NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

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REGULAR SESSION

SENATOR DAVID J. VALESKY, Acting President

ANGELO J. APONTE, Secretary

P R O C E E D I N G S

ACTING PRESIDENT VALESKY: The Senate will please come to order.

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

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

ACTING PRESIDENT VALESKY: Father Peter G. Young, of Mother Teresa Community here in Albany, is with us this afternoon to provide an invocation.

REVEREND YOUNG: Let us pray.

As we gather in this June day, may we again think of those that are graduating from college and from high school and all of the talent that they have that You might enable them to assist and be therefore great assets to our community.

God, You have given to those members in this community of the Senate many different gifts, but it is always Your spirit that will guide us. There are many different ways of serving as Senators. And we all know

that it's always You, O God, that have granted them to be used for the good of our New York State citizens.

God, You have gifted each of these Senators with a unique potential to help their constituents. Let us take a moment to thank God for our talents and our skills in this Senate chamber.

God, we thank You for those gifts, and unique to each and every Senator. Let us rejoice in who You have made us and dedicate our gifts to the good of our New York State citizens.

Amen.

ACTING PRESIDENT VALESKY: Thank you, Father.

The reading of the Journal.

The Secretary will read.

THE SECRETARY: In Senate, Friday, May 29, the Senate met pursuant to adjournment. The Journal of Thursday, May 28, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT VALESKY:

Without objection, the Journal stands approved as read.

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Klein.

SENATOR KLEIN: Mr. President, are there any substitutions at the desk?

ACTING PRESIDENT VALESKY: There are substitutions at the desk.

The Secretary will take them up at this time.

THE SECRETARY: On page 28, Senator Valesky moves to discharge, from the Committee on Higher Education, Assembly Bill Number 6394, and substitute it for the identical Senate Bill Number 3493, Third Reading Calendar 341.

And on page 37, Senator Foley moves

to discharge, from the Committee on Local Government, Assembly Bill Number 5788 and substitute it for the identical Senate Bill Number 2706A, Third Reading Calendar 427.

ACTING PRESIDENT VALESKY: Substitutions ordered.

Senator Klein.

SENATOR KLEIN: Mr. President, I have several motions.

The first is a motion to reconsider substitution and amend a Senate bill. Mr. President, I wish to call up Calendar Number 357, Assembly Print Number 7132.

ACTING PRESIDENT VALESKY: The Secretary will read.

THE SECRETARY: Calendar Number 357, by Member of the Assembly Lavine, Assembly Print Number 7132, an act to amend the Estates, Powers and Trusts Law.

SENATOR KLEIN: I mow move to move the reconsider the vote by which this Assembly bill was substituted for Senator Sampson's Senate Print Number 3528, on May 27th.

ACTING PRESIDENT VALESKY: Call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

SENATOR KLEIN: I now move that Assembly Bill Number 7132 be recommitted to the Committee on Judiciary and the Senate bill be restored to the order of Third Reading Calendar.

ACTING PRESIDENT VALESKY: The bill has been restored to its place on the Third Reading Calendar.

SENATOR KLEIN: Mr. President, I now offer the following amendments.

ACTING PRESIDENT VALESKY: The amendments are received.

Can we have some quiet, please.

SENATOR KLEIN: Thank you, Mr. President.

ACTING PRESIDENT VALESKY: Senator Klein, please continue.

SENATOR KLEIN: Amendments are offered to the following Third Reading Calendar bills.

Senator Savino, page number 17, Calendar Number 143, Senate Bill 3445B.

On behalf of Senator Adams, page 17, Calendar Number 144, Senate Print 3559.

On behalf of Senator Parker, page 17, Calendar Number 160, Senate Print Number 2501A.

On behalf of Senator Andrea Stewart-Cousins, page number 34, Calendar Number 393, Senate Print Number 2443A.

Mr. President, I now move that these bills retain their place on the order of third reading.

ACTING PRESIDENT VALESKY: So ordered.

Senator Klein.

SENATOR KLEIN: Mr. President, can you please call on Senator Libous for some amendments.

ACTING PRESIDENT VALESKY: Senator Libous.

SENATOR LIBOUS: Thank you, Senator Klein. Thank you, Mr. President.

Mr. President, on behalf of Senator

Volker, I would call up his bill, Print Number 1565, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT VALESKY: The Secretary will read.

THE SECRETARY: Calendar Number 191, by Senator Volker, Senate Print 1565, an act to amend the Tax Law.

SENATOR LIBOUS: Mr. President, I now move to reconsider the vote by which this bill was passed.

ACTING PRESIDENT VALESKY: The Secretary will call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 54.

ACTING PRESIDENT VALESKY: The bill is before the house and restored to its place on the Third Reading Calendar.

SENATOR LIBOUS: Mr. President, I now offer up the following amendments.

ACTING PRESIDENT VALESKY: The amendments are received.

Thank you, Senator Libous.

Senator Klein.

SENATOR KLEIN: Mr. President, may we at this time move to a reading of the calendar.

ACTING PRESIDENT VALESKY: The Secretary will proceed with the reading of Calendar Number 52.

THE SECRETARY: Calendar Number 254, by Senator Duane, Senate Print 3911A, an act to amend the Public Health Law, in relation to requiring.

SENATOR LIBOUS: Lay it aside.

ACTING PRESIDENT VALESKY: The bill is laid aside.

THE SECRETARY: Calendar Number 265, by Senator C. Johnson, Senate Print 3821B, an act to amend the Arts and --

SENATOR LIBOUS: Lay it aside.

ACTING PRESIDENT VALESKY: The bill is laid aside.

THE SECRETARY: Calendar Number 311, by Senator Seward, Senate Print 2002, an act to amend the Tax Law, in relation to extending.

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

Read the last section.

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

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT VALESKY: The bill is passed.

THE SECRETARY: Calendar Number 312, by Senator Volker, Senate Print 2100, an act to amend the Tax Law, in relation to extending the expiration.

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

Read the last section.

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

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT VALESKY: The bill is passed.

THE SECRETARY: Calendar Number 318, by Senator Stachowski, Senate Print 4100, an act to amend the Tax Law, in relation to the sales and compensating --

SENATOR LIBOUS: Lay it aside.

ACTING PRESIDENT VALESKY: The bill is laid aside.

THE SECRETARY: Calendar Number 323, by Senator Valesky, Senate Print 5120, an act to amend the Tax Law, in relation to extending.

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

SENATOR LIBOUS: Lay it aside.

ACTING PRESIDENT VALESKY: The bill is laid aside.

THE SECRETARY: Calendar Number 327, by Member of the Assembly Magnarelli, Assembly Print Number 296, an act to amend the Military Law, in relation to filing fees waiver.

ACTING PRESIDENT VALESKY: Read

the last section.

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

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 56.

ACTING PRESIDENT VALESKY: The bill is passed.

THE SECRETARY: Calendar Number 328, by Senator Sampson, Senate Print 2849, an act to amend the Judiciary Law, in relation to emergency relocation.

SENATOR LIBOUS: Lay it aside.

ACTING PRESIDENT VALESKY: The bill is laid aside.

THE SECRETARY: Calendar Number 331, by Senator Addabbo, Senate Print 4766, an act to amend the Real Property Tax Law, in relation to increasing.

ACTING PRESIDENT VALESKY: Read the last section.

THE SECRETARY: Section 4. This act shall take --

SENATOR LIBOUS: Lay it aside.

ACTING PRESIDENT VALESKY: The bill is laid aside.

THE SECRETARY: Calendar Number 334, by Senator L. Krueger, Senate Print 4147, an act to amend Chapter 436 of the Laws of --

SENATOR KLEIN: Lay the bill aside for the day.

ACTING PRESIDENT VALESKY: The bill is laid aside for the day.

THE SECRETARY: Calendar Number 335, by Member of the Assembly Jeffries, Assembly Print Number 4904, an act to amend the Public Service Law, in relation to transfer.

ACTING PRESIDENT VALESKY: Read the last section.

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

ACTING PRESIDENT VALESKY: Call the roll.

SENATOR LIBOUS: Lay it aside.

