresses the concerns of minority, women and business enterprises.

SENATOR FLANAGAN: There is no

specific language in the bill on that subject.

SENATOR PERKINS: One of the -- may I have another question?

ACTING PRESIDENT GRIFFO: Senator Flanagan, do you continue to yield?

SENATOR FLANAGAN: Yes.

ACTING PRESIDENT GRIFFO: Senator Perkins.

SENATOR PERKINS: Through you, Mr. President, if the sponsor will yield.

ACTING PRESIDENT GRIFFO: The sponsor yields, yes.

SENATOR PERKINS: Thank you.

The other concern I have is with regard to the voice of the minority conferences with respect to this legislation. Is the -- does the minority conference in the Assembly or the Senate have a voice that will be recorded at the PACB?

SENATOR FLANAGAN: There is no change from the present statute.

SENATOR PERKINS: Again, will the sponsor yield for a question.

ACTING PRESIDENT GRIFFO: Senator Flanagan, do you continue to yield?

SENATOR FLANAGAN: Yes.

ACTING PRESIDENT GRIFFO: Senator Perkins.

SENATOR PERKINS: It is my understanding that in the negotiations, these issues were brought up, the minority, women and business enterprises as well as the minority voice to be recorded, and that there was some movement to accept that. Am I correct?

SENATOR FLANAGAN: No.

ACTING PRESIDENT GRIFFO: Senator Perkins, do you wish to --

SENATOR PERKINS: May I ask another question?

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

SENATOR FLANAGAN: Yes.

ACTING PRESIDENT GRIFFO: Senator Perkins.

SENATOR PERKINS: As I understand it, Assemblyman Brodsky had a different point of view and a positive point of view about this. Am I correct?

ACTING PRESIDENT GRIFFO: Senator Flanagan.

SENATOR FLANAGAN: Two observations. One, I don't speak for Assemblyman Brodsky, I have enough challenge speaking for myself. So I'm not going to characterize any of his remarks.

On the issue that you raise, there was never any language offered and never any further discussion, to the best of my knowledge.

SENATOR PERKINS: Well, the fact that -- may I?

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

SENATOR FLANAGAN: Yes.

ACTING PRESIDENT GRIFFO: Senator Perkins.

SENATOR PERKINS: Again, with respect to prevailing wage, this was brought up at the negotiating sessions. Am I correct?

SENATOR FLANAGAN: Yes.

SENATOR PERKINS: This was brought up at the negotiation sessions by Assemblyman Brodsky. Am I correct?

SENATOR FLANAGAN: Yes.

SENATOR PERKINS: And as with --

ACTING PRESIDENT GRIFFO: Do you continue to ask the sponsor to yield, Senator Perkins?

SENATOR PERKINS: Will he continue to yield?

ACTING PRESIDENT GRIFFO: Senator Flanagan, do you continue to yield?

SENATOR FLANAGAN: Yes, I will.

ACTING PRESIDENT GRIFFO: Senator Perkins.

SENATOR PERKINS: And as with the prevailing wage and MWBE and the minority voice to be recorded, I believe -- I'm positive that Assemblyman Brodsky was in agreement with that, as you have indicated he was agreement with the other two matters.

ACTING PRESIDENT GRIFFO: What is the nature of your question, sir?

SENATOR PERKINS: I want to know if he recalls.

SENATOR FLANAGAN: Senator Perkins, in response to your question and going back, I want to be absolutely clear. I

don't speak for Assemblyman Brodsky. I'm not going to characterize his remarks. I was in several different meetings in which these issues were raised.

I would respectfully offer to you that they were raised. In my opinion, they were not discussed in detail. There was never any language offered from anyone concerning these subjects.

SENATOR PERKINS: Will the sponsor yield?

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

SENATOR FLANAGAN: Yes.

ACTING PRESIDENT GRIFFO: Senator Perkins.

SENATOR PERKINS: The negotiations have not concluded, have they?

SENATOR FLANAGAN: I don't believe they have.

SENATOR PERKINS: Will the sponsor continue to yield?

ACTING PRESIDENT GRIFFO: Senator Flanagan, do you continue to yield?

SENATOR FLANAGAN: Yes.

ACTING PRESIDENT GRIFFO: Senator Perkins.

SENATOR PERKINS: It seems to me that this legislation is precluding the negotiations, short-circuiting the negotiations. I'm sure you would agree.

ACTING PRESIDENT GRIFFO: Senator Flanagan.

SENATOR FLANAGAN: I would absolutely and completely disagree.

If anything, Senator Perkins, I would tell you that I believe this will help advance any negotiations. Because I sat in meetings with a number of different people, and I found that the tenor and tone of those negotiations, they were moving positively forward, then they stalled and in my opinion they took a severe step backward.

And I would hasten to add that I think the particular reason that we took a step backward was because for some reason the Executive found it within their discretion and wisdom to retreat from positions that they not only held during these negotiations but certainly to treat from positions that were

taken by our Governor when he was Attorney General.

SENATOR PERKINS: Let me say that, if I may --

ACTING PRESIDENT GRIFFO: Senator Perkins, are you asking a question?

SENATOR PERKINS: Will he continue to yield?

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

SENATOR FLANAGAN: Yes.

ACTING PRESIDENT GRIFFO: Senator Perkins.

SENATOR PERKINS: As you know, this conference is very committed to reforming the public authorities and has faithfully participated in the negotiations and put forward some very, very important concerns that we believe would have made the reforms more beneficial to the people of the State of New York.

Not having MWBE and a minority voice to be recorded in, or even to include the prevailing wage, and even at this point ending the negotiations or bringing forth this

legislation without the negotiations being concluded, as I pointed out earlier, seems to be circumventing.

So I think there's more work to be done. And I look forward to continue working with you so that we come up with some legislation that truly speaks to the interests of the people in terms of reform and transparency.

Thank you.

ACTING PRESIDENT GRIFFO: Thank you, Senator Perkins.

Any other Senator wishing to be heard?

Debate is closed.

The Secretary will ring the bell.

Senator Liz Krueger.

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

Would the sponsor please yield?

ACTING PRESIDENT GRIFFO: Will the sponsor yield?

SENATOR FLANAGAN: Yes.

ACTING PRESIDENT GRIFFO: Senator Krueger.

SENATOR LIZ KRUEGER: Thank you.

Does this bill address IDAs in any way? Are they under the same rules and requirements as other public authorities in the context of your bill, Senator?

SENATOR FLANAGAN: I believe that it does.

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

ACTING PRESIDENT GRIFFO: Will you continue to yield, Senator Flanagan?

SENATOR FLANAGAN: Yes, I do.

ACTING PRESIDENT GRIFFO: Senator Krueger.

SENATOR LIZ KRUEGER: And public benefit corporations as well as public authorities and IDAs are also included under the same rules and regulations of this bill?

SENATOR FLANAGAN: Yes.

SENATOR LIZ KRUEGER: Thank you.

Mr. President, if the sponsor would continue to yield.

ACTING PRESIDENT GRIFFO: Do you yield, Senator Flanagan?

SENATOR FLANAGAN: Yes, I do.

ACTING PRESIDENT GRIFFO: Senator Krueger.

SENATOR LIZ KRUEGER: Thank you.

And does this bill address the concern that I believe we discussed back in the 2005 public authority reform about lobbyists not being able to -- not that they can't lobby IDAs and public authorities and public benefit corporations, but they would be obligated under the same ethics and lobbying laws as if they were lobbying government agencies?

SENATOR FLANAGAN: On that point, Mr. President, that issue has been advanced in discussions with all the different parties in five-way negotiations. I think the most reticence and the most unwillingness to embrace that concept came from the Executive.

But I want to be fair. I think what they're essentially grappling with is how they're going to do this on an overall basis.

I believe that within the context of public authorities that the same type of laws that apply to those who lobby before the

Legislature should be the same standard for our public authorities.

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

ACTING PRESIDENT GRIFFO: Will you continue to yield, Senator Flanagan?

SENATOR FLANAGAN: Yes.

ACTING PRESIDENT GRIFFO: Senator Krueger.

SENATOR LIZ KRUEGER: Thank you. Just to rephrase my last question.

Is it in the bill that it's the same lobbying requirements and ethics rules for public benefit corporations, public authorities and IDAs as we passed for government agencies? Or were you explaining your own hope that we would get there? I didn't quite understand whether you were talking about that was in the bill now as we're seeing it.

SENATOR FLANAGAN: It is not in the bill.

SENATOR LIZ KRUEGER: It is not in the bill.

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

ACTING PRESIDENT GRIFFO: Senator Flanagan, do you continue to yield?

SENATOR FLANAGAN: Yes, I do.

ACTING PRESIDENT GRIFFO: Senator Krueger.

SENATOR LIZ KRUEGER: Thank you.

Are there any changes to the PACB in this bill?

SENATOR FLANAGAN: No.

SENATOR LIZ KRUEGER: Thank you, Mr. President. I'd like to speak on the bill.

ACTING PRESIDENT GRIFFO: Senator Krueger, on the bill.

SENATOR LIZ KRUEGER: Thank you. I thank the Senator for his answers.

I by and large support this bill. It goes down many of the roads I think it is important for us to be going down. As was said by my colleague Senator Perkins, many of us want exactly the same things in changes to our laws around public authorities, IDAs and public benefit corporations, including greater transparency, more documentation, more

reporting, more access by the public to the information.

I wish that as Senator Flanagan described there wasn't, as he perceives, a breakdown in the negotiations. And I am hopeful that everyone will get back to the table on this, because this bill doesn't go far enough. And there are still some serious concerns out there.

I personally would very much like the same lobbying requirements and ethics rules and mandatory reporting and transparency whenever we are negotiating or contracting out or moving government money through -- whether it's a state agency, a public benefit corporation, an IDA or a public authority.

I personally would like to see far more transparency in the process for the public and for those in elected office. I don't think the current PACB is the best model. I wish that we had greater inclusion of other players in the Public Authority Control Board. I wish certainly that at minimum, and I say sincerely at minimum, that anyone who's a participant in the PACB and has

a concern raised ought to have that concern reflected in the public minutes of the Public Authority Control Board.

I also believe that there is significant territory that we would come to agreement on if we continue to negotiate with all the parties involved.

So I will support the bill. But I hope that in continuation of negotiations, through conference committee with the Assembly and the Governor's office and discussions with the minorities as well as the majorities, we'll end up with a better bill at the end of the year before June 22nd.

Thank you, Mr. President.

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

Senator Stavisky.

SENATOR STACHOWSKI: Stavisky's over here someplace. And actually we don't look anything alike. But that's all right, you're new.

Mr. President, on the bill.

I think that I can understand the sponsor's feeling that maybe this will

jump-start the negotiations. It seems to be bogged down just a little bit, and hopefully that passing this bill will help.

I know that Senator Perkins brought up some parts that were brought up by the minority in the conversations. Hopefully as we continue with negotiations beyond this point, that possibly those things may get a little bit more light.

I would like to point out, though, that language was offered up on the recorded voice of the minority members of the PACB. That the sponsor didn't see it, I can't be responsible for that. But I know that I happened to be at the meeting where we passed that along.

And it just seems like a crazy rule that you can make a statement in the meeting and then if one of the three voting parties say, "Well, we don't want that to be part of the meeting," that's a little bit beyond "this is my ball and you guys can't play."

But the fact is as long as we're cleaning things up, that would be reasonable cleanup, since they still don't want the

minorities to vote. And possibly if that's the least you can get, I don't think it's a bad compromise to at least give us a recorded vote when you do bring up a strong point in the process okaying some kind of financial investment with the money of the people of the State of New York.

So I think that there's a lot of things in the bill that we like. Hopefully through further negotiations we can get other things in.

I understand that the sponsor said that the Governor's people are really interested in doing lobbying in a separate bill. And I might be able to understand that also, to try to handle all lobbying in one as we go forward. We did one lobbying bill already. They want to look at how to do the rest of that in some other table. And hopefully that will take place.

So with those things in mind, I really don't have any trouble supporting this bill, and I will be voting for it.

Thank you.

ACTING PRESIDENT GRIFFO: Thank

you, Senator Stachowski.

Anyone else wishing to speak?

Debate is closed. The Secretary will ring the bell.

Read the last section.

THE SECRETARY: Section 36. This act shall take effect on the 60th day.

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

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

SENATOR FLANAGAN: Thank you, Mr. President.

