NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

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3:14 p.m.

REGULAR SESSION

SENATOR JOSEPH A. GRIFFO, Acting President

STEVEN M. BOGGESS, Secretary

P R O C E E D I N G S

ACTING PRESIDENT GRIFFO: The Senate will come to order.

I ask all present to rise and join with me as we recite the Pledge of Allegiance to our Flag.

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

ACTING PRESIDENT GRIFFO: The invocation today will be offered by the Reverend Richard Klueg, pastor of the Baptist Church of Northville.

REVEREND KLUEG: Thank you. Please bow with me.

Our gracious Father in heaven, we want to thank You so much for being here today for these men and women serving our state, serving You. We ask for Your wisdom for them. We ask You to give them courage, ask You to give them insight.

We pray for their personal lives, Father, that You will bless them, their families, all their loved ones, give them good health and strength.

Father, we pray for our state. We

thank You for it, for the prosperity we enjoy, the peace we enjoy. We pray that will continue and abound. And I pray that the work that's done here today will help us to progress even further in those directions.

We thank You so much. And I pray in the name of my savior, Jesus Christ.

Amen.

ACTING PRESIDENT GRIFFO: Thank you, Reverend Klueg.

The reading of the Journal.

THE SECRETARY: In Senate, Monday, April 14, the Senate met pursuant to adjournment. The Journal of Sunday, April 13, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from

state officers.

Motions and resolutions.

Senator Seward.

SENATOR SEWARD: Yes, Mr. President. On behalf of Senator DeFrancisco, on page number 30 I offer the following amendments to Calendar Number 545, Senate Print Number 1829A, and ask that the said bill retain its place on the Third Reading Calendar.

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

Senator Skelos.

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

ACTING PRESIDENT GRIFFO: Yes, we do. The Secretary will read.

THE SECRETARY: On page 41, Senator Saland moves to discharge, from the Committee on Codes, Assembly Bill Number 614 and substitute it for the identical Senate Bill Number 2452, Third Reading Calendar 752.

And on page 42, Senator Volker moves to discharge, from the Committee on Codes, Assembly Bill Number 5513C and substitute it for the identical Senate Bill Number 3845C, Third Reading Calendar 757.

ACTING PRESIDENT GRIFFO: Substitutions so ordered.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could adopt the Resolution Calendar, with the exception of Resolution 5284.

ACTING PRESIDENT GRIFFO: All in favor of adopting the Resolution Calendar, with the exception of Resolution 5284, signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT GRIFFO: Opposed, nay.

(No response.)

ACTING PRESIDENT GRIFFO: The Resolution Calendar is adopted.

Senator Skelos.

SENATOR SKELOS: I believe, Senator Connor, you wanted to make a comment.

ACTING PRESIDENT GRIFFO: Senator

Connor.

SENATOR CONNOR: Yes, thank you, Mr. President. Just briefly.

This resolution recognizes the achievements of Dr. Frank Macchiarola, who I think many of us know. He has served in many positions over the years, including as chancellor of the New York City Board of Education. He's served on various commissions and governmental bodies. He served as the dean of Cardoza Law School. And for these last so many years, he has been the president of St. Francis College.

He is now retiring from that position, and this resolution recognizes his many accomplishments, both his scholarly accomplishments as well as the public service he has rendered from time to time over a long and wonderful career.

There is an event where he will be recognized and honored and where the resolution will be presented to benefit St. Francis College, which I'm privileged to have in my district, a mere two or three blocks away from my home -- a wonderful

institution that's graduated many, many distinguished alumni, including Dr. Frank Macchiarola.

And I would ask if any of my colleagues would like to join on the resolution -- I suspect perhaps Brooklyn colleagues or others would like to -- that I would open it up.

Thank you, Mr. President.

ACTING PRESIDENT GRIFFO: Thank you, Senator Connor, for your comments on Resolution 5204.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could have Resolution 5284, by Senator Marcellino, read in its entirety at this time.

ACTING PRESIDENT GRIFFO: Senator Skelos, without objection, will we open up the Connor resolution, 5204?

SENATOR SKELOS: Before we read that, I believe Senator Connor wanted to have his resolution opened up for sponsorship. If anybody wishes not to cosponsor it, they should notify the desk.

ACTING PRESIDENT GRIFFO: So

noted. If you choose not to be a cosponsor, please notify the desk on Resolution 5204 by Senator Connor.

The Secretary will now read Resolution 5284, from Senator Marcellino.

THE SECRETARY: By Senator Marcellino, Legislative Resolution Number 5284, commemorating the 38th Anniversary of Earth Day on April 22, 2008.

"WHEREAS, It is the sense of this Legislative Body to recognize and pay tribute to those organizations dedicating their purposeful work to increasing public awareness of, and appreciation for, the natural resources of New York, recognizing the role all citizens have in protecting the environment and the quality of life in this Empire State; and

"WHEREAS, On April 22, 1970, approximately 5 million Americans participated in the first Earth Day demonstration to express their concerns over the environment and the fate of the planet; and

"WHEREAS, In the past 38 years that have passed since the original Earth Day, the

planet has been subjected to the continuing burdens of world population growth, increasing commercial and residential development, ocean pollution, increasing stores of toxic and nuclear waste, and the other similar assaults that have exacerbated the growing dangers of global climate change, ozone depletion, toxic poisoning deforestation, and mass species extinctions; and

"WHEREAS, Following the first Earth Day and the demonstrations of the concerns of over 20 million Americans, a collective national action has resulted in the passage of sweeping new laws to protect the invaluable resources of air, land and water; and

"WHEREAS, April 22, 2008, marks the 38th anniversary of Earth Day, a day set aside to celebrate the beauty and bounty of our environment and to revitalize the efforts required to protect and maintain respect for the environment and its resources; and

"WHEREAS, Earth Day 2008 activities and events will educate all citizens on the importance of acting in an environmentally sensitive fashion by recycling, conserving

energy and water, using efficient transportation, and adopting more ecologically sound lifestyles; and

"WHEREAS, Earth Day 2008 activities and events will educate all citizens on the importance of supporting the passage of legislation that will help protect the environment, and will highlight the importance of a heightened awareness of environmental concerns amongst our state's leaders; and

"WHEREAS, The goal of Earth Day 2008 is not to plan only one day of events and activities, but to continue worldwide efforts to protect all aspects of the environment; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to commemorate the 38th Anniversary of Earth Day on April 22, 2008; and be it further

"RESOLVED, That this Legislative Body congratulate all the concerned citizens of New York State who have embraced the responsible work of protecting and preserving the environment for future generations."