ACTING PRESIDENT VALESKY: The bill is laid aside.

THE SECRETARY: Calendar Number 342, by Senator Sampson, Senate Print 61, an act to amend the Labor Law, in relation to prohibiting certain retaliatory personnel actions.

SENATOR KLEIN: Lay the bill aside for the day.

ACTING PRESIDENT VALESKY: The bill is laid aside for the day.

THE SECRETARY: Calendar Number 348, by Member of the Assembly Ortiz, Assembly Print Number 6532B, an act to amend the Executive Law, in relation to definition.

SENATOR LIBOUS: Lay it aside.

ACTING PRESIDENT VALESKY: The bill is laid aside.

THE SECRETARY: Calendar Number 353, by Member of the Assembly Cusick, Assembly Print Number 2369, an act to amend the General Obligations Law, in relation to a subcontractor's right.

SENATOR LIBOUS: Lay it aside.

ACTING PRESIDENT VALESKY: The bill is laid aside.

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

SENATOR KLEIN: Mr. President, can we now move to a reading of the controversial calendar.

ACTING PRESIDENT VALESKY: The Secretary will ring the bells.

Members are asked to proceed to the Senate chamber so that we may proceed with the controversial bills on today's active list.

The Secretary will proceed.

THE SECRETARY: Calendar Number 254, by Senator Duane, Senate Print 3911A, an act to amend the Public Health Law.

SENATOR LIBOUS: Explanation, please.

ACTING PRESIDENT VALESKY: Can we have some quiet in the chamber, please. It's a bit difficult to hear.

Senator Duane, an explanation of Calendar Number 254 has been requested by Senator Libous.

SENATOR DUANE: Thank you, Mr. President.

This legislation would require a hospital with a neonatal intensive care unit to offer a vaccination against the influenza virus.

And if the Senator would like a broader explanation, I'd be happy to do it. But maybe that's sufficient.

SENATOR LIBOUS: Read the last section.

ACTING PRESIDENT VALESKY: The Secretary will ring the bells.

I ask all Senators to proceed to the chamber so that we may move forward with a vote on Calendar Number 254.

Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 120th day.

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59. Nays, 0.

ACTING PRESIDENT VALESKY: The bill is passed.

THE SECRETARY: Calendar Number 265, by Senator C. Johnson, Senate Print 3821B, an act to amend the Arts and Cultural Affairs Law.

SENATOR LIBOUS: Explanation.

ACTING PRESIDENT VALESKY: Senator Craig Johnson, an explanation has been requested by Senator Libous.

SENATOR CRAIG JOHNSON: Sure. Thank you, Senator Libous. Thank you, Mr. President.

This bill would do a couple of things. One, it would extend the ticket resale law for a 50-week period until May --

ACTING PRESIDENT VALESKY: Excuse me, Senator Johnson.

It remains very difficult to hear this afternoon. If we could please have some quiet so that we can hear Senators who are explaining their bills.

Proceed.

SENATOR CRAIG JOHNSON: Thank you, Mr. President.

To repeat, the purpose of this bill

is to provide, first, a 50-week extender to a piece of legislation first enacted in 2007 relating to the resale of tickets.

The bill would also prohibit operators' agents from selling or conveying the tickets to a secondary reseller that they own or control.

Furthermore, the bill would also require the disclosure of obstructed-view seats by the operator and promoter. And finally, the bill would also authorize a report by the Department of State on issues relating to the sale and resale of tickets, that report to be issued by February 1, 2010.

ACTING PRESIDENT VALESKY: Senator Maziarz.

SENATOR MAZIARZ: Thank you, Mr. President. Would Senator Johnson yield for many questions?

ACTING PRESIDENT VALESKY: Senator Johnson, do you yield?

SENATOR CRAIG JOHNSON: I will yield to Senator Maziarz.

ACTING PRESIDENT VALESKY: The

sponsor yields.

SENATOR MAZIARZ: Thank you very much for yielding, Senator Johnson.

I notice, Senator, that this is a B print. What was the difference between the -- what provisions were changed from the A to the B print?

SENATOR CRAIG JOHNSON: Sure. Through you, Mr. President, the A print, which was passed 57 to 3 by this house, was a simple -- was a two-year extender bill. The first change is a reduction of time from two years to one.

It also added -- if you have a copy of the bill in front of you, it also adds the provision that were prohibit the operator agent from selling or conveying tickets to any secondary ticket seller owned or controlled by the operator's agent.

It also added the obstructed-view provision, and it also added the report provision. These are provisions that came primarily out of the Assembly.

SENATOR MAZIARZ: Okay. Thank

you, Senator.

I notice in your explanation you said that the -- I think it was the Department of State would be required to do a report on the policy of ticket scalping?

SENATOR CRAIG JOHNSON: Through you, I will continue to yield.

The answer is a report is going to be prepared, under this bill, by the Department of State.

SENATOR MAZIARZ: Through you, Mr. President, if Senator Johnson would continue to yield.

ACTING PRESIDENT VALESKY: Senator Johnson, do you continue to yield?

SENATOR CRAIG JOHNSON: Of course.

ACTING PRESIDENT VALESKY: The sponsor yields.

SENATOR MAZIARZ: The Department of State, back in 2007, was supposed to do to do that -- a very similar, if I read the -- one of the memos of opposition, and they never completed that.

My question, through you, Mr. President, is this time do we really mean it? Is this time the Department of State really going to do the report?

ACTING PRESIDENT VALESKY: You know, through you, Mr. President, obviously this bill -- introduced and passed in 2007 by my colleague from Long Island, Senator Skelos -- included a provision concerning the report. And obviously we need to be more vigilant to make sure a report is produced. That's something that we're going to have to do. And, you know, we're going to have to work hard to make sure that a report is produced.

SENATOR MAZIARZ: Thank you. If Senator Johnson would continue to yield, Mr. President.

ACTING PRESIDENT VALESKY: Senator Johnson?

SENATOR CRAIG JOHNSON: Of course.

ACTING PRESIDENT VALESKY: The sponsor continues to yield.

SENATOR MAZIARZ: Senator Johnson, did you hold any hearings on this particular piece of legislation?

SENATOR CRAIG JOHNSON: No.

SENATOR MAZIARZ: There were no hearings held on this particular piece of legislation?

SENATOR CRAIG JOHNSON: I'll continue to yield for Senator Maziarz.

No.

SENATOR MAZIARZ: Thank you. If Senator Johnson would continue to yield for more questions.

ACTING PRESIDENT VALESKY: Senator Johnson?

SENATOR CRAIG JOHNSON: Of course.

ACTING PRESIDENT VALESKY: He continues.

SENATOR MAZIARZ: Thank you very much, Mr. President.

Senator, I notice that the New York Public Interest Research Group, NYPIRG, has issued a memorandum of opposition to this

legislation. Are you familiar with that memorandum of opposition, Senator?

SENATOR CRAIG JOHNSON: Through you, Mr. President, I believe I have a copy of it, yup.

SENATOR MAZIARZ: The New York Public Interest Research Group claims in their memorandum of opposition that this legislation is going to hurt the little guy, the parent who wants to take their child, their son or daughter, to a baseball game or to a football game or a hockey game or to the theater or something like that, because what -- through you, Mr. President, to Senator Johnson -- what often happens is these tickets are sold out, you know, by representatives or dealers to the secondary market. And as the time gets closer to the event, the price goes down.

And, you know, people who go outside these stadiums -- I know you can see it outside of the former Rich Stadium in Erie County, how tickets will go on sale for a football game for a very cheap price. I haven't bought them myself because I'm afraid

it would be against the law. But, you know, you can get tickets for 10 bucks sometimes.

My question -- through you, Mr. President, to Senator Johnson -- is why, according to NYPIRG -- not according to me, but according to NYPIRG -- why are you hurting the little guy?

SENATOR CRAIG JOHNSON:

(Laughing.) Through you, Mr. President. Well, it's fascinating. I'm sure, Senator Maziarz, you were just as concerned a couple of weeks ago when we passed my A print, which was a two-year extender that you voted for.