I want to make two basic points. The first is I feel very strongly that this is a push in the right direction on reform. There are a number of strong components within this bill that I think everybody can support quite easily.

Senator Krueger, I want to clarify an answer that I gave to you on one of your questions. Regarding lobbying, the previous law that we enacted applied to state agencies and kept the same standards that exist for

lobbying the Legislature. That applies to public authorities as well.

The discussion that has been ongoing but not included is what about incidental contact. You know, sort of the nominal contact -- who comes in, when do they come in, who are they going to see.

But the way it is set up, when people lobby us, the same standard applies from the old law in relation to public authorities. That's a very positive thing.

Thank you.

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

SENATOR PERKINS: Thank you very much.

I want to acknowledge again that I think we've made a step in the right direction, but not much of a step that would convince me to support this bill. The minority and women business enterprises being absent from this bill is very, very significant, as well as the prevailing wage discussion.

And I think that the fact that

negotiations are still going on is significant. For some reason, all of a sudden this bill has come, and I guess it's to force the Governor's hand or to get negotiations to move forward in some way.

But I think if that's going to happen, then it has to include some of what we discussed earlier where there seems to have been some very positive movement. This bill is too silent on these very, very important areas, especially since it also does not include any changes with the Public Authorities Control Board. And having more public involvement and participation I think is also where there's room for improvement.

So again, I'm going to have to vote no on this bill for those reasons and look forward to continuing to work to make a better bill for the people.

ACTING PRESIDENT GRIFFO: Senator Perkins in the negative.

Senator Montgomery, to explain her vote.

SENATOR MONTGOMERY: Yes, Mr. President. As my colleagues, I have some

concerns.

There are some areas where there are still negotiations being done, and I'm happy to know that that is an ongoing process. I understand that this is not the final bill. And so I appreciate that there are some pieces that are still undone.

But I believe there are more areas of agreement than there are disagreement. And I'd just like to say, Mr. President, that this has been a very, very long and arduous process and we've taken it in pieces. We did -- this last session, I think we did a pretty good job of beginning to really reform the authorities and the way that they do business and the way that they do the business of the state. This goes even further. I think that we're getting there.

So the process has begun. I believe that we will finish this by the end of this session. I hope that the Majority Leader is sincere in that he really wants to have a negotiated bill and a resolution. And so I'm going to support this effort to begin moving toward an end where we have a real bill in

place.

Thank you, Mr. President. I vote aye.

ACTING PRESIDENT GRIFFO: Senator Montgomery in the affirmative.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 919 are Senators Adams, Duane, Gonzalez, Parker and Perkins.

Ayes, 56. Nays, 5.

ACTING PRESIDENT GRIFFO: The bill is passed.

Senator Libous.

SENATOR LIBOUS: Mr. President, could we go back to motions and please call on Senator Nozzolio, please.

ACTING PRESIDENT GRIFFO: Motions and resolutions.

The chair recognizes Senator Nozzolio.

SENATOR NOZZOLIO: Thank you, Mr. President.

On behalf of Senator DeFrancisco, I wish to call up Calendar Number 835, Assembly

Print Number 7376.

ACTING PRESIDENT GRIFFO: The Secretary will read.

THE SECRETARY: Calendar Number 835, by Member of the Assembly Weinstein, Assembly Print Number 7376, an act to amend the Real Property Actions and Proceedings Law.

ACTING PRESIDENT GRIFFO: Senator Nozzolio.

SENATOR NOZZOLIO: I now move to reconsider the vote by which this Assembly bill was substituted for Senator DeFrancisco's bill, Senate Print Number 4210, on May 15th.

ACTING PRESIDENT GRIFFO: Call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

SENATOR NOZZOLIO: I now move that Assembly Bill Number 7376 be recommitted to the Committee on Judiciary and that the Senate Bill be restored to the order of Third Reading Calendar.

ACTING PRESIDENT GRIFFO: So ordered.

Senator Libous.

SENATOR LIBOUS: Mr. President, could we have the reading of the noncontroversial Rules report calendar, please.

ACTING PRESIDENT GRIFFO: We will now have the reading of the noncontroversial Rules report.

The Secretary will read.

THE SECRETARY: Calendar Number 1173, by Senator Skelos, Senate Print 5848, an act to amend the Executive Law, in relation to collection of DNA samples.

SENATOR SMITH: Lay it aside.

ACTING PRESIDENT GRIFFO: Lay it aside.

THE SECRETARY: Calendar Number 1174, by Senator Lanza, Senate Print 5888, an act to amend the Executive Law, in relation to establishing an advisory council.

SENATOR HASSELL-THOMPSON: Lay it aside.

ACTING PRESIDENT GRIFFO: Lay it aside.

THE SECRETARY: Calendar Number 1175, by Senator Saland, Senate Print 5892, an

act to amend the Education Law, in relation to creating the Children's Healthy Access to Meals Program.

SENATOR SMITH: Lay it aside.

ACTING PRESIDENT GRIFFO: Lay it aside.

THE SECRETARY: Calendar Number 1176, by Senator Padavan, Senate Print 5902, an act to amend the Penal Law and others, in relation to human trafficking.

SENATOR SMITH: Lay that bill aside.

ACTING PRESIDENT GRIFFO: Lay it aside.

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

SENATOR LIBOUS: Mr. President, seeing that those bills are all laid aside, can we now take up the controversial calendar, starting with Bill Number 1173, by Senator Skelos.

ACTING PRESIDENT GRIFFO: The Secretary will read.

THE SECRETARY: Calendar Number 1173, by Senator Skelos, Senate Print 5848, an

act to amend the Executive Law.

SENATOR SCHNEIDERMAN: Explanation, please.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT GRIFFO: Senator Skelos.

SENATOR SKELOS: I believe Senator Schneiderman has asked for an explanation, and I'd be delighted to give him one.

This is the Governor's program bill concerning the expansion of the DNA database. I should point out what the Governor has done here is really he's cut and pieced together and pasted many bills that have passed the Senate on numerous occasions but unfortunately have not found their place within the Assembly floor for passage.

For example, last year this house passed legislation which I sponsored which would expand the DNA database to all crimes. The Assembly would not pass it, but we did expand it to, of course, all felonies and some misdemeanors, which would be about 50 percent of the total crimes.

It requires the DNA samples to be given by persons adjudicated to be youthful offenders. The Senate has previously passed this legislation; the Assembly has not.

It requires a person who must register as a sex offender coming from another state to also give a DNA sample. This is a new component of the legislation, which certainly as the sponsor of Megan's Law and this conference, supporting the constant strength of Megan's law, would be supportive of.

Statute of limitations. It tolls the running of the statute of limitations -- this is the Governor's bill -- for five years for prosecution of any crime for which DNA evidence is found at the crime scene but there's no match in the DNA database. This house has passed on several occasions, including this year, my legislation which would toll the statute of limitations indefinitely where DNA evidence is found at the crime scene.

It creates an office of wrongful conviction review. Prior to this year, the

Senate has supported legislation which would create a commission to carry out similar duties.

There's also legislation concerning evidence standards, the collection of DNA evidence, an optional local government fee, and also an Innocence Project, which I recall was in one of my first DNA bills that I passed that did have an Innocence Project in it but for some reason the Assembly would not support that legislation.

So this is the Governor's program bill in which he's taken legislation that the Senate has passed in many instances, put it all together, and is calling it the Governor's program bill.

ACTING PRESIDENT GRIFFO: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank the sponsor for that interesting explanation.

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

ACTING PRESIDENT GRIFFO: Reading

is waived. You may be heard on the amendment.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

I think today is a fascinating exercise in the bifurcated procedure in which we are engaged in this year in the New York State Legislature. Senator Skelos and I and others were just downstairs, along with Leader Smith and Senator Bruno, discussing with the Governor, really being led in negotiations with the Governor on the DNA bill that we are now addressing on the floor.

And in the course of that discussion -- in which I actually believe we came very close to working out the parameters of a bill that can be embraced by both houses and finally passed -- several issues were raised that are in fact addressed in this amendment. So this is something that I consider more in the way of a friendly amendment.

I agree with virtually everything Senator Skelos said, particularly the parts in which he successfully identified himself as the original sponsor of many of these

provisions. But in addition I agree with the point that this is a bill that seeks to make DNA evidence as widely available as possible to exonerate the innocent and to convict the guilty. That is the overall vision that the Governor articulated downstairs, the Governor articulated in introducing this bill, and I agree that that's what we should be doing.

There are several areas in which I personally believe this bill has problems, and I would like to suggest three in this amendment. And I would urge my colleagues -- I realize these are nontraditional times. Perhaps if we as a body do adopt this amendment, I think we'd bring back to the Governor a better bill than the one he sent us.

The first area in which I would suggest we modify this legislation is with regard to the provision for the preservation of biological evidence, Section 5 of the Governor's program bill. The Governor's program bill provides for voluntary guidelines, guidelines that would be optional for the preservation of DNA evidence.

Now, you all were here last week and the week before when we were joined by some people who worked with the Innocence Project and other organizations and had been exonerated by DNA evidence after years of incarceration. In several of these cases there were people there whose DNA was simply lost in the system.

One man from the Bronx, Al Newton, a very articulate gentleman, kept asking that they run his DNA against the database because he hadn't committed the crime. The assistant district attorney kept contacting the warehouse in Queens and kept being told the DNA was lost.

The DNA wasn't lost; he just didn't have the voucher number, so they couldn't find it. It was in a barrel with his name on it. Can you imagine doing a decade in prison for a crime you didn't commit because they lost your DNA?

Well, unfortunately this bill, as currently drafted, only provides for voluntary protocols for the storage of DNA and the preservation of DNA, and provides no direction

to any local authorities for how to catalog DNA. So our modest suggestion to improve this bill would be to change the language in Section 5 to require a mandatory set of guidelines for the preservation and cataloging of DNA evidence. We think that is only good sense. It does us no good to massively expand the database if we're not going to adequately preserve and catalog the evidence.

The second area in which this amendment changes the Governor's bill is that the innocence commission, which Senator Skelos referred to, in this bill is really not an independent agency. It is something that's actually entitled the office of wrongful conviction review. And under this provisions of this legislation, it is located within the Department of Criminal Justice Services.

In other words, the people who may directly or indirectly have some responsibility for the policies that could be called into question by this commission are in the same department as this commission. There's no provision to ensure that it is independent.

So our suggestion is to make it an independent agency outside of the Department of Criminal Justice Services. And in our amendment we provide some guidelines for how we think that can best be done.

The final area -- and while this is really, as I say, a friendly amendment and done with all regard for the Governor's absolutely effective and sincere efforts to move us forward towards an expansion of the DNA database and better utility of the DNA database for the benefit of the innocent and the conviction of the guilty, one thing in this bill really just doesn't belong in this bill, and that's the modification that's included in Sections 11 through 17 of the Governor's program bill, which is a change in Article 440 of the Criminal Procedure Law.

This change could potentially have a devastating impact on people who seek post-conviction review of their cases.

I would commend to all of you the excellent memo written on this specific issue by the New York State Defenders Association, which clearly identifies this as a -- if not a

poison pill, then certainly a stowaway. This is a provision that has nothing to do, really, with DNA evidence. In fact, it would allow people to continue to bring 440 proceedings to seek relief if they had newly discovered evidence, such as DNA, but it would limit them to one year after their conviction to bring any other action for relief.

So, for example, if someone was denied their constitutional right to an attorney, they now would not be able to bring an application for relief if they only realized they had that right a year later. If there was coercion, there was improper prosecutorial conduct, those applications would be barred after one year.

That is unfair. Particularly people who are running through the system, located in prison, no access to a lawyer, lack of clarity as to their rights, that's an unnecessary and unfair burden. And I would suggest we take that out. Take that out, make the office of wrongful conviction review into a real innocence commission, and let's change the protocols for the safe storage and

cataloging of DNA evidence. And then what is a good bill could become a great bill.

And I would urge, Mr. President, that all of my colleagues on both sides of the aisle really should support these amendments. It does modify the Governor's bill. We talked about all of those issues openly with the Governor downstairs. He expressed his interest in reviewing them. So I don't say this -- this is not done in any sort of a hostile way. This is a part of our ongoing discussion with the executive branch.

I am confident that with the Governor's leadership in this area we are going to pass a bill. But I would urge that this amendment, the three provisions in this amendment, are absolutely necessary if it's to be done the right way.