ACTING PRESIDENT GRIFFO: Senator

Marcellino.

SENATOR MARCELLINO: Thank you, Mr. President. I rise because Senator Morahan, my seatmate over here, urged me to do so today to remind everyone we're commemorating the 38th anniversary of Earth Day, and to also remind us that we should never, ever take for granted what we have on this planet, and that only one day a year should not be the only day we think about the earth and our environment.

They ain't making any more planets like this. This is the only one we're going to have. This is the only one our children and our grandchildren and future generations are going to have. We owe it to them to leave this place better than we found it and to make sure we preserve and protect the natural resources. And amongst those natural resources are the critters, the wildlife, plants and any other things that inhabit this planet that we share.

We have many challenges ahead of us. We have mountains of tires; no one knows what to do with them. We have mountains of

electronic equipment that goes out of date -- almost two days after you buy something, there's a new one on the market. What are we going to do with the old stuff? We call it e-waste. That's a fancy term for garbage.

We've got to learn how to handle what we generate and what we produce. We've got to learn how to protect the species that we, because of our ability to take, are taking faster than they can reproduce and replenish themselves.

There are several bills going to come up during the year where we're going to ask to preserve and limit the take on catch on certain types of fish and other wildlife. We need to do that to preserve and protect them and make sure that they can maintain themselves on this planet. We're just too good at taking. We've got to learn how to put back and leave alone.

We need to go into new directions and new technologies to generate power. We've got to get away from fossil fuel. We need a strong energy policy not only in New York State but in the United States of America. We

need an energy policy.

I am calling upon all the young people that I spoke to today and everyone in this chamber and everyone you can reach: Go out there, talk about this issue, talk about our planet and make sure we keep it and preserve it and protect it. It is the most important thing we will be doing and that we can do for our children, our grandchildren, and future generations to follow. This is an imperative.

Mr. President, I ask that this resolution be opened to all members of the chamber. Anyone wishing not to be on it, please notify the desk. It is for everyone, it should be for everyone.

And I thank you and urge everyone to remember, not only one day a year but every day of the year should be Earth Day.

Thank you, Mr. President.

ACTING PRESIDENT GRIFFO: Thank you, Senator Marcellino.

Senator Skelos, shall we apply the usual consideration?

SENATOR SKELOS: Yes. If anybody

wishes not to sponsor the resolution, they should contact the desk.

ACTING PRESIDENT GRIFFO: Thank you.

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

(Response of "Aye.")

ACTING PRESIDENT GRIFFO: Opposed, nay.

(No response.)

ACTING PRESIDENT GRIFFO: The resolution is adopted.

If you choose not to be on, please notify the desk.

Senator Skelos.

SENATOR SKELOS: If we could go to the noncontroversial reading of the calendar.

ACTING PRESIDENT GRIFFO: The Secretary will read.

THE SECRETARY: Calendar Number 130, by Senator Farley, Senate Print 6751, an act to amend the Civil Service Law and the Public Authorities Law, in relation to civil service status.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 723, by Senator Skelos, Senate Print 4055, an act to amend the General Business Law, in relation to authorizing collateral loans.

ACTING PRESIDENT GRIFFO: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 30th day.

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number

739, by Senator Leibell, Senate Print 3643, an act to amend the Executive Law, in relation to powers and duties.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 741, by Senator Leibell, Senate Print 3811, an act to amend the Penal Law, in relation to establishing --

SENATOR SKELOS: Lay it aside for the day, please.

ACTING PRESIDENT GRIFFO: Lay it aside for the day.

THE SECRETARY: Calendar Number 746, by Senator Maziarz, Senate Print 500, an act to amend the Penal Law, in relation to the crime of obstructing firefighting operations.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 747, by Senator Marcellino, Senate Print 610, an act to amend the Penal Law, in relation to establishing the crime of terrorism recruitment.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57. Nays,

2. Senators Hassell-Thompson and Montgomery recorded in the negative.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 748, by Senator Skelos, Senate Print 640, an act to amend the Penal Law, in relation to possession of disguised knives.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 748 are Senators Duane, Hassell-Thompson, Montgomery, Perkins, Schneiderman and Serrano.

Ayes, 53. Nays, 6.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 749, by Senator Padavan, Senate Print 1600, an

act to amend the Criminal Procedure Law and the Penal Law, in relation to aggravated crime conduct.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT GRIFFO: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 749 are Senators Adams, Dilan, Duane, Hassell-Thompson, Huntley, L. Krueger, Montgomery, Perkins and Schneiderman. Also Senator Gonzalez.

Ayes, 50. Nays, 10.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 750, by Senator Winner, Senate Print 2123, an act to amend the Penal Law, in relation to the imposition of driver's license suspensions.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT GRIFFO: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 750 are Senators Adams, Connor, Diaz, Dilan, Duane, Gonzalez, Hassell-Thompson, Huntley, L. Krueger, Montgomery, Perkins, and Schneiderman.

Ayes, 48. Nays, 12.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 751, by Senator Libous, Senate Print 2146, an act to amend the Penal Law, in relation to provision of large quantities.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 752, substituted earlier today by Member of the Assembly Paulin, Assembly Print Number 614, an act to amend the Penal Law, in relation to criminal mischief.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number

754, by Senator Flanagan, Senate Print 3329, an act to amend the Penal Law, in relation to payment of restitution.

ACTING PRESIDENT GRIFFO: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 90th day.

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 756, by Senator Volker, Senate Print 3566, an act to amend the Criminal Procedure Law, in relation to waiver of pre-sentence investigations.

ACTING PRESIDENT GRIFFO: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 30th day.