But moving aside the anecdotal evidence, what's interesting is we have interesting evidence regarding tickets and the secondary market when it comes to the comparison. And looking at a lot of concerts -- and, Senator Maziarz, I'll be happy to provide you a copy of this. My office, we will make sure that Senator Maziarz, as well as anyone else who wants this, gets a copy.

In running through the several

examples of tickets being on sale -- I'll pull one out for you which was interesting, the Knicks versus the Pacers. The New York Knicks, not doing so well this year. You know, not a team that -- I mean, hopefully in the future they'll get to the playoffs, maybe after they sign LeBron James.

But this year the Knicks played the Indiana Pacers on February 23rd, Madison Square Garden. The primary price, $330. Yet on the secondary market, that price was being offered for $131. Same ticket, $199 cheaper.

I have loads of examples of where on the secondary market the little guy, who we are all concerned about, was actually able to get a cheaper price for their ticket. No doubt there is anecdotal evidence about instances where people are trying to get a ticket. Let's take Miley Cyrus, for example. Now, I don't have children that are interested in Miley Cyrus but I have friends who do, who desperately want to get Miley Cyrus tickets.

But I've got to tell you something. When you try to buy a Miley Cyrus ticket for a

venue of 20,000 people in a metropolitan area of 18 million, you have a tough time getting a Miley Cyrus ticket. And so obviously you have that situation.

But I have countless examples of where the secondary market works, that the men and women who want to go purchase a ticket on the secondary market can actually get it cheaper. That it provides a benefit, that provides entertainment, and more importantly, it provides money into the local economy. So it's not just about buying the ticket, it's about buying the soda pop and the hot dogs and, if you go to a game, maybe a T-shirt or a baseball cap.

SENATOR MAZIARZ: Mr. President, through you, would Senator Johnson continue to yield?

ACTING PRESIDENT VALESKY: Senator Johnson, will you continue to yield?

SENATOR CRAIG JOHNSON: I will continue to yield to my friend Senator Maziarz.

ACTING PRESIDENT VALESKY: The

sponsor continues.

SENATOR MAZIARZ: Thank you.

Senator Johnson, do you have any examples of ticket sales from the Buffalo Bills?

SENATOR CRAIG JOHNSON: Through you, Mr. President, if the Senator would momentarily wait.

SENATOR MAZIARZ: You take your time. We have nothing here today but time, Senator Johnson.

SENATOR CRAIG JOHNSON: Thank you, Senator Maziarz. I appreciate that.

I have something for the Buffalo Bills, but -- through you, Mr. President, I have something for the Buffalo Bills, with respect to the Jets and the Bills. Now, I will say this. It involves the Bills, but it was at Giants Stadium.

SENATOR MAZIARZ: Excuse me, Mr. President. I'm sorry, could I just offer a clarification?

SENATOR CRAIG JOHNSON: Sure.

SENATOR MAZIARZ: You know, you

can give examples in the City of New York or at the Meadowlands or something like that. I'd like to see some examples from, you know, where poor people live, up in, you know, upstate. Buffalo Bills in Buffalo. I'm sorry, I should have said that earlier. A game at Rich Stadium.

SENATOR CRAIG JOHNSON: At Rich Stadium.

SENATOR MAZIARZ: Well, through you, Mr. President, another clarification. It's not called Rich Stadium anymore. It's now called Ralph Wilson Stadium. But to those of us who were born and raised there, it will always be Rich Stadium.

SENATOR CRAIG JOHNSON: You know, Senator Maziarz, regrettably, other than the Jets-Buffalo Bills game down in Giants Stadium -- which I'm sure plenty of Buffalo Bills fans attended, and perhaps many a Buffalo Bills fan who you would deem on their socioeconomic situation.

I do not have anything from Ralph Wilson Stadium. But I'm sure we can get those

examples, because I do have pages and pages, pages and pages of examples where the secondary market works. A market which two weeks ago you had no problem voting to extend an additional two years for the bill.

SENATOR MAZIARZ: Mr. President, through you, would Senator Johnson continue to yield.

ACTING PRESIDENT VALESKY: Senator Johnson, do you continue to yield?

SENATOR CRAIG JOHNSON: Absolutely, Mr. President.

ACTING PRESIDENT VALESKY: The sponsor yields.

SENATOR MAZIARZ: Thank you very much, Mr. President and Senator Johnson.

Senator Johnson, on your list do you have any examples of the Buffalo Sabres, on a game being played in Buffalo?

SENATOR CRAIG JOHNSON: I do not, Senator Maziarz.

SENATOR MAZIARZ: Thank you.

Mr. President, through you, would Senator Johnson continue to yield?

ACTING PRESIDENT VALESKY: Senator Johnson?

SENATOR CRAIG JOHNSON: Of course.

ACTING PRESIDENT VALESKY: The Senator yields.

SENATOR MAZIARZ: Senator Johnson, did the taxpayers of the State of New York or the City of New York -- I'm sorry, can I just go back one question.

On your list, Senator Johnson -- would you continue to yield? I'm sorry.

SENATOR CRAIG JOHNSON: Of course, Senator Maziarz.

SENATOR MAZIARZ: On your list, do you have any examples outside of New York City or Long Island?

SENATOR CRAIG JOHNSON: Sure. This is actually beyond -- and where it actually takes into account is other areas where people -- who may be from Long Island or Westchester or upstate New York -- may travel outside of the state to purchase tickets.

I also have Fenway Park, for

instance. I have the Palace of Auburn Hills. I have areas in Chicago.

SENATOR MAZIARZ: Excuse me, Mr. President. Through you, would Senator Johnson continue to yield.

ACTING PRESIDENT VALESKY: Senator Johnson, do you continue to yield?

SENATOR CRAIG JOHNSON: You bet.

ACTING PRESIDENT VALESKY: The sponsor yields.

SENATOR MAZIARZ: Senator Johnson, did I understand you to say we are regulating how tickets are going to be sold at Fenway Park?

SENATOR CRAIG JOHNSON: No. No. Because when you buy a ticket on the secondary market, Senator Maziarz, you may buy a ticket from a different state. You can still buy those tickets within New York State.

SENATOR MAZIARZ: Oh, I understand.

SENATOR CRAIG JOHNSON: I'm sorry, Senator Maziarz, with respect to an example outside of the metropolitan area,

other than the areas that I indicated -- the answer is other than the ones I may have indicated which may be outside of Ralph Wilson, I am not aware -- and I don't know what the name of the Buffalo Sabres hockey rink is.

SENATOR MAZIARZ: Well, it's in Buffalo.

SENATOR CRAIG JOHNSON: I understand, but I don't know the name.

SENATOR MAZIARZ: Oh.

SENATOR CRAIG JOHNSON: I know where it is, but thank you for clarifying that.

SENATOR MAZIARZ: Well, Mr. President, through you, for Senator Johnson's information, it's called HSBC Arena.

SENATOR CRAIG JOHNSON: Thank you. Other that, the stadiums and theaters that I have located here primarily deal with major league sporting events. And other than -- so the answer is besides, you know, Fenway Park, like I indicated, or Paul Brown Stadium, which is in Cleveland, which I

believe there are New Yorkers that may travel into Cleveland to catch a game, I am not aware of anything outside of Long Island or New York City in here.

But I will clarify it, if I need to, upon a closer examination.

SENATOR MAZIARZ: I would very much appreciate that.

And would Senator Johnson continue to yield.

ACTING PRESIDENT VALESKY: Senator Johnson?

SENATOR CRAIG JOHNSON: Of course.

ACTING PRESIDENT VALESKY: The sponsor continues.

SENATOR MAZIARZ: Thank you very much, Mr. President.

Senator Johnson, I would like to ask you -- you know, we're talking about venues now. I sort of want to get into the venues. You know, Madison Square Garden, Nassau Coliseum, Jones Beach Theater, Yankee Stadium, and Citi Field. I'm reading these

off of the NYPIRG opposition memo.

Are you aware if any of those venues were either built or significantly remodelled using taxpayer dollars, Senator?