Particularly, I do not see any way that we're going to bring a bill to the floor of both houses and get it signed into law this year that includes the gutting of the 440 provision as done by the current draft of the bill. So let's take that out. With those modifications, Your Honor, I think we're

prepared to go forward and I predict we will have a DNA bill that makes us all proud before the end of the session.

Thank you.

ACTING PRESIDENT GRIFFO: Thank you, counsel.

SENATOR SKELOS: Mr. President.

ACTING PRESIDENT GRIFFO: Senator Skelos.

SENATOR SKELOS: If I could just comment on learned counsel's amendment.

I'm not going to really discuss the pros and cons of the amendment, but I would point out that we are truly on a path of getting legislation passed once we go to conference committee of the Legislature.

Conference committee is not just with the Governor, conference committee is supposed to be between the Senate and the Assembly, where issues are resolved. And my concern is with your amendment if the canvass of agreement is agreed upon, as you know, under the rules of the Senate, the bill then has to go back to the committee of origin for ten days. So we would not be able to have

conference committee for at least ten days. And that would come near the end of conference, passage of the legislation would be threatened. And quite honestly, I think it would add to dysfunction, as you like to say, to the legislative process, which we're trying to avoid.

And really what we should be doing today is passing this bill, going to joint conference committee with the Assembly, getting a result and then going to the Governor and saying: Governor, this is what the Legislature wants to do, you have your right to veto or support the legislation.

So I would just urge my colleagues who are truly interested in passing a DNA bill this year that they not support the canvass of agreement so that we can immediately get to joint conference committee with the Assembly.

ACTING PRESIDENT GRIFFO: Senator Adams, on the amendment.

SENATOR ADAMS: Mr. President, first I want to commend my colleague on the amendment.

The issue of DNA is new. And when

you look at the fact that one of the most advanced police departments in the country was unable to find just a voucher, you have to stop and pause for a moment and ask yourself this new technology that we have, are we doing the right things with the infrastructure to allow our police officers and police agencies to properly use this technology.

Because the goal is not only to ensure that we incarcerate, but the goal is to also ensure that we don't allow innocent people to serve time in jail for crimes that they did not commit.

And if we are just merely looking for political expediency, to say that, hey, we passed the bill, that's fine for the other guys. That's not fine for me. It's fine for me to pass the right bill. And if there's an important component that's missing that is brought to our attention, the least we can do is stop, pause, and rectify whatever the problems are.

So merely to pass a DNA bill, that's feel-good dysfunctional legislation. Passing a bill that covers the issues that we

believe are important, such as making sure the infrastructure is in place that we can store the DNA data, that police officers can retrieve that data and we can ensure that a crime is solved -- I always revert back to the Central Park jogger case.

The person who was guilty of the crime was allowed to stay out of jail and continue his crime spree because we didn't use the infrastructure that was available to detect who was guilty of the crime in the first place.

So I commend my colleague. And I say to my colleagues across the aisle, the goal is not merely just to pass a piece of legislation, the goal is to pass the right legislation that we won't have men and women across this state spend 12 to 15 years in jail because someone couldn't find a voucher.

Thank you, Mr. President.

ACTING PRESIDENT GRIFFO: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

Just in response to my comrade in

arms in the effort to pass DNA legislation, Senator Skelos, I just want to observe a couple of things.

First of all, I don't think that this bringing a motion is a cause of dysfunctionality. This is not in any way going to delay things. This bill is not scheduled with the Assembly. And I assure you, after my discussions with our colleagues in the Assembly, it's not going to pass any time soon.

There's no conference committee scheduled now, so there's nothing we're holding up. We could amend the bill to accommodate these modest modifications -- modest but significant modifications -- move it to the floor tomorrow and pass it.

But the dysfunctionality really comes from the fact that we wouldn't have to bring this amendment this way on the floor through these formalistic procedures if the people on this side of the aisle had input into what bills actually come to the floor. If we were in the conferences, if we had real functional committees in this house, then we

could all work these things out and report out bills that did not exclude the representatives of half the people of the state.

So that really is the dysfunctionality I think we should address with rules changes in this Majority -- or in the next. In the meantime, I suggest everyone vote yes for this amendment.

ACTING PRESIDENT GRIFFO: Senator Marcellino, on the amendment.

SENATOR MARCELLINO: Mr. President, again, when we talk about passing something for expedience, we're passing the Governor's program bill here. This was written by the Governor and his staff. And he seemed to, according to what I've heard from Senator Skelos, cobble together legislation that had been passed several times in this house before.

This bill, once passed, will go to a conference committee, Senator. The purpose of the conference committee is to reconcile differences between what is passed in the other house and what is passed in this house. That's the legislative process as we do it

here.

So we're not doing anything expediently just for the purpose of passing a bill. The process is it goes to conference committees. We're urging the call immediately for a conference committee. Pass the bill, move to conference committees, reconcile the differences and move on. The Governor says yea or nay. That's his right, and we have another say.

So I urge this canvass of agreement be voted down. Let's proceed with the passage of this bill, move on to conference committees, as our colleague Senator Skelos has said, and let's get this very important piece of legislation done.

Thank you.

ACTING PRESIDENT GRIFFO: Senator Skelos.

SENATOR SKELOS: If I could just perhaps close for this side on this argument, I would point out that I believe in the Codes Committee and the Finance Committee this bill came out unanimously, except for Senator Krueger voting without recommendation.

So I think the bill has moved along. Everybody recognizes the need for something to be accomplished. And what I'm saying, Senator Schneiderman, not that the amendment is dysfunctional. You have the right to do that. What I'm saying is this bill being referred to committee now for 10 days if it were passed would add to a disorderly dysfunctional closing of the session, as was mentioned.

It came out of Rules. I meant the Rules Committee.

ACTING PRESIDENT GRIFFO: Senator Schneiderman.

SENATOR SCHNEIDERMAN: I hate to prolong this, but would Senator Skelos yield for one question? One question.

SENATOR SKELOS: Yes.

SENATOR SCHNEIDERMAN: Is this bill on the calendar in the Assembly? Or is there any other indication -- we can't go to a conference committee unless both houses pass the bill. What are we going to conference if we did pass this today?

SENATOR SKELOS: Well, the answer

is very simple. We all agree that the Assembly is totally dysfunctional.

(Laughter.)

SENATOR SKELOS: And what --

SENATOR SCHNEIDERMAN: My silence should not be taken as acquiescence.

SENATOR SKELOS: The Assembly has bills that they could pass, the Speaker has indicated. I believe he's the sponsor of one that he was touting in the meeting we had today with the Governor.

So I'm sure they could pass the bill tomorrow if they wanted, if they're serious about getting a result, just as we're passing it today. And I believe Senator Bruno would call conference committees expeditiously.

So really I would urge you to ask Speaker Silver to pass the bill and let's get to conference committee if he's serious.

SENATOR SCHNEIDERMAN: Thank you, Mr. President. There is no bill on the calendar for the Assembly.

But I thank the sponsor for his answers.

ACTING PRESIDENT GRIFFO: Senator Duane, on the amendment.

SENATOR DUANE: Yes, Mr. President. It should never be that a legislative body just accepts something from the chief executive, no matter what party that person may be from.

It is always not only appropriate but the responsibility of a legislative body to deliberate. The bill that was placed before us was obviously a starting point and not the completion of the process.

In terms of dysfunction, I think it's dysfunctional to only put a piece of legislation -- which it's been acknowledged has been around for a while -- but to just put it on the floor -- actually, just to make it -- to announce that it's going to be on the floor the morning of the day when it's going to be on the floor, and to rush it out to the floor, that is irresponsible and something that I think we could all agree, or I hope all of us would agree and I know the advocates would agree, that that is a dysfunctional way to run a house of the Legislature.

So having a healthy debate on --

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

SENATOR ROBACH: Would Senator Duane yield for a question?

ACTING PRESIDENT GRIFFO: Senator Duane, will you yield?

SENATOR DUANE: When I'm done speaking, Mr. President, I'd be glad to.

ACTING PRESIDENT GRIFFO: Senator Duane.

SENATOR DUANE: So if we are to be the deliberative body which I think the people sent us here to be, then we would provide for a longer and more inclusive way of discussing and indeed debating legislation than what I would characterize as springing it on us even though the urgency of the matter has been debunked.

Now I'll be pleased to respond to any questions.

ACTING PRESIDENT GRIFFO: Senator Robach.

SENATOR ROBACH: Yes, Senator Duane, if you -- I guess my question would be

so you think --

SENATOR DUANE: Are you doing it through the President?

ACTING PRESIDENT GRIFFO: I've given him the floor, Senator Duane, for his question to speak to you.

SENATOR ROBACH: I'm sorry. Mr. President, through you, would Senator Duane yield for a question?

SENATOR DUANE: Yes.

SENATOR ROBACH: Thank you.

My question is so you feel, from your statement there, then, just for clarification, that we who are embracing the Governor's program bill on a series of bills that we have passed here previously that we think not only helps crime victims, children, other people have been exploited but also can exonerate people who are innocent by using today's technology, the fingerprint of the decade, DNA technology, that we've embraced, that we are somehow getting pushed around from the Governor and be dysfunctional -- but you, who are all on a bill, over a weekend conversation who got off on that, that's good

government? I guess that's my question.

ACTING PRESIDENT GRIFFO: Senator Duane.

SENATOR DUANE: Mr. President, the bill that we have before us today is not -- and it's been characterized this way -- is not exactly the same as a bill that we've had before us before. It's an amalgamation of different bills, although it is missing the amendment, the pieces that -- important pieces, I would say -- that Senator Schneiderman's amendment would include.

So I think that speaks to the need for deliberations by the Legislature in its entirety as it responds to the initial DNA legislation that was put on the table by the Governor.

And I have to say I have no idea what the rest of the question was about, but -- so I would say yes or no depending on what the question was.

(Laughter.)

SENATOR ROBACH: I'll let you go.

ACTING PRESIDENT GRIFFO: Senator Morahan.

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

ACTING PRESIDENT GRIFFO: Will the sponsor of the amendment please yield?

SENATOR MORAHAN: No, no, the sponsor of the bill.

ACTING PRESIDENT GRIFFO: We're on the amendment, Senator.

SENATOR MORAHAN: I understand that. I really wanted to ask the sponsor of the bill if he would respond to a question.

ACTING PRESIDENT GRIFFO: Senator Skelos, will you yield?

SENATOR SKELOS: I think so.

SENATOR SCHNEIDERMAN: Mr. President, I have the floor for the amendment. We should vote on that. I think it's more appropriate then on the bill for Senator Morahan to conduct his inquiry, his vicious cross-examination.

ACTING PRESIDENT GRIFFO: He may ask on any aspect of the bill, even though the amendment is before us, because it is on the bill. It is an amendment to the bill.

SENATOR SCHNEIDERMAN: I just ask that we don't lose track of the fact that we're now waiting to vote on the amendment. I'm sure there are other points to be made on the bill.

Thank you, Mr. President.

ACTING PRESIDENT GRIFFO: Senator Morahan.

SENATOR MORAHAN: Just for Senator Schneiderman's information, the questions of Senator Skelos will deal with the thoughts behind the amendment, if I could proceed in a way that I would prefer to proceed.

ACTING PRESIDENT GRIFFO: You may, Senator Morahan.

SENATOR MORAHAN: Thank you. And thank you, Senator Schneiderman.

SENATOR SCHNEIDERMAN: You're very welcome.

SENATOR MORAHAN: Senator Skelos, I've been in this Legislature, in this body for several years. Have we had these bills on the floor before?

SENATOR SKELOS: As you know, as

the liaison to the Governor, Senator Morahan, every single one of these bills --

SENATOR MORAHAN: I withdraw the questions. Thank you, Senator.

(Laughter.)

SENATOR SKELOS: Every single one of these bills have passed the Senate.

SENATOR MORAHAN: Mr. President, I withdraw the questions.

ACTING PRESIDENT GRIFFO: The question is withdrawn.

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

Further discussion on the amendment? Senator Krueger has a question on the amendment.

SENATOR LIZ KRUEGER: Thank you, Mr. President. Thank you, Senator. If the sponsor of the amendment would please yield to a question.

ACTING PRESIDENT GRIFFO: Senator Schneiderman, will you yield to a question from Senator Krueger?

SENATOR SCHNEIDERMAN: Yes, I'll

be glad to.

ACTING PRESIDENT GRIFFO: Senator Liz Krueger.

