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REGULAR SESSION

SENATOR ANDREA STEWART-COUSINS, Acting President

ANGELO J. APONTE, Secretary

P R O C E E D I N G S

ACTING PRESIDENT STEWART-COUSINS: The Senate will please come to order.

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

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

ACTING PRESIDENT STEWART-COUSINS: The invocation today will be delivered by His Holiness, the Dalai Lama of Tibet.

Your Holiness.

THE DALAI LAMA: Tibetan verses [in Tibetan]. The meaning is the rest of my life I follow according to compassionate principles. Honesty, truthful, transparent. And all my life to try as much as you can serve the benefit of others. So that's the meaning of that prayer.

Thank you.

ACTING PRESIDENT STEWART-COUSINS: Thank you, Your Holiness. Thank you for gracing our chambers. Thank you for bringing the peace.

Senator Smith.

SENATOR SMITH: Yes, Madam President and colleagues. We have had the pleasure of having the invocation this morning being done by Your Holiness the Dalai Lama, who as we all know is a person who has traveled the world, who has been given not only the Nobel Peace Prize for nonviolence, but clearly one who represents peace and honesty.

We had the pleasure of talking with the Dalai Lama, His Holiness. And the three things he imparted to me, the three things that I will impart to you was that we should always be truthful, we should always be honest, and transparency was very much a part of his life and very much a part of his life now.

We are honored to have you here. And we appreciate the time that you've taken to come and provide us an invocation, praying over us doing the people's business of the State of New York, 19.5 million of us. We are appreciative of your presence. On behalf of

our Governor, on behalf of our Speaker, we welcome you to our chamber.

And at this time I'd like to have our Minority Leader Dean Skelos also offer some words.

SENATOR SKELOS: Thank you, Senator Smith, our Majority Leader.

Your Holiness, we welcome you on behalf of the Republican conference to our beautiful chamber. And it's a fitting day that you are here, because I imagine later in the day that we will be having a discussion on various issues. And I would suggest to all of us that we keep it in a very civil and respectful way.

We have a wonderful democratic process here in this country. Some days it's a little less democratic than others. But I know that, as the leader said, your belief in peace, honesty, and transparency, but also the fact that you protect the interests of minorities within Tibet -- and certainly we ask that you pray for this minority as we go through the day.

(Laughter.)

SENATOR SKELOS: So we welcome you.

SENATOR SMITH: Thank you very much.

Madam President, we will stand at ease for a moment. And I'd like to have Senator Skelos accompany me up as we help the Dalai Lama as he departs.

ACTING PRESIDENT STEWART-COUSINS: Thank you, Senator Smith.

THE DALAI LAMA: I want to say a few words.

ACTING PRESIDENT STEWART-COUSINS: Please.

The Dalai Lama will speak.

THE DALAI LAMA: I'm a little confused.

(Laughter.)

THE DALAI LAMA: At the beginning I thought it was just short sort of prayer.

So, respected State Senators and leaders, and I think some -- I think guests, so indeed I am very, very happy I'm here. I

think I want to show my deep respect about American values. And since the beginning you've been liberty, justice, democracy, freedom. These are I think your true values. So I want to sort of show or express my respect, admiration.

And then this is first time I've come to the State Capitol here, although New York area quite number of times I visit. But this almost first time, I think first time. So I just landed here, straight come here on your invitation. So I think great honor.

Then sometimes I have sort of -- what to say, what to say -- sort of my interest, or the feeling, is to side with minority. So my sympathy will be more Republican side.

(Laughter; applause.)

THE DALAI LAMA: Just a joke. Just a joke. Not serious.

(Laughter.)

THE DALAI LAMA: So I think this house I think really demonstrate American

system, democratic system, and according rule of law. And also complete freedom of press. These are, I think, really American power. It is really fortunate superpower with such a system, such values; I think very, very good.

So as I mentioned at the beginning, any human activities, including religious teaching, or any sort of politics or everywhere, ultimately depend on our individual motivation. No matter how good system, but individual who play that system, motivation not sort of adequate, then sometimes even in the good system sometimes may not sort of be successful.

So therefore, as I mentioned before, honesty, truthful, and these very much connected with compassion. Compassion, I believe the prime mover of our activities in order to become constructive and some sort of beneficial.

So therefore, of course as far as politics is concerned and economy is concerned, you know much better. My knowledge or experience is just zero.

But one thing I have firm conviction is compassionate mind really bring honesty, truthful, openness. These things happen, then not only that, it bring positive atmosphere within one's own family or within the community.

And with compassion I think so-called, nowadays, we are facing terrorism. Ultimately, answer must come from compassion.

Then, also, for individual health. Now, according to some medical scientists, they now confirm that for health also the compassionate mind is very essential, because compassion bring us inner strength, more self-confidence, inner peace of mind. That's extremely useful for our health.

So I think even for the politicians, you also take care of your own good health, isn't it?

So therefore, the health of course while we are taking some medicines or medication and also exercise, but pay more attention about our peace of mind. That's the basis of that peace of mind, is compassion.

So I just want to share with you then looks like when I enter here I am put in the center. So I thought you elected something. So then I thought oh, whether I should join this body Democratic Party or Republican Party or I should start another new party.

(Laughter.)

THE DALAI LAMA: Which is to say challenging for both parties.

Thank you. Thank you. A great honor. Thank you.

(Extended standing ovation.)

ACTING PRESIDENT STEWART-COUSINS: The Senate will stand at ease.

(Whereupon, the Senate stood at ease at 11:20 a.m.)

(Whereupon, the Senate reconvened at 11:33 a.m.)

ACTING PRESIDENT STEWART-COUSINS: The Senate will come to order.

Senator Klein.

SENATOR KLEIN: Madam President, I believe there's a privileged resolution at

the desk. I ask that just the title of the resolution be read and move for its immediate adoption.

ACTING PRESIDENT STEWART-COUSINS: First may we have the reading of the Journal.

The Secretary will read.

THE SECRETARY: In Senate, Tuesday, May 5, the Senate met pursuant to adjournment. The Journal of Monday, May 4, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT STEWART-COUSINS: 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.

And I believe Senator Klein has a motion.

SENATOR KLEIN: Madam President, I have two motions.

The first, on behalf of Senator Onorato, I move that the following bill be discharged from its respective committees and be recommitted with instructions to strike the enacting clause: Senate Bill 4613.

ACTING PRESIDENT STEWART-COUSINS: So ordered.

SENATOR KLEIN: The second, Madam President, on behalf of Senator Valesky, I move that the following bill be discharged from its committee and be recommitted with instructions to strike the enacting clause. That's Senate Bill 5424.

ACTING PRESIDENT STEWART-COUSINS: So ordered.

Now, with respect to the privileged resolution, the Secretary will read.

THE SECRETARY: By Senator Smith, Legislative Resolution Number 1841 honoring Tenzin Gyatso, the 14th Dalai Lama, for a lifetime dedicated to benefiting the entire world community.

ACTING PRESIDENT STEWART-COUSINS: The question is on the resolution. All those in favor please signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT STEWART-COUSINS: Opposed, nay.

(No response.)

ACTING PRESIDENT STEWART-COUSINS: The resolution is adopted.

At the request of the sponsor, the resolution is open for multisponsorship by the entire house. Any member wishing not to be a multisponsor of the resolution should so inform the desk.

Senator Klein.

SENATOR KLEIN: Madam President, I believe Senator Diaz has two resolutions at the desk. I ask that each of the resolutions be read in their entirety and move for their immediate adoption and allow Senator Diaz to speak on his resolutions.

ACTING PRESIDENT STEWART-COUSINS: The Secretary will read.

THE SECRETARY: By Senator Diaz,

Legislative Resolution Number 1839, memorializing Governor David A. Paterson to proclaim May 2009 as "Senior Citizen Month" in the State of New York.

"WHEREAS, The more than 3 million residents of New York State 60 years of age or older are vital, integral and contributing members of our society; and

"WHEREAS, The more than 3 million senior citizens residing in the State of New York have contributed to the commonwealth of the state by building and helping preserve the customs, traditions and ideals of the many ethnic groups that make up the mosaic of New York State; and

"WHEREAS, The wisdom and experience of senior citizens constantly enrich the lives of the young people of our state through a strong tradition of volunteerism; and

"WHEREAS, Since 1962, the month of May has been declared by presidential proclamation 'Older Americans Month,' in order for communities around the nation to set time aside to celebrate and reflect on the unique

role older Americans play in the fabric of our society; and

"WHEREAS, The legislative and executive branches of New York State government have as a primary goal the improvement of the quality of life of older New Yorkers and the assurance of their continued dignity; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to memorialize Governor David A. Paterson to proclaim May 2009 as 'Senior Citizen Month' in the State of New York; and be it further

"RESOLVED, That all the residents of New York State are urged to honor all senior citizens, who are a cornerstone of the strength of our nation and to whom a debt of gratitude is owed; and be it further

"RESOLVED, That a copy of this resolution, suitably engrossed, be transmitted to the Honorable David A. Paterson, Governor of the State of New York."

ACTING PRESIDENT STEWART-COUSINS: Senator Diaz.

SENATOR DIAZ: Thank you, Madam President.

Madam President, ladies and gentlemen, the month of May has many different holidays, many different celebrations, many different dates to commemorate.

During the month of May, Madam President and ladies and gentlemen, we celebrate the International Workers' Day in honor of those wonderful and magnificent men and women that with their dedication, commitment, and sweat work everyday to make not only a living for themselves but also a better place in the state, in the city and in the nation.

In the month of May, Madam President, we celebrate also El Cinco de Mayo, in honor of the revolution that commemorates the victory of the Mexican Army over the French forces in the Battle of Puebla in 1862.

During the month of May, we also celebrate Mother's Day, in honor of those women that have realized that life is sacred and have decided for life and not for

abortion. To all of you mothers, God bless you and have a very, very happy Mother's Day.

During the month of May, ladies and gentlemen, we also celebrate the Armed Forces Day in recognition of the contributions of all those men and women that have given and are giving and will give their lives and their blood and even their families for the love of this country.

We also celebrate the nurses and Memorial Day, great and very important days in the history of our country.

To add to those celebrations during the month of May, today, for the first time, we were given and have the pleasure and the honor to receive the Dalai Lama here in the month of May.

But the month of May, Madam President and ladies and gentlemen, is a very, very important month. It is called the Senior Citizens Month. The whole month is dedicated to honor and to recognize the contributions, the dedication, the commitment of senior citizens in our state.

At this time, Madam President, we have a little bit more over 3 million senior citizens. And today, ladies and gentlemen, today, ladies and gentlemen, we carry on a tradition instituted by this house, the Senate of the State of New York, 25 years ago. Since 1983 the New York State Senate has recognized and honored the many achievements by our state's senior citizens.

This year, this month, this time and this occasion, I'm honored to be the chairman of the Senior Citizens Committee from the New York State Senate.

And today we have with us one person representing every senior citizen of the entire State of New York. And the Senate, the New York State Senate has chosen that person to be the Senior Citizen of the Year. And today we are honored to have Mr. Floyd Powell, who's sitting over there.

And Mr. Floyd Powell is from DeKalb Junction, a place here in New York State, who also Mr. Powell is a constituent of my good friend and dedicated, distinguished member and

colleague Senator Darrel Aubertine.

Today we recognize Mr. Powell with the 2009 New York State Outstanding Contribution by a Senior Citizen in our state. Mr. Powell has given his time and talent generously and voluntarily in order to serve his community and in order to improve the lives of many people in need among his many contributions are the following.

The chaplain of the DeKalb-Hermon Senior Citizens Club. Founder and main caretaker of the DeKalb Junction Food Pantry. Counselor and leader of a Methodist Youth Group, and choir member, and a trustee of the Town of DeKalb Historical Association.

Mr. Powell, to you I say what the bible said in Matthew, Chapter 25, Verse 21. The Lord, talking to one servant, the Lord said, "I am very" -- and this was very appropriate. The Lord said: "Well done, well done, my good and faithful servant. Since you were faithful in small matters, I will give you great responsibilities. So come and share your master's joy." Matthew 25, Verse 21.

Thank you, Mr. Powell, for your contribution to the State of New York. Thank you for your dedication. Thank you for being the humble person, the great human being that you are. It's an honor for me as the chairman of the Aging Committee to recognize you today.

Thank you, Madam President, for this opportunity.

(Applause.)

ACTING PRESIDENT STEWART-COUSINS: Thank you, Senator Diaz.

And thank you, Mr. Powell, for exemplifying all of the best that our seniors offer us.

The question is on the resolution, unless there is anyone else who would like to speak on the resolution.

Hearing none, the question is on the resolution declaring this month Senior Citizen Month. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT STEWART-COUSINS: Opposed, nay.

(No response.)

ACTING PRESIDENT STEWART-COUSINS: The resolution is carried.

At the request of the sponsor, the resolution is open for multisponsorship by the entire house. Any member wishing not to be a multisponsor of the resolution should so inform the desk.

The Secretary will continue to read.

THE SECRETARY: By Senators Diaz and Aubertine, Legislative Resolution Number 1840, honoring Floyd Powell upon the occasion of receiving the 2009 New York State Outstanding Contribution by a Senior Citizen Award.

ACTING PRESIDENT STEWART-COUSINS: Senator Aubertine.

SENATOR AUBERTINE: Thank you, Madam President.

I want to thank my good friend and colleague Senator Diaz for bringing this resolution forward.

As we've heard Senator Diaz say,

Floyd "Duff" Powell is certainly an asset not only to DeKalb but all of New York State. Floyd has been very, very active in his community, and there are there are a lot of people in DeKalb and in St. Lawrence County that depend on Floyd.

Duff seems to be available for just about anything he's asked to do. His service to the community has been long recognized by many, by many who call him friend. This recognition from the State of New York formalizes what everyone who already knows Duff knows. He's certainly a big contributor to his community.

It's clear, Duff, that you're deserving of this honor. And I'm very, very pleased to have cosponsored this resolution with my good friend Senator Diaz.

And I want to recognize you and all of the seniors who are here to recognize you. So congratulations, Duff, on this award, this honor.

Thank you. Thank you, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Thank you, Senator Aubertine.

Senator Diaz.

SENATOR DIAZ: I also would like to invite, Madam President, with all due respect, all of my colleagues. At 1:00 o'clock in the convention hall there's going to be more than 600 senior citizens from all over the state. The Governor will be addressing them. Senator Malcolm Smith will be addressing them. And we will be recognizing and presenting Mr. Powell with a citation from the Senate.

So this will be at 1:00 o'clock. All of you are invited to come and join and say hello to all those magnificent senior citizens from the State of New York.

Thank you.

ACTING PRESIDENT STEWART-COUSINS: Thank you, Senator Diaz.

Are there any other Senators wishing to speak on the resolution?

Hearing none, the question is on the resolution. All those in favor please

signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT STEWART-COUSINS: Opposed, nay.

(No response.)

ACTING PRESIDENT STEWART-COUSINS: The resolution is adopted.

As in the previous case, the request of the sponsor is that the resolution is open for multisponsorship by the entire house. Any member wishing not to be a multisponsor of the resolution should so inform the desk.

Senator Klein.

SENATOR KLEIN: Madam President, can we at this time move to a reading of Senate Calendar Number 43.

ACTING PRESIDENT STEWART-COUSINS: The Secretary will read.

THE SECRETARY: Calendar Number 8, by Member of the Assembly Paulin, Assembly Print Number 755A, an act to amend the Executive Law, in relation to prohibiting employers.

SENATOR GRIFFO: Lay it aside.

ACTING PRESIDENT STEWART-COUSINS: The bill is laid aside.

THE SECRETARY: Calendar Number 19, by Senator Klein, Senate Print 1363C, an act to amend the Civil Practice Law and Rules and the Real Property Actions and Proceedings Law, in relation to evictions.

SENATOR GRIFFO: Lay it aside.

ACTING PRESIDENT STEWART-COUSINS: The bill is laid aside.

THE SECRETARY: Calendar Number 45, by Senator Stavisky, Senate Print 1742A, an act to amend the Real Property Tax Law, in relation to tax abatement.

ACTING PRESIDENT STEWART-COUSINS: Read the last section.

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

ACTING PRESIDENT STEWART-COUSINS: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT STEWART-COUSINS: Announce the results.

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

ACTING PRESIDENT STEWART-COUSINS: The bill is passed.

THE SECRETARY: Calendar Number 60, by Senator Oppenheimer, Senate Print 1087, an act to amend the Tax Law, in relation to extending.

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

Read the last section.

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

ACTING PRESIDENT STEWART-COUSINS: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT STEWART-COUSINS: Announce the results.

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT STEWART-COUSINS: The bill is passed.

THE SECRETARY: Calendar Number 227, by Senator Schneiderman --

SENATOR MAZIARZ: Lay it aside.

ACTING PRESIDENT STEWART-COUSINS: The bill is laid aside.

THE SECRETARY: Calendar Number 228, by Member of the Assembly Weinstein, Assembly Print Number 2006, an act to amend the Penal Law, in relation to property interests.

ACTING PRESIDENT STEWART-COUSINS: Read the last section.

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

ACTING PRESIDENT STEWART-COUSINS: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT STEWART-COUSINS: Announce the results.

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT STEWART-COUSINS: The bill is passed.

Senator Klein, that completes the noncontroversial reading of the active bills on Calendar Number 43.

SENATOR KLEIN: If we could go to

a reading of the controversial calendar, Madam President.

ACTING PRESIDENT STEWART-COUSINS: If the Secretary would please ring the bells, members are asked to come to the chamber for the controversial reading of the active bills on the calendar.

The Secretary will read.

THE SECRETARY: Calendar Number 8, by Member of the Assembly Paulin, Assembly Print Number 755A, an act to amend the Executive Law.

SENATOR DeFRANCISCO: Explanation.

ACTING PRESIDENT STEWART-COUSINS: Senator Johnson, an explanation is requested.

SENATOR CRAIG JOHNSON: Sure. Thank you, Madam President.

This bill would prohibit employers from discriminating against victims of domestic violence or stalking based upon their status as a domestic violence victim.

As the body may recall, a little while back this year we passed a similar bill

sponsored by myself here in the Senate. And as the process wound its way through the Assembly, in consultation with members of the Assembly, there was a determination that we could actually strengthen the bill, and we were able to do so by providing that the definition of a domestic violence victim, the status of the domestic violence victim would be based upon the victim of an act described pursuant to Section 812 of the Family Court Act -- which is different than what my earlier bill had indicated. That referred to a prohibition of the provision in the Social Services Law.

So in consultation with the Assembly sponsor, Amy Paulin, whom I worked very closely with, we have made the appropriate changes. Actually, this bill I think is a stronger bill, it will protect more men and women, women and men who are victims of domestic violence and will protect them from being discriminated against by their employers.

ACTING PRESIDENT STEWART-COUSINS:

Senator DeFrancisco.

SENATOR DeFRANCISCO: Would Senator Johnson yield to a question?

ACTING PRESIDENT STEWART-COUSINS: Senator Johnson, will you yield?

SENATOR CRAIG JOHNSON: Of course I will, Senator DeFrancisco.

Madam Chair, can we just get some order? I'm having a hard time hearing.

ACTING PRESIDENT STEWART-COUSINS: May we have order in the chamber, please.

Senator DeFrancisco.

SENATOR DeFRANCISCO: I think you may have already answered this one, but I want to be sure, because your memo talks about the lack of financial independence for many women in abusive relationships is often the reason why women stay with their abusers.

And my question was, does this bill apply to --

SENATOR CRAIG JOHNSON: Yes.

SENATOR DeFRANCISCO: -- victims of domestic violence no matter what their sex may be?

SENATOR CRAIG JOHNSON: Yes. It should have been clearer, and I thank you, Senator DeFrancisco, for pointing that out.

SENATOR DeFRANCISCO: All right. Would Senator Johnson yield to another question?

ACTING PRESIDENT STEWART-COUSINS: Do you continue to yield, Senator?

SENATOR CRAIG JOHNSON: Of course, Madam President.

SENATOR DeFRANCISCO: Is it fair to say that if someone is fired from a job for the reason that the person was a victim of domestic violence, that would be a violation of the Civil Rights Statute of the State of New York if this bill became law?

SENATOR CRAIG JOHNSON: You know, through you, Madam President, obviously I can't answer that particular question about some violation of the Civil Rights Statute with respect to how a court would determine that. Certainly someone would have actionable grounds to pursue that course of action.

This one, clearly what we're trying

to do is protect men and women who are victims of domestic violence. But it's a valid point.

SENATOR DeFRANCISCO: Would Senator Johnson yield to another question?

ACTING PRESIDENT STEWART-COUSINS: Senator Johnson, do you continue to yield?

SENATOR CRAIG JOHNSON: Absolutely, Madam President.

SENATOR DeFRANCISCO: Now, all of the other areas that are protected under the Executive Law Section 296, there seems to be an objective standard as to how you determine whether you're a protected class -- whether it's military status, sex, disability, genetic characteristics, race, creed, color.

How does one, if you're an employee and you're being either charged with or you're being accused of violating this Executive Law, how does an employee determine whether that person that's being protected here is a victim of domestic violence?

Because the way I read this, there doesn't have to be a conviction where this victim is found in a court of law to be a

victim of domestic violence. There's not even a requirement of a police report. How does one, as an employer, make that determination? Are they required to just take the word of the person claiming to be a domestic violence victim? What's the process for making that determination?

SENATOR CRAIG JOHNSON: Sure. And a very good question as well.

Obviously, when you refer back to the family offenses proceedings law, this Section 812 which sets forth in the various acts what are family offenses -- and it goes through a wide variety, similar to but larger than what was indicated in the Social Services Law, where the Social Services Law had also set forth a wide variety of -- one moment, I'm just going to open it up -- a wide variety of various acts that someone could be charged with.

The purpose of the law is to make sure that when an employer -- you said employee, but it's an employer; I just want to clarify what you were trying to say -- it

requires an employee, if they state that they are a victim of domestic violence, their spouse, their partner, their relations also, you know, has been threatening them or has been arrested, we'll cover them under this law.

SENATOR DeFRANCISCO: Will Senator Johnson yield to another question?

ACTING PRESIDENT STEWART-COUSINS: Senator Johnson, do you continue to yield?

SENATOR CRAIG JOHNSON: Absolutely.

SENATOR DeFRANCISCO: But you agree, Senator Johnson, that this statute that you're proposing or the bill that you're proposing to become law does not require there to be an adjudication that someone was a victim of a family offense --

SENATOR CRAIG JOHNSON: Correct.

SENATOR DeFRANCISCO: -- it just defines what could result in -- what could be defined as a family offense, the person is protected; is that fair to say?

SENATOR CRAIG JOHNSON: That's

fair to say, yes.

SENATOR DeFRANCISCO: But the process, how do you determine whether what's being said by the victim is truthful, whether what's being said, if there's a dispute with the abuser, the alleged abuser, how does an employer make that determination? Do they hold a hearing in their offices and try to figure out what facts are true so that they can make the right decision on this civil right that we're creating under this bill?

SENATOR CRAIG JOHNSON: Thank you. And through you, Madam President. Obviously a very important concern, one that I would have hoped -- or I'm sure that when we debated the bill the first time was an issue that we could have and should have discussed. But, you know, I'm glad we're bringing it up now.

SENATOR DeFRANCISCO: Thank you.

SENATOR CRAIG JOHNSON: The most important thing for an employer is to ensure that he has a safe workplace, among other things, and to ensure that his or her

employees are protected and are protected from the violence that occurred at home, outside of the home -- because the fact is it does impact upon the productivity.

And so it does require an employer to inquire and to make an inquiry, because that's what we need to make sure happens to protect the employee and especially protect the workplace.

SENATOR DeFRANCISCO: Thank you.

On the bill.

ACTING PRESIDENT STEWART-COUSINS: Senator DeFrancisco, on the bill.

SENATOR DeFRANCISCO: I can understand the rationale behind trying to protect victims of domestic violence. But, you know, we're in a situation now where we're placing enough burdens on employers, and businesses are closing and employers are reducing the amount of jobs and the like.

And I really, in all honesty, have no idea how an employer would make this determination when someone claims they're a victim of domestic violence and, for example,

they need some extra time off from work or they will -- they need a leave of absence for a period of time. There is no objective way to make that determination if there has been no adjudication that he can rely on or she can rely on, whoever the employer may be.

And the other areas of -- the other protected areas, there's a pretty objective standard as to whether you've been in the military, whether you're being discriminated against because of your sex, a disability, age, race, and it goes on and on.

But a victim of domestic violence may be -- it may be very difficult for an employer to determine whether the allegations that are being made by the employee are truthful, are corroborated, really do meet the standards of the family law.

And I've got a feeling that this might cause employers a substantial amount of problems in making these determinations. And it seems to me that this bill, if the bill is something that we should pass, it should be, in my mind, something where there's already

been an adjudication or at the very least there's been objective reports and an investigation by the police department, even if there's no charges that are brought or no family offense has been brought -- something upon which the employer is allowed to rely upon, rather than trying to test the credibility of an alleged victim.

So I have a concern with the bill for that reason.

Thank you, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Thank you, Senator.

Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Madam President. Just on the bill.

I want to congratulate my colleague Senator Craig Johnson for putting forth this bill. As someone who is fairly newly appointed to the chair the task force on domestic violence for the state, as we look at what happens to victims, one of the concerns I think I have is that when we -- for some reason, when we're in a financial crisis, it

seems that rules go out of the window.

Employers are responsible for workplace safety. And many times, because women do have to take a leave of absence or they have to take time from work, I understand that it does cause an increased burden, but I think we also have an obligation to protect and to ensure that we not only don't jeopardize employment opportunities for victims, because it just exacerbates a bad situation, but we should not use excuses that "We're on hard times, and we may have to replace you if we have to be responsible for your safety or there are too many problems with you being employed."

Particularly if we're talking about people who are good workers and who desperately need to hold onto their employment because of their changed situation.

So I commend Senator Craig Johnson. And I certainly hope that my colleagues will see the need for compassion that this bill expresses.

Thank you, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Thank you, Senator.

Are there any other members wishing to speak on the bill?

Senator Saland.

SENATOR SALAND: If Senator Johnson would yield.

ACTING PRESIDENT STEWART-COUSINS: Senator Johnson, do you yield?

SENATOR CRAIG JOHNSON: Of course, for Senator Saland.

SENATOR SALAND: Senator Johnson, did you consider placing in this language some provision that at the very least there should have been some showing that a complaint had been filed with law enforcement as being a --

SENATOR CRAIG JOHNSON: Sorry. Through you, Madam President. Senator Saland, I know you and I both, being in the legal profession and both of us having a bond on family members who are involved or have been involved in law enforcement, women and men who are sometimes domestic violence victims sometimes are even too scared to file a

complaint with the police department. Sometimes, you know, they get battered, they get an incident, and it does have an effect.

So I did not consider the idea about putting in a complaint, but I also did so because, you know, it does create a situation where what about the woman who has been beaten and is too afraid, for whatever reason. You know, maybe there is that individual who as the victim may have problems with the police. Maybe they're scared. Maybe they have a different problem.

So obviously, you know, it does create a different situation where if you establish that particular standard you may not be capturing men and women who are victims of domestic violence.

SENATOR SALAND: Thank you, Senator Johnson.

Madam President, on the bill.

ACTING PRESIDENT STEWART-COUSINS: Senator Saland, on the bill.

SENATOR SALAND: When I originally did the revamp of the domestic

violence law, the Family Protection and Domestic Violence Intervention Act -- I believe it might have been in 1994 -- the very issue that I raised with Senator Johnson was considered at that time.

And one of the things that we required in that legislation was, with rare exception, mandatory arrest. If the charge was a misdemeanor charge, there was some latitude with regard to the victim, as to whether or not she or occasionally he might wish to pursue the charges.

When I did the legislation requiring fingerprinting of school employees -- again, the intent of which was to curb abuse of children in school settings -- we required investigations, investigations by law enforcement, not by a school district, the purpose of which was to ensure that these investigations were conducted professionally, that these investigations were not in effect botched by people who weren't trained to do law enforcement work.

The intent of this bill certainly

is a most laudable intent. And I'm not suggesting to anybody that they vote against this bill. But what I am suggesting is that the language could be tighter.

It will be an extremely challenging situation for employers, based on a mere allegation, to give some preferential treatment to somebody who claims that they had been victimized, whether that treatment is some post in a different location, if that employer has more than one place of business, whether that post quite literally is moving from one place in an office to another place in an office, or whether that affords the opportunity for some additional time by way of request, as I believe may have been mentioned earlier by Senator DeFrancisco.

So I would hope that this would continue to be work in progress. I would hope that Senator Johnson would, when all is said and done, not consider this to have been finally resolved here today, but look to see how he can somehow or other deal with some of the legitimate issues that have been raised

here this afternoon.

Thank you, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Thank you, Senator.

Are there any other Senators wishing to be heard on this bill?

Hearing none, then the debate is closed.

The Secretary will ring the bell. Members are asked to come to the chamber to vote on the bill.

Read the last section.

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

ACTING PRESIDENT STEWART-COUSINS: May we have some order, please.

The Secretary will call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT STEWART-COUSINS: Senator Schneiderman, to explain his vote.

SENATOR SCHNEIDERMAN: Thank you, Madam President. To explain my vote.

I just want to say that there are always objections raised when you're trying to

prohibit discrimination. And I think Senator Johnson is really not just bringing a good bill to the floor today but raising public awareness.

This bill does not prohibit anyone from taking any action based on conduct or misconduct or omissions or actions. It simply says you can't discriminate against someone because of their status as a domestic violence victim. This is a very real problem.

And to my colleagues who expressed concerns, this is a problem all over the State of New York. And this is a big step forward towards ensuring that people, through no fault of their own, aren't terminated from employment just based on the fact that they are a victim of misconduct.

Senator Johnson, thank you. This is a fine, fine piece of legislation. I vote yes, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Thank you, Senator.

Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes. I

just want to explain my vote.

ACTING PRESIDENT STEWART-COUSINS: Again, please, can we have some order.

SENATOR DeFRANCISCO: And lest I be accused of being against victims of domestic violence, my points that I was trying to make during the course of the debate were very simple. That each of the other categories in this Executive Law that protects people from discrimination are -- there's objective criteria by which you can determine the status of that person.

A victim of domestic violence, there is no objective criteria by which someone could protect themselves from being accused of being a victim of domestic violence. There is no court proceeding that has been determined before the fact that the person was truly a victim. And I just -- I think it opens the door for some serious problems that employers are going to have.

So that is my objection; not with the concept that this is a group that should be protected, it's a question of how you make

that objective determination.

I would have much rather seen a bill that said a victim of domestic violence as determined by a court of law, as determined in family court, criminal court, or even as determined by the police in an investigation that was conducted. But rather leaving it open-ended, I think, is going to be a real problem for employers.

With that said, I will reluctantly vote yes, because I know if I voted no I would be accused by this august body, by somebody in this august body that I was against victims of domestic violence.

Thank you very much.

ACTING PRESIDENT STEWART-COUSINS: Senator DeFrancisco to be recorded in the affirmative.

Anyone else wishing to explain his or her vote?

Hearing none, please announce the results.

THE SECRETARY: Ayes, 61. Nays, 0.

ACTING PRESIDENT STEWART-COUSINS: The bill is passed.

The Secretary will read.

THE SECRETARY: Calendar Number 19, by Senator Klein, Senate Print 1363C, an act to amend the Civil Practice Law and Rules and the Real Property Actions and Proceedings Law.

SENATOR SALAND: Explanation, please.

ACTING PRESIDENT STEWART-COUSINS: Senator Klein.

SENATOR KLEIN: This legislation, Madam President, comes after unfortunately many tenants throughout New York State and throughout the country being evicted because of the subprime lending crisis. More and more, we're seeing more of the people who have been impacted by the subprime fallout, and in this case these are tenants.

These are individuals who rented apartments or part of a home in a residential property, a one-to-five-family home, who in many case, unbeknownst to them, the property

they were living in was the subject of a foreclosure proceeding. Before they even know that the property fell into foreclosure, they in many cases were evicted with --

SENATOR SALAND: Could we have some order, please? There's quite a bit of chatter around me, and I can't hear Senator Klein.

Thank you.

ACTING PRESIDENT STEWART-COUSINS: Senator Klein, continue.

SENATOR KLEIN: As I was saying, Madam President, these tenants in many cases received as little as three to 10 days' notice that they were facing eviction from the home that they lived in.

These tenants were playing by the rules. They were paying their rent on time, they were taking care of their properties, and unbeknownst to them, the property they were living in was the subject of a foreclosure proceeding.

My office conducted a survey through three months in the New York City

area, and we found on average these types of evictions -- meaning tenants being evicted from foreclosed properties -- on average, it's about 581 per month. Per month. And unfortunately, with this number continuously growing at the end of 2007, nationwide, over 1 million one-to-four-family homes were renter-occupied, and over 15,000 renters were at risk of losing their homes due to foreclosure.

This legislation will do two important things. First, it would require that the lending institution, or anyone who is bringing a foreclosure proceeding, notify the tenant that a foreclosure proceeding is taking place. Right now that's what they have to do for the individual who owns the home. Now they also have to notify the tenants who are living in the premises.

Next, once the new owner -- which could be a bank or a new individual -- wants to vacate the property by special proceeding or writ of assistance, they must give the tenant 90 days to vacate.

In addition, this legislation also codifies in the law the Polish National Alliance case which states that the normal procedure to evict would have to be followed, which is 30 days. Right now, if a tenant is not made party to the foreclosure, then their lease will survive the foreclosure.

ACTING PRESIDENT STEWART-COUSINS: Thank you, Senator.

Senator Saland.

SENATOR SALAND: Thank you, Madam President. Would Senator Klein yield to a question, please.

ACTING PRESIDENT STEWART-COUSINS: Senator Klein, will you yield?

SENATOR KLEIN: Madam President, I'd be happy to yield for a question.

SENATOR SALAND: Thank you, Senator Klein.

Senator Klein, just a couple of questions. I didn't catch all your comments, and then perhaps I'll follow those up with some more.

You had said something to the

effect of 581 tenants per month as a result of some survey. Could you -- I didn't catch all your comments. Could you tell me --

SENATOR KLEIN: Through you, Madam President, the survey that was conducted by my office looked at the five counties in the City of New York. And if you look at through December 2008 through April 2009, on average there's 581 evictions of tenants who were living in foreclosed properties.

SENATOR SALAND: Will Senator Klein continue to yield?

ACTING PRESIDENT STEWART-COUSINS: Senator Klein, will you continue to yield?

SENATOR KLEIN: I will continue to yield.

SENATOR SALAND: And are these the one-to-five-unit properties you're proposing to address in this bill?

SENATOR KLEIN: Yes. These are tenants that are living in residential properties, one-to-five-family homes.

SENATOR SALAND: And you also mentioned that you were codifying a case, and

I could not keep up with you at that point. Could you please --

SENATOR KLEIN: Through you, Madam President, the case -- what happens, if a tenant is not made party to the foreclosure, then their lease will survive the foreclosure. Presently, under statute, that's not the case.

However, in a case Polish National Alliance of Brooklyn vs. White Eagle Hall, in this case the foreclosure would actually be able to survive -- I mean, the tenancy would survive even after the foreclosure. So this legislation would codify that case that I cited.

SENATOR SALAND: And if he could continue to yield.

ACTING PRESIDENT STEWART-COUSINS: Senator, do you continue to yield?

SENATOR KLEIN: I'd be happy to continue to yield.

SENATOR SALAND: And could you share with us when that decision was rendered and what court rendered it?

SENATOR KLEIN: It was the Second

Department, 1983.

SENATOR SALAND: Thank you. Thank you, Senator Klein.

Senator Klein -- Madam President, would Senator Klein continue to yield, please.

ACTING PRESIDENT STEWART-COUSINS: Senator Klein, do you continue to yield?

SENATOR KLEIN: Madam President, I'd be happy to continue to yield.

SENATOR SALAND: On page 5 of your bill, Senator Klein -- I'm looking at Section 3 that begins at line 24 -- you require service by a new owner of a tenant in a variety of different fashions and go on to say that notice shall be accompanied by acknowledgment of service that shall be signed by the tenant, and then follow it up by saying if the tenant refuses to sign the acknowledgment, the serving party may file with the court a sworn affidavit.

