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NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

May 6, 2009

11:08 a.m.

REGULAR SESSION

SENATOR ANDREA STEWART-COUSINS, Acting President

ANGELO J. APONTE, Secretary

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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.

1 Senator Smith.

2 SENATOR SMITH: Yes, Madam

3 President and colleagues. We have had the
4 pleasure of having the invocation this morning
5 being done by Your Holiness the Dalai Lama,
6 who as we all know is a person who has
7 traveled the world, who has been given not
8 only the Nobel Peace Prize for nonviolence,
9 but clearly one who represents peace and
10 honesty.

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

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

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

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

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

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

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

1 (Laughter.)

2 SENATOR SKELOS: So we welcome
3 you.

4 SENATOR SMITH: Thank you very
5 much.

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

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

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

14 ACTING PRESIDENT STEWART-COUSINS:
15 Please.

16 The Dalai Lama will speak.

17 THE DALAI LAMA: I'm a little
18 confused.

19 (Laughter.)

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

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

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

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

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

19 (Laughter; applause.)

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

22 (Laughter.)

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

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

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

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

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

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

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

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

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

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

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

8 (Laughter.)

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

11 Thank you. Thank you. A great
12 honor. Thank you.

13 (Extended standing ovation.)

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

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

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

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

22 Senator Klein.

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

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

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

6 The Secretary will read.

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

12 ACTING PRESIDENT STEWART-COUSINS:
13 Without objection, the Journal stands approved
14 as read.

15 Presentation of petitions.
16 Messages from the Assembly.
17 Messages from the Governor.
18 Reports of standing committees.
19 Reports of select committees.
20 Communications and reports from
21 state officers.

22 Motions and resolutions.

23 And I believe Senator Klein has a
24 motion.

1 SENATOR KLEIN: Madam President,
2 I have two motions.

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

8 ACTING PRESIDENT STEWART-COUSINS:
9 So ordered.

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

16 ACTING PRESIDENT STEWART-COUSINS:
17 So ordered.

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

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

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

4 (Response of "Aye.")

5 ACTING PRESIDENT STEWART-COUSINS:
6 Opposed, nay.

7 (No response.)

8 ACTING PRESIDENT STEWART-COUSINS:
9 The resolution is adopted.

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

15 Senator Klein.

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

22 ACTING PRESIDENT STEWART-COUSINS:
23 The Secretary will read.

24 THE SECRETARY: By Senator Diaz,

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

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

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

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

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

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

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

9 "RESOLVED, That this Legislative
10 Body pause in its deliberations to memorialize
11 Governor David A. Paterson to proclaim May
12 2009 as 'Senior Citizen Month' in the State of
13 New York; and be it further

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

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

23 ACTING PRESIDENT STEWART-COUSINS:
24 Senator Diaz.

1 SENATOR DIAZ: Thank you, Madam
2 President.

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

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

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

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

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

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

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

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

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

1 At this time, Madam President, we
2 have a little bit more over 3 million senior
3 citizens. And today, ladies and gentlemen,
4 today, ladies and gentlemen, we carry on a
5 tradition instituted by this house, the Senate
6 of the State of New York, 25 years ago. Since
7 1983 the New York State Senate has recognized
8 and honored the many achievements by our
9 state's senior citizens.

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

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

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

1 colleague Senator Darrel Aubertine.

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

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

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

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

7 Thank you, Madam President, for
8 this opportunity.

9 (Applause.)

10 ACTING PRESIDENT STEWART-COUSINS:

11 Thank you, Senator Diaz.

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

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

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

22 (Response of "Aye.")

23 ACTING PRESIDENT STEWART-COUSINS:

24 Opposed, nay.

1 (No response.)

2 ACTING PRESIDENT STEWART-COUSINS:

3 The resolution is carried.

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

9 The Secretary will continue to
10 read.

11 THE SECRETARY: By Senators Diaz
12 and Aubertine, Legislative Resolution Number
13 1840, honoring Floyd Powell upon the occasion
14 of receiving the 2009 New York State
15 Outstanding Contribution by a Senior Citizen
16 Award.

17 ACTING PRESIDENT STEWART-COUSINS:
18 Senator Aubertine.

19 SENATOR AUBERTINE: Thank you,
20 Madam President.

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

24 As we've heard Senator Diaz say,

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

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

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

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

23 Thank you. Thank you, Madam
24 President.

1 ACTING PRESIDENT STEWART-COUSINS:

2 Thank you, Senator Aubertine.

3 Senator Diaz.

4 SENATOR DIAZ: I also would like
5 to invite, Madam President, with all due
6 respect, all of my colleagues. At
7 1:00 o'clock in the convention hall there's
8 going to be more than 600 senior citizens from
9 all over the state. The Governor will be
10 addressing them. Senator Malcolm Smith will
11 be addressing them. And we will be
12 recognizing and presenting Mr. Powell with a
13 citation from the Senate.

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

18 Thank you.

19 ACTING PRESIDENT STEWART-COUSINS:

20 Thank you, Senator Diaz.

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

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

1 signify by saying aye.

2 (Response of "Aye.")

3 ACTING PRESIDENT STEWART-COUSINS:

4 Opposed, nay.

5 (No response.)

6 ACTING PRESIDENT STEWART-COUSINS:

7 The resolution is adopted.

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

14 Senator Klein.

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

18 ACTING PRESIDENT STEWART-COUSINS:

19 The Secretary will read.

20 THE SECRETARY: Calendar Number
21 8, by Member of the Assembly Paulin, Assembly
22 Print Number 755A, an act to amend the
23 Executive Law, in relation to prohibiting
24 employers.

1 SENATOR GRIFFO: Lay it aside.

2 ACTING PRESIDENT STEWART-COUSINS:

3 The bill is laid aside.

4 THE SECRETARY: Calendar Number
5 19, by Senator Klein, Senate Print 1363C, an
6 act to amend the Civil Practice Law and Rules
7 and the Real Property Actions and Proceedings
8 Law, in relation to evictions.

9 SENATOR GRIFFO: Lay it aside.

10 ACTING PRESIDENT STEWART-COUSINS:

11 The bill is laid aside.

12 THE SECRETARY: Calendar Number
13 45, by Senator Stavisky, Senate Print 1742A,
14 an act to amend the Real Property Tax Law, in
15 relation to tax abatement.

16 ACTING PRESIDENT STEWART-COUSINS:

17 Read the last section.

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

20 ACTING PRESIDENT STEWART-COUSINS:

21 Call the roll.

22 (The Secretary called the roll.)

23 ACTING PRESIDENT STEWART-COUSINS:

24 Announce the results.

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

4 ACTING PRESIDENT STEWART-COUSINS:
5 The bill is passed.

6 THE SECRETARY: Calendar Number
7 60, by Senator Oppenheimer, Senate Print 1087,
8 an act to amend the Tax Law, in relation to
9 extending.

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

12 Read the last section.

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

15 ACTING PRESIDENT STEWART-COUSINS:
16 Call the roll.

17 (The Secretary called the roll.)

18 ACTING PRESIDENT STEWART-COUSINS:
19 Announce the results.

20 THE SECRETARY: Ayes, 60.

21 ACTING PRESIDENT STEWART-COUSINS:
22 The bill is passed.

23 THE SECRETARY: Calendar Number
24 227, by Senator Schneiderman --

1 SENATOR MAZIARZ: Lay it aside.

2 ACTING PRESIDENT STEWART-COUSINS:

3 The bill is laid aside.

4 THE SECRETARY: Calendar Number

5 228, by Member of the Assembly Weinstein,

6 Assembly Print Number 2006, an act to amend

7 the Penal Law, in relation to property

8 interests.

9 ACTING PRESIDENT STEWART-COUSINS:

10 Read the last section.

11 THE SECRETARY: Section 2. This

12 act shall take effect immediately.

13 ACTING PRESIDENT STEWART-COUSINS:

14 Call the roll.

15 (The Secretary called the roll.)

16 ACTING PRESIDENT STEWART-COUSINS:

17 Announce the results.

18 THE SECRETARY: Ayes, 60.

19 ACTING PRESIDENT STEWART-COUSINS:

20 The bill is passed.

21 Senator Klein, that completes the

22 noncontroversial reading of the active bills

23 on Calendar Number 43.

24 SENATOR KLEIN: If we could go to

1 a reading of the controversial calendar, Madam
2 President.

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

8 The Secretary will read.

9 THE SECRETARY: Calendar Number
10 8, by Member of the Assembly Paulin, Assembly
11 Print Number 755A, an act to amend the
12 Executive Law.

13 SENATOR DeFRANCISCO:
14 Explanation.

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

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

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

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

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

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

24 ACTING PRESIDENT STEWART-COUSINS:

1 Senator DeFrancisco.

2 SENATOR DeFRANCISCO: Would
3 Senator Johnson yield to a question?

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

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

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

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

12 Senator DeFrancisco.

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

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

21 SENATOR CRAIG JOHNSON: Yes.

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

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

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

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

9 SENATOR CRAIG JOHNSON: Of
10 course, Madam President.

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

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

24 This one, clearly what we're trying

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

3 SENATOR DeFRANCISCO: Would
4 Senator Johnson yield to another question?

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

7 SENATOR CRAIG JOHNSON:
8 Absolutely, Madam President.

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

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

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

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

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

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

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

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

7 SENATOR DeFRANCISCO: Will
8 Senator Johnson yield to another question?

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

11 SENATOR CRAIG JOHNSON:
12 Absolutely.

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

19 SENATOR CRAIG JOHNSON: Correct.

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

24 SENATOR CRAIG JOHNSON: That's

1 fair to say, yes.

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

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

20 SENATOR DeFRANCISCO: Thank you.

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

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

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

10 SENATOR DeFRANCISCO: Thank you.

11 On the bill.

12 ACTING PRESIDENT STEWART-COUSINS:

13 Senator DeFrancisco, on the bill.

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

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

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

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

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

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

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

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

11 Thank you, Madam President.

12 ACTING PRESIDENT STEWART-COUSINS:

13 Thank you, Senator.

14 Senator Hassell-Thompson.

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

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

1 seems that rules go out of the window.

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

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

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

24 Thank you, Madam President.

1 ACTING PRESIDENT STEWART-COUSINS:

2 Thank you, Senator.

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

5 Senator Saland.

6 SENATOR SALAND: If Senator
7 Johnson would yield.

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

10 SENATOR CRAIG JOHNSON: Of
11 course, for Senator Saland.

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

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

1 complaint with the police department.

2 Sometimes, you know, they get battered, they
3 get an incident, and it does have an effect.

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

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

18 SENATOR SALAND: Thank you,
19 Senator Johnson.

20 Madam President, on the bill.

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

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

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

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

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

24 The intent of this bill certainly

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

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

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

1 here this afternoon.

2 Thank you, Madam President.

3 ACTING PRESIDENT STEWART-COUSINS:

4 Thank you, Senator.

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

7 Hearing none, then the debate is
8 closed.

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

12 Read the last section.

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

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

17 The Secretary will call the roll.
18 (The Secretary called the roll.)

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

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

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

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

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

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

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

21 ACTING PRESIDENT STEWART-COUSINS:
22 Thank you, Senator.

23 Senator DeFrancisco.

24 SENATOR DeFRANCISCO: Yes. I

1 just want to explain my vote.

2 ACTING PRESIDENT STEWART-COUSINS:

3 Again, please, can we have some order.

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

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

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

1 that objective determination.

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

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

15 Thank you very much.

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

19 Anyone else wishing to explain his
20 or her vote?

21 Hearing none, please announce the
22 results.

23 THE SECRETARY: Ayes, 61. Nays,
24 0.

1 ACTING PRESIDENT STEWART-COUSINS:

2 The bill is passed.

3 The Secretary will read.

4 THE SECRETARY: Calendar Number
5 19, by Senator Klein, Senate Print 1363C, an
6 act to amend the Civil Practice Law and Rules
7 and the Real Property Actions and Proceedings
8 Law.

9 SENATOR SALAND: Explanation,
10 please.

11 ACTING PRESIDENT STEWART-COUSINS:
12 Senator Klein.

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

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

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

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

9 Thank you.

10 ACTING PRESIDENT STEWART-COUSINS:
11 Senator Klein, continue.

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

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

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

1 area, and we found on average these types of
2 evictions -- meaning tenants being evicted
3 from foreclosed properties -- on average, it's
4 about 581 per month. Per month. And
5 unfortunately, with this number continuously
6 growing at the end of 2007, nationwide, over
7 1 million one-to-four-family homes were
8 renter-occupied, and over 15,000 renters were
9 at risk of losing their homes due to
10 foreclosure.

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

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

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

8 ACTING PRESIDENT STEWART-COUSINS:
9 Thank you, Senator.

10 Senator Saland.

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

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

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

18 SENATOR SALAND: Thank you,
19 Senator Klein.

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

24 You had said something to the

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

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

11 SENATOR SALAND: Will Senator
12 Klein continue to yield?

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

15 SENATOR KLEIN: I will continue
16 to yield.

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

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

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

1 I could not keep up with you at that point.

2 Could you please --

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

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

15 SENATOR SALAND: And if he could
16 continue to yield.

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

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

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

24 SENATOR KLEIN: It was the Second

1 Department, 1983.

2 SENATOR SALAND: Thank you.

3 Thank you, Senator Klein.

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

6 ACTING PRESIDENT STEWART-COUSINS:

7 Senator Klein, do you continue to yield?

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

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

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

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

7 So under my proposed legislation,
8 you would actually be able to -- the notice
9 requirement of course within 30 days of the
10 foreclosure proceeding, and then an additional
11 60.

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

18 SENATOR KLEIN: Yes, it would.

19 SENATOR SALAND: It will.

20 SENATOR KLEIN: Yes, it will,
21 Senator.

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

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

8 SENATOR SALAND: If the Senator
9 will continue to yield.

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

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

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

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

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

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

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

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

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

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

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

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

6 ACTING PRESIDENT STEWART-COUSINS:
7 Senator Klein?

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

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

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

21 In other words, they could move to
22 clear the property again with the three to
23 10 days that I talked about earlier. That's
24 really the genesis of this legislation.

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

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

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

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

12 SENATOR KLEIN: Right. Right.

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

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

23 Again, this just applies to
24 foreclosed properties and properties which

1 contain one to four units.

2 SENATOR SALAND: If Senator Klein
3 will continue.

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

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

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

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

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

1 72-hour notice to vacate.

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

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

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

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

24 SENATOR SALAND: If the Senator

1 will continue to yield.

2 ACTING PRESIDENT STEWART-COUSINS:

3 Senator Klein, will you continue to yield?

4 SENATOR KLEIN: Yes, Madam

5 President, I'd be happy to continue to yield.

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

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

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

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

24 That's the 30-day grace period

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

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

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

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

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

7 SENATOR SALAND: But has not
8 under this section --

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

12 SENATOR SALAND: Yes, Madam
13 President.

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

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

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

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

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

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

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

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

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

16 SENATOR KLEIN: That's correct.

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

19 SENATOR KLEIN: That's correct.

20 SENATOR SALAND: If the Senator
21 will continue to yield.

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

24 SENATOR KLEIN: I'll continue to

1 yield.

2 SENATOR SALAND: If in fact that
3 is your concern, then why does this not say
4 that the tenant should not have to pay rent
5 twice, if they can establish, by way of
6 adequate documentation, that they paid that
7 month's rent to the prior landlord, instead of
8 being put in a position where the tenant may
9 not have paid the rent and the new incoming
10 landlord in effect has to give this tenant a
11 30-day grace period and the only person who
12 gains is the tenant?

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

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

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

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

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

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

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

18 Madam President, on the bill.

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

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

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

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

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

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

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

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

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

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

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

12 Thank you.

13 ACTING PRESIDENT STEWART-COUSINS:

14 Thank you, Senator.

15 Senator DeFrancisco.

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

19 ACTING PRESIDENT STEWART-COUSINS:

20 Senator DeFrancisco, on the bill.

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

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

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

18 Now, if the person who's
19 foreclosing gets possession of the property
20 and can't evict a month-by-month tenant within
21 30 days, if they have not provided this
22 notice, or in some cases have to nail and mail
23 and never know whether that's going to be
24 sufficient, then we're going to extend the

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

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

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

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

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

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

3 Thank you.

4 ACTING PRESIDENT STEWART-COUSINS:

5 Does any other member wish to be heard on this
6 bill?

7 Hearing none, the debate is closed.

8 The Secretary will please ring the
9 bells.

10 Read the last section.

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

13 ACTING PRESIDENT STEWART-COUSINS:

14 Order in the chamber, please.

15 Call the roll.

16 (The Secretary called the roll.)

17 SENATOR KLEIN: To explain my
18 vote.

19 ACTING PRESIDENT STEWART-COUSINS:

20 Senator Klein, to explain his vote.

21 SENATOR KLEIN: Madam President,
22 thank you.

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

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

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

11 I know Senator Saland mentioned the
12 lengthy process for foreclosure in New York
13 State. And if you look at other states, our
14 process is not as long. As a matter of fact,
15 in California they require that tenants
16 receive 60 days' written notice to vacate
17 property if it is foreclosed, and then it
18 takes approximately 300 days additionally for
19 foreclosure from start to finish. In the
20 state of Wisconsin, it takes about 310 days
21 for foreclosure from start to finish;
22 Illinois, close to 300; and then New Jersey,
23 300 as well.

24 So what we're doing here today is I

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

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

18 So I vote yes, Madam President.

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

22 Senator DeFrancisco.

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

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

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

23 So I'm going to vote no.

24 Thank you.

1 ACTING PRESIDENT STEWART-COUSINS:

2 Senator DeFrancisco to be recorded in the
3 negative.

4 Senator Hannon.

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

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

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

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

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

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

8 Thank you, Madam President.

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

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

14 Announce the results.

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

23 Ayes, 37. Nays, 24.

24 ACTING PRESIDENT STEWART-COUSINS:

1 The bill is passed.

2 The Secretary will read.

3 THE SECRETARY: Calendar Number
4 227, by Senator Schneiderman, Senate Print
5 4305, an act to amend the Criminal Procedure
6 Law.

7 SENATOR VOLKER: Explanation.

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

11 SENATOR SCHNEIDERMAN: Thank you,
12 Madam President.

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

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

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

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

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

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

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

1 people who don't make bail are out after
2 45 days with no money and no other restraints,
3 whereas someone who does make bail can be
4 dragged out for months and months and months
5 awaiting action in a grand jury over which
6 they have no influence, while the prosecutor
7 who controls whether the grand jury moves
8 forward or not has no burden to proceed.

9 ACTING PRESIDENT STEWART-COUSINS:

10 Thank you, Senator.

11 Senator Volker, why do you rise?

12 SENATOR VOLKER: Madam President,
13 on the bill.

14 ACTING PRESIDENT STEWART-COUSINS:

15 Senator Volker, on the bill.

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

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

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

13 Here's a problem with this bill
14 that you probably didn't think of, because the
15 Law Journal is a New York City paper. In the
16 rural areas, grand juries do not meet on a
17 regular basis. There are many counties, for
18 instance, in my district where they don't meet
19 on a regular basis. They may not meet for
20 45 days; it's very, very possible.

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

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

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

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

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

1 they're going to have to deal with that.

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

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

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

22 Senator DeFrancisco.

23 SENATOR DeFRANCISCO: Yes, on the
24 bill.

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

9 The rationale I heard yesterday was
10 basically that people who don't have their
11 180.80 hearing or the hearing on probable
12 cause sometimes get released on bail, or if
13 you're in jail and you get released on your
14 own recognizance after 45 days, and therefore
15 if someone is out on bail they should have
16 that 45-day right.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 ACTING PRESIDENT STEWART-COUSINS:

11 Thank you, Senator.

12 Senator Bonacic.

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

16 ACTING PRESIDENT STEWART-COUSINS:

17 Senator Schneiderman, do you yield?

18 SENATOR SCHNEIDERMAN: Yes, Madam
19 President.

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

23 SENATOR SCHNEIDERMAN: No.

24 Contrary to the assertions earlier today that

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

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

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

9 SENATOR SCHNEIDERMAN: Yes, Madam
10 President.

11 SENATOR BONACIC: Thank you,
12 Madam President.

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

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

24 SENATOR BONACIC: Would Senator

1 Schneiderman continue to yield?

2 ACTING PRESIDENT STEWART-COUSINS:

3 Senator Schneiderman, do you continue to
4 yield?

5 SENATOR SCHNEIDERMAN: Yes, Madam
6 President.

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

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

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

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

18 So those were the considerations.

19 SENATOR BONACIC: Thank you,
20 Senator Schneiderman.

21 On the bill.

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

24 SENATOR BONACIC: I'd like to

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

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

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

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

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

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

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

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

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

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

10 Thank you, Madam President.

11 ACTING PRESIDENT STEWART-COUSINS:

12 Thank you, Senator.

13 Senator Lanza.

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

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

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

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

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

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

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

8 So could you imagine in the case of
9 Bernie Madoff, when all that money is being
10 stolen, when you have a person of means who
11 can hop on a plane and go anywhere he wants,
12 if he so chooses, to avoid and evade justice?
13 Could you imagine bail being set in that case
14 after 45 days for no reason except that
15 45 days have passed, that all of a sudden,
16 automatically, bail is exonerated?

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

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

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

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

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

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

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

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

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

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

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

12 There's another issue here, and
13 it's cost. By setting an arbitrary date of
14 45 days -- again, there's no rhyme or reason
15 as to why we're selecting 45 days as the time
16 in which a prosecutor must bring an indictment
17 or else bail is going to be exonerated -- that
18 would mean that we'd have to have another
19 forced court date 45 days after the
20 arraignment of every felony case in this
21 state.

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

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

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

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

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

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

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

1 45 days, then I think we can all agree that it
2 does make sense that at that point you ought
3 to be released.

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

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

15 ACTING PRESIDENT STEWART-COUSINS:
16 Thank you, Senator.

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

19 Senator Morahan.

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

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

24 SENATOR SCHNEIDERMAN: Yes, Madam

1 President.

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

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

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

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

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

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

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

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

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

13 SENATOR SCHNEIDERMAN: Yes, Madam
14 President.

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

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

1 something that requires a defendant to make an
2 application.

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

11 SENATOR MORAHAN: Thank you,
12 Senator.

13 Thank you, Madam President.

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

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

18 Hearing none, the debate is closed.

19 The Secretary will please ring the
20 bells.

21 Read the last section.

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

24 ACTING PRESIDENT STEWART-COUSINS:

1 Call the roll.

2 (The Secretary called the roll.)

3 ACTING PRESIDENT STEWART-COUSINS:

4 Announce the results.

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

14 Ayes, 33. Nays, 28.

15 ACTING PRESIDENT STEWART-COUSINS:

16 The bill is passed.

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

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

24 ACTING PRESIDENT STEWART-COUSINS:

1 Senator Hassell-Thompson.

2 SENATOR HASSELL-THOMPSON: Thank
3 you, Madam Chair.

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

7 ACTING PRESIDENT STEWART-COUSINS:
8 Senator Padavan.

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

13 (Laughter.)

14 ACTING PRESIDENT STEWART-COUSINS:
15 Senator Klein.

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

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

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

24 We stand at ease.

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

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

5 ACTING PRESIDENT STEWART-COUSINS:
6 Senator Klein.

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

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

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

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

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

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

22 ACTING PRESIDENT STEWART-COUSINS:
23 Majority Leader Smith.

24 SENATOR SMITH: Yes, Madam

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

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

9 The Secretary will read.

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

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

16 ACTING PRESIDENT STEWART-COUSINS:
17 Senator Smith.

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

21 SENATOR LIBOUS: Point of order.

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

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

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

7 (Response of "Aye.")

8 ACTING PRESIDENT STEWART-COUSINS:
9 Opposed, nay.

10 (Response of "Nay.")

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

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

16 ACTING PRESIDENT STEWART-COUSINS:
17 The Secretary will read.

18 THE SECRETARY: Calendar Number
19 286, by Senator Dilan, Senate Print 5451, an
20 act to amend the Vehicle and Traffic Law.

21 SENATOR LIBOUS: Lay it aside,
22 please.

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

1 Senator Smith.

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

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

8 The Secretary will read.

9 THE SECRETARY: Calendar Number
10 286, by Senator Dilan, Senate Print 5451, an
11 act to amend the Vehicle and Traffic Law.

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

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

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

20 SENATOR LIBOUS: Madam President.

21 ACTING PRESIDENT STEWART-COUSINS:
22 Senator Libous.

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

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

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

8 ACTING PRESIDENT STEWART-COUSINS:
9 Senator Libous.

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

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

15 SENATOR LIBOUS: Thank you, Madam
16 President.

17 ACTING PRESIDENT STEWART-COUSINS:
18 Announce the results.

19 THE SECRETARY: Ayes, 32. Nays,
20 29.

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

23 The bill is before the house.

24 SENATOR LIBOUS: Explanation,

1 please.

2 ACTING PRESIDENT STEWART-COUSINS:

3 An explanation has been requested, Senator
4 Dilan.

5 SENATOR DILAN: Yes, Madam
6 President.

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

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

20 The five sources are the new
21 license fee, which would be a \$1 flat fee on
22 all licenses, and that's \$1 per six months or
23 \$2 over the course of a year. This was done
24 because it is easier for DMV to implement and

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

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

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

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

24 And this would be effective March 1

1 of this year, meaning it would be retroactive
2 to March 1st. It will raise approximately
3 \$1 billion in 2009 and \$1.5 billion in 2010.

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

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

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

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

3 There's also -- and it's the last
4 component, the fifth component -- a car rental
5 fee. And that charge will be 5 percent on all
6 rentals of passenger vehicles within the
7 12-county region. And it will generate
8 \$18 million in 2009, and it will generate
9 \$35 million in 2010.

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

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

22 ACTING PRESIDENT STEWART-COUSINS:
23 Senator Perkins.

24 SENATOR PERKINS: Thank you very

1 much.

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

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

1 the state.

2 ACTING PRESIDENT STEWART-COUSINS:
3 Senator DeFrancisco.

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

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

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

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

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

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

22 SENATOR PERKINS: Yes, by all
23 means.

24 SENATOR DeFRANCISCO: Senator,

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

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

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

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

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

4 SENATOR DeFRANCISCO: Will
5 Senator Perkins yield to another question?

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

8 SENATOR PERKINS: Yes. Yes.

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

13 SENATOR PERKINS: Yes.

14 SENATOR DeFRANCISCO: Would
15 Senator Perkins yield to another question?

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

18 SENATOR PERKINS: Yes, I do.

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

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

3 Do you find that troubling at all?

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

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

1 some time now one way or another.

2 SENATOR DeFRANCISCO: Would
3 Senator Perkins yield to another question?

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

6 SENATOR PERKINS: Yes. Through
7 you, Madam President.

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

14 Did you vote for that?

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

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

23 SENATOR DeFRANCISCO: On the
24 bill.

1 ACTING PRESIDENT STEWART-COUSINS:

2 Senator DeFrancisco, on the bill.

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

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

1 fact fulfilled.

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

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

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

24 And as a result, no matter what

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

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

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

20 Thank you.

21 ACTING PRESIDENT STEWART-COUSINS:

22 Senator Flanagan.

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

1 he would yield.

2 ACTING PRESIDENT STEWART-COUSINS:

3 Senator Dilan, will you yield for questions?

4 SENATOR DILAN: Yes.

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

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

14 SENATOR DILAN: That is correct.

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

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

24 SENATOR DILAN: Through you,

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

5 ACTING PRESIDENT STEWART-COUSINS:
6 Senator Flanagan.

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

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

13 SENATOR DILAN: Yes, Madam
14 President.

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

24 It is directly related to the bill

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 bill.

2 ACTING PRESIDENT STEWART-COUSINS:

3 Senator Flanagan, certainly there's no
4 refusal. What is being stated is that the
5 question regarding the executive order and the
6 Governor's executive order will not be the
7 subject of this discourse as we discuss the
8 bill.

9 SENATOR FLANAGAN: Madam

10 President, with all due respect, it will be
11 the subject of this discourse, and I will
12 speak on the bill and raise these points in
13 that context.

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

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

24 ACTING PRESIDENT STEWART-COUSINS:

1 Senator Flanagan, on the bill.

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

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

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

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

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

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

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

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

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

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

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

17 SENATOR KLEIN: Madam President,
18 point of order.

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

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

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

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

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

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

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

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

7 There's no \$60 million, there's no
8 \$97 million, there's no \$100 million in this
9 bill. There's no appropriation. There's a
10 promise. And it says it's the intent. But if
11 you look at this language that I just
12 referenced, it should make anybody who works
13 for a school district very nervous.

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

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

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

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

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

22 Thank you, Madam President.

23 ACTING PRESIDENT STEWART-COUSINS:

24 Thank you, Senator.

1 Senator Libous.

2 SENATOR LIBOUS: Thank you, Madam
3 President.

4 Would Senator Dilan yield for a
5 question, please?

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

8 SENATOR DILAN: Yes, Madam
9 President.

10 SENATOR LIBOUS: Thank you, Madam
11 President.

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

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

18 SENATOR SALAND: Would you suffer
19 an interruption?

20 SENATOR DILAN: Is he speaking to
21 me?

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

1 little bit louder.

2 ACTING PRESIDENT STEWART-COUSINS:

3 Senator Dilan, he can't hear you.

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

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

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

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

13 SENATOR DILAN: Yes, Madam
14 President.

15 SENATOR LIBOUS: How does
16 legislative intent address an issue?

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

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

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

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

8 SENATOR DILAN: Yes, Madam
9 President.

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

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

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

24 ACTING PRESIDENT STEWART-COUSINS:

1 Senator Dilan, do you continue to yield?

2 SENATOR DILAN: Yes.

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

8 Could you qualify those two
9 statements, because --

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

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

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

22 SENATOR DILAN: Yes.

23 ACTING PRESIDENT STEWART-COUSINS:
24 Senator Libous.

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

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

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

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

24 ACTING PRESIDENT STEWART-COUSINS:

1 Senator Dilan, do you continue to yield?

2 SENATOR DILAN: Yes, Madam
3 President.

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

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

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

12 I asked are you aware that since
13 1995 that a capital plan for roads and bridges
14 and a capital plan for the MTA have been done
15 simultaneously, they've been done together.