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59. Nays, 1. Senator Perkins recorded in the negative.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 757, substituted earlier today by Member of the Assembly Paulin, Assembly Print Number 5513C, an act to amend the Penal Law, in relation to changing the threshold of age.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59. Nays, 1. Senator Montgomery recorded in the negative.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 759, by Senator Libous, Senate Print 4096, an

act to amend the Penal Law, in relation to increasing penalties.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 760, by Senator Golden, Senate Print 4270, an act to amend the Penal Law, in relation to intentional damage.

ACTING PRESIDENT GRIFFO: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 90th day.

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT GRIFFO:

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 760 are Senators Duane, Hassell-Thompson, Huntley, Montgomery and Perkins.

Ayes, 55. Nays, 5.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 761, by Senator Nozzolio, Senate Print 4330, an act to amend the Penal Law, in relation to expanding the definition.

ACTING PRESIDENT GRIFFO: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 90th day.

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 765, by Senator Volker, Senate Print 5452, an act to amend the Criminal Procedure Law, in

relation to notifying certain crime victims.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 766, by Senator Lanza, Senate Print 5551, an act to amend the Penal Law, in relation to arson in the first degree.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT GRIFFO: The bill is passed.

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

SENATOR SKELOS: Thank you, Mr. President.

If you would please recognize Senator Dilan.

ACTING PRESIDENT GRIFFO: May we have some order in the house, please.

Senator Dilan.

SENATOR DILAN: Mr. President, there will be an immediate meeting of the Minority conference in the Minority Conference Room.

ACTING PRESIDENT GRIFFO: There will be an immediate meeting of the Minority conference in the Minority Conference Room.

Senator Skelos.

SENATOR SKELOS: Mr. President, I'm informed that the conference will last 15 minutes. So there will be a Rules Committee meeting at five to 4:00 in the Majority Conference Room.

ACTING PRESIDENT GRIFFO: At 3:55 there will be a meeting of the Rules Committee in the Majority Conference Room.

The Senate will stand at ease.

(Whereupon, the Senate stood at ease at 3:39 p.m.)

(Whereupon, the Senate reconvened at 4:05 p.m.)

ACTING PRESIDENT GRIFFO: The Senate will come to order.

Senator Skelos.

SENATOR SKELOS: Mr. President, if we could return to reports of standing committees for the report of the Rules Committee.

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

We will return to the reports of standing committees.

The Secretary will read.

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

Senate Print 6793, by Senator Oppenheimer, an act to amend the Tax Law;

And Senate Print 7038, by Senator Flanagan, an act to amend Chapter 266 of the Laws of 1986.

Both bills ordered direct to third reading.

ACTING PRESIDENT GRIFFO: Senator Skelos.

SENATOR SKELOS: Move to accept the report of the Rules Committee.

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

(Response of "Aye.")

ACTING PRESIDENT GRIFFO: Opposed, nay.

(No response.)

ACTING PRESIDENT GRIFFO: The report is accepted.

Senator Skelos.

SENATOR SKELOS: If we could take up Calendar Number 868, by Senator Flanagan.

ACTING PRESIDENT GRIFFO: The Secretary will read.

THE SECRETARY: Calendar Number 868, by Senator Flanagan, Senate Print 7038, an act to amend Chapter 266 of the Laws of 1986, amending the Civil Practice Law and Rules.

ACTING PRESIDENT GRIFFO: Read the last section.

SENATOR DUANE: Lay it aside, please.

ACTING PRESIDENT GRIFFO: Lay it aside.

There is a substitution at the desk. The Secretary will read.

THE SECRETARY: In relation to Calendar Number 867, Senator Oppenheimer moves to discharge, from the Committee on Investigations and Government Operations, Assembly Bill Number 9679 and substitute it for the identical Senate Bill Number 6793, Third Reading Calendar 867.

ACTING PRESIDENT GRIFFO: Substitution so ordered.

SENATOR SKELOS: Mr. President, please lay that bill aside.

ACTING PRESIDENT GRIFFO: And the bill is laid aside.

SENATOR SKELOS: Mr. President, if we could take up Calendar Number 868, controversial.

ACTING PRESIDENT GRIFFO: The

Secretary will ring the bell.

The Secretary will read Calendar Number 868.

THE SECRETARY: Calendar Number 868, by Senator Flanagan, Senate Print 7038, an act to amend Chapter 266 of the Laws of 1986, amending the Civil Practice Law and Rules and others.

SENATOR PARKER: Explanation.

ACTING PRESIDENT GRIFFO: Senator Flanagan, an explanation has been requested.

SENATOR FLANAGAN: Thank you, Mr. President.

This bill is actually fairly straightforward. I just want to make sure I'm getting the name right. It extends the excess medical malpractice liability insurance program for three years, through 2011.

And it provides what I think most people would agree is the first real opportunity for a reduction in malpractice premiums across the state, roughly between 6 and 8 percent, a real reduction to practicing physicians in New York State.

ACTING PRESIDENT GRIFFO: Thank

you, Senator Flanagan.

Is there any other Senator wishing to be heard?

Then the debate is closed.

The Secretary will ring the bell.

The Secretary will read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

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

SENATOR DeFRANCISCO: Earlier this year Superintendent Dinallo of the Insurance Department appointed a commission to study the issue of malpractice insurance and medical malpractice in general. That report has not been issued as yet, and it was a comprehensive study that involved all stakeholders, not only people of the medical profession, the insurance industry, as well as those who represent the consumers of medical services.

And this was one of the proposals that was suggested. But there were many, many other proposals made by all the --

ACTING PRESIDENT GRIFFO: Senator DeFrancisco, excuse me.

Can we have order, please, so we can hear the speaker.

Thank you, Senator DeFrancisco.

SENATOR DeFRANCISCO: So there were many other proposals that could cut down the cost of medical malpractice insurance other than simply changing the amount of coverage that you would need -- real, substantive changes that would not hurt the consumer as well.

So I'm going to vote aye on this bill as a partial measure but would hope that the commission report would come out and we'd do a more comprehensive study that would cut the cost of litigation not just by artificially changing the amount of money that the policies would cost a doctor, but also taking into account many cost-saving measures that people who protect consumers have suggested that would cut the cost of

litigation, so that those who are injured can get due recovery and doctors can get the relief that they are arguing for.