Would that sworn affidavit form the basis for a summary judgment motion in the event that the owner of the property wished to have the tenant evicted?

SENATOR KLEIN: Through you, Madam President, right now in New York State there's three different ways that a tenant can be evicted. One is a writ of assistance, one is a special proceeding, one is eviction by regular 30-day notice.

So under my proposed legislation, you would actually be able to -- the notice requirement of course within 30 days of the foreclosure proceeding, and then an additional 60.

SENATOR SALAND: My point is, if the tenant refuses to sign the acknowledgment of service and the landlord -- the owner offers a sworn affidavit that in fact the tenant refused to sign, will that suffice for purposes of a motion for summary judgment?

SENATOR KLEIN: Yes, it would.

SENATOR SALAND: It will.

SENATOR KLEIN: Yes, it will, Senator.

Just to elaborate a little further, one of the problems that we've seen is that in many cases either the tenant is named in the

foreclosure proceeding as a Jane or John Doe, they never actually get the notice, or in some cases they only serve the owner of the foreclosed property, and of course he or she doesn't pass that on to the tenant because they're hopeful that the tenant will continue to pay rent.

SENATOR SALAND: If the Senator will continue to yield.

ACTING PRESIDENT STEWART-COUSINS: Senator Klein, do you continue to yield?

SENATOR KLEIN: I'd be happy to continue to yield.

SENATOR SALAND: I saw your reference to pseudonyms somewhere else in this --

SENATOR KLEIN: Madam President, I'm having lot of problems hearing Senator Saland.

ACTING PRESIDENT STEWART-COUSINS: I would urge the members to please be respectful of your colleagues as they debate.

SENATOR SALAND: Thank you. Thank you. I appreciate the problem.

I saw your reference to pseudonyms. The question which I would ask you in that context would be I just purchased a parcel or a unit that had been the subject of a foreclosure proceeding. I don't have a rent roll, I don't know who the tenants are, and I can't locate the tenants. Standard practice in those situations is that you do use a John or Jane Doe in order to obtain service -- nail and mail, some form of substituted service.

SENATOR KLEIN: I'm not requiring under this legislation -- through you, Madam President -- that we change the notice requirements of how service is made. Presently in New York State it would be nail and mail, and that would suffice also in my legislation.

SENATOR SALAND: Well, I'll call your attention to the same page, beginning at line 51.

SENATOR KLEIN: Under the legislation -- let me just interrupt one second, Senator Saland -- you have to make a good-faith effort to locate the tenant.

ACTING PRESIDENT STEWART-COUSINS: Senator Saland, do you wish Senator Klein to continue to yield?

SENATOR SALAND: If he would continue to yield, yes.

ACTING PRESIDENT STEWART-COUSINS: Senator Klein?

SENATOR KLEIN: Madam President, I'll continue to yield.

SENATOR SALAND: Senator Klein, could you tell me your understanding of the law with respect to a holdover tenant? What rights does a holdover tenant have currently in law?

SENATOR KLEIN: Presently, under a foreclosure proceeding, if there's a foreclosure that takes place and there's a tenant living in the foreclosed property and that tenant was not named in the foreclosure proceeding, they have no rights.

In other words, they could move to clear the property again with the three to 10 days that I talked about earlier. That's really the genesis of this legislation.

SENATOR SALAND: And if you know, Senator Klein, if you'll continue to yield --

ACTING PRESIDENT STEWART-COUSINS: Do you continue to yield, Senator Klein?

SENATOR KLEIN: Madam President, I'll be happy to continue to yield.

SENATOR SALAND: That, in fact, is consistent with the law throughout the State of New York with respect to holdover tenants. You are something akin to a squatter, and you have no rights.

SENATOR KLEIN: Right. Right.

SENATOR SALAND: Senator Klein, if you're a month-to-month tenant, what would the law provide in terms of the requirements of an owner or a landlord to evict you?

SENATOR KLEIN: Through you, Madam President. Again, this only applies to a tenant who's living in a foreclosed property. I'm not expanding any of the notice requirements or the time that that person could be legally evicted in all other cases.

Again, this just applies to foreclosed properties and properties which

contain one to four units.

SENATOR SALAND: If Senator Klein will continue.

ACTING PRESIDENT STEWART-COUSINS: Senator Klein, do you continue to yield?

SENATOR KLEIN: Madam President, I'd be happy to continue to yield.

SENATOR SALAND: Senator Klein, there are tenants in one-to-five-unit residences or buildings that may well be month-to-month tenants. It's certainly commonplace in my district. And what the law would require with respect to a month-to-month tenant would be that be that tenant get a term's notice.

So if you are paying rent based on the first of the month, you must be given a term's notice for the whole month before you can begin the summary proceeding.

Similarly, if I'm a holdover tenant -- and whether it's in a foreclosed premise or in a normal, I'll say, garden-variety landlord/tenant situation, all that has to be done is have to serve you a

72-hour notice to vacate.

So what you are doing with respect to landlord/tenant law I would say is certainly a departure from the existing law. And with respect to holdover tenants who expect nothing more than a term's notice, you are now providing I believe 90 days' notice before you can even begin that proceeding.

SENATOR KLEIN: Through you, Madam President. Again, as I said, this only applies to tenants that are in foreclosed properties, one to four units.

And one of the things that we're doing -- and again, these are special circumstances, as I highlighted before, with the large number of tenants being evicted with actually no notice or three to 10 days if they lived in a foreclosed property.

So what we are doing in this case is first, as I said, requiring the 30 days upon the foreclosure proceeding. And then actually, yes, giving them additional -- giving them 90 days to find alternative space.

SENATOR SALAND: If the Senator

will continue to yield.

ACTING PRESIDENT STEWART-COUSINS: Senator Klein, will you continue to yield?

SENATOR KLEIN: Yes, Madam President, I'd be happy to continue to yield.

SENATOR SALAND: I saw some provision in here, and quite candidly I'm trying to scan and I can't pick up where I saw it, where there's language to the effect that under certain circumstances where service has not been made in some fashion, a tenant is not required to pay rent. Perhaps you could pull that up for me.

SENATOR KLEIN: I'll locate that section for you, sure.

SENATOR SALAND: I was just advised by Senator DeFrancisco it's page 5, line 32, starting at 32.

SENATOR KLEIN: "A tenant who is not served by the notice required by this section within the time period for service, until such notice is duly served upon such tenant."

That's the 30-day grace period

under the legislation for a tenant who is not served in any way that there was even a foreclosure proceeding taking place in the property that he or she was living in.

SENATOR SALAND: Why would you want to let somebody live on somebody else's premises rent-free if you effectively were to say, well, since they weren't served, they cannot be required to pay until they are served, but when they are served, they will be required to pay for the period they were in possession?

Otherwise, I fear what you're going to do is you're going to encourage tenants to avoid service for purposes of avoiding having to pay rent.

SENATOR KLEIN: Through you, Madam President, that's not the intent at all. The reason why that portion, the section is in the legislation is because we want to make sure that a tenant isn't paying to an owner who knows they're being foreclosed upon, they stopped paying their mortgage, and they're just pocketing the tenant's money.

This way it forces the person who's now taking over the property to know who's there and to properly collect rent from that tenant through a newly appointed management agent, in the case of a bank, or move to clear the property in a timely fashion.

SENATOR SALAND: But has not under this section --

ACTING PRESIDENT STEWART-COUSINS: Senator Saland, do you want Senator Klein to continue to yield?

SENATOR SALAND: Yes, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Senator Klein, do you continue to yield?

SENATOR KLEIN: I'll continue to yield, Madam President.

SENATOR SALAND: Has not, under this section, ownership changed hands? I'm looking at, on this page, Section 1305. This is the section that deals with the change of ownership, does it not?

SENATOR KLEIN: When property actually changes hands. But this is also in

the case of someone who wasn't served at all as far as the 30-day notice that there was a foreclosure proceeding.

SENATOR SALAND: So if the Senator will continue to yield.

ACTING PRESIDENT STEWART-COUSINS: Senator Klein, do you continue to yield?

SENATOR KLEIN: Madam President, I'll be happy to continue to yield.

SENATOR SALAND: If your concern is that this tenant unknowingly is going to pay his or her former landlord -- I'll rephrase it. Is your concern that this tenant will unknowingly pay his or her former landlord?

SENATOR KLEIN: That's correct.

SENATOR SALAND: Is that's what's driving this?

SENATOR KLEIN: That's correct.

SENATOR SALAND: If the Senator will continue to yield.

ACTING PRESIDENT STEWART-COUSINS: Senator, do you continue to yield?

SENATOR KLEIN: I'll continue to

yield.

SENATOR SALAND: If in fact that is your concern, then why does this not say that the tenant should not have to pay rent twice, if they can establish, by way of adequate documentation, that they paid that month's rent to the prior landlord, instead of being put in a position where the tenant may not have paid the rent and the new incoming landlord in effect has to give this tenant a 30-day grace period and the only person who gains is the tenant?

And if in fact you want the landlord to do something about improving the quality of the premises that have just been foreclosed, we're denying him, it, her the capital to be able to do that.

SENATOR KLEIN: Through you, Madam President, that would create two burdens.

In other words, what we're trying to do here is first make sure the new owner -- in many cases it's going to be a lending institution -- knows who's in the premises and

not force an individual -- in other words, I want them to move quickly to establish that, hey, first there's a foreclosure proceeding, and also now it's our property, and stop paying the old landlord who hasn't paid their mortgage in quite some time.

If an individual tenant wants to bring an action against the previous owner for taking the money under false pretenses or fraud, they have the right to do that also.

This legislation would merely force the lending institution or the new owner to move quickly and let the tenant know, Hey, this is who you should be paying, I'm not that person who we just foreclosed upon.

SENATOR SALAND: Thank you. Thank you, Senator Klein.

Madam President, on the bill.

ACTING PRESIDENT STEWART-COUSINS: Senator Saland, on the bill.

SENATOR SALAND: The point that I was attempting to make in our last exchange was that in fact it's the new landlord -- whether it be someone who took the property

pursuant to a deed in lieu of foreclosure, whether it be a lending institution, whether it be a short sale -- that it's a new landlord who is effectively being told that they have to subsidize the tenant for 30 days, when the egregious party, for lack of any other term, is the party who failed to pay their mortgage, by reason of which we now have this foreclosure proceeding.

I certainly am not unsympathetic to somebody who finds themselves in a situation where their property is being foreclosed or, for that matter, a tenant who is on property that's in a two-, three-, four- or five-unit residence.

I would add it was just yesterday morning I was watching the Today show, a portion of the Today show, and the very subject matter that was being discussed was foreclosures. And the commentator, the guest who was discussing foreclosures was talking about the variety that exists among the states in terms of periods for which it would take to foreclose a property.

And she pointed out that at one extreme you have a state like Georgia, in which this can be done, I think she said, in four weeks -- if not four weeks, she said a month -- and on the other extreme you have states like New York, where it's well over a year before you can conclude a foreclosure proceeding.

The effort here is to take a situation in which we already have this extended period far in excess of what is a national average, or among our brother and sister states, and compound the situation even that much more.

I'm not quite sure that this does what would hoped to be accomplished. I think it may provide some degree of what I will term window dressing, but I don't think it's going to help us deal with the far more serious issue, which is being attempted to be dealt with at a national level, a federal level.

We have made some efforts here in New York over the course of the past year or so to try and provide a better means by which

those threatened with foreclosure can deal with that issue, and certainly some of the provisions that Senator Klein has included in this legislation that he didn't have in his B print I think are intended to build on what we've done here previously by way of legislation.

I have very serious reservations about this bill. I don't know if there will be any additional debate, but if there is, I certainly look forward to hearing it.

Thank you.

ACTING PRESIDENT STEWART-COUSINS: Thank you, Senator.

Senator DeFrancisco.

SENATOR DeFRANCISCO: Senator Saland asked all the questions I had. I just want to speak on the bill very briefly.

ACTING PRESIDENT STEWART-COUSINS: Senator DeFrancisco, on the bill.

SENATOR DeFRANCISCO: One of the areas that I just for the life of me can't understand is that if you're a tenant in a month-by-month tenancy, a landlord can give

you a 30-day notice and you have to vacate or be evicted. If it happens to be, under this bill, a piece of property that's under foreclosure, you now get 90 days and free rent if you're not given another notice that's required by this particular bill.

It seems to me the biggest problems with foreclosures -- that, by the way, happen to be properties that happen to be owned by someone other than the tenant. There used to be something called property rights in this state. But to have a situation where we're extending the time to foreclose and even providing something that may be free rent, I thought we were concerned about vacant premises that are left to deteriorate during a foreclosure proceeding.

Now, if the person who's foreclosing gets possession of the property and can't evict a month-by-month tenant within 30 days, if they have not provided this notice, or in some cases have to nail and mail and never know whether that's going to be sufficient, then we're going to extend the

process. If they don't get rent, then you're going to make sure that the property deteriorates even more.

And I think in order to protect tenants who have less protection outside of foreclosure than they do in the foreclosure proceeding, you're just exacerbating a very bad situation.

It's important to be concerned about tenant rights, but not to expand them just because of the misfortune of a foreclosure proceeding, especially when the state is seeing more and more properties sitting vacant and also deteriorating and not allowing the person doing the foreclosing to even collect rent if they've made some procedural error.

If you've protected the tenant that they don't have to leave the premises because of a procedural error, you should at least require them to pay rent, it seems to me, if you don't want the property to deteriorate.

So I have similar problems as were brought up in Senator Saland's questioning,

and I'm also leaning towards and I probably will vote no on this particular bill.

Thank you.

ACTING PRESIDENT STEWART-COUSINS: Does any other member wish to be heard on this bill?

Hearing none, the debate is closed.

The Secretary will please ring the bells.

Read the last section.

THE SECRETARY: Section 11. This act shall take effect on the 90th day.

ACTING PRESIDENT STEWART-COUSINS: Order in the chamber, please.

Call the roll.

(The Secretary called the roll.)

SENATOR KLEIN: To explain my vote.

ACTING PRESIDENT STEWART-COUSINS: Senator Klein, to explain his vote.

SENATOR KLEIN: Madam President, thank you.

This legislation is clearly something that I would hope we wouldn't have

to pass here today. But again, as I said earlier, because of the subprime lending crisis and the large number of foreclosures in our state, we identified a new victim, and that's the tenant who rents these spaces.

What's happening until this law takes effect is these individuals who paid their rent, played by the rules, are being kicked to the curb with absolutely no notice; I said earlier from three to 10 days.

I know Senator Saland mentioned the lengthy process for foreclosure in New York State. And if you look at other states, our process is not as long. As a matter of fact, in California they require that tenants receive 60 days' written notice to vacate property if it is foreclosed, and then it takes approximately 300 days additionally for foreclosure from start to finish. In the state of Wisconsin, it takes about 310 days for foreclosure from start to finish; Illinois, close to 300; and then New Jersey, 300 as well.

So what we're doing here today is I

think commonsense legislation. First, in response to Senator DeFrancisco, we're not giving free rent to tenants. We're merely asking the lending institution in many cases, or anyone who's foreclosing on this property, to just identify themselves as the owner or the potential owner of this property, so the tenant knows who they can legally pay rent to.

So I think, again, this is important legislation. This was brought to my attention by many groups throughout our state. And I think today we're sending a very important message to homeowners and tenants that we're going to understand the predicament you're in, we're going to understand that you need a little more time to find a decent place to live for your families.

So I vote yes, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Senator Klein to be recorded in the affirmative.

Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes, I'm going to vote no.

And just in response to what Senator Klein just said, he said that it's not free rent, it just requires the new owner to give notice to the tenant. But this is the way the bill reads: "A tenant who is not served by this notice required by this section within the time period for service of such notice shall not be liable for any rent from the expiration of such time period until such notice is duly served upon such tenant." So it just seems to me it's more than simply what Senator Klein had said.

But more importantly, this I think is just going to expand the right of the tenants more than they had under their original lease or their tenancy,month-to-month tenancy. And as a result, it just seems to me that if you are expanding their rights during a period when you want to make sure a property is occupied and at least kept up so it doesn't deteriorate I think is the opposite of what we should be doing.

So I'm going to vote no.

Thank you.

ACTING PRESIDENT STEWART-COUSINS: Senator DeFrancisco to be recorded in the negative.

Senator Hannon.

SENATOR HANNON: Yes, Madam President. I'm going to vote yes on this, if only to encourage the sponsor to keep working on this.

Because I do believe the objections that have been raised are accurate, and that this is, while well-intentioned to deal with people who are suffering through no fault of their own through foreclosure, it's going to result in a couple of different things.

One would be that lenders are not going to be lending with a statute like this around, since it leaves them in total peril of losing the money they've lent.

And second, it almost eviscerates the foreclosure proceeding because it does cover, on page 3, one-to-five-family dwellings. Well, how does a lender know that there's a tenant in a one-family dwelling? They don't have any notice of rental. There

is no label that says the occupant is a renter. And yet if you fail to give them service, the foreclosure is null and void for the section that Senator DeFrancisco just read.

So it's a nice idea, and I want to encourage nice ideas.

Thank you, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Senator Hannon will be recorded in the affirmative.

Are there any other Senators wishing to explain his or her vote?

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 19 are Senators Alesi, Bonacic, DeFrancisco, Farley, Flanagan, Fuschillo, Golden, Griffo, O. Johnson, Lanza, Larkin, LaValle, Leibell, Libous, Marcellino, McDonald, Nozzolio, Ranzenhofer, Saland, Seward, Skelos, Volker, Winner and Young.

Ayes, 37. Nays, 24.

ACTING PRESIDENT STEWART-COUSINS:

The bill is passed.

The Secretary will read.

THE SECRETARY: Calendar Number 227, by Senator Schneiderman, Senate Print 4305, an act to amend the Criminal Procedure Law.

SENATOR VOLKER: Explanation.

ACTING PRESIDENT STEWART-COUSINS: An explanation has been requested, Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President.

This is a bill that is a part of an effort that we're undertaking to take a look at grand jury practices and processes in the court that impose an undue burden on witnesses, on defendants, on plaintiffs, and on third parties. And this bill very simply shifts the burden of demonstrating why bail should not be exonerated.

Currently, under New York State law, if a defendant is brought in, either they can make bail or not make bail. If they don't make bail, then they're incarcerated. If they

make bail, they are released. After 45 days, those who are incarcerated must be let out under the current state of law.

However, if you make bail, there's absolutely no pressure on the prosecutor to move forward in an expeditious manner to seek grand jury action. Defendants are routinely brought in over and over again. There really is very little that they can do.

So this bill shifts the burden to say that after 45 days a defendant may apply -- it's at the discretion of the defendant -- and a court may grant an order exonerating bail, giving them back their money. The prosecutor is free to show good cause as to why the grand jury hasn't proceeded.

The problem now is that the burden is not on the prosecutor to either move forward quickly or to show cause in court why it is taking so long.

So this is something that is aimed at increasing efficiency and efficacy and to correct the sort of anomalous situation where

people who don't make bail are out after 45 days with no money and no other restraints, whereas someone who does make bail can be dragged out for months and months and months awaiting action in a grand jury over which they have no influence, while the prosecutor who controls whether the grand jury moves forward or not has no burden to proceed.

ACTING PRESIDENT STEWART-COUSINS: Thank you, Senator.

Senator Volker, why do you rise?

SENATOR VOLKER: Madam President, on the bill.

ACTING PRESIDENT STEWART-COUSINS: Senator Volker, on the bill.

SENATOR VOLKER: Yeah. This bill apparently came, my research shows, from a Law Journal article several years ago that commiserates with the people who are charged in saying, well, their families may have put up the -- have to put up the bail and so forth, and says, you know, we must be more sympathetic to those that are charged with crimes.

Senator Schneiderman, I must say to you that you have handled the Codes Committee with aplomb and dignity and so forth and have managed it very well. However, having said that, you have let out some bills that I had buried for many, many, many, many years.

And one of the things that I noticed is that you have had a tendency to be far more supportive of the defendant than the prosecution. And that means that there are victims out there who I think have some real complaints.

Here's a problem with this bill that you probably didn't think of, because the Law Journal is a New York City paper. In the rural areas, grand juries do not meet on a regular basis. There are many counties, for instance, in my district where they don't meet on a regular basis. They may not meet for 45 days; it's very, very possible.

And the result of this is that what this bill will do is create a huge management problem for the district attorneys. In fact, even in New York City and in places where

there are frequent grand juries, shall we say, or continuing grand juries, it will create a real tracking problem for the grand jury and in some ways maybe even the victim, who has got to find out what's going on, won't be able to find out from time to time.

Now, yesterday we had a bill that you sponsored that said the court can waive mandatory fees and surcharges. That's all well and good. But on the other hand, what it does is it says that we feel very sorry for certain defendants. But on the other hand, we must understand these people have been charged with crimes. In most cases, they have previously been charged with crimes -- in most cases -- or convicted.

It seems to me that the 45-day rule here -- and I understand that the defense attorneys really like this ruling, and they can keep a close eye on these cases and make sure that they can pop in at any given time.

And by the way, the local courts in upstate New York will have costs connected with this, because if there's a 45-day rule,

they're going to have to deal with that.

I just think that this bill, although well-intentioned, will create a problem for the district attorneys, who are very much opposed to this. In fact, the district attorneys have been very much opposed to most of what has been happening. Certainly the drug reform bill, every district attorney in this state opposed except for one, and, you know, he's a -- well, every district attorney in the state but one opposed the bill.

And I think what we've got to realize is that it's up to this Senate, that has always been the defender of the victims, to do everything we can to protect the victims more than or as much as, certainly, as the defendants. And I just think this bill doesn't fit that mold.

ACTING PRESIDENT STEWART-COUSINS: Are there any other Senators wishing to be heard on the bill?

Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes, on the bill.

We discussed this at great length at the Codes Committee, and I just wanted to raise a couple of points that I think are important in practice. This bill may sound logical on its face, but in practice I don't think it's going to work, and it's going to cause an extremely greater burden on the prosecutors in this state.

The rationale I heard yesterday was basically that people who don't have their 180.80 hearing or the hearing on probable cause sometimes get released on bail, or if you're in jail and you get released on your own recognizance after 45 days, and therefore if someone is out on bail they should have that 45-day right.

But as a practical matter -- and that makes sense, in my mind, as far as when persons are incarcerated and they can't make bail, to have a period of time beyond which they are released. Because it's unfair for people who just can't make bail if the prosecution hasn't prosecuted in an expeditious way.

The problem with this is that if bail is in fact posted, and in many cases on very serious crimes, the district attorney has more time within which to present their case to the grand jury. And what happens oftentimes is those that the more serious crimes, they do need more time to go to the grand jury to present their case and get indictments.

And oftentimes the DA's office will concentrate on speed on those cases where people are incarcerated without bail so that they're not released without an indictment and another bail hearing.

So what will happen in this situation is that if everybody gets an automatic exoneration of bail after 45 days, on every case the district attorney is going to have to come forward and show why this should not happen.

In other words, the burden is on the district attorney's office on every case where someone wants their bail exonerated. Which means they're going to have to move more

quickly without any more resources to indict those cases as well as those cases where people are in jail without bail.

And it seems to me shifting the burden when someone is out of jail and already posted bail is not a good idea. If the person is at liberty, they've posted bail, they've already paid their bail bondsman and there's no additional fee as this case is pending, that seems to me sufficient to protect that person's interest, because they're out at liberty.

If they want their bail exonerated, they could then go into the court, the defendants can, and make an application to the court. So there's protection. If you feel you need your bail bond exonerated because you need the property released that's the security for the bond, well, you can make an application to the court and the court can release or exonerate the bond.

But in every case now, the burden is reversed, requiring the district attorney to do that, show good cause why the bail

should not be exonerated. And in addition, if the bail is exonerated and a defendant is indicted and they do appear before a superior court judge, they are going to most likely have to post bond again -- another fee, more security, and the like.

Rather than the bond that was posted preindictment being sufficient to cover the balance of the case, or being deemed to be sufficient bond without having to present any more money or provide any more security.

So I guess, in short, the reason I'm against this bill is that the current system works, it protects those people who are in jail and can't make bail by automatic release after a certain period of time. It protects those that are out on bail who certainly have the right to exonerate the bail if they choose to and may have to pay another bond if and when they're indicted. The system works. Why present another burden on the district attorney's office to have to come in every time someone makes an application for bond?

And we talk about repeatedly unfunded mandates, we're not going to burden our localities or our counties with more costs. Well, this is going to be an additional cost. And it's an unfunded mandate, and it just doesn't make good sense from an administration of justice as well.

So I'm going to vote no on this bill as well. Thank you.

ACTING PRESIDENT STEWART-COUSINS: Thank you, Senator.

Senator Bonacic.

SENATOR BONACIC: Would Senator Schneiderman just yield for a couple of questions?

ACTING PRESIDENT STEWART-COUSINS: Senator Schneiderman, do you yield?

SENATOR SCHNEIDERMAN: Yes, Madam President.

SENATOR BONACIC: Have the state district attorneys taken a position on your bill?

SENATOR SCHNEIDERMAN: No. Contrary to the assertions earlier today that

they're in opposition, we have received no opposition from the district attorneys to this bill.

SENATOR BONACIC: Would you yield to another question, Senator Schneiderman?

ACTING PRESIDENT STEWART-COUSINS: Senator Schneiderman, do you continue to yield?

SENATOR SCHNEIDERMAN: Yes, Madam President.

SENATOR BONACIC: Thank you, Madam President.

Do you have any statistics, say for the last three years, on was the posting of bail for defendants, was it cash or was it bail bond? Would you have any of those statistics, what percentage?

SENATOR SCHNEIDERMAN: Through you, Madam President, I do not have the statistics. I know that a very high proportion are bail bonds. But we can try and track down some records, if that would please the Senator.

SENATOR BONACIC: Would Senator

Schneiderman continue to yield?

ACTING PRESIDENT STEWART-COUSINS: Senator Schneiderman, do you continue to yield?

SENATOR SCHNEIDERMAN: Yes, Madam President.

SENATOR BONACIC: In your judgment, as a matter of state policy, what grievance were you trying to alleviate by virtue of your legislation? Was it a financial hardship on the families of the defendant that were posting the bail or put up the cash that they could get their money back sooner? Was that what motivated you to do this legislation?

SENATOR SCHNEIDERMAN: Through you, Madam President, that was a concern. But I think that this really was more -- because there are many situations where family members or third parties will put up money for someone's bail and then, you know, their money can be held up indefinitely under the current system. And that's what we're seeking to change.

But the focus really is on the fair and efficient administration of justice. You've got to put the burden where the burden belongs. And in this case, where the prosecutor has all the discretion about how fast you move along things to the grand jury, we're just seeking to shift the burden.

It's a very similar process to what exists today that someone can go in to seek exoneration of bail today. This doesn't change that, it just shifts the burden so that the prosecutor, who is in total control of how fast the grand jury moves along, will have to bear the burden of showing why it hasn't moved along. Which, incidentally, could include that you're in a rural area or the grand jury is not meeting. That's good cause.

So those were the considerations.

SENATOR BONACIC: Thank you, Senator Schneiderman.

On the bill.

ACTING PRESIDENT STEWART-COUSINS: Senator Bonacic, on the bill.

SENATOR BONACIC: I'd like to

associate myself with Senator DeFrancisco. I think the courts are working fine with the judges, the district attorneys, in terms of timeliness.

As to Senator Schneiderman's concern about financial hardship, as I understand the process, if I am a defendant for a serious crime and I have to post a bail, let's say a bail of $50,000, usually if I have an asset or my family has an asset, let's say a house, they put their house up and they go to a bail bondsman and they pay that bail bondsman 10 percent premium of $50,000 to get that bond.

So in the case that I gave, it might be $5,000 that they would have to pay the bail bondsman for $50,000 worth of a bond to get exonerated. Okay?

Now, once the money is paid to the bail bondsman, it's paid. It's never coming back. Because the purpose of the bond is to ensure that you're going to show up at the time of trial, you're not going to flee justice.

So in terms of relieving financial hardship, when that bond premium is paid, you're never get getting it back, because you paid for the bond. So I just want to make that clear.

So your concern about alleviating financial hardship, if most of the cases are bonds put up for bail, then your concern is not being achieved. But I just say that in terms of enlightenment as opposed to the reason why I'm voting against this bill.

And the main reason is we have communicated with the district attorneys in our area. They think this is a terrible bill. They manage the grand jury; in the rural areas, it works a lot differently. And, you know, there are constitutional objections to a speedy trial that you always have that, a defendant, to make sure that justice delayed is not justice not served.

So I think the constitutional protections are there. And I don't think this Legislature should be micromanaging the criminal justice courts.

And another purpose of clarification, Senator Schneiderman alluded to plaintiffs, he alluded to witnesses. I think it's usually the people, no plaintiffs. In criminal justice, it's the people versus the criminal defendant. He's not a criminal yet until he's convicted, the defendant.

So for the reasons that I've discussed, I'm voting no.

Thank you, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Thank you, Senator.

Senator Lanza.

SENATOR LANZA: Thank you, Madam President. I rise to oppose this legislation.

On its face, it may seem like a pretty innocuous piece of legislation. But I think when you put it in the context of how you actually prosecute a crime in this state in our courts, you see the problem that I think will occur if enacted.

Let's understand why and when and under which circumstances bail is set. When someone is arrested for a serious crime, a

felony, in this state there's an arraignment. And at that arraignment the prosecutor makes a bail application. The defendant has an opportunity to be heard. A judge reviews the arguments, looks at the defendant's past history, if there is one, the defendant's rap sheet, and sets bail only if it is determined that the defendant who is charged with a felony, a serious crime, presents a flight risk. That's why we have bail set.

There's due process, it occurs at the arraignment, the rap sheet is looked at. Perhaps we have a defendant who has committed crimes in the past who has not shown up to court, there are bench warrants issued. All that is considered. And in the interests of protecting the people and the process, bail is only set when the court decides that this defendant cannot be trusted to return to court during the pendency of the prosecution.

And it works. Most of the time. Could you imagine if in the Bernie Madoff case you had bail set -- because given the circumstances of the case, you're not supposed

to actually consider the underlying crime, whether it's murder or burglary or robbery. But in fact, as a matter of practice, it is factored in, the theory being that the more serious the crime, the more serious the ultimate potential penalty, the higher the flight risk that is presented.

So could you imagine in the case of Bernie Madoff, when all that money is being stolen, when you have a person of means who can hop on a plane and go anywhere he wants, if he so chooses, to avoid and evade justice? Could you imagine bail being set in that case after 45 days for no reason except that 45 days have passed, that all of a sudden, automatically, bail is exonerated?

Do you think Bernie Madoff would continue to come to court? Or do you think he would take off on a plane and go to the corners of the earth and evade justice? Of course that's what Bernie Madoff would do.

Now, you might say, well, that's a white-collar crime, it only involved the bilking of Americans and their financial

circumstances. But the same would occur in serious cases of rape, murder, burglary, robbery. It is bail that in many cases keeps a defendant returning to court to face justice.

Remember, this is a defendant who is not in jail. Their liberty is not being denied at this point. They're free to come and go, in most cases, but they must return to court. And it's because they have bail hanging over their heads.

It's been said that this is so that we can shift the burden to the prosecution. The burden is already there. The people, the prosecutors who represent the people, they already have the burden of making the argument for bail.

And if there are truly changed circumstances within those 45 days -- then, going back to the Bernie Madoff case, a very complicated case, there's a reason why you might not have an indictment in 45 days. You need to marshal the evidence, speak to the witnesses. Very complicated case.

To force the prosecution to rush, to rush to the grand jury to seek an indictment simply to avoid having the defendant released -- which would happen under this legislation -- would not, I think, be consistent with the administration of justice in this state.

But in the case where I think the sponsor of the bill I think is focusing on the fact that perhaps after 45 days we don't have an indictment, perhaps it means that the prosecution really doesn't have a good case or is sitting on their hands or is not really doing their job properly on behalf of the people. Or that something has changed with respect to new evidence that suggests that maybe this is a case that we will not have an indictment within the statutory 30/30 speedy trial time -- six months, by the way, as has been said.

Well, then, the system already allows for the defendant to appear before the court, under the present law, and make new application and present that argument. And it

occurs all the time in this state. If that is really what has occurred, we have those changed circumstances, that argument can be made right now.

And quite often a judge will look at that new evidence, those changed circumstances, and sometimes the prosecutor even agrees and removes or agrees with bail being lifted and the case continues until and if there's an indictment. So we have the ability to do that under the present law.

There's another issue here, and it's cost. By setting an arbitrary date of 45 days -- again, there's no rhyme or reason as to why we're selecting 45 days as the time in which a prosecutor must bring an indictment or else bail is going to be exonerated -- that would mean that we'd have to have another forced court date 45 days after the arraignment of every felony case in this state.

Which would mean you'd have to bring the defendant back, you'd have to bring the people back, the defense attorney back,

often Legal Aid or court-appointed. You'd have to have yet another case put on the calendar in our already clogged criminal justice system.

And we're not talking about a few, we're talking about thousands, tens of thousands of new court dates that will have to result because of this legislation. I don't see a fiscal statement, but I can tell you the cost to this state will be enormous, will be enormous, simply because we're going to have to drag people back to court so that we could automatically remove bail.

I think when you look at this piece of legislation, which I believe will result in more bench warrants being ordered, more felons evading justice, more defendants not returning to court -- I think when you put this in the context of the legislation which reduced the sentence on many very serious drug crimes in this state, when you put it in the context, together with that, with the downturn in the economy and with some of the other measures I've seen pass the Assembly already and maybe

coming before this house, I believe that together they represent the gathering storm clouds of a new crime wave in this state. And I think it's something that we need to be very, very mindful of.

There's a reason why bail is set on very serious felony cases. I know one of the arguments with respect to why 45 days is that because in the law as it exists today, if you're incarcerated, if your liberty has been taken from you during the pendency of a felony case, where you haven't either made bail or you're held without bail because of the serious risk of flight that you presented, that if a DA's office, if the prosecutor doesn't bring an indictment within 45 days, you're released.

That makes more sense. Your liberty has been taken, you're incarcerated. I think under those circumstances, everyone agrees that we might want to put an extra burden on the people to give an extra incentive to the prosecutor to bring that indictment. And if you haven't done that in

45 days, then I think we can all agree that it does make sense that at that point you ought to be released.

But that I don't think is the right analogy with respect to what's happening here. In these cases, defendants are already out, they're not incarcerated. It is the bail which is set in order to provide an incentive to have them return to court. I think by just automatically and arbitrarily removing that bail will result in many, many felons in this state evading justice.

And that's why I oppose this legislation, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Thank you, Senator.

Are there any other Senators wishing to comment on the bill?

Senator Morahan.

SENATOR MORAHAN: Is it too late to ask the sponsor to yield?

ACTING PRESIDENT STEWART-COUSINS: Senator Schneiderman, will you yield?

SENATOR SCHNEIDERMAN: Yes, Madam

President.

SENATOR MORAHAN: Senator, I just want some clarifications on some of the aspects of this bill.

If, for example, we don't have a grand jury meeting regularly or whatever, certainly the judge still has the ability, upon application by the prosecution, to continue the bail.

SENATOR SCHNEIDERMAN: Through you, Madam President, I really think the scope of the change that will be made by this legislation is really, I think, being overstated.

A grand jury that is not meeting because you're in a rural area where it doesn't meet regularly, that clearly would constitute good cause for a judge to say yes, you're not getting your bail exonerated.

Currently, if you want your bail exonerated, you make an application to the court. Under this bill, if you want your bail exonerated, you make an application to the court. It just shifts the burden. But under

this legislation, if there is good cause shown, the court has to deny the exoneration of bail.

So if there's a problem that the grand jury isn't meeting regularly enough, good cause shown. That is absolutely protected under this legislation.

SENATOR MORAHAN: May I continue to ask the Senator to yield?

ACTING PRESIDENT STEWART-COUSINS: Senator Schneiderman, do you continue to yield?

SENATOR SCHNEIDERMAN: Yes, Madam President.

SENATOR MORAHAN: So in other words, Senator, if a situation arises that would allow someone to apply to get off bail, so to speak, after 45 days because there's been no grand jury finding, the judge still has the discretion upon that application to continue bail for whatever reasons the judge feels is the right reason?