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

24 Are you aware of that?

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

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

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

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

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

18 SENATOR DILAN: Yes.

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

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

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

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

11 And then again, referring to page 2
12 at this time, line 28, Senator: "The Governor
13 and the Legislature request that the
14 Department of Transportation begin development
15 of such a program immediately and provide the
16 Legislature with an outline of the objectives
17 of the program and the performance measures
18 that will be used to determine investment in
19 transportation in the state for the next
20 multiple year capital program by October 1,
21 2009."

22 SENATOR LIBOUS: Thank you,
23 Senator.

24 Madam President, would Senator

1 Dilan continue to yield?

2 ACTING PRESIDENT STEWART-COUSINS:

3 Senator Dilan, do you continue to yield?

4 SENATOR DILAN: Yes, Madam

5 President.

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

9 So I go back to my question. Since
10 1995, they've been dealt with together --

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

13 SENATOR LIBOUS: Could I finish?

14 SENATOR DILAN: I'll let you
15 finish.

16 SENATOR LIBOUS: Please. Thank
17 you.

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

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

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

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

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

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

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

22 SENATOR LIBOUS: Thank you,
23 Senator.

24 SENATOR DILAN: And I will

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

3 SENATOR LIBOUS: Thank you,
4 Senator Dilan.

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

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

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

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

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

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

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

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

12 But what's happening here is this
13 is not about a crisis plan for the MTA. This
14 is an additional capital plan for the MTA.
15 We're breaking the parity that we've had since
16 1995 for roads and bridges.

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

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

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

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

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

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

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

18 ACTING PRESIDENT STEWART-COUSINS:
19 Senator Fuschillo.

20 SENATOR FUSCHILLO: Thank you,
21 Madam President.

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

1 some questions?

2 ACTING PRESIDENT STEWART-COUSINS:

3 Senator Dilan, will you yield for questions?

4 SENATOR DILAN: Yes, ma'am.

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

12 SENATOR DILAN: Sure.

13 SENATOR FUSCHILLO: Thank you.

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

17 Does this Governor's program bill
18 reimburse Nassau County?

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

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

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

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

8 SENATOR FUSCHILLO: So will
9 Senator Dilan continue to yield?

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

12 SENATOR DILAN: Yes, Madam
13 President.

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

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

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

23 Will Suffolk County be --

24 ACTING PRESIDENT STEWART-COUSINS:

1 Are you asking Senator Dilan to continue to
2 yield?

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

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

8 SENATOR DILAN: Yes, Madam
9 President.

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

15 Suffolk County is being hit with a
16 significant payroll tax as well of over
17 \$3 million. I believe it's correct that they
18 will not be reimbursed, the government, as
19 well?

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

24 Let me also indicate that the only

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

5 SENATOR FUSCHILLO: Thank you,
6 Senator.

7 Will Senator Dilan continue to
8 yield continue, Madam President?

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

11 SENATOR DILAN: Yes, Madam
12 President.

13 SENATOR FUSCHILLO: Thank you,
14 Senator.

15 Nassau County schools will have a
16 tax impact of \$13,320,000 and change. Suffolk
17 County schools will have a tax impact of
18 nearly \$15 million. The counties in the
19 12 regions, including New York City, will have
20 a tax impact of \$97 million, nearly
21 \$100 million.

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

24 SENATOR DILAN: Madam President,

1 as I indicated in my explanation, there will
2 be an appropriation in I believe it is the
3 2010 budget.

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

6 Madam President, will Senator Dilan
7 continue to yield?

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

10 SENATOR DILAN: Yes, Madam
11 President.

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

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

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

21 SENATOR FUSCHILLO: Thank you,
22 Senator Dilan.

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

1 ACTING PRESIDENT STEWART-COUSINS:

2 Senator Dilan, do you continue to yield?

3 SENATOR DILAN: Yes, Madam

4 President.

5 ACTING PRESIDENT STEWART-COUSINS:

6 He does.

7 SENATOR FUSCHILLO: Thank you,

8 Senator Dilan.

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

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

18 SENATOR DILAN: It's possible,

19 but I --

20 SENATOR FUSCHILLO: Okay, that's

21 fine.

22 Madam President, will Senator Dilan
23 continue to yield?

24 ACTING PRESIDENT STEWART-COUSINS:

1 Senator Dilan, do you continue to yield?

2 SENATOR DILAN: Yes, Madam
3 President.

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

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

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

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

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

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

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

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

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

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

20 And I'd like to say that I was very
21 involved. And during the committee meeting,
22 85 percent of what's in this bill, I would
23 dare to say 85 to 90 percent of what's in this
24 bill was reported out of the Transportation

1 Committee.

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

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

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

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

14 ACTING PRESIDENT STEWART-COUSINS:
15 Continue your thought?

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

22 SENATOR FUSCHILLO: Would Senator
23 Dilan continue to yield?

24 ACTING PRESIDENT STEWART-COUSINS:

1 Senator Dilan, do you continue to yield?

2 SENATOR DILAN: Yes, Madam
3 President.

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

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

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

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

13 SENATOR DILAN: Yes.

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

24 SENATOR DILAN: Currently, as the

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

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

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

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

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

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

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

20 SENATOR DILAN: Yes, Madam
21 President.

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

1 SENATOR DILAN: No.

2 SENATOR FUSCHILLO: Okay. Thank
3 you.

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

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

9 SENATOR DILAN: Yes.

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

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

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

1 outyears, 7.5 percent, 7.5 percent.

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

4 SENATOR FUSCHILLO: Thank you,
5 Senator Dilan.

6 Madam President, would Senator
7 Dilan continue to yield?

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

10 SENATOR DILAN: Yes.

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

17 SENATOR DILAN: With regard to
18 what?

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

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

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

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

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

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

20 SENATOR DILAN: Yes.

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

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

3 SENATOR FUSCHILLO: Okay. It
4 will be.

5 Madam President, will Senator Dilan
6 continue to yield?

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

9 SENATOR DILAN: Yes.

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

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

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

24 (Laughter.)

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

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

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

12 SENATOR DILAN: Mm-hmm.

13 SENATOR FUSCHILLO: Senator, I've
14 been getting letters -- as I'm sure are all of
15 you on both sides of the aisle, Democrats and
16 Republicans -- opposing this legislation.
17 Eastern Suffolk BOCES from Long Island says
18 that the payroll tax is going to cost them a
19 million dollars. The Nassau-Suffolk BOCES
20 said that the payroll tax is going to cost
21 them \$1.2 million. Nassau Community College,
22 a state college, it's going to cost them
23 \$400,000. And I'm sure other colleges
24 throughout this 12-county region.

1 Just to be correct and clear,
2 BOCES, Eastern BOCES, a million dollars;
3 Nassau BOCES, a million-two; Nassau Community
4 College, \$400,000. The small businesses in
5 the region, \$60 million. The school
6 districts, no guarantee. But my
7 municipalities of Nassau and Suffolk County,
8 the municipalities' total is nearly
9 \$10 million for all my villages and counties
10 in Nassau and Suffolk County.

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

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

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

19 SENATOR DILAN: Thank you,
20 Senator.

21 SENATOR FUSCHILLO: Madam
22 President, on the bill.

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

1 SENATOR FUSCHILLO: Just briefly,
2 Madam President.

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

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

11 From 2000 to 2008, we've lost
12 8.3 percent of our population that have gone
13 to other states. A report was just issued
14 that was printed before this budget was
15 adopted that said the state and local tax
16 burden that New York has is the
17 second-heaviest state and local tax burden in
18 the nation. We're number two, at
19 11.7 percent. New Jersey is 11.8.

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

24 Out of 50 states, the Small

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

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

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

1 on and on.

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

8 You know, we must be watching
9 different financial networks. Because the car
10 industry is now saying, without taxpayer
11 dollars, if you lose your job, we'll pay for
12 your car for 12 months. In New York State,
13 we're saying forget it. If you live in the
14 12 counties that affect the MTA, don't do
15 business here, because you're going to pay
16 more taxes. If you have a payroll in excess
17 of \$2500, you're going to pay the payroll tax.

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

1 us hard, and now you're hitting us again."

2 The hospitals are saying the same thing.

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

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

22 Seventy thousand employees,
23 \$11 billion, probably the most bloated
24 bureaucracy in the country, and yet we're

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

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

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

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

24 Thank you very much, Madam

1 President.

2 ACTING PRESIDENT STEWART-COUSINS:

3 Thank you, Senator.

4 Senator Bonacic.

5 SENATOR BONACIC: Thank you,
6 Madam President.

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

14 Now, why do I say that? When we
15 did the Big Ugly, the budget, of over
16 \$8 billion in new taxes, I pointed out that
17 the not-for-profit tax code at that time said
18 for small businesses, after that budget,
19 New York was number one and the worst state to
20 do business for small businesses.

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

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

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

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

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

24 Now, in Orange County, the hit to

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

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

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

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

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

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

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

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

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

1 ACTING PRESIDENT STEWART-COUSINS:
2 Senator Saland.

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

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

8 SENATOR PERKINS: Yes, Madam
9 President.

10 SENATOR SALAND: Thank you,
11 Senator Perkins.

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

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

24 SENATOR SALAND: Well,

1 assuming --

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

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

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

8 SENATOR PERKINS: Yes, I will,
9 Madam President.

10 SENATOR SALAND: Assuming in part
11 that the Senate hearing process comprised a
12 component of the openness and transparency
13 that has been pledged by the Democrat majority
14 in the house, could you tell me where those
15 Senate hearings were held?

16 SENATOR PERKINS: Through you,
17 Madam President. One was held in the borough
18 of Brooklyn, and the other one was held in the
19 borough of Manhattan.

20 SENATOR SALAND: Will Senator
21 Perkins continue to yield?

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

24 SENATOR PERKINS: Yes, Madam

1 President.

2 SENATOR SALAND: Senator Perkins,
3 do you recall receiving a copy of a letter
4 from me to the Majority Leader, Senator Smith,
5 in which I requested that a hearing be held in
6 the Hudson Valley?

7 SENATOR PERKINS: Through you,
8 Madam President, I recall receiving several
9 communications from members requesting
10 hearings in different parts of the state, and
11 possibly -- and I believe yours was one of
12 them.

13 SENATOR SALAND: Would the
14 Senator continue to yield?

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

17 SENATOR PERKINS: Yes, Madam
18 President.

19 SENATOR SALAND: Senator Perkins,
20 do you recall a conversation which we had in
21 which I discussed this issue with you and I
22 told you that it was critically important to
23 the Hudson Valley that people have the
24 opportunity to be heard because this was

1 causing such enormous anxiety, fear, in the
2 Hudson Valley? And that it didn't have to be
3 in my district. I even suggested, to be
4 centrally located, it might be somewhere in
5 northern Westchester.

6 SENATOR PERKINS: Through you,
7 Madam President. Yes, I recall you sharing
8 that concern.

9 SENATOR SALAND: Thank you,
10 Senator Perkins.

11 I have no more questions of Senator
12 Perkins. I have questions for Senator Dilan.

13 ACTING PRESIDENT STEWART-COUSINS:
14 Senator Dilan, do you yield for questions from
15 Senator Saland?

16 SENATOR DILAN: Yes, Madam
17 President. Yes.

18 SENATOR SALAND: Just, if I may,
19 before I engage with Senator Dilan, the sort
20 of proverbial orphans of this system, and
21 certainly the revenue hostages are the
22 so-called outer boroughs. And a mere modicum
23 of courtesy, a mere modicum of interest, a
24 mere modicum of courtesy as between colleagues

1 would have said there should be a hearing
2 somewhere other than in two boroughs in the
3 City of New York.

4 Senator Dilan, do you yield?

5 SENATOR DILAN: Yes. Yes.

6 ACTING PRESIDENT STEWART-COUSINS:

7 Senator Dilan has said he would yield, yes.

8 SENATOR SALAND: Senator Dilan,
9 the exchanges that have occurred previously, I
10 believe you responded to a revenue estimate as
11 to what this would be generating by way of
12 funds. I'm not quite sure I recall that
13 number. Could you please tell me what that
14 number is?

15 SENATOR DILAN: Are you talking
16 to the total amount of the two?

17 SENATOR SALAND: The total. And
18 if you could break it down by category.

19 SENATOR DILAN: You want me to
20 repeat it again?

21 SENATOR SALAND: I'm sorry?

22 SENATOR DILAN: You want me to
23 repeat the entire explanation? Is that what
24 you're asking me?

1 SENATOR SALAND: Senator, you
2 don't have to repeat it. If you'd just let me
3 know what are the components -- I believe
4 there are some five components -- and what
5 each yields.

6 SENATOR DILAN: Over a two-year
7 period, Madam President, this piece of
8 legislation would generate approximately
9 \$2.9 billion. And with regard to the new
10 license fee at a flat rate of \$1 per six
11 months, this year it would generate
12 \$6 million. It will raise \$27 million next
13 year. This is an increase of \$16 above the
14 rate of the state budget. An average
15 D license would be charged at a rate of \$78.50
16 for the eight-year period.

17 With regard to the car
18 registration, that's a flat fee of \$25 per
19 year. And it will raise, in 2009,
20 \$47 million. Next year, it will raise \$141
21 million.

22 With respect to the payroll tax, it
23 would raise, this year, approximately a
24 billion dollars. Next year it would raise

1 approximately \$1.5 billion. And as I
2 indicated before, schools would not have to
3 pay this tax until September, and they will be
4 reimbursed.

5 And I also want to take this
6 opportunity, because I found something in the
7 bill, on page 11, Part D, and it would be
8 Section 3609-g. With respect to a previous
9 question, I think it's appropriate to answer
10 it at this time.

11 This says "Monies apportioned to
12 school districts for reimbursement of
13 Article 23 of the Tax Law payments commencing
14 in the 2009-2010 school year. Notwithstanding
15 any other provision of law to the contrary,
16 school districts shall be reimbursed for
17 payments made pursuant this article."

18 And to continue, the fifth piece is
19 a 5 percent rental fee on all passenger
20 vehicles, and that would raise \$18 million
21 this year, \$35 million next year.

22 And I believe that answers the
23 Senator's question.

24 ACTING PRESIDENT STEWART-COUSINS:

1 Thank you, Senator Dilan.

2 SENATOR SALAND: So the total for
3 this year, according to your numbers -- unless
4 I've missed something -- will be somewhere in
5 the area of 1.07 billion; is that correct?

6 SENATOR DILAN: I believe it
7 would be 1.105 billion.

8 SENATOR SALAND: And next year
9 would be more like 1.7 billion?

10 SENATOR DILAN: 1.827.

11 SENATOR SALAND: Thank you.

12 Senator --

13 ACTING PRESIDENT STEWART-COUSINS:
14 Are you asking the Senator to continue to
15 yield?

16 SENATOR SALAND: Oh, yes, I am.
17 Thank you.

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

20 SENATOR DILAN: Yes, Madam
21 President.

22 SENATOR SALAND: I call your
23 attention to Article 23, entitled
24 "Metropolitan Commuter Transportation Mobility

1 Tax." And it provides that an employer who
2 has payroll expenses in excess of \$2500 per
3 quarter will be obligated to pay this tax. It
4 exempts certain national or international
5 entities, interstate agencies.

6 On Section 802 it says "Pass
7 through of tax is prohibited. An employer
8 cannot deduct from the wages or compensation
9 of an employee any portion of the tax
10 imposed." And up above, it defines payroll
11 expense as wages and compensation.

12 Could you tell me what the
13 difference is between wages and compensation
14 and what constitutes compensation that will be
15 taxed under this bill?

16 SENATOR DILAN: I am informed
17 that under the Internal Revenue Law, salary is
18 compensation and does not include any other
19 benefits.

20 SENATOR SALAND: I'm sorry, could
21 you repeat that?

22 SENATOR DILAN: According to
23 information that I've just been informed, the
24 Internal Revenue Law defines salary as

1 compensation and does not include any other
2 benefits.

3 SENATOR SALAND: Oh, I would
4 respectfully beg to differ. And if you read
5 3121, it enumerates a number of items that are
6 not included in compensation.

7 In speaking with school managers,
8 business managers, and others, I've been told
9 that you can reasonably expect -- these people
10 are far more expert in these matters than I
11 am -- that you will also be including those
12 contributions that are made to 401(k)s, that
13 if a business has a stock option plan, that
14 will be included.

15 And the school districts' reading
16 of this is that their pension payments,
17 somewhere in the area of some 8 or 9 percent
18 of payroll, would be included.

19 The law I believe specifically
20 excludes health benefits. But the advice that
21 you're getting from whomever is giving it to
22 you certainly flies in the face of what the
23 common perception is of what this proposal
24 will do with respect to compensation.

1 There is no need to say "wages or
2 compensation" as distinguished from "wages and
3 compensation" if in fact additional
4 compensation can't be taxed.

5 SENATOR DILAN: The Senator
6 differs with me, and I differ with him.

7 SENATOR SALAND: Senator, what
8 if you're an attorney --

9 ACTING PRESIDENT STEWART-COUSINS:
10 Are you asking him to continue to yield?

11 SENATOR SALAND: Yes, continue to
12 yield.

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

15 SENATOR DILAN: When he addresses
16 you. He still hasn't addressed you.

17 SENATOR SALAND: I couldn't hear
18 his response.

19 ACTING PRESIDENT STEWART-COUSINS:
20 The Senator has suggested that you speak
21 through -- ask me.

22 SENATOR SALAND: Certainly, Madam
23 President.

24 Senator Dilan, if you're an

1 attorney who does not have an office located
2 in the 12-county region, you're a consultant
3 who doesn't have an office in the 12-county
4 region, and you appear for business purposes
5 in that 12-county region and derive fees or
6 income, would that become taxable?

7 SENATOR DILAN: My understanding
8 is if they appear within the 12-county region
9 and receive compensation, they would be
10 subject to the tax from the district only, the
11 compensation that was derived from the
12 district.

13 SENATOR SALAND: So looking at
14 Section 801(b)(1), that person would be an
15 individual having net earnings, or probably
16 could be a business as well, without -- not
17 within, but without -- the Metropolitan
18 Transportation Authority district and would
19 have to allocate and apportion its earnings
20 within the district.

21 So have you --

22 ACTING PRESIDENT STEWART-COUSINS:
23 Senator Saland, are you asking Senator Dilan
24 to continue to yield?

1 SENATOR SALAND: Yes, I will.

2 ACTING PRESIDENT STEWART-COUSINS:

3 Senator Dilan, do you continue to yield?

4 SENATOR DILAN: Yes, ma'am.

5 SENATOR SALAND: In the
6 computation of payroll tax, in which you told
7 me there was roughly 1.1 billion this year and
8 1.8 billion next year, have you included in
9 your computation some amount of money that
10 will be derived from these I'll call them
11 external businesses or consultants or
12 attorneys who do business in the district and
13 derive a fee from there?

14 SENATOR DILAN: Madam President,
15 we do not have that breakdown.

16 But if you have compensation within
17 the 12-county region, this would be similar as
18 if a nonresident of the state or if I went to
19 New Jersey and earned an income there, I would
20 have to pay some form of income tax in that
21 state. And I believe that that would be
22 similar to that.

23 SENATOR SALAND: Would the
24 Senator continue to yield?

1 ACTING PRESIDENT STEWART-COUSINS:

2 Senator Dilan, do you continue to yield?

3 SENATOR DILAN: Yes. Yes.

4 SENATOR SALAND: So is it safe to
5 say, then, Senator Dilan, that inasmuch as you
6 have not computed that amount and it's not
7 included in your calculation, that the amount
8 of monies that's being raised by the payroll
9 tax will exceed your estimates?

10 SENATOR DILAN: I know the answer
11 that I gave just 30 seconds ago is that I do
12 not have that breakdown. It is computed, but
13 I do not have the breakdown.

14 SENATOR SALAND: Senator Dilan,
15 will you continue to yield?

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

18 SENATOR DILAN: Yes, Madam
19 President.

20 SENATOR SALAND: This would be
21 more appropriately a question probably for the
22 chair of the Education Committee. She's not
23 currently, I don't believe, in the chamber.

24 What happens in the case of a

1 school district that straddles a county line,
2 part of it being in the MTA region and part of
3 it being outside the MTA region? And I can
4 identify three of them in my district, by the
5 way.

6 SENATOR DILAN: My understanding
7 is that that payroll tax would be apportioned
8 according to, I would imagine, the employees,
9 or there would be a some formula to apportion
10 that.

11 SENATOR SALAND: And if in fact
12 the home site of the school district is -- I
13 have one school district, if you'll continue
14 to yield, that is --

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

17 SENATOR DILAN: Yes.

18 SENATOR SALAND: -- that is a
19 small school district, K-12, one building,
20 located outside of Dutchess County, located in
21 Columbia County, and yet they have students
22 from Dutchess County. They are now subject to
23 this as well?

24 SENATOR DILAN: Madam President,

1 the students are not on the payroll.

2 SENATOR SALAND: No -- will he
3 continue to yield?

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

6 SENATOR DILAN: Yes, Madam
7 President.

8 SENATOR SALAND: The school
9 districts are subject to the payroll tax, and
10 you are maintaining that you are then going to
11 reimburse them. So they are subject to the
12 tax. And as was discussed earlier, it's not
13 constitutional, it's a matter of intent. And
14 your obligation under the language of this
15 bill is to no more than six months' worth of
16 payments.

17 SENATOR DILAN: My understanding
18 from this legislation is if you have a school
19 district that's outside the 12-county region,
20 they are not subject to this tax. If you have
21 students that would go to a school in Columbia
22 County, it has nothing to do with this bill.

23 And you just mentioned the intent.
24 And I will remind the Senator that I did read

1 on page 11, Section 3609-g, that the school
2 districts shall be reimbursed for payments.

3 SENATOR SALAND: I'm sorry, would
4 you tell me where that is again?

5 SENATOR DILAN: Page 11, Part D,
6 Section 3609-g, starting on line 21.

7 SENATOR SALAND: If the Senator
8 would continue to yield.

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

11 SENATOR DILAN: Yes, Madam
12 President.

13 SENATOR SALAND: This may be
14 perhaps a little too lawyer-like; you
15 acknowledged you're not a lawyer. Are you
16 familiar with --

17 SENATOR DILAN: Point of order,
18 Madam President. I indicated before I am not
19 a lawyer. And I would ask the Senator to stop
20 referring and calling me such.

21 SENATOR SALAND: I'm sorry?

22 SENATOR DILAN: He says I'm
23 acting like a lawyer.

24 SENATOR SALAND: Oh, no, no, no,

1 I did not say that, Senator. No, no, no. I
2 said I realize that you're not a lawyer and
3 that you had said that --

4 SENATOR DILAN: Okay, I
5 apologize. I apologize.

6 SENATOR SALAND: Under rules of
7 construction, something that follows language
8 generally is viewed as being in effect more
9 controlling. So when you talk about "shall"
10 being in Section 3609-g, Part D, Section 1 --

11 SENATOR DILAN: Page 11, line 21.

12 SENATOR SALAND: A number of
13 paragraphs thereafter, in paragraph 5, it says
14 "It is the intent of the Governor to submit
15 and the Legislature to enact for each fiscal
16 year after the 2009-2010 fiscal year in an
17 annual budget bill an appropriation in the
18 amount to be paid to school districts pursuant
19 to this section."

20 And then when you get to the end of
21 that article, Section 2-a on page 13, it says,
22 in effect, if there's no appropriation you can
23 suspend the payment for up to six months --
24 "you" being the school district -- but very

1 critically, it goes on to say your liability
2 will not be reduced.

3 So under this bill, the only thing
4 that you have to hang your hat on is an
5 expression of intent, buttressed by the fact
6 that you can have your reimbursement
7 suspended, but not the liability that
8 underlies it.

9 ACTING PRESIDENT STEWART-COUSINS:
10 Senator Saland, was there a question?

11 SENATOR SALAND: Does that
12 conflict with your understanding of the bill?

13 SENATOR DILAN: I will stand by
14 my previous responses to this. I have
15 mentioned Section 3609 several times. And I
16 read it that it shall reimburse the districts.
17 On line 52 of the same page, it says: "Any
18 payment to a school district pursuant to this
19 section shall be general receipts of the
20 district and may be used for any lawful
21 purpose of the district."

22 And I've answered the same question
23 several times already.

24 SENATOR SALAND: Is there any

1 provision in this bill -- if you'll continue
2 to yield, Senator.

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

5 SENATOR DILAN: Last question for
6 Senator Saland.

7 SENATOR SALAND: I'm sorry?

8 ACTING PRESIDENT STEWART-COUSINS:
9 Senator Dilan has indicated this is the last
10 question.

11 SENATOR SALAND: I regret that,
12 but I'll go on the bill when we're done.

13 Senator Dilan, is there any
14 provision in this bill which authorizes the
15 increase in taxes or fees? And if so, where
16 might I find it?

17 SENATOR DILAN: What was the last
18 portion of your question?

19 SENATOR SALAND: Is there any
20 provision in this bill that authorizes the
21 increase of the taxes and fees proposed in
22 this bill, and if there is, where might I find
23 it?

24 SENATOR DILAN: So let me

1 understand the question. Is the Senator
2 asking me are there any provisions for future
3 increases within this bill? Is that what
4 you're asking me?

5 SENATOR SALAND: Yes, that's what
6 I'm asking.

7 SENATOR DILAN: There are none.

8 SENATOR SALAND: Thank you,
9 Senator Dilan.

10 SENATOR DILAN: Thank you.

11 SENATOR SALAND: On the bill,
12 Madam President.

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

15 SENATOR SALAND: I would call
16 Senator Dilan's attention and the body's
17 attention to page 23, paragraph 7, which
18 reads: "Nothing contained in this section
19 shall be deemed to restrict the right of the
20 state to amend, repeal, modify or otherwise
21 alter statutes imposing or relating to the
22 taxes and fees producing revenues for deposit
23 in the Metropolitan Transportation Authority
24 Financial Assistance Fund or the

1 appropriations relating thereto."

2 So we -- when I say "we," I mean
3 you, the Democratic majority here -- have
4 specifically carved out and given notice that
5 beware, you can reasonably anticipate that
6 more is coming down the road.

7 On the bill. Businesses are taking
8 an extraordinary hit. Businesses,
9 not-for-profits. One of my hospitals has
10 already advised me they will lay 10 people off
11 by reason of this particular bill alone. But
12 these folks who are getting hit are
13 businesses. They are winding up paying four
14 times. They will pay the payroll tax, they
15 will pay the county tax, they will pay the
16 town or village or city tax, they will pay the
17 school tax. So it's not merely the payroll
18 tax that's going to knock them off their feet,
19 it's the accumulation of all the other taxes
20 as well.

21 Now, I didn't have the opportunity
22 to engage Senator Dilan, because he's not
23 taking any more questions, but my
24 assumption -- and it's merely an assumption,

1 based upon what I've heard in prior iterations
2 of this bill -- is that the capital, the bonds
3 that will fund the capital will be secured, at
4 least in part, by the money from the payroll
5 taxes.

6 Well, that being the case, you can
7 rest assured that you've gotten notice in that
8 Section 7 that this is merely the beginning.

9 Now, when Senator Dilan talked
10 about the fact that this only applied to
11 public schools, there are special-act schools
12 to whom this will apply. And I will give you
13 a list of those that are in the metropolitan
14 region.

15 There's the Little Flower Union
16 Free School District in Wading River. That, I
17 believe, is in Senator LaValle's district.
18 There is the Greenburgh-Graham Union Free
19 School, which in Hastings-on-Hudson; I believe
20 in Senator Stewart-Cousins' district.

21 And the following, all in
22 Westchester County: Greenburgh Eleven Union
23 Free School District, Greenburgh-North Castle
24 Union Free School District, Abbott Union Free

1 School District, Hawthorne Cedar Knolls Union
2 Free School District, Mount Pleasant Cottage
3 School Union Free School District, Mt.
4 Pleasant Blythedale Union Free School
5 District. All located in Westchester County,
6 either Dobbs Ferry, Irvington, Hawthorne,
7 Pleasantville, or Valhalla. I'm not sure, but
8 I believe most if not all of them are also in
9 Senator Stewart-Cousins's district.

10 These folks get no buy in this
11 bill. They are specifically taxed. They
12 don't even get the benefit of the ruse of the
13 reimbursement at some later date. They're in,
14 they're in in its entirety.

15 The section that deals with the
16 imposition of the payroll tax, as I alluded to
17 earlier, takes great pains to distinguish
18 between the imposition of the tax on wages and
19 benefits and then goes on to say that the
20 employer can't pass through that tax to wages
21 or benefits or compensation, more
22 appropriately. And then it says any exemption
23 that you get under other sections of the law
24 you don't get under this section of the law.

1 So the idea that somehow or other
2 this doesn't apply to other means of
3 compensation really is straining credibility.

4 Let me just conclude with a
5 situation that's particularly painful for my
6 county. I live at the end of the line. We
7 have probably somewhere in the area of 6,000
8 to 6,100 people, out of a population of in
9 excess of 300,000, who avail themselves on a
10 weekday basis of either peak or off-peak
11 transportation on Metro North.

12 That means about 98 percent of the
13 people in my district don't use Metro North,
14 certainly don't use it during the week or on
15 peak or off-peak hours. That means 98 percent
16 of the people who are currently paying,
17 without the pain that they're about to
18 experience -- increased sales taxes, franchise
19 taxes, so-called temporary surcharge,
20 petroleum business tax, local operating
21 assistance, station maintenance payments of
22 about \$63 million -- they're now going to be
23 hit with \$18 million more without even the
24 licensing fees that we've been talking about

1 here.