So I'll vote yes for this, but I am looking forward to some more balanced approach that covers all sides of this issue so that a more permanent, better solution can be constructed.

Thank you, Mr. President. I vote aye.

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

Senator Flanagan, to explain his vote.

SENATOR FLANAGAN: Thank you, Mr. President. Just briefly to explain my vote.

I appreciate the cooperation of all the members. And I want to join in the remarks of Senator DeFrancisco, who I think takes a very principled and reasoned approach on these issues, even though we don't always necessarily agree with each other.

I think this a first step in something that needs a real serious look and a

tremendous amount of work. The task force was put together, but the task force has not finished its work. The task force was supposed to do a report, but that report has not been issued.

There were representations from the prior administration that we would see legislation in the form of a program bill, but that didn't happen. Now we have representations from the new administration, and in deference to them, they probably deserve a little bit of time.

But the whole idea was that we would see a report. Now there may not be a report. And now we're not sure we're going to see a program bill.

And the reality is that it doesn't really matter what part of the state you're from, this is a public health crisis. I'll just give you one or two examples.

On Long Island, the average OB-GYN pays $183,000 in malpractice premiums. That's over $15,000 a month net -- before you turn on a light, before you buy a paperclip, before you pay anyone in your office, and before you

deliver one iota of healthcare.

A neurosurgeon pays $300,000. That's $6,000 a week, $24,000 a month. None of us would want to be in that situation.

There's something drastically wrong, and we -- the Legislature and the Executive -- have failed to properly address this issue. Now we're coming to the point where at the end of June we can either start dealing with this now in a serious and reasoned way, or we can do it in crisis mode at the end of June.

I'm not suggesting that this a cure-all. But this is a piece of legislation that gives everybody an opportunity to make a real vote to actually reduce -- not increase, but reduce -- malpractice premiums across the State of New York.

So frankly I think anybody who votes against this is sending a clear message to their doctors that you're not listening or you're not getting it. And the public. This has to do about access to healthcare and access to quality healthcare and affordable healthcare.

Now, do we have to talk about reimbursement and other aspects of the system? You bet we do. But if we don't start somewhere and start here and start now, we are absolutely missing the boat. We owe this to our folks in the medical profession, but frankly we owe it more to our constituents, who are going to be looking for that quality healthcare.

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

Senator Winner, to explain his vote.

SENATOR WINNER: I rise in support of this measure and vote enthusiastically for it.

I'm frankly astonished that anyone from -- in particular, from any upstate area would ever vote for this bill. This is a bill to provide relief to our physician community that is in desperate straits, particularly in the upstate areas where there are shortages of physicians, there are shortages of specialists.

And during the debate on the

budget, it seemed to be that this was a measure that was moving forward, there were funds identified to pay for it through the HCRA pools and, therefore, this was going to provide the type of relief that the physician community was certainly looking for.

So, you know, frankly I think anybody that would vote against this is really making not only a dumb vote on the policy but, really, certainly a pretty dumb vote politically, because there can be really no explanation.

There's nobody against this bill. The bill can be paid for, again, through the HCRA pools. It provides immediate relief. And for those of you who supported the program of Doctors Across New York to provide for scholarship relief, it's not going to help a whole lot to provide for scholarship relief if we don't have any doctors, and particularly in our upstate regions.

So I would suggest that anyone from the upstate regions who are facing any kind of physician shortages that would vote against this bill that does not hurt anyone but only

helps the physician community that is admittedly in dire straits due to this malpractice crisis, I just find that to be an absolutely unsupportable position.

So I enthusiastically vote yes.

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

Senator Hannon, to explain his vote.

SENATOR HANNON: Thank you, Mr. President.

This is a very important measure. The malpractice problems, which are almost on the point of a crisis, have two parts to it. They originate, obviously, with what's taking place in medical care. But we had hoped we would have addressed it during the budget, because it's both hospitals and individual physicians that need to be addressed, need to have different approaches taken.

This is the approach that will say to the individual physician: We want you to continue to practice.

I come from Long Island. The numbers on Long Island in regard to costs for

medical malpractice are incredible. It's five times the cost to be an obstetrician in Nassau County than it is to be in Monroe County. We have the same standard of care, we have the same quality of physicians. Five times the cost.

We're finding that physicians are quietly but surely leaving the practice of obstetrics. They're moving, they'll just do gynecological practice, they're leaving obstetrics to somebody associated with the hospital.

What's going to happen in the future I don't know. It's been continually reported -- I've been to a huge meeting with Superintendent Dinallo before the Nassau County Medical Society. There was an incredible amount of quiet anger present in that room. There were people who actually stomped out of that room saying: "Look, you haven't given us a sure-fire solution. We're still going to be facing the problems next year that we're facing today. I'm leaving the state."

Superintendent Dinallo has done a

very good job at trying to marshall all of the different forces that are involved in this. There are no people at fault, but we do have a system that's not working. And we do not have the same momentum behind this malpractice task force that we had just two months ago.

So what we are trying to do here is address the part of the malpractice problem that's related to the delivery of services to the individuals by the physicians. There's much more to be done, that's obvious. But this is a concrete solution.

Senator Winner has pointed out the funding is there, it's existent, so we can pass this bill without someone saying where are you going to get the money.

I think that it is a very solid bill to pass. I can't see why anybody would oppose it. And I think I would just sit down by saying I'll vote yes, Mr. President.

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

Senator LaValle, to explain his vote.

SENATOR LaVALLE: Thank you,

Mr. President.

Senator Hannon, Senator Winner, Senator Flanagan, I think their remarks were very much on target.

But I want to say I live in a physician community. A lot of docs live in Port Jefferson, Belle Terre and the surrounding area. So wherever I go, I hear about this issue and whether physicians at many different levels can continue to practice in this state.

The one thing that I want people to remember from my remarks here is that many times we get so involved here in Albany with insider baseball, whether we want a bill to be -- language to be included in the budget or a freestanding bill, whether we want to do it in April or we want to do it in May or June.

Doctors have are very much involved with their patients. They're not involved in all of this insider baseball. They want to be able to practice with a free mind and be able to deliver services to our constituents.

So it is -- as someone said, Senator Winner, people voting no on this bill,

I can't possibly understand that, because people want certainty in their lives. They want to be able to count on something. And this continues uncertainty in people's minds.