SENATOR SCHNEIDERMAN: Through you, Madam President, absolutely. This is

something that requires a defendant to make an application.

And again, today, before we enact this bill, the defendant can also make an application. This just shifts the burden that the prosecutor has a little more responsibility for justifying why things are taking so long. That's all this does. But the judge absolutely has discretion to deny the exoneration.

SENATOR MORAHAN: Thank you, Senator.

Thank you, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Thank you, Senator Morahan.

Are there any other Senators wishing to be heard on the bill?

Hearing none, the debate is closed.

The Secretary will please ring the bells.

Read the last section.

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

ACTING PRESIDENT STEWART-COUSINS:

Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT STEWART-COUSINS: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 227 are Senators Alesi, Bonacic, DeFrancisco, Farley, Flanagan, Fuschillo, Golden, Griffo, Hannon, O. Johnson, Lanza, Larkin, LaValle, Leibell, Libous, Marcellino, Maziarz, McDonald, Nozzolio, Padavan, Ranzenhofer, Robach, Saland, Seward, Skelos, Volker, Winner and Young.

Ayes, 33. Nays, 28.

ACTING PRESIDENT STEWART-COUSINS: The bill is passed.

Senator Klein, that completes the controversial reading of the active bills on the calendar.

SENATOR KLEIN: Madam President, can you please recognize Senator Ruth Hassell-Thompson for an announcement, and then Senator Padavan.

ACTING PRESIDENT STEWART-COUSINS:

Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Thank you, Madam Chair.

There will be an immediate meeting of the Majority Conference in the Majority Conference Room, Room 332.

ACTING PRESIDENT STEWART-COUSINS: Senator Padavan.

SENATOR PADAVAN: Madam President, there will be an immediate meeting of the Dalai Lama's preferred party, the Republican Party, in Room 315.

(Laughter.)

ACTING PRESIDENT STEWART-COUSINS: Senator Klein.

SENATOR KLEIN: Madam President, at this time can we please stand at ease.

ACTING PRESIDENT STEWART-COUSINS: Thank you, Senator Klein.

There will be an immediate meeting of the Majority Conference in Room 332, and immediate meeting of the Minority Conference in their conference room.

We stand at ease.

(Whereupon, the Senate stood at ease at 1:32 p.m.)

(Whereupon, the Senate reconvened at 5:21 p.m.)

ACTING PRESIDENT STEWART-COUSINS: Senator Klein.

SENATOR KLEIN: Madam President, I'd like to announce a 5:30 Rules Committee meeting. And after that, we'll proceed with session.

We'll stand at ease pending the report of the Rules Committee.

ACTING PRESIDENT STEWART-COUSINS: There will be a 5:30 Rules Committee meeting in the Majority Conference Room, Room 332.

And the Senate will stand at ease pending the report of the Rules Committee.

(Whereupon, the Senate stood at ease at 5:22 p.m.)

(Whereupon, the Senate reconvened at 5:54 p.m.)

ACTING PRESIDENT STEWART-COUSINS: Majority Leader Smith.

SENATOR SMITH: Yes, Madam

President. Can we return to the order of reports of standing committees. I believe there is a report of the Rules Committee at the desk. I'd like to have it read at this time.

ACTING PRESIDENT STEWART-COUSINS: Senator Smith, there is a report of the Rules Committee here at the desk.

The Secretary will read.

THE SECRETARY: Senator Smith, from the Committee on Rules, reports the following bill direct to third reading:

Senate Print 5451, by Senator Dilan, an act to amend the Vehicle and Traffic Law.

ACTING PRESIDENT STEWART-COUSINS: Senator Smith.

SENATOR SMITH: Yes, Madam President, at this time can we please take up Supplemental Calendar 43A.

SENATOR LIBOUS: Point of order.

ACTING PRESIDENT STEWART-COUSINS: Senator Smith, might you want to move for the adoption of the Rules Committee report?

SENATOR SMITH: I move that we accept the report of the Rules Committee.

ACTING PRESIDENT STEWART-COUSINS: All those in favor of adopting the report of the Rules Committee please signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT STEWART-COUSINS: Opposed, nay.

(Response of "Nay.")

ACTING PRESIDENT STEWART-COUSINS: The report of the Rules Committee is accepted.

SENATOR SMITH: Thank you, Madam President. At this time can we please take up Supplemental Calendar 43A.

ACTING PRESIDENT STEWART-COUSINS: The Secretary will read.

THE SECRETARY: Calendar Number 286, by Senator Dilan, Senate Print 5451, an act to amend the Vehicle and Traffic Law.

SENATOR LIBOUS: Lay it aside, please.

ACTING PRESIDENT STEWART-COUSINS: The bill is laid aside.

Senator Smith.

SENATOR SMITH: Yes, Madam President. At this time can we go to the reading of the controversial calendar.

ACTING PRESIDENT STEWART-COUSINS: We will move to the reading of the controversial calendar.

The Secretary will read.

THE SECRETARY: Calendar Number 286, by Senator Dilan, Senate Print 5451, an act to amend the Vehicle and Traffic Law.

SENATOR SMITH: Madam President, is there a message of necessity at the desk?

ACTING PRESIDENT STEWART-COUSINS: Yes, Senator Smith, there is a message of necessity. It has been received from the Governor, and it is here at the desk.

SENATOR SMITH: Then I move to accept the message of necessity.

SENATOR LIBOUS: Madam President.

ACTING PRESIDENT STEWART-COUSINS: Senator Libous.

SENATOR LIBOUS: Could we please have a roll call on the message of necessity?

ACTING PRESIDENT STEWART-COUSINS: All those Senators in favor of accepting the message of necessity please signify by raising your hands.

SENATOR LIBOUS: Madam President, point of order. I'd like to raise a point of order, please.

ACTING PRESIDENT STEWART-COUSINS: Senator Libous.

SENATOR LIBOUS: Do the rules not state for a roll call that members have to be in their seats?

ACTING PRESIDENT STEWART-COUSINS: Senator Libous, yes, they do.

SENATOR LIBOUS: Thank you, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Announce the results.

THE SECRETARY: Ayes, 32. Nays, 29.

ACTING PRESIDENT STEWART-COUSINS: The message of necessity is accepted.

The bill is before the house.

SENATOR LIBOUS: Explanation,

please.

ACTING PRESIDENT STEWART-COUSINS: An explanation has been requested, Senator Dilan.

SENATOR DILAN: Yes, Madam President.

This is a program bill from the Governor of the State of New York. It's known as the MTA Financial and Reform Package.

This bill generates revenues from five different sources, and over the course of two years it would generate $2.9 billion. These revenues would only apply to the Metropolitan Commuter Transportation District, which is a 12-county region that includes New York City and the five boroughs. It also includes the County of Nassau, Suffolk, Rockland, Westchester, Orange, Putnam, and Dutchess Counties.

The five sources are the new license fee, which would be a $1 flat fee on all licenses, and that's $1 per six months or $2 over the course of a year. This was done because it is easier for DMV to implement and

collect on per six months the validity of the driver's license. This will generate, in a full year, $27 million. This current fiscal year it will generate $6 million.

This increased fee of $16 above the rate set by the state budget on D licenses will cost, for example, $78.50 for all eight-year renewals.

It also has another component to car registrations and reregistrations. There will be a $25 per year increase, and this will be imposed on registrations and reregistrations of all motor vehicles. It will raise $47 million in 2009 and $141 million in 2010.

The third component is the Metropolitan Commuter Transportation Mobility Tax, otherwise known as the payroll tax. The tax is 34 cents per $100 of income. It is imposed on all payrolls of more than 2500. And also, if you are self-employed, it would be a payroll of more than $10,000 for an individual who is self-employed.

And this would be effective March 1

of this year, meaning it would be retroactive to March 1st. It will raise approximately $1 billion in 2009 and $1.5 billion in 2010.

The rate of 34 cents per $100 of income applies to all 12 counties of the region. State Tax and Finance will be collected on a biweekly basis; the MTA will be paid monthly.

School districts will be reimbursed annually; that is, the school districts within the 12-county region. The tax applies only that applies only to public schools. Schools are reimbursed upon approval of the 2010 budget, and the tax is effective on these public schools beginning September 1st for these particular schools.

The next charge is the taxi surplus. It's a 50-cent-per-trip charge on all medallion taxicabs, and that would be in New York City only. If a cab leaves the region, the tax will not apply. Also, cab owners will be liable for paying the drop-off charge of 50 cents. And this drop-off charge will yield $85 million in a fully annualized

year. In the current fiscal year, it will generate $14 million.

There's also -- and it's the last component, the fifth component -- a car rental fee. And that charge will be 5 percent on all rentals of passenger vehicles within the 12-county region. And it will generate $18 million in 2009, and it will generate $35 million in 2010.

The bill also creates the MTA Financial Assistance Fund. The fund is subject to appropriation by the Legislature, and it consists of two accounts. The first account is the Mobility Trust Fund Account, and the second is the Metropolitan Transportation Authority Aid Trust Fund.

Also included within this piece of legislation is the accountability portion and the reforms. And if it's okay with you, Madam President, I would like to defer to Senator Perkins to explain that portion of the bill.

ACTING PRESIDENT STEWART-COUSINS: Senator Perkins.

SENATOR PERKINS: Thank you very

much.

I just want to point out that as we have attempted to tackle the financial needs of the system, we've also looked at other aspects that are just as much of a concern to the consumer and obviously to the region. In particular, we looked at some measures related to the governance of the MTA -- in other words, looking for more transparency and accountability -- and several measures are part of the legislation that speak to that in terms of preventing abuse, providing more transparency, reporting and accountability, improving the governance of the MTA, enhancing the process for the five-year plan, targeting MTA contracts.

And so I think that the legislation begins to be more comprehensive just beyond the financial needs but also in terms of some of the other concerns that so many members have raised about how do we make the MTA a more responsive, a more accountable, a more transparent agency for the sake of the folks in the region and obviously for the sake of

the state.

ACTING PRESIDENT STEWART-COUSINS: Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes, I don't know who to ask this of, Senator Dilan or Senator Perkins.

ACTING PRESIDENT STEWART-COUSINS: Who would you like to yield?

SENATOR DeFRANCISCO: Actually, I'd like Senator Smith to yield, because it's about procedure. If he chooses to. Would he yield, Senator Smith?

ACTING PRESIDENT STEWART-COUSINS: Senator Smith has not spoken on the bill, so therefore your request is not in order.

SENATOR DeFRANCISCO: All right, then I'll ask Senator Perkins if he would yield to a question.

ACTING PRESIDENT STEWART-COUSINS: Senator Perkins, will you yield for a question?

SENATOR PERKINS: Yes, by all means.

SENATOR DeFRANCISCO: Senator,

you just mentioned the transparency in this bill, and we've heard transparency throughout the budget process and the need for reform.

May I ask you if it's fair to say that this particular bill was generated by private negotiations between Senator Smith, Assembly Speaker Silver, and the Governor, and these negotiations were all behind closed doors?

SENATOR PERKINS: There's no question -- through you, Madam President, there's no question that they played an important role in this process.

But I do know that we've had several hearings by the Transportation Committee, by my committee. We've gotten input from members actually in terms of committee meetings here in Albany, from members particularly in the most recent hearing, a meeting in which there was a lot of concern expressed about transparency and accountability and the intractability of the MTA especially in the past when you were in the majority, so to speak.

And so we thought we would take that into consideration and try to capture it in the legislation you have before you.

SENATOR DeFRANCISCO: Will Senator Perkins yield to another question?

ACTING PRESIDENT STEWART-COUSINS: Senator Perkins, do you continue to yield?

SENATOR PERKINS: Yes. Yes.

SENATOR DeFRANCISCO: Senator Perkins, isn't it fair to say that this bill was just printed and handed out at approximately 3:15 or 3:30 this afternoon?

SENATOR PERKINS: Yes.

SENATOR DeFRANCISCO: Would Senator Perkins yield to another question?

ACTING PRESIDENT STEWART-COUSINS: Senator Perkins, do you continue to yield?

SENATOR PERKINS: Yes, I do.

SENATOR DeFRANCISCO: Senator Perkins, in order to vote on this particular bill it was necessary for the Governor to provide to us a message of necessity to pass a bill three hours after it was printed. And a message of necessity that really waives the at

least three days that people should be able to react to the bill.

Do you find that troubling at all?

SENATOR PERKINS: Through you, Madam President, there's no question that the urgency of the matter dictated a process, a procedure that called for a message of necessity. A practice that I don't think is unique in this case in this particular body, at least in my short period of time here, whereby such immediate type of action was necessary, and has proven in the past to be an approach that provided for the kind of dialogue and the kind of debate that's taking place now. And also, you know, the media that has also helped to get the information out.

So while there are more ideal circumstances, the urgency of the matter obviously called for us to use the process that we're using. I think that nevertheless it will provide the kind of opportunity to become fully familiar with these issues. After all, this crisis is not new to us. And, in fact, we've been deliberating on this for

some time now one way or another.

SENATOR DeFRANCISCO: Would Senator Perkins yield to another question?

ACTING PRESIDENT STEWART-COUSINS: Senator Perkins, do you continue to yield?

SENATOR PERKINS: Yes. Through you, Madam President.

SENATOR DeFRANCISCO: Senator Perkins, last year when the Senate rules came out, there was an amendment request in order to amend the rules so that we do away with the message of necessity. And that was brought by the Democrat minority at that time.

Did you vote for that?

SENATOR PERKINS: Through you, Madam President. I would like to focus on the bill and the legislation before us as the most relevant question.

However, assuming that I did, as you suggest, vote for it, I think it's not quite as germane as what is in front of us with respect to this particular bill.

SENATOR DeFRANCISCO: On the bill.

ACTING PRESIDENT STEWART-COUSINS: Senator DeFrancisco, on the bill.

SENATOR DeFRANCISCO: I think that explanation was transparent enough to the voters of this state. There were votes, there were attempts by the then Senate minority Democrats to do away with this process, because we need more transparency so the public can react. So that these businesses that are going to get killed under this bill can react and actually mount up some kind of opposition. Or the school districts that aren't going to be reimbursed, the parochial schools, can mount some kind of campaign against the bill. Or the districts that are being hit very hard in other ways can react to it.

That was what was requested. There was a lawsuit brought by Senator Liz Krueger and others demanding that the system stop. And we have a reform commission headed by Senator Valesky where we're going to make sure that their campaign promises were -- the Senate Democrats' campaign promises were in

fact fulfilled.

We have had two major bills, series of major bills for the budget, and we needed messages of necessity for some of them. It was negotiated by three New York City Democrats in a room.

We have a multi-billion-dollar bill that we're voting on today that was handed to us about three hours ago, also requiring a message of necessity. And in the bill it apparently has some new transparency provisions which we'll get to when we discuss the specific bills. But the whole process is anything but transparent, in that it was negotiated by the same three New York City Democrats in a room.

And that's contrary to what was promised and what was demanded by the now Senate Majority during their campaign to take over the majority. And to suggest that we've debated this bill, we've gotten input from various people, is just not the case. It's simply not the case.

And as a result, no matter what

this bill says, the process is flawed, it's contrary to what was demanded by the Senate Majority, and it's simply wrong. And to say that there's circumstances that are such that we've got to do it right now -- this issue has been before this house by the MTA since the beginning of the year. To suggest that now we have to do it because there's an emergency to get it done today is nonsense.

The real reason is the new Majority doesn't want this out there so that the people who are against it can start lobbying against them and have some real input to try to end this bill or try terminate this bill or avoid having this bill passed to the detriment of our communities.

So the process concerns me, but the substance is just as bad, and other Senators will get into that.

Thank you.

ACTING PRESIDENT STEWART-COUSINS: Senator Flanagan.

SENATOR FLANAGAN: Thank you, Madam President. I would ask Senator Dilan if

he would yield.

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, will you yield for questions?

SENATOR DILAN: Yes.

SENATOR FLANAGAN: Senator Dilan, I was listening to you in your opening remarks in explaining the bill, and you referenced that this was a program bill at the request of the Governor, and you and Senator Perkins are the prime sponsors.

I just want to reiterate that this is a program bill from the Governor of the State of New York.

SENATOR DILAN: That is correct.

SENATOR FLANAGAN: I would like to ask you a series of questions relative to a policy that was enacted most recently by the Governor of our state through an executive order on April 27th of this year, and that had to do with mandate relief and the imposition of mandates on local governments.

I was wondering if you were familiar with that executive order.

SENATOR DILAN: Through you,

Madam President, I am not going to respond to any particular policy or executive orders of the Governor. I will respond to questions within this bill.

ACTING PRESIDENT STEWART-COUSINS: Senator Flanagan.

SENATOR FLANAGAN: Madam President, maybe I can rephrase my question so that it makes more sense, because it clearly relates to this bill.

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, do you continue to yield?

SENATOR DILAN: Yes, Madam President.

SENATOR FLANAGAN: Madam President, last week the Governor of the State of New York came out with an executive order about mandate relief. It spoke to imposing more mandates on local governments and came through with a very clear process that we have advocated on this side of the aisle for a number of years, but that now was implemented through the imposition of an executive order.

It is directly related to the bill

that is before us, because if we ever had to look up "mandate" and try to find a picture of it or a definition of it, this bill is the quintessential mandate. Whether you're a not-for-profit, you're a library or a municipality, you're a school district, you're a small business employer, this is a brand-new multi-billion-dollar mandate being imposed by the Senate Democrats, the Assembly Democrats, and the Governor of the State of New York.

In that executive order, the Governor had laid out a number of criteria that have to accompany any piece of legislation that is either put forth by a state agency -- as defined by the Governor, not by this body, as any public authority -- and it is clearly a program bill. It has to do with the Metropolitan Transportation Authority, which is a public authority, defined as a state agency in that executive order.

So my question is absolutely relevant to this bill. And I would ask Senator Dilan, pursuant to that executive

order, if he has a local fiscal impact statement from the Governor's office that accompanies this bill.

SENATOR DILAN: Well, I don't. I read to you what this particular bill generates.

And then again, if you're asking about the Governor's executive order, I'm not prepared to answer that question.

SENATOR FLANAGAN: Madam President, is there anybody in the Senate Majority who is prepared to answer a question relative to the executive requirements that are supposed to accompany this legislation that they are advancing?

ACTING PRESIDENT STEWART-COUSINS: Senator Flanagan, I think you should direct your question to a Senator and then we can have that Senator yield.

SENATOR FLANAGAN: I would ask Senator Smith if he would yield.

ACTING PRESIDENT STEWART-COUSINS: Again, as we noted when Senator DeFrancisco asked for Senator Smith to yield, since

Senator Smith has not spoken on the bill, he would not be the appropriate person to yield.

SENATOR FLANAGAN: Well, Senator Smith introduced the bill. If he prefers not to yield, maybe then the chairman of the Senate Finance Committee, Senator Kruger, would yield, inasmuch as this deals with fiscal implications for the state.

ACTING PRESIDENT STEWART-COUSINS: Senator Skelos, why do you rise?

SENATOR SKELOS: Madam President, just a point of order.

I was wondering, when Senator Smith moved to accept the message of necessity, whether that's essentially speaking on the bill, the message of necessity to bring the bill to the floor.

ACTING PRESIDENT STEWART-COUSINS: His exchange was because he is the chairman of the Rules Committee, and it was in that capacity that he spoke.

SENATOR FLANAGAN: So, Madam President, I take it that Senator Smith is refusing to yield unless he has spoken on the

bill.

ACTING PRESIDENT STEWART-COUSINS: Senator Flanagan, certainly there's no refusal. What is being stated is that the question regarding the executive order and the Governor's executive order will not be the subject of this discourse as we discuss the bill.

SENATOR FLANAGAN: Madam President, with all due respect, it will be the subject of this discourse, and I will speak on the bill and raise these points in that context.

And I'm going to make it very clear I'm going to speak on the bill because apparently there's nobody on the Senate Majority side who is willing to yield to a series of questions on something that is extremely important to everybody in the State of New York, regardless of where you live.

So I will detail the executive order that I again would state is directly related to this bill --

ACTING PRESIDENT STEWART-COUSINS:

Senator Flanagan, on the bill.

SENATOR FLANAGAN: -- issued by the Governor on April 27th of 2009, and it contains the following basic points: That no state agency shall recommend, publish, or submit any regulation containing a mandate without an accounting of the impact of such mandate on local governments.

It goes on to further say that any bill containing a mandate that was offered by a state agency -- which is exactly defined by the executive order -- to the Legislature must be accompanied by a local fiscal impact statement.

It also goes on to say that there has to be an estimate of the present and future cost of compliance, a description of the methodology used to estimate such present and future cost impacts, and a summary of the inputs sought and obtained from the affected local governments and a cost-benefit analysis of such mandate.

Now, this didn't come from Senator Skelos, it didn't come from Senator Dilan, it

didn't come from me, it came from the Governor of the State of New York. So I would expect, in fulfilling his obligations and duties and in working with the Legislature, that he would bring forth the background material so that we as legislators, and in turn our constituents in the public, would be able to see exactly the criteria that we use. What's the methodology, what's the cost-benefit analysis, how do they believe that this will affect not-for-profits, how does the Governor believe this will affect libraries, how does the Governor believe this will affect small employers.

But the problem is nobody wants to deal with that. And you know what, that's too bad. Because if people are uncomfortable, that's part of the process that we're dealing with right now. It goes to the core of what Senator DeFrancisco spoke to about transparency and disclosure.

Separate point. I would ask -- and I'm going to preface this by saying I realize that she has not spoken on the bill, but I'm

asking as a courtesy, because I have an education-related question. I'm asking the chair of the Senate Education Committee, Senator Oppenheimer, if she would yield to a question.

ACTING PRESIDENT STEWART-COUSINS: The request, Senator Flanagan, is out of order. If you would want to continue to speak --

SENATOR FLANAGAN: Madam President, that is a strict interpretation of the rule. I'm asking as a courtesy if the Senate Education Committee chair would yield on an education-related question.

ACTING PRESIDENT STEWART-COUSINS: Senator Klein, why do you rise?

SENATOR KLEIN: Madam President, point of order.

According to Rule 9.4B, it shall not be in order for a Senator with right to the floor to ask another Senator to yield to a question unless such Senator has previously spoken in the debate on the matter. So that's the section, Madam President.

SENATOR FLANAGAN: Madam President, I'll just continue on the bill.

ACTING PRESIDENT STEWART-COUSINS: On the bill, Senator Flanagan.

SENATOR FLANAGAN: And I actually do hope that our constituents are watching this, because here's my question. I'll ask it rhetorically, since nobody is apparently willing to answer it.

On page 13 of the bill, there's language, lines 35 to 43, Section 2A, that talks about the suspension of the school payroll tax that would be paid by our school districts. It says if we don't have the money through an appropriation that there would be a six-month suspension for school districts from making that payment. But thereafter, there's no suspension, and they have to keep paying it no matter what we do in terms of money.

So if we don't come up with the money, we give a hiatus, not unlike the car companies are doing right now for people who lose their jobs. But after a certain point, school districts continue to have to pay the

school payroll tax with absolutely no guarantee that they will be reimbursed.

And I couldn't go back in good faith, and none of my colleagues could go back in good faith and tell our school districts right now: Don't worry, the money is there.

There's no $60 million, there's no $97 million, there's no $100 million in this bill. There's no appropriation. There's a promise. And it says it's the intent. But if you look at this language that I just referenced, it should make anybody who works for a school district very nervous.

I can't for the life of me understand why this was ever put in in the first place. If the idea was to hold school districts harmless, not create a problem for them, why was there not an exemption to begin with? It would have made a lot more sense to do it that way. School districts are simply not going to believe us. They're not going to believe it until they actually see the money.

And as a result, there will be a direct correlation between this action that

you're taking and raising local property taxes. I'm going to say that, all my colleagues are going to say that, because you're adding a cost and there's no guarantee that the money is going to come back.

Now, this reimbursement does not apply to our not-for-profits. It doesn't apply to our private or nonpublic schools. I have a school in my district, the Cleary School for the Deaf. I know Senator Foley has St. Mary's in East Islip, Dowling College in Oakdale. There's a lot of institutions that are not going to be exempted the way school districts are. It doesn't make sense.

I believe that this is a bad step in the wrong direction. And it just shows what the basic problems are when we can't even get the simplest of questions answered and when we use parliamentary procedure as an obstacle and not as a tool to actually inform the public.

Thank you, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Thank you, Senator.

Senator Libous.

SENATOR LIBOUS: Thank you, Madam President.

Would Senator Dilan yield for a question, please?

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, do you yield?

SENATOR DILAN: Yes, Madam President.

SENATOR LIBOUS: Thank you, Madam President.

Senator, I went through this bill. And could you tell me the part where it talks about the road and bridge plan?

SENATOR DILAN: I believe that there's an understanding and a commitment to address the highways and bridge --

SENATOR SALAND: Would you suffer an interruption?

SENATOR DILAN: Is he speaking to me?

SENATOR SALAND: I'm having a difficult time -- I'm having a difficult time hearing the Senator. If he might speak just a

little bit louder.

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, he can't hear you.

SENATOR DILAN: Oh, he can't hear me.

There's a legislative intent in this bill that would address that issue.

SENATOR LIBOUS: Madam President, would Senator Dilan yield for another question.

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, do you continue to yield?

SENATOR DILAN: Yes, Madam President.

SENATOR LIBOUS: How does legislative intent address an issue?

SENATOR DILAN: Right now we're dealing in this legislation with the MTA financial package, which deals with their operating deficit and also a two-year capital plan. There's legislative intent in this bill that will address the issue of highway and bridges for the entire State of New York in this bill.

Currently our capital plan does not end till the end of the year, and we will be addressing that in a five-year plan.

SENATOR LIBOUS: Madam President, will the Senator continue to yield?

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, do you continue to yield?

SENATOR DILAN: Yes, Madam President.

SENATOR LIBOUS: Senator Dilan, could you then tell me what revenues in this bill will address the capital road and bridge plan?

SENATOR DILAN: Well, at this particular plan, I cannot tell you what revenues we will be looking at. And I think I heard someone mention or I read somewhere today that if we knew the answer to that right now, it would be in this bill. So I would imagine that we would be looking at that at the appropriate time.

SENATOR LIBOUS: Madam President, would Senator Dilan continue to yield?

ACTING PRESIDENT STEWART-COUSINS:

Senator Dilan, do you continue to yield?

SENATOR DILAN: Yes.

SENATOR LIBOUS: Senator, I guess I'm confused. You said a moment ago that there is an intent in here for a capital road and bridge plan, and then you say that there are no revenues to support that plan.

Could you qualify those two statements, because --

SENATOR DILAN: If you go to page 2 of the bill, line 24, there is an intent to address the capital needs of the Department of Transportation, including highways and bridges and non-MTA transit passenger freight rails and aviation and port facilities, et cetera, in the future.

SENATOR LIBOUS: Madam President, so -- if I could ask Senator Dilan one other question.

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, one other question?

SENATOR DILAN: Yes.

ACTING PRESIDENT STEWART-COUSINS: Senator Libous.

SENATOR LIBOUS: So if I understand you, Senator, what you're saying is there is language that says in good faith, we will address that issue; however, there are no revenues in it today to address that issue.

SENATOR DILAN: I will repeat again, this is an MTA financial package which deals with the MTA and their immediate needs. And it addresses a two-year plan with regard to the payroll tax and any bonding issues. In order to get the bonding, you needed to have that portion in there.

There is intent in this bill. And right now we would be formulating at some point this year a five-year capital plan, like we would do every five years. And it is the intent to do that. And it would include the entire State of New York to deal with highway and bridge needs in the dedicated trust fund. And we will do that, just like it has been historically done.

SENATOR LIBOUS: Madam President, would the good Senator continue to yield?

ACTING PRESIDENT STEWART-COUSINS:

Senator Dilan, do you continue to yield?

SENATOR DILAN: Yes, Madam President.

SENATOR LIBOUS: Senator Dilan, are you aware that since 1995 the capital plan of the MTA and the road, bridge, and highway capital plan have been done simultaneously?

SENATOR DILAN: Can you repeat the question? I apologize.

SENATOR LIBOUS: Sure, Senator, I will repeat it.

I asked are you aware that since 1995 that a capital plan for roads and bridges and a capital plan for the MTA have been done simultaneously, they've been done together.

Each time -- I'll give you a perfect example. Five years ago we did a capital plan of $17.5 billion for roads and bridges and $17.5 billion for the MTA. That has been the way the Legislature and the Governors, both Republican and Democrat, have handled this going back to 1995. Parity, parity for both roads and bridges and the MTA.

Are you aware of that?

SENATOR DILAN: Madam President, yes, I am aware of that.

And as I indicated to the Senator in my previous response, we're talking about a funding package for the MTA in a two-year capital or debt to satisfy bonding.

And I indicated that there's legislative intent here to do exactly what the good Senator is talking about that, and that's not going to change. We are going to come up with a plan for the entire State of New York that will address that, as has always been the custom.

SENATOR LIBOUS: Madam President, would he continue to yield?

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, do you continue to yield?

SENATOR DILAN: Yes.

SENATOR LIBOUS: Madam President, I tend to differ, because it has not always been the custom. As I stated, since 1995 both plans have been done together.

So my question to Senator Dilan is, why isn't a road and bridge plan on the floor

today along with an MTA plan? Why today has it been broken?

SENATOR DILAN: Madam President, through you, we're dealing again with a situation within this 12-county region to ensure that there are no service cuts within the area, preventing 1100 jobs from being lost, preventing draconian increases in fares. And I indicated to the Senator that we will address that.

And then again, referring to page 2 at this time, line 28, Senator: "The Governor and the Legislature request that the Department of Transportation begin development of such a program immediately and provide the Legislature with an outline of the objectives of the program and the performance measures that will be used to determine investment in transportation in the state for the next multiple year capital program by October 1, 2009."

SENATOR LIBOUS: Thank you, Senator.

Madam President, would Senator

Dilan continue to yield?

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, do you continue to yield?

SENATOR DILAN: Yes, Madam President.

SENATOR LIBOUS: Senator, I heard you loud and clear. I heard you say that the intent was to deal with this issue later on.

So I go back to my question. Since 1995, they've been dealt with together --

SENATOR DILAN: Continuing with my response -- continuing --

SENATOR LIBOUS: Could I finish?

SENATOR DILAN: I'll let you finish.

SENATOR LIBOUS: Please. Thank you.

ACTING PRESIDENT STEWART-COUSINS: Senator, continue with the question.

SENATOR LIBOUS: So my question is, why aren't they being addressed together today?

Because in this MTA proposal, Madam President and Senator, if I read it correctly,

there's a capital plan being funded for the MTA. You're not just correcting a shortfall situation, you're addressing a future capital plan for the MTA.

So again, I heard you, but I'm confused. We have always done them together. We're addressing capital for the MTA today but nothing for roads and bridges.

SENATOR DILAN: Madam President, we will continue to do it together. Currently we are dealing with a financial plan for the MTA that is unique, it's an emergency situation within this 12-county region.

There is no difference from the way that we have done it in 1995. Our current capital plan continues to be funded, and this Legislature and the Governor will do a capital plan on a timely fashion, and it will be done for the entire State of New York, the same way it has been done in history and to the Senator's reference of 1995.

SENATOR LIBOUS: Thank you, Senator.

SENATOR DILAN: And I will

continue responding the same way if he continues to ask me the same question.

SENATOR LIBOUS: Thank you, Senator Dilan.

And I will, Madam President, speak on the bill now.

ACTING PRESIDENT STEWART-COUSINS: Senator Libous, on the bill.

SENATOR LIBOUS: In all due respect to Senator Dilan, who is chairman of the Transportation Committee and I respect and I like tremendously, I believe he is incorrect. Because this bill for the MTA does address capital needs. And there is no capital plan or no addressing of roads and bridges.

I'd like to continue by saying that, you know, when the Ravitch Commission was set up, I actually chaired the Transportation Committee at the time. It was toward the end of last year. And I was very concerned that this was going to happen, that we were going to have a plan that dealt with only the MTA and bailed out the MTA and took

care of the capital needs of the MTA, and roads and bridges were not going to be to be taken care of.

And at that time I wrote a letter to the Governor. And, Madam President, the ranking member of the committee, Senator Valesky, joined me in that letter, and he agreed with me, he concurred with me that this could be a serious issue, that there would be the MTA being addressed and nothing for upstate roads and bridges -- and, quite frankly, even the roads in the MTA region are going to be ignored. Because there are roads and bridges in the MTA region.

And Senator Valesky joined me in signing a letter to Governor Paterson, and I never got a response. And I don't know -- maybe, Senator, you got a response from the Governor -- he's shaking his head no. So I think the Governor ignored the two of us. Because he, like I at that time, was very concerned about the roads and bridges I'm sure in Syracuse, as I was in Binghamton. Because we were going to get shortchanged.

And guess what, ladies and gentlemen? We're getting shortchanged. We're here today, we're here today dealing on an MTA plan -- and I understand that the MTA is under crisis. But there's capital in here for the MTA. It would be much easier for me to say yeah, I could support this because the MTA is under crisis. I voted, I negotiated, I was a player in negotiating the last capital plan for the MTA. I respect and understand the importance of it.

But what's happening here is this is not about a crisis plan for the MTA. This is an additional capital plan for the MTA. We're breaking the parity that we've had since 1995 for roads and bridges.

And, Madam President, as I look, it gets even worse, and I'm going to tell you why. Those of you in the upstate region or in the Hudson Valley or for that matter in the MTA region and on Long Island who have roads and bridges, in this year's budget, which my colleagues on the other side of the aisle supported, they voted to take $400 million out

of the DOT capital program. That capital program goes to roads and bridges. So the roads and bridges throughout upstate New York and Syracuse and Watertown and in parts of Buffalo and in Binghamton, where I live, got shortchanged again in this budget that the other side of the aisle supported.

And then it gets worse when the Democrats passed the budget, Madam President. It gets worse. Because the Dedicated Highway Fund, which is supposed to pay for roads and bridges, which I've preached about on the floor of this house for years and said stop raiding the fund, because the money is supposed to go to roads and bridges -- well, the Democrats on the other side of the aisle raided the fund this year. They raided it to the tune of about $800 million. And there will be a deficit in the Dedicated Highway Fund to about $1.5 billion, and a $500 million operating gap for roads and bridges.

So, Madam President, I am upset as an upstate representative -- and I would be upstate if I was an MTA-region

representative -- because the roads and bridges in this state are being forgotten and neglected. Money has been taken away in this year's budget. There is no capital plan.

And, Madam President, Senator Dilan, I respect your word and I believe that you want to do something. But I'll be amazed at whether or not anything gets done, because I don't know where you're going to find the revenues to do it. They've always been addressed together, those tough decisions have always been made and we've moved forward.

This bill before us today deals with the MTA -- not only a bailout for the MTA, but it is a capital program for the MTA. Once again, upstate and roads and bridges in this state get screwed.

ACTING PRESIDENT STEWART-COUSINS: Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Madam President.

With respect to Governor Paterson's tax plan to bail out the MTA put forth by the Senate Democrats, would Senator Dilan answer

some questions?

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, will you yield for questions?

SENATOR DILAN: Yes, ma'am.

SENATOR FUSCHILLO: Senator, you chair Transportation. And all my questions relate to fiscal, but the chairman of Finance, Senator Kruger, is not even in the room. So with your indulgence, if you can help me out and answer some of these questions, I'd appreciate it.

SENATOR DILAN: Sure.

SENATOR FUSCHILLO: Thank you.

Under the plan that imposes taxes, Nassau County, the County of Nassau, will pay over $3 million, the municipality itself.

Does this Governor's program bill reimburse Nassau County?

SENATOR DILAN: You're referring to the education piece?

SENATOR FUSCHILLO: No, I'm referring to the tax on the municipality itself, the County of Nassau, of 0.34 percent of every hundred dollars. Nassau County is

expected to pay -- the government itself, headed by Democratic County Executive Tom Suozzi, will pay $3,018,670. Does this bill reimburse the County of Nassau as a government?

SENATOR DILAN: This current bill will only reimburse public schools.

SENATOR FUSCHILLO: So will Senator Dilan continue to yield?

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, do you continue to yield?