2 The City of New York, on the other
3 hand, has somewhere in the area of about
4 7.5 million fares during that same period of
5 time.

6 The benefit to the people of
7 Dutchess County is modest at best, and that's
8 probably a stretch. Dutchess County is
9 effectively a revenue hostage to this
10 Metropolitan Transportation Authority. This
11 bill provides license to the MTA to plunder,
12 to pillage, and yes, to steal from the people
13 of Dutchess County.

14 There's nothing to be derived for
15 the vast majority of the people in my
16 district, and I'm sure that holds true for
17 other of the suburban counties. This is an
18 extraordinarily painful, painful experience to
19 have this rammed down our throats in this
20 fashion without any pretense of even a hearing
21 being held by this body in the district to let
22 those who are suffering the most grievous
23 injury to have the opportunity to be heard.

24 ACTING PRESIDENT STEWART-COUSINS:

1 Thank you.

2 Senator Larkin.

3 SENATOR LARKIN: Thank God for
4 small favors. Madam President, I want to give
5 Senator Dilan a break. I'd like to talk to
6 Senator Perkins and ask him a few questions.

7 ACTING PRESIDENT STEWART-COUSINS:
8 Senator Perkins, will you yield for some
9 questions?

10 SENATOR PERKINS: By all means,
11 Madam President.

12 SENATOR LARKIN: Through the
13 chair.

14 Senator Perkins, as you were
15 drafting this bill, did you receive any input
16 from the Association of Towns, hospitals,
17 National Federation of Independents, the State
18 Business Council, Hospitals Association,
19 expressing their concern about it and their
20 opposition to it?

21 SENATOR PERKINS: Through you,
22 Madam President. I would say two things.
23 (A), we did receive some communications in
24 that regard, directly and, even more

1 importantly, through you and some of your
2 other colleagues that had indicated to me the
3 concerns that you had about the legislation.
4 And we accordingly tried to take that into
5 consideration as we moved forward, yes.

6 SENATOR LARKIN: Continue?

7 ACTING PRESIDENT STEWART-COUSINS:
8 Senator Perkins, will you continue to yield?

9 SENATOR PERKINS: Yes, Madam
10 President.

11 SENATOR LARKIN: What were the
12 results of your discussions?

13 SENATOR PERKINS: Through you,
14 Madam President, the results of the
15 discussions is the legislation that we have
16 before us today, which I look forward to you
17 supporting.

18 SENATOR LARKIN: Well, you know,
19 that sounds good. I'm reading a note here, it
20 says: "I don't think anybody in Albany paid
21 attention to us." We have businesses that
22 have said, We're going to go out of business.
23 Why are they going to go out of business?

24 Will Mr. Perkins continue?

1 ACTING PRESIDENT STEWART-COUSINS:

2 Senator Perkins, do you continue to yield?

3 SENATOR PERKINS: Yes, Madam
4 President.

5 SENATOR LARKIN: You know, I know
6 you received these, because they told us they
7 sent them to every member. What was the
8 reaction? I mean, you're saying to me the
9 bill is here today. But were any of these
10 concerns brought here?

11 SENATOR PERKINS: Through you,
12 Madam President. As I indicated, you and I --
13 they not only shared this with me through the
14 letters, but you and I had conversations. And
15 I had acknowledged to you, I remember,
16 directly that I had received such
17 communications.

18 The result of those types of
19 communications as well as others were brought
20 into consideration as we ultimately came up
21 with what's before us this evening that I
22 believe takes us -- is on the right track that
23 takes us where we need to go to address the
24 crisis. That while it may be most prominent

1 with respect to the people in the City of
2 New York, recognizes that this is a regional,
3 in fact statewide concern. And I hope that
4 this bill, with your support, will take us
5 where we need to go to address it.

6 SENATOR LARKIN: You'll be
7 waiting a long way on you know what.

8 Would Senator Dilan yield?

9 ACTING PRESIDENT STEWART-COUSINS:
10 Senator Dilan, will you yield?

11 SENATOR DILAN: Yes, Madam
12 President.

13 SENATOR LARKIN: Senator Dilan,
14 there are four counties in the MTA area --
15 Putnam, Dutchess, Orange and Rockland -- where
16 each one of us have a quarter of a vote. In
17 other words, if four representatives don't
18 show up, there's no vote for those four
19 counties.

20 During your discussion of the
21 organization and structure of the MTA, did you
22 ever discuss representation by the 12
23 counties? Whisper gently.

24 SENATOR DILAN: Well, at no point

1 did I discuss the organization or the board of
2 the MTA. You know, we were talking about the
3 finance package and reforms, and I basically
4 worked on the financial transportation portion
5 of it.

6 SENATOR LARKIN: Would the
7 Senator continue to yield?

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

10 SENATOR DILAN: Yes, Madam
11 President.

12 SENATOR LARKIN: Do you think
13 it's proper to give us one-fourth of a vote
14 but yet charge us the same amount of taxes
15 that you charge somebody with a full vote?

16 SENATOR DILAN: Well, my
17 understanding of this is that this region, the
18 Metropolitan Commuter Region, gets services
19 from the Metropolitan Transportation
20 Authority. And we are only applying these
21 fees to that particular region.

22 All 12 counties are being treated
23 the same. We're exempting all schools within
24 that region with regard -- or reimbursing,

1 rather, let me correct that -- reimbursing the
2 schools within that region, the public
3 schools.

4 In regard to how the MTA operates
5 and how they apportion their votes, I did not
6 deal with that.

7 SENATOR LARKIN: Would he still
8 continue?

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

11 SENATOR DILAN: Yes, Madam
12 President.

13 SENATOR LARKIN: In the MTA's
14 capital, are you aware that they have, for
15 lack of a better word, browbeat legislators in
16 both houses to provide ante-up money for
17 projects that belong to the MTA? We've paid
18 time and time again for these projects. And
19 yet we keep talking about something else. You
20 know, we're not going to do this and we're not
21 going to do that.

22 On the bill.

23 ACTING PRESIDENT STEWART-COUSINS:
24 Senator Larkin, on the bill.

1 SENATOR LARKIN: You know, I
2 stand here tonight totally disgusted, ashamed.
3 I can't answer my people in my district.
4 Maybe some of you can go home and hide
5 someplace; I can't. How do I tell the School
6 for the Deaf and the Blind that "We're going
7 to take money from you"? Now, let's be
8 realistic. That's stupid.

9 You know, we talk about "we're
10 going to reimburse you." Read page 11 up on
11 the top, and it says it is the intent of the
12 Governor. And a couple of pages later, it
13 says we're going to do something else. Is it
14 the intent of the Governor, or are we going to
15 force them to do it?

16 Now, we know -- I don't know if all
17 of you know; I don't know what your school
18 districts are. But my school districts are
19 telling me, We're going to borrow money. Do
20 we all realize that outside of the City of
21 New York, on the 19th of this month, school
22 districts are going to vote a school budget?

23 I'm sure that the Governor will
24 have a big press conference tomorrow and sign

1 this bill. But the burden we're placing on
2 the school districts is going to wrap more,
3 take people out of it.

4 We've been hearing since January
5 that the stimulus package is going to take
6 care of everything. Well, then why are school
7 districts laying people off? In Orange County
8 there's over 500 teachers and teachers'
9 assistants that have been laid off. Why?
10 Because of what we're doing today, part of it.
11 The other part is that the stimulus is going
12 to take care of it. The stimulus isn't taking
13 care of anything.

14 We ought to be ashamed of ourself,
15 truly ashamed. Look at the administrative
16 actions that are going to take place. We're
17 going to take the money from the school
18 districts, they're going to turn it over to
19 the Tax Commissioner, he's turn it over to the
20 Comptroller, the Comptroller is then going to
21 go into the MTA. They're going to set up two
22 accounts to handle it.

23 The paperwork in this is
24 unbelievable. And we sit here tonight looking

1 at it and laughing. It's a big deal. You can
2 ride a subway next week; I can't get a gallon
3 of gas for that price. I don't see anybody
4 coming up to me and saying, Hey, billy, here's
5 a couple of hundred dollars to buy gas. And
6 you can ride on the subways and the buses
7 cheaper than we can.

8 And then we talk about the roads
9 and bridges. They're falling apart. Oh, and
10 we got stimulus, we got stimulus. That's like
11 a song we're going to have soon.

12 We ought to be ashamed of ourself,
13 standing here tonight saying that this is what
14 we're going to do. We haven't done anything.
15 All we've done in this bill here is to say
16 that we're scared of New York City voters and
17 that we want to protect them.

18 I don't blame Senator Dilan, and I
19 don't blame Senator Perkins. They're very
20 respectable and solid individuals. But
21 somebody is sitting behind the scene.

22 And last but not least, I'm really
23 mad because I see my colleagues here asking
24 someone to yield and they won't yield. Two

1 reasons. One, they don't know the damn
2 answer, or number two, they want to be silent.

3 Now, let's be very serious on what
4 we're doing. We're sending young American men
5 and women into combat, to teach another
6 country democracy, responsibilities and all of
7 that. And then we come back to our own
8 country and say, I'll hide behind something
9 that says I haven't spoken, so you can't ask
10 me.

11 You know what we sound like? A
12 bunch of kids in first grade. If I can't play
13 first base, I'll taking my glove and go home.

14 We ought to be ashamed of ourself.
15 There's no other word for it. Why won't you
16 answer? You let me know, because I don't
17 believe it.

18 Thank you, Madam President.

19 ACTING PRESIDENT STEWART-COUSINS:

20 Thank you.

21 Senator Maziarz.

22 SENATOR MAZIARZ: Thank you very
23 much, Madam President.

24 I was wondering if my good friend

1 and colleague Senator Dilan would yield for a
2 couple of questions, Madam President.

3 ACTING PRESIDENT STEWART-COUSINS:
4 Senator Dilan, will you yield?

5 SENATOR DILAN: Yes, Madam
6 President.

7 SENATOR MAZIARZ: Thank you very
8 much, Senator.

9 And I'll get to my questions, Madam
10 President, but I do want to, again -- you
11 know, through the wonder of the Worldwide Web
12 and Twitter and YouTube and Facebook and all
13 the social networking stuff and even email
14 today, I think we're joined by the television
15 stations from Buffalo and Western New York.
16 Because I'm going to confine my questions to
17 issues involving Western New York, Senator.

18 And I do want to say, Madam
19 President, that in all my years that I've been
20 in this chamber, I don't know that I have ever
21 seen a Majority or a Minority Leader refuse to
22 yield for a question. So we're seeing history
23 made here tonight.

24 SENATOR DILAN: Point of order,

1 Madam President. I want to know why I'm
2 standing here. I'm standing for a question.

3 SENATOR MAZIARZ: I'm getting to
4 my question. I'm getting to my question.

5 ACTING PRESIDENT STEWART-COUSINS:
6 Senator Maziarz --

7 SENATOR MAZIARZ: I'm getting to
8 my question.

9 ACTING PRESIDENT STEWART-COUSINS:
10 Please.

11 SENATOR MAZIARZ: You know, the
12 Senate Majority, under the leadership of
13 Senator Malcolm Smith, has done many things in
14 this session that have affected Western
15 New York in a very negative fashion, according
16 to some very prominent people in Western
17 New York.

18 First, there was a \$550 million
19 sweep of the Niagara Power Project, which
20 Democratic Congressman Brian Higgins called --

21 SENATOR DILAN: Madam President,
22 I still have a point of order as to what is
23 the question.

24 ACTING PRESIDENT STEWART-COUSINS:

1 Senator Maziarz --

2 SENATOR MAZIARZ: Well, I'm going
3 to get to my question. Is there a list --

4 SENATOR DILAN: Well, if he's on
5 the bill, I will sit down.

6 SENATOR MAZIARZ: No.

7 ACTING PRESIDENT STEWART-COUSINS:
8 I think if you would direct your question at
9 Senator Dilan. And then of course if there
10 are commentaries that you'd like to make, that
11 would be appropriate. But --

12 SENATOR MAZIARZ: Well, Madam
13 President, through you. What I want to do is
14 point out how harmful the decisions that have
15 been made by the Senate Majority have been to
16 Western New York and how harmful this -- this
17 is like a continuation of that, and I want to
18 ask Senator Dilan about that.

19 SENATOR DILAN: Well, I'm waiting
20 for a question. That's why I have the point
21 of order.

22 ACTING PRESIDENT STEWART-COUSINS:
23 Senator Maziarz, if you would pose the
24 question it would probably move this along a

1 bit.

2 SENATOR MAZIARZ: Senator Dilan,
3 there was a \$550 million sweep from the
4 Niagara Power Project. Congressman Brian
5 Higgins, a Democrat, said that the Senate
6 majority --

7 SENATOR DILAN: Madam President,
8 I will not be answering any questions that's
9 not related to the 12 counties within this
10 area. And Senator Maziarz has only made
11 reference to Western New York. They are not
12 part of this legislation, so I will not be
13 accepting any questions from Senator Maziarz
14 at this time.

15 Thank you very much.

16 SENATOR MAZIARZ: Madam
17 President, through you, I would respectfully
18 disagree with my colleague. Madam President,
19 I would respectfully disagree.

20 The people from Western New York
21 are going to be paying for the reimbursements
22 to the school districts through their New York
23 State income tax. Are they not? That's one
24 of my questions.

1 ACTING PRESIDENT STEWART-COUSINS:

2 Senator Dilan --

3 SENATOR MAZIARZ: Madam

4 President, through you. The reimbursements to
5 the school districts in the MTA region will
6 come from the state's General Fund, which --

7 SENATOR DILAN: Madam President,

8 I gave the Senator an opportunity to ask a
9 question. He refused by continuing to speak
10 to issues that are not germane to this
11 legislation. Therefore, I am not answering
12 any of his questions. Thank you.

13 ACTING PRESIDENT STEWART-COUSINS:

14 Senator Maziarz, Senator Dilan will not be
15 yielding. Would you like to speak on the
16 bill?

17 SENATOR MAZIARZ: No, I would
18 like to ask if my other good friend, Senator
19 Perkins, would yield for a question.

20 ACTING PRESIDENT STEWART-COUSINS:

21 Senator Perkins, will you yield for a question
22 from Senator Maziarz?

23 SENATOR PERKINS: By all means,
24 Madam President.

1 SENATOR MAZIARZ: Thank you very
2 much, Madam President. Thank you, Senator
3 Perkins.

4 Senator Perkins, as I was saying, I
5 think that the people of Western New York who
6 are watching this today are very much affected
7 by this, because there is a provision in this
8 bill that will provide reimbursement to those
9 school districts in the MTA region that will
10 come from the state's General Fund. And of
11 course the state's General Fund is the
12 personal income tax that's paid by people in
13 Western New York.

14 Now, we've made a lot of decisions
15 here about Western New York I think that are
16 detrimental to Western New York. I talked
17 about the sweep of the Power Authority, what
18 Congressman Brian Higgins thought about that.

19 Just the other day, we did a bill
20 that adds two commissioners to the NFTA that
21 Commissioner James Eagan, who is cochair of
22 the Senate Democratic Campaign Committee
23 finance group, said is detrimental to
24 transportation in Western New York.

1 Healthcare, Robert Gioia, an
2 appointee of the old former Governor Mario
3 Cuomo, said that the Senate Majority destroyed
4 healthcare in Western New York.

5 So my question to you, Senator, is
6 is it fair that constituents of Senator
7 Stachowski, of Senator Thompson, of Senator
8 Volker, of myself, are made to pay for this
9 bailout of the MTA when probably 99.9 percent
10 of them will never use the MTA?

11 SENATOR PERKINS: Through you,
12 Madam President. I believe there's a fairness
13 here, and I believe that we need to really
14 focus on the fact that this MTA is not just a
15 regional service or economic engine for
16 New York City but really for the whole state.

17 And so I think that while many feel
18 concerned about having to pay, we've tried
19 craft a piece of legislation that shares the
20 pain, so to speak. And so that we can have a
21 state-of-the-art MTA that can continue to be
22 an important economic engine for the state.

23 SENATOR MAZIARZ: Thank you,
24 Senator Perkins.

1 Madam President, through you, would
2 Senator Perkins continue to yield?

3 ACTING PRESIDENT STEWART-COUSINS:
4 Senator Perkins, would you continue to yield?

5 SENATOR PERKINS: By all means,
6 Madam President.

7 SENATOR MAZIARZ: Thank you,
8 Senator. I very much appreciate that. So I
9 appreciate your answer that the people of
10 Senator Stachowski's, Senator Thompson's,
11 Senator Volker's district and my district are
12 financially contributing to this bailout of
13 the New York City and Metropolitan
14 Transportation Authority downstate area.

15 I guess my question would be,
16 Senator Perkins, you know, you took the power;
17 you gave us commissioners on the NFTA that
18 even your own appointee said was unnecessary;
19 one of the major healthcare advisors here in
20 Western New York said that you nearly
21 destroyed healthcare in Western New York in
22 the budget. Do you think it's fair that we
23 should have to pay for the MTA too?

24 SENATOR PERKINS: Through you,

1 Madam President, I wouldn't quite agree with
2 that characterization of the budget process
3 that we all contributed to. So I can't -- I
4 can't agree with that characterization of
5 destroying anything through that budget
6 process, as you suggested someone said. They
7 may have said it; it doesn't make it a fact.

8 SENATOR MAZIARZ: Well, through
9 you, Madam President, I can tell you that
10 Robert Gioia, he's chairman of the Great Lakes
11 Health governing board. He was a former
12 appointee of Governor Mario Cuomo. He's not
13 of my political party, he's of yours.

14 And I can tell you exactly what he
15 said: "Words cannot express how angry I am,
16 along with the boards of the Great Lakes
17 Health, Kaleida Health, and Erie County
18 Medical Center, at the state budget passed
19 last month. Simply stated, the 2009-2010
20 state budget is the worst I've seen in my
21 55 years as a resident of Western New York.
22 The men and women of the Western New York
23 legislative delegation who voted for this
24 budget" -- and I will add my own words there;

1 there were only two, Senator Thompson and
2 Senator Stachowski -- "should apologize to
3 their constituents and the taxpayers of
4 Western New York. They had an opportunity to
5 achieve something great for Western New York.
6 Instead, they dealt it a catastrophic blow."

7 That's what they said, Senator.

8 ACTING PRESIDENT STEWART-COUSINS:
9 Was there a question?

10 SENATOR MAZIARZ: Would you --
11 I'm sorry, would you change your
12 characterization after hearing what Mr. Gioia
13 had to say?

14 SENATOR PERKINS: Through you,
15 Madam President, no, I wouldn't.

16 SENATOR MAZIARZ: Madam
17 President, I would ask if -- thank you very
18 much, Senator. I appreciate your -- I would
19 ask if Senator Dilan would yield for a
20 question.

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

23 SENATOR DILAN: I just want to
24 make a point of order, Madam President.

1 I gave Senator Maziarz three
2 opportunities to ask me a question. And I am
3 not going to subject myself to the role that
4 he's playing here in the Senate chambers.

5 Thank you.

6 SENATOR MAZIARZ: Thank you,
7 Madam President. I think that the people of
8 Western New York who are watching tonight
9 deserve answers to their questions.

10 But, Madam President, I would ask
11 if Senator Larkin would yield for a question.

12 ACTING PRESIDENT STEWART-COUSINS:
13 Senator Larkin, do you yield for a question?

14 SENATOR LARKIN: Yes.

15 SENATOR MAZIARZ: Senator Larkin,
16 thank you very much for yielding to a
17 question.

18 Senator, you stated earlier during
19 your question period that there is a school in
20 your district that educates deaf and blind
21 children, that they will be charged the
22 payroll tax and they will not be reimbursed.
23 Did I understand you correctly, Senator?

24 SENATOR LARKIN: That's exactly

1 the way they're saying it from SED, and it's
2 also in Westchester County also.

3 SENATOR MAZIARZ: Senator, it's
4 unbelievable. I have to ask you again.

5 ACTING PRESIDENT STEWART-COUSINS:
6 Senator Maziarz --

7 SENATOR MAZIARZ: Through you,
8 Madam President, I'm sorry.

9 ACTING PRESIDENT STEWART-COUSINS:
10 Are you still asking Senator Larkin to yield?

11 SENATOR MAZIARZ: I am. Through
12 you, Madam President.

13 ACTING PRESIDENT STEWART-COUSINS:
14 Senator Larkin, do you yield?

15 SENATOR LARKIN: Most certainly.

16 SENATOR MAZIARZ: I apologize. I
17 apologize, Madam President. I was in such a
18 state of shock that this would happen.

19 Senator Larkin, Malcolm Smith and
20 the Senate Democratic Majority are going to
21 impose a tax on a school that educates blind
22 and deaf children and not reimburse them?

23 SENATOR LARKIN: That's exactly
24 what they're telling them.

1 SENATOR MAZIARZ: Thank you,
2 Senator Larkin.

3 Madam President, on the bill.

4 ACTING PRESIDENT STEWART-COUSINS:
5 Senator Maziarz on the bill.

6 SENATOR MAZIARZ: I think this
7 bill can use some drastic improvement, Madam
8 President.

9 Thank you.

10 ACTING PRESIDENT STEWART-COUSINS:
11 Thank you.

12 Senator Morahan.

13 SENATOR MORAHAN: Thank you,
14 Madam President.

15 I represent the County of Rockland
16 and the County of Orange. These two counties
17 are part of the 12, and they're the only two
18 counties that are shortchanged seriously by
19 the MTA.

20 To give you an example, the County
21 of Orange receives \$63.5 million from the MTA
22 in services and direct payments. However, the
23 same county, the County of Orange, pays to the
24 MTA \$95.5 million. So there's a value gap of

1 almost \$32 million between the MTA services
2 and what they collect through sales and
3 mortgage taxes and those sorts of devices from
4 the people of Orange County, \$31 million.

5 Now we're going to lay upon that a
6 tax that will be directly related to the
7 school tax by taxing their government, their
8 county, their villages and their towns, on top
9 of the \$32 million that they're already being
10 shortchanged yearly by the MTA.

11 The other county, Rockland County,
12 which I represent has a \$42 million value gap.
13 We receive, in Rockland, \$46.5 million from
14 MTA services, but we give the MTA over
15 \$88 million annually, leaving us with a
16 \$42 million value gap.

17 They're the only two counties in
18 the 12-county MTA region who have such a value
19 gap or any value gap. We're the only two.
20 That's number one.

21 I have received today a legislative
22 resolution passed by the County of Rockland
23 asking for state legislation to withdraw from
24 the MTA. They figure they can provide the

1 services a whole lot cheaper by contract and
2 have a net savings to the taxpayers.

3 I've received copies of two
4 letters, one to the MTA and one to myself,
5 going back as far as December of 2008
6 complaining to the MTA that Rockland County
7 receives very little service.

8 Now the employers in Rockland
9 County are now going to be taxed on a payroll.
10 And I would venture to say if there's two
11 employees in the County of Rockland who use an
12 MTA service to get to their place of
13 employment, it's one too many.

14 So now we're going to have to pay
15 school tax. And I heard Senator Dilan's
16 answer on the school tax. That yes we're
17 going reimburse you in one section. In the
18 second section, it says however, if there's no
19 appropriation to reimburse you, we'll let you
20 ride for six months, just like a car dealer,
21 as Senator Bonacic said, but after that you're
22 liable for that tax reimbursement or no
23 reimbursement. So that's a check-in-the-mail
24 kind of promise.

1 So as far as I'm concerned, this
2 bill, which I really -- I would ask Senator
3 Perkins would he yield for a question.

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

7 SENATOR PERKINS: Yes, Madam
8 President.

9 SENATOR MORAHAN: Thank you,
10 Senator.

11 Senator Larkin asked you a few
12 moments back whether you received any of these
13 letters anti this particular bill or this
14 approach. My question is, did you receive any
15 letters of support?

16 SENATOR PERKINS: Through you,
17 Madam President. We received probably more
18 communications of support for our effort to
19 fix the crisis than we received that were
20 opposed to fixing the crisis.

21 In fact, I must say since I've been
22 here, I have received more emails and related
23 types of communications of urgency about
24 fixing this crisis than anything I've ever

1 received before.

2 SENATOR MORAHAN: I agree with
3 you, there was a sense of urgency and people
4 wanted this Senate to address the problem,
5 they wanted this Senate's leadership to make
6 substantial moves. And I know I received
7 those sorts of emails as well.

8 But I don't know how many letters
9 of support [using air quotes] you're going to
10 get from the other seven counties outside of
11 New York to fix this crisis in the MTA. I
12 didn't receive one from within my district.

13 Thank you, Senator.

14 So as a matter of fairness, I think
15 there ought to be some adjustment in the MTA
16 budget that would provide the counties of
17 Orange and Rockland the services or
18 reimbursement, if you will, so that we could
19 be on a level playing field with the other
20 10 counties that have a value received equal
21 to what their commitment is to. This is going
22 to make that value gap a great deal larger.

23 And I will be submitting a bill at
24 the request of the Legislature in Rockland

1 County, who voted unanimously, both parties,
2 to withdraw from the MTA. And in the past,
3 they did get assurances from governors going
4 back that, if it got bad, the governors would
5 let them off the hook and get out of the MTA
6 if they decided to do that.

7 That's how bad it is in Rockland
8 County, and I believe it's equally bad in
9 Orange County. And I would not be surprised
10 if I received a request for home rule to
11 withdraw from the MTA. You can't have,
12 between those two counties, a \$75 million
13 shortfall and then impose upon them a payroll
14 tax, impose upon them a property tax increase
15 when you have that payroll tax hit the county,
16 the towns and the villages, and with some sort
17 of shell game going on with reimbursement of
18 the public schools, which may or may not
19 happen.

20 And we have plenty of evidence here
21 with the holding back of prior commitments,
22 either through member initiatives or through
23 capital programs where the Governor said we're
24 not going to do it.

1 Now they're going to have to
2 believe the same Governor who's saying he's
3 going to do it if the money is there. And
4 then he says if the money is there, but we
5 have another crisis coming of another
6 \$17 billion shortfall. And the stimulus
7 package will be used up.

8 So I don't know if we lose our
9 credibility, like the MTA has lost all its
10 credibility. They're already talking that
11 this isn't going to fix the problem to their
12 liking. But it was brought up earlier here we
13 need to know an honest answer about the MTA.

14 The one thing Senator Smith said
15 that I totally agree with in the very
16 beginning is before we did anything, we should
17 have a forensic audit done on the MTA to find
18 out what they could do, what they could do to
19 make it better, what they could do to make it
20 more efficient. Because it seems to me with
21 the fares they're raising, I think private
22 industry, if they had a shot, would be running
23 those railroads a whole lot cheaper.

24 So I am compelled to vote against

1 this budget with its totally harmful,
2 job-killing, property-tax-raising for the
3 County of Orange and the County of Rockland,
4 who get no equal treatment by the MTA -- and
5 we're on the short end of the stick already
6 for almost \$75 million, now to be compounded.

7 I will be voting in the negative.
8 Thank you, Madam President.

9 ACTING PRESIDENT STEWART-COUSINS:
10 Thank you, Senator.

11 Senator Golden.

12 SENATOR GOLDEN: Thank you, Madam
13 President. Would Senator Dilan please yield.

14 ACTING PRESIDENT STEWART-COUSINS:
15 Senator Dilan, would you yield for a question?

16 SENATOR DILAN: Yes, Madam
17 President.

18 SENATOR GOLDEN: Senator Dilan, I
19 know it's been a long and tenuous going back
20 and forth. I'm going to be brief, with about
21 five or six questions, and they're not too
22 technical, so hopefully we can get some
23 answers and move on.

24 You know, we all need a bill done.

1 We all know that we want to have our buses and
2 our trains running. We know how important it
3 is for the people of the City of New York.
4 And I was just wondering, as to process, what
5 else was taken into consideration before we
6 accepted the plan that's before us today.

7 Did other areas, were they
8 reviewed, such as the congestion pricing that
9 could have been reviewed in the City of
10 New York to bring in hundreds of millions of
11 dollars? Was that part of the process? Was
12 that reviewed?

13 SENATOR DILAN: Well, originally
14 there was the Ravitch Commission report, which
15 I think that we're all familiar with, which
16 included the tolls. There was plenty of
17 discussion regarding tolls, and that was
18 something that was apparently not acceptable
19 to many members of -- several Senators.

20 There were other options that were
21 discussed. A gasoline tax was discussed.
22 There were many, many options during this
23 whole process that were talked about. And
24 many of them were very public, through the

1 media and in other discussions.

2 SENATOR GOLDEN: Will Senator
3 Dilan continue to yield?

4 SENATOR DILAN: Yes.

5 SENATOR GOLDEN: Was the
6 cigarette tax from the Indian reservations,
7 was that ever brought up? I believe about --
8 in the numbers that we have, it's well over a
9 billion dollars a year that can be brought in.
10 Was that discussed?

11 SENATOR DILAN: It was not
12 discussed as part of this package. But I
13 don't know if there are any Indian
14 reservations within the 12-county region.

15 SENATOR GOLDEN: There are.

16 SENATOR DILAN: There are?

17 SENATOR GOLDEN: There are.

18 The --

19 ACTING PRESIDENT STEWART-COUSINS:
20 Are you asking Senator Dilan to continue to
21 yield?

22 SENATOR GOLDEN: Yes, if you
23 will, Senator Dilan.

24 ACTING PRESIDENT STEWART-COUSINS:

1 Senator Dilan, do you continue to yield?

2 SENATOR DILAN: Yes.

3 SENATOR GOLDEN: Was a statewide
4 buyout, was that considered? There are 45,000
5 employees that are capable of taking a buyout
6 that would have generated over a billion
7 dollars in funds. Was that discussed?

8 SENATOR DILAN: Madam President,
9 my answer is going to be the same. There were
10 many options that were discussed. These were
11 not the only ones. There were many changes or
12 discussions that were going on. There were
13 options that were within the initial bill that
14 was reported out of the Transportation
15 Committee, referred to Finance. So there were
16 many options that were discussed.

