NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

August 19, 2008

3:26 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 please 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: In the absence of clergy, I ask all present to bow their heads in a moment of silence.

(Whereupon, the assemblage respected a moment of silence.)

ACTING PRESIDENT GRIFFO: Senator Libous.

SENATOR LIBOUS: Mr. President, I just want to state that we're now beginning regular session.

ACTING PRESIDENT GRIFFO: We're now beginning the regular session for August 19, 2008.

The reading of the Journal.

THE SECRETARY: In Senate, Monday, August 18, the Senate met pursuant to adjournment. The Journal of Sunday,

August 17, 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 Libous.

SENATOR LIBOUS: Mr. President, at this time I'd like to call an immediate meeting of the Rules Committee in Room 332, please.

ACTING PRESIDENT GRIFFO: There will be an immediate meeting of the Rules Committee in Room 332.

SENATOR LIBOUS: And the Senate will stand at ease temporarily.

ACTING PRESIDENT GRIFFO: The Senate will stand at ease.

(Whereupon, the Senate stood at ease at 3:28 p.m.)

(Whereupon, the Senate reconvened at 3:42 p.m.)

ACTING PRESIDENT GRIFFO: The Senate will come to order.

Senator Libous.

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

I believe there's a report of the Rules Committee at the desk, and I ask that we have it read at this time.

ACTING PRESIDENT GRIFFO: Reports of standing committees.

The Secretary will read the report of the Rules Committee.

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

Restored, Senate Print 175B, by Senator Alesi, an act to amend the General Business Law;

Reported, Senate Print 7014, by Senator Diaz, an act to amend the Private

Housing Finance Law and the Public Housing Law;

8738, by Senator Skelos, Concurrent Resolution of the Senate and Assembly proposing an amendment to Article 7 of the Constitution;

And Senate Print 8750, by Senator Connor, an act to amend the Alcoholic Beverage Control Law.

All bills reported direct to third reading.

ACTING PRESIDENT GRIFFO: Senator Libous.

SENATOR LIBOUS: 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 Rules Committee report is accepted.

Senator Libous.

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

ACTING PRESIDENT GRIFFO: The Secretary will read.

Senator Duane.

SENATOR DUANE: Thank you, Mr. President. Just a point of personal privilege, I guess.

I just want to remind all the members that we are starting the reading of the noncontroversial calendar and that people need to be here. And I just want to make sure that that is known far and wide, that people need to be here because we are starting to do the noncontroversial calendar.

Thank you, Mr. President.

ACTING PRESIDENT GRIFFO: Thank you, Senator Duane.

The Secretary will read.

THE SECRETARY: In relation to Calendar Number 717, Senator Alesi moves to discharge, from the Committee on Rules, Assembly Bill Number 9163A and substitute it for the identical Senate Bill Number 175B,

Third Reading Calendar 717.

ACTING PRESIDENT GRIFFO: Substitution so ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 717, by Member of the Assembly Bradley, Assembly Print Number 9163A, an act to amend the General Business Law.

ACTING PRESIDENT GRIFFO: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the 60th day.

SENATOR DUANE: Lay it aside, please.

ACTING PRESIDENT GRIFFO: The bill is laid aside.

THE SECRETARY: In relation to Calendar Number 2250, Senator Diaz moves to discharge, from the Committee on Rules, Assembly Bill Number 3227A and substitute it for the identical Senate Bill Number 7014, Third Reading Calendar 2250.

ACTING PRESIDENT GRIFFO: Substitution so ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 2250, by Member of the Assembly Diaz, Assembly Print Number 3227A, an act to amend the Private Housing Finance Law and the Public Housing Law.

ACTING PRESIDENT GRIFFO: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the 120th day.

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Those recorded in the negative on Calendar Number 2250 are Senators Duane and Huntley. Also Senator Hassell-Thompson.

Ayes, 55. Nays, 3.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 2251, by Senator Skelos, Senate Print 8738, concurrent --

SENATOR LIBOUS: Lay it aside, temporarily, please.

ACTING PRESIDENT GRIFFO: The

bill is laid aside temporarily.

THE SECRETARY: Calendar Number 2252, by Senator Connor, Senate Print 8750, an act to amend the Alcoholic Beverage Control Law.

ACTING PRESIDENT GRIFFO: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the same date and in the same manner as a chapter of the Laws of 2008.

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT GRIFFO: The bill is passed.

SENATOR LIBOUS: Mr. President.

ACTING PRESIDENT GRIFFO: Senator Libous.

SENATOR LIBOUS: We're going to get to 2251 in just one second, Mr. President.

Mr. President, could we at this time take up 717, by Senator Alesi, controversial.

ACTING PRESIDENT GRIFFO: The Secretary will read.

THE SECRETARY: Calendar Number 717, substituted earlier by Member of the Assembly Bradley, Assembly Print Number 9163A, an act to amend the General Business Law.

ACTING PRESIDENT GRIFFO: Senator Breslin.

SENATOR BRESLIN: Yes, through you, Mr. President, if the sponsor would yield to a few questions.

ACTING PRESIDENT GRIFFO: Senator Alesi, do you yield?

SENATOR ALESI: I yield.

ACTING PRESIDENT GRIFFO: Senator Breslin.

SENATOR BRESLIN: Through you, Mr. President.

Senator Alesi, we're dealing with gasoline, obviously, for zone pricing. Is there any reason that other products that might be subject to zone pricing aren't included?

SENATOR ALESI: Through you, Mr. President, the bill deals specifically

with gasoline. And I'm certain that if there were interest in other items like that, they would be presented before the Legislature at an appropriate time by any member of the Legislature that chose to do so.

SENATOR BRESLIN: Again through you, Mr. President, if the sponsor would continue to yield.

SENATOR ALESI: I do.

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

SENATOR ALESI: Yes.

ACTING PRESIDENT GRIFFO: Senator Breslin.

SENATOR BRESLIN: Have there been any studies available to you which would show that the effect of an elimination of zone pricing would in fact lower the price?

SENATOR ALESI: Through you, Mr. President, I have over the last several years had several hearings, and of course there are pros and cons on this issue depending on whose philosophy you adhere to.

Through the course of these hearings and with memos of opposition and

memos in support, I am steadfastly certain that I am doing what is good for the consumers of this state when it comes to eliminating zone pricing of gasoline.

SENATOR BRESLIN: Again through you, Mr. President, if the sponsor would continue to yield.

SENATOR ALESI: I do.