SENATOR DILAN: Yes, Madam President.

SENATOR FUSCHILLO: So Nassau County will not be reimbursed the $3 million it's going to cost them.

SENATOR DILAN: Madam President, as I indicated and when I explained my vote, the only reimbursements will be made to public schools.

SENATOR FUSCHILLO: Okay, Madam President, so I'll take that as a no.

Will Suffolk County be --

ACTING PRESIDENT STEWART-COUSINS:

Are you asking Senator Dilan to continue to yield?

SENATOR FUSCHILLO: I'm sorry, Madam President, through you. Will Senator Dilan continue to yield?

ACTING PRESIDENT STEWART-COUSINS: Do you continue to yield?

SENATOR DILAN: Yes, Madam President.

SENATOR FUSCHILLO: Senator Dilan, I appreciate your indulgence. These are fiscal questions for the chairman of Finance, but it seems he wouldn't answer Senator Flanagan's questions.

Suffolk County is being hit with a significant payroll tax as well of over $3 million. I believe it's correct that they will not be reimbursed, the government, as well?

SENATOR DILAN: I'm going to continue to repeat the same response. The only reimbursement in this bill will be made to public schools within the 12-county region.

Let me also indicate that the only

individuals paying the payroll tax will be from this 12-county region. And in this legislation it will only reimburse public schools.

SENATOR FUSCHILLO: Thank you, Senator.

Will Senator Dilan continue to yield continue, Madam President?

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, do you continue to yield?

SENATOR DILAN: Yes, Madam President.

SENATOR FUSCHILLO: Thank you, Senator.

Nassau County schools will have a tax impact of $13,320,000 and change. Suffolk County schools will have a tax impact of nearly $15 million. The counties in the 12 regions, including New York City, will have a tax impact of $97 million, nearly $100 million.

Is there an appropriation in this bill to refund the school districts?

SENATOR DILAN: Madam President,

as I indicated in my explanation, there will be an appropriation in I believe it is the 2010 budget.

SENATOR FUSCHILLO: Thank you, Senator Dilan. So there's no appropriation.

Madam President, will Senator Dilan continue to yield?

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, do you continue to yield?

SENATOR DILAN: Yes, Madam President.

SENATOR FUSCHILLO: Senator, in this bill is there a constitutional requirement to reimburse the school districts?

Senator Oppenheimer, you want to answer that? I'm happy to --

SENATOR DILAN: Whether it's constitutional or not, I'm not an attorney. However, I know that there is language within this bill to reimburse public schools.

SENATOR FUSCHILLO: Thank you, Senator Dilan.

Madam President, will Senator Dilan continue to yield for questions?

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, do you continue to yield?

SENATOR DILAN: Yes, Madam President.

ACTING PRESIDENT STEWART-COUSINS: He does.

SENATOR FUSCHILLO: Thank you, Senator Dilan.

It states here on page 12 of the bill, line 1: "It is the intent of the Governor to submit and the Legislature to enact for each fiscal year after the 2009-2010 fiscal year in an annual budget bill an appropriation in the amount to be paid to school districts."

So the word "intent" is not a guarantee, am I correct?

SENATOR DILAN: It's possible, but I --

SENATOR FUSCHILLO: Okay, that's fine.

Madam President, will Senator Dilan continue to yield?

ACTING PRESIDENT STEWART-COUSINS:

Senator Dilan, do you continue to yield?

SENATOR DILAN: Yes, Madam President.

SENATOR FUSCHILLO: Now, what if, Senator Dilan -- again, thank you for answering these. These are all finance questions. I wish the chairman of Finance, Senator Kruger, would answer the questions. I know you are the chairman of Transportation, and I appreciate your cooperation.

SENATOR DILAN: I would love to answer that also, because --

SENATOR FUSCHILLO: I didn't ask the question yet.

SENATOR DILAN: Oh, well, I'll respond anyway when I have an opportunity for it.

SENATOR FUSCHILLO: What if there is not an appropriation in the 2009-2010 budget going forward? What if there's no appropriation to reimburse the school districts?

SENATOR DILAN: I know that there is language in this bill that indicates that

there will be reimbursements for public schools within the 12-county region.

I know that I as a member of this Senate, and my colleagues, intend to honor that commitment that's in here. There are other -- there's the Assembly involved, there is the Governor involved, there's a three-way agreement on this. And I believe, I sincerely believe that everyone will honor that commitment.

Now -- and it would also depend on perhaps the vote of any member of this Senate, not only my colleagues.

But I also want to indicate that in regard to the issue of this bill, this bill did go through the Transportation Committee. That portion was not in the bill when it was released or reported out from Transportation and Finance.

And I'd like to say that I was very involved. And during the committee meeting, 85 percent of what's in this bill, I would dare to say 85 to 90 percent of what's in this bill was reported out of the Transportation

Committee.

And that portion that relates to the Governor is only dealing with the public education reimbursement and maybe a few other minor changes. But in essence, this is the Senate bill.

SENATOR FUSCHILLO: Madam President, will Senator Dilan continue to yield on his bill now?

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, do you continue to yield?

SENATOR DILAN: Yes. But could I follow up on the previous question?

ACTING PRESIDENT STEWART-COUSINS: Continue your thought?

SENATOR DILAN: Yeah. Because it's my understanding that there's also wording within this legislation that if we do not reimburse the school districts that the payroll tax for the public schools within the region will be suspended for six months.

SENATOR FUSCHILLO: Would Senator Dilan continue to yield?

ACTING PRESIDENT STEWART-COUSINS:

Senator Dilan, do you continue to yield?

SENATOR DILAN: Yes, Madam President.

SENATOR FUSCHILLO: So, Senator, what happens to the school districts after the six months if there's still no appropriation?

SENATOR DILAN: They will be required to pay the payroll tax.

SENATOR FUSCHILLO: Would Senator Dilan continue to yield, Madam President?

ACTING PRESIDENT STEWART-COUSINS: Will you continue to yield?

SENATOR DILAN: Yes.

SENATOR FUSCHILLO: So the bill says that the Governor has the intent to provide reimbursement to school districts, with no constitutional language. And now you're telling me if there's no appropriation that they don't have to pay for six months, but after the six months they'll be required to pay the $97 million to the State of New York with no reimbursement; is that correct?

SENATOR DILAN: Currently, as the

bill is written, it is the intent of the Legislature and all those involved to reimburse the school districts.

SENATOR FUSCHILLO: I'm sorry, Madam President, I didn't hear his answer.

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, would you repeat your answer?

SENATOR DILAN: The answer is that under the current language in this bill, there's intent which is to guarantee -- to reimburse the school districts.

SENATOR FUSCHILLO: You and I will have to have a disagreement on that. There's no guarantee to reimburse the school districts.

But I'll move on. Would Senator Dilan continue to yield?

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, do you continue to yield?

SENATOR DILAN: Yes, Madam President.

SENATOR FUSCHILLO: Senator Dilan, is there a sunset provision? Does this tax ever end?

SENATOR DILAN: No.

SENATOR FUSCHILLO: Okay. Thank you.

What impact -- I'm sorry, Madam President. Would Senator Dilan continue to yield?

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, do you continue to yield?

SENATOR DILAN: Yes.

SENATOR FUSCHILLO: Senator Dilan, with tolls on bridges -- the Verrazano Bridge, other bridges that come under this authority -- what will individuals see as an increase on this?

SENATOR DILAN: I do not have that information. I believe that would be the responsibility of the MTA. I'm not aware in regard to the tolls.

I'm understanding that there's approximately a 10 percent increase -- well, with fares, with fares, transportation fares, what I'm aware of is that there's a 10 percent increase this year on fares, which would apply to the weekly and monthly, and then, in

outyears, 7.5 percent, 7.5 percent.

But in regard to tolls, I don't have that information.

SENATOR FUSCHILLO: Thank you, Senator Dilan.

Madam President, would Senator Dilan continue to yield?

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, do you continue to yield?

SENATOR DILAN: Yes.

SENATOR FUSCHILLO: So is it fair to say, Senator Dilan, that individuals will have tolls -- and for me, being parochial, the Long Island Railroad, the commutation fare increase will go up 27 percent in the next three years?

SENATOR DILAN: With regard to what?

SENATOR FUSCHILLO: Tolls and fares. Will they go up 27 percent in the next three years?

SENATOR DILAN: Within this current bill, we're talking about fares. So I'm not responding to questions that have to

do with tolls. That is the responsibility of the MTA, Metropolitan Transportation Authority.

What's within this bill or what we're talking about here or in discussions with MTA, my understanding is that the fare will go up 10 percent. In addition to those five sources of revenues that I mentioned, and in keeping with the spirit of everyone within the region paying some portion or fair share or some fair share, that the immediate impact on fares will be 10 percent this year, 7.5 two years after that, 7.5 two years after that. No reference to tolls.

SENATOR FUSCHILLO: Thank you, Madam President. Will Senator Dilan continue to yield?

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, do you continue to yield?

SENATOR DILAN: Yes.

SENATOR FUSCHILLO: So, Senator Dilan, the Long Island Railroad commuters will see a 27 percent increase over the next three years?

SENATOR DILAN: I don't have the answer to that.

SENATOR FUSCHILLO: Okay. It will be.

Madam President, will Senator Dilan continue to yield?

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, do you continue to yield?

SENATOR DILAN: Yes.

SENATOR FUSCHILLO: Senator Dilan, so it's correct for me to say that small businesses in the region -- and my figures are from the Retail Council of the State of New York -- will see an increase of a tax to small businesses, just retails, of about $60 million annually under this plan?

SENATOR DILAN: Well, you know, I don't know what's fair for Senator Flanagan to say -- or, I'm sorry, Senator Fuschillo. I apologize. I apologize.

SENATOR FUSCHILLO: No, that's okay, you can call me Flanagan. He's a good-looking guy.

(Laughter.)

SENATOR DILAN: And the point here is that everyone within the region that benefits from the services provided by the Metropolitan Transportation Authority is paying a share in regard to the benefits that it provides economically and otherwise.

SENATOR FUSCHILLO: Madam President -- thank you, Senator Dilan -- would Senator Dilan continue to yield?

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, do you continue to yield?

SENATOR DILAN: Mm-hmm.

SENATOR FUSCHILLO: Senator, I've been getting letters -- as I'm sure are all of you on both sides of the aisle, Democrats and Republicans -- opposing this legislation. Eastern Suffolk BOCES from Long Island says that the payroll tax is going to cost them a million dollars. The Nassau-Suffolk BOCES said that the payroll tax is going to cost them $1.2 million. Nassau Community College, a state college, it's going to cost them $400,000. And I'm sure other colleges throughout this 12-county region.

Just to be correct and clear, BOCES, Eastern BOCES, a million dollars; Nassau BOCES, a million-two; Nassau Community College, $400,000. The small businesses in the region, $60 million. The school districts, no guarantee. But my municipalities of Nassau and Suffolk County, the municipalities' total is nearly $10 million for all my villages and counties in Nassau and Suffolk County.

None of them will be receiving reimbursements, just the public schools; correct?

SENATOR DILAN: According to this, only public schools will receive reimbursement.

SENATOR FUSCHILLO: Senator Dilan, thank you very much for your answers.

SENATOR DILAN: Thank you, Senator.

SENATOR FUSCHILLO: Madam President, on the bill.

ACTING PRESIDENT STEWART-COUSINS: Senator Fuschillo, on the bill.

SENATOR FUSCHILLO: Just briefly, Madam President.

There is no guarantee that any school district in the 12 counties that is being subjected to an unfunded mandate will be reimbursed under this bill.

Governor Paterson's program bill put forth by the Senate Democrats is equally as bad as the state budget that was put forth by the Senate Democrats as well.

From 2000 to 2008, we've lost 8.3 percent of our population that have gone to other states. A report was just issued that was printed before this budget was adopted that said the state and local tax burden that New York has is the second-heaviest state and local tax burden in the nation. We're number two, at 11.7 percent. New Jersey is 11.8.

If this was printed in a month from now, because of the state budget and this MTA tax plan that you're putting forth, guarantee, a safe bet, we'll be number one.

Out of 50 states, the Small

Business Survival Index, which is the ranking of government's burden on small businesses -- you want to be number one, which means you're a friendly state to do business in. We're Number 45, before the budget and before the MTA bailout.

According to the Long Island Association, which is one of the largest business organizations in the state, Matt Crosson, its president, has expressed deep concern over this tax plan. He states: "New York has the poorest economic outlook in the nation, the number-one population lost in the last 10 years." And I can go on and on and on.

Now, like many of you, I have so many memos of opposition to this. The Nassau County Legislature, my schools, the BOCES, the hospitals, the community colleges, the Catholic Conference, the Suffolk County Legislature, endorsed by Democrats and Republicans, the New York Farm Bureau, the town superintendents, the School Board Association, the village associations, on and

on and on.

And they're opposed to this tax because it sinks us even deeper. The budget -- I stood at this body, probably a little too animated, and said "You're choking us to death." This budget really sinks further.

You know, we must be watching different financial networks. Because the car industry is now saying, without taxpayer dollars, if you lose your job, we'll pay for your car for 12 months. In New York State, we're saying forget it. If you live in the 12 counties that affect the MTA, don't do business here, because you're going to pay more taxes. If you have a payroll in excess of $2500, you're going to pay the payroll tax.

Now, I work very closely with my downtowns, as most of you do. I have businesses telling me: "Senator, we haven't taken a paycheck since October or November of last year." I have more vacant stores than I've ever seen before in my life. The libraries are saying to me, you know, "You hit

us hard, and now you're hitting us again." The hospitals are saying the same thing.

And the school districts, the Nassau-Suffolk School District Association is saying, Are you kidding me? We're going to trust the Governor that the word "intent" is going to reimburse us? $24.4 million just on Long Island; Nassau and Suffolk schools have to pay this tax.

This is probably the largest unfunded mandate I've ever witnessed in the State of New York. And what happened to the billion-dollar surplus the MTA had hast year? What happened to that? What happened to the reforms to the authorities in the State of New York that everybody said the chairman and the CEO have too much authority? Yet this bill gives back that title of the chairman and the CEO. Every other authority can't have the chairman and the CEO having the same title except now for the MTA.

Seventy thousand employees, $11 billion, probably the most bloated bureaucracy in the country, and yet we're

saying, Hey, take another blank check. Take another blank check. Because that's what you're getting.

Now, Lee Sander finally says, on April 22nd, "We're going to have a hiring freeze." What are we supposed to do, applaud? He put a hiring freeze. Where have you been? Where have you been? And now we're giving that title, that power of chairman and CEO only to the MTA.

Madam President, I appreciate the time allotted to me. This is as bad as the budget that was enacted.

This Governor's bill that just taxes people, taxes businesses, taxes small businesses, schools, libraries, hospitals, nonprofits that are struggling right now to provide the services that government can't do, is going to further create higher unemployment and make New York State a less friendly state than it is right now to live, raise your family, and do business here. I'll be voting no.

Thank you very much, Madam

President.

ACTING PRESIDENT STEWART-COUSINS: Thank you, Senator.

Senator Bonacic.

SENATOR BONACIC: Thank you, Madam President.

I'm not going to ask any Senator any question. But a couple of my colleagues asked me, "Why are you wearing a black shirt, Senator Bonacic, today?" And I said that I am going to a eulogy. This session will be a wake. And it will be a wake for the people in Orange County.

Now, why do I say that? When we did the Big Ugly, the budget, of over $8 billion in new taxes, I pointed out that the not-for-profit tax code at that time said for small businesses, after that budget, New York was number one and the worst state to do business for small businesses.

Now, I don't know if you're looking at what's happening to the rest of New York State outside New York City, but that unemployment is pushing close to 10 percent.

Businesses are on their backs. Many have closed. They are hanging on by the barest of strings.

And what do we do? We come along and we hit the taxpayers and small businesses and everybody else with another $2.2 billion. So that's a total of $10.7 billion.

Now, where do you think government gets their money from? Where do you think? Because government does not create one penny of wealth, not one cent. For everything we do in this state -- for the salaries that we pay, for all the programs that we have, for educating our children, for taking care of our healthcare and those that can't afford it, and our transportation aid and helping the mentally health and affordable housing -- it comes from the private sector.

There seems to be a disconnect with our actions and what we do to the golden goose. Because the private sector is the golden goose that is the means for us to do what we do.

Now, in Orange County, the hit to

our county for both the schools and the municipalities is $4.2 million. That's an increase in property taxes right there. The fact that you reached in -- and, you know, the Democrats are always known for compassion politics. You know, we want to help everybody.

But you hit our libraries, you hit our higher institutions of education. You just raped them for 80 percent of the tax hike -- a tuition hike, excuse me. And now every employer in higher ed -- with me, it's -- throughout the state is going to have toll pay a payroll tax, a further hit.

You took $400 million from our hospitals, and now another payroll tax. You're taking millions out of the small businesses.

This is a job killer. A killer. And they need this capital. When you tax, you take capital out of the private-sector system. Now, that capital is what businesses need to expand, to create jobs, to buy technology, to even give their employees a raise so they'll

stay here. Businesses are mobile, they can leave, as well as private taxpayers.

Now, I want to tell you another fact about the Orange County residents. We have about 3 percent that use the buses and the trains to the metropolitan area, a population of 3 percent. Yet you have charged a business payroll tax the same as the New York City businesses. Is that fair? Is that equitable? I ask you that.

When you became a Senator, you said you're not only going to be a Senator for your constituents, you're going to be a Senator of the whole state and you're going to treat people or you're going to try to treat people fairly and equitably.

Well, let me tell you, on this MTA tax you did not treat the people of Orange County fairly and equitably. You treated them with a city bias. This is taxation without transportation. That's what you did to the people of Orange County.

Madam President, thank you. I vote in the negative.

ACTING PRESIDENT STEWART-COUSINS: Senator Saland.

SENATOR SALAND: Thank you, Madam President. Would Senator Perkins yield to a question?

ACTING PRESIDENT STEWART-COUSINS: Senator Perkins, do you yield for questions?

SENATOR PERKINS: Yes, Madam President.

SENATOR SALAND: Thank you, Senator Perkins.

Senator Perkins, it seems like quite some time ago I heard you, I believe in an exchange with Senator DeFrancisco -- I believe it was he -- in which you responded to a question about the openness of this procedure as being taken care of by the conducting of Senate hearings. Is that correct?

SENATOR PERKINS: Through you, Madam President. That was a part of the answer that I gave. However, it was significantly more involved than that.

SENATOR SALAND: Well,

assuming --

ACTING PRESIDENT STEWART-COUSINS: Do you wish the Senator to continue to yield?

SENATOR SALAND: Yes, if Senator Perkins will continue to yield.

ACTING PRESIDENT STEWART-COUSINS: Senator, do you continue to yield?

SENATOR PERKINS: Yes, I will, Madam President.

SENATOR SALAND: Assuming in part that the Senate hearing process comprised a component of the openness and transparency that has been pledged by the Democrat majority in the house, could you tell me where those Senate hearings were held?

SENATOR PERKINS: Through you, Madam President. One was held in the borough of Brooklyn, and the other one was held in the borough of Manhattan.

SENATOR SALAND: Will Senator Perkins continue to yield?

ACTING PRESIDENT STEWART-COUSINS: Senator Perkins, do you continue to yield?

SENATOR PERKINS: Yes, Madam

President.

SENATOR SALAND: Senator Perkins, do you recall receiving a copy of a letter from me to the Majority Leader, Senator Smith, in which I requested that a hearing be held in the Hudson Valley?

SENATOR PERKINS: Through you, Madam President, I recall receiving several communications from members requesting hearings in different parts of the state, and possibly -- and I believe yours was one of them.

SENATOR SALAND: Would the Senator continue to yield?

ACTING PRESIDENT STEWART-COUSINS: Senator Perkins, do you continue to yield?

SENATOR PERKINS: Yes, Madam President.

SENATOR SALAND: Senator Perkins, do you recall a conversation which we had in which I discussed this issue with you and I told you that it was critically important to the Hudson Valley that people have the opportunity to be heard because this was

causing such enormous anxiety, fear, in the Hudson Valley? And that it didn't have to be in my district. I even suggested, to be centrally located, it might be somewhere in northern Westchester.

SENATOR PERKINS: Through you, Madam President. Yes, I recall you sharing that concern.

SENATOR SALAND: Thank you, Senator Perkins.

I have no more questions of Senator Perkins. I have questions for Senator Dilan.

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, do you yield for questions from Senator Saland?

SENATOR DILAN: Yes, Madam President. Yes.

SENATOR SALAND: Just, if I may, before I engage with Senator Dilan, the sort of proverbial orphans of this system, and certainly the revenue hostages are the so-called outer boroughs. And a mere modicum of courtesy, a mere modicum of interest, a mere modicum of courtesy as between colleagues

would have said there should be a hearing somewhere other than in two boroughs in the City of New York.

Senator Dilan, do you yield?

SENATOR DILAN: Yes. Yes.

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan has said he would yield, yes.

SENATOR SALAND: Senator Dilan, the exchanges that have occurred previously, I believe you responded to a revenue estimate as to what this would be generating by way of funds. I'm not quite sure I recall that number. Could you please tell me what that number is?

SENATOR DILAN: Are you talking to the total amount of the two?

SENATOR SALAND: The total. And if you could break it down by category.

SENATOR DILAN: You want me to repeat it again?

SENATOR SALAND: I'm sorry?

SENATOR DILAN: You want me to repeat the entire explanation? Is that what you're asking me?

SENATOR SALAND: Senator, you don't have to repeat it. If you'd just let me know what are the components -- I believe there are some five components -- and what each yields.

SENATOR DILAN: Over a two-year period, Madam President, this piece of legislation would generate approximately $2.9 billion. And with regard to the new license fee at a flat rate of $1 per six months, this year it would generate $6 million. It will raise $27 million next year. This is an increase of $16 above the rate of the state budget. An average D license would be charged at a rate of $78.50 for the eight-year period.

With regard to the car registration, that's a flat fee of $25 per year. And it will raise, in 2009, $47 million. Next year, it will raise $141 million.

With respect to the payroll tax, it would raise, this year, approximately a billion dollars. Next year it would raise

approximately $1.5 billion. And as I indicated before, schools would not have to pay this tax until September, and they will be reimbursed.

And I also want to take this opportunity, because I found something in the bill, on page 11, Part D, and it would be Section 3609-g. With respect to a previous question, I think it's appropriate to answer it at this time.

This says "Monies apportioned to school districts for reimbursement of Article 23 of the Tax Law payments commencing in the 2009-2010 school year. Notwithstanding any other provision of law to the contrary, school districts shall be reimbursed for payments made pursuant this article."

And to continue, the fifth piece is a 5 percent rental fee on all passenger vehicles, and that would raise $18 million this year, $35 million next year.

And I believe that answers the Senator's question.

ACTING PRESIDENT STEWART-COUSINS:

Thank you, Senator Dilan.

SENATOR SALAND: So the total for this year, according to your numbers -- unless I've missed something -- will be somewhere in the area of 1.07 billion; is that correct?

SENATOR DILAN: I believe it would be 1.105 billion.

SENATOR SALAND: And next year would be more like 1.7 billion?

SENATOR DILAN: 1.827.

SENATOR SALAND: Thank you.

Senator --

ACTING PRESIDENT STEWART-COUSINS: Are you asking the Senator to continue to yield?

SENATOR SALAND: Oh, yes, I am. Thank you.

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, do you continue to yield?

SENATOR DILAN: Yes, Madam President.

SENATOR SALAND: I call your attention to Article 23, entitled "Metropolitan Commuter Transportation Mobility

Tax." And it provides that an employer who has payroll expenses in excess of $2500 per quarter will be obligated to pay this tax. It exempts certain national or international entities, interstate agencies.

On Section 802 it says "Pass through of tax is prohibited. An employer cannot deduct from the wages or compensation of an employee any portion of the tax imposed." And up above, it defines payroll expense as wages and compensation.

Could you tell me what the difference is between wages and compensation and what constitutes compensation that will be taxed under this bill?

SENATOR DILAN: I am informed that under the Internal Revenue Law, salary is compensation and does not include any other benefits.

SENATOR SALAND: I'm sorry, could you repeat that?

SENATOR DILAN: According to information that I've just been informed, the Internal Revenue Law defines salary as

compensation and does not include any other benefits.

SENATOR SALAND: Oh, I would respectfully beg to differ. And if you read 3121, it enumerates a number of items that are not included in compensation.

In speaking with school managers, business managers, and others, I've been told that you can reasonably expect -- these people are far more expert in these matters than I am -- that you will also be including those contributions that are made to 401(k)s, that if a business has a stock option plan, that will be included.

And the school districts' reading of this is that their pension payments, somewhere in the area of some 8 or 9 percent of payroll, would be included.

The law I believe specifically excludes health benefits. But the advice that you're getting from whomever is giving it to you certainly flies in the face of what the common perception is of what this proposal will do with respect to compensation.

There is no need to say "wages or compensation" as distinguished from "wages and compensation" if in fact additional compensation can't be taxed.

SENATOR DILAN: The Senator differs with me, and I differ with him.

SENATOR SALAND: Senator, what if you're an attorney --

ACTING PRESIDENT STEWART-COUSINS: Are you asking him to continue to yield?

SENATOR SALAND: Yes, continue to yield.

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, do you continue to yield?

SENATOR DILAN: When he addresses you. He still hasn't addressed you.

SENATOR SALAND: I couldn't hear his response.

ACTING PRESIDENT STEWART-COUSINS: The Senator has suggested that you speak through -- ask me.

SENATOR SALAND: Certainly, Madam President.

Senator Dilan, if you're an

attorney who does not have an office located in the 12-county region, you're a consultant who doesn't have an office in the 12-county region, and you appear for business purposes in that 12-county region and derive fees or income, would that become taxable?

SENATOR DILAN: My understanding is if they appear within the 12-county region and receive compensation, they would be subject to the tax from the district only, the compensation that was derived from the district.

SENATOR SALAND: So looking at Section 801(b)(1), that person would be an individual having net earnings, or probably could be a business as well, without -- not within, but without -- the Metropolitan Transportation Authority district and would have to allocate and apportion its earnings within the district.

So have you --

ACTING PRESIDENT STEWART-COUSINS: Senator Saland, are you asking Senator Dilan to continue to yield?

SENATOR SALAND: Yes, I will.

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, do you continue to yield?

SENATOR DILAN: Yes, ma'am.

SENATOR SALAND: In the computation of payroll tax, in which you told me there was roughly 1.1 billion this year and 1.8 billion next year, have you included in your computation some amount of money that will be derived from these I'll call them external businesses or consultants or attorneys who do business in the district and derive a fee from there?

SENATOR DILAN: Madam President, we do not have that breakdown.

But if you have compensation within the 12-county region, this would be similar as if a nonresident of the state or if I went to New Jersey and earned an income there, I would have to pay some form of income tax in that state. And I believe that that would be similar to that.

SENATOR SALAND: Would the Senator continue to yield?

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, do you continue to yield?

SENATOR DILAN: Yes. Yes.

SENATOR SALAND: So is it safe to say, then, Senator Dilan, that inasmuch as you have not computed that amount and it's not included in your calculation, that the amount of monies that's being raised by the payroll tax will exceed your estimates?

SENATOR DILAN: I know the answer that I gave just 30 seconds ago is that I do not have that breakdown. It is computed, but I do not have the breakdown.

SENATOR SALAND: Senator Dilan, will you continue to yield?

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, do you continue to yield?

SENATOR DILAN: Yes, Madam President.

SENATOR SALAND: This would be more appropriately a question probably for the chair of the Education Committee. She's not currently, I don't believe, in the chamber.

What happens in the case of a

school district that straddles a county line, part of it being in the MTA region and part of it being outside the MTA region? And I can identify three of them in my district, by the way.

SENATOR DILAN: My understanding is that that payroll tax would be apportioned according to, I would imagine, the employees, or there would be a some formula to apportion that.

SENATOR SALAND: And if in fact the home site of the school district is -- I have one school district, if you'll continue to yield, that is --

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, do you continue to yield?

SENATOR DILAN: Yes.

SENATOR SALAND: -- that is a small school district, K-12, one building, located outside of Dutchess County, located in Columbia County, and yet they have students from Dutchess County. They are now subject to this as well?

SENATOR DILAN: Madam President,

the students are not on the payroll.

SENATOR SALAND: No -- will he continue to yield?

ACTING PRESIDENT STEWART-COUSINS: Do you continue to yield, Senator Dilan?

SENATOR DILAN: Yes, Madam President.

SENATOR SALAND: The school districts are subject to the payroll tax, and you are maintaining that you are then going to reimburse them. So they are subject to the tax. And as was discussed earlier, it's not constitutional, it's a matter of intent. And your obligation under the language of this bill is to no more than six months' worth of payments.

SENATOR DILAN: My understanding from this legislation is if you have a school district that's outside the 12-county region, they are not subject to this tax. If you have students that would go to a school in Columbia County, it has nothing to do with this bill.

And you just mentioned the intent. And I will remind the Senator that I did read

on page 11, Section 3609-g, that the school districts shall be reimbursed for payments.

SENATOR SALAND: I'm sorry, would you tell me where that is again?

SENATOR DILAN: Page 11, Part D, Section 3609-g, starting on line 21.

SENATOR SALAND: If the Senator would continue to yield.

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, do you continue to yield?

SENATOR DILAN: Yes, Madam President.

SENATOR SALAND: This may be perhaps a little too lawyer-like; you acknowledged you're not a lawyer. Are you familiar with --

SENATOR DILAN: Point of order, Madam President. I indicated before I am not a lawyer. And I would ask the Senator to stop referring and calling me such.

SENATOR SALAND: I'm sorry?

SENATOR DILAN: He says I'm acting like a lawyer.

SENATOR SALAND: Oh, no, no, no,

I did not say that, Senator. No, no, no. I said I realize that you're not a lawyer and that you had said that --

SENATOR DILAN: Okay, I apologize. I apologize.

SENATOR SALAND: Under rules of construction, something that follows language generally is viewed as being in effect more controlling. So when you talk about "shall" being in Section 3609-g, Part D, Section 1 --

SENATOR DILAN: Page 11, line 21.

SENATOR SALAND: A number of paragraphs thereafter, in paragraph 5, it says "It is the intent of the Governor to submit and the Legislature to enact for each fiscal year after the 2009-2010 fiscal year in an annual budget bill an appropriation in the amount to be paid to school districts pursuant to this section."

And then when you get to the end of that article, Section 2-a on page 13, it says, in effect, if there's no appropriation you can suspend the payment for up to six months -- "you" being the school district -- but very

critically, it goes on to say your liability will not be reduced.

So under this bill, the only thing that you have to hang your hat on is an expression of intent, buttressed by the fact that you can have your reimbursement suspended, but not the liability that underlies it.

ACTING PRESIDENT STEWART-COUSINS: Senator Saland, was there a question?

SENATOR SALAND: Does that conflict with your understanding of the bill?

SENATOR DILAN: I will stand by my previous responses to this. I have mentioned Section 3609 several times. And I read it that it shall reimburse the districts. On line 52 of the same page, it says: "Any payment to a school district pursuant to this section shall be general receipts of the district and may be used for any lawful purpose of the district."

And I've answered the same question several times already.

SENATOR SALAND: Is there any

provision in this bill -- if you'll continue to yield, Senator.

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, do you continue to yield?

SENATOR DILAN: Last question for Senator Saland.

SENATOR SALAND: I'm sorry?

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan has indicated this is the last question.

SENATOR SALAND: I regret that, but I'll go on the bill when we're done.

Senator Dilan, is there any provision in this bill which authorizes the increase in taxes or fees? And if so, where might I find it?

SENATOR DILAN: What was the last portion of your question?

SENATOR SALAND: Is there any provision in this bill that authorizes the increase of the taxes and fees proposed in this bill, and if there is, where might I find it?

SENATOR DILAN: So let me

understand the question. Is the Senator asking me are there any provisions for future increases within this bill? Is that what you're asking me?

SENATOR SALAND: Yes, that's what I'm asking.

SENATOR DILAN: There are none.

SENATOR SALAND: Thank you, Senator Dilan.

SENATOR DILAN: Thank you.

SENATOR SALAND: On the bill, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Senator Saland, on the bill.

SENATOR SALAND: I would call Senator Dilan's attention and the body's attention to page 23, paragraph 7, which reads: "Nothing contained in this section shall be deemed to restrict the right of the state to amend, repeal, modify or otherwise alter statutes imposing or relating to the taxes and fees producing revenues for deposit in the Metropolitan Transportation Authority Financial Assistance Fund or the

appropriations relating thereto."

So we -- when I say "we," I mean you, the Democratic majority here -- have specifically carved out and given notice that beware, you can reasonably anticipate that more is coming down the road.

On the bill. Businesses are taking an extraordinary hit. Businesses, not-for-profits. One of my hospitals has already advised me they will lay 10 people off by reason of this particular bill alone. But these folks who are getting hit are businesses. They are winding up paying four times. They will pay the payroll tax, they will pay the county tax, they will pay the town or village or city tax, they will pay the school tax. So it's not merely the payroll tax that's going to knock them off their feet, it's the accumulation of all the other taxes as well.

Now, I didn't have the opportunity to engage Senator Dilan, because he's not taking any more questions, but my assumption -- and it's merely an assumption,

based upon what I've heard in prior iterations of this bill -- is that the capital, the bonds that will fund the capital will be secured, at least in part, by the money from the payroll taxes.

Well, that being the case, you can rest assured that you've gotten notice in that Section 7 that this is merely the beginning.

Now, when Senator Dilan talked about the fact that this only applied to public schools, there are special-act schools to whom this will apply. And I will give you a list of those that are in the metropolitan region.

There's the Little Flower Union Free School District in Wading River. That, I believe, is in Senator LaValle's district. There is the Greenburgh-Graham Union Free School, which in Hastings-on-Hudson; I believe in Senator Stewart-Cousins' district.

And the following, all in Westchester County: Greenburgh Eleven Union Free School District, Greenburgh-North Castle Union Free School District, Abbott Union Free

School District, Hawthorne Cedar Knolls Union Free School District, Mount Pleasant Cottage School Union Free School District, Mt. Pleasant Blythedale Union Free School District. All located in Westchester County, either Dobbs Ferry, Irvington, Hawthorne, Pleasantville, or Valhalla. I'm not sure, but I believe most if not all of them are also in Senator Stewart-Cousins's district.

These folks get no buy in this bill. They are specifically taxed. They don't even get the benefit of the ruse of the reimbursement at some later date. They're in, they're in in its entirety.

The section that deals with the imposition of the payroll tax, as I alluded to earlier, takes great pains to distinguish between the imposition of the tax on wages and benefits and then goes on to say that the employer can't pass through that tax to wages or benefits or compensation, more appropriately. And then it says any exemption that you get under other sections of the law you don't get under this section of the law.

So the idea that somehow or other this doesn't apply to other means of compensation really is straining credibility.

Let me just conclude with a situation that's particularly painful for my county. I live at the end of the line. We have probably somewhere in the area of 6,000 to 6,100 people, out of a population of in excess of 300,000, who avail themselves on a weekday basis of either peak or off-peak transportation on Metro North.

That means about 98 percent of the people in my district don't use Metro North, certainly don't use it during the week or on peak or off-peak hours. That means 98 percent of the people who are currently paying, without the pain that they're about to experience -- increased sales taxes, franchise taxes, so-called temporary surcharge, petroleum business tax, local operating assistance, station maintenance payments of about $63 million -- they're now going to be hit with $18 million more without even the licensing fees that we've been talking about

here.

The City of New York, on the other hand, has somewhere in the area of about 7.5 million fares during that same period of time.

The benefit to the people of Dutchess County is modest at best, and that's probably a stretch. Dutchess County is effectively a revenue hostage to this Metropolitan Transportation Authority. This bill provides license to the MTA to plunder, to pillage, and yes, to steal from the people of Dutchess County.

There's nothing to be derived for the vast majority of the people in my district, and I'm sure that holds true for other of the suburban counties. This is an extraordinarily painful, painful experience to have this rammed down our throats in this fashion without any pretense of even a hearing being held by this body in the district to let those who are suffering the most grievous injury to have the opportunity to be heard.

ACTING PRESIDENT STEWART-COUSINS:

Thank you.