SENATOR LIZ KRUEGER: Thank you, Mr. President.

It seems we got into a very confusing debate here. So just to clarify for myself, Senator, as you explained in your hostile amendment, if the bill were to become law as it currently is, would some people who have actually been exonerated with DNA evidence under existing law risk not being able to be exonerated in the future because of this law?

SENATOR SCHNEIDERMAN: Thank you. Through you, Mr. President. It doesn't apply retroactively, in the sense that someone who was exonerated will still be exonerated.

What this bill would do -- one of the things this bill would do, and the thing to which -- again, I emphasize, I strongly support most parts of this bill. This is one thing to which I strongly object -- is that it would gut Criminal Procedure Law Article 440, which is the provision that allows people

post-judgment relief from a wrongful conviction.

Now, this particular piece of legislation does provide an exception for newly discovered evidence. So some DNA evidence, a person raising newly discovered DNA evidence might still be allowed to bring a 440 application if this bill was passed.

However, this would impose a one-year limitation on every other possible type of application for post-judgment relief. So the very serious problem that we have in this state of denial of counsel, inadequate service of counsel, where you have a situation where someone may have a counsel who's drunk or asleep, as happens in this case on those very issues, might not realize they had a claim until more than a year had passed. Someone who was the victim of prosecutorial misconduct.

So there is an exception in the current legislation for newly discovered evidence. And I credit the drafters with that. This provision, however, would impose a strict one-year-from-conviction deadline that

would, I believe, endanger many, many people wrongfully convicted in the sense that they would no longer have a right they have today, whenever they discover that they have a claim for some sort of exculpation, that they can bring their motion.

So that's the thing that I'm concerned about on Article 440, Senator Krueger.

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

ACTING PRESIDENT GRIFFO: Senator Krueger, on the amendment.

SENATOR L. KRUEGER: Thank you.

I needed to ask the question and get the answer clarified because in the discussion it sounded like maybe we're just having a minor technical debate about some of the language somebody might not like that could come out in a conference committee.

But as I was reading the materials, my understanding -- and Senator Schneiderman has confirmed it for me -- is that we could pass a bill that we think is just about DNA evidence, which we think is a win for

everyone, that because it's not written correctly or has sections in it that need to be clarified, we could actually be doing future harm to the ability in the State of New York to allow people who have been wrongfully convicted to ever have their day in court for appeal.

So this is a dangerous mistake in the bill. And it can be resolved. There is no question it could be resolved. It could be resolved without continued delays or dysfunction to the Legislature.

I support the amendment -- thank you, Senator Schneiderman -- and to save time later, I'll vote against the bill for that same reason.

Thank you, Mr. President.

ACTING PRESIDENT GRIFFO: The question is on the amendment. Senators in agreement again please signify by raising your hand.

THE SECRETARY: Those recorded in agreement are Senators Adams, Breslin, Connor, Diaz, Dilan, Duane, Gonzalez, Hassell-Thompson, Huntley, L. Krueger,

Montgomery, Oppenheimer, Parker, Perkins, Sabini, Sampson, Savino, Schneiderman, Serrano, Smith, Stavisky, Stewart-Cousins and Thompson.

ACTING PRESIDENT GRIFFO: The amendment is not agreed to.

On the bill. Is there any Senator wishing to be heard on the bill?

Senator Duane.

SENATOR DUANE: Thank you, Mr. President.

DNA technology is or can be both a blessing and a curse. If we expand the DNA database too quickly, then New York State is going to encounter serious problems in maintaining and utilizing the database effectively. And this could lead to results diametrically opposite of what it is that we're trying to achieve here today.

You know, DNA experts and technicians, those who work in crime labs and law enforcement agencies in New York State are already stretching their resources to the max. There's a tremendous backlog now in DNA labs across New York State. In 2006, the New York

State Commission on Investigation reported that -- and I'm quoting from them -- "Representatives of most of the state's forensic laboratories express frustration regarding the lack of funds available to higher trained qualified forensic analysts."

District Attorney David Soares has said on the record that mounting caseloads are causing delays and problems, and his office has been flooded with cases since the expansion of the DNA database. And he is probably one of the only ones who's willing to be honest about it, because we know that other district attorneys' offices are having tremendous problems because they are not coming up with the results in a timely manner.

There are many, many unanswered questions regarding expanding the DNA database. We don't really have proper procedures in place for crime lab operations. And let's face it, the backlogs which will happen because of further expansion, you know, combined with additional processing time, which is already way too long, is going to increase. And we still don't have procedures

in place on the proper storage and disposal of DNA samples that we already have that have come from convicted and nonconvicted people.

You know, last year -- and I protested about this -- the State Legislature expand the DNA database hugely. Even though there are already problems, we added even more to it. And all of the questions that I and others have never got answered.

So I would urge my colleagues not to rush into a further expansion before we really find out what we're doing, through hearings with law enforcement personnel and of course those who represent the innocents, but especially people that run the crime labs, people that run what I would call rogue DNA databases, and other people in law enforcement.

You know, there is evidence also already that shows that expanding the DNA database doesn't increase the amount of cold kits leading to convictions. And I think allegedly that's what people are most interested in doing. I mean even if you don't care about exonerating innocent people,

chances are -- and I think we all agree to this -- that we care about the number of cold hits that you get.

And our own state DCJS says that while there was an increase in cold hits after 1999, subsequent expansion saw a diminished number of cold hits. And we don't even know what happened as a result of what we did last year.

So shouldn't we be focusing instead on increased spending on training of personnel and hiring of trained personnel to deal with the database, the DNA database that we already have, and other things that crime labs already have? I mean, in some cases fingerprint evidence is not even being handled and used properly.

You know, I'm not here to question the value or the need for DNA technology. It certainly has produced amazing results. But what we don't want to do is diminish the possibility of continuing to have good results. The way to do that is to expand the database responsibly.

I know it sounds good in theory,

you know, and it's an easy way to kind of just say, oh, you know, we're going to expand the DNA database and we're going to catch more bad guys. But that's simply not the case. And we're not ready to make that the case.

I really urge my colleagues to use prudence when we consider expanding the DNA database and use our resources more prudently for training more staff, for hiring more trained staff on the full range of evidence, including DNA, of course. That's the better way to capture the bad guys and not to continue to needlessly incarcerate the innocent.

So I urge my colleagues to vote no until and unless we actually deal with the DNA that we presently have in a prudent and responsible manner.

Thank you, Mr. President.

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

Senator Schneiderman.

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

I appreciate this debate. I

believe, based on our discussion with the Governor and the Assembly earlier today, we will pass a DNA database bill that expands both the requirements for cataloging and preservation and the scope of the database itself.

My disagreement with this is somewhat narrower than that of Senator Duane, who has been leading the effort to call for caution in the expansion of the database here for many years. My concern really is that if we have the proper guidelines and we have the proper protections for the innocent and we have the proper privacy protections for people whose DNA is in the system, then I really do favor broad expansion.

I think DNA -- and a lot of people lose track of this. Letting someone out because we discover their DNA is not being soft on crime. That is letting an innocent person out. And that enables us to catch the guilty person. So this is a tough-on-crime provision to allow innocent people every opportunity to demonstrate they did not commit a crime.

My only concern with this bill is this -- and again, I won't call it a poison pill, but this sort of stowaway provision related to 440.

And, Senator Krueger, to amplify my response to your question, one of the other things I believe, under my reading of this bill, that section would do is to prevent defendants -- after conviction, so prevent prisoners -- from seeking relief even if the Court of Appeals changed the rules, discovered that something in the procedures under which they were convicted was done improperly, and that prospectively that shouldn't be done anymore. Currently that's the section of law that allows people to go back in and challenge their conviction to seek relief.

I think it needs a little more work. I think that provision needs to come out. But I am absolutely committed to working with the Governor. And I wish everyone had been downstairs today to watch him in the meeting. He seems to listen to us. It was a back-and-forth the kind of which I've frankly never had in this house, where we were

actually talking about revisiting issues and renegotiating and redrafting as we went.

I am going to be voting against this bill somewhat reluctantly, because I think the overall vision is the vision we need to follow. I look forward to voting yes on another bill soon this session.

Thank you, Mr. President.

ACTING PRESIDENT GRIFFO: Senator Skelos, to close debate.

SENATOR SKELOS: Thank you, Mr. President.

I want to point out since the last expansion of the DNA database there have been 112 individuals that have been convicted because of that expansion.

I also believe by expanding the DNA database to include all crimes that you will also see individuals who have been incorrectly convicted of crimes a better chance of finding them innocent. And certainly all of us believe that a person who's unjustly convicted of a crime and goes to jail, the more evidence that we can gather to make sure that they are eventually exonerated is the right way to go.

And certainly this legislation, by expanding the DNA database, I think will put more people in jail that deserve to be in jail. And in the event somebody is wrongfully convicted, it will help exonerate them.

ACTING PRESIDENT GRIFFO: Debate is closed.

The Secretary will ring the bell.

Read the last section.

THE SECRETARY: Section 20. This act shall take effect November 1, 2007.

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

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

SENATOR DeFRANCISCO: Yes, I think everything has been said that ought to be said on the merits of this, and I'm going to vote for it.

I just wanted to mention, very briefly, the procedure. Senator Schneiderman mentioned about this bifurcated system that we're under right now where there was a leaders' meeting with special guests at the

meeting to discuss some of this legislation.

I don't remember that being any part of any reform agenda. It just seems to me that the way to legislate and the proper way to reform the system is for each house to do a bill and then start conference committees between the Legislature and then send the bill to the Governor for either his approval or his veto power. Of course he would be involved in providing any input to the Legislature as we do our deliberations.

But this -- I don't know if it's called a reform or what it's called, to have public, televised meetings of certain people to discuss legislation before it's even considered by either house of the Legislature, I don't think that's healthy, I don't think that's reform.

I think we should go back to what should be a system -- the best system, namely, each house pass their bill and then resolve their differences and then send a bill to the Governor. I think that's the way government should operate.

ACTING PRESIDENT GRIFFO: Senator

Robach, to explain his vote.

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

And I guess just off the process and everything else, I want to talk about the merits of this a little bit, having worked in the criminal justice system before coming to the Legislature, and working with a lot of crime victims groups -- Adam Walsh Center for Missing and Exploited Children -- as well as people often on the defense side of this.

This is one of those rare opportunities where I really think we do have the quintessential win-win situation. As has been said before, we cannot only use today's technology to convict the guilty but we can also use it to exonerate the innocents.

And while some very good points have been brought up, I think what strikes me is if you go back several years before we used any DNA, those people did not have an opportunity either way for guilt or innocence. This is only going to give that opportunity to be larger.

So I actually applaud the Governor

for his sense of urgency on using today's technology to address both population groups, both the guilty and the innocent.

And let's be candid, the holdup on this historically has been the Assembly, the house I came from. And I'm hopeful through whatever process we use, whether it's negotiations, one-on-one, or conference committees, whether it's fine-tuning or not, that the Governor will be able to get the Assembly to come on board to do something to better protect New York's people. Because clearly this house, which has passed these bills for four years, has not been able to have that effect on the merits and gotten the Assembly to move.

So I do think as far as protection goes, across the board for New Yorkers, this is a good step. And I'm happy to cast my vote in the affirmative.

ACTING PRESIDENT GRIFFO: Senator Robach in the affirmative.

Senator Sabini, to explain his vote.

SENATOR SABINI: Mr. President,

I'm going to be voting in the affirmative as well.

I just wanted to highlight the remarks that were made a little earlier about process, about conference committees and how easy it is to get an agreement here. Gee, I've been here for five years and I don't recall it being so easy. I've only seen about three conference committees since I've been here. And under the prior administration I did not see a lot of agreements being reached in the last four years.

In the last four months here, we've had agreements on workers' comp and civil confinement. We're going to hear about one on human trafficking.

I think that any device we do to get some consensus going, whether it's a conference committee, a quiz show or whatever you want to call it, I think is a good thing. And I think the Governor has shown some leadership on these issues. So in passing his bill, I don't think we should criticize the road we got -- how we got there. I think we got there and we should celebrate the fact

that we're getting there.

And if it requires a public knocking of heads, I think, you know, it should be done. Because we really hadn't seen a lot of progress on a lot of issues up till now.

And, you know, it may not have been an official part of the reform agenda, but I think we all agree -- and I know all of you agree when it comes to election time -- that changes are needed in this town.