ACTING PRESIDENT GRIFFO: Senator Alesi yields, Senator Breslin.

SENATOR BRESLIN: I'd repeat the same question. Are there any studies available that are --

SENATOR ALESI: Excuse me, Mr. President. I can't hear. Too much background.

ACTING PRESIDENT GRIFFO: Excuse me.

Can we have order in the chamber, please.

SENATOR ALESI: Thank you, Senator.

SENATOR BRESLIN: Through you again, Mr. President.

Are there any actual definitive

studies that come up with some sort of an analysis and conclusions relative to whether the price would be reduced?

SENATOR ALESI: Through you, Mr. President, yes.

SENATOR BRESLIN: And through you again, Mr. President, if the sponsor would continue to yield.

ACTING PRESIDENT GRIFFO: Senator Alesi, do you yield?

SENATOR ALESI: I yield, yes.

ACTING PRESIDENT GRIFFO: Senator Breslin.

SENATOR BRESLIN: Can you tell us what that study is?

SENATOR ALESI: In answer to your question, I believe, if I have the name right, maybe the Petroleum Institute -- which is steadfastly against this bill -- offered a study of its own. There might be some other studies that have been done from the mentioned Petroleum Institute. And the Quinnipiac survey, which I'm sure you have in your memos.

SENATOR BRESLIN: And through you again, Mr. President, can you tell us what the

conclusion --

ACTING PRESIDENT GRIFFO: Senator Breslin, are you asking Senator Alesi to continue to yield?

SENATOR BRESLIN: Yes, I am, Mr. President.

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

SENATOR ALESI: I yield.

ACTING PRESIDENT GRIFFO: Senator Breslin.

SENATOR BRESLIN: And through you, Mr. President, can you tell us what the result of those studies are?

SENATOR ALESI: Through you, Mr. President, I can paraphrase, since I don't have the documents in front of me.

But as you can imagine, studies that are done by a particular industry group tend to be subjective in their analysis and in their results. Memos in opposition to this based on any of those studies, of course, would say that this bill is not one that they would embrace.

I do have information from the 3500

or so retail gasoline dealers who are members of their own organization, the Repair Shop and Gas Station Dealers, as well. Those 3500 collective members are opposed to zone pricing, and they have offered in their memo of support very solid evidence that zone pricing not only hurts consumers, not only hurts consumers that are individuals but businesses as well that are trying to conduct commerce in this state, but it also hurts the retail gasoline dealers as well.

SENATOR BRESLIN: And again through you, Mr. President, if the sponsor would continue to yield.

SENATOR ALESI: I will yield.

ACTING PRESIDENT GRIFFO: The Senator yields.

SENATOR BRESLIN: Through you, Mr. President, has there been any analysis done to determine whether this bill would in fact be constitutional, as in effect you are regulating price?

SENATOR ALESI: Through you, Mr. President, there's no analysis that says it's not constitutional as far as I know.

SENATOR BRESLIN: On the bill, Mr. President.

ACTING PRESIDENT GRIFFO: Senator Breslin, on the bill.

SENATOR BRESLIN: I have some concerns for any kind of zone pricing because it's the State of New York dictating.

And my experience is that this kind of elimination of zone pricing can be positive to wealthy people, detrimental to the poor and middle class, that in fact that areas are picked on when there's -- without zone pricing, the prices would come up in particular areas.

In other areas, with like food and grocery products, it's a routine use of zone pricing which is always determined based upon competition. And competition, in fact, should be the reality of how products are priced.

Accordingly, I will be voting in the negative.

Thank you, Mr. President.

ACTING PRESIDENT GRIFFO: Senator Alesi.

SENATOR ALESI: Mr. President,

I'd like to be clear on this issue as I close the debate, hopefully.

There are pros and cons on the issue philosophically. What I can tell you is this, that zone pricing, as it stands right now, can cause severe economic damage and pain to those people who are living in impoverished areas of our state.

One of the reasons for that is because, if you live in an area that is artificially described as a zone where people generally do not use an oil company credit card and where people can't afford to fill their tank and where they buy their gasoline $10 or $20 at a time, the price in those zones is usually higher than it is anywhere else.

So this elimination of zone pricing goes a long way to help those people who actually can't afford gasoline.

ACTING PRESIDENT GRIFFO: Debate is closed.

The Secretary will ring the bell.

Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the 60th day.

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

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

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

You know, in Bronx County, where I'm coming from, and my district -- Soundview, Castle Hill, Pelham Bay, Parkchester -- when you go and purchase gas, you will see different prices of gas in different areas in the same district.

I understand that this bill will end zone pricing, meaning that every single area in the Bronx in my district will have the same prices. And wherever you go to buy gasoline, if zone pricing -- if this bill will end zone pricing, the price will be the same everywhere. So we will avoid going around to find out where are the cheaper prices.

So I think this is a good bill -- good for consumers, good for my community -- and I'm supporting the bill.

ACTING PRESIDENT GRIFFO: Senator

Diaz to be recorded in the affirmative.

Senator Leibell. Oh, Senator LaValle.

Sorry, Vinny.

SENATOR LaVALLE: That's all right, Mr. President -- [inaudible]. I'd just like to comment on the zone pricing.

And, Senator Alesi, I just want to say that the people who live on eastern Long Island, who are hardworking people, will be as ecstatic as they can be that the Senate has passed this legislation.

Because if you've ever seen zone pricing, with huge disparities between what we call "Up Island" and the East End, it can be 50 cents or more a gallon. I think they will be very pleased, and I want to thank you on behalf of those people on eastern Long Island for this bill.

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

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 717 are Senators Breslin and Perkins.

Absent from voting: Senators Sampson and Thompson.

Ayes, 54. Nays, 2.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Senator Libous.

SENATOR LIBOUS: Mr. President, could we go back to the noncontroversial calendar and have Senate Number 2251 read, please.

ACTING PRESIDENT GRIFFO: Thank you, Senator Libous.

Without objection, the noncontroversial reading of the calendar, Calendar Number 2251. The Secretary will read.

THE SECRETARY: Calendar Number 2251, by Senator Skelos, Senate Print 8738, concurrent resolution --

SENATOR DUANE: Lay it aside, please.

ACTING PRESIDENT GRIFFO: Lay it aside.

Senator Libous.

SENATOR LIBOUS: Mr. President,

could we now go to the controversial calendar and take up 2251, by Senator Skelos.

ACTING PRESIDENT GRIFFO: The Secretary will read.