17 If this were an easy solution, it
18 probably would have been resolved earlier this
19 year. And in many cases, any revenue sources,
20 we were always talking about the region and
21 not things that pertain outside of the region.

22 SENATOR GOLDEN: Thank you,
23 Senator Dilan.

24 Would you continue to yield?

1 SENATOR DILAN: Yes.

2 ACTING PRESIDENT STEWART-COUSINS:

3 Senator Dilan, will you continue to yield?

4 SENATOR DILAN: Yes.

5 SENATOR GOLDEN: It's along the
6 same line. I'm trying to get answers. I know
7 that there was a lot discussed, and I'm trying
8 to get yes or no answers to some of these
9 questions. I know they're difficult, some of
10 them. Some of them may have been discussed;
11 some may not have been discussed.

12 But one I think is important for
13 all of us is the stimulus dollars. There's
14 \$7 billion this year, \$8 billion next year.
15 And I know that most of this dollars going to
16 the MTA are for operating dollars when in fact
17 not too long ago we had a plan that would have
18 taken care of the operating as well as the
19 capital plan.

20 So I wanted to know if we had
21 included the thought of the stimulus money for
22 this year and for next year as part of the
23 process of getting the MTA out of this
24 bailout.

1 SENATOR DILAN: So your question
2 is whether the stimulus package was discussed?

3 SENATOR GOLDEN: Yes, and how
4 would it have played a role. Did it play a
5 role in the discussion --

6 SENATOR DILAN: It's only for
7 capital, and there were apparently guidelines
8 that the federal government had regarding the
9 stimulus package.

10 It's my understanding that the MTA
11 did receive stimulus money. However, for some
12 reason or other, maybe federal regulation or
13 some other law or regulation, none of that
14 money is being used in this particular
15 package.

16 I know I do have a very large
17 computerized spreadsheets of millions and
18 millions of dollars that have been provided
19 from the stimulus package for roads and
20 highways outside of the MTA region that's
21 being used for that.

22 SENATOR GOLDEN: If the good
23 Senator would continue to yield.

24 ACTING PRESIDENT STEWART-COUSINS:

1 Senator Dilan, do you continue to yield?

2 SENATOR DILAN: Yes.

3 SENATOR GOLDEN: I know that
4 there was an awful lot of stimulus money we
5 can't trace it out, and we've been asking
6 Finance to help us find out where a lot of
7 that stimulus money is. But we haven't been
8 able to find all that \$7 billion in stimulus.

9 And we'd like to find out, if you
10 can, if you can get us some of those numbers.
11 I know of the numbers have been released on
12 some of the roads and highways, but nothing
13 near to the number that has been stipulated
14 for this year from the federal government.

15 And that's why I brought up the
16 stimulus money would have obviously really
17 helped us had we been able to use that money,
18 this year and next year, to be able to get us
19 out of the bind that we're in today and to
20 make sure we had a capital program going
21 forward. So that was the reasons for my
22 questions on the stimulus money.

23 I'm going to change my -- and I
24 know some of these questions are redundant to

1 a degree. But it's just to get an idea of
2 where your conference may go in the future.
3 And I know we've talk about school districts.
4 And we've talked about money going back to the
5 school districts. And we've talked about the
6 parochials, the privates, and the charters on
7 how there is no money stipulated.

8 Do you plan in the future to deal
9 with trying to make them whole as we go
10 forward in some other way or form through the
11 budget process?

12 SENATOR DILAN: Can he just
13 rephrase? Because I was getting background
14 noise and I couldn't hear clearly.

15 ACTING PRESIDENT STEWART-COUSINS:
16 Senator Golden, would you rephrase your
17 question?

18 SENATOR GOLDEN: In the MTA
19 bailout plan we have money going back to the
20 public school districts. We don't have any
21 money going back to the private, the parochial
22 and the charter schools. And what I'm asking
23 is does your conference in the future plan to
24 correct that outside of this MTA bailout plan?

1 SENATOR DILAN: Well, the
2 New York State Senate -- and once this
3 legislation is passed, approved by the other
4 house and the Governor -- and I've been
5 basically dealing with the revenue sources.
6 But during discussions, it's been my
7 understanding, and the reforms and the
8 forensic audit that we're talking about, if
9 the forensic audit would show that there would
10 be significant savings or other sources of
11 revenues that could be used to reduce the
12 payroll tax or to realize savings or
13 stabilizing the fares in the future, of course
14 we're going to do that.

15 That's the purpose of the forensic
16 audit and the reforms that are included in
17 this package. And I think Senator Perkins has
18 been articulating that tonight.

19 And we're going to do everything
20 possible to ensure that the MTA really lives
21 and completes their original mission of when
22 they were first established, the mission of
23 the Metropolitan Transportation Authority was
24 to be self-sustaining. And that is the goal

1 here, Madam President.

2 SENATOR GOLDEN: Would the good
3 Senator continue to yield, Madam President.

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

6 SENATOR DILAN: Yes.

7 SENATOR GOLDEN: My question was,
8 will those private, parochial and charter
9 schools be made whole? And your answer to me
10 is yes, it will, after we do a forensic rotate
11 audit of the MTA. Did I understand that
12 correctly?

13 SENATOR DILAN: It is the hope
14 that after a forensic audit.

15 And it is the hope that if our
16 economy recovers, it is the hope that if real
17 estate taxes -- or revenues, rather, make a
18 comeback, that the Metropolitan Transportation
19 Authority can operate on a self-sustaining
20 basis. And it would not only help all those
21 particular schools or agencies you mentioned
22 but also businesses in the region and in the
23 State of New York.

24 SENATOR GOLDEN: And if the good

1 Senator will still yield, Madam President.

2 ACTING PRESIDENT STEWART-COUSINS:

3 Senator Dilan, do you continue to yield?

4 SENATOR DILAN: Yes.

5 SENATOR GOLDEN: Along the same
6 line, there are many not-for-profits that have
7 been hit across the 12-county area. The
8 numbers are astounding to some of our
9 not-for-profits that work with our seniors,
10 our homeless, housing, and kids.

11 And will that be part of the
12 process, to try to get the not-for-profits
13 made whole as well, going forward?

14 SENATOR DILAN: I would have to
15 give the same response that it is our hope
16 that at some point the Metropolitan
17 Transportation Authority would be able to
18 operate on a self-sustaining basis where we
19 would not have to resort to these measures in
20 subsidizing their operation.

21 Again, the purpose of the reforms
22 and the forensic audit and all the other
23 issues on transparency is so the public can
24 know how the MTA operates and to bring them

1 back to their original mission of becoming a
2 self-sustaining authority.

3 And I'm not clairvoyant, so I would
4 like to tell the Senator that I cannot predict
5 the future.

6 SENATOR GOLDEN: Would the good
7 Senator continue? I've only got about three
8 or four more questions.

9 SENATOR DILAN: I remember he
10 said he only had six, but --

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

13 SENATOR DILAN: Yes.

14 SENATOR GOLDEN: Changing in a
15 different direction, the 50-cent taxi charge,
16 did anybody think that we may not create a
17 little bit of competition and a little bit of
18 war with the livery car services now in the
19 City of New York that will probably be in the
20 City of New York competing with those Yellow
21 taxis? Did that come up in the negotiations?

22 SENATOR DILAN: Madam President,
23 there were many items that were considered
24 during discussion regarding this issue. And

1 there were considerations of what happened in
2 previous years in the budget. We're talking
3 about here within the City of New York
4 charging the medallion cabs this additional
5 fee.

6 We tried to find alternative
7 revenue sources, but it's a very difficult
8 situation that we're in. And with regard to
9 competition, we were also considering how you
10 would collect these fees from one particular
11 type of private vehicles or medallions. So
12 there were many things that were taken into
13 consideration. And this is the things that we
14 considered.

15 A medallion cab and the purpose of
16 the medallion is that you can publicly hailed.
17 A livery service is something that you have to
18 previously contract or call for that
19 particular service. So with respect to
20 competition, you cannot hail a livery cab.
21 You cannot hail a black car. The purpose of
22 the medallion is that you can hail them
23 anywhere within the region.

24 SENATOR GOLDEN: Thank you, good

1 Senator, for that answer. But if the good
2 Senator continues, we all know, going through
3 our communities, we hail black cars and
4 liveries on a regular basis in the outer
5 boroughs. And I've seen it in New York City
6 as well, when it's raining or when there's no
7 cabs available, that we're able to hail these
8 cars.

9 But I'm going to change direction.
10 I've got two more questions, possibly, and one
11 is again on the not-for-profits, if the good
12 Senator continues to yield.

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

15 SENATOR DILAN: I will yield for
16 two more questions.

17 ACTING PRESIDENT STEWART-COUSINS:
18 For two more questions, Senator Golden.

19 SENATOR GOLDEN: The
20 not-for-profits that we talked about in my
21 community -- Lutheran Medical, the hospitals,
22 Maimonides, Downstate Hospital, my nursing
23 homes, my senior centers, they're going to be
24 impacted pretty severely. And I was just,

1 when I was going through the bill, I seen that
2 the Port Authority -- is the Port Authority
3 exempted from paying any --

4 SENATOR DILAN: What was that?

5 SENATOR GOLDEN: The Port
6 Authority.

7 SENATOR DILAN: Are they
8 exempted?

9 SENATOR GOLDEN: Yes.

10 SENATOR DILAN: From payroll tax?

11 SENATOR GOLDEN: Yes.

12 SENATOR DILAN: My answer is yes.

13 SENATOR GOLDEN: I don't know --

14 SENATOR DILAN: He has one
15 question left.

16 SENATOR GOLDEN: No, no, no.
17 Well, I've seen that the U.N. is also -- is
18 the U.N. also exempted?

19 ACTING PRESIDENT STEWART-COUSINS:
20 Is that your second question?

21 SENATOR GOLDEN: Well, if he
22 wants to use that as the second question,
23 that's fine.

24 And why, is the question I would

1 ask. Why would you exempt the Port Authority,
2 and why would you exempt the U.N?

3 SENATOR DILAN: Well, first of
4 all, within his previous question he was
5 talking about various not-for-profits and
6 organizations within his district that will be
7 impacted. But I'd like to remind the good
8 Senator that also his constituents that ride
9 subways, buses, will also be impacted.

10 And to answer his final question,
11 the reason that the United Nations is exempted
12 is because we have do not have the authority
13 as a state legislature to tax the United
14 Nations, which is an international body.

15 And that was his final question.
16 Thank you very much.

17 SENATOR GOLDEN: Well, I didn't
18 get an answer to the Port Authority, as to why
19 the Port Authority was exempted.

20 SENATOR DILAN: The Port
21 Authority is a multistate agency, New York,
22 New Jersey. So it's the same answer.

23 Thank you very much, Madam
24 President.

1 SENATOR GOLDEN: Thank you, good
2 Senator.

3 On the bill.

4 ACTING PRESIDENT STEWART-COUSINS:
5 Senator Golden, on the bill.

6 SENATOR GOLDEN: I find it
7 amazing that the people in our communities in
8 the city and in the 12-county area are going
9 to, you know, be satisfied to listen that,
10 well, the Port Authority, we didn't do that
11 because it -- you know, cross-state
12 multiagency. But yet we're going to take a
13 school district that's cross-county and we're
14 going to find a way to tax the part that's in
15 the county that's taxable versus the county
16 part that's not taxable. So we found a way do
17 that, but we're going to exempt the Port
18 Authority.

19 My people in my community are going
20 to be very happy about that. And they're
21 going to be very happy to find out that the
22 U.N. was exempted as well, I think because we
23 didn't have the authority to do that. I think
24 they'll be very impressed to find out that the

1 people that most use the services are not
2 going to pay for them.

3 They'll be very impressed to find
4 out that we didn't do a congestion pricing
5 plan to go for the people that come in and use
6 the services in the city, such as the fire,
7 the police, the ambulances, the hospitals, the
8 parks. They're going to be very happy to find
9 out what our good colleagues here, the Senate
10 Democrats, did in putting this bill forward
11 and taxing the people in my community and in
12 the communities of the 12 counties.

13 They're going to be very -- you
14 know, I think the good Majority Leader had
15 spoken about how we're not going to do
16 anything until we have a top-to-bottom review
17 of that agency and find out where that money
18 is. And I read in the bill and I see "may," I
19 don't see "shall." I see that we may or may
20 not have a date as to when that top-to-bottom
21 review will be made, how this forensic
22 accounting would be done, when this forensic
23 accounting would be accountable to, and when
24 we would have a report on that forensic

1 accounting.

2 And all of the money that we've
3 discussed here today with my good colleague as
4 to being able to restore money to our
5 parochials, our privates, our charters, and to
6 our not-for-profits. You know, it was a nice
7 answer, but we all know that that's not going
8 to happen.

9 It's also very interesting that we
10 as a state, my colleagues in the Democratic
11 side, the other side of this room, passed a
12 budget that went from \$119 billion in spending
13 and went to \$132 billion in spending. And
14 they took \$7 billion in stimulus, and they put
15 it in an increase in spending. And they've
16 increased taxes and fees by \$8 billion, and
17 now we've just added another \$2.2 billion to
18 spending, which is over \$10 billion in
19 spending on taxes and fees that was created
20 here by my Senate colleagues, the Democrats.

21 My people in my community are going
22 to be very interested to see how we went from
23 \$119 billion to \$132 billion, and now we just
24 went another \$2 billion, that's \$134 billion.

1 Let me see. We're not finished yet with
2 the -- what is it, the capital program is not
3 finished yet, so we're going to have to do
4 some more on the capital program for the MTA.
5 And we haven't yet done the roads yet and
6 bridges for upstate, but we're going to do
7 that by the end of the year.

8 So let me see, what are we up to,
9 about \$140 billion in spending here in the
10 State of New York? My people are going to be
11 very interested to hear that. We owed the
12 taxpayer, we owed the people of this great
13 city and state, we owed them more what we gave
14 them. We gave them nothing. In the worst
15 economic times that we've seen or witnessed.

16 And it's only going to get worse
17 here. By the end of the year, the way the
18 spending here in this conference is going, our
19 Democratic colleagues, with the Governor and
20 with the Assembly, are taxing our families out
21 of existence in this great state.

22 There's a couple of trains out
23 there. There's a runaway train, it's the
24 runaway spending train, followed by a runaway

1 taxing train. And that train, the runaway
2 taxing train, is the fuel for the spending
3 train. And guess what? It's on a one-way
4 track.

5 Some people will think, hey, this
6 might be Governor Paterson's revival for
7 upstate, and taking all of the people out of
8 the City of New York and bringing them
9 upstate.

10 But we all know that the people
11 upstate are just as burdened and will be just
12 as burdened when this program, road program
13 and bridge program, is completed. So we all
14 know that these two runaway trains are on a
15 track out of the State of New York, with our
16 families, with our children, with our seniors.
17 Because they can't afford to stay here, they
18 won't be able to get jobs here, they will not
19 be able to maintain their homes here because
20 we allowed this runaway spending train to get
21 to \$140 billion in the year 2009. And we are
22 very close to that right now.

23 I know that the people across the
24 city and across the 12 counties and across

1 this state are not going to be satisfied with
2 what this body has done. We are accountable
3 to those people. We are accountable to those
4 families. And we let them down.

5 I vote no, Madam President.

6 ACTING PRESIDENT STEWART-COUSINS:
7 Senator Marcellino.

8 SENATOR MARCELLINO: Thank you,
9 Madam President.

10 The hour is late, so I don't intend
11 to ask any Senators to yield. I just would
12 like to make a couple of comments relative to
13 this bailout package, which I consider to
14 be -- no pun intended -- a train wreck looking
15 for a place to happen.

16 This bill is massive. You've heard
17 before, you've heard from my colleagues
18 earlier about the taxes, you've heard about
19 the schools, you've heard about the
20 repayments, you've heard about all of this.
21 The colloquy has been going on and on and on.
22 We were given a bill, given about an hour to
23 look at this bill and to review it before we
24 had to come on the floor and debate a very

1 extensive and very complex piece of
2 legislation.

3 Let me read something to you. This
4 was done in 2007. "To its credit, the MTA has
5 outlined a multiyear plan to balance the 2009
6 budget and to reduce future-year budget gaps
7 to manageable levels. The July plan, however,
8 fails to deliver on past promises to reduce
9 unnecessary waste and duplication. Last year
10 the MTA achieved only 41 percent of its
11 planned cost-reduction target, which was
12 modest from the outset."

13 This is a statement written in 2007
14 by the Comptroller of the State of New York,
15 Thomas DiNapoli, an analysis of a plan
16 proposed by the MTA to cut costs, to create
17 efficiencies that it made itself. And it says
18 very clearly here that you've only done
19 41 percent of what you said the MTA could do.

20 Now, who's watching the store here?
21 I hear a statement that we had to do this
22 thing and it had to be done immediately, we
23 were under severe pressure, that this only
24 came up recently. This is nonsense. This was

1 in 2007. I don't think Tom DiNapoli -- I've
2 known him for many years. He's a great guy,
3 but he's not a soothsayer. He can't see into
4 the future, but he clearly did here. He
5 predicted a shortfall. He predicted that the
6 MTA didn't do what it said it could do.

7 I heard my good friend Senator
8 Perkins talk about an audit. I heard Senator
9 Dilan, another good friend, talk about a
10 possible forensic audit.

11 I read this bill. I read this
12 bill; there's nothing in there. On page 37,
13 starting on line 46, it talks about a possible
14 independent audit may be -- the word "may" is
15 used, it may be ordered by the Speaker and the
16 Majority Leader. May be. No requirement
17 here. I also don't see the word "shall" in
18 here. I don't see the word "must" in here. I
19 think you have to do that.

20 The MTA is a \$7 billion plus
21 entity. It has thousands of employees.
22 Ladies and gentlemen, do you know that it has
23 400 people in its public relations department?
24 Four hundred people. Four hundred people to

1 do what? Say what a great entity this is?

2 The MTA is a disaster. It is the
3 worst-run authority in the state. Nobody
4 believes them, nobody. Not even the
5 Comptroller of the State of New York trusts
6 their numbers. No one. You can't go anywhere
7 in this state and mention the MTA without
8 getting something thrown at you.

9 This entity has lied, it has
10 misrepresented its books, misrepresented its
11 budget. The Long Island Railroad alone, as it
12 was discovered recently by the Attorney
13 General of the State of New York -- last time
14 I looked, he was a Democrat -- by the Attorney
15 General, he said that 89 percent of the Long
16 Island Railroad workers go out on workers'
17 comp pensions. On a disability pension.

18 How can that be? We have
19 firefighters and police who really do
20 heavy-duty work, and they don't go out on
21 those kind of pensions. Yet 89 percent of the
22 Long Island Railroad pensioners get a
23 disability. Fraud. Absolute fraud under
24 investigation now by our own Attorney General.

1 Where's the audit? Who's watching
2 the store? Who's going to hold them to the
3 fact that if we give them all this money -- as
4 Senator Dilan points out, billions, almost
5 \$3 billion -- \$2.5 billion is going to be
6 handed to them in the hopes that it's going to
7 be used appropriately.

8 Who's going to see that it is?
9 Who's going to ask them the question, Why do
10 you need so many people in public relation?
11 Why are you doing it? Where's the
12 duplication?

13 It's nice to have an audit that
14 adds up the books. I have some experience in
15 writing legislation requiring audits from
16 people who don't necessarily want to be
17 audited. I wrote the legislation, along with
18 Tom DiNapoli, then an Assemblyman, to audit
19 the school districts. The school districts
20 all said they didn't need audits, they didn't
21 need to be audited, they did everything right.
22 Roslyn proved them wrong.

23 The numbers in the Roslyn school
24 district added up. They added up. You added

1 them down this way, you added them across,
2 they all added up. But they were still in the
3 district blind. Yet they said, We don't need
4 to be audited.

5 The legislation that I authored
6 required an audit. And by the way, we gave
7 the Comptroller's office money. We put an
8 appropriation in the bill to give them money
9 so they could hire additional people. There's
10 nothing in this bill that authorizes that.
11 There's nothing in this bill that gives them
12 additional money to do extra work. We're
13 asking them to do extra work.

14 It talks about hiring an outside
15 auditor. Why? Why do we have to go outside?
16 We have a Comptroller, a perfectly legitimate
17 office. We have an Attorney General who we
18 all respect and trust, quite frankly. Why
19 don't we let them do it? Let them do their
20 job. That's what they're hired for. That's
21 what the people want them to do. Let them do
22 it. Why do we have to go outside? Who's
23 going to pay for that? Where is the money for
24 it? It's not in this bill. It's not in this

1 piece of legislation.

2 Madam President, this bill is a
3 sham. This bill is a taxing entity. This
4 bill promises we intend to pay you back,
5 schools, we intend to. Sounds like "the check
6 is in the mail." Sounds like "I'll respect
7 you in the morning." But this is what this
8 bill does. It does nothing. It talks a lot,
9 it discusses a lot, but it doesn't do what
10 it's supposed to do, and that is hold the MTA
11 to a very high standard. A very high
12 standard.

13 They're getting a lot of money, an
14 awful lot of money. In addition to \$8 billion
15 in new taxes, we're spending another
16 \$2.5 billion here. So we've raised spending
17 \$10 billion in just this term alone, and we're
18 not even through yet. That's a lot of money
19 going down the line here. That's a huge
20 amount of money coming out of the pockets of
21 our taxpayers, from the entire state.
22 Everybody pays those income taxes. That's
23 going to take the General Fund. Everybody
24 pays these taxes, and the 12 counties

1 downstate are all going to get ripped off.

2 This is not a good piece of
3 legislation that is being rushed. Two
4 hearings, only in the City of New York. What
5 happened to Long Island? We don't count?
6 What happened to Buffalo? They don't count?
7 What happened to Syracuse? They don't count?

8 Come on, guys. Come on, guys.
9 This is ridiculous. We should have had more
10 time. This was pointed out in 2007, there was
11 a problem. We did a budget this year. This
12 should have been done in the state budget.

13 This should have been done as part
14 of the state budget, not a separate entity.
15 It didn't need to be done separately. When
16 you're talking about money, there should have
17 been appropriations done. And the proper
18 place to do an appropriation is in the state
19 budget when we do a state budget, not weeks
20 later.

21 Not negotiating with three Senators
22 over here who say, We won't vote for it
23 because you're going to put tolls, so we won't
24 support it. So we won't do tolls. Or two

1 Senators who say, We won't vote for this
2 because we're going to hold the schools
3 harmless, and everything stops. And we've got
4 to negotiate this and negotiate that.

5 This should have been done at the
6 appropriate time when the situation was right,
7 when we could have done the proper amount of
8 budgeting and the proper amount of auditing
9 and asking all the right questions.

10 Madam President, I fully intend to
11 vote no on this piece of legislation. As I
12 said before, it is a disaster. We are going
13 to rue the day that we bring this up. We're
14 going to be paying for this down the line, and
15 the voters of this state are not going to
16 forget who votes for this bill.

17 I for one am going to keep
18 reminding them for the next two years who
19 voted for this bill. This is a disgrace.

20 I intend to vote no, Madam
21 President. I thank you for your indulgence.

22 ACTING PRESIDENT STEWART-COUSINS:

23 Thank you.

24 Senator LaValle.

1 SENATOR LaVALLE: Thank you,
2 Madam President. I rise to speak on the MTA
3 bailout bill.

4 I'd like to just start by reminding
5 everyone historically, during the 1960s, there
6 was a movement fought that we needed to create
7 superagencies, that went to creating
8 authorities that would be off-budget and we
9 would be able to do what we needed to do and
10 at that time with not a lot of scrutiny.

11 We today find that the MTA has
12 really, structurally, not really changed. And
13 so I heard Senator Perkins talked about fixing
14 the crisis, fixing the crisis. Fixing the
15 crisis is not raising taxes and fees. That is
16 not fixing the crisis.

17 I've been very fortunate -- and I
18 would tell you there are two social futurists,
19 Alvin and Heidi Toffler, and they wrote a
20 series of books. And one -- actually, two of
21 the books that really point out where we are
22 today and where we have been is the third wave
23 in the creation of the a new civilization.
24 Toffler points out that we have moved or

1 should be moving from the industrial
2 revolution into the technological age.

3 We are using, in too many
4 instances, industrial revolution fixes that
5 don't apply today. And we wonder why we have
6 the problems that we have today.

7 The MTA needs to be gutted. And we
8 need to think out of the box to recreate how
9 do we provide transit services to the people
10 in the 12-county region. This solution only
11 begs in a year or two for a crash. A crash.

12 We fail sometimes to look at what
13 is going on around us -- recession,
14 depression, whatever it is -- and what's
15 happening with the lending institutions. How
16 does that all apply to this situation? And
17 I'm saying all we're using is a BandAid, a
18 BandAid that continues to hurt people.

19 During the budget -- a month ago,
20 just a little more than a month ago, on this
21 floor -- people said, you know, this is not a
22 great bill, but we're trying to do the best we
23 can to fix a crisis because of the economy.

24 It has been mentioned several times

1 that we have increased taxes and fees on
2 people \$10.4 billion, \$10.4 billion. People
3 are beginning to find out some of these fees.
4 Like May 1st, wine and beer tax. A lot of
5 people -- I think our agencies haven't even
6 communicated with restaurants and other
7 entities that have to pay this tax.

8 But when I'm home, people keep
9 stopping me and saying, "Is anyone listening?
10 Is anyone listening?" And you know, I hear
11 stories about people who are -- and you hear
12 these stories too. "I'm working two jobs. I
13 just think I'm getting to the top of the
14 ladder, and someone pulls the rungs and I'm
15 down again. My utilities are going up, my
16 school district taxes are going up." On and
17 on and on.

18 These are, as my father used to
19 say, the little people, the people that really
20 count in our society. And we are not serving
21 them. We are not serving them. This is not a
22 fix. It is not a fix.

23 On top of it, what do I tell
24 people? Not only have we imposed all these

1 taxes, we took your rebate checks away. What?
2 What? Yes, the rebate checks in the budget
3 were taken away from you. And we did not do
4 it.

5 And, you know, and I'm going to say
6 over and over before I finish that I, for
7 one -- and I don't think it's an act of
8 cowardice, but I'm not going to be part of
9 "the Legislature" as many newspapers report,
10 Because there are authors on this bill. There
11 were authors on the budget bill. And there
12 was not one Republican who was an author of
13 either the budget or this. We did not impose
14 taxes. We are not imposing and crushing
15 people with this bill.

16 Jobs. Everyone talks about jobs,
17 the creation of jobs. What we're doing with
18 this is this is a killer. I've already
19 talked -- and a lot of people didn't think
20 that this was going to happen, because in our
21 local newspapers a lot of -- well, a couple of
22 people said they were not going support this,
23 so people believed that the payroll tax was
24 not going to happen. They believed it.

1 Sometime tomorrow, next week or
2 whenever, they will know that the payroll tax
3 did happen. And it may affect them when their
4 boss comes up to them and says goodbye: I
5 have a payroll tax, and I have to make cuts.
6 Or I have to cut benefits. Or I have to do
7 something.

8 We're talking about real people
9 here. These are real people. And you know
10 that. And we're doing this, again, to them.
11 Not us as Republicans. But I think the
12 Democrats are the authors of these measures.

13 We have -- this applies, as
14 everyone knows, and I'm just going to go
15 through the school districts, not-for-profits,
16 for-profits, municipal entities. But somehow
17 we cut out the school districts. We're going
18 to reimburse them.

19 People are asking me, and quite
20 honestly, I was staff here once, and I would
21 have said just do it clean and easy. Exempt
22 the schools. Exempt the schools.

23 So I get a letter -- Senator Foley
24 got one, Johnson, Oppenheimer and

1 Stewart-Cousins -- from the Longwood Central
2 School District. And it goes: "The proposed
3 MTA payroll tax on employers will have a
4 drastic impact on our schools. If approved,
5 it will cost the Longwood School District
6 approximately \$350,000 for the 2009-2010
7 school year. Since our budget is already
8 established and cannot be legally changed, the
9 \$350,000 will have to be removed from services
10 provided to our children. Reimbursement is
11 not an acceptable solution." And the letter
12 goes on.

13 Received a letter from one of the
14 Democrat county legislators, and I'm just
15 going to read the last paragraph. This is
16 Legislator Stern: "Suffolk County taxpayers
17 already subsidize the MTA in the amount of
18 \$250 million annually. I urge every member of
19 the Long Island state legislative delegation
20 to make it clear to the Governor, to the MTA
21 board that it is not the responsibility of
22 Suffolk residents to further subsidize the
23 MTA, and to vote against this proposed tax."

24 I would like to just go back to the

1 school piece again. The language in here --
2 by the way, as I mentioned, as a staff
3 member -- and I've written legislative
4 intents. And I learned very early on in my
5 career, and as an attorney, that legislative
6 intent has no legal standing. You can write
7 great prose, and sometimes I like to do that
8 when I want to keep my writing skills honed.

9 But we had a discussion; I know
10 Senator Dilan had said it's the intent and the
11 legislative intent. It means nothing. It's
12 nice, gives a great impression, what we'd like
13 to do. But it means nothing legally.

14 And there's a piece here that talks
15 about it is the intent of the Governor, "the
16 intent of the Governor to submit and the
17 Legislature to enact for each fiscal year
18 after the 2009-2010 fiscal year in an annual
19 budget bill an appropriation in the amount to
20 be paid to the school districts."

21 Then, as we know, there's other
22 language here that says "in no case, however,
23 shall the suspension of payment obligation
24 exceed a period of six months, nor shall the

1 liability be reduced." School districts are
2 frightened, and with this language.

3 Now, how are the school districts
4 going to make these payments? One, if a large
5 school district gets a lot of state aid, they
6 can probably use some of that early state aid
7 in the fall to be able to pay.

8 Number two, there's a methodology
9 called revenue anticipation notes. With this
10 language, with this language the feeling is no
11 school district will be able to use rants,
12 which means to borrow in anticipation with a
13 lot of praying that they're going to get the
14 money back.