So I think this is a change for the better, and I'm voting aye.

ACTING PRESIDENT GRIFFO: Senator Sabini in the affirmative.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1173 are Senators Adams, Duane, Gonzalez, Hassell-Thompson, L. Krueger, Montgomery, Parker, Perkins and Schneiderman.

Ayes, 52. Nays, 9.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number

1174, by Senator Lanza, Senate Print 5888, an act to amend the Executive Law, in relation to establishing the advisory council on interactive media and youth violence.

SENATOR HASSELL-THOMPSON: Explanation.

ACTING PRESIDENT GRIFFO: Explanation, Senator Lanza.

SENATOR LANZA: Yes, Mr. President.

You know, we often talk about ways to address criminal conduct after the fact. This is a measure that would address one of the growing influences in our society which often tragically leads people, especially children, to engage in criminally violent conduct.

We hear about the culture of violence that exists and the tragic consequences that it has for our children and for society. And we also know through many studies that violent behavior is learned, and the implication there is that it is taught.

And over the years we see, through advancements in technology, video games

becoming more virtually real, more violent, and more, I believe, damaging to the youth in our society.

The emotions and behaviors of our young children are quite often affected and shaped by these virtual reality video games. And I think it's imperative that we find a way to break that chain and to find a way to prevent these games from fueling this violent behavior.

You know, a couple of weeks ago when we talked about and I proposed this legislation, I made a reference to the Virginia Tech mass murder. And it raised a number of eyebrows. And people talked about whether or not there really was a correlation. And only a couple of days ago we found and learned that in the mind of at least one twisted person, there was a correlation. Because over the Internet you can now, sadly, download a game known as V Tech Rampage, where the goal of the game is to act out the events of that day, to murder students, to avoid the police, and then to kill yourself.

I'm a person who believes that

there are certain things in life that you don't make light of and you don't turn into a game. People said, Well, that's an isolated sort of event. We've got Grand Theft Auto 4 soon to be released, which makes light and turns into a game the murdering of a New York City police officer. I think that's wrong. I don't think we ought to be teaching that to our children. I don't think we ought to be exposing our children to that sort of thing, which clearly desensitizes them to violence.

So this measure would do a number of things. It would create an advisory council on media entertainment and youth violence to review recommendations on the effectiveness of the Entertainment Software Ratings Board. It's a voluntary system right now, which we all know doesn't work.

It would further require that ratings be mandatorily placed on all video games sold or presented on the Internet in the state of New York.

It would create a parent-teacher antiviolence awareness program, because at the root of this measure is providing our parents

with the information that they need to properly exercise parental control. When you talk to parents, many of them have missed the virtual jump in technology that has occurred over the last five years. When you show them actually what's on these games that they're purchasing for their children, they're shocked. They can't believe the virtual nature of the reality, the way with which the technology makes so real and so interactive these violent games.

And finally, it would provide for a fund in order to create those advisory councils and provide for that awareness.

ACTING PRESIDENT GRIFFO: Thank you, Senator Lanza.

Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Mr. President. Would the sponsor yield for a few questions?

ACTING PRESIDENT GRIFFO: Senator Lanza, will you yield?

SENATOR LANZA: Yes.

ACTING PRESIDENT GRIFFO: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you.

Through you, Mr. President. Senator Lanza, please understand the nature of this question, because it's really very important. It's not flippant, and it's not disrespectful. But what is your legislative intent in passing this bill?

SENATOR LANZA: My legislative intent is to find a way to prevent these virtual realities that are being marketed and presented to our children as games, which teach children that it's okay to assassinate New York police officers, which say and make light of and turn into a game the horrible mass murder that occurred in Virginia Tech -- to somehow find a way to break that chain and prevent these games from having what I believe to be the detrimental effect that they have on your youth.

SENATOR HASSELL-THOMPSON: Through you, Mr. President, if the sponsor will continue to yield.

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

SENATOR LANZA: Yes.

ACTING PRESIDENT GRIFFO: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you.

Senator Lanza, have you been in discussion with the Majority counsel that has been working with the five-way staff on this bill --

SENATOR LANZA: I have.

SENATOR HASSELL-THOMPSON: -- on the Governor's program bill?

SENATOR LANZA: I have.

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

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

SENATOR LANZA: Yes.

ACTING PRESIDENT GRIFFO: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Were you aware that in citing certain business laws and others that -- to present the bill in the manner in which you have chosen to do so has been struck down by every state as being

unconstitutional?

SENATOR LANZA: Through you, Mr. President, that is not true. Nowhere have constitutional protections been evoked to prevent states from creating advisory councils. Nowhere have constitutional protections been evoked to prevent states from creating parent-teacher antiviolence awareness programs. Nowhere have constitutional safeguards been evoked to prevent states from creating funds to educate parents, to educate children, to stop this chain of violence and the poisoning of the minds of children.

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

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

SENATOR LANZA: Yes.

ACTING PRESIDENT GRIFFO: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: So what you're telling this body is that that's the extent of your bill?

SENATOR LANZA: No, the bill goes further. It would require that labels are

mandatorily placed on bills.

SENATOR HASSELL-THOMPSON: Ah. Through you, Mr. President.

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

SENATOR LANZA: Yes.

ACTING PRESIDENT GRIFFO: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: What other factors within the bill besides rating does the bill ask for?

SENATOR LANZA: I don't understand the question, Mr. President.

ACTING PRESIDENT GRIFFO: Can you clarify the question, Senator Hassell-Thompson?

SENATOR HASSELL-THOMPSON: You said that the bill goes further and that in the furtherance of the language you are asking for such games to be rated and some other issues. I'm just asking, what other aspects are you requesting in the bill?

ACTING PRESIDENT GRIFFO: Senator Lanza.

SENATOR LANZA: Mr. President,

through you. That manufacturers are required to place ratings on games indicating the violent or mature content of these games. And that, further, that fines would be imposed to retailers who do not abide by those provisions.

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

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

SENATOR LANZA: Yes, Mr. President.

ACTING PRESIDENT GRIFFO: Senator Hassell-Thompson.

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

And that particular language, counsel has not advised you that that's the very specific kind of language that has in fact caused these bills to be struck down? Because, see, I really wasn't speaking to the advisory councils, but I'm speaking to the language in the business law, that changes the business law and commerce law, and some of the aspects that are unconstitutional.

SENATOR LANZA: Mr. President, well, you were speaking to the entire bill, I presume, Senator, and that's why I wanted to point out the many provisions which exist in this bill, many of which I believe would sail free of any constitutional objections.

Are there other issues with respect to constitutionally protected speech with respect to this issue? Certainly. But I don't believe that we ought to hide and sit on our hands and not attempt in this state to address this very important issue. We are attempting to do it in a way that is different from other provisions that have been presented throughout the states.

But this is a different way, and I believe that we ought to not sit on our hands. I believe that we ought to see if there's anything that we can do. Because at the end of the day, it's important that we protect our children. It's important, rather than come here and try to craft laws to mop up after there's been a murder, after another child has been led down the trail of violence, that we do something before that happens, that we try

to affect the root cause of those behaviors.

You know, it's not something that we find foreign to require that there is labeling on food that's sold in this state, so that families and people can make decisions about whether or not there's something in that food that's bad for them before they either ingest it or they give it to their children. We've got no problem making sure that we prevent drug dealers from getting near our kids at schools, because we know if they use those drugs, it's going to harm them physically.

I suggest to you that many of these games are poisoning the minds of our children, with tragic consequence. So rather than sit back and say, Well, other states have tried and failed, we should walk away from the problem, I say we have a responsibility in this state to address the problem head-on and do all we can to see whether or not we can help our children, help our parents educate them, to make sure that another child doesn't meet with this sort of tragic consequence that we far too often read about in the papers

every day.

SENATOR HASSELL-THOMPSON: Through you, Mr. President, would the sponsor continue to yield?

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

SENATOR LANZA: Yes.

ACTING PRESIDENT GRIFFO: Senator Hassell-Thompson.

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

Senator Lanza, can you tell me, since you denied that my statement was correct, can you tell me any state that has in fact passed language that has allowed ratings -- and by the way, the labeling of food is not protected language. There is a difference.

ACTING PRESIDENT GRIFFO: Senator Lanza.

SENATOR LANZA: Yes, I'm well aware of that, Senator. I was, by analogy, talking about the measures that we take as a society to protect ourselves and to provide information so that we can make more educated

decisions, especially when it comes to decisions as they relate to children.

I, Senator, was elected to represent the 24th Senate District, which happens to be in the State of New York. So I'm not exact sure what the relevance of bringing up what other states -- all of which I'm not completely familiar with -- has to do with whether or not we as body in this state should make an attempt to protect our children from the detrimental effects that these increasingly violent video games have upon them.

And every study has demonstrated that the more you're exposed to violence, the more likely you are to engage in violence. Studies have also demonstrated that the more real, the more real the demonstration of violence is, the more likely you are to engage in violence.

And let's not forget that when children engage in violence not only do they victimize others in society, but they become the victims of their own violence and actions.

And clearly, clearly Senator

Leiberman in the U.S. Senate took a leadership role nationally on this issue more than five years ago. Since he has done that, if you haven't taken a look at video games today, you might be shocked to find out the realism, to see the realism and the violence and the explicitness which exists in these games. And many times parents are unaware of that fact when they go out and purchase these games.

So in broad strokes this measure would do nothing more, nothing more, Senator, than provide parents with the information. Surely you can have no problem with providing parent with information about what their children are being exposed to.

SENATOR HASSELL-THOMPSON: Mr. President, on the bill.

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

SENATOR FARLEY: Good job, Andrew.

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

I'd like to be able to say, Senator Farley, that he's done a good job, but I

can't. And the reason that I cannot is -- see, I have mother's ears and a grandmother's heart. So I heard you.

One of the things that becomes important, Senator Lanza, is that I, like you, want this bill to pass. But I have sat in the five-way meetings and I have been briefed every day by staff as we have talked about what kind of language is protected language. I went to the meeting requesting ratings. I am a parent and a grandparent who likes to know what kinds of things children are reading, what kind of games children are being exposed to.

So you don't have to chide me to be able to understand that. My questions are important because part of what we have an obligation to do if we want to see our bills passed is to do so in a way that does not infringe on the constitutional rights of the people who do business.

Now, do I like it? No. Do I have an obligation to protect it? We all do. My questions had everything to do with your understanding of not only how this bill is

crafted but the fact that, taken into court, the State of New York then would be liable, if they win the lawsuit, if it is struck down.

And so when we begin to talk about where we should put -- yes, check with your attorney. He will tell you that. And I have the literature that will help you to understand that a part of what we have an obligation to do is to be protective of the rights of the people for whom we are responsible for.

We are responsible to make sure that while we feel passionately -- and we do, we feel very passionately about this issue. My concern was about presumptive defense. Presumptive defense says that, well, you can't presume that all levels of this game have violence. Well, I'm here to tell you that having watched my nephews play some of these games, it takes skill to go from one level to the next. And the lower and deeper into the game you go, the more violent the acts are.

So I'm not at all surprised, I am not at all amazed at the level of violence and degradation that are involved in these games.

Not only that, I was prepared, if I had spoken today at the six-way meeting with the Governor, to support your efforts for this committee. Trust me. I've read your bill. I read it carefully. I don't want to see us lose a very genuine opportunity to do something appropriate and right for the families and the children of the State of New York. And I want us to be a model across this country.

And I've fought with the Governor's people, but they have made the bill very narrow in the Governor's bill. And I understand your frustration. But what you have done, if you're aware, by creating this committee, some of the language that we have all talked about being upset about, the obscenity against women, the way in which women are portrayed and the way in which violence is portrayed, that committee can speak to this language in a way that the bill can't.

So what I'm trying to get you to do -- what I'm trying to get you to do, Senator Lanza, is to understand that I'm not

here to destroy your bill, I'm here to support your bill. I'm here to support you in your efforts to make sure that this bill is passed. I've already begun to have dialogue with my colleagues in the Assembly to make sure that bill does not become something that gets lost and that does not get passed. But I want to be sure that we understand that in order to do that, we cannot use infringement --

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

SENATOR LANZA: Will the Senator yield for a question?

ACTING PRESIDENT GRIFFO: Senator Hassell-Thompson, will you yield for a question?

SENATOR HASSELL-THOMPSON: Certainly.