Senator Larkin.

SENATOR LARKIN: Thank God for small favors. Madam President, I want to give Senator Dilan a break. I'd like to talk to Senator Perkins and ask him a few questions.

ACTING PRESIDENT STEWART-COUSINS: Senator Perkins, will you yield for some questions?

SENATOR PERKINS: By all means, Madam President.

SENATOR LARKIN: Through the chair.

Senator Perkins, as you were drafting this bill, did you receive any input from the Association of Towns, hospitals, National Federation of Independents, the State Business Council, Hospitals Association, expressing their concern about it and their opposition to it?

SENATOR PERKINS: Through you, Madam President. I would say two things. (A), we did receive some communications in that regard, directly and, even more

importantly, through you and some of your other colleagues that had indicated to me the concerns that you had about the legislation. And we accordingly tried to take that into consideration as we moved forward, yes.

SENATOR LARKIN: Continue?

ACTING PRESIDENT STEWART-COUSINS: Senator Perkins, will you continue to yield?

SENATOR PERKINS: Yes, Madam President.

SENATOR LARKIN: What were the results of your discussions?

SENATOR PERKINS: Through you, Madam President, the results of the discussions is the legislation that we have before us today, which I look forward to you supporting.

SENATOR LARKIN: Well, you know, that sounds good. I'm reading a note here, it says: "I don't think anybody in Albany paid attention to us." We have businesses that have said, We're going to go out of business. Why are they going to go out of business?

Will Mr. Perkins continue?

ACTING PRESIDENT STEWART-COUSINS: Senator Perkins, do you continue to yield?

SENATOR PERKINS: Yes, Madam President.

SENATOR LARKIN: You know, I know you received these, because they told us they sent them to every member. What was the reaction? I mean, you're saying to me the bill is here today. But were any of these concerns brought here?

SENATOR PERKINS: Through you, Madam President. As I indicated, you and I -- they not only shared this with me through the letters, but you and I had conversations. And I had acknowledged to you, I remember, directly that I had received such communications.

The result of those types of communications as well as others were brought into consideration as we ultimately came up with what's before us this evening that I believe takes us -- is on the right track that takes us where we need to go to address the crisis. That while it may be most prominent

with respect to the people in the City of New York, recognizes that this is a regional, in fact statewide concern. And I hope that this bill, with your support, will take us where we need to go to address it.

SENATOR LARKIN: You'll be waiting a long way on you know what.

Would Senator Dilan yield?

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, will you yield?

SENATOR DILAN: Yes, Madam President.

SENATOR LARKIN: Senator Dilan, there are four counties in the MTA area -- Putnam, Dutchess, Orange and Rockland -- where each one of us have a quarter of a vote. In other words, if four representatives don't show up, there's no vote for those four counties.

During your discussion of the organization and structure of the MTA, did you ever discuss representation by the 12 counties? Whisper gently.

SENATOR DILAN: Well, at no point

did I discuss the organization or the board of the MTA. You know, we were talking about the finance package and reforms, and I basically worked on the financial transportation portion of it.

SENATOR LARKIN: Would the Senator continue to yield?

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, do you continue to yield?

SENATOR DILAN: Yes, Madam President.

SENATOR LARKIN: Do you think it's proper to give us one-fourth of a vote but yet charge us the same amount of taxes that you charge somebody with a full vote?

SENATOR DILAN: Well, my understanding of this is that this region, the Metropolitan Commuter Region, gets services from the Metropolitan Transportation Authority. And we are only applying these fees to that particular region.

All 12 counties are being treated the same. We're exempting all schools within that region with regard -- or reimbursing,

rather, let me correct that -- reimbursing the schools within that region, the public schools.

In regard to how the MTA operates and how they apportion their votes, I did not deal with that.

SENATOR LARKIN: Would he still continue?

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, do you continue to yield?

SENATOR DILAN: Yes, Madam President.

SENATOR LARKIN: In the MTA's capital, are you aware that they have, for lack of a better word, browbeat legislators in both houses to provide ante-up money for projects that belong to the MTA? We've paid time and time again for these projects. And yet we keep talking about something else. You know, we're not going to do this and we're not going to do that.

On the bill.

ACTING PRESIDENT STEWART-COUSINS: Senator Larkin, on the bill.

SENATOR LARKIN: You know, I stand here tonight totally disgusted, ashamed. I can't answer my people in my district. Maybe some of you can go home and hide someplace; I can't. How do I tell the School for the Deaf and the Blind that "We're going to take money from you"? Now, let's be realistic. That's stupid.

You know, we talk about "we're going to reimburse you." Read page 11 up on the top, and it says it is the intent of the Governor. And a couple of pages later, it says we're going to do something else. Is it the intent of the Governor, or are we going to force them to do it?

Now, we know -- I don't know if all of you know; I don't know what your school districts are. But my school districts are telling me, We're going to borrow money. Do we all realize that outside of the City of New York, on the 19th of this month, school districts are going to vote a school budget?

I'm sure that the Governor will have a big press conference tomorrow and sign

this bill. But the burden we're placing on the school districts is going to wrap more, take people out of it.

We've been hearing since January that the stimulus package is going to take care of everything. Well, then why are school districts laying people off? In Orange County there's over 500 teachers and teachers' assistants that have been laid off. Why? Because of what we're doing today, part of it. The other part is that the stimulus is going to take care of it. The stimulus isn't taking care of anything.

We ought to be ashamed of ourself, truly ashamed. Look at the administrative actions that are going to take place. We're going to take the money from the school districts, they're going to turn it over to the Tax Commissioner, he's turn it over to the Comptroller, the Comptroller is then going to go into the MTA. They're going to set up two accounts to handle it.

The paperwork in this is unbelievable. And we sit here tonight looking

at it and laughing. It's a big deal. You can ride a subway next week; I can't get a gallon of gas for that price. I don't see anybody coming up to me and saying, Hey, billy, here's a couple of hundred dollars to buy gas. And you can ride on the subways and the buses cheaper than we can.

And then we talk about the roads and bridges. They're falling apart. Oh, and we got stimulus, we got stimulus. That's like a song we're going to have soon.

We ought to be ashamed of ourself, standing here tonight saying that this is what we're going to do. We haven't done anything. All we've done in this bill here is to say that we're scared of New York City voters and that we want to protect them.

I don't blame Senator Dilan, and I don't blame Senator Perkins. They're very respectable and solid individuals. But somebody is sitting behind the scene.

And last but not least, I'm really mad because I see my colleagues here asking someone to yield and they won't yield. Two

reasons. One, they don't know the damn answer, or number two, they want to be silent.

Now, let's be very serious on what we're doing. We're sending young American men and women into combat, to teach another country democracy, responsibilities and all of that. And then we come back to our own country and say, I'll hide behind something that says I haven't spoken, so you can't ask me.

You know what we sound like? A bunch of kids in first grade. If I can't play first base, I'll taking my glove and go home.

We ought to be ashamed of ourself. There's no other word for it. Why won't you answer? You let me know, because I don't believe it.

Thank you, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Thank you.

Senator Maziarz.

SENATOR MAZIARZ: Thank you very much, Madam President.

I was wondering if my good friend

and colleague Senator Dilan would yield for a couple of questions, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, will you yield?

SENATOR DILAN: Yes, Madam President.

SENATOR MAZIARZ: Thank you very much, Senator.

And I'll get to my questions, Madam President, but I do want to, again -- you know, through the wonder of the Worldwide Web and Twitter and YouTube and Facebook and all the social networking stuff and even email today, I think we're joined by the television stations from Buffalo and Western New York. Because I'm going to confine my questions to issues involving Western New York, Senator.

And I do want to say, Madam President, that in all my years that I've been in this chamber, I don't know that I have ever seen a Majority or a Minority Leader refuse to yield for a question. So we're seeing history made here tonight.

SENATOR DILAN: Point of order,

Madam President. I want to know why I'm standing here. I'm standing for a question.

SENATOR MAZIARZ: I'm getting to my question. I'm getting to my question.

ACTING PRESIDENT STEWART-COUSINS: Senator Maziarz --

SENATOR MAZIARZ: I'm getting to my question.

ACTING PRESIDENT STEWART-COUSINS: Please.

SENATOR MAZIARZ: You know, the Senate Majority, under the leadership of Senator Malcolm Smith, has done many things in this session that have affected Western New York in a very negative fashion, according to some very prominent people in Western New York.

First, there was a $550 million sweep of the Niagara Power Project, which Democratic Congressman Brian Higgins called --

SENATOR DILAN: Madam President, I still have a point of order as to what is the question.

ACTING PRESIDENT STEWART-COUSINS:

Senator Maziarz --

SENATOR MAZIARZ: Well, I'm going to get to my question. Is there a list --

SENATOR DILAN: Well, if he's on the bill, I will sit down.

SENATOR MAZIARZ: No.

ACTING PRESIDENT STEWART-COUSINS: I think if you would direct your question at Senator Dilan. And then of course if there are commentaries that you'd like to make, that would be appropriate. But --

SENATOR MAZIARZ: Well, Madam President, through you. What I want to do is point out how harmful the decisions that have been made by the Senate Majority have been to Western New York and how harmful this -- this is like a continuation of that, and I want to ask Senator Dilan about that.

SENATOR DILAN: Well, I'm waiting for a question. That's why I have the point of order.

ACTING PRESIDENT STEWART-COUSINS: Senator Maziarz, if you would pose the question it would probably move this along a

bit.

SENATOR MAZIARZ: Senator Dilan, there was a $550 million sweep from the Niagara Power Project. Congressman Brian Higgins, a Democrat, said that the Senate majority --

SENATOR DILAN: Madam President, I will not be answering any questions that's not related to the 12 counties within this area. And Senator Maziarz has only made reference to Western New York. They are not part of this legislation, so I will not be accepting any questions from Senator Maziarz at this time.

Thank you very much.

SENATOR MAZIARZ: Madam President, through you, I would respectfully disagree with my colleague. Madam President, I would respectfully disagree.

The people from Western New York are going to be paying for the reimbursements to the school districts through their New York State income tax. Are they not? That's one of my questions.

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan --

SENATOR MAZIARZ: Madam President, through you. The reimbursements to the school districts in the MTA region will come from the state's General Fund, which --

SENATOR DILAN: Madam President, I gave the Senator an opportunity to ask a question. He refused by continuing to speak to issues that are not germane to this legislation. Therefore, I am not answering any of his questions. Thank you.

ACTING PRESIDENT STEWART-COUSINS: Senator Maziarz, Senator Dilan will not be yielding. Would you like to speak on the bill?

SENATOR MAZIARZ: No, I would like to ask if my other good friend, Senator Perkins, would yield for a question.

ACTING PRESIDENT STEWART-COUSINS: Senator Perkins, will you yield for a question from Senator Maziarz?

SENATOR PERKINS: By all means, Madam President.

SENATOR MAZIARZ: Thank you very much, Madam President. Thank you, Senator Perkins.

Senator Perkins, as I was saying, I think that the people of Western New York who are watching this today are very much affected by this, because there is a provision in this bill that will provide reimbursement to those school districts in the MTA region that will come from the state's General Fund. And of course the state's General Fund is the personal income tax that's paid by people in Western New York.

Now, we've made a lot of decisions here about Western New York I think that are detrimental to Western New York. I talked about the sweep of the Power Authority, what Congressman Brian Higgins thought about that.

Just the other day, we did a bill that adds two commissioners to the NFTA that Commissioner James Eagan, who is cochair of the Senate Democratic Campaign Committee finance group, said is detrimental to transportation in Western New York.

Healthcare, Robert Gioia, an appointee of the old former Governor Mario Cuomo, said that the Senate Majority destroyed healthcare in Western New York.

So my question to you, Senator, is is it fair that constituents of Senator Stachowski, of Senator Thompson, of Senator Volker, of myself, are made to pay for this bailout of the MTA when probably 99.9 percent of them will never use the MTA?

SENATOR PERKINS: Through you, Madam President. I believe there's a fairness here, and I believe that we need to really focus on the fact that this MTA is not just a regional service or economic engine for New York City but really for the whole state.

And so I think that while many feel concerned about having to pay, we've tried craft a piece of legislation that shares the pain, so to speak. And so that we can have a state-of-the-art MTA that can continue to be an important economic engine for the state.

SENATOR MAZIARZ: Thank you, Senator Perkins.

Madam President, through you, would Senator Perkins continue to yield?

ACTING PRESIDENT STEWART-COUSINS: Senator Perkins, would you continue to yield?

SENATOR PERKINS: By all means, Madam President.

SENATOR MAZIARZ: Thank you, Senator. I very much appreciate that. So I appreciate your answer that the people of Senator Stachowski's, Senator Thompson's, Senator Volker's district and my district are financially contributing to this bailout of the New York City and Metropolitan Transportation Authority downstate area.

I guess my question would be, Senator Perkins, you know, you took the power; you gave us commissioners on the NFTA that even your own appointee said was unnecessary; one of the major healthcare advisors here in Western New York said that you nearly destroyed healthcare in Western New York in the budget. Do you think it's fair that we should have to pay for the MTA too?

SENATOR PERKINS: Through you,

Madam President, I wouldn't quite agree with that characterization of the budget process that we all contributed to. So I can't -- I can't agree with that characterization of destroying anything through that budget process, as you suggested someone said. They may have said it; it doesn't make it a fact.

SENATOR MAZIARZ: Well, through you, Madam President, I can tell you that Robert Gioia, he's chairman of the Great Lakes Health governing board. He was a former appointee of Governor Mario Cuomo. He's not of my political party, he's of yours.

And I can tell you exactly what he said: "Words cannot express how angry I am, along with the boards of the Great Lakes Health, Kaleida Health, and Erie County Medical Center, at the state budget passed last month. Simply stated, the 2009-2010 state budget is the worst I've seen in my 55 years as a resident of Western New York. The men and women of the Western New York legislative delegation who voted for this budget" -- and I will add my own words there;

there were only two, Senator Thompson and Senator Stachowski -- "should apologize to their constituents and the taxpayers of Western New York. They had an opportunity to achieve something great for Western New York. Instead, they dealt it a catastrophic blow."

That's what they said, Senator.

ACTING PRESIDENT STEWART-COUSINS: Was there a question?

SENATOR MAZIARZ: Would you -- I'm sorry, would you change your characterization after hearing what Mr. Gioia had to say?

SENATOR PERKINS: Through you, Madam President, no, I wouldn't.

SENATOR MAZIARZ: Madam President, I would ask if -- thank you very much, Senator. I appreciate your -- I would ask if Senator Dilan would yield for a question.

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, do you yield?

SENATOR DILAN: I just want to make a point of order, Madam President.

I gave Senator Maziarz three opportunities to ask me a question. And I am not going to subject myself to the role that he's playing here in the Senate chambers.

Thank you.

SENATOR MAZIARZ: Thank you, Madam President. I think that the people of Western New York who are watching tonight deserve answers to their questions.

But, Madam President, I would ask if Senator Larkin would yield for a question.

ACTING PRESIDENT STEWART-COUSINS: Senator Larkin, do you yield for a question?

SENATOR LARKIN: Yes.

SENATOR MAZIARZ: Senator Larkin, thank you very much for yielding to a question.

Senator, you stated earlier during your question period that there is a school in your district that educates deaf and blind children, that they will be charged the payroll tax and they will not be reimbursed. Did I understand you correctly, Senator?

SENATOR LARKIN: That's exactly

the way they're saying it from SED, and it's also in Westchester County also.

SENATOR MAZIARZ: Senator, it's unbelievable. I have to ask you again.

ACTING PRESIDENT STEWART-COUSINS: Senator Maziarz --

SENATOR MAZIARZ: Through you, Madam President, I'm sorry.

ACTING PRESIDENT STEWART-COUSINS: Are you still asking Senator Larkin to yield?

SENATOR MAZIARZ: I am. Through you, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Senator Larkin, do you yield?

SENATOR LARKIN: Most certainly.

SENATOR MAZIARZ: I apologize. I apologize, Madam President. I was in such a state of shock that this would happen.

Senator Larkin, Malcolm Smith and the Senate Democratic Majority are going to impose a tax on a school that educates blind and deaf children and not reimburse them?

SENATOR LARKIN: That's exactly what they're telling them.

SENATOR MAZIARZ: Thank you, Senator Larkin.

Madam President, on the bill.

ACTING PRESIDENT STEWART-COUSINS: Senator Maziarz on the bill.

SENATOR MAZIARZ: I think this bill can use some drastic improvement, Madam President.

Thank you.

ACTING PRESIDENT STEWART-COUSINS: Thank you.

Senator Morahan.

SENATOR MORAHAN: Thank you, Madam President.

I represent the County of Rockland and the County of Orange. These two counties are part of the 12, and they're the only two counties that are shortchanged seriously by the MTA.

To give you an example, the County of Orange receives $63.5 million from the MTA in services and direct payments. However, the same county, the County of Orange, pays to the MTA $95.5 million. So there's a value gap of

almost $32 million between the MTA services and what they collect through sales and mortgage taxes and those sorts of devices from the people of Orange County, $31 million.

Now we're going to lay upon that a tax that will be directly related to the school tax by taxing their government, their county, their villages and their towns, on top of the $32 million that they're already being shortchanged yearly by the MTA.

The other county, Rockland County, which I represent has a $42 million value gap. We receive, in Rockland, $46.5 million from MTA services, but we give the MTA over $88 million annually, leaving us with a $42 million value gap.

They're the only two counties in the 12-county MTA region who have such a value gap or any value gap. We're the only two. That's number one.

I have received today a legislative resolution passed by the County of Rockland asking for state legislation to withdraw from the MTA. They figure they can provide the

services a whole lot cheaper by contract and have a net savings to the taxpayers.

I've received copies of two letters, one to the MTA and one to myself, going back as far as December of 2008 complaining to the MTA that Rockland County receives very little service.

Now the employers in Rockland County are now going to be taxed on a payroll. And I would venture to say if there's two employees in the County of Rockland who use an MTA service to get to their place of employment, it's one too many.

So now we're going to have to pay school tax. And I heard Senator Dilan's answer on the school tax. That yes we're going reimburse you in one section. In the second section, it says however, if there's no appropriation to reimburse you, we'll let you ride for six months, just like a car dealer, as Senator Bonacic said, but after that you're liable for that tax reimbursement or no reimbursement. So that's a check-in-the-mail kind of promise.

So as far as I'm concerned, this bill, which I really -- I would ask Senator Perkins would he yield for a question.

ACTING PRESIDENT STEWART-COUSINS: Senator Perkins, will you yield for a question?

SENATOR PERKINS: Yes, Madam President.

SENATOR MORAHAN: Thank you, Senator.

Senator Larkin asked you a few moments back whether you received any of these letters anti this particular bill or this approach. My question is, did you receive any letters of support?

SENATOR PERKINS: Through you, Madam President. We received probably more communications of support for our effort to fix the crisis than we received that were opposed to fixing the crisis.

In fact, I must say since I've been here, I have received more emails and related types of communications of urgency about fixing this crisis than anything I've ever

received before.

SENATOR MORAHAN: I agree with you, there was a sense of urgency and people wanted this Senate to address the problem, they wanted this Senate's leadership to make substantial moves. And I know I received those sorts of emails as well.

But I don't know how many letters of support [using air quotes] you're going to get from the other seven counties outside of New York to fix this crisis in the MTA. I didn't receive one from within my district.

Thank you, Senator.

So as a matter of fairness, I think there ought to be some adjustment in the MTA budget that would provide the counties of Orange and Rockland the services or reimbursement, if you will, so that we could be on a level playing field with the other 10 counties that have a value received equal to what their commitment is to. This is going to make that value gap a great deal larger.

And I will be submitting a bill at the request of the Legislature in Rockland

County, who voted unanimously, both parties, to withdraw from the MTA. And in the past, they did get assurances from governors going back that, if it got bad, the governors would let them off the hook and get out of the MTA if they decided to do that.

That's how bad it is in Rockland County, and I believe it's equally bad in Orange County. And I would not be surprised if I received a request for home rule to withdraw from the MTA. You can't have, between those two counties, a $75 million shortfall and then impose upon them a payroll tax, impose upon them a property tax increase when you have that payroll tax hit the county, the towns and the villages, and with some sort of shell game going on with reimbursement of the public schools, which may or may not happen.

And we have plenty of evidence here with the holding back of prior commitments, either through member initiatives or through capital programs where the Governor said we're not going to do it.

Now they're going to have to believe the same Governor who's saying he's going to do it if the money is there. And then he says if the money is there, but we have another crisis coming of another $17 billion shortfall. And the stimulus package will be used up.

So I don't know if we lose our credibility, like the MTA has lost all its credibility. They're already talking that this isn't going to fix the problem to their liking. But it was brought up earlier here we need to know an honest answer about the MTA.

The one thing Senator Smith said that I totally agree with in the very beginning is before we did anything, we should have a forensic audit done on the MTA to find out what they could do, what they could do to make it better, what they could do to make it more efficient. Because it seems to me with the fares they're raising, I think private industry, if they had a shot, would be running those railroads a whole lot cheaper.

So I am compelled to vote against

this budget with its totally harmful, job-killing, property-tax-raising for the County of Orange and the County of Rockland, who get no equal treatment by the MTA -- and we're on the short end of the stick already for almost $75 million, now to be compounded.

I will be voting in the negative. Thank you, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Thank you, Senator.

Senator Golden.

SENATOR GOLDEN: Thank you, Madam President. Would Senator Dilan please yield.

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, would you yield for a question?

SENATOR DILAN: Yes, Madam President.

SENATOR GOLDEN: Senator Dilan, I know it's been a long and tenuous going back and forth. I'm going to be brief, with about five or six questions, and they're not too technical, so hopefully we can get some answers and move on.

You know, we all need a bill done.

We all know that we want to have our buses and our trains running. We know how important it is for the people of the City of New York. And I was just wondering, as to process, what else was taken into consideration before we accepted the plan that's before us today.

Did other areas, were they reviewed, such as the congestion pricing that could have been reviewed in the City of New York to bring in hundreds of millions of dollars? Was that part of the process? Was that reviewed?

SENATOR DILAN: Well, originally there was the Ravitch Commission report, which I think that we're all familiar with, which included the tolls. There was plenty of discussion regarding tolls, and that was something that was apparently not acceptable to many members of -- several Senators.

There were other options that were discussed. A gasoline tax was discussed. There were many, many options during this whole process that were talked about. And many of them were very public, through the

media and in other discussions.

SENATOR GOLDEN: Will Senator Dilan continue to yield?

SENATOR DILAN: Yes.

SENATOR GOLDEN: Was the cigarette tax from the Indian reservations, was that ever brought up? I believe about -- in the numbers that we have, it's well over a billion dollars a year that can be brought in. Was that discussed?

SENATOR DILAN: It was not discussed as part of this package. But I don't know if there are any Indian reservations within the 12-county region.

SENATOR GOLDEN: There are.

SENATOR DILAN: There are?

SENATOR GOLDEN: There are. The --

ACTING PRESIDENT STEWART-COUSINS: Are you asking Senator Dilan to continue to yield?

SENATOR GOLDEN: Yes, if you will, Senator Dilan.

ACTING PRESIDENT STEWART-COUSINS:

Senator Dilan, do you continue to yield?

SENATOR DILAN: Yes.

SENATOR GOLDEN: Was a statewide buyout, was that considered? There are 45,000 employees that are capable of taking a buyout that would have generated over a billion dollars in funds. Was that discussed?

SENATOR DILAN: Madam President, my answer is going to be the same. There were many options that were discussed. These were not the only ones. There were many changes or discussions that were going on. There were options that were within the initial bill that was reported out of the Transportation Committee, referred to Finance. So there were many options that were discussed.

If this were an easy solution, it probably would have been resolved earlier this year. And in many cases, any revenue sources, we were always talking about the region and not things that pertain outside of the region.

SENATOR GOLDEN: Thank you, Senator Dilan.

Would you continue to yield?

SENATOR DILAN: Yes.

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, will you continue to yield?

SENATOR DILAN: Yes.

SENATOR GOLDEN: It's along the same line. I'm trying to get answers. I know that there was a lot discussed, and I'm trying to get yes or no answers to some of these questions. I know they're difficult, some of them. Some of them may have been discussed; some may not have been discussed.

But one I think is important for all of us is the stimulus dollars. There's $7 billion this year, $8 billion next year. And I know that most of this dollars going to the MTA are for operating dollars when in fact not too long ago we had a plan that would have taken care of the operating as well as the capital plan.

So I wanted to know if we had included the thought of the stimulus money for this year and for next year as part of the process of getting the MTA out of this bailout.

SENATOR DILAN: So your question is whether the stimulus package was discussed?

SENATOR GOLDEN: Yes, and how would it have played a role. Did it play a role in the discussion --

SENATOR DILAN: It's only for capital, and there were apparently guidelines that the federal government had regarding the stimulus package.

It's my understanding that the MTA did receive stimulus money. However, for some reason or other, maybe federal regulation or some other law or regulation, none of that money is being used in this particular package.

I know I do have a very large computerized spreadsheets of millions and millions of dollars that have been provided from the stimulus package for roads and highways outside of the MTA region that's being used for that.

SENATOR GOLDEN: If the good Senator would continue to yield.

ACTING PRESIDENT STEWART-COUSINS:

Senator Dilan, do you continue to yield?

SENATOR DILAN: Yes.

SENATOR GOLDEN: I know that there was an awful lot of stimulus money we can't trace it out, and we've been asking Finance to help us find out where a lot of that stimulus money is. But we haven't been able to find all that $7 billion in stimulus.

And we'd like to find out, if you can, if you can get us some of those numbers. I know of the numbers have been released on some of the roads and highways, but nothing near to the number that has been stipulated for this year from the federal government.

And that's why I brought up the stimulus money would have obviously really helped us had we been able to use that money, this year and next year, to be able to get us out of the bind that we're in today and to make sure we had a capital program going forward. So that was the reasons for my questions on the stimulus money.

I'm going to change my -- and I know some of these questions are redundant to

a degree. But it's just to get an idea of where your conference may go in the future. And I know we've talk about school districts. And we've talked about money going back to the school districts. And we've talked about the parochials, the privates, and the charters on how there is no money stipulated.

Do you plan in the future to deal with trying to make them whole as we go forward in some other way or form through the budget process?

SENATOR DILAN: Can he just rephrase? Because I was getting background noise and I couldn't hear clearly.

ACTING PRESIDENT STEWART-COUSINS: Senator Golden, would you rephrase your question?

SENATOR GOLDEN: In the MTA bailout plan we have money going back to the public school districts. We don't have any money going back to the private, the parochial and the charter schools. And what I'm asking is does your conference in the future plan to correct that outside of this MTA bailout plan?

SENATOR DILAN: Well, the New York State Senate -- and once this legislation is passed, approved by the other house and the Governor -- and I've been basically dealing with the revenue sources. But during discussions, it's been my understanding, and the reforms and the forensic audit that we're talking about, if the forensic audit would show that there would be significant savings or other sources of revenues that could be used to reduce the payroll tax or to realize savings or stabilizing the fares in the future, of course we're going to do that.

That's the purpose of the forensic audit and the reforms that are included in this package. And I think Senator Perkins has been articulating that tonight.

And we're going to do everything possible to ensure that the MTA really lives and completes their original mission of when they were first established, the mission of the Metropolitan Transportation Authority was to be self-sustaining. And that is the goal

here, Madam President.

SENATOR GOLDEN: Would the good Senator continue to yield, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, do you continue to yield?

SENATOR DILAN: Yes.

SENATOR GOLDEN: My question was, will those private, parochial and charter schools be made whole? And your answer to me is yes, it will, after we do a forensic rotate audit of the MTA. Did I understand that correctly?

SENATOR DILAN: It is the hope that after a forensic audit.

And it is the hope that if our economy recovers, it is the hope that if real estate taxes -- or revenues, rather, make a comeback, that the Metropolitan Transportation Authority can operate on a self-sustaining basis. And it would not only help all those particular schools or agencies you mentioned but also businesses in the region and in the State of New York.

SENATOR GOLDEN: And if the good

Senator will still yield, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, do you continue to yield?

SENATOR DILAN: Yes.

SENATOR GOLDEN: Along the same line, there are many not-for-profits that have been hit across the 12-county area. The numbers are astounding to some of our not-for-profits that work with our seniors, our homeless, housing, and kids.

And will that be part of the process, to try to get the not-for-profits made whole as well, going forward?

SENATOR DILAN: I would have to give the same response that it is our hope that at some point the Metropolitan Transportation Authority would be able to operate on a self-sustaining basis where we would not have to resort to these measures in subsidizing their operation.

Again, the purpose of the reforms and the forensic audit and all the other issues on transparency is so the public can know how the MTA operates and to bring them

back to their original mission of becoming a self-sustaining authority.

And I'm not clairvoyant, so I would like to tell the Senator that I cannot predict the future.

SENATOR GOLDEN: Would the good Senator continue? I've only got about three or four more questions.

SENATOR DILAN: I remember he said he only had six, but --

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, do you continue to yield?

SENATOR DILAN: Yes.

SENATOR GOLDEN: Changing in a different direction, the 50-cent taxi charge, did anybody think that we may not create a little bit of competition and a little bit of war with the livery car services now in the City of New York that will probably be in the City of New York competing with those Yellow taxis? Did that come up in the negotiations?

SENATOR DILAN: Madam President, there were many items that were considered during discussion regarding this issue. And

there were considerations of what happened in previous years in the budget. We're talking about here within the City of New York charging the medallion cabs this additional fee.

We tried to find alternative revenue sources, but it's a very difficult situation that we're in. And with regard to competition, we were also considering how you would collect these fees from one particular type of private vehicles or medallions. So there were many things that were taken into consideration. And this is the things that we considered.

A medallion cab and the purpose of the medallion is that you can publicly hailed. A livery service is something that you have to previously contract or call for that particular service. So with respect to competition, you cannot hail a livery cab. You cannot hail a black car. The purpose of the medallion is that you can hail them anywhere within the region.

SENATOR GOLDEN: Thank you, good

Senator, for that answer. But if the good Senator continues, we all know, going through our communities, we hail black cars and liveries on a regular basis in the outer boroughs. And I've seen it in New York City as well, when it's raining or when there's no cabs available, that we're able to hail these cars.

But I'm going to change direction. I've got two more questions, possibly, and one is again on the not-for-profits, if the good Senator continues to yield.

ACTING PRESIDENT STEWART-COUSINS: Senator Dilan, do you continue to yield?

SENATOR DILAN: I will yield for two more questions.

ACTING PRESIDENT STEWART-COUSINS: For two more questions, Senator Golden.

SENATOR GOLDEN: The not-for-profits that we talked about in my community -- Lutheran Medical, the hospitals, Maimonides, Downstate Hospital, my nursing homes, my senior centers, they're going to be impacted pretty severely. And I was just,

when I was going through the bill, I seen that the Port Authority -- is the Port Authority exempted from paying any --

SENATOR DILAN: What was that?

SENATOR GOLDEN: The Port Authority.

SENATOR DILAN: Are they exempted?

SENATOR GOLDEN: Yes.

SENATOR DILAN: From payroll tax?

SENATOR GOLDEN: Yes.

SENATOR DILAN: My answer is yes.

SENATOR GOLDEN: I don't know --

SENATOR DILAN: He has one question left.

SENATOR GOLDEN: No, no, no. Well, I've seen that the U.N. is also -- is the U.N. also exempted?

ACTING PRESIDENT STEWART-COUSINS: Is that your second question?

SENATOR GOLDEN: Well, if he wants to use that as the second question, that's fine.

And why, is the question I would

ask. Why would you exempt the Port Authority, and why would you exempt the U.N?

SENATOR DILAN: Well, first of all, within his previous question he was talking about various not-for-profits and organizations within his district that will be impacted. But I'd like to remind the good Senator that also his constituents that ride subways, buses, will also be impacted.

And to answer his final question, the reason that the United Nations is exempted is because we have do not have the authority as a state legislature to tax the United Nations, which is an international body.

And that was his final question. Thank you very much.

SENATOR GOLDEN: Well, I didn't get an answer to the Port Authority, as to why the Port Authority was exempted.

SENATOR DILAN: The Port Authority is a multistate agency, New York, New Jersey. So it's the same answer.

Thank you very much, Madam President.

SENATOR GOLDEN: Thank you, good Senator.

On the bill.

ACTING PRESIDENT STEWART-COUSINS: Senator Golden, on the bill.

SENATOR GOLDEN: I find it amazing that the people in our communities in the city and in the 12-county area are going to, you know, be satisfied to listen that, well, the Port Authority, we didn't do that because it -- you know, cross-state multiagency. But yet we're going to take a school district that's cross-county and we're going to find a way to tax the part that's in the county that's taxable versus the county part that's not taxable. So we found a way do that, but we're going to exempt the Port Authority.

My people in my community are going to be very happy about that. And they're going to be very happy to find out that the U.N. was exempted as well, I think because we didn't have the authority to do that. I think they'll be very impressed to find out that the

people that most use the services are not going to pay for them.

They'll be very impressed to find out that we didn't do a congestion pricing plan to go for the people that come in and use the services in the city, such as the fire, the police, the ambulances, the hospitals, the parks. They're going to be very happy to find out what our good colleagues here, the Senate Democrats, did in putting this bill forward and taxing the people in my community and in the communities of the 12 counties.

They're going to be very -- you know, I think the good Majority Leader had spoken about how we're not going to do anything until we have a top-to-bottom review of that agency and find out where that money is. And I read in the bill and I see "may," I don't see "shall." I see that we may or may not have a date as to when that top-to-bottom review will be made, how this forensic accounting would be done, when this forensic accounting would be accountable to, and when we would have a report on that forensic

accounting.

And all of the money that we've discussed here today with my good colleague as to being able to restore money to our parochials, our privates, our charters, and to our not-for-profits. You know, it was a nice answer, but we all know that that's not going to happen.

It's also very interesting that we as a state, my colleagues in the Democratic side, the other side of this room, passed a budget that went from $119 billion in spending and went to $132 billion in spending. And they took $7 billion in stimulus, and they put it in an increase in spending. And they've increased taxes and fees by $8 billion, and now we've just added another $2.2 billion to spending, which is over $10 billion in spending on taxes and fees that was created here by my Senate colleagues, the Democrats.

My people in my community are going to be very interested to see how we went from $119 billion to $132 billion, and now we just went another $2 billion, that's $134 billion.

Let me see. We're not finished yet with the -- what is it, the capital program is not finished yet, so we're going to have to do some more on the capital program for the MTA. And we haven't yet done the roads yet and bridges for upstate, but we're going to do that by the end of the year.

So let me see, what are we up to, about $140 billion in spending here in the State of New York? My people are going to be very interested to hear that. We owed the taxpayer, we owed the people of this great city and state, we owed them more what we gave them. We gave them nothing. In the worst economic times that we've seen or witnessed.

And it's only going to get worse here. By the end of the year, the way the spending here in this conference is going, our Democratic colleagues, with the Governor and with the Assembly, are taxing our families out of existence in this great state.

There's a couple of trains out there. There's a runaway train, it's the runaway spending train, followed by a runaway

taxing train. And that train, the runaway taxing train, is the fuel for the spending train. And guess what? It's on a one-way track.

Some people will think, hey, this might be Governor Paterson's revival for upstate, and taking all of the people out of the City of New York and bringing them upstate.

But we all know that the people upstate are just as burdened and will be just as burdened when this program, road program and bridge program, is completed. So we all know that these two runaway trains are on a track out of the State of New York, with our families, with our children, with our seniors. Because they can't afford to stay here, they won't be able to get jobs here, they will not be able to maintain their homes here because we allowed this runaway spending train to get to $140 billion in the year 2009. And we are very close to that right now.

I know that the people across the city and across the 12 counties and across

this state are not going to be satisfied with what this body has done. We are accountable to those people. We are accountable to those families. And we let them down.

I vote no, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Senator Marcellino.

SENATOR MARCELLINO: Thank you, Madam President.

The hour is late, so I don't intend to ask any Senators to yield. I just would like to make a couple of comments relative to this bailout package, which I consider to be -- no pun intended -- a train wreck looking for a place to happen.