THE SECRETARY: Calendar Number 2251, by Senator Skelos, Senate Print 8738, concurrent --

SENATOR LIZ KRUEGER: Explanation, please.

ACTING PRESIDENT GRIFFO: Explanation requested by Senator Krueger.

Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes, this bill is a piece of legislation that would seek a change in the constitution, which change would limit the amount that the Legislature and the budget and the Governor can raise the amount of spending from year to year, either to 4 percent maximum or 120 percent of the Consumer Price Index, whichever is less.

If there happen to be revenues in any year above and beyond the maximum spending limit, then 50 percent of the revenues would be put in a special reserve fund for future contingencies -- which would have been nice to

have now -- and 50 percent would be returned to the taxpayers so that they could spend the money in a way that will no doubt help the economy.

Had we had this in effect over the last five years, we would have had an additional $13.1 million of spending that would not have happened, half of which would have gone back to the taxpayer, half of which would be in the kitty right now that could help us do what we've got to do today, make cuts. We wouldn't have to worry about that, in view of the fact that there would have been a reserve fund in order to take care of those cuts.

Now, the most important thing about this bill is that it's a constitutional amendment. And what we're doing by first passage would be to get -- to hopefully have second passage next year and to put on the ballot in November of next year a referendum for the people of the State of New York to decide whether or not this is a good idea.

And it would seem to me that all of us should want the constituents to have this

choice, especially now that we're facing the sins of our past and running into a problem where we've spent too much and have to make midyear corrections.

So that's what the bill does, and I would urge by the adoption by all of us here.

ACTING PRESIDENT GRIFFO: Senator Krueger.

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

SENATOR DeFRANCISCO: Yes, I would.

ACTING PRESIDENT GRIFFO: Senator DeFrancisco yields.

SENATOR LIZ KRUEGER: Or the sponsor's representative. Thank you, Senator.

So as I understand this constitutional amendment, which would limit us to 4 percent or 120 percent of the Consumer Price Index in any given year, if this law had been in effect in fiscal year 2007-2008, the Senate Majority's recommendation for the budget was a 12.36 percent increase. So could you not have recommended that budget if this

bill was in effect?

SENATOR DeFRANCISCO: You know, that's a very good point. But as you know, budgets are a product of the work of the Assembly, the Senate and the Governor.

And budgets are also very subject to many, many special interest groups, all of us who are concerned about and want to help. And because of that, budgets have gotten out of control. And everybody is guilty of that fact, because of the facts of life, how things work in a democracy and with houses with different needs and a governor with different priorities.

So yes, voluntarily this could have happened in each house, or it could have happened with the vetoes of the Governor. But it hasn't happened that way.

And that's why we want the people to have the opportunity to decide whether a better way would be to have this cap and use additional revenues for a reserve fund and also half of those revenues to go back to the taxpayer to spur the economy.

SENATOR LIZ KRUEGER: Thank you.

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

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

SENATOR DeFRANCISCO: Yes.

ACTING PRESIDENT GRIFFO: Senator Krueger.

SENATOR LIZ KRUEGER: Thank you.

So, leaping ahead, let's assume this became law. And then the federal government, which as we know currently pours -- a significant amount of the state's budget actually comes through the federal government. I think about 40 percent of our money comes from the federal government, give or take, in a given year.

And let's say the federal government decided that it was going to stop sending us money. Which we've actually seen they are decreasing the money they send the State of New York.

If this constitutional amendment was in place and the federal government -- let's round down our budget to $100 billion, for argument -- and the federal government

didn't move us $40 billion a year, if this amendment was in place we could only go up 4 percent from the year before even if we did not receive $40 billion from the federal budget.

Is that a correct reading of this bill?

SENATOR DeFRANCISCO: Well, first of all, President McCain would never do that.

(Laughter.)

SENATOR LIZ KRUEGER: He's actually the president I was worried about.

SENATOR DeFRANCISCO: Nor would the Republican Senate or the Republican Congress.

However, if something happened where that did occur, there's a provision in the bill that in emergency fiscal situations -- and the emergency fiscal situation is defined in the bill. It's -- you can read it in Section 3(C) -- which emergency was declared by the Governor, but also was agreed to by the Comptroller, then under those situations we could spend more than that limit.

So there is a provision, in case something foolhardy like that had happened, that we would be able to go beyond that limit.

But there's a check and a balance. It's a good bill. It's not just one person making that determination. The Comptroller would, a separately elected person.

SENATOR LIZ KRUEGER: Mr. President, on the bill.

ACTING PRESIDENT GRIFFO: Senator Krueger, on the bill.

SENATOR LIZ KRUEGER: Thank you.

I appreciate the sponsor's answers to the questions.

I'm very uncomfortable with a constitutional amendment that says the Legislature, the Governor, it doesn't really matter what's going on in the State of New York, we're putting a constitutional cap on. It doesn't address if the population skyrockets, which it could, and it would change the formula for our education needs versus other needs.

I don't agree -- while I respect the sponsor's reading of the emergency section

of the bill, which says "an extraordinary unforeseen or unexpected occurrence with a sudden fiscal action of a drastic but temporary nature." I'm not sure, if the federal government walked away from its responsibility for the State of New York, that that would meet that category.

And of course as we've seen under President Bush, and I'm hoping we wouldn't see under President Obama, we have seen the federal government walk away, year after year, from its responsibilities to the state, which has translated into the state having to increase our budget, sometimes very specifically in relationship to lost federal funds.

And so in a world where we are a balancing act between what happens at the federal level, what happens at the local level, what happens in our economy -- in good years, hopefully we do not only ensure that we have invested in a reserve fund or a rainy day fund, but in bad years there's an argument for increasing one's spending to support bad economic times and tough times in particular

communities.

And yet we don't do this in a vacuum, we do this in relationship to the federal government and their budgets and their policies; we do this in relationship to our local governments, their budgets and their policies.

And so to tie our hands with a constitutional amendment saying that we would not be able to make the adjustments that I think government needs to be in a position to make, I personally think is a mistake.

Now, we have a responsibility to our constituents to only spend the dollars we need to spend and, I agree, to give back the dollars we're not spending.

And as I pointed out in one of my questions, sitting here for the last few years in the Senate -- not with governors' budgets, but with Senate Majority recommendations -- in '07-'08 the Senate Majority's proposed budget would have been -- again, not the Assembly, not the negotiated, just the Senate Majority -- it would have a $6.25 billion increase, a 12.3 percent increase.