SENATOR LANZA: Senator, aside from the provision in the measure that would require a mandatory rating system on the games, do you support every other provision?

SENATOR HASSELL-THOMPSON: Every other aspect of your bill.

SENATOR LANZA: Would the Senator

continue to yield?

ACTING PRESIDENT GRIFFO: Will you continue to yield, Senator Hassell-Thompson?

SENATOR HASSELL-THOMPSON: I continue to yield, Mr. President.

ACTING PRESIDENT GRIFFO: Senator Lanza.

SENATOR LANZA: Senator, are you further aware that if there were a constitutional challenge to this bill, that potentially only that portion of the bill which is deemed to be unconstitutional would be struck down and we'd be left with all the other measures that you support?

SENATOR HASSELL-THOMPSON: Yes, I am aware of that. But I also know that we would be liable for the attorney's fees and the costs to the State of New York.

SENATOR LANZA: Would the Senator continue to yield?

ACTING PRESIDENT GRIFFO: Senator Hassell-Thompson, will you continue to yield?

SENATOR HASSELL-THOMPSON: Yes, Mr. President, I will continue to yield.

ACTING PRESIDENT GRIFFO: Senator Lanza.

SENATOR LANZA: Senator, given that, though, don't you think it's worth a shot to do something different here in New York and really try to get at the heart of this problem? I learned a long time ago in law school from my constitutional law professor, who served in President Kennedy's administration, that there's only one thing you need to know about constitutional law and what is constitutional, and that's how to count to five.

So, Senator, we don't know how a challenge to this bill would be reviewed by the Supreme Court in the event that one is even made.

So again, my question to you is isn't it worth a shot, shouldn't we do all we can to make sure we really address the heart of this issue as opposed to dancing around the fringe?

ACTING PRESIDENT GRIFFO: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Mr.

President, my response to you, Senator Lanza, has to be that while I'm in agreement, I don't think that we should be imprudent in terms of how we do that.

If we knowingly can change a portion of the bill that causes infringement, what would be the real harm in us retracting that portion if the rest of the bill achieves the goal that we want, that both of us want to see happen?

SENATOR LANZA: Will the Senator continue to yield?

ACTING PRESIDENT GRIFFO: Senator Hassell-Thompson, will you continue to yield?

SENATOR HASSELL-THOMPSON: Certainly, Mr. President, I will continue to yield.

ACTING PRESIDENT GRIFFO: Senator Lanza.

SENATOR LANZA: Senator, when you claim infringement, that is you speaking, isn't it? There's no court decision that would specifically say that this bill would represent an infringement upon some constitutionally protected right.

SENATOR HASSELL-THOMPSON:
Through you, Mr. President, the answer to your question is that I have a whole sheet of every state that has struck down this based on constitutionality. There is no portion of what I said today that was my opinion.

ACTING PRESIDENT GRIFFO: Senator Lanza.

SENATOR LANZA: Would the Senator continue to yield?

ACTING PRESIDENT GRIFFO: Senator Hassell-Thompson, will you continue to yield?

SENATOR HASSELL-THOMPSON: Yes, Mr. President, I will continue to yield.

ACTING PRESIDENT GRIFFO: Senator Lanza.

SENATOR LANZA: This is my last question, Senator. And it's almost rhetorical, but I would like a response. You are aware that this provision in this state has not only not been challenged but has not been struck down by any court?

SENATOR HASSELL-THOMPSON:
Because it's never been passed, Senator Lanza. That's the only reason.

SENATOR LANZA: I take it back, Mr. President. Would the Senator yield to one more question?

ACTING PRESIDENT GRIFFO: Senator Hassell-Thompson, will you yield --

SENATOR HASSELL-THOMPSON: I will yield to as many questions as you'd like, Senator. Especially if I can change your mind.

ACTING PRESIDENT GRIFFO: Senator Hassell-Thompson continues to yield.

SENATOR LANZA: In light of that response, I would ask one more time, isn't it worth, given what's at stake, given the fact that we know our children are being poisoned by these violent games -- and we know how it all ends. We read about it on the front page of the paper. We see it on the nightly news. We know how it ends. It ends horribly. Isn't it therefore worth a shot in this state at this time?

SENATOR HASSELL-THOMPSON: Senator Lanza -- through you, Mr. President -- I will say to you that your insistence that you pass this bill with the language that

knowingly is infringement is egotistical on your part.

You refuse to believe and accept that if -- the slightest change to this bill will not only get the total support of this house but of the Assembly if you are willing to concede that there is an error in the bill.

If you choose not to do that, then you are knowingly putting something forward that will put this state in a position where it will incur legal fees. Because I can tell you, I also have a list of every association that is waiting for you to pass this bill so that they can do as they have done in other states around this country: Take you to court.

And so therefore I believe that your passion is real, your cause is noble, but your course is irresponsible.

Thank you, Mr. President.

ACTING PRESIDENT GRIFFO: Thank you, Senator Hassell-Thompson.

Is there any other Senator wishing to be heard?

Senator Parker.

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

I like the intention of this bill. And, Senator Lanza, let me congratulate you and thank you for kind of raising this bill for part of the debate.

I unfortunately don't feel like I can vote for this, and it's for very different reasons than Senator Hassell-Thompson or others who may have problems with the constitutionality, which I think is part of it.

I think that today that this body is heading down a slippery slope and a slippery slope that leads us into censorship into all types of areas. That today we're talking about video games, but we really can be in another place very, very quickly.

And so I'm not going to vote for this bill, or I'm not going to vote affirmatively for this bill. And I guess I know that we're attempting to protect children. I know you have a family and you're trying to protect your children. And I think a lot of people here, including Senator

Hassell-Thompson, who cares about this, is trying to protect her grandchildren and other families and other children.

But this I think this bill is an attempt to legislate morality. And I don't think that that's the place for this Legislature or any Legislature anywhere. I think at the point that we abdicate parental responsibility, that we're making a huge mistake. I think that there are a lot of thing that we don't like that happen in society, but I think that this is not the way that we go about it.

I think that video games fall into a realm that is no different than other types of entertainment media. I think we do this going to then start happening to censor TV and radio and books and CDs, DVDs, the Internet, Hollywood, network news. I mean, at what point do we stop with these images?

And then the question is, when you start developing these panels, my question is who's on these panels and who gets to pick them? And I'm asking that rhetorically, because the bill actually deals with that.

But I'm asking it because a lot of group that I'm concerned about are not necessarily going to be represented in the same way that African-Americans and Latinos in particular don't get represented on a host of panels and boards and commissions and authorities throughout this state and throughout this country. And this becomes a problem.

And just to illustrate this, you know, kind of bear with me when I talk about this for a second. Because in the wake of the Don Imus problems, the conversation then turned to, well, what do we do to censor rap music, because Don Imus is affected by rap music. And he gets these terms and the way he thinks about this stuff from rap music, so we now need to censor the stories that primarily young African-American men are telling to the world about their experience in the world from their perspective. Whether you agree or disagree. In the same way that some of us may or may not like lots of other things in stories of other -- and music and movies and all kinds of things.

But we didn't talk about the fact

that the primary images that we see in rap music and the hip hop culture come out of the dominant culture. And in fact, when we start talking about, you know, half of the rappers out there, they get their names and the name of their crews from real-life stuff. Right? You got Gotti coming from John Gotti. You got Murder, Inc. coming from a group of gangsters, Mafia gangsters. You got the Wu-Tang Clan who gets their images from Chinese epics about martial arts. Right?

I mean, you can go on and on about where these names -- you have Jay-Z or Roc-A-Fella getting their name from, you know, our former Governor. Right? And other robber barons who participated in building this country. And that's where they get their notions about the world. Pablo Escobar. Right? Nas called himself Nas Escobar.

You know, you have a lot of these images coming directly from day-to-day things that young people in fact are engaging in the news and in television.

And by and large, every time there's a cultural attack, an attack on

morality, as much as things may be happening in other communities, I've never seen in a white Catholic priest taking heavy metal CDs and putting them in the street and rolling over them with a steamroller the way Calvin Butts did with hip hop music back in the early '90s. Some of you all forgot about that. Right? We don't see that in other places, but we have seen them here.

Let me go back. There was a group called N.W.A., right, headed by Easy E. Right? Niggers With Attitude, right, N.W.A. They had a song called "F--- the Police." And in that song they talked about the conflict that African-American young men have with police every day and essentially said, you know, we like to do violence to them the way they inflict on our community. Police departments were enraged. And they talked about this and they banned the song, and it was a big deal.

The same year a movie came out by a guy named, oh, Schwarzenegger called "Terminator." And in that same year, in the "Terminator" movie, Arnold Schwarzenegger

walked into a police precinct and killed every single -- must have been 300 cops he killed. Not a word. Just like this room. Not a word.

And in fact, well, Easy E goes on and dies of AIDS, and Schwarzenegger is now, what, governor of the largest state in the country. I mean, you know, these kind of things in terms of how morality is dictated in this country is problematic for me. And I see this kind of slippery slope, I see us moving from there, a very, very noble and worthy cause of protecting our children, to a quickly moving down to a censorship and a moral compass being directed over my community that I certainly cannot vote for.

And again, I'm not defending the horror images, the misogynistic or the sexist images that we see in these video games. And I'm certainly not trying to abdicate parents in this state of their responsibility from overseeing their children. Parents have a responsibility. And they need to know what their children -- they need to know.

If parents are buying video games for their children and they don't know what's

in those video games, shame on them. That's their job. In the same way they, you know, turn on a television set or buy a DVD or a CD or they let their children on the Internet, they should know what their children are watching. We have conversations about this all the time, but we have certainly not banned any of those things.

And lastly, I guess I'm always shocked by the flippant attitude that we have in this body about coming in conflict with the Constitution of the United States. I mean, this is not the first time or even like the fifth time that I have voted against a bill in this body because it came into conflict, clearly, with the courts or the Constitution of the United States as kind of afterthought, kind of like, well, if they catch us, they may well change it. Maybe. And I just don't think that's the right message to send.

We should be looking at ways to mitigate violence and particularly violent images that our children are seeing every day in our societies. And we should be working to make sure that in television and in movies and

in DVDs and books that those things happen.

We actually ought to begin by making sure that our federal government doesn't go and engage in, you know, wars that are not sanctioned by the people of the United States and are immoral.

But there's other things we can do. And we are so scared about -- which again is valid, because there are lot of studies that indicate that the violence that young people in particular see does get played out in real life. But there's other things that we can do to mitigate this violence.

So there's a number of gun control bills, many of which people in this house have, that we ought to bring to the floor and we ought to pass before we go. If we really care about violence in our societies, then we should, you know, have expanded ballistic testing. We ought to expand the IDs on bullets and increase the way that we in fact have gun control in this state.

We ought to have better mental health services, you know, in our schools. You know, the horrific things that mental

health decontrol has created in terms of the homeless situation that we have in this state is absolutely unconscionable and we ought to relook at those things and figure out how do we in fact provide better, more, and more comprehensive mental health services at every level of the people of the State of New York to make sure that the tragedy that happened in Virginia does not in fact happen here.

And then, lastly, and this is something that we all can do, is just work towards a more caring society. And a more caring society means that we in fact expand the rights of the society. That education shouldn't be seen as a privilege, education should be seen as a right. That healthcare should not be seen as a privilege, it should be seen as a right. That mental health services should not be seen as a privilege, it should be seen as a right. Affordable housing ought to not be seen as a privilege, it should be seen as a right.

That we need to make sure that food -- that there's people who are hungry right now as we sit here, and that shouldn't

be a privilege. It should be a right for you to be able to have food.

A job. I said this before, we ought to pass a full employment law in the State of New York and simply say that it is no longer acceptable to have an economic system that says that there is an optimal level of unemployment. That we should in fact ensure a job for every man, woman and child who wants one in this state and make sure that we have ability for people to have a full-time job at a living wage with benefits.

And a more caring society would in fact do as much as this bill would do in terms of creating a place where our children will be safe and secure and happy to live in.

And so, Senator Lanza, please don't misunderstand my not voting for this bill in terms of its being any kind of adversarial thing about you or this bill. I simply just have some concerns about where we're going with it.

I'm hoping that we can in fact continue to reduce violence and the images of violence and misogyny and homophobia and

racism and all those things that we see in this society that we don't like, that I know that people in this body want to see mitigated, and that we move to a more caring society where we have less privileges and more rights.

ACTING PRESIDENT GRIFFO: Senator Robach, on the bill.