So I vote for certainty. I vote for my constituents who want access to affordable care and for the physicians to be able to give that care and understand that there's some stability in their lives.

I vote yes, Mr. President.

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

Senator Klein, to explain his vote.

SENATOR KLEIN: Thank you, Mr. President.

I vote no on this legislation, and I think have a pretty good reason.

This is doing absolutely nothing to really benefit those doctors who pay an awful lot of medical malpractice insurance because of the specialty in which they practice and in the locality where they practice. This is a broad stroke where everyone is going to be benefiting whether or not they have a high-yield or a high-need practice.

One of the things I say time and time again is we don't have a medical malpractice crisis. We do have a problem if you're a doctor practicing in a specific specialty in a specific locality. Well, what do I mean by that? If you do obstetrics, if you do neurosurgery, if you do orthopedic surgery and you happen to practice downstate, yeah, you pay an awful lot of money in medical malpractice insurance.

But under this legislation, we're not only benefiting those high-need or high-risk doctors, we're also benefiting those who have no risk.

I have some statistics in front of me which I'd like to go over. As I said earlier, Suffolk County, if you practice obstetrics, you're paying, on average, $177,000 a year. That's an awful lot of money. That person deserves to be helped. However, if you're also a dermatologist in Suffolk County, you're only paying about $8,000 a year. That should be considered a cost of doing business.

One of the things that I've

proposed for a couple of years now is I think the way to go about this, it would be a tax credit. If you pay more than 25 percent of your total income in medical malpractice insurance, then you should be involved in some type of sliding scale where you would benefit and get up to $25,000 to alleviate the high cost of medical malpractice insurance. That's the way to do it, by surgically -- and excuse the pun -- helping those people who really need help.

The other reason why I oppose this legislation is that we're drawing from a pool, the high-risk pool, which I think most of us know here has absolutely no money. It's $700 million in the hole. It was raided by previous administrations. And there's certainly no money to actually be able to help these doctors under this plan.

One of the things that I think we need to do if we're really going to get serious about helping doctors who have very high medical malpractice insurance, and I think really benefiting the entire medical industry, is to have a very comprehensive

approach. Which means punishing those bad doctors who time and time again commit the same medical malpractice over and over again.

The stats that are out there. You have 8 percent of the doctors are committing the same medical malpractice over and over again. Why should we actually hurt the other doctors who go through a whole career without having a medical malpractice verdict against them?

So I think we certainly need to do something, but I think it has to be a comprehensive approach, not just a very broad stroke to hand doctors money whether or not they're guilty of malpractice and whether or not they did the right thing to reduce medical malpractice premiums.

So I vote no, Mr. President.

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

Senator Schneiderman, to explain his vote.

SENATOR SCHNEIDERMAN: Thank you, Mr. President. I also am voting against this measure.

This proposal, which essentially just requires -- it reduces the amount of malpractice insurance that doctors have to cover and substitutes in its place public funds, taken supposedly from HCRA, which doesn't have the money and needs the money. So this is essentially just a blanket subsidy for every doctor in the state.

As Senator Klein has pointed out, it doesn't distinguish by specialty. It doesn't distinguish by region. So it's a blanket subsidy.

I think even more offensive to me, frankly, is the fact that it doesn't distinguish good doctors from bad doctors. This was rejected in the budget negotiations because it is really not a good solution of any kind to the malpractice problem. The problem with malpractice in this state primarily is that 4 percent of the doctors are responsible for 50 percent of the malpractice payouts. We do not regulate bad doctors.

And what is really offensive about this proposal is that this provides subsidies to even the doctors who are so bad they can't

buy insurance in the open market, that they're forced to get insurance from the New York State Medical Malpractice Insurance Program. That is a high-risk pool of doctors.

This provides a subsidy, takes state dollars to subsidize the practice of Dr. Harvey Finkelstein and every other bad doctor out there. This is a part of the problem, not a part of the solution. It is absolutely clear that the Office of Professional Medical Conduct has not been doing its job. We are not disciplining the bad doctors.

And you know what you're doing? You force every good doctor in this state, the overwhelming majority of doctors in this state who are decent and hardworking and provide the best healthcare in the world, to subsidize the bad doctors, because every licensed carrier of medical malpractice insurance is required to carry a certain portion of the MMIP doctors, the high-risk-pool doctors. How are these bad docs subsidized? By the premiums of the good doctors.

You are hurting good doctors with

this bill. You are not distinguishing between good and bad doctors. You want to vote for this bill? Fine. Let's call it Harvey's Law and name it after Harvey Finkelstein, because I know you guys like to name laws after people.

This bill to subsidize every doctor no matter how bad they are, regardless of their medical situation, their specialty or their region, is a bad solution to the problem. It will never pass the Assembly. And if we had integrity, it would never pass this house.

I vote no.

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

Senator Breslin, to explain his vote.

SENATOR BRESLIN: Thank you, Mr. President.

I couldn't agree more with both Senator Schneiderman, Senator Klein. This is a bad bill.

When we took this up during the budget process, it was rejected. It was

rejected because there wasn't a thorough analysis at the same time that a commission is operating, as Senator Hannon pointed out.

It's estimated that this will cost $65 million. What does that do? It allows, as Senator Schneiderman has pointed out, to let doctors who haven't been policed, haven't been disciplined, to continue to practice medicine in this state. Four percent of the doctors in this state take 50 percent of the dollars. That's wrong.

And we also have to analyze the professions. As Senator Klein pointed out, you can't put dermatology as the same as neonatal care, brain care, or other specialized areas of medicine.

It's not a very well thought out bill. It's a bill that needs a comprehensive review by both houses. We all know that this is a one-house bill. We all know that it's not going anyplace beyond here. So let's look at the commission report from Superintendent Dinallo. Let's do it on a bipartisan basis, to make sure that good doctors have malpractice insurance at a reasonable rate,

that bad doctors are weeded out, and that the process comes together as a whole to provide better medicine in this state at a lower cost.

I vote no.

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

Senator Young, to explain her vote.

SENATOR YOUNG: Thank you, Mr. President.