In '06-'07 the Senate Majority recommended budget would have been a 5.25 percent increase. In fiscal year '05-'06 the Senate Majority proposed budget would have been a 10 percent budget increase.

So I agree with the concerns of my colleagues that we are perhaps increasing our budgets or proposing to increase our budgets too big, too fast, without justification of how we're going to pay for them.

But even when I look at our own proposals from this house, I don't think we need a constitutional amendment; I think we need a change in policy about how we deal with our own budgets.

I think my constituents elect me to come up here and make hard decisions, including limiting the amount of money that we put into a budget. I think each of us are expected by our constituents to come up here and make the hard but right decisions for the State of New York.

I'm not opposed to constitutional amendments. In fact, I support I&R initiatives and voted for that, I guess, nine

days ago when we were up here. But I fundamentally don't believe the right answer for the Legislature for the State of New York is to pass a constitutional amendment that would in fact tie our hands --

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

SENATOR DeFRANCISCO: Would Senator Krueger yield to a question?

ACTING PRESIDENT GRIFFO: Senator Krueger, will you yield?

SENATOR LIZ KRUEGER: Yes, I will.

ACTING PRESIDENT GRIFFO: Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes, Senator Krueger, you say that you are in favor of initiative and referendum; is that correct?

SENATOR LIZ KRUEGER: Yes.

SENATOR DeFRANCISCO: And so you're -- would you also yield another time, please.

ACTING PRESIDENT GRIFFO: Senator Krueger?

SENATOR LIZ KRUEGER: Yes,

Mr. President, I will.

SENATOR DeFRANCISCO: You understand, do you not, that this bill, in order to become a constitutional amendment, if it was passed by both houses twice, would have to go to the voters for their determination? You understand that?

SENATOR LIZ KRUEGER: Yes.

SENATOR DeFRANCISCO: One last question.

ACTING PRESIDENT GRIFFO: Senator Krueger?

SENATOR LIZ KRUEGER: Certainly.

ACTING PRESIDENT GRIFFO: Senator DeFrancisco.

SENATOR DeFRANCISCO: So basically you're saying you're in favor of initiative and referendum for ideas that the voters may have by circulating petitions to get something on the ballot, but you're not in favor of the voters making this determination on a cap?

SENATOR LIZ KRUEGER: Mr. President, through you. I don't support a constitutional amendment to cap budgets. If

it was an I&R question, I would also argue in my district and around the state that this is not the right answer for the State of New York.

So you raise a valid point about once you open your state laws open up to initiative and referendum, lots of possible bills might end up going through that process, starting out with the petitioning process.

And if this ended up at some point in history moving as an initiative and referendum proposal, which we of course don't have yet in New York State, I believe I would still argue to the voters that this was not the right answer.

SENATOR DeFRANCISCO: Thank you, Senator.

SENATOR LIZ KRUEGER: Thank you. So just to close.

ACTING PRESIDENT GRIFFO: Senator Krueger, to close.

SENATOR L. KRUEGER: Thank you.

It's a fascinating debate about how you make decisions about a budget. But I think that fundamentally the role of a

legislature in negotiations with a governor is to make those decisions. They're not always easy decisions, as some of us might say we're going through today. But that this is what the voters asked us to come here and do.

And at a certain level should we all hold ourselves accountable for having flunked the test in the last few years? Certainly the Majority in this house has flunked their own test in the last few years, based on their proposed increases in the budget.

But I think the job is then for us to go back and do our job better, not to have an absolute and yet unexplainable cap on where we go.

So I'm urging my colleagues to vote no. Thank you, Mr. President.

ACTING PRESIDENT GRIFFO: Is there any other Senator wishing to be heard?

Debate is closed.

The Secretary will ring the bell.

The Secretary will call the roll on the resolution.

(The Secretary called the roll.)

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

SENATOR MARCELLINO: Thank you, Mr. President.

This state, as we go around, is losing population. We're losing population and we're losing jobs to states around us, different regions of the country.

And one of the reasons we're losing this population, one of the reasons people are leaving our state -- as can be proved by the loss in the last census of some Congressional seats in the House of Representatives. And it's proposed this year, well, when the next census comes, we'll likely lose at least two more members of the House of Representatives. Which means we have less of a voice at the federal level because people are leaving.

They're leaving because we spend too much and tax too much. People in effect are voting with their feet. They're telling us that there's no point in having the Cadillac of Cadillacs of states if they cannot afford to live here, if they can't find a job here.

It's up to us to put some type of control, some type of limit on spending. We've got to get our fiscal house in order, in order to save and protect our own people. Otherwise we're going to lose more and more people, more and more jobs to regions of this country that tax less and offer less.

People are voting, as I just said, with their feet. It's time that this Legislature takes one big step to control state spending. That's what we must do.

This cap will do that. This cap will enforce a restriction with the proper limitations so that we can overrule it when necessary, in an emergency. But we must control spending at every level.

I'm going to vote aye for this, and I urge everyone else to do the same.

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

Senator Golden, to explain his vote.

SENATOR GOLDEN: Thank you, Mr. President.

I find it ironic that I rise and I

see so many in this house that would be to a spending cap. I guess they're not looking and talking to the constituencies across the State of New York. Because every poll that I've looked at and the constituents that I've talked to in my district are all concerned about the spending that's going on here in the State of New York.

And, you know what, you can cap spending; you can't raise taxes beyond it because there's no reason to raise taxes beyond that cap.

A 4 percent cap works for this state. And if we had put that 4 percent cap into play last year, we would have saved $2.4 billion for the State of New York, this year $2.4 billion for the State of New York. And 2009's budget is predicted to be at 10 percent, according to the Governor. That would save $2.8 billion for the State of New York.

I just can't imagine, I can't imagine how many Democrats here in this room are against this cap. I am amazed and appalled that they would be against doing

what's right for the people of this great state.

A 4 percent cap works. The people of the State of New York deserve it. The people of the State of New York are fed up with taxes. And we owe it to the people of the State of New York.

To think, to think, Mr. President, that we don't trust the will of the people, the will of the voters to take a vote on a constitutional amendment about spending in the State of New York is ludicrous. I just can't believe it.

So I vote aye. And I'm hoping that some of the Democrats in this room, and others, understand the necessity of this bill, this constitutional amendment, and the belief, the belief in the voter, the belief in the ability for that voter to go and vote.

I vote aye, Mr. President.

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

I'd ask the members to please refrain from conversations amongst each other right now so we can hear the speaker.

Senator Morahan, to explain his vote.