SENATOR CRAIG JOHNSON: Well, according to NYPIRG -- because I'm looking at the same memo -- NYPIRG claims that the examples that you've cited are either publicly owned or subsidized. I am not entirely sure that Nassau Coliseum is actually publicly financed or subsidized. I believe that's owned privately, I believe -- or it's operated privately. So I clarify that.

SENATOR MAZIARZ: I'm sorry, which one was owned privately?

: I believe it's operated, so I strike what I was saying about Nassau Coliseum.

But according to the NYPIRG memo that you're reading, according to them, they claim that Yankee Stadium, Citi Field and the others that you mentioned were either publicly owned or subsidized.

SENATOR MAZIARZ: Mr. President,

if, through you, Senator Johnson would continue to yield.

ACTING PRESIDENT VALESKY: Senator Johnson, do you continue to yield?

SENATOR CRAIG JOHNSON: Yes, I do.

ACTING PRESIDENT VALESKY: The sponsor yields.

SENATOR MAZIARZ: Senator Johnson, do you think just in your opinion that NYPIRG would give us misinformation?

SENATOR CRAIG JOHNSON: I'm sorry, you'll have to repeat that question, I apologize.

SENATOR MAZIARZ: Through you Mr. President, I said do you think NYPIRG would give us misinformation in a memo?

SENATOR CRAIG JOHNSON: I think there are times when NYPIRG is cited by this side of the aisle that have been rejected by your side of the aisle.

Mr. President, just -- what I'm not sure about is, with respect to what Senator Maziarz is referring to on the "NYPIRG

Opposes," I don't know if that's referring to the A print or the B print. Because what's very clear in looking at -- it's referring to my 3821. Right now we're dealing with 3821B.

I think NYPIRG, though, if they're going to give this information, probably would also clarify, because I think they do this in the past, they indicate by As and Bs and Cs. So I don't know if NYPIRG is opposing to my original one -- which passed, again, through your support -- or the B print.

SENATOR MAZIARZ: Mr. President, through you. Senator Johnson, I don't know if perhaps NYPIRG keeps me better informed than they keep you informed, but my memo of opposition clearly states 3821B. There's a letter B right there.

SENATOR CRAIG JOHNSON: Okay, I yield. I just have 3821. But that's fine.

SENATOR MAZIARZ: So NYPIRG, for the record, NYPIRG is opposed to 37821B.

SENATOR CRAIG JOHNSON: That means, Mr. President, that means that NYPIRG was probably opposed to 3821. Which, Senator

Maziarz, you voted for.

SENATOR MAZIARZ: Mr. President, on the bill.

ACTING PRESIDENT VALESKY: Senator Maziarz, on the bill.

SENATOR CRAIG JOHNSON: Thank you, Senator Maziarz, for the dialogue.

SENATOR MAZIARZ: Thank you, Senator Johnson.

Mr. President, according to NYPIRG, this bill is going to hurt, you know, a parent what wants to take their children to a sporting event, maybe buy their tickets on the secondary market. I know that my colleagues from Buffalo are well aware of people who stand out in front of HSBC Arena and Ralph Wilson Stadium now -- I keep wanting to call it Rich Stadium -- that sell tickets at a very cheap price, particularly, you know, just before the sporting event is taking place.

I would have to tell you, Senator, I thought maybe -- you've pointed out many times that I voted for the A print of this bill. And I did do that. And then you

changed the bill and I think, according to NYPIRG, made it even worse.

So I'm going to be, when we do the roll call, voting in the negative on this bill.

Thank you, Mr. President. And thank you for your time, Senator Johnson.

ACTING PRESIDENT VALESKY: Thank you, Senator Maziarz.

Senator Robach.

SENATOR ROBACH: Yes, on the bill, Mr. President.

ACTING PRESIDENT VALESKY: Senator Robach, on the bill.

SENATOR ROBACH: I enjoyed the dialogue. And, you know, this is an issue that's been around for a long time, and I've supported it. But again, you know, the logic always was that there would be some recommendations to make this bigger, better and I think -- I guess the word I'm looking for is more consumer-friendly.

And so despite the -- or in addition to the opposition from NYPIRG, in

this two-week time window since we've talked about this, one of our colleagues in the Assembly, Richard Brodsky, has traveled around the state, there's been editorials on why not cap the maximum amount of profit on a secondary ticket at 25 percent above the cost. I think that makes all the sense in the world.

And all kidding aside, what's making me change my vote is I've got a lot of letters now from people who are paying attention to this issue a little bit more. And, you know, whether it's "Disney on Ice" or even there was a show, "Hannah Montana" kid shows, they were selling the tickets for 11 times the face value of the ticket.

When you're going to have that, that's only going to allow fairly wealthy people to go to shows. And when people learn -- at least some people are indicating to me in their correspondence, citizens -- that a show is going to sell out, we have people go get those tickets so they can sell them on a secondary market.

I think a extender, a great

recommendation from this commission that was supposed to study it would have been to put a cap on it of 25 percent or some reasonable number above the cost. You would be paying for the convenience, but you wouldn't be outpricing people and events.

And whether it's sporting events or something else, maybe I'm getting sentimental in my old age, but for things with kids or with -- if you have five kids, who's going to be able to afford tickets at 5, 6, 7 percent above the --

ACTING PRESIDENT VALESKY: Senator Squadron, why do you rise?

SENATOR SQUADRON: Would Senator Robach yield to a question?

ACTING PRESIDENT VALESKY: Senator Robach?

SENATOR ROBACH: One second. I'm really almost done. I'm not denying you at all.

The cost for sporting events, which I'm interested in, have taken my own children, whether it's been the WNBA games with my

daughters, professional baseball or football games with my son, I think the regular face value is pretty, pretty high already. But I think to add on, just because you're going to the secondary market, being able to mark that up unlimitedly -- while you don't have to buy them, I think we should be a little more consumer-friendly.

So for that reason, I'm going to vote no this go-round. And I hope, if it does pass, that this commission will look at putting some kind of cap on what people can charge in the secondary market. We have a whole group of other people making money off this, not the people that put the show on or anything else.

I'm sorry for the delay. I happily await Senator Squadron's question.

SENATOR SQUADRON: Mr. President, through you, I'd like to apologize to Senator Robach for standing before he was completed. But would he yield for a question?

SENATOR ROBACH: Yes, sir.

ACTING PRESIDENT VALESKY:

Senator Robach yields.

SENATOR SQUADRON: Thank you very much. Senator Robach, I believe -- through you, Mr. President -- that Senator Robach did vote for the previous version of this legislation.

SENATOR ROBACH: I voted for it twice. I said that when I started, if you were paying attention.

SENATOR SQUADRON: And so through you, Mr. President -- paying attention as closely as I'm able -- I'd just like to ask Senator Robach, is this legislation a fundamentally worse piece of legislation because it's shorter or because there's a report in order to really figure out what's wrong with this system?

And before I ask, I'd like to just say that I stipulate I in fact sponsor a piece of legislation that would put a cap on the reselling. So I share many of the concerns Senator Robach brought up today. And I think this bill is a significantly better one than the one that passed with 59 votes in this

house a couple of weeks ago.

SENATOR ROBACH: Simply, you know what happened? I think because of Assemblyman Brodsky -- through you, Mr. President. Through Assemblyman Brodsky's efforts, which I applaud, and people talking about other options, I've gotten a lot more correspondence from my constituents. And so that's what's motivated me to change my mind, because I think they raised some valid issues that with just putting a cap on this I think would alleviate it.

Some people don't want it to be anything, they want it to be face value. I understand they have a secondary market. There has to be some profit margin in there. I just think we could limit it. And I think it's an easy and good solution. I wish we could have done it two years ago. We didn't. I did vote for that extender. I did vote for it another time.

But I still think, in light of the correspondence I've received from my constituents, in addition to NYPIRG and other

groups that think there's no controls over it, I'm going to vote no now and talk about this, with the hope that when this commission is convened, if everyone on that side of the aisle is going to vote yes, they might make those recommendations in the future.

Because I do think it would make it better and much, much more consumer-friendly for everybody, but especially families or if you want to go to that special event.