SENATOR ROBACH: Yes, Mr. President, on the bill. I rise to support this and want to applaud my colleague Senator Lanza, both as a legislator and as a father.

I think my colleague Senator Thompson, certainly I would agree, we agree with four of the points. The one that seems of some controversy is the requirement that video games should be labeled. I for one don't understand what the constitutional challenge would be. We rate movies.

And I think what we're missing is I hear these comments, but I don't really feel they're applicable. We are not saying they can't make the game, we are saying that we think it has a different impact on a 7-, a 9-, an 11-, a 12-, a 15-year-old, someone under

the age of 18, a minor, than it would an adult.

And while I share in all those other problems that Senator Parker pointed out, I think trying to help kids at an early age and not have them exposed to violence would be one of the things that would make the world a little bit less violent and a better place.

And I would also point out, in relationship to the fear on the bill, if you read the bill it clearly points out where the appointments would come from, some of which would come from your side of the aisle as well as ours, other trained professionals in the area, from teachers, parents, psychiatrists, psychologists, as well as some appointments by the Governor and this body.

I in all sincerity think this is very good, sound language. And I want to point out that all this label does is let parents -- who often, I admit this, buy the game unknowingly with things in there they don't want their kids to see that really are of a superrealistic, graphic, violent nature,

often showing things that would be completely illegal to do in the real world, almost making it look like fun and fantasy again to desensitize and encourage.

So I think this would be a great bill. Again, it does not stop these manufacturers, these businesses from making the games. Whether I think they're garbage or great, it doesn't affect that at all. It only says, very similar to a movie, this is NA, explain a little bit what's in it, and really would be a very big cross-section of people deciding how those labels get on there. I think it would be great. I'm happy to support the bill and encourage the rest of my colleagues to vote for that.

Thank you.

ACTING PRESIDENT GRIFFO: Senator Marcellino, on the bill.

SENATOR MARCELLINO: Yes, thank you, Mr. President.

I too rise to support this bill. I think it's a good bill, it moves in the right direction. As the new grandparent of a granddaughter, I want to make sure that my

grandchild is protected from the images, that her parents are given the proper notice as to what is contained in these games and videos and the like that come out.

The only concern, Senator Parker mentioned "The Terminator." The only difference with "The Terminator," it was rated. It was in fact at the time rated R, so that children under 17 couldn't get into see it without parental consent.

I think that's all Senator Lanza would like to see. He'd like too see these games rated so that parents know basically what they're getting and what's the content of the games that are involved here.

I think this is a good idea. Let's do it. I intend to vote aye.

ACTING PRESIDENT GRIFFO: Thank you, Senator Marcellino.

Any other Senator wishing to be heard?

Debate is closed. The Secretary will ring the bell.

Read the last section.

THE SECRETARY: Section 7. This

act shall take effect immediately.

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

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

SENATOR BONACIC: Mr. President, I stand to congratulate Senator Lanza on bringing this bill forward.

I think -- there's no question in my mind that there is a correlation. With our children who watch these violent video games, there's a tendency for them to be more violent and more aggressive. And I think psychology studies have shown that to be true.

So what is it we as public officials try to do? We try to put forth laws that represent the values, priorities and protection of our children which the majority of the people --

ACTING PRESIDENT GRIFFO: Senator Hassell-Thompson, why do you rise?

SENATOR HASSELL-THOMPSON: I apologize. I'll wait.

ACTING PRESIDENT GRIFFO: Senator

Bonacic.

SENATOR BONACIC: Yes. So we put forward legislation that we believe reflects the feelings of the majority of the people that we represent. That's what Senator Lanza has done.

Now, if we have constitutional concerns, like any legislation that passes this house, we have staff counsel, we have general counsel in the Senate before a bill goes through. In the Assembly they have those same legal minds that review this stuff. And so it goes, to the Governor's office.

So we have been through this process before. Now, if there is a constitutional issue that's been raised and it's proper to raise it, quite frankly I would like to make an error on the side of public safety and the protection of our children and leave the judicial branch to make that ultimate decision if we've done something wrong.

So for those reasons, I'm supporting the bill. And I thank, again, Senator Lanza for bringing it forward.

ACTING PRESIDENT GRIFFO: Senator Bonacic in the affirmative.

Senator Hassell-Thompson, to explain her vote.

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

I listened, as it's clear that I did to all the questions that Senator Lanza asked me, and I listened to all the people who have stood to congratulate and to support Senator Lanza on this bill. I too congratulate Senator Lanza on this bill, particularly because of its intent.

I still must pose the question to Senator Lanza, why the rush? There is an appropriation that has to be made which will not appear until next year's budgetary period. That would give us more than enough time to hammer out the issues.

Not only that, we are still in the middle of -- we've been in the middle of negotiating the very language. And it was agreed in the fifth meeting that was held on Saturday that much of the language of Senator Lanza's bill would in fact be included in the

Governor's program bill.

So suddenly here we are, faced with passing a bill that has language that is constitutionally challenging, and yet we're rushing to put it in as though it was going to make that much of a difference. And I can tell you that with these points, it will be impossible to get support for this bill out of the Assembly.

And you can say what you will about that, but we've worked very hard up to this point with the Assembly, and they were going along with the language of this bill until such time as you insisted that this bill must go in the way in which that you presented it, Senator Lanza.

So I will -- you know, these are one of those times I wish that I could abstain. I voted without recommendation in Rules because I just don't feel that this bill is going to pass. But I can't not support you based upon the intent that I know that both of you and I want to see happen in the effects of this legislation.

So I will be voting to support you,

but I'm going to tell you, we're going to have a problem, Senator Lanza. We're going to have a big problem with this bill.

ACTING PRESIDENT GRIFFO: Senator Hassell-Thompson in the affirmative. Is that correct?

SENATOR HASSELL-THOMPSON: Yes, that's correct, Mr. President.

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

SENATOR DeFRANCISCO: I think this is a good bill, and Senator Lanza should be applauded for moving this as quickly as possible.

First of all, there were some references by Senator Parker concerning some situations that might be determined to be racist as to who might be the targets of some legislation like this, and he gave "The Terminator" example. I don't remember Senator Lanza saying anything about who the individual was that produced the video that shows people how to play a game based upon the recent slayings of all those college students. I don't think he even knows. Quite frankly, I

don't think he cares or anyone else here should care, because the victims are not of any particular race. And the concept is to give parents as many tools as possible so they can protect their kids. And how could that be wrong?

If the only objectionable part of this legislation is whether there's mandatory ratings and it turns out to be unconstitutional, there's a theory known as severability. And basically the court who finds it unconstitutional can cut out any parts that are not proper or not in accordance with the Constitution.

But even more importantly, the members of the various appeals courts change all the time. And if anyone has not noticed, over the last several years the Court of Appeals has changed a little bit to the right, if you want to look at the political spectrum. And it could change to the left later on with Governor Spitzer's appointees.

The fact of the matter, as Senator Lanza mentioned, it depends upon who's on the court at the time. So I really feel that

we've got to provide the biggest, best tools we can. And hopefully at the time this is reviewed, that that section is constitutional, because who happens to be on the court that determines the constitutionality -- and if it's not the worst-case scenario, is that section that's not constitutional is severed, the rest is enforced.

So I think it's good legislation. As Senator Bonacic said, we ought to err on the side -- if we're erring at all; I don't believe we are -- to protect our children and our grandchildren.

ACTING PRESIDENT GRIFFO: Senator DeFrancisco in the affirmative.

Is there any other Senator that wishes to speak?

Senator C. Johnson.

SENATOR CRAIG JOHNSON: Thank you.

I rise to support this legislation. As a parent of a 5-year-old and a 2-year-old, I obviously, if they are going to start buying video games, would want to know what's in those video games.

I am concerned, I share the concern with my colleague Senator Ruth Hassell-Thompson, in reviewing this legislation. Because Senator Bonacic brought out, you do have counsel, and able counsel, to address these issues. Because my concern is that the bill doesn't effectively -- more importantly, it leaves some holes.

For instance, it doesn't create an actual ratings system. The language talks about standardized designation, when the problem is I don't know what standardized designation is going to be. So clearly we may be coming back here to address what is the standardized designation that's going to be attached. And I think that's a good thing. That way maybe we could discuss it a little bit more.

Because Senator DeFrancisco and Senator Lanza seem to be quoting the Supreme Court, or paraphrasing the Supreme Court, and I will as well. As Justice Powell talked about when looking at pornography and saying, you know, what is pornography, he remarked, "I know it when I see it."

And I think that's the same thing we have here with our ratings systems, it's kind of the designation of what is violence and what falls within that rating system.

But I think it's important because when we are asking our manufacturers and our distributors to put a rating system on our video games, there has to be some sort of guideline, and this bill doesn't actually address that. But I'm hopeful that this will come back to do so.

My final point is that when we come back and address these issues, one thing we need to look at is are we going to apply this expansively. Because the way I read the bill -- and I still am supportive of the bill -- for children's games, my 5-year-old goes on the computer and goes to Noggin or Nickelodeon, and those are two websites for youngsters, and plays video games on them. And according to this bill, you're asking now Noggin and Nickelodeon to provide a rating for these particular games.

So I think when we decide if we have to come back to address what type of

rating system we're going to produce, we need to see are we going to focus specifically on violent video games and video games that focus on sex and prurient interests, or are we going to talk a rating system where it's totally expansive for games under the age of five.

But I do support this legislation. I believe it's important. We should err on the side of caution, we should err on the side of protecting our children and our grandchildren, and I will vote yes.

Thank you.

THE PRESIDENT: Senator C. Johnson will be recorded in the affirmative.

Senator Farley, to explain his vote.

SENATOR FARLEY: Yes, thank you, Mr. President.

Senator Hassell-Thompson, in her acute hearing, heard me say "good job" to Senator Lanza. I just want the record to show that it was a good job. It's a good bill. And I vote in the affirmative.

(Laughter.)

THE PRESIDENT: Senator Farley will be recorded in the affirmative.

Senator Lanza, to explain his vote.

SENATOR LANZA: Thank you, Mr. President.

You know, the question has been raised why the rush, why now. Because I believe that when it comes to protecting our children, you can't act quickly enough. There is no time like the present.

Is this difficult? Is it challenging? Were there issues that we needed to negotiate and navigate through in order to craft legislation that we thought would pass constitutional muster? Yes. It's not easy. That's precisely why we should do it, because of what's at stake. We shouldn't run and hide because something is difficult.

There was talk about which moral compass or whose moral compass would be used in addressing this issue as we move forward. Only a broken moral compass would not be able to discern the damaging effect that a video game has that teaches kids that it's okay to assassinate New York City police officers, or

that the mass murder at Virginia Tech is something that we should make light of or turn into a game.

We know, we know the detrimental effect that these games are having on children. And we know how it all ends up for them.

The constitutional issue. The point was raised that the manufacturers have rights. I'm aware of that. This is not a measure that would prohibit anyone from selling anything to anyone. I wish it did. I wish we could pass a law that would pass constitutional muster that would prohibit these games from getting into the hands of kids. But it seems, sadly, that that clearly is something we can't do.

Maybe my colleagues have some insight into the nine justices who sit on the Supreme Court and have polled them and know how they're going to decide in the hypothetical eventuality that this case goes before them. I don't. I know that this country has a history, a history of trying to protect rights of individuals that from time

to time have been judged to be constitutional or not. But we shouldn't run and hide at the prospect that potentially a challenge will be made and that this will be struck down.

It was suggested perhaps that this is being flippant to the United States Constitution. I'm not being flippant. In fact, I have the opposite opinion with respect to the Constitution. I'm optimistic, I'm hopeful that our Constitution will protect our right and will sanction our ability to protect our children from an influence in society that we know, we know beyond a reasonable doubt is creating a culture of violence and is having a disastrous effect.

Manufacturer's rights. One of my colleagues across the aisle last week, when talking about paint cans, talked about not wanting to put profits over public health, talked about lead, lead in paint and how it hurts kids. Were there challenges to provisions that sought to protect kids from that? Sure there were. We knew they were coming in advance. Did people run and hide? No, they stood up.

Smoking in the workplace. Were challenges on the horizon? Absolutely. People stood up and led and did what they thought was right.

This is a labeling requirement. That's all this does, it puts a label on a game to let people know ahead of the purchase, to let parents know that the content may be damaging to the health of your child. This is information. This is education. That's all this bill does.