This bill is massive. You've heard before, you've heard from my colleagues earlier about the taxes, you've heard about the schools, you've heard about the repayments, you've heard about all of this. The colloquy has been going on and on and on. We were given a bill, given about an hour to look at this bill and to review it before we had to come on the floor and debate a very

extensive and very complex piece of legislation.

Let me read something to you. This was done in 2007. "To its credit, the MTA has outlined a multiyear plan to balance the 2009 budget and to reduce future-year budget gaps to manageable levels. The July plan, however, fails to deliver on past promises to reduce unnecessary waste and duplication. Last year the MTA achieved only 41 percent of its planned cost-reduction target, which was modest from the outset."

This is a statement written in 2007 by the Comptroller of the State of New York, Thomas DiNapoli, an analysis of a plan proposed by the MTA to cut costs, to create efficiencies that it made itself. And it says very clearly here that you've only done 41 percent of what you said the MTA could do.

Now, who's watching the store here? I hear a statement that we had to do this thing and it had to be done immediately, we were under severe pressure, that this only came up recently. This is nonsense. This was

in 2007. I don't think Tom DiNapoli -- I've known him for many years. He's a great guy, but he's not a soothsayer. He can't see into the future, but he clearly did here. He predicted a shortfall. He predicted that the MTA didn't do what it said it could do.

I heard my good friend Senator Perkins talk about an audit. I heard Senator Dilan, another good friend, talk about a possible forensic audit.

I read this bill. I read this bill; there's nothing in there. On page 37, starting on line 46, it talks about a possible independent audit may be -- the word "may" is used, it may be ordered by the Speaker and the Majority Leader. May be. No requirement here. I also don't see the word "shall" in here. I don't see the word "must" in here. I think you have to do that.

The MTA is a $7 billion plus entity. It has thousands of employees. Ladies and gentlemen, do you know that it has 400 people in its public relations department? Four hundred people. Four hundred people to

do what? Say what a great entity this is?

The MTA is a disaster. It is the worst-run authority in the state. Nobody believes them, nobody. Not even the Comptroller of the State of New York trusts their numbers. No one. You can't go anywhere in this state and mention the MTA without getting something thrown at you.

This entity has lied, it has misrepresented its books, misrepresented its budget. The Long Island Railroad alone, as it was discovered recently by the Attorney General of the State of New York -- last time I looked, he was a Democrat -- by the Attorney General, he said that 89 percent of the Long Island Railroad workers go out on workers' comp pensions. On a disability pension.

How can that be? We have firefighters and police who really do heavy-duty work, and they don't go out on those kind of pensions. Yet 89 percent of the Long Island Railroad pensioners get a disability. Fraud. Absolute fraud under investigation now by our own Attorney General.

Where's the audit? Who's watching the store? Who's going to hold them to the fact that if we give them all this money -- as Senator Dilan points out, billions, almost $3 billion -- $2.5 billion is going to be handed to them in the hopes that it's going to be used appropriately.

Who's going to see that it is? Who's going to ask them the question, Why do you need so many people in public relation? Why are you doing it? Where's the duplication?

It's nice to have an audit that adds up the books. I have some experience in writing legislation requiring audits from people who don't necessarily want to be audited. I wrote the legislation, along with Tom DiNapoli, then an Assemblyman, to audit the school districts. The school districts all said they didn't need audits, they didn't need to be audited, they did everything right. Roslyn proved them wrong.

The numbers in the Roslyn school district added up. They added up. You added

them down this way, you added them across, they all added up. But they were still in the district blind. Yet they said, We don't need to be audited.

The legislation that I authored required an audit. And by the way, we gave the Comptroller's office money. We put an appropriation in the bill to give them money so they could hire additional people. There's nothing in this bill that authorizes that. There's nothing in this bill that gives them additional money to do extra work. We're asking them to do extra work.

It talks about hiring an outside auditor. Why? Why do we have to go outside? We have a Comptroller, a perfectly legitimate office. We have an Attorney General who we all respect and trust, quite frankly. Why don't we let them do it? Let them do their job. That's what they're hired for. That's what the people want them to do. Let them do it. Why do we have to go outside? Who's going to pay for that? Where is the money for it? It's not in this bill. It's not in this

piece of legislation.

Madam President, this bill is a sham. This bill is a taxing entity. This bill promises we intend to pay you back, schools, we intend to. Sounds like "the check is in the mail." Sounds like "I'll respect you in the morning." But this is what this bill does. It does nothing. It talks a lot, it discusses a lot, but it doesn't do what it's supposed to do, and that is hold the MTA to a very high standard. A very high standard.

They're getting a lot of money, an awful lot of money. In addition to $8 billion in new taxes, we're spending another $2.5 billion here. So we've raised spending $10 billion in just this term alone, and we're not even through yet. That's a lot of money going down the line here. That's a huge amount of money coming out of the pockets of our taxpayers, from the entire state. Everybody pays those income taxes. That's going to take the General Fund. Everybody pays these taxes, and the 12 counties

downstate are all going to get ripped off.

This is not a good piece of legislation that is being rushed. Two hearings, only in the City of New York. What happened to Long Island? We don't count? What happened to Buffalo? They don't count? What happened to Syracuse? They don't count?

Come on, guys. Come on, guys. This is ridiculous. We should have had more time. This was pointed out in 2007, there was a problem. We did a budget this year. This should have been done in the state budget.

This should have been done as part of the state budget, not a separate entity. It didn't need to be done separately. When you're talking about money, there should have been appropriations done. And the proper place to do an appropriation is in the state budget when we do a state budget, not weeks later.

Not negotiating with three Senators over here who say, We won't vote for it because you're going to put tolls, so we won't support it. So we won't do tolls. Or two

Senators who say, We won't vote for this because we're going to hold the schools harmless, and everything stops. And we've got to negotiate this and negotiate that.

This should have been done at the appropriate time when the situation was right, when we could have done the proper amount of budgeting and the proper amount of auditing and asking all the right questions.

Madam President, I fully intend to vote no on this piece of legislation. As I said before, it is a disaster. We are going to rue the day that we bring this up. We're going to be paying for this down the line, and the voters of this state are not going to forget who votes for this bill.

I for one am going to keep reminding them for the next two years who voted for this bill. This is a disgrace.

I intend to vote no, Madam President. I thank you for your indulgence.

ACTING PRESIDENT STEWART-COUSINS: Thank you.

Senator LaValle.

SENATOR LaVALLE: Thank you, Madam President. I rise to speak on the MTA bailout bill.

I'd like to just start by reminding everyone historically, during the 1960s, there was a movement fought that we needed to create superagencies, that went to creating authorities that would be off-budget and we would be able to do what we needed to do and at that time with not a lot of scrutiny.

We today find that the MTA has really, structurally, not really changed. And so I heard Senator Perkins talked about fixing the crisis, fixing the crisis. Fixing the crisis is not raising taxes and fees. That is not fixing the crisis.

I've been very fortunate -- and I would tell you there are two social futurists, Alvin and Heidi Toffler, and they wrote a series of books. And one -- actually, two of the books that really point out where we are today and where we have been is the third wave in the creation of the a new civilization. Toffler points out that we have moved or

should be moving from the industrial revolution into the technological age.

We are using, in too many instances, industrial revolution fixes that don't apply today. And we wonder why we have the problems that we have today.

The MTA needs to be gutted. And we need to think out of the box to recreate how do we provide transit services to the people in the 12-county region. This solution only begs in a year or two for a crash. A crash.

We fail sometimes to look at what is going on around us -- recession, depression, whatever it is -- and what's happening with the lending institutions. How does that all apply to this situation? And I'm saying all we're using is a BandAid, a BandAid that continues to hurt people.

During the budget -- a month ago, just a little more than a month ago, on this floor -- people said, you know, this is not a great bill, but we're trying to do the best we can to fix a crisis because of the economy.

It has been mentioned several times

that we have increased taxes and fees on people $10.4 billion, $10.4 billion. People are beginning to find out some of these fees. Like May 1st, wine and beer tax. A lot of people -- I think our agencies haven't even communicated with restaurants and other entities that have to pay this tax.

But when I'm home, people keep stopping me and saying, "Is anyone listening? Is anyone listening?" And you know, I hear stories about people who are -- and you hear these stories too. "I'm working two jobs. I just think I'm getting to the top of the ladder, and someone pulls the rungs and I'm down again. My utilities are going up, my school district taxes are going up." On and on and on.

These are, as my father used to say, the little people, the people that really count in our society. And we are not serving them. We are not serving them. This is not a fix. It is not a fix.

On top of it, what do I tell people? Not only have we imposed all these

taxes, we took your rebate checks away. What? What? Yes, the rebate checks in the budget were taken away from you. And we did not do it.

And, you know, and I'm going to say over and over before I finish that I, for one -- and I don't think it's an act of cowardice, but I'm not going to be part of "the Legislature" as many newspapers report, Because there are authors on this bill. There were authors on the budget bill. And there was not one Republican who was an author of either the budget or this. We did not impose taxes. We are not imposing and crushing people with this bill.

Jobs. Everyone talks about jobs, the creation of jobs. What we're doing with this is this is a killer. I've already talked -- and a lot of people didn't think that this was going to happen, because in our local newspapers a lot of -- well, a couple of people said they were not going support this, so people believed that the payroll tax was not going to happen. They believed it.

Sometime tomorrow, next week or whenever, they will know that the payroll tax did happen. And it may affect them when their boss comes up to them and says goodbye: I have a payroll tax, and I have to make cuts. Or I have to cut benefits. Or I have to do something.

We're talking about real people here. These are real people. And you know that. And we're doing this, again, to them. Not us as Republicans. But I think the Democrats are the authors of these measures.

We have -- this applies, as everyone knows, and I'm just going to go through the school districts, not-for-profits, for-profits, municipal entities. But somehow we cut out the school districts. We're going to reimburse them.

People are asking me, and quite honestly, I was staff here once, and I would have said just do it clean and easy. Exempt the schools. Exempt the schools.

So I get a letter -- Senator Foley got one, Johnson, Oppenheimer and

Stewart-Cousins -- from the Longwood Central School District. And it goes: "The proposed MTA payroll tax on employers will have a drastic impact on our schools. If approved, it will cost the Longwood School District approximately $350,000 for the 2009-2010 school year. Since our budget is already established and cannot be legally changed, the $350,000 will have to be removed from services provided to our children. Reimbursement is not an acceptable solution." And the letter goes on.

Received a letter from one of the Democrat county legislators, and I'm just going to read the last paragraph. This is Legislator Stern: "Suffolk County taxpayers already subsidize the MTA in the amount of $250 million annually. I urge every member of the Long Island state legislative delegation to make it clear to the Governor, to the MTA board that it is not the responsibility of Suffolk residents to further subsidize the MTA, and to vote against this proposed tax."

I would like to just go back to the

school piece again. The language in here -- by the way, as I mentioned, as a staff member -- and I've written legislative intents. And I learned very early on in my career, and as an attorney, that legislative intent has no legal standing. You can write great prose, and sometimes I like to do that when I want to keep my writing skills honed.

But we had a discussion; I know Senator Dilan had said it's the intent and the legislative intent. It means nothing. It's nice, gives a great impression, what we'd like to do. But it means nothing legally.

And there's a piece here that talks about it is the intent of the Governor, "the intent of the Governor to submit and the Legislature to enact for each fiscal year after the 2009-2010 fiscal year in an annual budget bill an appropriation in the amount to be paid to the school districts."

Then, as we know, there's other language here that says "in no case, however, shall the suspension of payment obligation exceed a period of six months, nor shall the

liability be reduced." School districts are frightened, and with this language.

Now, how are the school districts going to make these payments? One, if a large school district gets a lot of state aid, they can probably use some of that early state aid in the fall to be able to pay.

Number two, there's a methodology called revenue anticipation notes. With this language, with this language the feeling is no school district will be able to use rants, which means to borrow in anticipation with a lot of praying that they're going to get the money back.

So school districts should have been exempt, if that's what we wanted to do, so we didn't hurt school districts or the taxpayer.

Lastly, and critically important, I believe -- unless I have not read this, I only had a short period of time -- there's no sunset provision in here. So this continues to go on. When the economy picks up, there's going to be a windfall to the MTA. There's

going to be a windfall to the MTA. In the meantime we've hurt people, we've hurt businesses, we've hurt -- and I know Senator Fuschillo talked about this -- our higher education institutions.

I have said on this floor many times State University at Stony Brook is a major player on Long Island. Their impact is $4.7 billion. Well, what we did to them in the budget and what we're doing to them here is going to have a $44.7 million impact in the 2009-2010 fiscal year. That means less jobs for people. It means the quality of education is going to diminish at a time when we have record enrollments.

So if we thought the budget bill was bad, this is as bad if not worse. And I just say that there are a lot of smart people in this room as members. There are a lot of smart staff people. We really have to begin to look at these authorities and other entities and really start as if we were in the 21st century, giving 21st-century resolutions to the problems that we need.

So when it comes time for a vote, Madam President, I will be among those voting in the negative. Thank you.

ACTING PRESIDENT STEWART-COUSINS: Thank you, Senator.

Senator Lanza.

SENATOR LANZA: You've really got to hand it to the MTA. You've really got to take your hats off. They did it again. Here we are with an emergency -- partially, I believe, of their own doing. Scare tactics, threats, telling people doomsday is coming unless we get a bailout.

We're not going to sit before the body, we don't want a microphone, we don't want to answer questions. We're not going to tell you where we spent the money. We're not even going to tell you where we're going to spend the money with specificity, the kind of specificity that we all deserve to have before we're forced to make tough choices on behalf of the people.

None of that happened. And they're going to get a check, a big fat one. It's a

blank check except for the signature. That's not blank. It's going to be signed by the people we represent.

And how did we get here? I want to speak about the process, as my colleagues have as well. We went through a tough budget here. It got heated. And I think I heard from the other side of the aisle that mistakes were made and we're going to do better next time. This is next time. And we didn't do better. We've done worse.

There's been a lot of dishonesty with respect to this process. I've heard from members of the TWU, good, hardworking people. They put ads in newspapers, they came to my office, outside the office, and petitioned and protested, as it is their right to do, because they were sold a bill of goods by the MTA and someone else. They were told: Senator Lanza is not willing to help out. His colleagues on the Republican side of the aisle, they don't want to help. They're sitting on their hands.

That's a lie. I don't blame them. I met a group of people from the TWU the other

day up here in Albany. A young lady, I could tell she was the kind of person we want working for us out there, she said, "You have to vote for this, Senator Lanza. I'm scared."

I said, "Why are you scared?" She said, "Because if you don't do this, I'm going to lose my job. That's what they're telling me."

Who can blame her? Who can blame her? And when we talked about the merits or lack thereof in this legislation and how we could have done it better, you know what? In all honesty, she didn't really want to hear it. She was kind of numb to it.

And again, I don't blame her, because she was afraid. And so from her point of view, whatever package the MTA wanted, please, just go ahead and do it. So it's not her fault.

But I can tell you there is fault here. Because it was dishonest to say that we were unwilling to come to the table to sit down and work together.

I'm going to repeat a lot of what's

been said about why this is such a bad piece of legislation, but I think it's important to understand why it is we got to this point, why we didn't do better.

Here's the truth. I reached out to the Majority, to the Majority Leader. I said I'd be willing to vote, I will vote for an MTA bailout if you will hear the concerns of the people I represent on Staten Island. I know there are no easy choices here, and there would be no easy piece of legislation regardless of who was at the table.

But I said, if you would listen to the concerns of my constituents and if we can change parts of this legislation to reflect that, you'd have my vote. I wrote to the Majority Leader. I asked the Majority Leader. I'm still waiting for that meeting.

It's the Majority Leader's prerogative, control the process. You can do it your way. But I believe there's a right way and a wrong way. And I think this was the wrong way.

Maybe you're like me. You have the

occasion to go to a funeral, a service, to pay homage to a good person that we shared the earth with, and you listen to the eulogies and hear good things being said. You hear descriptions about things they've done in their life which substantiate their decency or how that life was well-lived. And you leave the funeral, and it gives you that extra incentive, and you think about it and you reflect, and you say you know what, I want to do those sorts of things, I want to live up to those standards.

Well, I just went to one of those funerals, the great Senator John Marchi. And I listened to the eulogies. And I listened to the great things that he did. And one of the things that he was credited with being part of was the bailout of New York City. A time when they came together -- Republicans, Democrats -- they put politics aside, they didn't play games, and they said, We've got work to do, there's always time for politics later, but on this one it's too big, it's too important to do it any other way but to work

together.

Well, those opportunities don't come along very often. This was one of them. This is that big. This was the one that we should have put politics aside, that we should have had both parties at the table, all stakeholders, the taxpayers, the riders, and we should have worked together, collaborated, negotiated -- only on substance -- and then come to this chamber and vote together, take a tough vote together, but the right vote with the right legislation. And that didn't happen.

I wrote the Governor. I asked the Governor to utilize his leadership to call upon a bipartisan, task force-like approach here. Didn't happen. I wrote a letter to the MTA. In all fairness, I was not very optimistic. They didn't let me down; I haven't had a response.

They're getting a blank check, and they don't have to do anything different from what they've done before. We've talked. Truth be told, people ought to know,

Democrats, Republicans, we leave this chamber, we talk as colleagues and friends. I haven't heard anyone, Democrat or Republican, say they believe the MTA was doing a good job. And yet here we are again with a blank check.

Some of the members across the aisle I served with in the City Council. I served on the Transportation Committee. I see Senator Addabbo smiling, Senator Perkins not. There were others -- he's smiling now. You know, we asked these questions then. We didn't get answers. It's a few years; we're still asking the questions. We're not getting the answers.

We don't only deserve to have these answers, we need to have these answers. You see what's going on in corporate America and the economic downturn and the bailout. You know, the MTA ought to report their financial condition with the same specificity as any publicly traded company in this country. Why not?

You know, I'm not being critical of you on the other side of the aisle when I say

you don't really know where this money is going. It isn't your fault; I don't know either. They won't tell us.

But we had a great opportunity here in this bailout -- because I know there is a real crisis somewhere in there. I don't know what the size of that crisis is, because I can't get straight answers. But we had a great opportunity to say, once and for all, no more bailouts, no more surprise emergencies, no more instances where the MTA comes to us and says you know what, we were taken by surprise by the results of our own operations.

You know, typically good management can tell you at any day during the year where the money is being spent, where it's coming from, what the predictions are for the future. We had a real opportunity to do it better here.

And so I've heard that we've put accountability and transparency into this. You can't just say you've done it, you've actually got to do it. I see here in this legislation it says as part of the new

accountability and transparency, the authority, the MTA, they must submit to the Governor, the Temporary President of the Senate, the Speaker of the Assembly on or before October 31st -- they've got six months to do this -- a proposed authority mission statement and proposed measurements.

So here's the new accountability. They've got six months to tell us what they're supposed to be doing for us, to figure it all out. And furthermore, thereafter, the authority, the MTA will reexamine its mission statement on an annual basis and self-evaluate how they're doing.

So that's accountability. They've got six months to figure out what they're supposed to do to us -- Freudian slip, do to us -- for us, they're going to tell us what that is, and then they're going to tell us afterwards if they're doing a good job.

There's going to be an audit, a forensic audit. It says "may," "shall." There's going to be one I think in the legislation of the year 2009, which means we

won't be able to get it done until 2010. So we're going to hand them $2.5 billion, and then in a year from now we're going to ask them where they spent it. Shrewd, really shrewd.

There's an expression, an old computer expression, "garbage in, garbage out." That's what we're getting here. So what's coming out of this? Who's paying? Who's going to sign that blank check? Payroll taxes, you've heard about it. Parochial, Catholic, yeshiva schools, they're going to pay that payroll tax. What does that mean? Tuition's going up, or they're going to fire some teachers? Colleges, tuition's going up or they're going to fire some professors?

I was temporarily delighted to hear that public schools were going to be carved out, there's going to be an exception. I saw that as good news yesterday. Then I read the legislation, as my colleagues have and they've talked about. Public schools aren't being carved out. I don't know who negotiated the provisions to carve it out, but evidently the

MTA's lawyers were better than our lawyers because there is no exception for public schools. Because it requires, it requires a vote that hasn't happened and won't happen until next year for that reimbursement.

We don't know what the financial condition of the state is going to be next year. We don't know what kind of budget we're going to be facing. We don't know who is going to be in this chamber or who is not going to be in this chamber. We don't know who the Governor is going to be and who the Governor isn't going to be.

That's the guarantee? There was a lot of complicated language -- six months, hiatus, later. Let me translate. Let me put it in better legal terms for you. Public schools, the check's in the mail. There is no carve-out. There is no exception. That's not honest.

Who else is going to sign that check? Hospitals? We know how they fared in the budget. I can tell you on Staten Island -- again, I'll say it -- we've got a

hospital that's teetering, 500,000 people. Two hospitals, we've got one on life support. I don't know, is this the one that takes them off life support and puts put them under? Might be.

A good piece of legislation would have spread the cost across the region. It would have been based on fairness and equity. You know what is so offensive, what is so offensive about this legislation, is that the people who received the least are being asked to pay the most. That's not progressive. That's regressive.

You live out on Staten Island, you get less from the MTA than anyone in the region. You're going to pay more. You drive a car on Staten Island? Not because you want to. There aren't enough buses. We don't have a subway. In short, they've failed miserably with respect to providing equitable transportation infrastructure across the region. So they put you in the car, and now you're going to pay them for the privilege.

They said doomsday, we're going to

raise fares, we're going to raise tolls if you don't give us a blank check. They're getting the blank check, and they're going to raise fares and they're going to raise tolls.

Let's think about this, folks. Verrazano Narrows Bridge, they're going to going from $10 -- and again, there's no guarantee that it won't go higher. But I'm told there's an agreement from the MTA, another one -- this one's not even written anywhere, but we're supposed to trust this one as well -- they'll only raise it to $11, and then in two years they'll raise it to $13.

And that fare hike we talked about, we're only going to raise it one-third of what we said we would raise it on doomsday, but doomsday is still coming, it's just coming in 2013, so we're going to do it anyway. That's who's paying.

Who else is paying on that payroll tax? I spoke to folks from the Office of Mental Retardation and Developmental Disabilities. The impact of the payroll tax statewide to them is $10 million. People with

developmental disabilities have got to fork over $10 million to bail the MTA out. And they don't have any answers with respect to where the money is going.

On Staten Island alone, on Staten Island alone, OMRDD facilities, over $100,000 in payroll tax. Why should they pay for the mismanagement? Why should they pay even if there was not mismanagement? Why is that fair? How does that get into this legislation? Why didn't it come out of the legislation once it got in?

We talked about the car representations and the license and the plate fees on top of what happened in the budget. This is wrong. This is wrong, and you know it. This is wrong both in process, a squandered opportunity. I'm still waiting to see better. I'm still waiting.

And again, you know, it's been said -- it's a fair question -- if you don't have alternatives, you shouldn't be critical. There are alternatives. There was a better piece of legislation. There were people on

this side of the aisle that would be willing to sit down with you and anyone, anywhere, anytime, to make the touch choices.

Someone there decided that the only way to do this, the only way to show leadership was to make sure there was a 32-30 vote on an issue this important. The hell with getting it right, let's just play politics.

Well, that's wrong, and I'm going to vote no.

ACTING PRESIDENT STEWART-COUSINS: Senator Nozzolio.

SENATOR NOZZOLIO: Thank you, Madam President. On the bill.

ACTING PRESIDENT STEWART-COUSINS: Senator Nozzolio, on the bill.

SENATOR NOZZOLIO: Madam President, this bailout of the New York City bus and subway system is another one-two punch against the taxpayers of New York. First, the budget. And if that wasn't bad enough, this proposal presents additional blows to taxpayers in upstate as well as downstate.

Senators Marcellino and LaValle were extremely critical, as they should be, about the fact that there was absolutely no scrutiny on the massive Metropolitan Transportation Authority. They never explained to us -- and I have served on the Transportation Committee throughout my tenure in the State Assembly and in this body, and called for this year an explanation in the Transportation Committee of where is the money, where is the spending, where are the steps that we need to scrutinize that got the Metropolitan Transportation Authority to this point.

There's no accountability by any of the administrative positions. There's no transparency in the budget. And what is absolutely unconscionable is that there's been no investigation by this State Senate, by the Democrats who control this process in the State Senate, over the Metropolitan Transportation Authority. You had an obligation to conduct a thorough investigation, and that investigation was not

achieved.

Enormous job-killing taxes downstate. But I need to reiterate, the way you have fashioned this plan, our upstate taxpayers and particularly the upstate property taxpayers are also going to be paying a burden. Next year, when school taxes and school aid, as the first step, is administered, there is going to be less school aid to go around, and then upstate taxpayers are going to be footing the bill.

The citizens I serve in upstate New York have crushing property tax burdens. In some of the counties of upstate we have the highest property taxes per the valuation -- Madam President, could I have some order, please.

ACTING PRESIDENT STEWART-COUSINS: Go ahead, Senator Nozzolio.

SENATOR NOZZOLIO: Thank you, Madam President.

In upstate we have some of the largest property taxpayer bills based on the value of the property of any counties in

America. And what this plan does is increase the property tax burden of our upstate taxpayers as well.

It was 22 years ago this spring that the Thruway bridge collapsed. A number of people died. A number of policymakers at that time analyzed that we had over half of the bridges in New York State that were deficient. Those bridges in many cases are still deficient. And as far as the federal stimulus goes, we've only seen plans to paint a number of bridges.

That paint may make the bridges look better, it may defer some of the rust for a few more years, but it doesn't get to solid infrastructure. It is unconscionable that the upstate taxpayers are left holding only a simple and potentially an empty promise that there will be a highway and bridge plan for their construction.

That the Thruway bridge collapse should be a reminder to all of you that we cannot ignore our bridge and infrastructure across our upstate highways. And let's not

let that happen.

Madam President, for these and other reasons --

ACTING PRESIDENT STEWART-COUSINS: Again, can we have some order in the chamber.

Thank you.

SENATOR NOZZOLIO: Thank you, Madam President.

For these and other reasons, our upstaters in particular, our upstate Senators should not vote for this plan.

Thank you.

ACTING PRESIDENT STEWART-COUSINS: Thank you, Senator.

Senator Leibell.

SENATOR LEIBELL: Thank you, Madam President.

Senator Perkins, would you yield, please, to a question?

ACTING PRESIDENT STEWART-COUSINS: Senator Perkins, will you yield for a question?

SENATOR PERKINS: Yes. Through you, Madam President.

SENATOR LEIBELL: Senator Perkins, you chair the Committee on Corporations and Authorities that I used to chair. And I'm very curious as to the genesis of the language on page 29 combining the positions of chief executive and chairman. Can you give me some background on that, how that came about?

And I'll preface my question by saying this, that -- and I believe it was prior to your getting here, Senator -- we did a major reform piece where we reformed the authorities of the State of New York. And this was one of the key components that we negotiated. At the time intimately involved with that was the then Attorney General, Eliot Spitzer, and the then Comptroller, Alan Hevesi. This was a major component of that reform legislation.

Could you give me the genesis, then, of why this piece is in this legislation now?

SENATOR PERKINS: Through you, Madam President. May I just ask that you just

repeat what you just asked me? Because I missed a section of what you said.

SENATOR LEIBELL: Okay. The section combines the positions of chairman and chief executive officer of the authority.

SENATOR PERKINS: Through you, Madam President. Thank you for the question.

The history to some extent of this is that it was a part of the Ravitch plan. One of the -- as I said before, part of how we got here was to look at a variety of different ideas that we thought were worthy that would provide us with the type of governance structure that can provide some accountability.

And this was an idea that we thought would provide that.

SENATOR LEIBELL: Senator, I don't know if you're aware or not that the MTA, at the time of that reform legislation -- which I believe was passed unanimously in this house -- they were back-channeling it and were very much opposed to the reforms that this body agreed to which are now being undone by

this piece of legislation.

Were you aware of that, Senator?

SENATOR PERKINS: Well, through you, Madam President, I'm not quite sure whether my awareness of it or not is relevant, because this is the idea that we think is appropriate for this particular piece of legislation.

So the point that you're making I guess is that you don't agree with this. And I can respect that. But I don't see that as the reform that's most significant in this piece of legislation.

SENATOR LEIBELL: Senator --

ACTING PRESIDENT STEWART-COUSINS: Senator Leibell, are you asking Senator Perkins to continue to yield?

SENATOR LEIBELL: Through the chair. Through the chair.

ACTING PRESIDENT STEWART-COUSINS: Senator Perkins, do you continue to yield?

SENATOR PERKINS: Yes. Please.

SENATOR LEIBELL: Are you aware that when we drafted that legislation, which I

was intimately involved with, that the concept of being transparent and of being accountable were key instruments in that legislation?

SENATOR PERKINS: Is that --

SENATOR LEIBELL: Yeah, that's a question, Senator.

SENATOR PERKINS: Through you, Madam President. I appreciate the history that you're trying to suggest in efforts to make the MTA more transparent and accountable.

But I would just like to remind you that -- and all of us -- that these issues and concerns, as you are sort of underscoring, are not new to this new majority. That the challenges that we are grappling with and trying to fix tonight, today, are challenges that we inherited.

And so while we might disagree on this specific approach, you must remember that we did not create this mess. What we are working towards, with you, is fixing it. And I think that we are on the right track, and therefore I would urge that we keep that in mind, that this is something that we

inherited, that we embraced as a challenge because of the urgency, not just for the people of the City of New York but for the state, as this represents a significant economic engine for all of us.

SENATOR LEIBELL: Thank you, Senator Perkins.

On the bill.

ACTING PRESIDENT STEWART-COUSINS: Senator Leibell, on the bill.

SENATOR LEIBELL: Madam President, I'm going to suggest to you and to this body that this is a major step back in the reforms that we instituted within this body only a few short years ago.

Those reforms were negotiated with the then Attorney General and the then Comptroller, and they were absolutely adamant about having this language in there that would separate thee two corporate positions. And it was considered to be absolutely critical in order to make sure that our authorities acted in a legal and correct way.

Now, we should not confuse the two

issues here, one of which is the corporate structure and the other is the fiscal, the dollars issue. But we are taking a major step back on the reforms that we all agreed to, I believe unanimously, not that many years ago within this body.

This was recommended also by Ira Millstein, who was the commissioner at that time, and who is the leading authority on corporate governance.

Now, I'm going to also say that after this terrible budget that we went through not too many weeks ago, I was describing that in my district as a disaster. Well, this takes it a step further. This is really shameful. We have to take a look here -- and many of my colleagues have -- upon all the entities and all the organizations that will be severely damaged by what's occurring here this evening.

I was home in my district this morning. I went to a breakfast, hundreds of business people, small business people. Not General Motors, General Electric, Verizon --

small business people. And also not-for-profits. I have never seen such anger and outrage over an issue as I have over this one.

I had the head of my local hospital catch me on the way out: "Senator, Putnam Hospital, this is devastating." PARC, which takes care of our handicapped citizens. Susan Limongello came up to me: "Senator, this is devastating for us."

Many of these not-for-profits who take care of those who have been less fortunate in life than most of us have been, they are in businesses and industries that are particularly labor-intensive. Not well-paid people, but labor-intensive. This has a huge impact on those organizations.

ACTING PRESIDENT STEWART-COUSINS: Senator Perkins, why do you rise?

SENATOR PERKINS: Madam President, I'd like to be recognized and to respond to my colleague.

SENATOR LEIBELL: Certainly.

SENATOR PERKINS: You know,

you -- again, I want to --

SENATOR LEIBELL: This is in response to my question, is that correct?

SENATOR PERKINS: Yes.

ACTING PRESIDENT STEWART-COUSINS: Yes, this is.

SENATOR LEIBELL: Okay.

SENATOR PERKINS: Thank you. Thank you. You know, I want to earnestly respect the efforts that you made with respect to reform and to appreciate the difficulty that you may be having because of the fact that obviously some reforms work as we envision, and some don't.

And in this instance it's clear, based on the evidence that you and your colleagues have shared, that it wasn't working. That in fact, despite those changes, laudable as they may have been, you have said time and time again that there was still a system running amuck, unaccountable and untransparent.

So that may have been an idea that at the time seemed to be appropriate, but over

time did not seem to be a solution.

So this idea I think provides us with an opportunity to provide that solution, and it is now up to the chairman whether or not to have an executive director. So I'm not here to dismiss your efforts or in any way denigrate them. But clearly, based on what you and others have said just this evening, that piece did not work, because it did not control the misbehavior of the MTA that we're trying now to try to get under control.

Thank you.

SENATOR LEIBELL: Thank you, Senator.

I'm also going to suggest that the splitting up of these positions is not the reason we are confronting this most difficult issue here tonight. In fact, I'm going to suggest that it's going to exacerbate this in the future.

What I was saying a moment ago is how not only devastating this is but how cruel it is. Madam Chair, Madam President, I want you to, as a colleague from Westchester

County -- there are five of us who have the good fortune and the honor to represent Westchester County. I received yesterday from our county executive his news release calling for the Legislature to stop the payroll tax.

County Executive Andy Spano has called for the State Legislature and the Governor to stop a payroll tax that he said would cost Westchester residents millions of dollars and hurt taxpayers, businesses, hospitals and nonprofits who are already struggling to survive.

Later in that press release, he asked the question how come Connecticut gets away with not having to contribute when thousands of their riders use MTA public transportation. Why is there no toll on the East River bridges? Why must we constantly bail out agencies that are inefficiently run?

I might add that today, verbally, I received a communication from the Yonkers mayor, Mayor Amicone, who said this is devastating for his city as well as for his city school district.

Previous to that, the county executive had written to us also saying how devastating this is and why is it that any agreement does not address assistance to the B Line, our bus system in Westchester, equal to and in proportion to the MTA bus system. County Executive Spano continued: "It is incredible to me that the inefficiency of the MTA is rewarded while our efficiency is penalized."

That's the county executive of Westchester County, which I have the good fortune to represent, telling me that I should vote against this garbage. Not dignified language, but that's what this is, legislative garbage.

In particular, the county executive is concerned about Westchester Medical Center, which we know how fragile that is. And this is going to cost them a lot of money, a lot of money. And for all we know, the tertiary hospital that we have fought hard to save, maybe it will go over the edge now and be out of business. That's how bad this legislation

has the potential to be.

Libraries, hospitals, educational groups. The entire Westchester delegation was invited to meet with our parochial schools only a couple of months ago in Westchester County to talk to them about the importance of the role they play. And I believe every legislator there committed that we're going to do everything we can to help you, because you have a significant role, regardless of what faith you may represent, in our educational process in Westchester County.

Is this the commitment that was made to them? This will close some of those parochial schools.

New York Medical College, our medical school in Westchester County, will be severely impacted. Careers for People with Disabilities. Westchester Arts Council. Grace Community Church, well known in White Plains for how they serve those who are needing of help. The New York School for the Deaf. Will they be made whole? They serve my constituents.

I cannot for the life of me understand how, in looking for a legislative remedy, we punish these various entities, those that can least afford it. People are leaving this state. The coming census is going to reveal to us all what we know. We'll lose, in political terms, a couple of congressional districts, which will weaken our clout in Washington, D.C.

But more significantly, it's a reflection of what people are saying. Our motto used to be and still is "Excelsior," ever upward. What goes ever upward in New York State are our taxes. That's what goes ever upward.

We should be looking for ways to create jobs. Jobs, jobs, jobs. These jobs that I'm talking about, because of these taxes, will be lost forever. There's no money in here for roads, there's none for our bridges. There are just taxes.

Madam President, what we have here with the MTA is a failed business model. It has failed miserably. And there's nothing

that's occurring here this evening in this house or across the way that's going to save a failed business model like the MTA.

And the one thing I can tell you is that whatever numbers we're relying on here this evening, within two weeks three weeks, they'll be changed. Oh, we didn't know this. We have new information.

What this authority needs is not this legislation. What this authority needs is an in-depth audit, a forensic audit, that will take them apart from top to bottom and show all of us, all the people of New York State -- not just in the metro region, but up in Buffalo -- will show everyone what is wrong with this institution.

Madam President, when the time comes to vote, I will vote against this legislation.

ACTING PRESIDENT STEWART-COUSINS: Senator Winner.

SENATOR WINNER: Thank you, Madam President.