SENATOR SQUADRON: I thank Senator Robach.

On the bill.

ACTING PRESIDENT VALESKY: Senator Squadron, on the bill.

SENATOR SQUADRON: You know, there's a whole lot of concerns about the way ticket reselling is happening now. I spoke about them -- in fact, I think I was the only member of this body to speak about them two weeks ago when the previous version of this bill passed 59 to 3.

This is a better bill. And in a moment when it seemed almost impossible to

pass a bill that would fundamentally change this system, certainly improving the bill by making it a shorter extender, making it something we need to address again in this term before we go and stand for election again, before we go to all those Miley Cyrus fans and Bruce Springsteen fans and New York State Jets fans, Buffalo Bills fans -- before we face them again, we need to address this issue. And we're going to do it with a report under our belt that will tell us exactly where the problems are and exactly how to solve them.

And so I'm quite pleased that we've improved it in that way, although I'd like to say that the interest in the bill that I carry that I think continues to be before this house is one that I'm pleased to hear today, and I hope that we're going to be able to move forward with the best way to protect theatergoers and sportsgoers --

ACTING PRESIDENT VALESKY: Senator Winner, why do you rise?

SENATOR WINNER: I was wondering

if Senator Squadron would yield to a question.

ACTING PRESIDENT VALESKY: Senator Squadron, do you yield to Senator Winner?

SENATOR SQUADRON: I'd be happy to.

ACTING PRESIDENT VALESKY: The Senator yields.

SENATOR WINNER: Thank you, Mr. President.

Senator Squadron, you indicated that you have another bill on the calendar. I think it's Calendar Number 422?

SENATOR SQUADRON: Through you, Mr. President, I do another bill on the calendar. I'm not sure what the calendar number is, but I'm sure Senator Winner does know.

SENATOR WINNER: It's a bill, basically a companion bill to Assemblyman Brodsky's bill?

SENATOR SQUADRON: Through you, Mr. President, it was introduced as a same-as bill to the one carried by Assemblyman Brodsky

in the other house.

SENATOR WINNER: Will the Senator yield to another question?

ACTING PRESIDENT VALESKY: Senator Squadron, do you continue to yield?

SENATOR SQUADRON: I'd be happy to.

ACTING PRESIDENT VALESKY: The Senator yields.

SENATOR WINNER: Senator, your bill was referred to the Investigations Committee, of which I'm the ranking member. And the time it was on the agenda for the committee agenda, that bill was held and not taken up. How did it get on the calendar?

SENATOR SQUADRON: Through you, Mr. President, I believe that bill was passed through the Rules Committee last week.

SENATOR WINNER: Will the Senator yield to a question?

ACTING PRESIDENT VALESKY: Senator, do you continue to yield?

SENATOR SQUADRON: I'd be happy to.

ACTING PRESIDENT VALESKY: The Senator yields.

SENATOR WINNER: Senator, in other words, in the spirit of the great reform here, you bypassed the committee structure to yank that bill out onto the calendar?

SENATOR SQUADRON: Through you, Mr. President, I don't actually think the word "yanked" is appropriate. Nor do I think, as I said before, that "the great reform" is actually appropriate.

There's no question that this house is moving to reform how it does things. And as you know, Senator Winner, I think as many of my colleagues know, I don't think we've gone all the way there by any means. We are certainly starting with reforms.

And to answer your question, I think all I can say again is it was passed through the Rules Committee publicly last week.

SENATOR WINNER: Will the Senator yield to another question?

ACTING PRESIDENT VALESKY:

Senator Squadron, do you continue to yield?

SENATOR SQUADRON: I'd be happy to.

ACTING PRESIDENT VALESKY: The Senator yields.

SENATOR WINNER: Senator Squadron, I don't think I really quite understood the answer to the question. I think the question was, why did you bypass the committee structure to have the bill brought through the Rules Committee?

SENATOR SQUADRON: Through you, Mr. President, there's a whole lot of reasons that I'd be happy to discuss about why I support this bill and what's going on. I'm not sure that the function of the Rules Committee, which is a longstanding role of this house, is germane to the discussion we're having.

SENATOR WINNER: Thank you. I got the answer. Thank you.

SENATOR SQUADRON: Thank you very much.

ACTING PRESIDENT VALESKY:

Senator Marcellino.

SENATOR MARCELLINO: Thank you, Mr. President.

During the discussion, we've heard reference to various memos from NYPIRG in opposition, whether it be on the original bill, 3821, or the 3821B version which we are discussing today. Just for the record, I voted for the first version of this bill a couple of weeks back.

But I think it's important at this moment that we discuss and we hear the opposition memo written by NYPIRG, because it raises certain points and it raises certain questions which I think need to be responded to before we go through this debate any further.

It says here: "Statement of Opposition." And I'm reading from the memo from NYPIRG, which says "NYPIRG Opposes S3921-B, Statement of Opposition. New York had an anti-ticket scalping law from 1920 to 2007.

"That law protected moderate-income

families and other consumers who wanted to attend sports, theater, music and other entertainment events by outlawing unlimited markups by scalpers who had no hand in creating or producing the events.

"The law also protected the athletes, sports teams, actors, musicians and their investors from others making profit from their labor.

"In 2007, without the benefit of a report on the issue that was required to be issued by the state's Consumer Protection Board by the end of 2006, and without a public hearing, the Legislature passed and Governor Spitzer signed legislation that suspended the state's longstanding antiscalping law for two years.

"There are two major problems with this bill. First, the bill would extend the current experiment with allowing unlimited markups to secondary ticket sales while a study is performed. The burden is on the ticket scalpers to show a public benefit over the past two years of unlimited ticket

scalping, a burden scalping proponents have not met.

"Second, the Secretary of State is charged with issuing a report on scalping. The Attorney General was charged with the task in the previous version of this legislation, based on the AG's experience with the issue and track record for investigations and reviews. In contrast, the Department of State has no relevant experience with this issue and is not primarily an investigative or enforcement agency."

In bold print: "It's outrageous that the New York taxpayers who pay to build, maintain, and subsidize venues like Yankee Stadium, Citi Field, Jones Beach Theater, Nassau Coliseum, Madison Square Garden, Times Union Center, SPAC, et cetera, often cannot afford tickets for good seats to events at these very buildings as a result of scalping.

"Unless and until a thorough evaluation of current scalping practices is performed, the Attorney General's 1999 report, "Why Can't I Get Tickets?" which showed

widespread ticket diversion, commercial bribery and tax evasion, stands as the definitive analysis of the ticket sales marketplace.

"And accordingly, NYPIRG urges everyone to oppose this legislation."

Mr. President, will the sponsor please yield for a question?

ACTING PRESIDENT VALESKY: Senator Johnson, do you yield to a question from Senator Marcellino?

SENATOR CRAIG JOHNSON: Senator Marcellino, my good friend, I will be happy to.

ACTING PRESIDENT VALESKY: The sponsor yields.

SENATOR MARCELLINO: Thank you, my good friend.

The two questions raised by NYPIRG -- first, that the bill would extend the current experiment, which allows unlimited markups, the suggestion has been made here, Senator, that the average citizen can't get tickets because the scalpers buy them when

they go on sale, and they're selling them at many times the price. So the average family can't get access to these events.

How does your bill help that?

SENATOR CRAIG JOHNSON: Thank you. And through you, Mr. President, I'll be happy to share with you and to all members of the Minority the same data that we've accumulated with respect to the claim -- and I believe erroneous claim -- that somehow the secondary market is marking up.

I have countless examples -- and while it may not have had the exact area for Senator Maziarz, for you, Senator Marcellino, as someone who, like myself, represents Long Island, I have countless instances of tickets sold at the primary market, when sold on the secondary market, substantial reductions. At Citi Field, at Madison Square Garden, at Nassau Coliseum. The list goes on and on and on and on.

What's interesting in NYPIRG's fascinating memo is they cite anecdotal evidence. I don't see the actual factual

evidence. I'll be happy to share it with you. I'll pull one out right now. Let's talk about, let's see -- well, I gave you my Knicks-Pacers example. We could do the Islanders-Rangers, the December 31st game at New Year's Eve in Nassau Coliseum, where a $50 ticket was sold at a reduced price of $35.