15 So school districts should have
16 been exempt, if that's what we wanted to do,
17 so we didn't hurt school districts or the
18 taxpayer.

19 Lastly, and critically important, I
20 believe -- unless I have not read this, I only
21 had a short period of time -- there's no
22 sunset provision in here. So this continues
23 to go on. When the economy picks up, there's
24 going to be a windfall to the MTA. There's

1 going to be a windfall to the MTA. In the
2 meantime we've hurt people, we've hurt
3 businesses, we've hurt -- and I know Senator
4 Fuschillo talked about this -- our higher
5 education institutions.

6 I have said on this floor many
7 times State University at Stony Brook is a
8 major player on Long Island. Their impact is
9 \$4.7 billion. Well, what we did to them in
10 the budget and what we're doing to them here
11 is going to have a \$44.7 million impact in the
12 2009-2010 fiscal year. That means less jobs
13 for people. It means the quality of education
14 is going to diminish at a time when we have
15 record enrollments.

16 So if we thought the budget bill
17 was bad, this is as bad if not worse. And I
18 just say that there are a lot of smart people
19 in this room as members. There are a lot of
20 smart staff people. We really have to begin
21 to look at these authorities and other
22 entities and really start as if we were in the
23 21st century, giving 21st-century resolutions
24 to the problems that we need.

1 So when it comes time for a vote,
2 Madam President, I will be among those voting
3 in the negative. Thank you.

4 ACTING PRESIDENT STEWART-COUSINS:
5 Thank you, Senator.

6 Senator Lanza.

7 SENATOR LANZA: You've really got
8 to hand it to the MTA. You've really got to
9 take your hats off. They did it again. Here
10 we are with an emergency -- partially, I
11 believe, of their own doing. Scare tactics,
12 threats, telling people doomsday is coming
13 unless we get a bailout.

14 We're not going to sit before the
15 body, we don't want a microphone, we don't
16 want to answer questions. We're not going to
17 tell you where we spent the money. We're not
18 even going to tell you where we're going to
19 spend the money with specificity, the kind of
20 specificity that we all deserve to have before
21 we're forced to make tough choices on behalf
22 of the people.

23 None of that happened. And they're
24 going to get a check, a big fat one. It's a

1 blank check except for the signature. That's
2 not blank. It's going to be signed by the
3 people we represent.

4 And how did we get here? I want to
5 speak about the process, as my colleagues have
6 as well. We went through a tough budget here.
7 It got heated. And I think I heard from the
8 other side of the aisle that mistakes were
9 made and we're going to do better next time.
10 This is next time. And we didn't do better.
11 We've done worse.

12 There's been a lot of dishonesty
13 with respect to this process. I've heard from
14 members of the TWU, good, hardworking people.
15 They put ads in newspapers, they came to my
16 office, outside the office, and petitioned and
17 protested, as it is their right to do, because
18 they were sold a bill of goods by the MTA and
19 someone else. They were told: Senator Lanza
20 is not willing to help out. His colleagues on
21 the Republican side of the aisle, they don't
22 want to help. They're sitting on their hands.

23 That's a lie. I don't blame them.
24 I met a group of people from the TWU the other

1 day up here in Albany. A young lady, I could
2 tell she was the kind of person we want
3 working for us out there, she said, "You have
4 to vote for this, Senator Lanza. I'm scared."

5 I said, "Why are you scared?" She
6 said, "Because if you don't do this, I'm going
7 to lose my job. That's what they're telling
8 me."

9 Who can blame her? Who can blame
10 her? And when we talked about the merits or
11 lack thereof in this legislation and how we
12 could have done it better, you know what? In
13 all honesty, she didn't really want to hear
14 it. She was kind of numb to it.

15 And again, I don't blame her,
16 because she was afraid. And so from her point
17 of view, whatever package the MTA wanted,
18 please, just go ahead and do it. So it's not
19 her fault.

20 But I can tell you there is fault
21 here. Because it was dishonest to say that we
22 were unwilling to come to the table to sit
23 down and work together.

24 I'm going to repeat a lot of what's

1 been said about why this is such a bad piece
2 of legislation, but I think it's important to
3 understand why it is we got to this point, why
4 we didn't do better.

5 Here's the truth. I reached out to
6 the Majority, to the Majority Leader. I said
7 I'd be willing to vote, I will vote for an MTA
8 bailout if you will hear the concerns of the
9 people I represent on Staten Island. I know
10 there are no easy choices here, and there
11 would be no easy piece of legislation
12 regardless of who was at the table.

13 But I said, if you would listen to
14 the concerns of my constituents and if we can
15 change parts of this legislation to reflect
16 that, you'd have my vote. I wrote to the
17 Majority Leader. I asked the Majority Leader.
18 I'm still waiting for that meeting.

19 It's the Majority Leader's
20 prerogative, control the process. You can do
21 it your way. But I believe there's a right
22 way and a wrong way. And I think this was the
23 wrong way.

24 Maybe you're like me. You have the

1 occasion to go to a funeral, a service, to pay
2 homage to a good person that we shared the
3 earth with, and you listen to the eulogies and
4 hear good things being said. You hear
5 descriptions about things they've done in
6 their life which substantiate their decency or
7 how that life was well-lived. And you leave
8 the funeral, and it gives you that extra
9 incentive, and you think about it and you
10 reflect, and you say you know what, I want to
11 do those sorts of things, I want to live up to
12 those standards.

13 Well, I just went to one of those
14 funerals, the great Senator John Marchi. And
15 I listened to the eulogies. And I listened to
16 the great things that he did. And one of the
17 things that he was credited with being part of
18 was the bailout of New York City. A time when
19 they came together -- Republicans,
20 Democrats -- they put politics aside, they
21 didn't play games, and they said, We've got
22 work to do, there's always time for politics
23 later, but on this one it's too big, it's too
24 important to do it any other way but to work

1 together.

2 Well, those opportunities don't
3 come along very often. This was one of them.
4 This is that big. This was the one that we
5 should have put politics aside, that we should
6 have had both parties at the table, all
7 stakeholders, the taxpayers, the riders, and
8 we should have worked together, collaborated,
9 negotiated -- only on substance -- and then
10 come to this chamber and vote together, take a
11 tough vote together, but the right vote with
12 the right legislation. And that didn't
13 happen.

14 I wrote the Governor. I asked the
15 Governor to utilize his leadership to call
16 upon a bipartisan, task force-like approach
17 here. Didn't happen. I wrote a letter to the
18 MTA. In all fairness, I was not very
19 optimistic. They didn't let me down; I
20 haven't had a response.

21 They're getting a blank check, and
22 they don't have to do anything different from
23 what they've done before. We've talked.
24 Truth be told, people ought to know,

1 Democrats, Republicans, we leave this chamber,
2 we talk as colleagues and friends. I haven't
3 heard anyone, Democrat or Republican, say they
4 believe the MTA was doing a good job. And yet
5 here we are again with a blank check.

6 Some of the members across the
7 aisle I served with in the City Council. I
8 served on the Transportation Committee. I see
9 Senator Addabbo smiling, Senator Perkins not.
10 There were others -- he's smiling now. You
11 know, we asked these questions then. We
12 didn't get answers. It's a few years; we're
13 still asking the questions. We're not getting
14 the answers.

15 We don't only deserve to have these
16 answers, we need to have these answers. You
17 see what's going on in corporate America and
18 the economic downturn and the bailout. You
19 know, the MTA ought to report their financial
20 condition with the same specificity as any
21 publicly traded company in this country. Why
22 not?

23 You know, I'm not being critical of
24 you on the other side of the aisle when I say

1 you don't really know where this money is
2 going. It isn't your fault; I don't know
3 either. They won't tell us.

4 But we had a great opportunity here
5 in this bailout -- because I know there is a
6 real crisis somewhere in there. I don't know
7 what the size of that crisis is, because I
8 can't get straight answers. But we had a
9 great opportunity to say, once and for all, no
10 more bailouts, no more surprise emergencies,
11 no more instances where the MTA comes to us
12 and says you know what, we were taken by
13 surprise by the results of our own operations.

14 You know, typically good management
15 can tell you at any day during the year where
16 the money is being spent, where it's coming
17 from, what the predictions are for the future.
18 We had a real opportunity to do it better
19 here.

20 And so I've heard that we've put
21 accountability and transparency into this.
22 You can't just say you've done it, you've
23 actually got to do it. I see here in this
24 legislation it says as part of the new

1 accountability and transparency, the
2 authority, the MTA, they must submit to the
3 Governor, the Temporary President of the
4 Senate, the Speaker of the Assembly on or
5 before October 31st -- they've got six months
6 to do this -- a proposed authority mission
7 statement and proposed measurements.

8 So here's the new accountability.
9 They've got six months to tell us what they're
10 supposed to be doing for us, to figure it all
11 out. And furthermore, thereafter, the
12 authority, the MTA will reexamine its mission
13 statement on an annual basis and self-evaluate
14 how they're doing.

15 So that's accountability. They've
16 got six months to figure out what they're
17 supposed to do to us -- Freudian slip, do to
18 us -- for us, they're going to tell us what
19 that is, and then they're going to tell us
20 afterwards if they're doing a good job.

21 There's going to be an audit, a
22 forensic audit. It says "may," "shall."
23 There's going to be one I think in the
24 legislation of the year 2009, which means we

1 won't be able to get it done until 2010. So
2 we're going to hand them \$2.5 billion, and
3 then in a year from now we're going to ask
4 them where they spent it. Shrewd, really
5 shrewd.

6 There's an expression, an old
7 computer expression, "garbage in, garbage
8 out." That's what we're getting here. So
9 what's coming out of this? Who's paying?
10 Who's going to sign that blank check? Payroll
11 taxes, you've heard about it. Parochial,
12 Catholic, yeshiva schools, they're going to
13 pay that payroll tax. What does that mean?
14 Tuition's going up, or they're going to fire
15 some teachers? Colleges, tuition's going up
16 or they're going to fire some professors?

17 I was temporarily delighted to hear
18 that public schools were going to be carved
19 out, there's going to be an exception. I saw
20 that as good news yesterday. Then I read the
21 legislation, as my colleagues have and they've
22 talked about. Public schools aren't being
23 carved out. I don't know who negotiated the
24 provisions to carve it out, but evidently the

1 MTA's lawyers were better than our lawyers
2 because there is no exception for public
3 schools. Because it requires, it requires a
4 vote that hasn't happened and won't happen
5 until next year for that reimbursement.

6 We don't know what the financial
7 condition of the state is going to be next
8 year. We don't know what kind of budget we're
9 going to be facing. We don't know who is
10 going to be in this chamber or who is not
11 going to be in this chamber. We don't know
12 who the Governor is going to be and who the
13 Governor isn't going to be.

14 That's the guarantee? There was a
15 lot of complicated language -- six months,
16 hiatus, later. Let me translate. Let me put
17 it in better legal terms for you. Public
18 schools, the check's in the mail. There is no
19 carve-out. There is no exception. That's not
20 honest.

21 Who else is going to sign that
22 check? Hospitals? We know how they fared in
23 the budget. I can tell you on Staten
24 Island -- again, I'll say it -- we've got a

1 hospital that's teetering, 500,000 people.
2 Two hospitals, we've got one on life support.
3 I don't know, is this the one that takes them
4 off life support and puts put them under?
5 Might be.

6 A good piece of legislation would
7 have spread the cost across the region. It
8 would have been based on fairness and equity.
9 You know what is so offensive, what is so
10 offensive about this legislation, is that the
11 people who received the least are being asked
12 to pay the most. That's not progressive.
13 That's regressive.

14 You live out on Staten Island, you
15 get less from the MTA than anyone in the
16 region. You're going to pay more. You drive
17 a car on Staten Island? Not because you want
18 to. There aren't enough buses. We don't have
19 a subway. In short, they've failed miserably
20 with respect to providing equitable
21 transportation infrastructure across the
22 region. So they put you in the car, and now
23 you're going to pay them for the privilege.

24 They said doomsday, we're going to

1 raise fares, we're going to raise tolls if you
2 don't give us a blank check. They're getting
3 the blank check, and they're going to raise
4 fares and they're going to raise tolls.

5 Let's think about this, folks.
6 Verrazano Narrows Bridge, they're going to
7 going from \$10 -- and again, there's no
8 guarantee that it won't go higher. But I'm
9 told there's an agreement from the MTA,
10 another one -- this one's not even written
11 anywhere, but we're supposed to trust this one
12 as well -- they'll only raise it to \$11, and
13 then in two years they'll raise it to \$13.

14 And that fare hike we talked about,
15 we're only going to raise it one-third of what
16 we said we would raise it on doomsday, but
17 doomsday is still coming, it's just coming in
18 2013, so we're going to do it anyway. That's
19 who's paying.

20 Who else is paying on that payroll
21 tax? I spoke to folks from the Office of
22 Mental Retardation and Developmental
23 Disabilities. The impact of the payroll tax
24 statewide to them is \$10 million. People with

1 developmental disabilities have got to fork
2 over \$10 million to bail the MTA out. And
3 they don't have any answers with respect to
4 where the money is going.

5 On Staten Island alone, on Staten
6 Island alone, OMRDD facilities, over \$100,000
7 in payroll tax. Why should they pay for the
8 mismanagement? Why should they pay even if
9 there was not mismanagement? Why is that
10 fair? How does that get into this
11 legislation? Why didn't it come out of the
12 legislation once it got in?

13 We talked about the car
14 representations and the license and the plate
15 fees on top of what happened in the budget.
16 This is wrong. This is wrong, and you know
17 it. This is wrong both in process, a
18 squandered opportunity. I'm still waiting to
19 see better. I'm still waiting.

20 And again, you know, it's been
21 said -- it's a fair question -- if you don't
22 have alternatives, you shouldn't be critical.
23 There are alternatives. There was a better
24 piece of legislation. There were people on

1 this side of the aisle that would be willing
2 to sit down with you and anyone, anywhere,
3 anytime, to make the tough choices.

4 Someone there decided that the only
5 way to do this, the only way to show
6 leadership was to make sure there was a 32-30
7 vote on an issue this important. The hell
8 with getting it right, let's just play
9 politics.

10 Well, that's wrong, and I'm going
11 to vote no.

12 ACTING PRESIDENT STEWART-COUSINS:
13 Senator Nozzolio.

14 SENATOR NOZZOLIO: Thank you,
15 Madam President. On the bill.

16 ACTING PRESIDENT STEWART-COUSINS:
17 Senator Nozzolio, on the bill.

18 SENATOR NOZZOLIO: Madam
19 President, this bailout of the New York City
20 bus and subway system is another one-two punch
21 against the taxpayers of New York. First, the
22 budget. And if that wasn't bad enough, this
23 proposal presents additional blows to
24 taxpayers in upstate as well as downstate.

1 Senators Marcellino and LaValle
2 were extremely critical, as they should be,
3 about the fact that there was absolutely no
4 scrutiny on the massive Metropolitan
5 Transportation Authority. They never
6 explained to us -- and I have served on the
7 Transportation Committee throughout my tenure
8 in the State Assembly and in this body, and
9 called for this year an explanation in the
10 Transportation Committee of where is the
11 money, where is the spending, where are the
12 steps that we need to scrutinize that got the
13 Metropolitan Transportation Authority to this
14 point.

15 There's no accountability by any of
16 the administrative positions. There's no
17 transparency in the budget. And what is
18 absolutely unconscionable is that there's been
19 no investigation by this State Senate, by the
20 Democrats who control this process in the
21 State Senate, over the Metropolitan
22 Transportation Authority. You had an
23 obligation to conduct a thorough
24 investigation, and that investigation was not

1 achieved.

2 Enormous job-killing taxes
3 downstate. But I need to reiterate, the way
4 you have fashioned this plan, our upstate
5 taxpayers and particularly the upstate
6 property taxpayers are also going to be paying
7 a burden. Next year, when school taxes and
8 school aid, as the first step, is
9 administered, there is going to be less school
10 aid to go around, and then upstate taxpayers
11 are going to be footing the bill.

12 The citizens I serve in upstate
13 New York have crushing property tax burdens.
14 In some of the counties of upstate we have the
15 highest property taxes per the valuation --
16 Madam President, could I have some order,
17 please.

18 ACTING PRESIDENT STEWART-COUSINS:
19 Go ahead, Senator Nozzolio.

20 SENATOR NOZZOLIO: Thank you,
21 Madam President.

22 In upstate we have some of the
23 largest property taxpayer bills based on the
24 value of the property of any counties in

1 America. And what this plan does is increase
2 the property tax burden of our upstate
3 taxpayers as well.

4 It was 22 years ago this spring
5 that the Thruway bridge collapsed. A number
6 of people died. A number of policymakers at
7 that time analyzed that we had over half of
8 the bridges in New York State that were
9 deficient. Those bridges in many cases are
10 still deficient. And as far as the federal
11 stimulus goes, we've only seen plans to paint
12 a number of bridges.

13 That paint may make the bridges
14 look better, it may defer some of the rust for
15 a few more years, but it doesn't get to solid
16 infrastructure. It is unconscionable that the
17 upstate taxpayers are left holding only a
18 simple and potentially an empty promise that
19 there will be a highway and bridge plan for
20 their construction.

21 That the Thruway bridge collapse
22 should be a reminder to all of you that we
23 cannot ignore our bridge and infrastructure
24 across our upstate highways. And let's not

1 let that happen.

2 Madam President, for these and
3 other reasons --

4 ACTING PRESIDENT STEWART-COUSINS:
5 Again, can we have some order in the chamber.

6 Thank you.

7 SENATOR NOZZOLIO: Thank you,
8 Madam President.

9 For these and other reasons, our
10 upstaters in particular, our upstate Senators
11 should not vote for this plan.

12 Thank you.

13 ACTING PRESIDENT STEWART-COUSINS:
14 Thank you, Senator.

15 Senator Leibell.

16 SENATOR LEIBELL: Thank you,
17 Madam President.

18 Senator Perkins, would you yield,
19 please, to a question?

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

23 SENATOR PERKINS: Yes. Through
24 you, Madam President.

1 SENATOR LEIBELL: Senator
2 Perkins, you chair the Committee on
3 Corporations and Authorities that I used to
4 chair. And I'm very curious as to the genesis
5 of the language on page 29 combining the
6 positions of chief executive and chairman.
7 Can you give me some background on that, how
8 that came about?

9 And I'll preface my question by
10 saying this, that -- and I believe it was
11 prior to your getting here, Senator -- we did
12 a major reform piece where we reformed the
13 authorities of the State of New York. And
14 this was one of the key components that we
15 negotiated. At the time intimately involved
16 with that was the then Attorney General, Eliot
17 Spitzer, and the then Comptroller, Alan
18 Hevesi. This was a major component of that
19 reform legislation.

20 Could you give me the genesis,
21 then, of why this piece is in this legislation
22 now?

23 SENATOR PERKINS: Through you,
24 Madam President. May I just ask that you just

1 repeat what you just asked me? Because I
2 missed a section of what you said.

3 SENATOR LEIBELL: Okay. The
4 section combines the positions of chairman and
5 chief executive officer of the authority.

6 SENATOR PERKINS: Through you,
7 Madam President. Thank you for the question.

8 The history to some extent of this
9 is that it was a part of the Ravitch plan.
10 One of the -- as I said before, part of how we
11 got here was to look at a variety of different
12 ideas that we thought were worthy that would
13 provide us with the type of governance
14 structure that can provide some
15 accountability.

16 And this was an idea that we
17 thought would provide that.

18 SENATOR LEIBELL: Senator, I
19 don't know if you're aware or not that the
20 MTA, at the time of that reform legislation --
21 which I believe was passed unanimously in this
22 house -- they were back-channeling it and were
23 very much opposed to the reforms that this
24 body agreed to which are now being undone by

1 this piece of legislation.

2 Were you aware of that, Senator?

3 SENATOR PERKINS: Well, through
4 you, Madam President, I'm not quite sure
5 whether my awareness of it or not is relevant,
6 because this is the idea that we think is
7 appropriate for this particular piece of
8 legislation.

9 So the point that you're making I
10 guess is that you don't agree with this. And
11 I can respect that. But I don't see that as
12 the reform that's most significant in this
13 piece of legislation.

14 SENATOR LEIBELL: Senator --

15 ACTING PRESIDENT STEWART-COUSINS:
16 Senator Leibell, are you asking Senator
17 Perkins to continue to yield?

18 SENATOR LEIBELL: Through the
19 chair. Through the chair.

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

22 SENATOR PERKINS: Yes. Please.

23 SENATOR LEIBELL: Are you aware
24 that when we drafted that legislation, which I

1 was intimately involved with, that the concept
2 of being transparent and of being accountable
3 were key instruments in that legislation?

4 SENATOR PERKINS: Is that --

5 SENATOR LEIBELL: Yeah, that's a
6 question, Senator.

7 SENATOR PERKINS: Through you,
8 Madam President. I appreciate the history
9 that you're trying to suggest in efforts to
10 make the MTA more transparent and accountable.

11 But I would just like to remind you
12 that -- and all of us -- that these issues and
13 concerns, as you are sort of underscoring, are
14 not new to this new majority. That the
15 challenges that we are grappling with and
16 trying to fix tonight, today, are challenges
17 that we inherited.

18 And so while we might disagree on
19 this specific approach, you must remember that
20 we did not create this mess. What we are
21 working towards, with you, is fixing it. And
22 I think that we are on the right track, and
23 therefore I would urge that we keep that in
24 mind, that this is something that we

1 inherited, that we embraced as a challenge
2 because of the urgency, not just for the
3 people of the City of New York but for the
4 state, as this represents a significant
5 economic engine for all of us.

6 SENATOR LEIBELL: Thank you,
7 Senator Perkins.

8 On the bill.

9 ACTING PRESIDENT STEWART-COUSINS:
10 Senator Leibell, on the bill.

11 SENATOR LEIBELL: Madam
12 President, I'm going to suggest to you and to
13 this body that this is a major step back in
14 the reforms that we instituted within this
15 body only a few short years ago.

16 Those reforms were negotiated with
17 the then Attorney General and the then
18 Comptroller, and they were absolutely adamant
19 about having this language in there that would
20 separate thee two corporate positions. And it
21 was considered to be absolutely critical in
22 order to make sure that our authorities acted
23 in a legal and correct way.

24 Now, we should not confuse the two

1 issues here, one of which is the corporate
2 structure and the other is the fiscal, the
3 dollars issue. But we are taking a major step
4 back on the reforms that we all agreed to, I
5 believe unanimously, not that many years ago
6 within this body.

7 This was recommended also by Ira
8 Millstein, who was the commissioner at that
9 time, and who is the leading authority on
10 corporate governance.

11 Now, I'm going to also say that
12 after this terrible budget that we went
13 through not too many weeks ago, I was
14 describing that in my district as a disaster.
15 Well, this takes it a step further. This is
16 really shameful. We have to take a look
17 here -- and many of my colleagues have -- upon
18 all the entities and all the organizations
19 that will be severely damaged by what's
20 occurring here this evening.

21 I was home in my district this
22 morning. I went to a breakfast, hundreds of
23 business people, small business people. Not
24 General Motors, General Electric, Verizon --

1 small business people. And also
2 not-for-profits. I have never seen such anger
3 and outrage over an issue as I have over this
4 one.

5 I had the head of my local hospital
6 catch me on the way out: "Senator, Putnam
7 Hospital, this is devastating." PARC, which
8 takes care of our handicapped citizens. Susan
9 Limongello came up to me: "Senator, this is
10 devastating for us."

11 Many of these not-for-profits who
12 take care of those who have been less
13 fortunate in life than most of us have been,
14 they are in businesses and industries that are
15 particularly labor-intensive. Not well-paid
16 people, but labor-intensive. This has a huge
17 impact on those organizations.

18 ACTING PRESIDENT STEWART-COUSINS:
19 Senator Perkins, why do you rise?

20 SENATOR PERKINS: Madam
21 President, I'd like to be recognized and to
22 respond to my colleague.

23 SENATOR LEIBELL: Certainly.

24 SENATOR PERKINS: You know,

1 you -- again, I want to --

2 SENATOR LEIBELL: This is in
3 response to my question, is that correct?

4 SENATOR PERKINS: Yes.

5 ACTING PRESIDENT STEWART-COUSINS:
6 Yes, this is.

7 SENATOR LEIBELL: Okay.

8 SENATOR PERKINS: Thank you.
9 Thank you. You know, I want to earnestly
10 respect the efforts that you made with respect
11 to reform and to appreciate the difficulty
12 that you may be having because of the fact
13 that obviously some reforms work as we
14 envision, and some don't.

15 And in this instance it's clear,
16 based on the evidence that you and your
17 colleagues have shared, that it wasn't
18 working. That in fact, despite those changes,
19 laudable as they may have been, you have said
20 time and time again that there was still a
21 system running amuck, unaccountable and
22 untransparent.

23 So that may have been an idea that
24 at the time seemed to be appropriate, but over

1 time did not seem to be a solution.

2 So this idea I think provides us
3 with an opportunity to provide that solution,
4 and it is now up to the chairman whether or
5 not to have an executive director. So I'm not
6 here to dismiss your efforts or in any way
7 denigrate them. But clearly, based on what
8 you and others have said just this evening,
9 that piece did not work, because it did not
10 control the misbehavior of the MTA that we're
11 trying now to try to get under control.

12 Thank you.

13 SENATOR LEIBELL: Thank you,
14 Senator.

15 I'm also going to suggest that the
16 splitting up of these positions is not the
17 reason we are confronting this most difficult
18 issue here tonight. In fact, I'm going to
19 suggest that it's going to exacerbate this in
20 the future.

21 What I was saying a moment ago is
22 how not only devastating this is but how cruel
23 it is. Madam Chair, Madam President, I want
24 you to, as a colleague from Westchester

1 County -- there are five of us who have the
2 good fortune and the honor to represent
3 Westchester County. I received yesterday from
4 our county executive his news release calling
5 for the Legislature to stop the payroll tax.

6 County Executive Andy Spano has
7 called for the State Legislature and the
8 Governor to stop a payroll tax that he said
9 would cost Westchester residents millions of
10 dollars and hurt taxpayers, businesses,
11 hospitals and nonprofits who are already
12 struggling to survive.

13 Later in that press release, he
14 asked the question how come Connecticut gets
15 away with not having to contribute when
16 thousands of their riders use MTA public
17 transportation. Why is there no toll on the
18 East River bridges? Why must we constantly
19 bail out agencies that are inefficiently run?

20 I might add that today, verbally, I
21 received a communication from the Yonkers
22 mayor, Mayor Amicone, who said this is
23 devastating for his city as well as for his
24 city school district.

1 Previous to that, the county
2 executive had written to us also saying how
3 devastating this is and why is it that any
4 agreement does not address assistance to the
5 B Line, our bus system in Westchester, equal
6 to and in proportion to the MTA bus system.
7 County Executive Spano continued: "It is
8 incredible to me that the inefficiency of the
9 MTA is rewarded while our efficiency is
10 penalized."

11 That's the county executive of
12 Westchester County, which I have the good
13 fortune to represent, telling me that I should
14 vote against this garbage. Not dignified
15 language, but that's what this is, legislative
16 garbage.

17 In particular, the county executive
18 is concerned about Westchester Medical Center,
19 which we know how fragile that is. And this
20 is going to cost them a lot of money, a lot of
21 money. And for all we know, the tertiary
22 hospital that we have fought hard to save,
23 maybe it will go over the edge now and be out
24 of business. That's how bad this legislation

1 has the potential to be.

2 Libraries, hospitals, educational
3 groups. The entire Westchester delegation was
4 invited to meet with our parochial schools
5 only a couple of months ago in Westchester
6 County to talk to them about the importance of
7 the role they play. And I believe every
8 legislator there committed that we're going to
9 do everything we can to help you, because you
10 have a significant role, regardless of what
11 faith you may represent, in our educational
12 process in Westchester County.

13 Is this the commitment that was
14 made to them? This will close some of those
15 parochial schools.

16 New York Medical College, our
17 medical school in Westchester County, will be
18 severely impacted. Careers for People with
19 Disabilities. Westchester Arts Council.
20 Grace Community Church, well known in White
21 Plains for how they serve those who are
22 needing of help. The New York School for the
23 Deaf. Will they be made whole? They serve my
24 constituents.

1 I cannot for the life of me
2 understand how, in looking for a legislative
3 remedy, we punish these various entities,
4 those that can least afford it. People are
5 leaving this state. The coming census is
6 going to reveal to us all what we know. We'll
7 lose, in political terms, a couple of
8 congressional districts, which will weaken our
9 clout in Washington, D.C.

10 But more significantly, it's a
11 reflection of what people are saying. Our
12 motto used to be and still is "Excelsior,"
13 ever upward. What goes ever upward in
14 New York State are our taxes. That's what
15 goes ever upward.

16 We should be looking for ways to
17 create jobs. Jobs, jobs, jobs. These jobs
18 that I'm talking about, because of these
19 taxes, will be lost forever. There's no money
20 in here for roads, there's none for our
21 bridges. There are just taxes.

22 Madam President, what we have here
23 with the MTA is a failed business model. It
24 has failed miserably. And there's nothing

1 that's occurring here this evening in this
2 house or across the way that's going to save a
3 failed business model like the MTA.

4 And the one thing I can tell you is
5 that whatever numbers we're relying on here
6 this evening, within two weeks three weeks,
7 they'll be changed. Oh, we didn't know this.
8 We have new information.

9 What this authority needs is not
10 this legislation. What this authority needs
11 is an in-depth audit, a forensic audit, that
12 will take them apart from top to bottom and
13 show all of us, all the people of New York
14 State -- not just in the metro region, but up
15 in Buffalo -- will show everyone what is wrong
16 with this institution.