So I say let's hope that the Constitution of this great land is still a vehicle that continues to allow us to protect our right to do what's right for society.

Mr. President, I vote aye.

THE PRESIDENT: Senator Lanza will be recorded in the affirmative.

Senator Adams, to explain his vote.

SENATOR ADAMS: Mr. President, thank you.

You know, I was going to vote nay on this bill. I was. And I remember I saw -- about two months ago, I saw a mother walk with her son, and he had no belt on his pants and

his underwear was showing, and she was walking with him.

And it dawned on me that we have to be very careful when abnormal behavior becomes normal. We've reached a point in society where our children are so used to violence, our children are so used to not having the basic principles that's made us great as a country. And when we reach the point that children duplicate the behavior of those who are incarcerated and it becomes normal to parents, then something is wrong.

And so we may have a constitutional problem; I think my colleague was correct in that. But we do have to start -- and I agree with you, Senator Lanza, we do have to start the process of bringing a level of normality back to our everyday behavior. When parents walk inside a household and they watch their children listen to degrading music and it's normal, when parents allow their children to move through our society in a degrading fashion and it's normal, something has gone so far, and the style of living we're doing as Americans -- when we used to set the standards

of how the globe lives and exists.

So we do need legislation like this. And I disagree with my colleague. If this is a slippery slope, I want to be on that slope and slide along with it. Because we have to put a period to the behavior that appears to have engulfed our society.

And so some will say, well, what's wrong with not wearing a belt? What's wrong with not dressing a certain way? I've learned that the dismantling of a society is a slow erosive process of the basic principle that makes a society great.

The video games started out as just using foul languages. Our children adapted to those languages. Then it started out just shooting one person. Our children adapted to that shooting. We have an adaptability as a human person that if we don't stop it, eventually we're going to have 3D games where individuals are going to start shooting each other.

And I'll never forget one case that made me change my mind today as I heard you speak. A young man we arrested, he and his

buddy participated in a gang rape. In his pocket was the video game that was duplication of the action he carried out.

So if people are telling me our children don't duplicate that behavior, just go back and see how they leave a kung fu movie and start kicking and screaming. Now you have a countless number of kids that want to be CSI investigators because they see CSI on TV.

These games influence, impact, and they address our children. This bill is the right bill, this is the right decision to make. And I change my vote from nay to aye, and I agree with this bill.

THE PRESIDENT: Senator Adams will be recorded in the affirmative.

The Secretary will announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1174 are Senators Breslin, Duane, Gonzalez, Montgomery and Parker.

Ayes, 56. Nays, 5.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 1175, by Senator Saland, Senate Print 5892, an act to amend the Education Law, in relation to creating the Children's Healthy Access to Meals Program.

SENATOR SAMPSON: Explanation.

THE PRESIDENT: Senator Saland, an explanation has been requested by Senator Sampson.

SENATOR SALAND: Thank you, Mr. President.

Mr. President, I'm sure there's nobody in this chamber who is unaware of some of the very troubling data that certainly has had enormous coverage and certainly enormous public impact over the course of the past two or three years dealing with the issue of childhood obesity, young children being overweight, a comparison of statistics going back two and three decades where young children, adolescents and younger, seem to be far heavier and certainly with far greater percentages in terms of obesity, more given to obesity than we've witnessed during our prior generations.

What this bill proposes to do, Mr. President, basically is to recognize not merely the problem but to deal with it in a fashion that is not prescriptive but a fashion that requires the collaboration of the Commissioner of Education, the Commissioner of Health, and the Commissioner of Ag and Markets, the purpose of which would be to provide, by way of regulation, the ability for schools by the next school year, 2008-2009, to adopt basically not only new means by which to provide for nutrition within their schools but also new means at the same time by which to review their curriculum for both physical education, which hasn't been looked at in decades, and for instruction with respect to nutrition.

Certainly it has to be recognized that healthy eating habits are established in the home. Food and beverages, however, in schools certainly play a significant part of a child's nutritional intake during the course of a week. And as Senator Parker I believe said during the earlier debate, certainly parents have responsibility. But schools

should not -- and I repeat not -- be part of the problem but certainly should be part of the solution.

And by requiring that collaboration, by requiring a less prescriptive means than has been proposed by the Governor, we are basically getting to the same place in a fashion that recognizes that there's changes in the science frequently.

My own personal experience. As one who watches his cholesterol intake because of my concern about a history of heart condition in my family, and having experienced some challenges in that regard myself, I can recall probably 15 or so years ago I was advised that I had to keep my cholesterol below 220. Well, probably within several years thereafter, I was told it had to be below 200. And then within the past several years I was told it had to be below 180.

There's a certain evolution, there's an evolution with respect to the food pyramid. Things change. What's today acceptable in terms of milligrams for sodium or sugar may not be acceptable two years from

now.

So to take this overly prescriptive approach as has been proposed by the Governor is basically to say that every time there's a change in the science, there's a new finding, that we in fact have to change the statute.

These things can be done by regulation. They can be done, in effect, far more readily without taking up the time and attention of this body and the other house. If in fact we disagree, we can always certainly take issue. There's provision for a constant review, so that there's reports to the Legislature no more than one year apart.

We have provided for the first time in probably about 25 years for an increase in the amount of monies that would go to schools based on the number of lunches that they are providing under the national program. There's probably somewhere in the area, I believe, of about 1400 lunches that are served every day in school. We're proposing to provide the additional money, based on lunches and the breakfasts, by the way. There's probably some 500,000 breakfasts that are provided.

One of the things that concerned me -- and if I may, simply because I had the opportunity to review the Governor's proposed program bill, and I must sort of share with you my reason for getting where it is that I've arrived -- I was troubled by the fact that there was language in the bill that went so far as to say that nothing in the bill prohibited students and staff from drinking from water fountains. I mean, that's quite literally in the bill. And, I mean, if you're being that prescriptive that you have to say it's okay to drink from a water fountain, I must share with you that you've gone a little over the top, at least in my opinion.

The Governor's proposal would require breakfasts to be provided in every single school district. Now, for the past 10 to 12 days we have been trying to find out the costs associated with providing breakfasts in school districts. There are things that flow from that. There may be school districts, for example, that use the same school buses to run children one time, and then take another run -- perhaps they start off with the younger

kids in the morning, perhaps they start off with the older kids in the morning, and in some instances they'll do a second run to pick up those kids again.

There will be transportation consequences. Will we require more buses if we're going to take all the kids together? Are we going to have young children and adolescents in with high school students? There are just issues that we've been asking for answers to that we have yet to receive answers to.

And if you're going to provide a breakfast, as is proposed by the Governor, for every student, what does that do in part to your contracts? Now you have part-time employees, many of whom are working in cafeterias, who may not be working a full day. If they have to come in and work a full day, are there consequences to the school district? Do they become entitled to retirement benefits because they're working a longer day? These are issues, again, that we've been asking for answers to, and we have yet to receive them.

So I think this is a balanced

approach. I think it's a reasonable approach. I think it's a fair approach. I think it gets us again to the same place.

We look at the integration of phys ed and nutrition. We look merely not at what is it that's going to be served to children, but what is it that's going on in the children. Do you throw a ball down in the middle of the court and say, Okay, kids, just play for the next half hour, 45 minutes? There has to be a better way of also dealing with the phys ed side of the obesity and overweight question as well.

We are not capable of micromanaging. We should not be micromanaging. But we should certainly make sure that at all times we retain our oversight. And this bill would enable us to do that.

Thank you, Mr. President.

ACTING PRESIDENT ROBACH: Thank you, Senator Saland.

Senator Sampson.

SENATOR SAMPSON: I defer to my colleague.

ACTING PRESIDENT ROBACH: Senator Sampson is yielding to Senator Oppenheimer.

SENATOR OPPENHEIMER: He's a gentleman and a scholar.

I'm very, very supportive of Senator Saland's bill, and I'll give you some of the reasons, though I think really Senator Saland hit upon many of them.

The requirement to have a breakfast mandate makes no sense to me at all, no sense. Because there are many homes where breakfast is served. It was always served in my home before the children left. What am I now to tell them, you can't eat breakfast at home, you have to eat it at school? Makes no sense.

And as far as any contractual arrangements we have, the additional costs, I mean it could really escalate. We need people there to offer this, and the contracts have been signed and they didn't include breakfast, to say nothing about the buses. I mean, it just doesn't make sense to me.

I think also that if we put nutritional requirements into law, we are in for very big problems. One year it is good to

eat eggs, and three years later it's bad. And then two years after that, it's good to eat eggs. I mean, you cannot possibly keep up with the changing scientific data. I don't even know if anybody should follow the scientific data, because just eat healthy, eat smart, use your brain and I think you're best off. Anything in moderation is fine.

But I think to put it into law, we would have to come back every time we wanted to change it from 6 ounces to 8 ounces or 12 ounces, you know, the amount of juice in the container. It makes no sense. So it really should just be regulation where it can be done by our Department of Health and our Department of Education.

The fact that we will increase by 10 cents per meal to cover the increased costs in the school lunch program I think is a wonderful move that we are finally making. And there is no such increase in monies going to districts in the Governor's proposal, and I think he really has to take a close look at that.

If we can manage to find a way to

provide more local ingredients into our lunch program, more vegetables and fruits that are grown locally, I think that's a win-win. It's a win for our agricultural people in our state who are already hurting, and I think anything we can do to assist them is beneficial.

And we just have to find a way to make that possible so that we can use the local fruits and vegetables, which in some cases are going to be a little more expensive but it certainly is of value to our economy and I think to the children because it's very, very fresh.

I think this is an excellent bill, and I hope that we will be able to negotiate something closer to this than to what the Governor has offered us.

Thank you.

THE PRESIDENT: Is there any other Senator wishing to speak on the bill?

Senator Sampson.

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

I want to commend Senator Saland for this legislation, especially the piece of

the legislation that deals with allowing school districts to purchase New York State agricultural products. And I commend you especially; that will be very helpful to our farmers upstate and our upstate economy.

One thing I would love to see if this was in the bill would be the posting of nutritional values. We talk about we want our kids to eat nutritional meals and we're concerned about the cholesterol level. And, you know, I'm concerned about when our kids are eating or what foods they eat, because you are what you eat.

But at the same time, we need to be posting the nutritional levels that kids are consuming. So if the bill could be tweaked, that's the only piece of the bill I would like to see tweaked dealing with the nutritional information that needs to be provided to our children so they know exactly what they're eating.

But once again, I want to commend the sponsor for the legislation.

Thank you, Mr. President.

THE PRESIDENT: Is there any

other Senator that would like to speak on the bill?

Senator Stavisky.

SENATOR STAVISKY: Thank you, Mr. President.

It's been said that breakfast is the most important meal of the day. And a number of years ago, back I guess it was in the early '70s when my husband was in the Assembly chairing the Education Committee, he was the sponsor of the school breakfast bill, the first one I believe in the country, but certainly the current law where we provide school breakfasts -- breakfasts in the schools of New York.

The reason I mention this, Mr. President, is that earlier today we dedicated a post office in Flushing in my district in Leonard's memory. And while I wish there had been a breakfast component to this bill, I think it's a great start and I'm delighted to support this bill.

Thank you.

THE PRESIDENT: Is there any other Senator who would like to speak on this

bill?

Senator Maziarz? Senator Robach? No? Please.

(Laughter.)

SENATOR DUANE: Explanation.

THE PRESIDENT: Senator Robach? No? Not even Senator Duane? Breakfast is the most important meal of the day. Dinner must be, because a lot of members seem fed up around here.

(Laughter.)

THE PRESIDENT: The Secretary will read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Announce the results.

THE SECRETARY: Ayes, 61. Nays, 0.

THE PRESIDENT: The bill is passed.

Senator Maltese.

SENATOR MALTESE: Mr. President,

would you lay aside 1176 for the day.

THE PRESIDENT: Senate Calendar 1176 will be laid aside for the day.

With that, that completes the controversial reading of the calendar, Senator Maltese.

SENATOR MALTESE: Is there any other business at the desk?

THE PRESIDENT: Fortunately no, Senator.

SENATOR MALTESE: There being no further business, I move we adjourn until Tuesday, May 22nd, at 11:00 a.m.

THE PRESIDENT: On motion, the Senate is adjourned until Tuesday, May 22nd, at 11:00 a.m.

(Whereupon, at 6:23 p.m., the Senate adjourned.)