I just want to again reiterate the

difficulties that many of us have in the upstate regions with the fact that this bill and this plan does havoc with our upstate roads and bridge program by decoupling it. And as many of us have said all along, that we would be able to support and have supported in the past an MTA plan that coupled roads and bridges -- and yet, for reasons unbeknownst to me but only have just recently become very, very aware as to why it was uncoupled.

You know, right now we have a road and bridge program upstate which was cut by $400 million in this year's budget from the capital plan. In 2010 and 2011, the Dedicated Highway, Bridge and Trust Fund is estimated to be running about a $1.5 billion deficit. And that notwithstanding that, we made that cut in this year's budget. And we are now diverting even more dollars away from our ability to try to cover that proposed deficit.

And one of the reasons why it becomes very clear as to why you uncoupled the road and bridge program from the MTA is very simple. You don't want us to be able to use

the dollars that you're now taking to fund the MTA to fund our road and bridge program like we've done in the past. Twenty-eight percent of the road and bridge program comes from motor vehicle fees. And yet in the budget we just adopted, you raise those by 25 percent, and in this plan you're raising them by another 25 percent.

So effectively, if you had let us use those funds for our road and bridge program, you couldn't have taken them down and utilized them for the MTA. And now we're probably not going to be able to do it for the road and bridge program, because how much you can raise these? How much more can you continue to raise these fees?

Enough is enough. We've raised every fee that is in existence in this state, and raise them again and raise them again. And now we are now really out of options that are going to be at all palatable to meet our needs to fund our road and bridge program. And that is an untenable circumstance for us.

Right now we're sending

$400 million in gasoline taxes and drivers' fees to the MTA from upstate residents. We're now going to send, under this bill, another $175 million in drivers' fees to the MTA. Those are funds that would ordinarily go to the upstate road and bridge program that are now being diverted to the MTA, and that's why you're taking those options away from us.

And, you know, the other completely disingenuous statement that was made out here tonight was that, you know, we shouldn't care whether or not we're diverting upstate dollars now to make up for the reimbursement for another $60 million -- but probably $97 million, as was pointed out in a more accurate number -- that we're now going to have to spend out of General Funds from the State of New York to reimburse school districts in the MTA region.

You know, it was said, well, that's an investment in the State of New York, and therefore we'll get paid back. Well, it is a diversion of upstate dollars, you know, from Big Flats and from Canton, New York, and from

Watertown and other areas upstate to now to the MTA region for schools.

For the first time in my memory, now we're going to be sending money down to Long Island schools and Westchester schools and New York City school districts from upstate regions. And I just think that that's entirely a misrepresentation to say that there's no upstate impact to this plan.

You know, I just want to associate myself with the remarks from the editorial from the Watertown Daily Times. And when talking about the fact that the school districts are going to be reimbursed -- why they weren't exempt in the first place is beyond me. That would have been the easy way to do it.

But now we're being told that the legislative intent and the promise of everybody is to reimburse them, so everybody is now feeling good about the fact that they think the schools are going to get the money.

That promise and intent came from the same Governor who promised not to raise

our income taxes earlier this year, and we know where that promise went.

So the Watertown Daily Times says that those school districts would receive special treatment under the plan. "It would be unfair to businesses, villages, towns, cities and other public entities that would have to shoulder the payroll tax as an added expense of doing business without state relief. Museums, libraries, and other nonprofits, many of them operating on shoestring budgets now, would bear the burden as well. They too may come to demand similar relief, and around the state other school districts may push for more state aid in fairness to them. The Governor's proposal would shift the funding source to the rest of the state. Rural and upstate New Yorkers who do not have mass transit available to them are already paying their transportation taxes in the price of gas. Governor Paterson's plan and the Senate Democrat majority's plan inappropriately transfers the local obligation of MTA users to taxpayers all over the state."

The Watertown Daily Times got it right. They understand what's happening here, in that once again our upstate regions are being treated unfairly, and this bill only makes it worse. And on top of the budget, where we're driving businesses away from the state in droves with the extra fees and taxes, this bill will only make it worse for not only the people in the MTA region but in every corner, nook and cranny in this state.

I'm going to oppose this legislation. Thank you, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Thank you, Senator.

Senator Sampson.

SENATOR SAMPSON: Thank you very much, Madam President. On the bill. I won't ask Senator Dilan or Senator Perkins any questions. But on the bill.

You know, I've been listening to the debate. And I don't like to speak a lot, I just like to hear and listen, unless it's necessary. But, you know, I heard Senator Golden talk about the MTA being a runaway

train. I heard Senator Marcellino talk about, as of 2007, the Comptroller talked about these issues, about the problem that we had. And then Senator LaValle talked about the MTA needs to be gutted.

I just want to let my colleagues know, what we do here, we take it seriously, Senator Larkin. We can agree to disagree. Maybe the manner in which we do things, you may not like. But when you were in the majority, you did things that we did not like.

But we know what you did, you took it seriously, because you thought your method was the best way to do it. And I respect that. And it's the same way. We figure our method is the best way.

But you know, we can't have selective amnesia here. You made the point and you made our argument. This has been a runaway train for years. You have been in control for years. The reforms that took place, they were not working. Now we're trying to fix it.

We talk about businesses leaving

New York State, we talk about jobs leaving New York State. I wonder how many jobs and how many businesses closed within the last 99 days in comparison to when the prior majority was in control and how many jobs, how many businesses have closed.

You know, we have to understand -- when the Dalai Lama was here, he talked about honesty, truthfulness, and openness. We have to be frank to ourselves and we have to understand that in order for us to resolve these problems, we have to put partisan politics aside and deal with the issues that confront us.

So when we talk about we're not concerned about upstate, we are definitely concerned about upstate, because we represent all of New York State. You know, we didn't have a position on the Capital Program Review Board that dealt with a lot of these capital issues that we have to deal with now.

But you know what? You know, we have to face those issues. And we will take the hits like everybody else. And I'm quite

sure when you all were in the majority, you took hits for decisions that people thought were inappropriate but you felt it was the best thing to do.

But we have to understand going forward, collectively, we are all colleagues. And what we do here, we all take seriously. This is no joke. Because the impact that we have affects not only people in my district, but it affects people throughout the State of New York.

So I'm not here to -- and my mother always said, you know, don't throw stones if you live in a glass house. So we have to understand if we're going to resolve this issue, you may not like the way in which it came about, but we have to deal with it. And I can respect your positions. But as I said before, you have made our argument. It has not worked. It has been barreling down the road, this runaway train, but we have to look at who has been the conductor of this runaway train while it was running down the train tracks.

So on that note, Madam President, I will be voting yes for this bailout of the MTA. Thank you.

ACTING PRESIDENT STEWART-COUSINS: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Thank you, Madam President. I'll be very brief on the bill.

I have to join Senator Sampson in expressing a little bit of puzzlement as to the tone of the debate and the focus of the debate here. This is far from a perfect bill. You know, if I were in charge of everything and got to write all the bills myself, I certainly would have done it differently.

Some of the points that have been addressed by my colleagues on the other side of the aisle, though, have been explicitly addressed in this bill, and really through the intervention of Majority Leader Smith.

Particularly, some of you have talked about the need for audits. Well, the idea of a forensic audit was brought up by the Majority Leader originally, and there is

expanded auditing and independent auditing provided for in this bill.

More importantly -- and this is this has not been noted by anyone -- this bill puts into statute the common-law fiduciary duty of MTA board members for the first time.

Now, before I came to the Senate I spent quite a few years in litigation against the MTA. I represented the Straphangers Campaign. I understand how they operate, I understand how they have concealed things over the years. Things are much better than they were. But there still is a need for more transparency, for more accountability.

And I can tell you that the provisions of this bill take major steps in that direction. There is none as important, though, as the change in fiduciary duty. Putting into the statute the common-law fiduciary duty that ensures that board members can be removed for a breach of their duty -- of their duties of care, their other fiduciary duties -- is tremendously important.

You know, I think that while we

have tried to make this bill better, there's only so much you can do with a bad situation. As Senator Sampson said, you know, we try to be charitable in listening to each other and everyone does have a point to make and everyone is trying to the best they can to represent their constituents.

But, you know, we've been called the authors of this bill, and people say: Oh, you Democrats, you Democrats are the authors of this. We may be the authors of it, but the title of this book is "Cleaning Up Your Mess," ladies and gentlemen. I mean, come on. We got here a couple of months ago.

I was here 10 years ago as a young Senator -- or I was a new Senator, even if I wasn't young. But I had just come from working on MTA matters when the MTA capital plan was brought to us by Governor Pataki's then MTA board, by all the board members who I heard feted and cooed about when they came before the Senate by the majority.

And that capital plan, I remember standing and holding it up and saying, "This

is a fare increase." Because it was under the Republican regime that the state stopped providing any money for capital to the MTA, forcing it to issue bonds to cover operating expenses.

Eight years ago there was a huge front-page story in the New York Times about what they called the worst public policy regarding a mass transit system in the history of the United States. This is something that did not happen on our watch.

You want to talk about how we got here? We didn't get here with our group in the majority, I am assure you. We didn't get here with us having a vote on the Capital Authorities Review Board. We didn't get here with us having the ability to choose nominees to the MTA.

So now this transit system, the greatest transit system in the history of this country, is down the drain, broke, broke, broke -- in debt, paying off the bonds we had to float because your governor, with your acquiescence, cut the capital funding.

So what have we got to do here? We've got to bail them out. We just got here, been here a couple of months here. We've got to bail them out. We've got to clean up the mess. And that is what we're trying to do here today.

Is this fun, to raise taxes and raise fares? Is this fun? No. But any one of you -- and I would particularly note, my colleagues who represent any of the straphangers in the City of New York, if you do not pass this bill today, if you're going to vote no and pound your chest and say, "Oh, this is terrible, what you Democrats are doing," understand that if we don't do this, if we don't provide funding -- which has to come, ladies and gentlemen, from either taxing or borrowing. Right? Unless you think you're going to strike oil in the Adirondacks or something, this is what we're down to in the State of New York.

If you do not vote for this bill, understand that 30-day metro passes go over $100. Understand that the MTA will eliminate

the service on seven bus lines, weekend service and overnight bus service on many more bus lines. It will eliminate completely three subway lines and partially eliminate others. That is what we are voting to stop here. That is the mess we are voting to clean up.

Did we create this mess? No. Are we willing to take responsibility for this? Yes. And I would urge all of you to take a breath in the blame game and consider how long we've been here, how long you were in charge, and how we got into this situation.

This is not a good bill, but it is an absolutely necessary bill. I'll be voting yes. And I look forward to us having these ongoing discussions about how we got into the state that, after raising spending and cutting taxes for years when you were in power, we now have the situation where those who are attempting to clean up the mess are getting chastised by those who created it.

Ladies and gentlemen, please, a little bit of perspective on this. I'm voting yes, not because this is a great bill, but

because we have to step up to the challenge and the responsibility.

Thank you, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Thank you, Senator.

Senator Ranzenhofer.

SENATOR RANZENHOFER: Thank you, Madam President. I'd just like to make a couple of remarks on the MTA bailout.

And I just find amazing when somebody says, "Let's cool it on the blame game, but it's your fault." I don't understand that. Again, I've been here for four months. And I think that's why people across this state find that this is just so dysfunctional, when you hear a comment "let's not be political, let's not blame each other, but it's your fault." It's like children who can't get along playing in the play box.

I don't want to comment on how this hurts jobs and how this hurts schools, because that's been talked about a lot. But I do want to talk about how this is really one part of the state, New York City, hurting upstate

New York.

We've heard a couple of comments where what we are going to have is we are going to have taxpayers from Buffalo, Rochester, Syracuse and Albany paying taxes, their income taxes, which will go to the General Fund which will then be used to pay back school districts in the lower part of the state.

What you really have here is you really have New York City imposing its will on the rest of the state. Nobody else gets any benefit whatsoever out of that, but you have someone like me and my colleagues from upstate New York paying their income taxes to bail out the MTA.

But the point I want to make, Madam President, which has not been talked about earlier, is we have a transit system in upstate New York called the NFTA, the Niagara Falls Transportation Authority. And in the budget two years ago, $1 million was taken away from the transit authority. In the budget that was passed just last month,

another million dollars was taken away from the transit authority.

Now, I've heard on this floor by some of my colleagues that the Buffalo area is one of the poorest cities in the entire country. Yet the fare in Buffalo is $1.75. The fare in New York City is $2. Yet the average income for somebody living in New York City is more than twice what it is for someone living in Buffalo.

Yet here you have assistance for the richest part of the state, New York City, so that you can keep a low fare for people who can easily afford it at $2 or a little more, yet you have people in the poorest city in the United States, in Buffalo, New York, who pay just a little less for their fare, not only having that same fare but having in turn, then, to bail out money through their income taxes to pay for this.

That's really an outrage. It's really a double hit in not getting any sort of assistance for the poorest city in the United States and then having them turn around and

bail out the richest city in the United States. That's not fair, and I will be voting no when this comes for a vote.

Thank you.

ACTING PRESIDENT STEWART-COUSINS: Thank you, Senator.

Senator DeFrancisco.

SENATOR DeFRANCISCO: I just wanted to make a brief comment about the statements of Senator Sampson and Senator Schneiderman.

You know, there is a problem right now, and what's really amazing to me is -- well, it's not amazing. It's pretty easy for New York City Senators to say that this is a fair way to resolve the problem when they're the beneficiaries of the solution that they've come up with.

And Senator Winner had mentioned that, you know, how does this happen? And he learned how it happened. But procedurally how it happened, the three people who made it happen are all from New York City.

And I could never understand why

$100 for a monthly subway pass is so onerous when we're lucky upstate if we can get two tanks of gas to travel the many miles that people have to travel to their jobs. I don't quite get it.

I don't understand why bridge tolls aren't increased when we're asking the upstate community to take less school aid next year because a greater share is going to help bail out the city by the two speakers who are so impressed with this situation, so impressed with their solution to this situation.

I would like to see, quite frankly, some of the upstate Senators on the Democratic side -- like Valesky and Aubertine and Senator Stachowski and Senator Breslin and Senator Thompson -- I'd like to see them justify how this helps their districts. Or maybe somebody from the outer regions of the Metropolitan Transportation Authority that are being charged the same thing as other regions, other parts of the region that use the system so much more.

So I guess my point is I guess

fairness is in the eye of the beholder. And when we don't have a bridge and road plan and we are paying more for our transportation upstate and we are helping, through our school districts taking less money next year to bail out the school districts that they want to get give a break to, I can see how that's fairer to some. It's certainly not fair to most.

But unfortunately, the three people who made this decision, despite what everyone on the other side of the aisle said about their involvement, everybody knows that Malcolm Smith, Shelly Silver and the Governor met behind closed doors -- I don't know, maybe it was in Albany, maybe it was back in their hometown of New York City -- and came up with this solution which is unfair to the rest of the state.

ACTING PRESIDENT STEWART-COUSINS: Senator Skelos, to close for the Minority.

SENATOR SKELOS: Thank you, Madam President.

I think a lot has been said this evening, and finally we had an opportunity to

see a bill with unfortunately not a lot of time to review it, but it didn't take that much to realize how bad it is.

You know, I'd like to just read some comments from some individuals and groups that are opposed to the bill that the Democrats are going to pass tonight.

From the Nassau-Suffolk School Board Association, which was addressed to Senator Foley, Johnson, Oppenheimer, and Stewart-Cousins, about the press conference last night, that "It was appropriately timed in the dark of night, an announcement that the scheme would be put to a vote in the Assembly and Senate in less than 24 hours, utilizing a message of necessity -- back room dealing at its worst. Long Island schools are being ordered to take on a permanent obligation to fund the MTA in exchange for a promissory note, a promissory note that is not worth the paper to print it on."

And I should point out that there's going to be a bipartisan "no" vote on this from the Island and Staten Island, because I'm

told that every Democrat Assemblyperson from Long Island and Staten Island and every Republican Assemblyperson from Long Island voted no, because they had the courage of their convictions to understand how bad and dangerous this bill is.

You know, other people that have opposed it -- Rabbi Shmuel Lefkowitz sent me a letter here, an email: "The large Orthodox Jewish community schools and synagogues, likewise already in a hard place, will find the new tax a large and heavy rock closing in on them."

The New York Catholic Conference: "The New York State Catholic Conference opposes the application of a payroll tax on not-for-profit health, social service, and educational providers."

The Village Officials Association of Long Island, of Nassau County -- and I know that Senator Johnson represents many incorporated villages, as I do -- "The payroll tax is just going to be passed on as a real property tax bill."

It's ironic that today we met and talked about real property tax relief with the Governor, and the Democrats are raising property taxes within the metropolitan region.

Nassau Community College, it's going to cost them $400,000. It's going to cost the students $400,000, because the tuition is going to go up. It's going to cost our SUNY students more tuition. Well, you'll sweep 80 or 90 percent of it first, but it's going to cost them more tuition.

National Federation of Independent Businesses: It's going to kill businesses. The only state in the nation that has higher taxes on businesses is Hawaii. Well, we're going probably top them today.

I read so many. The Farm Bureau, the Business Council, Mayor Phil Amicone of Yonkers. I believe you represent the City of Yonkers, Senator Stewart-Cousins. He's opposed to it.

Nassau/Suffolk Hospital Council. Chamber of Commerce. Hospital Association. Nassau/Suffolk School Board Association.

Greater Southern Dutchess Chamber. I mean, I don't know how they can all be wrong.

Then we're going to tax non-public schools. Our Lady of Victory in Floral Park. St. Catherine of Siena in Franklin Square. Notre Dame School in New Hyde Park. North Shore Hebrew Academy in Great Neck. Chabad of Port Washington, it's in Port Washington. The Henry Viscardi School in Albertson, which provides educational opportunities to severely disabled students. You should visit that school.

And I don't think it's funny, the taxes that you're looking to impose. No, I was just trying to speak. Maybe you'd listen. Because I'll extend the courtesy to you and listen to you when you close.

Different not-for-profits. Gateway Youth Outreach in Elmont. Family and Children Association, Mineola-based. American Red Cross. Salvation Army. You're taxing them. You're taxing them.

So this legislation that you're passing, it's really not a solution, it's a

recipe for absolute fiscal disaster. $2.2 billion in new taxes after the $8.5 billion that you imposed in the budget. That's over $10 billion in new taxes. And the centerpiece of this Democrat plan is a billion and a half tax on jobs, tax on jobs that will devastate those who are affected. Businesses throughout the state are choking from high taxes. They can't compete, and many will be put out of business as a result.

The higher fares. We're saving the fares, supposedly. Twenty-seven percent increase in the last several years. How are you saving the fares, 27 percent?

The Governor said he'll reimburse school districts for this new mandate and give them money in next year's budget. That's a sham. Our school districts don't believe it. The Governor made a commitment on the STAR program. He reneged on that. You all voted to take away the STAR rebate checks from our constituents.

Highways and bridges. We always set parity to make sure that upstate

communities were treated fairly when we were in the majority. And now you're expecting us to trust you, to trust you that this will happen appropriately for our upstate residents.

Our local governments, struggling, struggling to make ends meet. I received a call today from the mayor of East Rockaway, from my village. He said it was $10,000, $12,000. He said, "We've put our budget together. We're a small village. Quite honestly, we can't afford it." But you want to tax them so they can raise property taxes.

So, Madam President, I just -- I'm upset, I guess, a bit by the fact that these this was a secretive process.

Quite honestly, I thank you, Senator Dilan for debating and answering our questions. I thank you, Senator Perkins, for the courtesy that you extended.

I was hoping that perhaps more would engage within the debate. Would have loved to have heard from Senator Oppenheimer on education, chair of Education. Loved to

hear from my good friend Senator Craig Johnson, how all his Democrat Assemblymen from Long Island are wrong and he's right, and the commitment he made, no payroll tax. And Senator Foley. But I guess it's for another day.

And, Madam President, I thank you for your courtesy. You've been up there a long time. You've been very patient. And I know that I have to conclude because we're waiting for Senator Smith's comments anxiously.

And I remember when we were closing during the budget, Senator Smith said, you know, "Look me in the eye. Do you think I want to hurt people?" And I know, Senator Smith, you don't want to hurt people.

But, you know, many times if an individual is in a car and they're about to rob a bank and one uses a gun, the other person is also guilty of that robbery. So today what we're doing is we are robbing the pockets of our taxpayers from the hard-earned dollars that they're working on, and we're

destroying job opportunities within this state.

Madam President, I will be voting no.

ACTING PRESIDENT STEWART-COUSINS: Thank you, Senator.

Senator Smith, to close for the Majority.

SENATOR SMITH: Thank you, Madam President. Let me first thank you for your patience and your professionalism and the way you have maintained the professional decorum for this chamber.

I also want to thank my colleague Senator Klein for his leadership on the floor, dealing with a debate -- or dealing with accusations, I should say; it really wasn't a debate -- about what our colleagues fail to realize is the mess that they left for the last 12 to 14 years that they were in leadership.

To Senator Dilan also, and Senator Perkins, for all their work throughout this entire process, which took us almost about

three months, back in December when it first came out. And they spent a lot of time, countless hours, on trying put together a plan, some kind of plan that we could at least make sure the MTA would be able to function and have a capital plan that would allow it to continue itself on out into the future.

Unfortunately, we are in a very difficult financial time. We can't predict what the market is going to be like four years from now. And so therefore having a plan that's a capital plan that really is more about upkeep and maintenance of upkeep, maintenance of effort for the rail systems and the like, and then being able to come back and hopefully the market is in a better place that we'll be able to have bond issuances that will be able to pay the capital plan for the five-year plan, as well as roads and bridges for upstate New York I'm sure we're going to do.

This plan will, despite the rhetoric from across the aisle, make sure that our schools are reimbursed.

But what I find interesting is this sort of intellectual epiphany that the other side of the aisle always gets at this moment. The MTA that we are dealing with is their mess. We are the adults. We're trying to solve a problem that they left.

Everybody on this side of the aisle talked about how there was mismanagement, they are bloated, they overspend money, they have duplicative services, duplicative staff people. And we don't disagree with you. We don't disagree with you at all. But all the years that you was in charge, you never held them accountable.

We're making the Governor's changes. We have the audit that has to happen, the independent, outside audit. Because no, we don't trust the MTA. We are the ones that are restructuring their management system so that they're going to be more transparent.

We are the ones which you will see the editorials, as you saw in the Daily News today, Juan Gonzalez. The only thing he wrote

about this MTA bill was the fact that finally there was someone courageous enough to tell them how they have mismanaged their operation, how they're a black hole, and now they're going to have to be responsible because we are the ones that are going to be able to veto their entire capital plan if it is not correct.

We took those efforts now. You had that opportunity years ago, and you failed. So let's not be misled. All we're doing is cleaning up your mess.

We did the same thing with the budget. Sure, the budget spent money that was from the stimulus package. But who created that mess? We didn't create that mess. When we got elected, there was already a $13 billion deficit. Did Democrats do that? No.

And I don't want to sit here again, as I said before, and don't make two wrongs a right. There's no question about that. But all I'm saying to each and every one of you is this is going to be a bad year, because we

have to clean up your mess. By next year, you will see the fruits of the labor of the decisions that we made that were tough decisions.

And we're not happy about it; no one likes to tax people. There's no question about that. What we are trying to do is to fix a system that we agree, we agree, the system is horrible. The MTA, believe me, if I could take it apart tomorrow and send it to some MBA school and have them restructure and fix it from bottom up, I would do it overnight. Because it needs it.

But at the end of the day, here's the challenge that we're faced with. One, we have to make sure the system still runs. We have millions of people that use that transit system, that go back and forth to work, that have families that they have to take care of. We have to make sure they can get in that train and go back and forth.

Two, we had to make sure there were no job cuts. There's a thousand people that are going to lose their jobs. And we're not

talking about inside the MTA in the management process, we're talking about conductors, we're talking about people behind booths, all the people that are just middle-class families. We had to protect that.

And then, three, we had to make sure that the transit system is kept up. We've still got to fix the rails, the tracks. We've still got to fix the stations. Buses still need to be repaired. Those are just basic things that have to be done.

We don't disagree that the MTA is a train wreck. It is. Nobody disagrees with that. All we're trying to do is to try to fix the mess that was left to us. And I think this is about as responsible as we can get.

The mayor of the City of New York, while he says it's not the best plan, he says but it's good enough to do the job. Dick Ravitch, who was commissioned to put the plan together, says it can do enough. The Straphangers, Gene Russianoff, says it's good enough to do the job. The editorials for the most part are telling us you did the best that

you could out of a bad situation.

And so when you completely try to chastise us because we put a financial package together that may not solve all of their problems, but does solve some, I don't know what else to tell you that we should have done. You could have gave us and you could have told us what your ideas was.

You say to us that you wasn't involved in the process. With the exception of Lanza, who I did speak to, who said, "Let's talk, I want to vote for this plan, I want to be able to help you" -- we didn't have dialogue after that, there's no question about that. But he was the only one. No one sent over anything.

I understand you sent a package to the Governor that basically said let the school districts raise their own taxes in order for pay for this. Let the Indians pay for it with the tobacco.

Now, you both know that Indian money ain't coming -- $700 million that's going to be in a lawsuit that will be going on

for about 10 years from now. We all know that. So why would you put a proposal forward that basically makes no sense? It made no sense.

So here we are with no sense over here and common sense over here. And so we now have put a common-sense package together. And we put a common-sense package together that simply says if you don't like it, then give us something else. And you didn't give us anything else.

There was no way we could have supported saying to Craig Johnson, I'm going to tell Senator Johnson and I'm going to tell Suzi Oppenheimer, go to your school districts and tell your school districts raise as much taxes as they need to pay their contribution. There was no way in any good conscience that I could put a bill together and ask any of my colleagues to say pass a bill so that the Indians, the tobacco tax they're going to pay to us, we can use towards bailing out the MTA.

We both know Pataki tried to get that money years ago, and the Indians put

tires all on the Thruway. And then if it didn't happen on the Thruway, he'd have went to court. And trust me, anybody in here that's an attorney knows the court system will wring that thing out for the next 10 years. And then what would we have been doing? We'd have been sitting here the laughingstock of the state.

Well, I'm not going to have this Senate body, my colleagues nor you, I'm not going to have any of you being laughed at because you have some misguided intellectual interpretation of what the future's going to look like so you're going to offer up just any old proposal which you know is bottomless. It's just that simple.

Do we agree that the MTA is a runaway train? Absolutely. Is it bloated? Absolutely. Is it a black hole? Absolutely.

The debate that we had on our side of the aisle was because we don't like MTA neither. Trust me. If I could have taken the MTA apart, we would have done so. We put the governance pieces in here because we're hoping

that this audit that gets done that we find out about those 2700 duplicative positions that the MTA has that's worth almost a couple of hundred million dollars. We don't have all the hard facts. But believe me, when this thing is done, we'll have hard facts.

We think when we're done we're going to have hard facts that tells us that the MTA has $30 million worth of consultants that they don't need. We know some of the problems that they have. But you gave us the tail end of this thing. We're on the tail end. We have to do something. We have to do something.

My belief, my belief, based on what I heard today from each one of your colleagues and my colleagues, is that we're going to do a great job on taking the MTA apart after we get this audit back. Because everything that you said -- about the MTA, let's be clear -- the things that you said about the MTA and how it functions, you're absolutely right. They're a bad authority. They are a bad authority.

So because you left us with this

mess, we had nothing left to do but try to fix it. We had to do the responsible thing.

So, Madam President, I would only say, to all of my colleagues: You did the best that you could. You did a great job under a very tough situation. And you should not leave here and make anybody make you feel that you did something wrong. You did nothing wrong. When you leave here, when somebody tells you you did something wrong, say "I was cleaning up the mess." We were cleaning up the mess. We didn't create that mess. You didn't create that mess; you cleaned up the mess.

Now, after the mess is going to be cleaned up, we're going to create a better authority, and hope to create it with your help.

Senator Libous, you had Transportation for a long time. I bet you you have a wealth of knowledge on how to create a better authority to handle the MTA those 12 years. I'm absolutely sure you do. And I'm absolutely sure, when you sit with Senator

Dilan, you guys can make that happen.

But as of right now, we have to do this. We have to do this. So I thank my colleagues for their spirited statements about how ridiculous the MTA is. It is, there's no question about it.

I thank my colleagues on this side of the aisle for being brave and showing leadership under very difficult circumstances. Under very difficult circumstances. And you should be applauded for it. You will be appreciated for it, you will hear it, you will see it when the true story comes out -- and it will come out -- that we were left a mess, and you cleaned it up.

Thank you very much, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Thank you, Senator Smith.

There is a substitution of the bill on the desk.

The Secretary will read.

THE SECRETARY: In relation to Calendar Number 286, Senator Dilan moves to

discharge, from the Committee on Rules, Assembly Bill Number 8180 and substitute it for the identical Senate Bill Number 5451, Third Reading Calendar 286.

ACTING PRESIDENT STEWART-COUSINS: Substitution ordered.

Read the last section.

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

SENATOR LIBOUS: Madam President, a slow roll call, please.

ACTING PRESIDENT STEWART-COUSINS: Seeing that five Senators have risen, a slow roll call has been called.

The Secretary will ring the bell and call the roll slowly.

THE SECRETARY: Senator Adams.

SENATOR ADAMS: Aye.

THE SECRETARY: Senator Addabbo.

SENATOR ADDABBO: Yes.

THE SECRETARY: Senator Alesi.

SENATOR ALESI: No.

THE SECRETARY: Senator Aubertine.

SENATOR AUBERTINE: Yes.

THE SECRETARY: Senator Bonacic.

SENATOR BONACIC: No.

THE SECRETARY: Senator Breslin.

SENATOR BRESLIN: Yes.

THE SECRETARY: Senator DeFrancisco.

SENATOR DeFRANCISCO: To explain my vote.

ACTING PRESIDENT STEWART-COUSINS: Senator DeFrancisco, to explain his vote.

SENATOR DeFRANCISCO: I appreciate the negative reaction from the other side.

And I agree with Senator Smith that they did the best that they could. But unfortunately, it's putting this state into an even deeper position than we're in after that disastrous budget.

As far as the Republicans putting -- taking -- having the mess created so that you're going to correct it, I just want to remind you, two years ago there was another governor by the name of Spitzer, I

think. I can't keep track of how quickly they come and go. But Governor Spitzer actually -- during his term, the MTA two years ago had a $1 billion surplus, a $1 billion surplus. I'd like to have that mess now after two years of different leadership.

Secondly, with respect to the plaudits by the mayor and the editorial boards in New York City, that's wonderful. That's as legitimate as the plaudits by the beneficiaries of this bill that are sitting on the floor that we've talked about before. Of course the people in New York City, at least the editorial boards, there's a solution where they won't have to pay higher subway fares, and they don't have to pay more tolls on the bridges.

But we have nothing upstate other than a bill for the part of the project that we have to pay for in decreased school aid. So fairness is a good solution. This is not fair. And although they did the best they could on the other side of the aisle, they didn't do it for the entire State of New York.

I vote no.

ACTING PRESIDENT STEWART-COUSINS: Senator DeFrancisco will be recorded in the negative.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Diaz.

ACTING PRESIDENT STEWART-COUSINS: Senator Diaz, to explain his vote.

SENATOR DIAZ: Thank you, Madam President.

Tonight, after listening for four hours to the other side, jiggety, jiggety, jiggety, I am proud, Mr. Leader, to put my vote in helping you to clean up the mess. So I am proud to help you out tonight.

And by the way, Madam President, I would have to thank the Four Amigos -- Senator Kruger, Senator Espada, Senator Hiram Monserrate, and Senator Hassell-Thompson and Senator Parker, because --

SENATOR HASSELL-THOMPSON: That's six.

SENATOR DIAZ: No, no, no, wait,

wait, wait, wait.

ACTING PRESIDENT STEWART-COUSINS: It's late.

SENATOR DIAZ: I'm the fourth amigo. Listen. Because Senator Parker and Senator Ruth Hassell-Thompson joined the Four Amigos since day one to stop, to stop the tolls on the bridges.

And even though the Daily News and the Post and all the editorial boards was against us and criticized us, and they even picket my office, today I am proud, standing here proud, telling my constituents I promised you, constituents of the 32nd Senatorial District, no tolls. Today, ladies and gentlemen, no tolls.

(Laughter.)

SENATOR DIAZ: So ladies and gentlemen, I'm proud. Senator Skelos, I'm sorry. But, you know, I got to help you clean the mess.

So, ladies and gentlemen, Madam President, I'm going to go back -- no, no, I was supposed to go back tonight. I'm going to

stay so I can collect the 160 dollars tomorrow like everybody else.

ACTING PRESIDENT STEWART-COUSINS: Senator Diaz, how do you vote?

SENATOR DIAZ: Let me -- let me explain my vote.

ACTING PRESIDENT STEWART-COUSINS: Senator Diaz, there is a two-minute allocation. To explain the vote is two minutes.

SENATOR DIAZ: Madam President -- Madam President, I patiently waited two hours.

ACTING PRESIDENT STEWART-COUSINS: But we're on a different section. So how --

SENATOR DIAZ: So tonight is a very important night and day for the State of New York, where the new Democratic Senate is voting yes.

ACTING PRESIDENT STEWART-COUSINS: Thank you.

SENATOR DIAZ: And I'm voting yes to help clean up the mess.

ACTING PRESIDENT STEWART-COUSINS: Thank you, Senator Diaz.

SENATOR DIAZ: And my constituents are happy to see me here tonight.

ACTING PRESIDENT STEWART-COUSINS: Senator Diaz will be recorded in the affirmative.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Dilan.

SENATOR DILAN: I voted yes.

THE SECRETARY: Senator Duane.

SENATOR DUANE: Yes.

THE SECRETARY: Senator Espada.

SENATOR ESPADA: Yes.

THE SECRETARY: Senator Farley.

SENATOR FARLEY: No.

THE SECRETARY: Senator Flanagan.

SENATOR FLANAGAN: To explain my vote, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Senator Flanagan, to explain his vote.

SENATOR FLANAGAN: Thank you.

I listened very carefully to the comments from many of my colleagues. I joined in much of what Senator Sampson said about

taking our obligations seriously.

And I do want to pick up on one thing that Senator Schneiderman said in terms of a very important point in this legislation. And it may be one little glimmer of hope, and that is the breach of fiduciary duty. That's something that I know I worked on with Assemblyman Brodsky. Maybe that will help make a difference.

But I want to direct my comments -- and I realize I'm explaining my vote -- to the Majority Leader. You complimented Madam President on her role here today.

But I must tell you, as a member and a colleague, I am extremely disappointed. I got up and spoke, and I asked to have people yield -- including you, Mr. Majority Leader -- and you refused to do that. I don't believe that shows good and proper decorum and respect.

I'll engage with any one of my colleagues on any issue any given time. Debate is good. It's healthy. I feel like what you did today was a hit and run.

I listened very carefully to the comments you just made about cleaning up the mess and all this intellectual dishonesty. You want to engage, you want to debate, then let's do it. Let's do it in the course of a debate, not at the end of the debate.

And I listened to you reference my colleague Senator Lanza as "Lanza" and former Governor Pataki as "Pataki." If there's going to be a sense of decorum, it's "Senator Lanza", it's "Governor Pataki," it's "Governor Spitzer."

And if we are going to engage, then let's have a full-blown debate so we can have the intellectual honesty that you're looking for and that I'm looking for.

ACTING PRESIDENT STEWART-COUSINS: Senator Flanagan --

SENATOR FLANAGAN: I vote no.

ACTING PRESIDENT STEWART-COUSINS: Senator Flanagan will be recorded in the negative.

And again, Senator Flanagan, the Senate rules say that unless one has engaged

in discussion on the bill, one is not to really answer.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Foley.

SENATOR FOLEY: Aye.

THE SECRETARY: Senator Fuschillo.

SENATOR FUSCHILLO: Madam President, to explain my vote.

ACTING PRESIDENT STEWART-COUSINS: Senator Fuschillo, to explain his vote.

SENATOR FUSCHILLO: The legislation over Governor Paterson's MTA tax plan will increase Long Island Railroad commuters, over the next three years, what they pay on a monthly basis by more than 25 percent. Retail businesses in the 12 counties will pay more than $60 million in this new tax. School districts will pay nearly $100 million in this new tax.