I've listened intently to the arguments from the other side of the aisle as far as why they think this is a bad bill. I will say to you I think this is a great bill, and I wholeheartedly support it.

I come from a part of the state that suffers from a severe physician crisis. And yes, we have to help the doctors in the specialties. I agree with that. But we also have to help primary care physicians.

And when you say that we shouldn't help, for example, primary care physicians, that's wrong. I have primary care physicians that have caseloads of 5,000 to 10,000 people that they have to take care of because we do not have enough doctors. We don't have enough

obstetricians, we don't have enough of the specialties.

And for the characterization to say that this only addresses a problem and it's not a crisis, that's wrong. And I think that's out of touch with the needs of this state and especially upstate.

If we don't take some kind of action and we don't do something now, we will end up driving, I believe, every single doctor out of the state. And that's why passing this bill, making a statement, standing up for accessible, affordable healthcare is the way to go.

And so I would urge all of my colleagues to vote yes.

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

Senator Krueger, to explain her vote.

SENATOR LIZ KRUEGER: Thank you, Mr. President.

I also rise to explain my vote and why I'm voting no on this bill. We need an institutional and systemic resolution to a

number of the issues that were raised today.

In respect to my colleagues from upstate who have highlighted the shortage of doctors, I've gone to hearings where I heard the Health Commissioner and the Insurance Commissioner explain that the medical malpractice costs in upstate New York are one-fifth of what they are in my district.

It's not medical malpractice costs that are causing a doctor shortage in New York State, it is other problems. And in fact, the Doctors Across New York program that we did support in the budget was one step in the right direction.

But this bill will not do anything to resolve the upstate doctor shortage problem. So we need to make sure that our bills match our problems.

And I am waiting for the recommendations of the task force to come up with a holistic approach to what we do about medical malpractice, because I share my colleagues' concerns. It's not one problem statewide, there are different issues in different specialties. This attempts to be a

one-size-fits-all bill. I feel it's a one-size-fits-none bill.

I also note that there is no explanation in the bill of the fiscal impact or how we're going to pay for it. The answer appears to be we're going to pay for it out of the HCRA funds. But for the record, we didn't move it through the budget through the HCRA funds.

I personally am concerned that too much of the HCRA funds actually are dependent on an expectation of a $5 billion sale of GHI-HIP that is not clear in today's market will ever come through. So I would argue we actually already have a problem in actually having adequate HCRA funds. I believe it is one of the reasons why this didn't get included in the budget.

It's one size doesn't fit all. We don't have the money. It doesn't address the problems we need to address. And I'm hoping that very soon we will come back together with answers from the task force that has been created to address this issue.

And so, today, not the right bill,

won't give us the answers we're looking for, won't give the doctors the answers they're looking for. And so I vote no.

Thank you, Mr. President.

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

Senator Marcellino, to explain his vote.

SENATOR MARCELLINO: Thank you, Mr. President.

I want to congratulate Senator Flanagan for taking on this issue. It's not easy. It's complicated. If it was easy, it would have been done already a long time ago. Senator Flanagan has courage, brought it out.

This is the first step in a process. If I heard him correctly when he explained his vote, he understands this is the first step. We've got to get the process moving. Sitting back, waiting for it to happen hasn't worked. It just hasn't worked. There have been no serious negotiations at any level on this problem.

Doctors are leaving certain specialty professions, they're leaving certain

parts of the state, they're leaving the state as a whole. We're losing. We're losing. We're going to wake up one day and not going to find any obstetricians out there. We're not going to find any doctors willing to do neurosurgery, the high-risk specialties. We've got to start a process, get the negotiations moving, and deal with this.

I keep hearing this from the other side: Oh, it's only a one-house bill, therefore we should vote against it. Well, gee whiz, every bill that has ever passed this chamber and become law was a one-house bill to begin with. I don't know of too many bills that were done before we started.

Nothing moves the process of negotiation like a bill on the floor. Senator Flanagan is to be congratulated for putting this bill out front, getting negotiations started, and making the process move forward. The process will go now better than before because you've got something to work from, as opposed to nothing but talk. And that's what we're getting from some people in this chamber.

Mr. President, I vote aye.

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

Senator Seward, to explain his vote.

SENATOR SEWARD: Thank you, Mr. President.

I rise in support of this legislation. I do so for a number of reasons.

Even though there are members that disagree on this particular piece of legislation, I think all of us can agree that we do have a medical malpractice problem, and some would say even crisis, in this state. The high costs are driving physicians out of New York State, and that is hurting those citizens of this state that require medical care.

Now, there's a lot of talk about the task force that the Superintendent of Insurance has been heading up in terms of dealing with the medical malpractice issue. Now, as chair of the Insurance Committee, I've been involved in that task force. I know Senator DeFrancisco from Judiciary, Senator

Hannon from Health. There have been stakeholders involved on all sides of this issue on many, many meetings last year.

And we have been expecting, from the department, a departmental bill. We expected it at the end of the year. We expected it at the end of January, at the end of February, at the end of March. And here we are in April, and we have yet to see a product from the administration on this issue.

Meantime, Senator Flanagan has developed a partial answer. No one is saying it's the total answer. He has provided us with a piece of legislation that provides some relief to the medical community, some relief to those in this state that require medical care. It is a step in the right direction.

And no one disagrees that the money is in HCRA to pay for this, as we do with the previous coverage for our doctors. This just expands a bit what the state, through HCRA, will be picking up.

Now, some would say this isn't an upstate problem. Well, I am from upstate, and I say it is an upstate problem. We feel it

first. Because, Senator Krueger and others, the income of doctors upstate is not that of, shall we say, a Park Avenue practice. That even though the medical malpractice premiums may be less upstate in many cases, also the income and the revenue to support the medical malpractice costs is also less.

So on a percentage basis, the problem is the same. And we feel it greater upstate because the income coming in to pay for those med-mal premiums is less.

So, Mr. President, I vote in favor of this bill. We still await the report from the Insurance Department. We hope we get it. But if we don't, I know that Senator Flanagan's bill will provide some immediate relief to the medical community. That's why the Medical Society has filed a memorandum in support of this legislation. I think they know best what is in the best interests of the physician community of New York State. They support this bill, as do I.