SENATOR MORAHAN: Thank you, Mr. President.

I rise also in support of this resolution. It is high time that we tried to put some controls and some discipline on the State of New York budget process. Each year we go through the torture of trying to decide what to spend, how much to spend. We go through the criticisms. What we don't do, though, is respond appropriately.

I think this bill, capping what the state budget can be each year, is really the right move for the State of New York to create jobs, to keep business here, to give people relief on the income tax and other taxes that they pay.

We have many different taxes within our budget. They're all too high. The time has come. I think we're going to hear more of this. Hopefully we can get this passed in the Assembly and we will have a constitutional amendment that will put a cap on how much we can raise the state budget each year.

I think 4 percent is an adequate cap. It fits the bill. We have relief clauses in case of emergency that certainly will call a great deal of attention once we try to go over that cap. And 4 percent seems very reasonable to me.

So I vote in the affirmative, Mr. President.

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

Senator Savino, to explain her vote.

SENATOR SAVINO: Thank you, Mr. President.

Before I explain my vote, I remember earlier this session having a very spirited discussion in the Judiciary Committee with Senator DeFrancisco and some of the members where we discussed the merits of this bill.

Now, there are some very important merits to the bill. We all recognize -- and I think Senator Golden has left the room, but we're all concerned, we recognize that the people of the State of New York are worried

about spending. They recognize that we spend too much money. They're concerned about the impact on their local property taxes, on their income tax, on their cost of living. We're all concerned about that.

And part of the discussion we had then was that one of the reasons why they elect us and send us to the Legislature is to make decisions about how we appropriate public money and how we provide the services that those concerned citizens demand. And so it's a delicate balancing act, how do we make those decisions.

And what was ironic, as Senator Golden pointed out, was that a few weeks later we passed a budget that was 5 percent above the rate of inflation, knowing that the state's finances were precarious at best. So we had the great discussion about it, we may think it's a good idea. But the truth is, when the time came to act, we exceeded the rate of inflation.

Now, we can debate at another time whether we should or we shouldn't have or whatever the case may be. But I think all of

us at that time tried to put together a budget that we felt met the needs of our constituencies. That is what we tried to do here.

And what I'm afraid of with this constitutional amendment is that we would be tying our hands, essentially saying to the public: We're incapable of making hard decisions unless you tie our hands. And I know every one of the members in this room. We are capable of making those decisions without our hands being tied.

If we put our heads together, like we're doing today, we can find ways to reduce spending without impacting public services. And we can also -- we also need the flexibility to be able to respond to emergency situations that we cannot see coming, whether it's the fiscal crisis or 9/11 or anything else, or the federal government abandoning us.

And I think that we should be mindful that we are all capable legislators. We don't need an artificial cap on us to make good decisions for the people of the State of New York.

That is why, unfortunately, I am voting in the negative on this piece of legislation.

ACTING PRESIDENT GRIFFO: Senator Savino to be cast in the negative on her vote.

Senator Connor, to explain your vote.

SENATOR CONNOR: Thank you, Mr. President.

I'm voting no. When an identical bill passed, I should note for the record, on March 12th, it seems that I was recorded in the affirmative. And I don't remember taking that position. And someone pointed out that that was a chaotic day in the history of this Capitol earlier this year, as the governorship changed hands.

But I'm opposed to this simply because I think it's a political gimmick. I have served here for many years, and I have never, ever, ever seen a budget drama play out -- and I've been here for some late budgets, and I've been in Albany in August to pass budgets that should have been passed on April 1st -- and I've never seen the battle

involve the Legislature fighting a governor for less spending.

It has always been the Legislature, both houses, sometimes with different emphasis, fighting governors for more spending, more spending, and more spending. And the majority in this house often wanted to spend more on different things than the majority in the other house. And usually the compromise was we spent more on everything that the houses wanted.

And to have the majority in effect -- what does it say, Mr. President, that we want to have a fiscal chastity belt? What does it say about our moral courage, our political courage, and our fiscal responsibility?

The fact is the people, when they adopted our Constitution, gave this Legislature and the Governor the budget authority. They expect us to use it prudently. Instead, we have used it politically, on the spending side and on the revenue side.

There are two sides to every

budget, Mr. President. And I hear so much talk about spending, spending, spending. Yet in the way we tax and in the way we do not tax and those we do not tax fairly, we also waste the resources of our great state, the people's resources.

So I'm voting no. I think we can do better. And I think perhaps next year the then-leadership of this house will do better at meeting both the legitimate needs of our citizens in apportioning revenue fairly and prudently with a due regard to the economic health of our state.

So I'm optimistic, looking forward, that we can step away from the bad practices of the past decades that have driven spending at perhaps too high a rate on an annual basis.

So I'm voting no, Mr. President.

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

Senator DeFrancisco, to explain his vote.

SENATOR DeFRANCISCO: Yes, I just wanted to correct a couple of things concerning this past budget year.

Actually, what happened was that the Senate's budget actually was less in dollar amount than the Governor's proposed budget. And after the negotiations there was increases in various areas, but the proposed budget that was referred to as a 12 percent increase by Senator Krueger really was not a 12 percent increase at all, it was under the Governor's number.

Secondly, with respect to political gimmicks, as Senator Connor mentioned, every time we try to propose something that would make a cap or a restraint on spending in the State of New York, it's referred to as a political gimmick. And I just don't think that's a fair characterization of what it really is.

What it is is a way to make sure that our citizens will have a cap on spending. And if they don't want a cap on spending, they can say so when this bill, if it ever passed both houses twice, got to the voters for their determination.

And I think it's a prudent way to do things. Because we can talk all we want

philosophically about how everyone is capable individually of doing wonderful things and controlling spending, but the track record for many, many years has been that that has not actually happened because of the realities of life in Albany and all the different interests that have to be satisfied, especially, as you can see, in years such as election years.

When the Governor came out with this proposal that we're going to be dealing with very shortly concerning cuts, you would think the world was going to end with the amount of communication that all of us received that the world's going to end if we make even modest cuts in last year's budget.

So we need some control. And no matter what great faith or good faith we may be involved in and how we deal with the situation, the realities of life is we've got to have some control. And I think a spending cap with an emergency provision is the control that we need.

I'm going to vote aye, or I do vote aye on this bill.

ACTING PRESIDENT GRIFFO: Senator

DeFrancisco to be recorded in the affirmative.

Senator Craig Johnson, to explain his vote.