I'll go on. The secondary -- the free market, the free market is working. And again, what's fascinating is NYPIRG's opposition two weeks ago is the same opposition you ignored -- except for Frank Padavan, credit to him, he did oppose the bill. I won't single out Senator Padavan. You opposed the bill.

But the same opposition you ignored now all of a sudden it's Eureka, we have figured out -- and Senator Squadron and Senator Krueger also ignored it, on my side. But Senator Squadron has come around. Because why? Because we revised the bill and put in protections.

Protections, by the way -- this claim that the last piece of legislation

contained a report? There was no reporting requirement. This is new. This is new. We are improving it and cutting down the time to require people to come back. And we're putting a report requirement to come back in February.

And so we're going to have to be vigilant. And I know Senator Squadron will be vigilant. I know you, Senator Marcellino. I know Senator Maziarz will be just as vigilant. But the fact is is that what we see by example and by fact is the anecdotal evidence shows that the secondary market is working, it's working, and it's working.

SENATOR MARCELLINO: Senator, would you yield for another question?

ACTING PRESIDENT VALESKY: Senator Johnson, do you continue?

SENATOR CRAIG JOHNSON: Of course.

ACTING PRESIDENT VALESKY: The sponsor yields.

SENATOR MARCELLINO: Senator Johnson, what you're suggesting is that

scalpers are buying tickets and selling them under market value. So they're going to lose money?

SENATOR CRAIG JOHNSON: Is that the question?

SENATOR MARCELLINO: Yes.

SENATOR CRAIG JOHNSON: What I'm suggesting is the anecdotal evidence that we have found is that the members on the secondary market are paying for less than the face value than what was being offered on the primary market.

SENATOR MARCELLINO: With due respect -- through you, Mr. President -- to my colleague, if he would continue to yield.

ACTING PRESIDENT VALESKY: Senator Johnson, do you continue to yield?

SENATOR CRAIG JOHNSON: Yes. Of course.

ACTING PRESIDENT VALESKY: The sponsor continues.

SENATOR MARCELLINO: My question was, are the scalpers buying the tickets at a price and then selling them under the price

they purchased? In other words, they're losing money?

SENATOR CRAIG JOHNSON: Again, let me repeat. What the evidence shows, what my document shows that I'll be happy to provide you, is there is a face value for a ticket. Again, New York Knicks selling a $330 ticket. They are turning around and selling that ticket, which normally would have been bought from Madison Square Garden at $330, they're selling it to some other consumer at a much lower value. It's almost like a stock. Sometimes stocks go up, sometimes stocks go down, based upon potentially the popularity of the venue.

SENATOR MARCELLINO: If the Senator would continue to yield.

ACTING PRESIDENT VALESKY: Senator Johnson?

SENATOR CRAIG JOHNSON: Of course, yes.

ACTING PRESIDENT VALESKY: The Senator continues to yield.

SENATOR MARCELLINO: The bill

that I and others voted for, what was the vote that that bill passed by?

SENATOR CRAIG JOHNSON: Through you, Mr. President, I believe it was 59 to 3. Senator Padavan, Senator Liz Krueger, and Senator Dan Squadron opposing the bill.

SENATOR MARCELLINO: So members on your side of the aisle as well as my side of the aisle voted similarly?

SENATOR CRAIG JOHNSON: Correct.

SENATOR MARCELLINO: Through you, Mr. President, would the Senator continue to yield?

SENATOR CRAIG JOHNSON: Of course.

ACTING PRESIDENT VALESKY: Senator Johnson continues to yield.

SENATOR MARCELLINO: It was my understanding that that bill was passed initially for this one-time experiment, that this was not supposed to go on forever, this bill. There was supposed to be a report issued, and a report was supposed to be given to us tell us whether this was going to work

or not. This was an experiment, not a permanent fixture. Am I wrong?

SENATOR CRAIG JOHNSON: Through you, Mr. President, I never want to say you're wrong, Senator Marcellino. I have too much respect for you. Let me correct your interpretation.

The original A print was a two-year extender of a bill of a law originally enacted by our colleague, your leader, Senator Skelos. It was simply a two-year extender to extend the time, and that was it. That was it.

What you have today, because of issues that have been raised in the other house and as well as by my colleague Senator Squadron, what you have today is a compromise where we've extended out the time by 50 weeks, this law, as well as put in some requirements -- in particular, this reporting requirement that a report is going to be produced with respect to sale and resale of the tickets.

It's a very good compromise, one that I would urge all our colleagues to get on

board with. Because come February, we will have a more definitive report to see what's going on, plus time to address if there are problems. Or, if there are not, to address whether or not to extend the law further.

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

Thank you, Senator.

SENATOR CRAIG JOHNSON: Thank you, Senator Marcellino.

ACTING PRESIDENT VALESKY: Senator Marcellino, on the bill.

SENATOR MARCELLINO: It has been my experience in talking to people -- and I'd be interested in seeing the Senator's report and where he got his information and the facts and figures on this. But in talking to people on the street who try to go to an event, if you can't get the ticket in the initial purchase because the scalpers have purchased up a lot of them -- and they're not in the business of losing money. They're in the business of making money.

So for an event that is really

popular, you're basically freezing out the average citizen. The average family is not getting into these events. Those events that are popular where people want to go there, they're not getting there. Fifty weeks.

A report has to be done. Some study has to be done. The chairman of the Investigations Committee, my colleague, could well have done this, should have, in my mind, done this as a service and issued a report himself as a committee, should have issued a report on this thing of the committee, and let us know what's going on here.

We need to know the facts on this bill. And until we do -- and I don't often do this -- I'm going to agree with NYPIRG, because I think they're correct.

I think the taxpayers are getting the shaft on this one and they're not getting their fair share. They're paying the bills, they're paying for these venues, they're supporting these teams to keep them in their areas, yet the average citizen is not able to get in. They're just not able to get in.

Unless you are a major corporation who can afford to buy $2,000 tickets and $2,000 seats, you have a problem.

ACTING PRESIDENT VALESKY: Senator Stachowski, why do you rise?

SENATOR STACHOWSKI: I would like to have Senator Marcellino yield for a question.

ACTING PRESIDENT VALESKY: Senator Marcellino, do you yield?

SENATOR MARCELLINO: Yes, I would yield to Senator Stachowski.

ACTING PRESIDENT VALESKY: Senator Marcellino yields.

SENATOR STACHOWSKI: Through you, Mr. President. Senator Marcellino, do you believe that if this went out of existence, the secondary market, that there would no longer be scalpers that bought tickets in bulk form at every possible opportunity for what they conceive as the popular games for sporting teams and then would proceed to sell them at even a more exorbitant rate, with nobody -- even though it's illegal -- with

nobody overseeing it?

Do you believe that's true, that if this bill goes out of effect there will be no secondary market?

SENATOR MARCELLINO: No, I don't for a second believe that that's true, Senator. I agree with you. There are illegal activities, and certain people will do illegal things no matter what you do.

What I'm suggesting, however, is this bill doesn't fix that problem. This bill extends it. This bill gives it more time. And I don't see the report. I think the report could have been and should have been done. And I think we need to know. And I don't think the Department of State is the agency to do that. The Attorney General's office is much better equipped to do that kind of an investigation and to do that enforcement.

I agree, I think I know where you're going, Senator, and I agree with you, because your background is a good one in the sports field, and I respect you for your

experience in the sports area and that arena. We need to protect the taxpayer and we need to protect the viewing public from the scalper who's taking advantage. And this bill doesn't do that, in my mind.

SENATOR STACHOWSKI: Mr. President, would the Senator please continue to yield?

ACTING PRESIDENT VALESKY: Senator Marcellino, do you continue to yield?

SENATOR MARCELLINO: It will be my pleasure.

ACTING PRESIDENT VALESKY: The Senator yields.