I vote aye.

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

Senator Rath, to explain her vote.

SENATOR RATH: Thank you, Mr. President. I rise with my colleagues who are supporting the measure.

I would like to point out that yesterday a report came from Dr. John W. Rowe, a professor of health policy, Columbia University. He headed a committee for the Institute of Medicine, which is an arm of the National Academy of Sciences. The report pointed out clearly that we need to be concerned about the crisis in healthcare. The crisis, much of which has been pointed out, clearly stemming from lack of physicians and hopefully not having lack of physicians in the future.

And Senator Flanagan's bill gives us an opportunity to say to the medical community that we are going to support you, we know your circumstances, and we know you need help.

But the most telling point in the report was that 78 million baby boomers are about to turn 65. If there isn't anything else that would frighten us into knowing that

we need to support the health system, I think that number in itself says to us we have got a problem facing New York State. We know how much the aging population needs support from the medical professionals. We know how important it is for the medical professionals to be there for them so that they can avoid serious problems and hopefully have some preventive measures in place.

If the doctors aren't there, the older folks are just going to ignore the problems, and it's going to become even a more serious problem than we're facing now. Seventy-eight million baby boomers about to start turning 65.

I vote aye.

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

Senator Parker, to explain his vote.

SENATOR PARKER: Mr. President, briefly to explain my vote.

First let me thank Senator Flanagan for bringing this up. I think certainly this is an issue that we ought to take up and

continue to fight for. And I know that he has been working hard on this issue, and I'm looking forward to us continuing to work hard to resolve this issue.

I think this is the right issue; I think this is the wrong approach. I think that, you know, many of my colleagues have gotten up and said we're eagerly awaiting the report, eagerly awaiting the report from the superintendent and the task force. And that's great. But right now we're putting the cart before the horse.

How can we in fact put forward a recommendation without having seen the report, without knowing what the report is? We don't know where this recommendation is within the context of the report. I haven't seen the report; you said you haven't seen the report. So how do we know whether this is in fact one of the recommendations from the superintendent?

And so I'm voting no because I'm unclear, from my perspective -- now, if the superintendent says something different, then let's have that debate. But right now I'm

clear that this is not the right thing. If we're going to do the right thing, let's look at reimbursement rates, which no one has talked about. Let's look at the fact that, you know, this is really an insurance problem and not a malpractice problem.

I mean, the reality is that we also have a responsibility here to protect our constituents, who are oftentimes the victims of malpractice, and their ability to recoup loss when they have been injured. So that's going to be also important.

The other thing is that we also don't do a good job in this state of regulating the industry such that good doctors and bad doctors are not in fact paying, you know, around the same rates. We ought to make sure that we deal with that.

And, lastly, I think this bill is bad because this then tells taxpayers, out of the fund that we're paying it out of -- which really there's no money in it. But if there was money, that would be taxpayer money. So why are we having taxpayers pay for the malpractice suits of bad doctors? I'm not for

that. I don't know why my colleagues across the aisle are for that.

So I'm voting no.

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

Senator Saland, to explain his vote.

SENATOR SALAND: Thank you, Mr. President.

Mr. President, I'd like to commend Senator Flanagan for bringing this bill before us.

I was in the Insurance Committee earlier today, heard his explanation, which was similar to the explanation that he gave here on this floor. At no time did he in any way, shape, or form propose this, as some have alluded to, as a comprehensive approach. He proposed it for what it is. It's an effort to try and deal with a problem that is burgeoning out of control, a problem which has brought more doctors to Albany this year than I have seen in any number of years, brought more doctors to see me in my district than I have seen in any number of years.

And the simple fact of the matter is, I would have, had I not known better, been led to believe by some of the comments from the other side of the aisle that in fact the Medical Society opposed this bill. We've heard from a couple of members already, and I'm aware, that in fact the Medical Society supports the bill.

Should there be a more comprehensive approach? Sure, that would be absolutely wonderful. But really the missing ingredient that has not been alluded to at any time during the course of any of the comments is that there won't be a comprehensive approach until the very people who provided you with some of the material that you used for some of your comments, the trial bar, is willing to acknowledge the existence of the problem, not walk away from it, and try and deal with it.

The medical malpractice system should not be a lottery system. And doctors should not be punished for bad results when in fact they've proceeded and proceeded by the book and done everything right.

So are there bad doctors? Certainly there are bad doctors. Are there doctors who are willing to take risks because their profession requires them to do so and take on challenging surgeries that many would be unwilling to do? Yes. Are those doctors part of the so-called malpractice problem because they don't get perfect results and they get sued? Yes. Notwithstanding the fact that they may have proceeded with absolute perfection.

Let me suggest to you too that there are some demographic or cultural differences that were certainly apparent to me. Many of you who rose have the good fortune of coming from the city, where there is an abundance of physicians. Perhaps not in all areas, some areas are underserved. But you look at the raw data per capita, the city has physicians in numbers far greater than either the national or the state average.

And as you go away from the city, you'll find still greater numbers in the inner suburbs. As you go further beyond that periphery, you suddenly find what has been

alluded to by several of my upstate colleagues -- a significant shortage of physicians. Not merely specialists, but physicians.

Something which none of you or those of you who rose could possibly comprehend, because you never have a problem finding a physician. You don't have the kinds of -- you have choices. In many of these communities, they have no choice. Or they have to travel God only knows how many miles to find a physician. So you come from a world apart from the world that my colleagues were alluding to.

So I would merely suggest to you that as important as it is to deal with the specialties, believe it or not, folks, it's important to keep internists and general practitioners upstate, because in many instances they're it. And why in the world would they want to continue to pay these kinds of premiums?

I see a difference in the two counties that I represent. My colleagues further upstate in Central New York and out

west I'm sure see even more dramatic differences. This bill would help those doctors.

So let's not live in a makeup world of comprehensive solutions when one of the players doesn't want to be part of a comprehensive solution. This is, as many have mentioned, a good first step. It's not the answer. But maybe we should just throw the baby out with the bathwater simply because it's not the perfect solution.

I vote aye.

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

The Secretary will announce the results.

Senator Oppenheimer, why do you rise?