And there's no guarantee. The STAR rebate was in statute; the Governor took that out. Now there's language that said he has

the intent to reimburse school districts. There's no guarantee.

This was referred to as a common-sense package from the Majority Leader, and we did the best we could. Well, it's not good enough. Because as the ticket goes, we're now over $10 billion that you've created, the Democrats in the new Majority, in less than a month in new taxes to the residents.

How any legislator here in the 12 counties can support this is a failure to represent their districts, to represent their constituents in a responsible manner. We all run on the theme that we're going to improve the quality of life for everybody who lives in our district. This does not improve the quality of life.

The end result, Majority Leader Smith -- as you said may be cleaning up the mess -- is going to result in higher unemployment, more businesses downtown being closed, and school districts passing on their costs, and local governments and hospitals and

nonprofits and libraries, to the taxpayers. Because that's who pays them, we the taxpayers.

And on Long Island, we get killed. We get destroyed. And there's nothing in this bill that Governor Paterson has brought to this body that you've sponsored that is good. It hurts Long Island residents. It destroys businesses even further than they could be destroyed --

ACTING PRESIDENT STEWART-COUSINS: Senator Fuschillo, how do you vote?

SENATOR FUSCHILLO: I proudly vote no, Madam President. Thank you very much.

ACTING PRESIDENT STEWART-COUSINS: Senator Fuschillo to be recorded in the negative.

The Secretary will continue calling the roll.

THE SECRETARY: Senator Golden.

SENATOR GOLDEN: To explain my vote.

ACTING PRESIDENT STEWART-COUSINS:

Senator Golden, to explain his vote.

SENATOR GOLDEN: Thank you, Madam President.

As I had said in my earlier comments, the spending is out of control. And I heard the Majority Leader talk about what he inherited. Revisionist history going on here, especially when it comes to Governor Eliot Spitzer two and a half years ago, Governor Paterson, Shelly Silver in the Assembly.

And I also want to take into consideration that the Majority Leader and the Democrats voted for the MTA plans each and every year -- each and every five years that we did the plan.

And I also want to point out that they voted for the budget each and every year when they could have voted no. They could have stood up and said no, spending was out of control.

So what they've done is increased this spending to unbelievable heights that nobody could ever believe that we'd be at $132 billion, heading to $140 billion in

spending. The hypocrisy in this room is amazing.

Ladies and gentlemen, not only is this runaway train, spending train on a one-way track with that runaway taxing train, but the Senate Democrats in this room are ripping up the tracks behind them so those taxpayers, our families, the people of this great state won't even be able to return after you've finished what you've done here with this budget this year. It's sad, and it's getting worse.

All I can say is the people in my district are going to pay 25 percent more, they're going to get less services because the capital program that we put together is insufficient to deal with the capital so we can't even repair the infrastructure that has to be repaired.

The people of my city and my district are going to be disgusted by what we've done here, and we will have a price to pay for that in the years to come. And I hope, and I'm just hoping that this budget

somehow has the decency on the other side of the room to come up with numbers that work. These numbers --

ACTING PRESIDENT STEWART-COUSINS: Senator Golden --

SENATOR GOLDEN: These numbers don't work.

ACTING PRESIDENT STEWART-COUSINS: How do you vote, Senator Golden?

SENATOR GOLDEN: I vote no, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Senator Golden to be recorded in the negative.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Griffo.

ACTING PRESIDENT STEWART-COUSINS: Senator Griffo, to explain his vote.

SENATOR GRIFFO: Madam President, to explain my vote.

You know, the concern that I have here, Majority Leader, is we need to stand up for something. And this was done in a secretive and closed process.

It's the leader's responsibility and obligation to communicate and to reach out to members. That wasn't done. You violated the process in the budget, you violated the Budget Reform Act of 2007, you ignored it, and you continue to do that now.

You talked about the collection of the Indian sales tax, and you have an obligation and responsibility to insist that the Governor enforce that law and to work with him to do that.

So today, a secretive process, abandoning upstate roads and bridges, hurting upstate schools, costing upstate taxpayers money in this budget process. This is unfortunate. And I think today, you know, MTA stands for More Taxes Again. And it's -- what I have seen, the trend here, during this budget and during this particular process tonight, is bad process, bad plans make for bad policy.

I vote no.

ACTING PRESIDENT STEWART-COUSINS: Senator Griffo to be recorded in the negative.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Hannon.

SENATOR HANNON: To explain my vote, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Senator Hannon, to explain his vote.

SENATOR HANNON: I rise to oppose this so-called MTA bailout. I think it's my job to oppose it because it's supposed to be helping people in the Metropolitan Transportation Region, and yet I think it hurts.

I think it hurts for having the goal of having a transportation system that gets people to work. Because what's going to happen in the decision-making that will take place from here on in with this payroll tax, with the increased fees, with the increased tolls, is that businesses will decide it's not good to be in the MTA region, it's not good to be in New York. They'll move.

I rise to oppose it because I think it's my job to oppose something that hurts

people. If we are supposed to help the rider, we aren't supposed to do it in this way that's only going to raise their property taxes. They're the little people. I think it's my job to oppose something that imposes charges on hospitals, on churches, on charities, villages, towns and counties. It only goes to the property tax.

And I think it's my job to oppose a whole process where this was not debated, Where the prior experience was ignored.

And I also think it's my job to oppose something that does not deal with a capital plan -- doesn't deal with an MTA capital plan, doesn't deal with a highway and bridge capital plan. And highways and bridges are as much a part of the metropolitan area as they are upstate. And if you've ever worked your way through an MTA project, you know you have to do highways and bridges at the same time.

We have failed. This is not good. I oppose it.

Thank you, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Senator Hannon to be recorded in the negative.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: Yes.

THE SECRETARY: Senator Huntley.

SENATOR HUNTLEY: Yes.

THE SECRETARY: Senator C. Johnson.

SENATOR CRAIG JOHNSON: Madam President, to explain my vote.

ACTING PRESIDENT STEWART-COUSINS: Senator C. Johnson, to explain his vote.

SENATOR CRAIG JOHNSON: Thank you. I'm just going to simply clarify the record using my time, because we've heard a lot tonight and it's been a very spirited debate. And what's important about debate is just discussing facts and getting things correct.

I think it's just important, as I vote, I'll be voting the same way that Nassau

Democratic Assemblymembers have voted, Senator Skelos, as you may be interested. Maybe I misheard you, but Assemblyman Levine, Assemblywoman Schimel, Assemblywoman Hooper -- who all represent Nassau County, who all represent men and women who use the Long Island Railroad, who all pay property taxes -- all voted in favor of this.

So I just want to clarify the record in case I misheard when the statement was all Nassau County Democratic Assemblymembers voted against this. I think the record needs to accurately reflect that.

I'll be voting yes. Thank you very much.

ACTING PRESIDENT STEWART-COUSINS: Senator Johnson to be recorded in the affirmative.

The Secretary will continue calling the roll.

THE SECRETARY: Senator O. Johnson.

ACTING PRESIDENT STEWART-COUSINS: Senator O. Johnson, to explain his vote.

SENATOR OWEN JOHNSON: It sounds Irish, but it's not.

Well, I think the second shoe has fallen. The first shoe was the budget, which was a mockery of democracy because we had nothing to say about it. We didn't see the bill, it was thrown on our desks: This is it, take it or leave it.

The second shoe fell, another $2.5 billion worth of taxes on our constituents. No debate, no participation in joint conference committees or anything else, as we did in the past. So it was really all your show. And you said this is it, take it or leave it. We have to take it or leave it.

But it really sounds more like a Third World country where there's a one-party system and nobody else can participate. That's why the people are suffering. That's why the taxes are so high now, and that's why they're going to be inconvenienced in many ways, by this budget and by this bill.

And frankly, on that side, someone said that, well, what we're doing to you is

what you did to us. But it wasn't quite the same, because then you had a Democrat Assembly and Republicans here, so there was some balance of power. There's no balance of power now. You can do what you want to the people of this state.

I resent what you're doing to the people of this state, and we're going to have to change that in the future.

And I vote no.

ACTING PRESIDENT STEWART-COUSINS: Senator O. Johnson to be recorded in the negative.

The Secretary will continue calling the roll.

THE SECRETARY: Senator Klein.

SENATOR KLEIN: Yes.

THE SECRETARY: Senator L. Krueger.

SENATOR LIZ KRUEGER: To explain my vote.

ACTING PRESIDENT STEWART-COUSINS: Senator L. Krueger, to explain her vote.

SENATOR LIZ KRUEGER: You know,

sometimes when you spend enough time in this chamber, you feel like reality has stopped. So to explain my vote.

If we let the MTA collapse, closing down bus service, reducing subway service, reducing Long Island Railroad service, Metro North, we end the future of the economically strongest region of our state, in a time where every single one of us, no matter where we represent, is completely dependent on making sure that New York State moves forward with a 21st-century economy.

We're talking about a million more New Yorkers coming into the New York City area in the next 15 years. Everyone in the MTA region has a direct and integral economic relationship with the MTA and with the City of New York.

And yet, again, my city seems to become a four-letter word on this floor, in this honorable chamber. What we are doing tonight is what we have to do to make sure that we do the right thing for every single one of our constituents.

We're not costing the schools; the money is going back. Every business in the region is dependent on the economic activity that comes out of the jobs that the commuters to and from New York have and earn income and come home and use their services and use their businesses in their local county.

The upstate economy is driven by whether or not we have economic activity in the City of New York. And without a functioning 21st-century mass transit system, it all falls apart.

And to correct some people, yes, it is for capital money. Yes, it is for operating money. Yes, it is for the Metro North and the Long Island Railroad and the buses in all those counties. And if anybody imagines you could function in a car-only system --

ACTING PRESIDENT STEWART-COUSINS: Senator Krueger, how do you vote?

SENATOR LIZ KRUEGER: -- you are wrong.

And I am voting yes. Thank you,

Madam President.

ACTING PRESIDENT STEWART-COUSINS: Senator L. Krueger to be recorded in the affirmative.

The Secretary will continue to call the roll.

THE SECRETARY: Senator C. Kruger.

SENATOR CARL KRUGER: To explain my vote.

ACTING PRESIDENT STEWART-COUSINS: Senator C. Kruger, to explain his vote.

SENATOR CARL KRUGER: It's often said that it's easier to curse the darkness than to light a candle. Tonight, our Majority Leader Malcolm Smith has lit that candle. Tonight we begin a journey, a journey that says that only will we provide for transparency and accountability at the MTA, but we will provide for a methodology and A mechanism for both their operating and capital expense.

At the end of the day, we're righting the ship. The ship was not listing,

the ship was sinking. And we had an obligation, a moral obligation to move forward with a program. The program is not everything we would have wanted, but it has a accomplished one thing directly. It has kept the City of New York together.

I and initially my amigos that were joined by so many of my other colleagues in this house prevented the city from being divided into Manhattan and the other boroughs.

There is no tolling. There is a program in place. There's an audit that's going to happen. There's transparency. There's accountability. And tonight we have to thank our Majority Leader, Malcolm Smith, for putting the MTA on the right course.

I vote yes. Thank you.

ACTING PRESIDENT STEWART-COUSINS: Senator C. Kruger to be recorded in the affirmative.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Lanza.

SENATOR LANZA: No.

THE SECRETARY: Senator Larkin.

SENATOR LARKIN: Positively no.

THE SECRETARY: Senator LaValle.

SENATOR LaVALLE: To explain my vote, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Senator LaValle, to explain his vote.

SENATOR LaVALLE: Very briefly. I listened to Senator Krueger talking about helping her city. I heard Senator Diaz in a very celebratory manner talk about no tolls that makes his people happy.

This does not make people on Long Island happy. They feel that they're being punished. If we are to deal with crises like this as we did in 1974 to save the city, there was an ethos that prevailed that every member felt empowered to participate to save the city. We did not have the same atmosphere and the same collegiality to be involved with saving the MTA.

I vote no.

ACTING PRESIDENT STEWART-COUSINS: Senator LaValle to be recorded in the

negative.

The Secretary will continue calling the roll.

THE SECRETARY: Senator Leibell.

SENATOR LEIBELL: No.

THE SECRETARY: Senator Libous.

SENATOR LIBOUS: Madam President, to explain my vote.

ACTING PRESIDENT STEWART-COUSINS: Senator Libous, to explain his vote.

SENATOR LIBOUS: I'm not going to repeat what I said earlier, but this plan is missing something. It's missing a road and bridge plan for the rest of the state.

The MTA region isn't the only region in the state. And, Mr. Majority Leader, yes, you're right, I would have loved to have been engaged and debate this, like we did it four and a half years ago with members of your side of the aisle, members of the Assembly -- and the public, because we debated in public.

And we came up with a $17.5 billion plan for the MTA and a $17.5 billion plan for

roads and bridges. What's missing here is a road and bridge plan for upstate New York, for the Hudson Valley, for the MTA region, and for the rest of the state.

And, Mr. Majority Leader, in all due respect, you took a shot at this side of the aisle about some of the proposals we used, and you talked about the Indian tax collection. Well, I might remind you, sir, that Senator Klein uses those same revenues in a bill that he has to reduce property taxes. So you might want to have a conversation with him before you have to clean up his mess.

I vote no.

ACTING PRESIDENT STEWART-COUSINS: Senator Libous to be recorded in the negative.

The Secretary will continue calling the roll.

THE SECRETARY: Senator Little, excused.

Senator Marcellino.

SENATOR MARCELLINO: To explain my vote.

ACTING PRESIDENT STEWART-COUSINS:

Senator Marcellino, to explain his vote.

SENATOR MARCELLINO: I heard the Majority Leader, my good friend Senator Malcolm Smith, talk about editorials. Let me read a couple.

The New York Post: "That's a Deal? Fare Hike 10 Percent." Newsday.com, "Derail Albany's MTA Bailout." The Long Island Association News: "State Legislature should vote against proposed MTA Bailout." The New York Daily News -- I think you cited this one -- "Straphangers Suffer. Senate Majority Leader Smith's Alleged MTA Bailout is a Train Wreck." Now you know where I got the line.

Again, from the Daily News: "Malcolm's Muddle: MTA taxi tax would be a nightmare to impose or collect." The Poughkeepsie Journal: "MTA Fix Isn't Better with Age." Again, Newsday: "Business School's Officials Blast MTA Payroll Aid." The Times Herald Record: "Local taxi drivers say even 50-cent MTA surcharge will be a burden." Politickerny.com: "Albany amuck: Whose bailout is this anyway?"

I mean, I read the editorials too, Senator, and they don't simply say everything you said. I also like Senator Klein's idea for the Indians. We'll join you, we'll go collect them together, Jeff, and perhaps we can get it done. I think it's a good idea.

Madam President, I said before this bill needs more work, should have been better discussed, and I'm going to vote no on this present form, because I think we're going to be revisiting this thing over and over again. Thank you.

ACTING PRESIDENT STEWART-COUSINS: Senator Marcellino to be recorded in the negative.

The Secretary will continue calling the roll.

THE SECRETARY: Senator Maziarz.

SENATOR MAZIARZ: Madam President, to explain my vote.

ACTING PRESIDENT STEWART-COUSINS: Senator Maziarz, to explain his vote.

SENATOR MAZIARZ: Thank you very much, Madam President.

Madam President, I don't see how anyone from Western New York could vote to have their constituents, their constituents pay through their state income tax for the reimbursement to the school districts in the MTA region.

Senator Smith, people in Western New York are angry. They're angry, Senator Smith, because you stood at Chef's Restaurant and you said that you were going to make a Senator from Western New York the chairman of the Senate Finance Committee. You just didn't tell them the truth.

You took $550 million from the Niagara Power Project. Congressman Brian Higgins said you did more damage to Western New York in that one day than the Power Authority has given to Western New York in over 50 years.

This week we voted to put two additional commissioners on the NFTA. James Eagan, your fundraiser for the Democratic Senate Campaign Committee, James Eagan said that that legislation was unnecessary and a

detriment to transportation in Western New York. Robert Gioia, an appointee of former Governor Mario Cuomo, said that your budget was a catastrophic blow to healthcare in Western New York.

But there is a silver lining to this anger. People are getting involved. I was at a union-sponsored function last Saturday, and a young woman came up to me and she said, "I am running for the New York State Senate next year." She's a member of the Working Families Party. She doesn't live in my district. But she said, "I'm running."

I said, "Why are you running for the New York State Senate next year?" You know, you've got kids in high school and that. She said, "I'm running because I'm angry. I'm tired of Western New York having to have so much taken away from it."

On a positive note, though -- and I do want to end on a positive note -- I was, like Senator Libous, very happy to hear your reference to the cigarette tax and that it will never be collected. Because just a

couple of weeks ago, Senator Stachowski and I debated -- he is cosponsoring Senator Klein's bill to restore the STAR rebate check program. And he was saying on television how they're going to restore the STAR rebate program and they're going to collect the cigarette tax to pay for it.

And I said what you said, Senator Smith, that they're never going to collect the cigarette tax, that that's all just --

ACTING PRESIDENT STEWART-COUSINS: Senator Maziarz, how do you vote?

SENATOR MAZIARZ: Thank you, Madam President. I vote in the negative.

ACTING PRESIDENT STEWART-COUSINS: Senator Maziarz to be recorded in the negative.

The Secretary will please continue calling the roll.

THE SECRETARY: Senator McDonald.

SENATOR McDONALD: No.

THE SECRETARY: Senator Monserrate.

SENATOR MONSERRATE: I vote yes.

THE SECRETARY: Senator Montgomery.

SENATOR MONTGOMERY: Yes.

THE SECRETARY: Senator Morahan.

SENATOR MORAHAN: To explain my vote.

ACTING PRESIDENT STEWART-COUSINS: Senator Morahan, to explain his vote.

SENATOR MORAHAN: Senator Smith, let me just explain where I'm coming from here.

There are 12 counties in this MTA region. Ten of them are on the plus side with the contributions of the MTA to those two counties. The two counties I represent, Rockland County and Orange County, are in the negative, a value gap of $75 million a year in services and contributions from the MTA.

In other words, it's costing us, after the MTA rebates, after the recipients from the MTA of, say, 70, we are paying over $75 million over and above that. The only two counties in the region on the very short end of the stick.

We have a county legislature which is a Democrat legislature back home in Rockland County who voted last night for me to put a bill in to withdraw from the MTA. Today in the Assembly, my two colleagues on the Democrat side, representing the same area, are going to cosponsor that bill, and they also voted. It's a terrible situation.

Now, on top of that shortfall, this bill that we voted on tonight adds another $7 million to my municipalities, schools, okay, another $7 million on top of the 75. And that doesn't count what we're going to have to pay for by our employees through the payroll tax.

We have one train, one train. It goes down to Hoboken on a local --

ACTING PRESIDENT STEWART-COUSINS: Senator Morahan --

SENATOR MORAHAN: -- then you have to take it over to PATH, then you have to take it up by subway, then you have to get a cab --

ACTING PRESIDENT STEWART-COUSINS:

Senator, how do you vote?

SENATOR MORAHAN: I vote no.

ACTING PRESIDENT STEWART-COUSINS: Senator Morahan to be recorded in the negative.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Nozzolio.

SENATOR NOZZOLIO: Madam President, I ask permission to explain my vote.

ACTING PRESIDENT STEWART-COUSINS: Senator Nozzolio, to explain his vote.

SENATOR NOZZOLIO: I wasn't going to rise, but when I heard Senator Smith indicate that he did not believe that the law that this body passed, that we worked together in a bipartisan fashion, with Senator Klein and others, to support the collection of those taxes -- the only thing worse than taxation is taxation that's distributed unevenly. One rule for Indian and one for non-Indian businesses.

To suggest that the enforcement of

the laws of this state is a fantasy in my view is one of the worst things I've ever heard in this chamber. Every member of this chamber took an oath to uphold the laws of this state.

And for the leader of this Senate to indicate that a law that this Senate passed would not be enforced sends a tremendously terrible signal to the citizens of every corner of the state. And my district, which is seeing business after business destroyed because of uneven taxation, is now going to be depressed more than ever.

This bill destroys much of commerce and industry and jobs in this state. But to have the comments made that the laws of this state are not going to be enforced I think is a sad day, and that everyone should rise up.

We've already done this once, with the "drug dealer protection act" earlier this month, the so-called Rockefeller Drug Law reform. Now the Majority Leader has indicated we're not going to enforce the taxation laws of this state in an even fashion. A sad day, Madam President.

I vote no on this measure.

ACTING PRESIDENT STEWART-COUSINS: Senator Nozzolio to be recorded in the negative.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Onorato.

SENATOR ONORATO: Aye.

THE SECRETARY: Senator Oppenheimer.

SENATOR OPPENHEIMER: To explain my vote.

ACTING PRESIDENT STEWART-COUSINS: Senator Oppenheimer, to explain her vote.

SENATOR OPPENHEIMER: Thank you, Madam President.

I know for sure that there are many governments, municipal governments, businesses, corporations that are going to be unhappy with the additional costs. And if I had my druthers, I would have been pleased to offer an exemption to our not-for-profits and our municipalities who also will bear the costs in their -- we will bear the costs in

the property tax.

But I am happy that we were able to do something for the schools and therefore able to keep some level on the property tax burden.

The alternative, as I see it, is to have charged the passengers on the trains and on the subways and the buses 30 percent more. And most of the people who are riding on that mode of transportation don't perhaps have as much money as the people that have cars. And they are the people that we need to support, because they are filling jobs that need to be filled, they have to get to work. And if there is not going to be a bus at midnight or at 1 o'clock to get some of the working women who are working in our buildings at night -- if they're working at 250 Broadway and they can't get home because there's no bus and they haven't a car, then what are they going to do?

So I think we have to think of the people that perhaps are not as affluent as those of us in this chamber. And I really feel that there's an alternative.

Do I love this? I really applaud what was spoken by our leader, because he said it beautifully. It's the best that we could do. And it isn't wonderful, but it's done.

I'm voting yes.

ACTING PRESIDENT STEWART-COUSINS: Senator Oppenheimer to be recorded in the affirmative.

The Secretary will continue to read the roll.

THE SECRETARY: Senator Padavan.

SENATOR PADAVAN: No.

THE SECRETARY: Senator Parker.

ACTING PRESIDENT STEWART-COUSINS: Senator Parker, to explain his vote.

SENATOR PARKER: Yes, Madam President.

First, let me congratulate the leader, let me congratulate the Governor, let me congratulate the Speaker, let me congratulate the members who are voting yes on this bill. We have done a good thing today. We have taken care of our business the way we were voted to do. We made promises when we

got elected that we would take care of things, and today we did those things.

What we should do right now, though, is get the record straight. Let's be clear, Senator Lanza. You voted no against your residents who take the MTA for them to have a lower fare. You voted no today, Senator Golden, for your voters and your constituents who ride the MTA, for them to have their buses and their trains restored. You voted no, Senator Padavan, today to make sure that there is more transparency and accountability in the MTA.

Those are the votes that you took today. We took votes to make sure that we restored a proper transit system for New York City. We restored today, with our votes, a transparent and accountable system that will go to the future. We're cleaning up your mess. All this stuff -- we've been here less than a hundred days. This stuff didn't get this messed up in a hundred days. Come on.

You want to talk about a lockbox, Senator Libous? That lockbox got raided way

before then.

I'm glad that you said, Senator Flanagan, that you talked about Governor Pataki, because we were 35 percent more in debt after Governor Pataki left office than we were the day he took over in 1994. The reality is is you mismanaged this state.

Senator Maziarz, if Western New York is messed up, it's because your leadership has been failed, it has been impotent to turn those places around. Buffalo is one of the most outmigrated cities in the entire country. And it didn't happen in the last hundred days.

So let's get the record straight. Your mismanagement is what caused you to be on that side of the aisle and why we have a new day here in America. We have a new day right now because the record is straight about who has taken the leadership of our economy and the transparency and who has mismanaged the --

ACTING PRESIDENT STEWART-COUSINS: Senator Parker --

SENATOR PARKER: -- the resources

of the state.

ACTING PRESIDENT STEWART-COUSINS: Senator Parker, how do you vote?

SENATOR PARKER: I vote yes.

ACTING PRESIDENT STEWART-COUSINS: Senator Parker to be recorded in the affirmative.

Senator Lanza, why do you rise?

SENATOR LANZA: Madam President, point of personal privilege. Senator Parker mentioned my name. I'd like to respond.

ACTING PRESIDENT STEWART-COUSINS: Senator Lanza, there have been a number of people who have mentioned other people's names.

SENATOR LANZA: And at any time, if anybody was accused of doing something, they could have raised the point of privilege the way I'm doing it.

I'm raising that point of privilege because I was accused of doing something by one of my colleagues, and I'd like to respond.

ACTING PRESIDENT STEWART-COUSINS: Senator Lanza, please make your response in

about 30 seconds.

SENATOR LANZA: Thank you, Madam President.

Senator Parker, I didn't vote no to keep fare increases from happening. You're voting yes to increase fares. That's getting the record straight. Fares are going up. Tolls are going up.

SENATOR PARKER: No, fares are coming down.

ACTING PRESIDENT STEWART-COUSINS: Okay --

SENATOR PARKER: Point of order. That's incorrect. The fare's coming down. The MTA took a vote --

ACTING PRESIDENT STEWART-COUSINS: Senator Lanza, Senator Parker --

SENATOR PARKER: Yes, ma'am.

ACTING PRESIDENT STEWART-COUSINS: -- I allocated 30 seconds, and we have now to start that 30 seconds again.

Senator Lanza, 30 seconds.

SENATOR LANZA: Thank you, Madam President.

Let's get the record straight, as you say. Fares are going up. The tolls are going up. Taxes are going up by $2.5 billion. That's what you're voting yes for. That's what I'm voting against.

Thank you, Madam President.

ACTING PRESIDENT STEWART-COUSINS: The Secretary will continue to call the roll.

THE SECRETARY: Senator Perkins.

SENATOR PERKINS: I'd like to take a moment to explain my vote.

ACTING PRESIDENT STEWART-COUSINS: Senator Perkins, to explain his vote.

SENATOR PERKINS: On a similar note, our Majority Leader reminds us that MTA has become ATM, A Total Mess.

And so we have decided through this legislation that we could do better than that which we inherited. And so we're going to make lemonade out of a lemon, and we're going to make MTA not only be an agency, a corporation and authority that gets the revenues that will provide the end of the draconian problem that Ravitch and others have

presented to us, but will also include the opportunity for MTA to stand for more transparency and accountability.

And so I'm pleased that we have moved in this very positive direction, and I'm especially pleased because a sweetener to it all is that we have MWBE also in our governance initiative with this piece of legislation. There will be more minority and women business enterprises involved as well.

So I vote yes because of all of that. Thank you.

ACTING PRESIDENT STEWART-COUSINS: Senator Perkins to be recorded in the affirmative.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Ranzenhofer.

SENATOR RANZENHOFER: No.

THE SECRETARY: Senator Robach.

SENATOR ROBACH: No.

THE SECRETARY: Senator Saland.

SENATOR SALAND: To explain my

vote.

ACTING PRESIDENT STEWART-COUSINS: Senator Saland, to explain his vote.

SENATOR SALAND: Just very quickly.

I seem to recollect, as was referred to earlier by Senator DeFrancisco, that about a year or so ago there was a billion-dollar surplus that the MTA claimed to have had. The interesting question would be how was it squandered. And that really has not been a subject of this debate.

The obvious pride that some of my Democratic colleagues have coming from the city and what this means to the city and how important it is to the city does really not expand or reverberate through the rest of the MTA region.

As I said earlier, my county suffers terribly. We suffer the double whammy of not only, as I mentioned, some 98 percent of people not using the MTA, a similar number of businesses deriving absolutely zero benefit from the MTA. What we need is roads and

bridges. We don't get roads and bridges.

Those taxpayers who are somewhat chagrined, to say the least, at losing their STAR rebate I think will put little faith in this vague promise of an intent to restore.

If this were to be done correctly, I would take issue with the current Education chair. There should have been a straight-out exemption. This is a wing and a prayer.

Lastly, if we were to create a Taxpayer Offender Registry, not unlike the Sex Offender Registry, the two biggest culprits would probably be the budget bill that the new majority, Democrat majority imposed upon us and the rest of the state this year, and the second culprit would be this MTA piece.

You're talking about a modest $11 billion or so. Not exactly pocket change. And that's without the stimulus. We've lost 146,000 jobs over the course of the past nine months. You can rest assured that between your budget and your MTA plan, there will be thousands of others leaving.

I vote in the negative.

ACTING PRESIDENT STEWART-COUSINS: Senator Saland to be recorded in the negative.

The Secretary will continue calling the roll.

THE SECRETARY: Senator Sampson.

ACTING PRESIDENT STEWART-COUSINS: Senator Sampson, to explain his vote.

SENATOR SAMPSON: I vote yes. That's all I wanted to say.

(Laughter.)

ACTING PRESIDENT STEWART-COUSINS: Senator Sampson to be recorded in the affirmative.

The Secretary will continue calling the roll.

THE SECRETARY: Senator Savino.

SENATOR SAVINO: Yes.

THE SECRETARY: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Aye.

THE SECRETARY: Senator Serrano.

SENATOR SERRANO: Yes.

THE SECRETARY: Senator Seward.

SENATOR SEWARD: No.

THE SECRETARY: Senator Skelos.

SENATOR SKELOS: Madam President, just quickly to explain my vote.

ACTING PRESIDENT STEWART-COUSINS: Senator Skelos, to explain his vote.

SENATOR SKELOS: Senator Parker -- and I think Senator Lanza mentioned it -- the Ravitch Commission, if we did nothing today, fares would have gone up 30 percent. You're raising them 27 percent, yet taxing billions of dollars with our citizens throughout the state, our hospitals, our nursing homes, our charities.

And Senator Johnson, I apologize if I had the wrong information. But the bottom line is Nassau County is going to lose $5 million, Suffolk County over $4 million. Schools, if the commitment is not kept, $97 million. The Town of Hempstead, $500,000. The Town of North Hempstead, $180,000. Village of Mineola, which you represent, $20,000. Different school districts -- Elmont School District, $189,000. Westbury, $278,000. East Williston, $136,000. Port

Washington, where you live, $348,000. Mineola, $224,000.

And I can go through the entire list of school districts, villages, charities that are going to lose money and pass it on to the real property taxpayers by the action that you're taking today.

You know, I would have loved if you would raise some of these issues during the debate. But I notice that many of -- yourself and many other colleagues were not here to debate us. And I think many of our colleagues are correct, we wanted to engage today. We wanted to engage today. But Senator Oppenheimer wouldn't speak, you wouldn't speak. Came in and made a gratuitous speech.

Senator Smith, thank you for clearing up about cigarette taxes. And Senator Klein, we'll discuss that, I guess, next week. Because maybe, as you like to use the word "epiphany," maybe next week you will have an epiphany and all of a sudden we can collect the cigarette taxes.

But, Madam President, I am going to

vote no. And again, I thank you for extending me the courtesy of allowing me to speak.

ACTING PRESIDENT STEWART-COUSINS: Senator Skelos to be recorded in the negative.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Smith.

SENATOR SMITH: Yes.

THE SECRETARY: Senator Squadron.

SENATOR SQUADRON: To explain my vote, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Senator Squadron, to explain his vote.

SENATOR SQUADRON: I know the hour is getting late, but I just want to briefly explain the choices that I see before me in my vote tonight.

A no vote would be choosing 30 percent fare hikes immediately. A yes vote is a fraction of that. A no vote would be devastating service cuts in my district and across the region. A yes vote prevents those completely.

A no vote is taking us back to the

1970s, a time when the system started to fall into disrepair and the city started to fall apart for that reason.

A yes vote prevents that from happening and allows New York to continue to drive the region, allows the buses and the subways and the transit system, that is unlike any other in this country, to continue to work.

A no vote, to me, is clearly easy to talk about for a long time. A yes vote is a critical piece of having a chance to get out of this terrible economy and come out with a city that we can be proud of and a state that can do all the things we all care about.

And so that's why I'm choosing to vote yes tonight.

Thank you, Madam President.

ACTING PRESIDENT STEWART-COUSINS: Senator Squadron to be recorded in the affirmative.

The Secretary will continue calling the roll.

THE SECRETARY: Senator

Stachowski.

SENATOR STACHOWSKI: Yes.

THE SECRETARY: Senator Stavisky.

SENATOR STAVISKY: Yes.

THE SECRETARY: Senator Stewart-Cousins.

ACTING PRESIDENT STEWART-COUSINS: Yes.

THE SECRETARY: Senator Thompson.

SENATOR THOMPSON: Yes.

THE SECRETARY: Senator Valesky.

SENATOR VALESKY: Yes.

THE SECRETARY: Senator Volker.

SENATOR VOLKER: Madam President.

ACTING PRESIDENT STEWART-COUSINS: Senator Volker, to explain his vote.

SENATOR VOLKER: In the spirit of the man who 12 hours ago stood right where you are standing and announced he supported the Republican Party, I vote no.

(Laughter.)

ACTING PRESIDENT STEWART-COUSINS: Revisionist history already, my goodness.

(Laughter.)

ACTING PRESIDENT STEWART-COUSINS: Senator Volker to be recorded in the negative.

The Secretary will continue calling the roll.

THE SECRETARY: Senator Winner.

SENATOR WINNER: Madam President, very briefly.

My opposition to this legislation is predominantly due to the uncoupling of the road and bridge program from the MTA capital plan. And I have not heard, notwithstanding our contention about this uncoupling, as to why it was uncoupled.

And there hasn't been any explanation, which lends every bit of credibility to my contention and my assertion earlier in this debate that the reason why it's uncoupled is so you can glom onto the money that would otherwise be available through the revenue sources that you're utilizing for the MTA plan and use it for the MTA and deprive the upstate road and bridge capital plan of those revenues and make it virtually impossible for us to have any kind

of growth in our ability to fund that road and bridge program going forward.

I vote no.

ACTING PRESIDENT STEWART-COUSINS: Senator Winner to be recorded in the negative.

The Secretary will continue to call the roll.

THE SECRETARY: Senator Young.

SENATOR YOUNG: Thank you, Madam President. To explain my vote.

ACTING PRESIDENT STEWART-COUSINS: Senator Young, to explain her vote.

SENATOR YOUNG: Thank you.

There seems to be a lot of concern lately from Governor Paterson, Senator Smith, the Senate Democrats about unfunded mandates. This, my friend, this MTA bailout bill that you just forced through this chamber, is the mother of all mandates. It places a very heavy mandate burden on schools, hospitals, charities, local governments.

And in fact, it even places a mandate burden through the payroll tax on the farms in the MTA region. And I have to say

I'm very surprised that the chair of the Senate Agriculture Committee, Senator Darrel Aubertine, has not spoken out to support the farmers in the MTA region, because that's his responsibility, is to stand up for all of the farmers in this state.

In fact, it's very shocking that all five upstate Democrat Senators -- Senator Valesky, Senator Aubertine, Senator Stachowski, Senator Thompson, Senator Breslin -- are supporting this MTA bailout bill, because this is a direct assault on upstate New York. There's a big fat zero for our roads and bridges.

And next year, if this money comes through for the school districts in the MTA region, it will be at the expense, at the expense of our upstate school districts.

The Governor, the Senate Democrats have made it very, perfectly clear that they consider upstate New York residents to be second-class citizens. I believe that anybody who voted yes on this bill will be held accountable by the people of this state, and I

vote no.

ACTING PRESIDENT STEWART-COUSINS: Senator Young to be recorded in the negative.

The Secretary will announce the results.

THE SECRETARY: Ayes, 32. Nays, 29.

ACTING PRESIDENT STEWART-COUSINS: The bill is passed.

Senator Smith.

SENATOR SMITH: Madam President, is there any further business at the desk?

ACTING PRESIDENT STEWART-COUSINS: No, Senator Smith, the desk is clear.

SENATOR SMITH: There being none, I move that we adjourn until Monday, May 11th, at 3:00 p.m., intervening days to be legislative days.

ACTING PRESIDENT STEWART-COUSINS: There being no further business to come before the Senate, on motion, the Senate stands adjourned until Monday, May 11th, at 3:00 p.m., intervening days being legislative days.

(Whereupon, at 11:15 p.m., the Senate adjourned.)