17 Madam President, when the time
18 comes to vote, I will vote against this
19 legislation.

20 ACTING PRESIDENT STEWART-COUSINS:
21 Senator Winner.

22 SENATOR WINNER: Thank you, Madam
23 President.

24 I just want to again reiterate the

1 difficulties that many of us have in the
2 upstate regions with the fact that this bill
3 and this plan does havoc with our upstate
4 roads and bridge program by decoupling it.
5 And as many of us have said all along, that we
6 would be able to support and have supported in
7 the past an MTA plan that coupled roads and
8 bridges -- and yet, for reasons unbeknownst to
9 me but only have just recently become very,
10 very aware as to why it was uncoupled.

11 You know, right now we have a road
12 and bridge program upstate which was cut by
13 \$400 million in this year's budget from the
14 capital plan. In 2010 and 2011, the Dedicated
15 Highway, Bridge and Trust Fund is estimated to
16 be running about a \$1.5 billion deficit. And
17 that notwithstanding that, we made that cut in
18 this year's budget. And we are now diverting
19 even more dollars away from our ability to try
20 to cover that proposed deficit.

21 And one of the reasons why it
22 becomes very clear as to why you uncoupled the
23 road and bridge program from the MTA is very
24 simple. You don't want us to be able to use

1 the dollars that you're now taking to fund the
2 MTA to fund our road and bridge program like
3 we've done in the past. Twenty-eight percent
4 of the road and bridge program comes from
5 motor vehicle fees. And yet in the budget we
6 just adopted, you raise those by 25 percent,
7 and in this plan you're raising them by
8 another 25 percent.

9 So effectively, if you had let us
10 use those funds for our road and bridge
11 program, you couldn't have taken them down and
12 utilized them for the MTA. And now we're
13 probably not going to be able to do it for the
14 road and bridge program, because how much you
15 can raise these? How much more can you
16 continue to raise these fees?

17 Enough is enough. We've raised
18 every fee that is in existence in this state,
19 and raise them again and raise them again.
20 And now we are now really out of options that
21 are going to be at all palatable to meet our
22 needs to fund our road and bridge program.
23 And that is an untenable circumstance for us.

24 Right now we're sending

1 \$400 million in gasoline taxes and drivers'
2 fees to the MTA from upstate residents. We're
3 now going to send, under this bill, another
4 \$175 million in drivers' fees to the MTA.
5 Those are funds that would ordinarily go to
6 the upstate road and bridge program that are
7 now being diverted to the MTA, and that's why
8 you're taking those options away from us.

9 And, you know, the other completely
10 disingenuous statement that was made out here
11 tonight was that, you know, we shouldn't care
12 whether or not we're diverting upstate dollars
13 now to make up for the reimbursement for
14 another \$60 million -- but probably \$97
15 million, as was pointed out in a more accurate
16 number -- that we're now going to have to
17 spend out of General Funds from the State of
18 New York to reimburse school districts in the
19 MTA region.

20 You know, it was said, well, that's
21 an investment in the State of New York, and
22 therefore we'll get paid back. Well, it is a
23 diversion of upstate dollars, you know, from
24 Big Flats and from Canton, New York, and from

1 Watertown and other areas upstate to now to
2 the MTA region for schools.

3 For the first time in my memory,
4 now we're going to be sending money down to
5 Long Island schools and Westchester schools
6 and New York City school districts from
7 upstate regions. And I just think that that's
8 entirely a misrepresentation to say that
9 there's no upstate impact to this plan.

10 You know, I just want to associate
11 myself with the remarks from the editorial
12 from the Watertown Daily Times. And when
13 talking about the fact that the school
14 districts are going to be reimbursed -- why
15 they weren't exempt in the first place is
16 beyond me. That would have been the easy way
17 to do it.

18 But now we're being told that the
19 legislative intent and the promise of
20 everybody is to reimburse them, so everybody
21 is now feeling good about the fact that they
22 think the schools are going to get the money.

23 That promise and intent came from
24 the same Governor who promised not to raise

1 our income taxes earlier this year, and we
2 know where that promise went.

3 So the Watertown Daily Times says
4 that those school districts would receive
5 special treatment under the plan. "It would
6 be unfair to businesses, villages, towns,
7 cities and other public entities that would
8 have to shoulder the payroll tax as an added
9 expense of doing business without state
10 relief. Museums, libraries, and other
11 nonprofits, many of them operating on
12 shoestring budgets now, would bear the burden
13 as well. They too may come to demand similar
14 relief, and around the state other school
15 districts may push for more state aid in
16 fairness to them. The Governor's proposal
17 would shift the funding source to the rest of
18 the state. Rural and upstate New Yorkers who
19 do not have mass transit available to them are
20 already paying their transportation taxes in
21 the price of gas. Governor Paterson's plan
22 and the Senate Democrat majority's plan
23 inappropriately transfers the local obligation
24 of MTA users to taxpayers all over the state."

1 The Watertown Daily Times got it
2 right. They understand what's happening here,
3 in that once again our upstate regions are
4 being treated unfairly, and this bill only
5 makes it worse. And on top of the budget,
6 where we're driving businesses away from the
7 state in droves with the extra fees and taxes,
8 this bill will only make it worse for not only
9 the people in the MTA region but in every
10 corner, nook and cranny in this state.

11 I'm going to oppose this
12 legislation. Thank you, Madam President.

13 ACTING PRESIDENT STEWART-COUSINS:
14 Thank you, Senator.

15 Senator Sampson.

16 SENATOR SAMPSON: Thank you very
17 much, Madam President. On the bill. I won't
18 ask Senator Dilan or Senator Perkins any
19 questions. But on the bill.

20 You know, I've been listening to
21 the debate. And I don't like to speak a lot,
22 I just like to hear and listen, unless it's
23 necessary. But, you know, I heard Senator
24 Golden talk about the MTA being a runaway

1 train. I heard Senator Marcellino talk about,
2 as of 2007, the Comptroller talked about these
3 issues, about the problem that we had. And
4 then Senator LaValle talked about the MTA
5 needs to be gutted.

6 I just want to let my colleagues
7 know, what we do here, we take it seriously,
8 Senator Larkin. We can agree to disagree.
9 Maybe the manner in which we do things, you
10 may not like. But when you were in the
11 majority, you did things that we did not like.

12 But we know what you did, you took
13 it seriously, because you thought your method
14 was the best way to do it. And I respect
15 that. And it's the same way. We figure our
16 method is the best way.

17 But you know, we can't have
18 selective amnesia here. You made the point
19 and you made our argument. This has been a
20 runaway train for years. You have been in
21 control for years. The reforms that took
22 place, they were not working. Now we're
23 trying to fix it.

24 We talk about businesses leaving

1 New York State, we talk about jobs leaving
2 New York State. I wonder how many jobs and
3 how many businesses closed within the last
4 99 days in comparison to when the prior
5 majority was in control and how many jobs, how
6 many businesses have closed.

7 You know, we have to understand --
8 when the Dalai Lama was here, he talked about
9 honesty, truthfulness, and openness. We have
10 to be frank to ourselves and we have to
11 understand that in order for us to resolve
12 these problems, we have to put partisan
13 politics aside and deal with the issues that
14 confront us.

15 So when we talk about we're not
16 concerned about upstate, we are definitely
17 concerned about upstate, because we represent
18 all of New York State. You know, we didn't
19 have a position on the Capital Program Review
20 Board that dealt with a lot of these capital
21 issues that we have to deal with now.

22 But you know what? You know, we
23 have to face those issues. And we will take
24 the hits like everybody else. And I'm quite

1 sure when you all were in the majority, you
2 took hits for decisions that people thought
3 were inappropriate but you felt it was the
4 best thing to do.

5 But we have to understand going
6 forward, collectively, we are all colleagues.
7 And what we do here, we all take seriously.
8 This is no joke. Because the impact that we
9 have affects not only people in my district,
10 but it affects people throughout the State of
11 New York.

12 So I'm not here to -- and my mother
13 always said, you know, don't throw stones if
14 you live in a glass house. So we have to
15 understand if we're going to resolve this
16 issue, you may not like the way in which it
17 came about, but we have to deal with it. And
18 I can respect your positions. But as I said
19 before, you have made our argument. It has
20 not worked. It has been barreling down the
21 road, this runaway train, but we have to look
22 at who has been the conductor of this runaway
23 train while it was running down the train
24 tracks.

1 So on that note, Madam President, I
2 will be voting yes for this bailout of the
3 MTA. Thank you.

4 ACTING PRESIDENT STEWART-COUSINS:
5 Senator Schneiderman.

6 SENATOR SCHNEIDERMAN: Thank you,
7 Madam President. I'll be very brief on the
8 bill.

9 I have to join Senator Sampson in
10 expressing a little bit of puzzlement as to
11 the tone of the debate and the focus of the
12 debate here. This is far from a perfect bill.
13 You know, if I were in charge of everything
14 and got to write all the bills myself, I
15 certainly would have done it differently.

16 Some of the points that have been
17 addressed by my colleagues on the other side
18 of the aisle, though, have been explicitly
19 addressed in this bill, and really through the
20 intervention of Majority Leader Smith.

21 Particularly, some of you have
22 talked about the need for audits. Well, the
23 idea of a forensic audit was brought up by the
24 Majority Leader originally, and there is

1 expanded auditing and independent auditing
2 provided for in this bill.

3 More importantly -- and this is
4 this has not been noted by anyone -- this bill
5 puts into statute the common-law fiduciary
6 duty of MTA board members for the first time.

7 Now, before I came to the Senate I
8 spent quite a few years in litigation against
9 the MTA. I represented the Straphangers
10 Campaign. I understand how they operate, I
11 understand how they have concealed things over
12 the years. Things are much better than they
13 were. But there still is a need for more
14 transparency, for more accountability.

15 And I can tell you that the
16 provisions of this bill take major steps in
17 that direction. There is none as important,
18 though, as the change in fiduciary duty.
19 Putting into the statute the common-law
20 fiduciary duty that ensures that board members
21 can be removed for a breach of their duty --
22 of their duties of care, their other fiduciary
23 duties -- is tremendously important.

24 You know, I think that while we

1 have tried to make this bill better, there's
2 only so much you can do with a bad situation.
3 As Senator Sampson said, you know, we try to
4 be charitable in listening to each other and
5 everyone does have a point to make and
6 everyone is trying to the best they can to
7 represent their constituents.

8 But, you know, we've been called
9 the authors of this bill, and people say: Oh,
10 you Democrats, you Democrats are the authors
11 of this. We may be the authors of it, but the
12 title of this book is "Cleaning Up Your Mess,"
13 ladies and gentlemen. I mean, come on. We
14 got here a couple of months ago.

15 I was here 10 years ago as a young
16 Senator -- or I was a new Senator, even if I
17 wasn't young. But I had just come from
18 working on MTA matters when the MTA capital
19 plan was brought to us by Governor Pataki's
20 then MTA board, by all the board members who I
21 heard feted and cooed about when they came
22 before the Senate by the majority.

23 And that capital plan, I remember
24 standing and holding it up and saying, "This

1 is a fare increase." Because it was under the
2 Republican regime that the state stopped
3 providing any money for capital to the MTA,
4 forcing it to issue bonds to cover operating
5 expenses.

6 Eight years ago there was a huge
7 front-page story in the New York Times about
8 what they called the worst public policy
9 regarding a mass transit system in the history
10 of the United States. This is something that
11 did not happen on our watch.

12 You want to talk about how we got
13 here? We didn't get here with our group in
14 the majority, I am assure you. We didn't get
15 here with us having a vote on the Capital
16 Authorities Review Board. We didn't get here
17 with us having the ability to choose nominees
18 to the MTA.

19 So now this transit system, the
20 greatest transit system in the history of this
21 country, is down the drain, broke, broke,
22 broke -- in debt, paying off the bonds we had
23 to float because your governor, with your
24 acquiescence, cut the capital funding.

1 So what have we got to do here?
2 We've got to bail them out. We just got here,
3 been here a couple of months here. We've got
4 to bail them out. We've got to clean up the
5 mess. And that is what we're trying to do
6 here today.

7 Is this fun, to raise taxes and
8 raise fares? Is this fun? No. But any one
9 of you -- and I would particularly note, my
10 colleagues who represent any of the
11 straphangers in the City of New York, if you
12 do not pass this bill today, if you're going
13 to vote no and pound your chest and say, "Oh,
14 this is terrible, what you Democrats are
15 doing," understand that if we don't do this,
16 if we don't provide funding -- which has to
17 come, ladies and gentlemen, from either taxing
18 or borrowing. Right? Unless you think you're
19 going to strike oil in the Adirondacks or
20 something, this is what we're down to in the
21 State of New York.

22 If you do not vote for this bill,
23 understand that 30-day metro passes go over
24 \$100. Understand that the MTA will eliminate

1 the service on seven bus lines, weekend
2 service and overnight bus service on many more
3 bus lines. It will eliminate completely three
4 subway lines and partially eliminate others.
5 That is what we are voting to stop here. That
6 is the mess we are voting to clean up.

7 Did we create this mess? No. Are
8 we willing to take responsibility for this?
9 Yes. And I would urge all of you to take a
10 breath in the blame game and consider how long
11 we've been here, how long you were in charge,
12 and how we got into this situation.

13 This is not a good bill, but it is
14 an absolutely necessary bill. I'll be voting
15 yes. And I look forward to us having these
16 ongoing discussions about how we got into the
17 state that, after raising spending and cutting
18 taxes for years when you were in power, we now
19 have the situation where those who are
20 attempting to clean up the mess are getting
21 chastised by those who created it.

22 Ladies and gentlemen, please, a
23 little bit of perspective on this. I'm voting
24 yes, not because this is a great bill, but

1 because we have to step up to the challenge
2 and the responsibility.

3 Thank you, Madam President.

4 ACTING PRESIDENT STEWART-COUSINS:

5 Thank you, Senator.

6 Senator Ranzenhofer.

7 SENATOR RANZENHOFER: Thank you,
8 Madam President. I'd just like to make a
9 couple of remarks on the MTA bailout.

10 And I just find amazing when
11 somebody says, "Let's cool it on the blame
12 game, but it's your fault." I don't
13 understand that. Again, I've been here for
14 four months. And I think that's why people
15 across this state find that this is just so
16 dysfunctional, when you hear a comment "let's
17 not be political, let's not blame each other,
18 but it's your fault." It's like children who
19 can't get along playing in the play box.

20 I don't want to comment on how this
21 hurts jobs and how this hurts schools, because
22 that's been talked about a lot. But I do want
23 to talk about how this is really one part of
24 the state, New York City, hurting upstate

1 New York.

2 We've heard a couple of comments
3 where what we are going to have is we are
4 going to have taxpayers from Buffalo,
5 Rochester, Syracuse and Albany paying taxes,
6 their income taxes, which will go to the
7 General Fund which will then be used to pay
8 back school districts in the lower part of the
9 state.

10 What you really have here is you
11 really have New York City imposing its will on
12 the rest of the state. Nobody else gets any
13 benefit whatsoever out of that, but you have
14 someone like me and my colleagues from upstate
15 New York paying their income taxes to bail out
16 the MTA.

17 But the point I want to make, Madam
18 President, which has not been talked about
19 earlier, is we have a transit system in
20 upstate New York called the NFTA, the Niagara
21 Falls Transportation Authority. And in the
22 budget two years ago, \$1 million was taken
23 away from the transit authority. In the
24 budget that was passed just last month,

1 another million dollars was taken away from
2 the transit authority.

3 Now, I've heard on this floor by
4 some of my colleagues that the Buffalo area is
5 one of the poorest cities in the entire
6 country. Yet the fare in Buffalo is \$1.75.
7 The fare in New York City is \$2. Yet the
8 average income for somebody living in New York
9 City is more than twice what it is for someone
10 living in Buffalo.

11 Yet here you have assistance for
12 the richest part of the state, New York City,
13 so that you can keep a low fare for people who
14 can easily afford it at \$2 or a little more,
15 yet you have people in the poorest city in the
16 United States, in Buffalo, New York, who pay
17 just a little less for their fare, not only
18 having that same fare but having in turn,
19 then, to bail out money through their income
20 taxes to pay for this.

21 That's really an outrage. It's
22 really a double hit in not getting any sort of
23 assistance for the poorest city in the United
24 States and then having them turn around and

1 bail out the richest city in the United
2 States. That's not fair, and I will be voting
3 no when this comes for a vote.

4 Thank you.

5 ACTING PRESIDENT STEWART-COUSINS:

6 Thank you, Senator.

7 Senator DeFrancisco.

8 SENATOR DeFRANCISCO: I just
9 wanted to make a brief comment about the
10 statements of Senator Sampson and Senator
11 Schneiderman.

12 You know, there is a problem right
13 now, and what's really amazing to me is --
14 well, it's not amazing. It's pretty easy for
15 New York City Senators to say that this is a
16 fair way to resolve the problem when they're
17 the beneficiaries of the solution that they've
18 come up with.

19 And Senator Winner had mentioned
20 that, you know, how does this happen? And he
21 learned how it happened. But procedurally how
22 it happened, the three people who made it
23 happen are all from New York City.

24 And I could never understand why

1 \$100 for a monthly subway pass is so onerous
2 when we're lucky upstate if we can get two
3 tanks of gas to travel the many miles that
4 people have to travel to their jobs. I don't
5 quite get it.

6 I don't understand why bridge tolls
7 aren't increased when we're asking the upstate
8 community to take less school aid next year
9 because a greater share is going to help bail
10 out the city by the two speakers who are so
11 impressed with this situation, so impressed
12 with their solution to this situation.

13 I would like to see, quite frankly,
14 some of the upstate Senators on the Democratic
15 side -- like Valesky and Aubertine and Senator
16 Stachowski and Senator Breslin and Senator
17 Thompson -- I'd like to see them justify how
18 this helps their districts. Or maybe somebody
19 from the outer regions of the Metropolitan
20 Transportation Authority that are being
21 charged the same thing as other regions, other
22 parts of the region that use the system so
23 much more.

24 So I guess my point is I guess

1 fairness is in the eye of the beholder. And
2 when we don't have a bridge and road plan and
3 we are paying more for our transportation
4 upstate and we are helping, through our school
5 districts taking less money next year to bail
6 out the school districts that they want to get
7 give a break to, I can see how that's fairer
8 to some. It's certainly not fair to most.

9 But unfortunately, the three people
10 who made this decision, despite what everyone
11 on the other side of the aisle said about
12 their involvement, everybody knows that
13 Malcolm Smith, Shelly Silver and the Governor
14 met behind closed doors -- I don't know, maybe
15 it was in Albany, maybe it was back in their
16 hometown of New York City -- and came up with
17 this solution which is unfair to the rest of
18 the state.

19 ACTING PRESIDENT STEWART-COUSINS:
20 Senator Skelos, to close for the Minority.

21 SENATOR SKELOS: Thank you, Madam
22 President.

23 I think a lot has been said this
24 evening, and finally we had an opportunity to

1 see a bill with unfortunately not a lot of
2 time to review it, but it didn't take that
3 much to realize how bad it is.

4 You know, I'd like to just read
5 some comments from some individuals and groups
6 that are opposed to the bill that the
7 Democrats are going to pass tonight.

8 From the Nassau-Suffolk School
9 Board Association, which was addressed to
10 Senator Foley, Johnson, Oppenheimer, and
11 Stewart-Cousins, about the press conference
12 last night, that "It was appropriately timed
13 in the dark of night, an announcement that the
14 scheme would be put to a vote in the Assembly
15 and Senate in less than 24 hours, utilizing a
16 message of necessity -- back room dealing at
17 its worst. Long Island schools are being
18 ordered to take on a permanent obligation to
19 fund the MTA in exchange for a promissory
20 note, a promissory note that is not worth the
21 paper to print it on."

22 And I should point out that there's
23 going to be a bipartisan "no" vote on this
24 from the Island and Staten Island, because I'm

1 told that every Democrat Assemblyperson from
2 Long Island and Staten Island and every
3 Republican Assemblyperson from Long Island
4 voted no, because they had the courage of
5 their convictions to understand how bad and
6 dangerous this bill is.

7 You know, other people that have
8 opposed it -- Rabbi Shmuel Lefkowitz sent me a
9 letter here, an email: "The large Orthodox
10 Jewish community schools and synagogues,
11 likewise already in a hard place, will find
12 the new tax a large and heavy rock closing in
13 on them."

14 The New York Catholic Conference:
15 "The New York State Catholic Conference
16 opposes the application of a payroll tax on
17 not-for-profit health, social service, and
18 educational providers."

19 The Village Officials Association
20 of Long Island, of Nassau County -- and I know
21 that Senator Johnson represents many
22 incorporated villages, as I do -- "The payroll
23 tax is just going to be passed on as a real
24 property tax bill."

1 It's ironic that today we met and
2 talked about real property tax relief with the
3 Governor, and the Democrats are raising
4 property taxes within the metropolitan region.

5 Nassau Community College, it's
6 going to cost them \$400,000. It's going to
7 cost the students \$400,000, because the
8 tuition is going to go up. It's going to cost
9 our SUNY students more tuition. Well, you'll
10 sweep 80 or 90 percent of it first, but it's
11 going to cost them more tuition.

12 National Federation of Independent
13 Businesses: It's going to kill businesses.
14 The only state in the nation that has higher
15 taxes on businesses is Hawaii. Well, we're
16 going probably top them today.

17 I read so many. The Farm Bureau,
18 the Business Council, Mayor Phil Amicone of
19 Yonkers. I believe you represent the City of
20 Yonkers, Senator Stewart-Cousins. He's
21 opposed to it.

22 Nassau/Suffolk Hospital Council.
23 Chamber of Commerce. Hospital Association.
24 Nassau/Suffolk School Board Association.

1 Greater Southern Dutchess Chamber. I mean, I
2 don't know how they can all be wrong.

3 Then we're going to tax non-public
4 schools. Our Lady of Victory in Floral Park.
5 St. Catherine of Siena in Franklin Square.
6 Notre Dame School in New Hyde Park. North
7 Shore Hebrew Academy in Great Neck. Chabad of
8 Port Washington, it's in Port Washington. The
9 Henry Viscardi School in Albertson, which
10 provides educational opportunities to severely
11 disabled students. You should visit that
12 school.

13 And I don't think it's funny, the
14 taxes that you're looking to impose. No, I
15 was just trying to speak. Maybe you'd listen.
16 Because I'll extend the courtesy to you and
17 listen to you when you close.

18 Different not-for-profits. Gateway
19 Youth Outreach in Elmont. Family and Children
20 Association, Mineola-based. American Red
21 Cross. Salvation Army. You're taxing them.
22 You're taxing them.

23 So this legislation that you're
24 passing, it's really not a solution, it's a

1 recipe for absolute fiscal disaster.
2 \$2.2 billion in new taxes after the
3 \$8.5 billion that you imposed in the budget.
4 That's over \$10 billion in new taxes. And the
5 centerpiece of this Democrat plan is a billion
6 and a half tax on jobs, tax on jobs that will
7 devastate those who are affected. Businesses
8 throughout the state are choking from high
9 taxes. They can't compete, and many will be
10 put out of business as a result.

11 The higher fares. We're saving the
12 fares, supposedly. Twenty-seven percent
13 increase in the last several years. How are
14 you saving the fares, 27 percent?

15 The Governor said he'll reimburse
16 school districts for this new mandate and give
17 them money in next year's budget. That's a
18 sham. Our school districts don't believe it.
19 The Governor made a commitment on the STAR
20 program. He reneged on that. You all voted
21 to take away the STAR rebate checks from our
22 constituents.

23 Highways and bridges. We always
24 set parity to make sure that upstate

1 communities were treated fairly when we were
2 in the majority. And now you're expecting us
3 to trust you, to trust you that this will
4 happen appropriately for our upstate
5 residents.

6 Our local governments, struggling,
7 struggling to make ends meet. I received a
8 call today from the mayor of East Rockaway,
9 from my village. He said it was \$10,000,
10 \$12,000. He said, "We've put our budget
11 together. We're a small village. Quite
12 honestly, we can't afford it." But you want
13 to tax them so they can raise property taxes.

14 So, Madam President, I just -- I'm
15 upset, I guess, a bit by the fact that these
16 this was a secretive process.

17 Quite honestly, I thank you,
18 Senator Dilan for debating and answering our
19 questions. I thank you, Senator Perkins, for
20 the courtesy that you extended.

21 I was hoping that perhaps more
22 would engage within the debate. Would have
23 loved to have heard from Senator Oppenheimer
24 on education, chair of Education. Loved to

1 hear from my good friend Senator Craig
2 Johnson, how all his Democrat Assemblymen from
3 Long Island are wrong and he's right, and the
4 commitment he made, no payroll tax. And
5 Senator Foley. But I guess it's for another
6 day.

7 And, Madam President, I thank you
8 for your courtesy. You've been up there a
9 long time. You've been very patient. And I
10 know that I have to conclude because we're
11 waiting for Senator Smith's comments
12 anxiously.

13 And I remember when we were closing
14 during the budget, Senator Smith said, you
15 know, "Look me in the eye. Do you think I
16 want to hurt people?" And I know, Senator
17 Smith, you don't want to hurt people.

18 But, you know, many times if an
19 individual is in a car and they're about to
20 rob a bank and one uses a gun, the other
21 person is also guilty of that robbery. So
22 today what we're doing is we are robbing the
23 pockets of our taxpayers from the hard-earned
24 dollars that they're working on, and we're

1 destroying job opportunities within this
2 state.

3 Madam President, I will be voting
4 no.

5 ACTING PRESIDENT STEWART-COUSINS:
6 Thank you, Senator.

7 Senator Smith, to close for the
8 Majority.

9 SENATOR SMITH: Thank you, Madam
10 President. Let me first thank you for your
11 patience and your professionalism and the way
12 you have maintained the professional decorum
13 for this chamber.

14 I also want to thank my colleague
15 Senator Klein for his leadership on the floor,
16 dealing with a debate -- or dealing with
17 accusations, I should say; it really wasn't a
18 debate -- about what our colleagues fail to
19 realize is the mess that they left for the
20 last 12 to 14 years that they were in
21 leadership.

22 To Senator Dilan also, and Senator
23 Perkins, for all their work throughout this
24 entire process, which took us almost about

1 three months, back in December when it first
2 came out. And they spent a lot of time,
3 countless hours, on trying put together a
4 plan, some kind of plan that we could at least
5 make sure the MTA would be able to function
6 and have a capital plan that would allow it to
7 continue itself on out into the future.

8 Unfortunately, we are in a very
9 difficult financial time. We can't predict
10 what the market is going to be like four years
11 from now. And so therefore having a plan
12 that's a capital plan that really is more
13 about upkeep and maintenance of upkeep,
14 maintenance of effort for the rail systems and
15 the like, and then being able to come back and
16 hopefully the market is in a better place that
17 we'll be able to have bond issuances that will
18 be able to pay the capital plan for the
19 five-year plan, as well as roads and bridges
20 for upstate New York I'm sure we're going to
21 do.

22 This plan will, despite the
23 rhetoric from across the aisle, make sure that
24 our schools are reimbursed.

1 But what I find interesting is this
2 sort of intellectual epiphany that the other
3 side of the aisle always gets at this moment.
4 The MTA that we are dealing with is their
5 mess. We are the adults. We're trying to
6 solve a problem that they left.

7 Everybody on this side of the aisle
8 talked about how there was mismanagement, they
9 are bloated, they overspend money, they have
10 duplicative services, duplicative staff
11 people. And we don't disagree with you. We
12 don't disagree with you at all. But all the
13 years that you was in charge, you never held
14 them accountable.

15 We're making the Governor's
16 changes. We have the audit that has to
17 happen, the independent, outside audit.
18 Because no, we don't trust the MTA. We are
19 the ones that are restructuring their
20 management system so that they're going to be
21 more transparent.

22 We are the ones which you will see
23 the editorials, as you saw in the Daily News
24 today, Juan Gonzalez. The only thing he wrote

1 about this MTA bill was the fact that finally
2 there was someone courageous enough to tell
3 them how they have mismanaged their operation,
4 how they're a black hole, and now they're
5 going to have to be responsible because we are
6 the ones that are going to be able to veto
7 their entire capital plan if it is not
8 correct.

9 We took those efforts now. You had
10 that opportunity years ago, and you failed.
11 So let's not be misled. All we're doing is
12 cleaning up your mess.

13 We did the same thing with the
14 budget. Sure, the budget spent money that was
15 from the stimulus package. But who created
16 that mess? We didn't create that mess. When
17 we got elected, there was already a
18 \$13 billion deficit. Did Democrats do that?
19 No.

20 And I don't want to sit here again,
21 as I said before, and don't make two wrongs a
22 right. There's no question about that. But
23 all I'm saying to each and every one of you is
24 this is going to be a bad year, because we

1 have to clean up your mess. By next year, you
2 will see the fruits of the labor of the
3 decisions that we made that were tough
4 decisions.

5 And we're not happy about it; no
6 one likes to tax people. There's no question
7 about that. What we are trying to do is to
8 fix a system that we agree, we agree, the
9 system is horrible. The MTA, believe me, if I
10 could take it apart tomorrow and send it to
11 some MBA school and have them restructure and
12 fix it from bottom up, I would do it
13 overnight. Because it needs it.

14 But at the end of the day, here's
15 the challenge that we're faced with. One, we
16 have to make sure the system still runs. We
17 have millions of people that use that transit
18 system, that go back and forth to work, that
19 have families that they have to take care of.
20 We have to make sure they can get in that
21 train and go back and forth.

22 Two, we had to make sure there were
23 no job cuts. There's a thousand people that
24 are going to lose their jobs. And we're not

1 talking about inside the MTA in the management
2 process, we're talking about conductors, we're
3 talking about people behind booths, all the
4 people that are just middle-class families.
5 We had to protect that.

6 And then, three, we had to make
7 sure that the transit system is kept up.
8 We've still got to fix the rails, the tracks.
9 We've still got to fix the stations. Buses
10 still need to be repaired. Those are just
11 basic things that have to be done.

12 We don't disagree that the MTA is a
13 train wreck. It is. Nobody disagrees with
14 that. All we're trying to do is to try to fix
15 the mess that was left to us. And I think
16 this is about as responsible as we can get.