SENATOR STACHOWSKI: Senator, are you also aware that because of this bill the law that we're currently trying to extend, teams like the Bills now have a policy where if you know ahead of time you're not going to use your tickets, you can let them know and they will then sell them for you and you get a credit to your account and they sell them at face value? Are you aware of that?

And that would have never happened

in the old days. But due to this law, that happens currently. And the Sabres also have that kind of policy. I don't know about other sports teams, but I know Senator Maziarz was interested in Buffalo teams. So I can only give you the two Buffalo teams, major sport teams, that they now, because of this law, have a policy that for season ticketholders, if they know a week or two ahead of time that they're going to be out of town, they can let the Sabres know or the Bills know, and then they will then sell their tickets at face value to fans that otherwise couldn't get the seat. And that wouldn't be possible if this law expires.

SENATOR MARCELLINO: Yes, Mr. President, through you, I am, Senator Stachowski, aware of what you're saying.

SENATOR STACHOWSKI: Thank you, Mr. President.

ACTING PRESIDENT VALESKY: Thank you, Senator Stachowski.

SENATOR MARCELLINO: I'm finished.

ACTING PRESIDENT VALESKY: Thank you, Senator Marcellino.

Are there any other Senators who wish to be heard?

Senator Winner.

SENATOR WINNER: Thank you, Mr. President. Will Senator Johnson yield to a question or two?

ACTING PRESIDENT VALESKY: Senator Craig Johnson, do you yield?

SENATOR CRAIG JOHNSON: Sure, Senator. Of course, for my colleague.

ACTING PRESIDENT VALESKY: The sponsor yields.

SENATOR WINNER: Thank you. Mr. President, through you. Senator Johnson, excuse me if this has been asked before, but this bill is different than that which passed through our committee. And therefore, I'd like to have you clarify for me and for the members what the meaning of Section 2 on page 1 of the bill is and whether it relates to any specific example that you're trying to get at.

SENATOR CRAIG JOHNSON: Section

2, which prohibits the operator's agent from selling or conveying tickets to any secondary ticket reseller owned or controlled by the operator's agent. So I think it's self-explanatory. What exactly are you looking -- that's new. What are you exactly looking to get clarified?

SENATOR WINNER: Mr. President, through you. Senator Johnson, what I'm trying to get is you said it's new. Why is it in there?

SENATOR CRAIG JOHNSON: This was a request by the Assembly during the process. And we saw no objection to it. And in order to ensure that we were able to extend out a law -- I will say a good law that was drafted and sponsored by Senator Skelos, your leader -- we included this provision in an effort to compromise to get the extender for an additional year.

SENATOR WINNER: Mr. President, through you.

ACTING PRESIDENT VALESKY: Senator Johnson?

SENATOR CRAIG JOHNSON: Yes, I yield.

ACTING PRESIDENT VALESKY: Senator Johnson continues to yield.

SENATOR WINNER: Well, again, your statement then and your representation to us on the floor is that this section for which you have assented to the Assembly for its addition doesn't have any meaning for you as far as any specific purpose.

SENATOR CRAIG JOHNSON: To give an example, Madison Square Garden, purely as an example, can't own a secondary market to resell the tickets. If that's what you're trying to understand what this section does. Because Madison Square Garden, obviously, for the Rangers and for the Knicks, sell their own tickets. So they can't own a StubHub or any other type of secondary seller.

SENATOR WINNER: Mr. President, through you, if Senator Johnson would continue to yield.

SENATOR CRAIG JOHNSON: Of course.

SENATOR WINNER: I have heard somewhere through the grapevine that perhaps this was trying to get at a circumstance where there was a concert that Ticketmaster had a relationship with a reseller -- I think it was a Springsteen concert -- and that there was some transfer of the authority from Ticketmaster to some other entity that was purported to be owned by Ticketmaster to restrict the sales of those tickets in those types of circumstances. Does that make any sense to you?

SENATOR CRAIG JOHNSON: I'm not aware of that particular grapevine, Senator Winner.

SENATOR WINNER: Okay. Well, that's good. So I just wanted to clarify whether or not there were any real specific pictures on Section 2 in the bill.

SENATOR CRAIG JOHNSON: Through you, Mr. President, of course yielding, I am not aware of it, Senator Winner.

SENATOR WINNER: Okay. Thank you, Mr. President.

SENATOR CRAIG JOHNSON: Thank you, Senator Winner.

ACTING PRESIDENT VALESKY: Thank you, Senator Winner. Thank you, Senator Johnson.

The Secretary will ring the bells.

The debate is closed.

The Secretary will read the last section.

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

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT VALESKY: Senator LaValle, to explain his vote.

SENATOR LaVALLE: Mr. President, this bill being a free-market bill, it was very interesting to see that our colleague Senator Johnson is sponsoring this.

(Laughter.)

SENATOR LaVALLE: That is C. Johnson.

But I wanted to believe -- if you

talk to any of my constituents, they would tell you that this bill will not lower their rates.

Now, with the exception of -- and I'm a Knicks fan -- the New York Knicks, where you probably can give tickets away, or couldn't give tickets away.

(Laughter.)

SENATOR LaVALLE: And that was one of the examples that was used about a lower rate.

So I'm going to -- I think this is a bad bill for constituents. I'm going to vote in the negative.

ACTING PRESIDENT VALESKY: Senator LaValle to be recorded in the negative.

Senator Squadron, to explain his vote.

SENATOR SQUADRON: Thank you, Mr. President.

I spoke a little bit during the debate about the fact that I don't think this is an ideal bill. I have many concerns about

the current system as it's in place. I am eager to get the report and next year come together and pass a much better system.

And in fact, I'm incredibly heartened today, because all indications have been that there were very few folks on the other side of the aisle, slightly more on this side, who are were as concerned as I was. Today I am seeing that so many folks, folks who voted against this in the Rules Committee, folks who expressed grave concerns about it who were on the Investigations Committee, which is where it was originally referred, are now seeing all of the concerns with what happens.

And so I'm very, very hopeful that in this session before we stand for election again, we will be able to create a much better system. And hopefully this report and today's debate will move us toward that.

So I am voting in the affirmative with the hope that we can do better in the future. Thank you.

ACTING PRESIDENT VALESKY:

Senator Squadron to be recorded in the affirmative.

Senator Maziarz, you wish to explain your vote?

SENATOR MAZIARZ: Thank you, Mr. President, to explain my vote.

Mr. President, I'm a little bit surprised that some of my colleagues are going to vote against NYPIRG today.

I am going to vote in agreement with NYPIRG today. I fully expect that that means that next week Senator Schneiderman is going to vote with the NRA and that things will really be surprising around here.

I vote in the negative, Mr. President.

ACTING PRESIDENT VALESKY: Senator Maziarz to be recorded in the negative.

Senator Craig Johnson, to explain his vote.

SENATOR CRAIG JOHNSON: Thank you very much, Mr. President. Of course, I thank my colleagues who engaged in a very

interesting discussion and an important discussion here in the New York State Senate.

I've seen some quite ironic things in my very short tenure here in the State Senate. But here this bill is trying to extend out for a short period of time a piece of landmark legislation that was drafted and sponsored and put forth by the Minority Leader, Senator Skelos. Then, two weeks ago, we put forth a simple two-year extender that everybody but Frank Padavan in the Minority supported, over the objections of NYPIRG.

Today, where we actually put in a shorter extender, with some provisions that, as my good friend Senator Squadron, the coprime sponsor of this legislation, talks about being important to raising some issues and furthering a dialogue, all of a sudden Eureka, here's the NYPIRG memo: My goodness, what are we doing.

Look, I hear you. I appreciate your position. But you first voted against NYPIRG, and today you're voting with NYPIRG. I think let's be genuine -- except for Frank

Padavan, except for Senator Padavan, who opposed the bill originally. I want to make the record clear.

But let's be honest here. The evidence, the empirical evidence shows that tickets are able in the secondary market to be a lot loss. And numerous examples, whether it's the Knicks, the Islanders, the Rangers, other locations in the area.

So good piece of legislation. Needs to be improved upon, Senator Squadron. The report is going to be issued in February and hopefully we'll have it. It will be the first time, because the last law had no report.