SENATOR OPPENHEIMER: I'm voting yes.

THE SECRETARY: Those recorded in the negative on Calendar Number 868 are Senators Adams, Aubertine, Breslin, Connor, Dilan, Duane, Gonzalez, Hassell-Thompson, Huntley, Klein, L. Krueger, Montgomery,

Onorato, Parker, Perkins, Sabini, Sampson, Savino, Schneiderman, Serrano, Smith, Stachowski, Stavisky, Stewart-Cousins, Thompson and Valesky.

Absent from voting: Senator C. Kruger.

Ayes, 35. Nays, 26.

ACTING PRESIDENT GRIFFO: The bill is passed.

The Secretary will read Calendar Number 867.

THE SECRETARY: Calendar Number 867, substituted earlier by Member of the Assembly Bradley, Assembly Print Number 9679, an act to amend the Tax Law.

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

Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 62.

ACTING PRESIDENT GRIFFO: The

bill is passed.

Senator Skelos.

SENATOR SKELOS: Thank you, Mr. President. Is there any further business at the desk?

ACTING PRESIDENT GRIFFO: No, Senator, there is no further business at the desk.

SENATOR SKELOS: Please recognize Senator Craig Johnson.

ACTING PRESIDENT GRIFFO: Thank you, Senator Skelos.

In accordance with Rule 11, Section 2(e), the chair recognizes and allots 10 minutes to Senator Craig Johnson.

SENATOR CRAIG JOHNSON: Thank you very much, Mr. President.

I have a motion at the desk at this time. I would like to have it called up at this time, please.

ACTING PRESIDENT GRIFFO: The Secretary will read.

THE SECRETARY: Senate Print 3936, by Senator C. Johnson, an act to amend the Labor Law.

ACTING PRESIDENT GRIFFO: Senator Johnson.

SENATOR CRAIG JOHNSON: Thank you very much.

As I've said before and I say it again, there is no excuse why, 40 years after the Equal Pay Act, equal pay is not being paid for equal work in New York State. According to the U.S. Department of Labor, in a study issued in September 2007, women earned 81 cents for every dollar earned by their male counterparts in 2006.

Study after study after study after study undeniably and unequivocally establishes this point. In fact, since yesterday we have located more studies that clearly demonstrate that women and minorities are paid less for equal work. All these studies clearly prove that a gender and minority pay gap has become a fixture throughout the workforce and is so common that many view it as simply business as usual.

This wage gap reflects a sex and racial discrimination that pervades our state's economy. One must truly wonder why we

need yet another study to outlaw paying welcome and minorities unequal wages.

The losses to women, minorities, and their families due to this wage gap are large and can be devastating, not only financial but emotional. It is unacceptable in this state or anywhere else for pay inequity to exist.

That is why I am proud to be the sponsor of Senate Bill 3936, the Fair Pay Act. Present law has not and does not adequately address the issue of pay equity. And the need for state enforcement of a prohibition on such inequities is warranted right now.

I have no objection to another study. But frankly, it is redundant and not necessary to prove what we already know, that pay inequity exists in our state. Just speak to your constituents, members of this body, or speak to the persons in the gallery or outside on the street. They will tell you that pay inequity is here and we need to eradicate it now.

Under the Fair Pay Act, it will be unlawful practice for an employer to

discriminate between employees on the basis of sex, race, and/or national origin by paying employees at a rate less than the rate paid to employees of the opposite sex or a different race or national origin for work in equivalent jobs.

The act also protects employees by prohibiting an employer from taking adverse action against an employee who seeks to protect his or her rights under this law.

Critically, the act also requires employers to establish records that document wages paid to employees and to document and support the methods, systems and calculations used to establish and adjust wage rates. The continuing pay disparity that exists in our state is due chiefly to a lack of salary information that employers are require to keep.

This is a good bill. This is a sound bill. It's a bill that has a same-as bill in the Assembly sponsored by Assemblywoman Susan John, a bill that has passed the Assembly every year since 2002.

I am proud to see and to know that

my colleagues in the Senate Democratic conference are here to support my legislation. I wish more members of the Senate Republican conference were here today to listen and to perhaps maybe join us in supporting a motion to petition this bill. I wish more Senators were here than the two, four, six, eight, 10 members that have joined me in the conference. And I thank you for at least participating and sitting in.

Last week, during session, one Republican Senator expressed a sentiment on the floor that's when addressing an issue involving a person's pay, he remarked that we should have a "good debate in front of the TV with families of these people and then find out how families feel." I wholeheartedly agree. We should have a debate on those issues and the issue of pay equity.

We started to have one yesterday, that the public in every conceivable medium should have been able to witness. But incredibly, the Senate Majority ordered a local news reporter to shut off her video camera while recording the debate I was having

with another Senator about pay equity.

I never thought I would see the day in the Senate chamber or in the Capitol or in this state when Senate Republicans would trample upon the First Amendment. Clearly, I was proven wrong.

So now is the opportunity for the Senate Republicans to allow for this debate to go forward, a real debate. So I ask you, join the members of my conference, join the Senate Democrats in taking care of the countless female and minority employees who in this state suffer daily from pay inequity.

To all my colleagues, I urge you to vote in favor of my petition. Move my bill, the Fair Pay Act, to the floor of this great Senate and make pay equity in New York State a reality.

I thank you, Mr. President.

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

Announce the results.

THE SECRETARY: Those recorded in

agreement are Senators Aubertine, Breslin, Connor, Diaz, Duane, C. Johnson, Klein, L. Krueger, Montgomery, Onorato, Oppenheimer, Parker, Perkins, Sabini, Sampson, Savino, Schneiderman, Serrano, Smith, Stachowski, Stavisky, Stewart-Cousins, Thompson and Valesky. Also Senator Dilan.

ACTING PRESIDENT GRIFFO: The petition is not agreed to.

Senator Skelos.

SENATOR SKELOS: Mr. President, there being no further business to come before the Senate, I move we stand adjourned until Wednesday, April 16th, at 11:00 a.m.

ACTING PRESIDENT GRIFFO: On motion, the Senate stands adjourned until Wednesday, April 16th, at 11:00 a.m.

(Whereupon, at 5:09 p.m., the Senate adjourned.)