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

On March 12, 2008, I rose and voted aye on this bill for many of the reasons set forth by my Republican as well as some of Democratic colleagues. Today I will be voting aye as well for many of those same reasons.

Thank you very much.

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

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 2251 are Senators Adams, Breslin, Connor, Diaz, Dilan, Duane, Gonzalez, Hassell-Thompson, Huntley, L. Krueger, C. Kruger, Montgomery, Parker, Perkins, Sampson, Savino, Serrano, Smith, Stavisky and Thompson.

Ayes, 38. Nays, 20.

ACTING PRESIDENT GRIFFO: The resolution is adopted.

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

SENATOR LIBOUS: Thank you, Mr. President.

There will be an immediate meeting of the Transportation Committee in Room 332. And until that is complete, the Senate will stand at ease.

ACTING PRESIDENT GRIFFO: There will be an immediate meeting of the Transportation Committee in Room 332.

The Senate will stand at ease.

(Whereupon, the Senate stood at ease at 4:35 p.m.)

ACTING PRESIDENT GRIFFO: The Senate will come to order.

Senator Libous.

SENATOR LIBOUS: Mr. President, there will be an immediate meeting of the Finance Committee in Room 332.

ACTING PRESIDENT GRIFFO: There will be an immediate meeting of the Senate Finance Committee in Room 332.

The Senate continues to stand at ease.

(Whereupon, the Senate reconvened at 5:35 p.m.)

ACTING PRESIDENT GRIFFO: The Senate will come to order.

Senator Libous.

SENATOR LIBOUS: Mr. President, could we please return to motions and resolutions and have the Resolution Calendar adopted, with the exception of Resolution Numbers 7114 and 7036.

ACTING PRESIDENT GRIFFO: We will return to the order of motions and resolutions.

All in favor of adopting the Resolution Calendar, with the exceptions outlined, signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT GRIFFO: Opposed, nay.

(No response.)

ACTING PRESIDENT GRIFFO: The Resolution Calendar is adopted.

Senator Libous.

SENATOR LIBOUS: Mr. President, could we have Resolution Number 7114, by

Senator Maltese, please. Read the title only.

ACTING PRESIDENT GRIFFO: The Secretary will read.

THE SECRETARY: By Senator Maltese, Legislative Resolution Number 7114, mourning the untimely death of Firefighter Kevin M. Delano, a man of singular distinction and extraordinary accomplishment, and paying tribute to his heroic efforts at the World Trade Center on 9/11.

ACTING PRESIDENT GRIFFO: Senator Maltese.

SENATOR MALTESE: I did not want this time to pass without saying a word --

ACTING PRESIDENT GRIFFO: Excuse me, Senator Maltese.

Could we have order, please, in the chamber.

Senator Maltese.

SENATOR MALTESE: -- without seeing a word about Kevin Delano. Kevin was the chief of the West Hamilton Beach Fire Department for many, many years. He was a volunteer fireman and everything that speaks of on behalf of the community.

He and his family were involved in so many aspects of life in Hamilton Beach and Howard Beach. He was a former firefighter, a firefighter, as has been indicated by the reading of the title, that spent untold hours down at the World Trade Center trying to find former colleagues and friends.

He has devoted a good part of his life to the community, to the Fire Department of the City of New York, and to the West Hamilton Beach Fire Department. He will be sorely missed. And the fact of the matter is that he is irreplaceable in our community.

Thank you, Mr. President.

ACTING PRESIDENT GRIFFO: Thank you, Senator Maltese.

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.

Senator Libous.

SENATOR LIBOUS: Mr. President, Senator Maltese would like to open that up for cosponsorship. So any member who doesn't want to be on it, if they would let the desk know.

ACTING PRESIDENT GRIFFO: The resolution is open for cosponsorship. If there's a member who does not wish to be a cosponsor, please notify the desk.

Senator Libous.

SENATOR LIBOUS: We now have Resolution Number 7036, by Senators Valesky and DeFrancisco. Could you read the title only, please.

ACTING PRESIDENT GRIFFO: The Secretary will read.

THE SECRETARY: By Senators Valesky and DeFrancisco, Legislative Resolution Number 7036, honoring Lopez Lomong upon the occasion of carrying the United States Flag during the opening ceremony of the 2008 Summer Olympics.

ACTING PRESIDENT GRIFFO: Senator Valesky.

SENATOR VALESKY: Thank you, Mr. President.

We were all here about a week and a half ago in special session considering such things as property tax caps and other pieces of legislation. For those of you who were able to return home that evening, you will recall that we had an opportunity to witness one of the most spectacular opening ceremonies of Olympics in recent memory, the Beijing Games.

And if you had an opportunity to see those opening ceremonies, you undoubtedly were moved by the Parade of Nations and certainly the United States Olympic Team as it was led into the Bird's Nest Stadium in Beijing by a young man named Lopez Lomong.

The story, which you may also be familiar with, is the subject of the resolution before us today. Lopez Lomong is one of the lost boys of Sudan who came to the Syracuse area, Onondaga County, through the Catholic Charities program.

Robert and Barbara Rogers adopted Mr. Lomong. He entered the 10th grade at Tully High School in Southern Onondaga County. And he quickly distinguished himself in the

1500-meter event.

I think most significantly, Mr. President, he attained his citizenship in this country only one year ago. And when the United States Olympic Team and its members and team captains had the opportunity to make a decision as to who would carry the United States flag into the stadium, they chose Lopez Lomong. And those team captains indicated that one of the reasons why they chose him was because they were so impressed and said that he so deserved that honor of being the flag bearer because he, Lopez Lomong, was so proud of his citizenship.

And I think that's something that we can reflect on as we go about our business today, how significant that was someone, who only seven years ago was in a war-torn region of the world, came to the United States, worked as hardly as he possibly could to attain his citizenship only one year ago, made the United States Olympic Team, and was elected by his colleagues, chosen by his colleagues to be the flag bearer and to carry the Stars and Stripes into that stadium during

those opening ceremonies.

So, Mr. President, it's certainly fitting for us to acknowledge Lopez Lomong, to congratulate him -- and certainly we will do that upon his return from China, in person -- but to also thank his foster parents and the Catholic Charities program that does such great work in helping resettle those Sudanese refugees.

Mr. President, I encourage all of my members to support this resolution and, with the consent of the Majority, ask that the resolution be open for cosponsorship by all of the members.

Thank you, Mr. President.

ACTING PRESIDENT GRIFFO: Thank you, Senator Valesky.