17 The mayor of the City of New York,
18 while he says it's not the best plan, he says
19 but it's good enough to do the job. Dick
20 Ravitch, who was commissioned to put the plan
21 together, says it can do enough. The
22 Straphangers, Gene Russianoff, says it's good
23 enough to do the job. The editorials for the
24 most part are telling us you did the best that

1 you could out of a bad situation.

2 And so when you completely try to
3 chastise us because we put a financial package
4 together that may not solve all of their
5 problems, but does solve some, I don't know
6 what else to tell you that we should have
7 done. You could have gave us and you could
8 have told us what your ideas was.

9 You say to us that you wasn't
10 involved in the process. With the exception
11 of Lanza, who I did speak to, who said, "Let's
12 talk, I want to vote for this plan, I want to
13 be able to help you" -- we didn't have
14 dialogue after that, there's no question about
15 that. But he was the only one. No one sent
16 over anything.

17 I understand you sent a package to
18 the Governor that basically said let the
19 school districts raise their own taxes in
20 order for pay for this. Let the Indians pay
21 for it with the tobacco.

22 Now, you both know that Indian
23 money ain't coming -- \$700 million that's
24 going to be in a lawsuit that will be going on

1 for about 10 years from now. We all know
2 that. So why would you put a proposal forward
3 that basically makes no sense? It made no
4 sense.

5 So here we are with no sense over
6 here and common sense over here. And so we
7 now have put a common-sense package together.
8 And we put a common-sense package together
9 that simply says if you don't like it, then
10 give us something else. And you didn't give
11 us anything else.

12 There was no way we could have
13 supported saying to Craig Johnson, I'm going
14 to tell Senator Johnson and I'm going to tell
15 Suzi Oppenheimer, go to your school districts
16 and tell your school districts raise as much
17 taxes as they need to pay their contribution.
18 There was no way in any good conscience that I
19 could put a bill together and ask any of my
20 colleagues to say pass a bill so that the
21 Indians, the tobacco tax they're going to pay
22 to us, we can use towards bailing out the MTA.

23 We both know Pataki tried to get
24 that money years ago, and the Indians put

1 tires all on the Thruway. And then if it
2 didn't happen on the Thruway, he'd have went
3 to court. And trust me, anybody in here
4 that's an attorney knows the court system will
5 wring that thing out for the next 10 years.
6 And then what would we have been doing? We'd
7 have been sitting here the laughingstock of
8 the state.

9 Well, I'm not going to have this
10 Senate body, my colleagues nor you, I'm not
11 going to have any of you being laughed at
12 because you have some misguided intellectual
13 interpretation of what the future's going to
14 look like so you're going to offer up just any
15 old proposal which you know is bottomless.
16 It's just that simple.

17 Do we agree that the MTA is a
18 runaway train? Absolutely. Is it bloated?
19 Absolutely. Is it a black hole? Absolutely.

20 The debate that we had on our side
21 of the aisle was because we don't like MTA
22 neither. Trust me. If I could have taken the
23 MTA apart, we would have done so. We put the
24 governance pieces in here because we're hoping

1 that this audit that gets done that we find
2 out about those 2700 duplicative positions
3 that the MTA has that's worth almost a couple
4 of hundred million dollars. We don't have all
5 the hard facts. But believe me, when this
6 thing is done, we'll have hard facts.

7 We think when we're done we're
8 going to have hard facts that tells us that
9 the MTA has \$30 million worth of consultants
10 that they don't need. We know some of the
11 problems that they have. But you gave us the
12 tail end of this thing. We're on the tail
13 end. We have to do something. We have to do
14 something.

15 My belief, my belief, based on what
16 I heard today from each one of your colleagues
17 and my colleagues, is that we're going to do a
18 great job on taking the MTA apart after we get
19 this audit back. Because everything that you
20 said -- about the MTA, let's be clear -- the
21 things that you said about the MTA and how it
22 functions, you're absolutely right. They're a
23 bad authority. They are a bad authority.

24 So because you left us with this

1 mess, we had nothing left to do but try to fix
2 it. We had to do the responsible thing.

3 So, Madam President, I would only
4 say, to all of my colleagues: You did the
5 best that you could. You did a great job
6 under a very tough situation. And you should
7 not leave here and make anybody make you feel
8 that you did something wrong. You did nothing
9 wrong. When you leave here, when somebody
10 tells you you did something wrong, say "I was
11 cleaning up the mess." We were cleaning up
12 the mess. We didn't create that mess. You
13 didn't create that mess; you cleaned up the
14 mess.

15 Now, after the mess is going to be
16 cleaned up, we're going to create a better
17 authority, and hope to create it with your
18 help.

19 Senator Libous, you had
20 Transportation for a long time. I bet you you
21 have a wealth of knowledge on how to create a
22 better authority to handle the MTA those
23 12 years. I'm absolutely sure you do. And
24 I'm absolutely sure, when you sit with Senator

1 Dilan, you guys can make that happen.

2 But as of right now, we have to do
3 this. We have to do this. So I thank my
4 colleagues for their spirited statements about
5 how ridiculous the MTA is. It is, there's no
6 question about it.

7 I thank my colleagues on this side
8 of the aisle for being brave and showing
9 leadership under very difficult circumstances.
10 Under very difficult circumstances. And you
11 should be applauded for it. You will be
12 appreciated for it, you will hear it, you will
13 see it when the true story comes out -- and it
14 will come out -- that we were left a mess, and
15 you cleaned it up.

16 Thank you very much, Madam
17 President.

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

20 There is a substitution of the bill
21 on the desk.

22 The Secretary will read.

23 THE SECRETARY: In relation to
24 Calendar Number 286, Senator Dilan moves to

1 discharge, from the Committee on Rules,
2 Assembly Bill Number 8180 and substitute it
3 for the identical Senate Bill Number 5451,
4 Third Reading Calendar 286.

5 ACTING PRESIDENT STEWART-COUSINS:
6 Substitution ordered.

7 Read the last section.

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

10 SENATOR LIBOUS: Madam President,
11 a slow roll call, please.

12 ACTING PRESIDENT STEWART-COUSINS:
13 Seeing that five Senators have risen, a slow
14 roll call has been called.

15 The Secretary will ring the bell
16 and call the roll slowly.

17 THE SECRETARY: Senator Adams.

18 SENATOR ADAMS: Aye.

19 THE SECRETARY: Senator Addabbo.

20 SENATOR ADDABBO: Yes.

21 THE SECRETARY: Senator Alesi.

22 SENATOR ALESI: No.

23 THE SECRETARY: Senator

24 Aubertine.

1 SENATOR AUBERTINE: Yes.

2 THE SECRETARY: Senator Bonacic.

3 SENATOR BONACIC: No.

4 THE SECRETARY: Senator Breslin.

5 SENATOR BRESLIN: Yes.

6 THE SECRETARY: Senator

7 DeFrancisco.

8 SENATOR DeFRANCISCO: To explain
9 my vote.

10 ACTING PRESIDENT STEWART-COUSINS:
11 Senator DeFrancisco, to explain his vote.

12 SENATOR DeFRANCISCO: I
13 appreciate the negative reaction from the
14 other side.

15 And I agree with Senator Smith that
16 they did the best that they could. But
17 unfortunately, it's putting this state into an
18 even deeper position than we're in after that
19 disastrous budget.

20 As far as the Republicans
21 putting -- taking -- having the mess created
22 so that you're going to correct it, I just
23 want to remind you, two years ago there was
24 another governor by the name of Spitzer, I

1 think. I can't keep track of how quickly they
2 come and go. But Governor Spitzer actually --
3 during his term, the MTA two years ago had a
4 \$1 billion surplus, a \$1 billion surplus. I'd
5 like to have that mess now after two years of
6 different leadership.

7 Secondly, with respect to the
8 plaudits by the mayor and the editorial boards
9 in New York City, that's wonderful. That's as
10 legitimate as the plaudits by the
11 beneficiaries of this bill that are sitting on
12 the floor that we've talked about before. Of
13 course the people in New York City, at least
14 the editorial boards, there's a solution where
15 they won't have to pay higher subway fares,
16 and they don't have to pay more tolls on the
17 bridges.

18 But we have nothing upstate other
19 than a bill for the part of the project that
20 we have to pay for in decreased school aid.
21 So fairness is a good solution. This is not
22 fair. And although they did the best they
23 could on the other side of the aisle, they
24 didn't do it for the entire State of New York.

1 I vote no.

2 ACTING PRESIDENT STEWART-COUSINS:

3 Senator DeFrancisco will be recorded in the
4 negative.

5 The Secretary will continue to call
6 the roll.

7 THE SECRETARY: Senator Diaz.

8 ACTING PRESIDENT STEWART-COUSINS:

9 Senator Diaz, to explain his vote.

10 SENATOR DIAZ: Thank you, Madam
11 President.

12 Tonight, after listening for four
13 hours to the other side, jiggety, jiggety,
14 jiggety, I am proud, Mr. Leader, to put my
15 vote in helping you to clean up the mess. So
16 I am proud to help you out tonight.

17 And by the way, Madam President, I
18 would have to thank the Four Amigos -- Senator
19 Kruger, Senator Espada, Senator Hiram
20 Monserrate, and Senator Hassell-Thompson and
21 Senator Parker, because --

22 SENATOR HASSELL-THOMPSON: That's
23 six.

24 SENATOR DIAZ: No, no, no, wait,

1 wait, wait, wait.

2 ACTING PRESIDENT STEWART-COUSINS:

3 It's late.

4 SENATOR DIAZ: I'm the fourth
5 amigo. Listen. Because Senator Parker and
6 Senator Ruth Hassell-Thompson joined the Four
7 Amigos since day one to stop, to stop the
8 tolls on the bridges.

9 And even though the Daily News and
10 the Post and all the editorial boards was
11 against us and criticized us, and they even
12 picket my office, today I am proud, standing
13 here proud, telling my constituents I promised
14 you, constituents of the 32nd Senatorial
15 District, no tolls. Today, ladies and
16 gentlemen, no tolls.

17 (Laughter.)

18 SENATOR DIAZ: So ladies and
19 gentlemen, I'm proud. Senator Skelos, I'm
20 sorry. But, you know, I got to help you clean
21 the mess.

22 So, ladies and gentlemen, Madam
23 President, I'm going to go back -- no, no, I
24 was supposed to go back tonight. I'm going to

1 stay so I can collect the 160 dollars tomorrow
2 like everybody else.

3 ACTING PRESIDENT STEWART-COUSINS:
4 Senator Diaz, how do you vote?

5 SENATOR DIAZ: Let me -- let me
6 explain my vote.

7 ACTING PRESIDENT STEWART-COUSINS:
8 Senator Diaz, there is a two-minute
9 allocation. To explain the vote is two
10 minutes.

11 SENATOR DIAZ: Madam President --
12 Madam President, I patiently waited two hours.

13 ACTING PRESIDENT STEWART-COUSINS:
14 But we're on a different section. So how --

15 SENATOR DIAZ: So tonight is a
16 very important night and day for the State of
17 New York, where the new Democratic Senate is
18 voting yes.

19 ACTING PRESIDENT STEWART-COUSINS:
20 Thank you.

21 SENATOR DIAZ: And I'm voting yes
22 to help clean up the mess.

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

1 SENATOR DIAZ: And my
2 constituents are happy to see me here tonight.

3 ACTING PRESIDENT STEWART-COUSINS:
4 Senator Diaz will be recorded in the
5 affirmative.

6 The Secretary will continue to call
7 the roll.

8 THE SECRETARY: Senator Dilan.

9 SENATOR DILAN: I voted yes.

10 THE SECRETARY: Senator Duane.

11 SENATOR DUANE: Yes.

12 THE SECRETARY: Senator Espada.

13 SENATOR ESPADA: Yes.

14 THE SECRETARY: Senator Farley.

15 SENATOR FARLEY: No.

16 THE SECRETARY: Senator Flanagan.

17 SENATOR FLANAGAN: To explain my
18 vote, Madam President.

19 ACTING PRESIDENT STEWART-COUSINS:
20 Senator Flanagan, to explain his vote.

21 SENATOR FLANAGAN: Thank you.

22 I listened very carefully to the
23 comments from many of my colleagues. I joined
24 in much of what Senator Sampson said about

1 taking our obligations seriously.

2 And I do want to pick up on one
3 thing that Senator Schneiderman said in terms
4 of a very important point in this legislation.
5 And it may be one little glimmer of hope, and
6 that is the breach of fiduciary duty. That's
7 something that I know I worked on with
8 Assemblyman Brodsky. Maybe that will help
9 make a difference.

10 But I want to direct my comments --
11 and I realize I'm explaining my vote -- to the
12 Majority Leader. You complimented Madam
13 President on her role here today.

14 But I must tell you, as a member
15 and a colleague, I am extremely disappointed.
16 I got up and spoke, and I asked to have people
17 yield -- including you, Mr. Majority Leader --
18 and you refused to do that. I don't believe
19 that shows good and proper decorum and
20 respect.

21 I'll engage with any one of my
22 colleagues on any issue any given time.
23 Debate is good. It's healthy. I feel like
24 what you did today was a hit and run.

1 I listened very carefully to the
2 comments you just made about cleaning up the
3 mess and all this intellectual dishonesty.
4 You want to engage, you want to debate, then
5 let's do it. Let's do it in the course of a
6 debate, not at the end of the debate.

7 And I listened to you reference my
8 colleague Senator Lanza as "Lanza" and former
9 Governor Pataki as "Pataki." If there's going
10 to be a sense of decorum, it's "Senator
11 Lanza", it's "Governor Pataki," it's "Governor
12 Spitzer."

13 And if we are going to engage, then
14 let's have a full-blown debate so we can have
15 the intellectual honesty that you're looking
16 for and that I'm looking for.

17 ACTING PRESIDENT STEWART-COUSINS:
18 Senator Flanagan --

19 SENATOR FLANAGAN: I vote no.

20 ACTING PRESIDENT STEWART-COUSINS:
21 Senator Flanagan will be recorded in the
22 negative.

23 And again, Senator Flanagan, the
24 Senate rules say that unless one has engaged

1 in discussion on the bill, one is not to
2 really answer.

3 The Secretary will continue to call
4 the roll.

5 THE SECRETARY: Senator Foley.

6 SENATOR FOLEY: Aye.

7 THE SECRETARY: Senator
8 Fuschillo.

9 SENATOR FUSCHILLO: Madam
10 President, to explain my vote.

11 ACTING PRESIDENT STEWART-COUSINS:
12 Senator Fuschillo, to explain his vote.

13 SENATOR FUSCHILLO: The
14 legislation over Governor Paterson's MTA tax
15 plan will increase Long Island Railroad
16 commuters, over the next three years, what
17 they pay on a monthly basis by more than
18 25 percent. Retail businesses in the 12
19 counties will pay more than \$60 million in
20 this new tax. School districts will pay
21 nearly \$100 million in this new tax.

22 And there's no guarantee. The STAR
23 rebate was in statute; the Governor took that
24 out. Now there's language that said he has

1 the intent to reimburse school districts.

2 There's no guarantee.

3 This was referred to as a
4 common-sense package from the Majority Leader,
5 and we did the best we could. Well, it's not
6 good enough. Because as the ticket goes,
7 we're now over \$10 billion that you've
8 created, the Democrats in the new Majority, in
9 less than a month in new taxes to the
10 residents.

11 How any legislator here in the
12 12 counties can support this is a failure to
13 represent their districts, to represent their
14 constituents in a responsible manner. We all
15 run on the theme that we're going to improve
16 the quality of life for everybody who lives in
17 our district. This does not improve the
18 quality of life.

19 The end result, Majority Leader
20 Smith -- as you said may be cleaning up the
21 mess -- is going to result in higher
22 unemployment, more businesses downtown being
23 closed, and school districts passing on their
24 costs, and local governments and hospitals and

1 nonprofits and libraries, to the taxpayers.

2 Because that's who pays them, we the

3 taxpayers.

4 And on Long Island, we get killed.

5 We get destroyed. And there's nothing in this

6 bill that Governor Paterson has brought to

7 this body that you've sponsored that is good.

8 It hurts Long Island residents. It destroys

9 businesses even further than they could be

10 destroyed --

11 ACTING PRESIDENT STEWART-COUSINS:

12 Senator Fuschillo, how do you vote?

13 SENATOR FUSCHILLO: I proudly

14 vote no, Madam President. Thank you very

15 much.

16 ACTING PRESIDENT STEWART-COUSINS:

17 Senator Fuschillo to be recorded in the

18 negative.

19 The Secretary will continue calling

20 the roll.

21 THE SECRETARY: Senator Golden.

22 SENATOR GOLDEN: To explain my

23 vote.

24 ACTING PRESIDENT STEWART-COUSINS:

1 Senator Golden, to explain his vote.

2 SENATOR GOLDEN: Thank you, Madam
3 President.

4 As I had said in my earlier
5 comments, the spending is out of control. And
6 I heard the Majority Leader talk about what he
7 inherited. Revisionist history going on here,
8 especially when it comes to Governor Eliot
9 Spitzer two and a half years ago, Governor
10 Paterson, Shelly Silver in the Assembly.

11 And I also want to take into
12 consideration that the Majority Leader and the
13 Democrats voted for the MTA plans each and
14 every year -- each and every five years that
15 we did the plan.

16 And I also want to point out that
17 they voted for the budget each and every year
18 when they could have voted no. They could
19 have stood up and said no, spending was out of
20 control.

21 So what they've done is increased
22 this spending to unbelievable heights that
23 nobody could ever believe that we'd be at
24 \$132 billion, heading to \$140 billion in

1 spending. The hypocrisy in this room is
2 amazing.

3 Ladies and gentlemen, not only is
4 this runaway train, spending train on a
5 one-way track with that runaway taxing train,
6 but the Senate Democrats in this room are
7 ripping up the tracks behind them so those
8 taxpayers, our families, the people of this
9 great state won't even be able to return after
10 you've finished what you've done here with
11 this budget this year. It's sad, and it's
12 getting worse.

13 All I can say is the people in my
14 district are going to pay 25 percent more,
15 they're going to get less services because the
16 capital program that we put together is
17 insufficient to deal with the capital so we
18 can't even repair the infrastructure that has
19 to be repaired.

20 The people of my city and my
21 district are going to be disgusted by what
22 we've done here, and we will have a price to
23 pay for that in the years to come. And I
24 hope, and I'm just hoping that this budget

1 somehow has the decency on the other side of
2 the room to come up with numbers that work.

3 These numbers --

4 ACTING PRESIDENT STEWART-COUSINS:

5 Senator Golden --

6 SENATOR GOLDEN: These numbers
7 don't work.

8 ACTING PRESIDENT STEWART-COUSINS:

9 How do you vote, Senator Golden?

10 SENATOR GOLDEN: I vote no, Madam
11 President.

12 ACTING PRESIDENT STEWART-COUSINS:

13 Senator Golden to be recorded in the negative.

14 The Secretary will continue to call
15 the roll.

16 THE SECRETARY: Senator Griffo.

17 ACTING PRESIDENT STEWART-COUSINS:

18 Senator Griffo, to explain his vote.

19 SENATOR GRIFFO: Madam President,
20 to explain my vote.

21 You know, the concern that I have
22 here, Majority Leader, is we need to stand up
23 for something. And this was done in a
24 secretive and closed process.

1 It's the leader's responsibility
2 and obligation to communicate and to reach out
3 to members. That wasn't done. You violated
4 the process in the budget, you violated the
5 Budget Reform Act of 2007, you ignored it, and
6 you continue to do that now.

7 You talked about the collection of
8 the Indian sales tax, and you have an
9 obligation and responsibility to insist that
10 the Governor enforce that law and to work with
11 him to do that.

12 So today, a secretive process,
13 abandoning upstate roads and bridges, hurting
14 upstate schools, costing upstate taxpayers
15 money in this budget process. This is
16 unfortunate. And I think today, you know, MTA
17 stands for More Taxes Again. And it's -- what
18 I have seen, the trend here, during this
19 budget and during this particular process
20 tonight, is bad process, bad plans make for
21 bad policy.

22 I vote no.

23 ACTING PRESIDENT STEWART-COUSINS:
24 Senator Griffo to be recorded in the negative.

1 The Secretary will continue to call
2 the roll.

3 THE SECRETARY: Senator Hannon.

4 SENATOR HANNON: To explain my
5 vote, Madam President.

6 ACTING PRESIDENT STEWART-COUSINS:
7 Senator Hannon, to explain his vote.

8 SENATOR HANNON: I rise to oppose
9 this so-called MTA bailout. I think it's my
10 job to oppose it because it's supposed to be
11 helping people in the Metropolitan
12 Transportation Region, and yet I think it
13 hurts.

14 I think it hurts for having the
15 goal of having a transportation system that
16 gets people to work. Because what's going to
17 happen in the decision-making that will take
18 place from here on in with this payroll tax,
19 with the increased fees, with the increased
20 tolls, is that businesses will decide it's not
21 good to be in the MTA region, it's not good to
22 be in New York. They'll move.

23 I rise to oppose it because I think
24 it's my job to oppose something that hurts

1 people. If we are supposed to help the rider,
2 we aren't supposed to do it in this way that's
3 only going to raise their property taxes.
4 They're the little people. I think it's my
5 job to oppose something that imposes charges
6 on hospitals, on churches, on charities,
7 villages, towns and counties. It only goes to
8 the property tax.

9 And I think it's my job to oppose a
10 whole process where this was not debated,
11 Where the prior experience was ignored.

12 And I also think it's my job to
13 oppose something that does not deal with a
14 capital plan -- doesn't deal with an MTA
15 capital plan, doesn't deal with a highway and
16 bridge capital plan. And highways and bridges
17 are as much a part of the metropolitan area as
18 they are upstate. And if you've ever worked
19 your way through an MTA project, you know you
20 have to do highways and bridges at the same
21 time.

22 We have failed. This is not good.
23 I oppose it.

24 Thank you, Madam President.

1 ACTING PRESIDENT STEWART-COUSINS:
2 Senator Hannon to be recorded in the negative.
3 The Secretary will continue to call
4 the roll.
5 THE SECRETARY: Senator
6 Hassell-Thompson.
7 SENATOR HASSELL-THOMPSON: Yes.
8 THE SECRETARY: Senator Huntley.
9 SENATOR HUNTLEY: Yes.
10 THE SECRETARY: Senator C.
11 Johnson.
12 SENATOR CRAIG JOHNSON: Madam
13 President, to explain my vote.
14 ACTING PRESIDENT STEWART-COUSINS:
15 Senator C. Johnson, to explain his vote.
16 SENATOR CRAIG JOHNSON: Thank
17 you. I'm just going to simply clarify the
18 record using my time, because we've heard a
19 lot tonight and it's been a very spirited
20 debate. And what's important about debate is
21 just discussing facts and getting things
22 correct.
23 I think it's just important, as I
24 vote, I'll be voting the same way that Nassau

1 Democratic Assemblymembers have voted, Senator
2 Skelos, as you may be interested. Maybe I
3 misheard you, but Assemblyman Levine,
4 Assemblywoman Schimel, Assemblywoman Hooper --
5 who all represent Nassau County, who all
6 represent men and women who use the Long
7 Island Railroad, who all pay property taxes --
8 all voted in favor of this.

9 So I just want to clarify the
10 record in case I misheard when the statement
11 was all Nassau County Democratic
12 Assemblymembers voted against this. I think
13 the record needs to accurately reflect that.

14 I'll be voting yes. Thank you very
15 much.

16 ACTING PRESIDENT STEWART-COUSINS:
17 Senator Johnson to be recorded in the
18 affirmative.

19 The Secretary will continue calling
20 the roll.

21 THE SECRETARY: Senator O.
22 Johnson.

23 ACTING PRESIDENT STEWART-COUSINS:
24 Senator O. Johnson, to explain his vote.

1 SENATOR OWEN JOHNSON: It sounds
2 Irish, but it's not.

3 Well, I think the second shoe has
4 fallen. The first shoe was the budget, which
5 was a mockery of democracy because we had
6 nothing to say about it. We didn't see the
7 bill, it was thrown on our desks: This is it,
8 take it or leave it.

9 The second shoe fell, another
10 \$2.5 billion worth of taxes on our
11 constituents. No debate, no participation in
12 joint conference committees or anything else,
13 as we did in the past. So it was really all
14 your show. And you said this is it, take it
15 or leave it. We have to take it or leave it.

16 But it really sounds more like a
17 Third World country where there's a one-party
18 system and nobody else can participate.
19 That's why the people are suffering. That's
20 why the taxes are so high now, and that's why
21 they're going to be inconvenienced in many
22 ways, by this budget and by this bill.

23 And frankly, on that side, someone
24 said that, well, what we're doing to you is

1 what you did to us. But it wasn't quite the
2 same, because then you had a Democrat Assembly
3 and Republicans here, so there was some
4 balance of power. There's no balance of power
5 now. You can do what you want to the people
6 of this state.

7 I resent what you're doing to the
8 people of this state, and we're going to have
9 to change that in the future.

10 And I vote no.

11 ACTING PRESIDENT STEWART-COUSINS:

12 Senator O. Johnson to be recorded in the
13 negative.

14 The Secretary will continue calling
15 the roll.

16 THE SECRETARY: Senator Klein.

17 SENATOR KLEIN: Yes.

18 THE SECRETARY: Senator L.

19 Krueger.

20 SENATOR LIZ KRUEGER: To explain
21 my vote.

22 ACTING PRESIDENT STEWART-COUSINS:

23 Senator L. Krueger, to explain her vote.

24 SENATOR LIZ KRUEGER: You know,

1 sometimes when you spend enough time in this
2 chamber, you feel like reality has stopped.
3 So to explain my vote.

4 If we let the MTA collapse, closing
5 down bus service, reducing subway service,
6 reducing Long Island Railroad service, Metro
7 North, we end the future of the economically
8 strongest region of our state, in a time where
9 every single one of us, no matter where we
10 represent, is completely dependent on making
11 sure that New York State moves forward with a
12 21st-century economy.

13 We're talking about a million more
14 New Yorkers coming into the New York City area
15 in the next 15 years. Everyone in the MTA
16 region has a direct and integral economic
17 relationship with the MTA and with the City of
18 New York.

19 And yet, again, my city seems to
20 become a four-letter word on this floor, in
21 this honorable chamber. What we are doing
22 tonight is what we have to do to make sure
23 that we do the right thing for every single
24 one of our constituents.

1 We're not costing the schools; the
2 money is going back. Every business in the
3 region is dependent on the economic activity
4 that comes out of the jobs that the commuters
5 to and from New York have and earn income and
6 come home and use their services and use their
7 businesses in their local county.

8 The upstate economy is driven by
9 whether or not we have economic activity in
10 the City of New York. And without a
11 functioning 21st-century mass transit system,
12 it all falls apart.

13 And to correct some people, yes, it
14 is for capital money. Yes, it is for
15 operating money. Yes, it is for the Metro
16 North and the Long Island Railroad and the
17 buses in all those counties. And if anybody
18 imagines you could function in a car-only
19 system --

20 ACTING PRESIDENT STEWART-COUSINS:
21 Senator Krueger, how do you vote?

22 SENATOR LIZ KRUEGER: -- you are
23 wrong.

24 And I am voting yes. Thank you,

1 Madam President.

2 ACTING PRESIDENT STEWART-COUSINS:

3 Senator L. Krueger to be recorded in the
4 affirmative.

5 The Secretary will continue to call
6 the roll.

7 THE SECRETARY: Senator C.
8 Kruger.

9 SENATOR CARL KRUGER: To explain
10 my vote.

11 ACTING PRESIDENT STEWART-COUSINS:
12 Senator C. Kruger, to explain his vote.

13 SENATOR CARL KRUGER: It's often
14 said that it's easier to curse the darkness
15 than to light a candle. Tonight, our Majority
16 Leader Malcolm Smith has lit that candle.
17 Tonight we begin a journey, a journey that
18 says that only will we provide for
19 transparency and accountability at the MTA,
20 but we will provide for a methodology and A
21 mechanism for both their operating and capital
22 expense.

23 At the end of the day, we're
24 righting the ship. The ship was not listing,

1 the ship was sinking. And we had an
2 obligation, a moral obligation to move forward
3 with a program. The program is not everything
4 we would have wanted, but it has a
5 accomplished one thing directly. It has kept
6 the City of New York together.

7 I and initially my amigos that were
8 joined by so many of my other colleagues in
9 this house prevented the city from being
10 divided into Manhattan and the other boroughs.

11 There is no tolling. There is a
12 program in place. There's an audit that's
13 going to happen. There's transparency.
14 There's accountability. And tonight we have
15 to thank our Majority Leader, Malcolm Smith,
16 for putting the MTA on the right course.

17 I vote yes. Thank you.

18 ACTING PRESIDENT STEWART-COUSINS:
19 Senator C. Kruger to be recorded in the
20 affirmative.

21 The Secretary will continue to call
22 the roll.

23 THE SECRETARY: Senator Lanza.

24 SENATOR LANZA: No.

1 THE SECRETARY: Senator Larkin.

2 SENATOR LARKIN: Positively no.

3 THE SECRETARY: Senator LaValle.

4 SENATOR LaVALLE: To explain my
5 vote, Madam President.

6 ACTING PRESIDENT STEWART-COUSINS:
7 Senator LaValle, to explain his vote.

8 SENATOR LaVALLE: Very briefly.
9 I listened to Senator Krueger talking about
10 helping her city. I heard Senator Diaz in a
11 very celebratory manner talk about no tolls
12 that makes his people happy.

13 This does not make people on Long
14 Island happy. They feel that they're being
15 punished. If we are to deal with crises like
16 this as we did in 1974 to save the city, there
17 was an ethos that prevailed that every member
18 felt empowered to participate to save the
19 city. We did not have the same atmosphere and
20 the same collegiality to be involved with
21 saving the MTA.