Senator DeFrancisco.

SENATOR DeFRANCISCO: Thank you, Mr. President.

Only in America. You know, oftentimes in this day and age we hear criticism of the United States all over the world for this reason or that reason. We hear criticism from our own citizens for various

policies -- some legitimate criticism, some not.

But only in America could this story ever have occurred where an individual who was in a refugee camp -- if I recall correctly, for almost 10 years -- from when he was a young boy, to come over to the United States, through the goodness of some people in Onondaga County, in the village of Tully, named the Rogerses, through a Catholic Charities program, and not only be welcomed with open arms but be given all of the benefits, through that family, of any other child that was living in the United States -- and in fact was given so much love and so many opportunities by the family that he progressed to the point where he not only became a great athlete but a great student, went on to college, and excelled in track.

There were images all the way from China about his carrying the flag during the opening ceremonies. But the shots that I'll remember is his foster parents, you know, cheering him on in the Olympics. And, you know, that's really the most important part of

this, the love and affectionate that they had to make him reach a dream, from a refugee to carrying the American flag one year after he gets his citizenship. What other country would ever have that kind of opportunity?

And I really want to commend not only the Rogerses but also Lopez himself and also all the individuals who were involved with the Olympics who made it possible for him to actually be the representative of the United States, to carry our flag at such a great event as the opening ceremonies for this year's Olympics.

So I could not be prouder of America and prouder of Lopez and especially, as well, as his foster parents, now parents, that I can't even express it.

So it's a wonderful thing, and I'm very happy to rise here and congratulate not only him but the entire United States for giving that opportunity to this young man.

ACTING PRESIDENT GRIFFO: Thank you, Senator DeFrancisco.

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.

Senator Libous.

SENATOR LIBOUS: Mr. President, the sponsors also request that if members would like to go on, they would like to open it up for sponsorship.

So if someone does not want to be on the resolution, if they would let the desk know. Otherwise, everyone will go on.

ACTING PRESIDENT GRIFFO: Thank you, Senator Libous.

The resolution is open for sponsorship. Anyone who does not wish to cosponsor the resolution please notify the desk.

Senator Libous.

SENATOR LIBOUS: Could we now return to the reports of standing committees. I believe there's a Finance Committee report at the desk.

ACTING PRESIDENT GRIFFO: Reports of standing committees.

The Secretary will read the report of the Finance Committee.

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

As a member of the Metropolitan Transportation Authority, Allen P. Cappelli, of Staten Island.

ACTING PRESIDENT GRIFFO: Senator O. Johnson.

SENATOR OWEN JOHNSON: Move the nomination.

ACTING PRESIDENT GRIFFO: The nomination is moved.

Senator Savino.

SENATOR SAVINO: Thank you, Mr. President.

I would like to commend Governor Paterson for this nomination. Allen Cappelli is not just a constituent of my district, he is my friend. He is also one of the most dedicated public servants that we have in Staten Island.

As some of you may be aware, we had an appointee to the MTA board by the previous governor and by the previous governor to that. His name was Frank Powers. He was a very prominent member of the Staten Island community and also a dedicated member of Staten Island and a great voice for Staten Islanders at the MTA.

Sadly, he passed away about a month ago. And many of us in Staten Island, while we were mourning for Frank Powers, we were also concerned that with his passing there would be a void on the MTA board for Staten Islanders.

You've heard me lament several times -- and I'm sure if Senator Lanza was here, he would concur -- that Staten Island is often ignored and left behind by the MTA. So we were quite concerned that with the passing of Frank Powers that the Governor would take this opportunity to replace Mr. Powers with someone who wasn't a Staten Islander.

And we are very happy and pleased that Governor Paterson has decided to nominate Allen Cappelli. Allen Cappelli is not just a

native islander, as I said in the Transportation Committee, he's a native New Yorker. He understands the needs of the people that he calls his neighbors. But he also understands the transportation disparities that affect the entire region that the MTA serves.

So I am very pleased and proud to stand here and say congratulations to my friend Allen Cappelli. And I will tell you, I promised him when he appears at public hearings I will try not to yell at him too much -- but I can't guarantee that, Allen.

So congratulations.

ACTING PRESIDENT GRIFFO: Senator Marcellino.

SENATOR MARCELLINO: Thank you, Mr. President.

I rise to support the nomination of Mr. Cappelli, and I will. And not just because I met him a few minutes ago and read his extensive resume, but because his sister lives in my district and she'd probably vote against me if I didn't vote for you.

So I will stand and support this

nomination because I think it's a good one. From what I've read and what I've heard about Mr. Cappelli, he has an excellent resume and he has a history of dedicated public service. And I commend him for that.

I thank him for his willingness to serve on what will be and probably is one of the most thankless positions that the Governor could probably appoint someone to. You're going to take a lot of heat. As you heard some part of it in the confirmation hearings before the Finance Committee, it isn't an easy job.

We need a voice on the MTA for the commuter. We need a voice for the people. People in my district spend in excess of $300 monthly to just go to work. That's a lot of money. That's too much money taken out of their pockets, especially when you talk about rising gasoline prices and home heating oil and all the rest of that stuff that's going up -- and food prices and everything else -- to have to spend 300-plus, nearly $400 a month just to go to work.

The MTA's seemingly only response

to shortfalls that they say they have -- and sometimes the books that they show us support that, and sometimes the books that they show us don't support that. Even the Comptroller has said that the questionable budget practices that have occurred there make their books questionable, and he's reviewing the issue and wants to look at them more closely.

I strongly suggest and I strongly urge Mr. Cappelli to be a strong, vigorous voice for the public. They need it. We don't need another rubber stamp. We don't need someone who's just going to go back and say, Oh, we have a need for money, let's look to the commuter and take money of their pockets.

We want them out of their cars, we want them on mass transportation. The policy of the MTA in recent years has been driving them out of the mass transportation and back to their cars. It's just the opposite of what we need and what we want and what's best for our country and what's best for our state and what's best for our people.

The MTA's history, as I said earlier, not a good one. Hopefully,

Mr. Cappelli, you will be a good voice and a presence that will help turn that around. I look forward to working with you. I will support anything you can do to change their philosophy of hit the commuter first and look for cuts in process last.

We've got to improve the service and we've got to have a strong voice for the commuting public. It's an absolute necessity if we're going to move this state forward in a positive direction.

Again, I'm pleased to support your nomination, sir, and look forward to working with you.

ACTING PRESIDENT GRIFFO: Senator Connor.

SENATOR CONNOR: Thank you, Mr. President.

I rise to support this nominee's confirmation. I congratulate the Governor on such an excellent appointment.

I first met Allen Cappelli I guess it was 30 years ago. He was running for the Assembly, I think in 1980. Maybe it was '78? I don't know, it was back then. And that's

when I first met Allen.

And then I had the distinct pleasure in 1982, after redistricting, to represent the north shore of Staten Island for the ensuing 10 years.

One of the great endeavors of those '80s for Staten Islanders, led by Senator Marchi, was in fact the study of secession of Staten Island from the rest of New York City. And legislation passed both houses and was signed by the governor to set up a commission to seriously investigate the ramification and possibility of secession.

The legislation set up a commission consisting of each legislator representing Staten Island plus one appointee of each such legislator. As a result, I was, for the ensuing number of years, the only non-Staten Islander who sat on the Staten Island secession study commission.

And at the time I needed to appoint someone as my appointee to serve as well as a commissioner. And I toyed with the idea of appointing another Brooklynite, but I didn't think that was appropriate. And in fact I was

quite happy to appoint Allen Cappelli to serve on that commission.

And the commission did interesting work, fine work. It came to a crashing end, I suppose, when this Legislature wouldn't act on the next step.

But I've known Allen all these years. We've come together in various governmental interactions as well as political interactions. We remain friends. And he is indeed one of my -- and when I was redistricted, I said, "Well, Allen Cappelli is one of my oldest friends in Staten Island."

And so I am delighted. His wealth of government experience and his wealth of community experience make him uniquely qualified to serve as Staten Island's representative and all of our representative on the MTA board.

So, Mr. President, I urge an affirmative vote by everyone and look forward to working with Allen when he serves on the MTA board. Thank you.

ACTING PRESIDENT GRIFFO: Senator Craig Johnson.

SENATOR CRAIG JOHNSON: Thank you very much, Mr. President. I too rise to support the nomination.

I commend our Governor for placing Mr. Cappelli in nomination. I thank Senator Savino -- and, Mr. Cappelli, you should too as well -- who was a very vocal advocate on your behalf for the Democratic conference.

But I think what's important during the nomination process and the seconding process is to listen to the members of this body, both Democratic and Republican, because we do represent the entire voice of New York State. And I listened to the words of my friend and colleague Senator Marcellino, who represents an adjoining district of mine on Long Island.

And Long Islanders have tremendous needs for mass transit. We have tremendous concerns with the rising fares that are occurring on the Long Island Railroad. I hope you have an open mind. Because what I have found, in my experience with members of the board of the MTA recently, is they don't have an open mind and they seem to be rather

close-minded when it comes to listening to members of this body and in taking their advice.

And so when I reach out to you -- and I will be reaching out to you shortly on an issue called the Third Track Project, the Main Line Corridor Project, which will systematically destroy communities within my Senate district -- I hope you have an open mind to listen and to hear the concerns from my residents and to actually maybe take into account that we can save $1.5 billion in the MTA budget by not going forward with this project.

Because this project is a waste of money and is unnecessary. And I've been looking for people to talk to on the MTA board who will just spend the time to listen and not just keep repeating the same old tired lines and lies that have been repeated time and time again to the residents of my district and to the residents of Long Island.

So I look forward to working with you on that issue as well as other issues that affect our commuters and our residents and our

constituents.

But I congratulate you today. I look forward to working with you as soon as you're confirmed. Thank you very much.

Thank you, Mr. President.

ACTING PRESIDENT GRIFFO: The question is on the nomination of Allen Cappelli as a member of the board of the MTA. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT GRIFFO: Opposed, nay.

(No response.)

ACTING PRESIDENT GRIFFO: The nominee is confirmed.

Congratulations, Mr. Cappelli. He is with us in the chamber today. Our best wishes.

(Applause.)

ACTING PRESIDENT GRIFFO: The Secretary will read.

THE SECRETARY: As commissioner of the Port Authority of New York and New Jersey, Fred P. Hochberg, of New York City.

As trustees of the Power Authority

of the State of New York, Jonathan F. Foster, of Bedford, and Eugene L. Nicandri, of Massena.

As a member of the Empire State Plaza Art Commission, Kate Johns, of Old Chatham.

As a member of the State Council on the Arts, Deborah Ronnen, of Rochester.

As a member of the Continuing Care Retirement Community Council, Joseph F. Pofit, of Slingerlands.

As a member of the State Hospital Review and Planning Council, James A. Ghent, Jr., of Churchville.

And as members of the Board of Visitors of the Agricultural and Industrial School at Industry, Carmen I. Aponte, Ph.D., of Rochester; Roy W. King, of Rochester; and Howard A. Moore, Sr., of Rochester.

ACTING PRESIDENT GRIFFO: Senator Johnson.

SENATOR O. JOHNSON: Move all the nominations.

ACTING PRESIDENT GRIFFO: The question is on the confirmation of the

nominees as read. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT GRIFFO: Opposed, nay.

(No response.)

ACTING PRESIDENT GRIFFO: The individuals that have been read are hereby confirmed to the positions indicated.

Senator Libous.

SENATOR LIBOUS: Mr. President, in consultation with the Minority Leader, Senator Skelos hands up the following committee assignments for filing.

ACTING PRESIDENT GRIFFO: They will be filed in the Journal.

SENATOR LIBOUS: And if you would recognize Senator Dilan, please.

ACTING PRESIDENT GRIFFO: Senator Dilan.

SENATOR DILAN: Yes, Mr. President, there will be an immediate meeting of the Minority conference in Room 315.

ACTING PRESIDENT GRIFFO: There

will be an immediate meeting of the Minority conference in Room 315.

Senator Libous.

SENATOR LIBOUS: Mr. President, there will also be an immediate meeting of the Majority conference in Room 332.

And there being no further business, Mr. President, this session will stand adjourned at the call of the Majority Leader.

ACTING PRESIDENT GRIFFO: There will be an immediate meeting of the Senate Majority in Room 332.

Senator Libous.

SENATOR LIBOUS: Mr. President, before you do adjourn this session, I do want everyone to be reminded that the extraordinary session is still in recess and that we will be coming back at some point this evening.

So this session may close for now; we are still in session.

ACTING PRESIDENT GRIFFO: So noted.

On motion, the Senate stands adjourned in regular session until the call of

the Majority Leader, intervening days being legislative days.

(Whereupon, at 6:00 p.m., the Senate adjourned.)