22 I vote no.

23 ACTING PRESIDENT STEWART-COUSINS:
24 Senator LaValle to be recorded in the

1 negative.

2 The Secretary will continue calling
3 the roll.

4 THE SECRETARY: Senator Leibell.

5 SENATOR LEIBELL: No.

6 THE SECRETARY: Senator Libous.

7 SENATOR LIBOUS: Madam President,
8 to explain my vote.

9 ACTING PRESIDENT STEWART-COUSINS:
10 Senator Libous, to explain his vote.

11 SENATOR LIBOUS: I'm not going to
12 repeat what I said earlier, but this plan is
13 missing something. It's missing a road and
14 bridge plan for the rest of the state.

15 The MTA region isn't the only
16 region in the state. And, Mr. Majority
17 Leader, yes, you're right, I would have loved
18 to have been engaged and debate this, like we
19 did it four and a half years ago with members
20 of your side of the aisle, members of the
21 Assembly -- and the public, because we debated
22 in public.

23 And we came up with a \$17.5 billion
24 plan for the MTA and a \$17.5 billion plan for

1 roads and bridges. What's missing here is a
2 road and bridge plan for upstate New York, for
3 the Hudson Valley, for the MTA region, and for
4 the rest of the state.

5 And, Mr. Majority Leader, in all
6 due respect, you took a shot at this side of
7 the aisle about some of the proposals we used,
8 and you talked about the Indian tax
9 collection. Well, I might remind you, sir,
10 that Senator Klein uses those same revenues in
11 a bill that he has to reduce property taxes.
12 So you might want to have a conversation with
13 him before you have to clean up his mess.

14 I vote no.

15 ACTING PRESIDENT STEWART-COUSINS:
16 Senator Libous to be recorded in the negative.

17 The Secretary will continue calling
18 the roll.

19 THE SECRETARY: Senator Little,
20 excused.

21 Senator Marcellino.

22 SENATOR MARCELLINO: To explain
23 my vote.

24 ACTING PRESIDENT STEWART-COUSINS:

1 Senator Marcellino, to explain his vote.

2 SENATOR MARCELLINO: I heard the
3 Majority Leader, my good friend Senator
4 Malcolm Smith, talk about editorials. Let me
5 read a couple.

6 The New York Post: "That's a Deal?
7 Fare Hike 10 Percent." Newsday.com, "Derail
8 Albany's MTA Bailout." The Long Island
9 Association News: "State Legislature should
10 vote against proposed MTA Bailout." The
11 New York Daily News -- I think you cited this
12 one -- "Straphangers Suffer. Senate Majority
13 Leader Smith's Alleged MTA Bailout is a Train
14 Wreck." Now you know where I got the line.

15 Again, from the Daily News:
16 "Malcolm's Muddle: MTA taxi tax would be a
17 nightmare to impose or collect." The
18 Poughkeepsie Journal: "MTA Fix Isn't Better
19 with Age." Again, Newsday: "Business
20 School's Officials Blast MTA Payroll Aid."
21 The Times Herald Record: "Local taxi drivers
22 say even 50-cent MTA surcharge will be a
23 burden." Politickerny.com: "Albany amuck:
24 Whose bailout is this anyway?"

1 I mean, I read the editorials too,
2 Senator, and they don't simply say everything
3 you said. I also like Senator Klein's idea
4 for the Indians. We'll join you, we'll go
5 collect them together, Jeff, and perhaps we
6 can get it done. I think it's a good idea.

7 Madam President, I said before this
8 bill needs more work, should have been better
9 discussed, and I'm going to vote no on this
10 present form, because I think we're going to
11 be revisiting this thing over and over again.
12 Thank you.

13 ACTING PRESIDENT STEWART-COUSINS:
14 Senator Marcellino to be recorded in the
15 negative.

16 The Secretary will continue calling
17 the roll.

18 THE SECRETARY: Senator Maziarz.

19 SENATOR MAZIARZ: Madam
20 President, to explain my vote.

21 ACTING PRESIDENT STEWART-COUSINS:
22 Senator Maziarz, to explain his vote.

23 SENATOR MAZIARZ: Thank you very
24 much, Madam President.

1 Madam President, I don't see how
2 anyone from Western New York could vote to
3 have their constituents, their constituents
4 pay through their state income tax for the
5 reimbursement to the school districts in the
6 MTA region.

7 Senator Smith, people in Western
8 New York are angry. They're angry, Senator
9 Smith, because you stood at Chef's Restaurant
10 and you said that you were going to make a
11 Senator from Western New York the chairman of
12 the Senate Finance Committee. You just didn't
13 tell them the truth.

14 You took \$550 million from the
15 Niagara Power Project. Congressman Brian
16 Higgins said you did more damage to Western
17 New York in that one day than the Power
18 Authority has given to Western New York in
19 over 50 years.

20 This week we voted to put two
21 additional commissioners on the NFTA. James
22 Eagan, your fundraiser for the Democratic
23 Senate Campaign Committee, James Eagan said
24 that that legislation was unnecessary and a

1 detriment to transportation in Western
2 New York. Robert Gioia, an appointee of
3 former Governor Mario Cuomo, said that your
4 budget was a catastrophic blow to healthcare
5 in Western New York.

6 But there is a silver lining to
7 this anger. People are getting involved. I
8 was at a union-sponsored function last
9 Saturday, and a young woman came up to me and
10 she said, "I am running for the New York State
11 Senate next year." She's a member of the
12 Working Families Party. She doesn't live in
13 my district. But she said, "I'm running."

14 I said, "Why are you running for
15 the New York State Senate next year?" You
16 know, you've got kids in high school and that.
17 She said, "I'm running because I'm angry. I'm
18 tired of Western New York having to have so
19 much taken away from it."

20 On a positive note, though -- and I
21 do want to end on a positive note -- I was,
22 like Senator Libous, very happy to hear your
23 reference to the cigarette tax and that it
24 will never be collected. Because just a

1 couple of weeks ago, Senator Stachowski and I
2 debated -- he is cosponsoring Senator Klein's
3 bill to restore the STAR rebate check program.
4 And he was saying on television how they're
5 going to restore the STAR rebate program and
6 they're going to collect the cigarette tax to
7 pay for it.

8 And I said what you said, Senator
9 Smith, that they're never going to collect the
10 cigarette tax, that that's all just --

11 ACTING PRESIDENT STEWART-COUSINS:
12 Senator Maziarz, how do you vote?

13 SENATOR MAZIARZ: Thank you,
14 Madam President. I vote in the negative.

15 ACTING PRESIDENT STEWART-COUSINS:
16 Senator Maziarz to be recorded in the
17 negative.

18 The Secretary will please continue
19 calling the roll.

20 THE SECRETARY: Senator McDonald.

21 SENATOR McDONALD: No.

22 THE SECRETARY: Senator
23 Monserrate.

24 SENATOR MONSERRATE: I vote yes.

1 THE SECRETARY: Senator
2 Montgomery.

3 SENATOR MONTGOMERY: Yes.

4 THE SECRETARY: Senator Morahan.

5 SENATOR MORAHAN: To explain my
6 vote.

7 ACTING PRESIDENT STEWART-COUSINS:
8 Senator Morahan, to explain his vote.

9 SENATOR MORAHAN: Senator Smith,
10 let me just explain where I'm coming from
11 here.

12 There are 12 counties in this MTA
13 region. Ten of them are on the plus side with
14 the contributions of the MTA to those two
15 counties. The two counties I represent,
16 Rockland County and Orange County, are in the
17 negative, a value gap of \$75 million a year in
18 services and contributions from the MTA.

19 In other words, it's costing us,
20 after the MTA rebates, after the recipients
21 from the MTA of, say, 70, we are paying over
22 \$75 million over and above that. The only two
23 counties in the region on the very short end
24 of the stick.

1 We have a county legislature which
2 is a Democrat legislature back home in
3 Rockland County who voted last night for me to
4 put a bill in to withdraw from the MTA. Today
5 in the Assembly, my two colleagues on the
6 Democrat side, representing the same area, are
7 going to cosponsor that bill, and they also
8 voted. It's a terrible situation.

9 Now, on top of that shortfall, this
10 bill that we voted on tonight adds another
11 \$7 million to my municipalities, schools,
12 okay, another \$7 million on top of the 75.
13 And that doesn't count what we're going to
14 have to pay for by our employees through the
15 payroll tax.

16 We have one train, one train. It
17 goes down to Hoboken on a local --

18 ACTING PRESIDENT STEWART-COUSINS:
19 Senator Morahan --

20 SENATOR MORAHAN: -- then you
21 have to take it over to PATH, then you have to
22 take it up by subway, then you have to get a
23 cab --

24 ACTING PRESIDENT STEWART-COUSINS:

1 Senator, how do you vote?

2 SENATOR MORAHAN: I vote no.

3 ACTING PRESIDENT STEWART-COUSINS:

4 Senator Morahan to be recorded in the
5 negative.

6 The Secretary will continue to call
7 the roll.

8 THE SECRETARY: Senator Nozzolio.

9 SENATOR NOZZOLIO: Madam
10 President, I ask permission to explain my
11 vote.

12 ACTING PRESIDENT STEWART-COUSINS:
13 Senator Nozzolio, to explain his vote.

14 SENATOR NOZZOLIO: I wasn't going
15 to rise, but when I heard Senator Smith
16 indicate that he did not believe that the law
17 that this body passed, that we worked together
18 in a bipartisan fashion, with Senator Klein
19 and others, to support the collection of those
20 taxes -- the only thing worse than taxation is
21 taxation that's distributed unevenly. One
22 rule for Indian and one for non-Indian
23 businesses.

24 To suggest that the enforcement of

1 the laws of this state is a fantasy in my view
2 is one of the worst things I've ever heard in
3 this chamber. Every member of this chamber
4 took an oath to uphold the laws of this state.

5 And for the leader of this Senate
6 to indicate that a law that this Senate passed
7 would not be enforced sends a tremendously
8 terrible signal to the citizens of every
9 corner of the state. And my district, which
10 is seeing business after business destroyed
11 because of uneven taxation, is now going to be
12 depressed more than ever.

13 This bill destroys much of commerce
14 and industry and jobs in this state. But to
15 have the comments made that the laws of this
16 state are not going to be enforced I think is
17 a sad day, and that everyone should rise up.

18 We've already done this once, with
19 the "drug dealer protection act" earlier this
20 month, the so-called Rockefeller Drug Law
21 reform. Now the Majority Leader has indicated
22 we're not going to enforce the taxation laws
23 of this state in an even fashion. A sad day,
24 Madam President.

1 I vote no on this measure.

2 ACTING PRESIDENT STEWART-COUSINS:

3 Senator Nozzolio to be recorded in the
4 negative.

5 The Secretary will continue to call
6 the roll.

7 THE SECRETARY: Senator Onorato.

8 SENATOR ONORATO: Aye.

9 THE SECRETARY: Senator
10 Oppenheimer.

11 SENATOR OPPENHEIMER: To explain
12 my vote.

13 ACTING PRESIDENT STEWART-COUSINS:
14 Senator Oppenheimer, to explain her vote.

15 SENATOR OPPENHEIMER: Thank you,
16 Madam President.

17 I know for sure that there are many
18 governments, municipal governments,
19 businesses, corporations that are going to be
20 unhappy with the additional costs. And if I
21 had my druthers, I would have been pleased to
22 offer an exemption to our not-for-profits and
23 our municipalities who also will bear the
24 costs in their -- we will bear the costs in

1 the property tax.

2 But I am happy that we were able to
3 do something for the schools and therefore
4 able to keep some level on the property tax
5 burden.

6 The alternative, as I see it, is to
7 have charged the passengers on the trains and
8 on the subways and the buses 30 percent more.
9 And most of the people who are riding on that
10 mode of transportation don't perhaps have as
11 much money as the people that have cars. And
12 they are the people that we need to support,
13 because they are filling jobs that need to be
14 filled, they have to get to work. And if
15 there is not going to be a bus at midnight or
16 at 1 o'clock to get some of the working women
17 who are working in our buildings at night --
18 if they're working at 250 Broadway and they
19 can't get home because there's no bus and they
20 haven't a car, then what are they going to do?

21 So I think we have to think of the
22 people that perhaps are not as affluent as
23 those of us in this chamber. And I really
24 feel that there's an alternative.

1 Do I love this? I really applaud
2 what was spoken by our leader, because he said
3 it beautifully. It's the best that we could
4 do. And it isn't wonderful, but it's done.

5 I'm voting yes.

6 ACTING PRESIDENT STEWART-COUSINS:
7 Senator Oppenheimer to be recorded in the
8 affirmative.

9 The Secretary will continue to read
10 the roll.

11 THE SECRETARY: Senator Padavan.

12 SENATOR PADAVAN: No.

13 THE SECRETARY: Senator Parker.

14 ACTING PRESIDENT STEWART-COUSINS:
15 Senator Parker, to explain his vote.

16 SENATOR PARKER: Yes, Madam
17 President.

18 First, let me congratulate the
19 leader, let me congratulate the Governor, let
20 me congratulate the Speaker, let me
21 congratulate the members who are voting yes on
22 this bill. We have done a good thing today.
23 We have taken care of our business the way we
24 were voted to do. We made promises when we

1 got elected that we would take care of things,
2 and today we did those things.

3 What we should do right now,
4 though, is get the record straight. Let's be
5 clear, Senator Lanza. You voted no against
6 your residents who take the MTA for them to
7 have a lower fare. You voted no today,
8 Senator Golden, for your voters and your
9 constituents who ride the MTA, for them to
10 have their buses and their trains restored.
11 You voted no, Senator Padavan, today to make
12 sure that there is more transparency and
13 accountability in the MTA.

14 Those are the votes that you took
15 today. We took votes to make sure that we
16 restored a proper transit system for New York
17 City. We restored today, with our votes, a
18 transparent and accountable system that will
19 go to the future. We're cleaning up your
20 mess. All this stuff -- we've been here less
21 than a hundred days. This stuff didn't get
22 this messed up in a hundred days. Come on.

23 You want to talk about a lockbox,
24 Senator Libous? That lockbox got raided way

1 before then.

2 I'm glad that you said, Senator
3 Flanagan, that you talked about Governor
4 Pataki, because we were 35 percent more in
5 debt after Governor Pataki left office than we
6 were the day he took over in 1994. The
7 reality is is you mismanaged this state.

8 Senator Maziarz, if Western
9 New York is messed up, it's because your
10 leadership has been failed, it has been
11 impotent to turn those places around. Buffalo
12 is one of the most outmigrated cities in the
13 entire country. And it didn't happen in the
14 last hundred days.

15 So let's get the record straight.
16 Your mismanagement is what caused you to be on
17 that side of the aisle and why we have a new
18 day here in America. We have a new day right
19 now because the record is straight about who
20 has taken the leadership of our economy and
21 the transparency and who has mismanaged the --

22 ACTING PRESIDENT STEWART-COUSINS:

23 Senator Parker --

24 SENATOR PARKER: -- the resources

1 of the state.

2 ACTING PRESIDENT STEWART-COUSINS:

3 Senator Parker, how do you vote?

4 SENATOR PARKER: I vote yes.

5 ACTING PRESIDENT STEWART-COUSINS:

6 Senator Parker to be recorded in the

7 affirmative.

8 Senator Lanza, why do you rise?

9 SENATOR LANZA: Madam President,
10 point of personal privilege. Senator Parker
11 mentioned my name. I'd like to respond.

12 ACTING PRESIDENT STEWART-COUSINS:

13 Senator Lanza, there have been a number of
14 people who have mentioned other people's
15 names.

16 SENATOR LANZA: And at any time,
17 if anybody was accused of doing something,
18 they could have raised the point of privilege
19 the way I'm doing it.

20 I'm raising that point of privilege
21 because I was accused of doing something by
22 one of my colleagues, and I'd like to respond.

23 ACTING PRESIDENT STEWART-COUSINS:

24 Senator Lanza, please make your response in

1 about 30 seconds.

2 SENATOR LANZA: Thank you, Madam
3 President.

4 Senator Parker, I didn't vote no to
5 keep fare increases from happening. You're
6 voting yes to increase fares. That's getting
7 the record straight. Fares are going up.
8 Tolls are going up.

9 SENATOR PARKER: No, fares are
10 coming down.

11 ACTING PRESIDENT STEWART-COUSINS:
12 Okay --

13 SENATOR PARKER: Point of order.
14 That's incorrect. The fare's coming down.
15 The MTA took a vote --

16 ACTING PRESIDENT STEWART-COUSINS:
17 Senator Lanza, Senator Parker --

18 SENATOR PARKER: Yes, ma'am.

19 ACTING PRESIDENT STEWART-COUSINS:
20 -- I allocated 30 seconds, and we have now to
21 start that 30 seconds again.

22 Senator Lanza, 30 seconds.

23 SENATOR LANZA: Thank you, Madam
24 President.

1 Let's get the record straight, as
2 you say. Fares are going up. The tolls are
3 going up. Taxes are going up by \$2.5 billion.
4 That's what you're voting yes for. That's
5 what I'm voting against.

6 Thank you, Madam President.

7 ACTING PRESIDENT STEWART-COUSINS:
8 The Secretary will continue to call the roll.

9 THE SECRETARY: Senator Perkins.

10 SENATOR PERKINS: I'd like to
11 take a moment to explain my vote.

12 ACTING PRESIDENT STEWART-COUSINS:
13 Senator Perkins, to explain his vote.

14 SENATOR PERKINS: On a similar
15 note, our Majority Leader reminds us that MTA
16 has become ATM, A Total Mess.

17 And so we have decided through this
18 legislation that we could do better than that
19 which we inherited. And so we're going to
20 make lemonade out of a lemon, and we're going
21 to make MTA not only be an agency, a
22 corporation and authority that gets the
23 revenues that will provide the end of the
24 draconian problem that Ravitch and others have

1 presented to us, but will also include the
2 opportunity for MTA to stand for more
3 transparency and accountability.

4 And so I'm pleased that we have
5 moved in this very positive direction, and I'm
6 especially pleased because a sweetener to it
7 all is that we have MWBE also in our
8 governance initiative with this piece of
9 legislation. There will be more minority and
10 women business enterprises involved as well.

11 So I vote yes because of all of
12 that. Thank you.

13 ACTING PRESIDENT STEWART-COUSINS:
14 Senator Perkins to be recorded in the
15 affirmative.

16 The Secretary will continue to call
17 the roll.

18 THE SECRETARY: Senator
19 Ranzenhofer.

20 SENATOR RANZENHOFER: No.

21 THE SECRETARY: Senator Robach.

22 SENATOR ROBACH: No.

23 THE SECRETARY: Senator Saland.

24 SENATOR SALAND: To explain my

1 vote.

2 ACTING PRESIDENT STEWART-COUSINS:

3 Senator Saland, to explain his vote.

4 SENATOR SALAND: Just very
5 quickly.

6 I seem to recollect, as was
7 referred to earlier by Senator DeFrancisco,
8 that about a year or so ago there was a
9 billion-dollar surplus that the MTA claimed to
10 have had. The interesting question would be
11 how was it squandered. And that really has
12 not been a subject of this debate.

13 The obvious pride that some of my
14 Democratic colleagues have coming from the
15 city and what this means to the city and how
16 important it is to the city does really not
17 expand or reverberate through the rest of the
18 MTA region.

19 As I said earlier, my county
20 suffers terribly. We suffer the double whammy
21 of not only, as I mentioned, some 98 percent
22 of people not using the MTA, a similar number
23 of businesses deriving absolutely zero benefit
24 from the MTA. What we need is roads and

1 bridges. We don't get roads and bridges.

2 Those taxpayers who are somewhat
3 chagrined, to say the least, at losing their
4 STAR rebate I think will put little faith in
5 this vague promise of an intent to restore.

6 If this were to be done correctly,
7 I would take issue with the current Education
8 chair. There should have been a straight-out
9 exemption. This is a wing and a prayer.

10 Lastly, if we were to create a
11 Taxpayer Offender Registry, not unlike the Sex
12 Offender Registry, the two biggest culprits
13 would probably be the budget bill that the new
14 majority, Democrat majority imposed upon us
15 and the rest of the state this year, and the
16 second culprit would be this MTA piece.

17 You're talking about a modest
18 \$11 billion or so. Not exactly pocket change.
19 And that's without the stimulus. We've lost
20 146,000 jobs over the course of the past nine
21 months. You can rest assured that between
22 your budget and your MTA plan, there will be
23 thousands of others leaving.

24 I vote in the negative.

1 ACTING PRESIDENT STEWART-COUSINS:
2 Senator Saland to be recorded in the negative.
3 The Secretary will continue calling
4 the roll.
5 THE SECRETARY: Senator Sampson.
6 ACTING PRESIDENT STEWART-COUSINS:
7 Senator Sampson, to explain his vote.
8 SENATOR SAMPSON: I vote yes.
9 That's all I wanted to say.
10 (Laughter.)
11 ACTING PRESIDENT STEWART-COUSINS:
12 Senator Sampson to be recorded in the
13 affirmative.
14 The Secretary will continue calling
15 the roll.
16 THE SECRETARY: Senator Savino.
17 SENATOR SAVINO: Yes.
18 THE SECRETARY: Senator
19 Schneiderman.
20 SENATOR SCHNEIDERMAN: Aye.
21 THE SECRETARY: Senator Serrano.
22 SENATOR SERRANO: Yes.
23 THE SECRETARY: Senator Seward.
24 SENATOR SEWARD: No.

1 THE SECRETARY: Senator Skelos.

2 SENATOR SKELOS: Madam President,
3 just quickly to explain my vote.

4 ACTING PRESIDENT STEWART-COUSINS:
5 Senator Skelos, to explain his vote.

6 SENATOR SKELOS: Senator
7 Parker -- and I think Senator Lanza mentioned
8 it -- the Ravitch Commission, if we did
9 nothing today, fares would have gone up
10 30 percent. You're raising them 27 percent,
11 yet taxing billions of dollars with our
12 citizens throughout the state, our hospitals,
13 our nursing homes, our charities.

14 And Senator Johnson, I apologize if
15 I had the wrong information. But the bottom
16 line is Nassau County is going to lose
17 \$5 million, Suffolk County over \$4 million.
18 Schools, if the commitment is not kept,
19 \$97 million. The Town of Hempstead, \$500,000.
20 The Town of North Hempstead, \$180,000.
21 Village of Mineola, which you represent,
22 \$20,000. Different school districts -- Elmont
23 School District, \$189,000. Westbury,
24 \$278,000. East Williston, \$136,000. Port

1 Washington, where you live, \$348,000.

2 Mineola, \$224,000.

3 And I can go through the entire
4 list of school districts, villages, charities
5 that are going to lose money and pass it on to
6 the real property taxpayers by the action that
7 you're taking today.

8 You know, I would have loved if you
9 would raise some of these issues during the
10 debate. But I notice that many of -- yourself
11 and many other colleagues were not here to
12 debate us. And I think many of our colleagues
13 are correct, we wanted to engage today. We
14 wanted to engage today. But Senator
15 Oppenheimer wouldn't speak, you wouldn't
16 speak. Came in and made a gratuitous speech.

17 Senator Smith, thank you for
18 clearing up about cigarette taxes. And
19 Senator Klein, we'll discuss that, I guess,
20 next week. Because maybe, as you like to use
21 the word "epiphany," maybe next week you will
22 have an epiphany and all of a sudden we can
23 collect the cigarette taxes.

24 But, Madam President, I am going to

1 vote no. And again, I thank you for extending
2 me the courtesy of allowing me to speak.

3 ACTING PRESIDENT STEWART-COUSINS:
4 Senator Skelos to be recorded in the negative.

5 The Secretary will continue to call
6 the roll.

7 THE SECRETARY: Senator Smith.

8 SENATOR SMITH: Yes.

9 THE SECRETARY: Senator Squadron.

10 SENATOR SQUADRON: To explain my
11 vote, Madam President.

12 ACTING PRESIDENT STEWART-COUSINS:
13 Senator Squadron, to explain his vote.

14 SENATOR SQUADRON: I know the
15 hour is getting late, but I just want to
16 briefly explain the choices that I see before
17 me in my vote tonight.

18 A no vote would be choosing
19 30 percent fare hikes immediately. A yes vote
20 is a fraction of that. A no vote would be
21 devastating service cuts in my district and
22 across the region. A yes vote prevents those
23 completely.

24 A no vote is taking us back to the

1 1970s, a time when the system started to fall
2 into disrepair and the city started to fall
3 apart for that reason.

4 A yes vote prevents that from
5 happening and allows New York to continue to
6 drive the region, allows the buses and the
7 subways and the transit system, that is unlike
8 any other in this country, to continue to
9 work.

10 A no vote, to me, is clearly easy
11 to talk about for a long time. A yes vote is
12 a critical piece of having a chance to get out
13 of this terrible economy and come out with a
14 city that we can be proud of and a state that
15 can do all the things we all care about.

16 And so that's why I'm choosing to
17 vote yes tonight.

18 Thank you, Madam President.

19 ACTING PRESIDENT STEWART-COUSINS:
20 Senator Squadron to be recorded in the
21 affirmative.

22 The Secretary will continue calling
23 the roll.

24 THE SECRETARY: Senator

1 Stachowski.

2 SENATOR STACHOWSKI: Yes.

3 THE SECRETARY: Senator Stavisky.

4 SENATOR STAVISKY: Yes.

5 THE SECRETARY: Senator

6 Stewart-Cousins.

7 ACTING PRESIDENT STEWART-COUSINS:

8 Yes.

9 THE SECRETARY: Senator Thompson.

10 SENATOR THOMPSON: Yes.

11 THE SECRETARY: Senator Valesky.

12 SENATOR VALESKY: Yes.

13 THE SECRETARY: Senator Volker.

14 SENATOR VOLKER: Madam President.

15 ACTING PRESIDENT STEWART-COUSINS:

16 Senator Volker, to explain his vote.

17 SENATOR VOLKER: In the spirit of
18 the man who 12 hours ago stood right where you
19 are standing and announced he supported the
20 Republican Party, I vote no.

21 (Laughter.)

22 ACTING PRESIDENT STEWART-COUSINS:

23 Revisionist history already, my goodness.

24 (Laughter.)

1 ACTING PRESIDENT STEWART-COUSINS:
2 Senator Volker to be recorded in the negative.
3 The Secretary will continue calling
4 the roll.

5 THE SECRETARY: Senator Winner.

6 SENATOR WINNER: Madam President,
7 very briefly.

8 My opposition to this legislation
9 is predominantly due to the uncoupling of the
10 road and bridge program from the MTA capital
11 plan. And I have not heard, notwithstanding
12 our contention about this uncoupling, as to
13 why it was uncoupled.

14 And there hasn't been any
15 explanation, which lends every bit of
16 credibility to my contention and my assertion
17 earlier in this debate that the reason why
18 it's uncoupled is so you can glom onto the
19 money that would otherwise be available
20 through the revenue sources that you're
21 utilizing for the MTA plan and use it for the
22 MTA and deprive the upstate road and bridge
23 capital plan of those revenues and make it
24 virtually impossible for us to have any kind

1 of growth in our ability to fund that road and
2 bridge program going forward.

3 I vote no.

4 ACTING PRESIDENT STEWART-COUSINS:
5 Senator Winner to be recorded in the negative.

6 The Secretary will continue to call
7 the roll.

8 THE SECRETARY: Senator Young.

9 SENATOR YOUNG: Thank you, Madam
10 President. To explain my vote.

11 ACTING PRESIDENT STEWART-COUSINS:
12 Senator Young, to explain her vote.

13 SENATOR YOUNG: Thank you.

14 There seems to be a lot of concern
15 lately from Governor Paterson, Senator Smith,
16 the Senate Democrats about unfunded mandates.
17 This, my friend, this MTA bailout bill that
18 you just forced through this chamber, is the
19 mother of all mandates. It places a very
20 heavy mandate burden on schools, hospitals,
21 charities, local governments.

22 And in fact, it even places a
23 mandate burden through the payroll tax on the
24 farms in the MTA region. And I have to say

1 I'm very surprised that the chair of the
2 Senate Agriculture Committee, Senator Darrel
3 Aubertine, has not spoken out to support the
4 farmers in the MTA region, because that's his
5 responsibility, is to stand up for all of the
6 farmers in this state.

7 In fact, it's very shocking that
8 all five upstate Democrat Senators -- Senator
9 Valesky, Senator Aubertine, Senator
10 Stachowski, Senator Thompson, Senator
11 Breslin -- are supporting this MTA bailout
12 bill, because this is a direct assault on
13 upstate New York. There's a big fat zero for
14 our roads and bridges.

15 And next year, if this money comes
16 through for the school districts in the MTA
17 region, it will be at the expense, at the
18 expense of our upstate school districts.

19 The Governor, the Senate Democrats
20 have made it very, perfectly clear that they
21 consider upstate New York residents to be
22 second-class citizens. I believe that anybody
23 who voted yes on this bill will be held
24 accountable by the people of this state, and I

1 vote no.

2 ACTING PRESIDENT STEWART-COUSINS:
3 Senator Young to be recorded in the negative.

4 The Secretary will announce the
5 results.

6 THE SECRETARY: Ayes, 32. Nays,
7 29.

8 ACTING PRESIDENT STEWART-COUSINS:
9 The bill is passed.

10 Senator Smith.

11 SENATOR SMITH: Madam President,
12 is there any further business at the desk?

13 ACTING PRESIDENT STEWART-COUSINS:
14 No, Senator Smith, the desk is clear.

15 SENATOR SMITH: There being none,
16 I move that we adjourn until Monday, May 11th,
17 at 3:00 p.m., intervening days to be
18 legislative days.

19 ACTING PRESIDENT STEWART-COUSINS:
20 There being no further business to come before
21 the Senate, on motion, the Senate stands
22 adjourned until Monday, May 11th, at
23 3:00 p.m., intervening days being legislative
24 days.

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(Whereupon, at 11:15 p.m., the
Senate adjourned.)