SENATOR LIBOUS: Mr. President --

SENATOR CRAIG JOHNSON: So here we're doing something --

SENATOR LIBOUS: Excuse me, Mr. President.

ACTING PRESIDENT VALESKY: Senator Libous, why do you rise?

SENATOR LIBOUS: Have the rules changed? I thought it was two minutes to

explain your vote.

ACTING PRESIDENT VALESKY: I was just looking over at the clock, and Senator Craig Johnson is rapidly approaching his two minutes.

SENATOR LIBOUS: Thank you, Mr. President.

SENATOR CRAIG JOHNSON: But do I get added time, since Senator Libous cut into it?

SENATOR LIBOUS: Thank you, Mr. President.

SENATOR CRAIG JOHNSON: I'm done. I'm done.

SENATOR LIBOUS: Thank you, Mr. President.

ACTING PRESIDENT VALESKY: How do you vote, Senator Johnson?

SENATOR CRAIG JOHNSON: I vote yes.

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

Senator Liz Krueger, to explain her

vote.

SENATOR LIZ KRUEGER: Thank you.

Well, I listened interestingly to the debate. And I have to say when the bill passed originally several years ago, I had many concerns. And I still have them today.

But I recognize that you can't turn on a dime. This state doesn't turn on a dime. And unfortunately, it was time to either end the bill or extend it, because research had not been done by my colleagues in either house about the impact of this law.

So I am prepared to vote for this bill today knowing that we're going to do real research, a real study, and decide whether or not this system is working. I suspect we will find it's not working and we will have an opportunity very quickly to fix the legislation in everyone's best interests.

So today I vote yes. Thank you, Mr. President.

ACTING PRESIDENT VALESKY: Senator Liz Krueger to be recorded in the affirmative.

Senator Padavan, to explain his vote.

SENATOR PADAVAN: Thank you, Mr. President.

Since the sponsor keeps referring to people who voted yes or no, I think he should recognize that there are some people, particularly on this side of the aisle, who have the intellectual capacity to learn.

(Laughter.)

SENATOR PADAVAN: In any event, Mr. President, while we've been studying this issue now for years and are projecting a further continuation of that, New Jersey is acting. They have introduced legislation and are voting, if my radio report that I heard this morning as I drove up here is accurate, on a solution to the problem.

And I'm surprised that you didn't know the situation that Senator Winner spoke to with the Springsteen concert and where one outfit, Ticketmaster, owns another outfit, gave them a bulk of tickets, and they sold them for the sky's the limit. That happened.

And New Jersey is addressing the issue. And apparently they don't have to take year after year to study it. I vote no.

ACTING PRESIDENT VALESKY: Senator Padavan to be recorded in the negative.

Senator Volker, to explain his vote.

SENATOR VOLKER: Mr. President, I've been listening to the debate here today, and I listened to the debate on a number of occasions when Senator Skelos had the bill and so forth.

But the key to me is, and the reason I'm supporting it is, is that NYPIRG is opposed to it. So I vote aye.

(Laughter.)

ACTING PRESIDENT VALESKY: Senator Volker to be recorded in the affirmative.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 265 are Senators Flanagan, LaValle, Marcellino,

Maziarz, Padavan, and Robach. Also Senator Saland.

Ayes, 52. Nays, 7.

ACTING PRESIDENT VALESKY: The bill is passed.

THE SECRETARY: Calendar Number 318, by Senator Stachowski, Senate Print 4100, an act to amend the Tax Law.

SENATOR LIBOUS: Explanation.

ACTING PRESIDENT VALESKY: Senator Stachowski, an explanation has been requested by Senator Libous.

SENATOR STACHOWSKI: Yes. This bill gives Erie County another year of extending their additional .75 percent county sales tax for an additional two years.

It's at the request of the county executive, who I believe is from their party, and the smartest guy in New York State, and it also is forwarded to us by the county legislature.

It's got a home rule with it. It's something that localities still feel are necessary to make their budget work, and so

that's why we have the bill.

SENATOR LIBOUS: Read the last section.

ACTING PRESIDENT VALESKY: The Secretary will ring the bells.

There is a home-rule message at the desk.

Read the last section.

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

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59. Nays, 0.

ACTING PRESIDENT VALESKY: The bill is passed.

THE SECRETARY: Calendar Number 323, by Senator Valesky, Senate Print 5120, an act to amend the Tax Law.

SENATOR LIBOUS: Explanation, please.

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

Valesky.

SENATOR VALESKY: Yes, Madam President. This piece of legislation, which has been requested by the Madison County board of supervisors, would extend for a period of two years their ability to collect the additional 1 percent in sales and compensating use tax, would extend the authority for Madison County to do that through November 30, 2011.

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

Are there any Senators that wish to be heard on the bill?

The Secretary will ring the bell.

Read the last section.

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

ACTING PRESIDENT STEWART-COUSINS: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT STEWART-COUSINS: Announce the results.

THE SECRETARY: Ayes, 59. Nays,

0.

ACTING PRESIDENT STEWART-COUSINS: The bill is passed.

THE SECRETARY: Calendar Number 328, by Senator Sampson, Senate Print 2849, an act to amend the Judiciary Law.

SENATOR LIBOUS: Explanation, please.

ACTING PRESIDENT STEWART-COUSINS: Senator Sampson, an explanation has been requested.

SENATOR SAMPSON: Yes, Madam President. This bill updates and modernizes the emergency procedures for the relocation of state court.

It redresses the foregoing concerns by providing for, one, updated disaster plans adapted to modern threats by allowing relocation beyond districts. Second, it insulates localities against unfair faculty costs arising from these emergency situations. And, third, it basically streamlines the authority under what circumstances who is responsible for relocating these courts.

SENATOR LIBOUS: Read the last section.

SENATOR ROBACH: Good explanation.

SENATOR SAMPSON: Thank you very much, Senator Robach.

ACTING PRESIDENT VALESKY: The Secretary will ring the bells.

Read the last section.

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

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59. Nays, 0.

ACTING PRESIDENT VALESKY: The bill is passed.

THE SECRETARY: Calendar Number 331, by Senator Addabbo, Senate Print 4766, an act to amend the Real Property Tax Law.

SENATOR LIBOUS: Read the last section.

ACTING PRESIDENT VALESKY: The

Secretary will ring the bells.

Read the last section.

THE SECRETARY: Section 4. This act shall take effect January 2, 2010.

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59. Nays, 0.

ACTING PRESIDENT VALESKY: The bill is passed.

THE SECRETARY: Calendar Number 335, by Member of the Assembly Jeffries, Assembly Print Number 4904, an act to amend the Public Service Law.

SENATOR LIBOUS: Explanation, please.

ACTING PRESIDENT VALESKY: Senator Parker, an explanation has been requested by Senator Libous.

SENATOR PARKER: Through you, Mr. President. This is essentially a cleanup bill.

And essentially what it does is

that it takes into account new types of corporations that are providing energy and telecommunications products and really just ensuring that the PSC has an ability to regulate their stock conversions.

ACTING PRESIDENT VALESKY: Are there any Senators who wish to be heard?

Seeing none, the debate is closed.

The Secretary will ring the bells.

Read the last section.

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

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59. Nays, 0.

ACTING PRESIDENT VALESKY: The bill is passed.

THE SECRETARY: Calendar Number 348, by Member of the Assembly Ortiz, Assembly Print Number 6532B, an act to amend the Executive Law.

SENATOR LIBOUS: Explanation,

please.

ACTING PRESIDENT VALESKY: Senator Hassell-Thompson, an explanation has been requested by Senator Libous.

SENATOR HASSELL-THOMPSON: Thank you, Mr. President. Basically, this is --

ACTING PRESIDENT VALESKY: Senator Libous, why do you rise?

SENATOR LIBOUS: I'm sorry, I thought we were on the Breslin bill. No explanation needed.

Call the roll.

SENATOR HASSELL-THOMPSON: Thank you. Thank you, Senator Libous. I appreciate that so much.

ACTING PRESIDENT VALESKY: The Secretary will ring the bells.

Read the last section.

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

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59. Nays,

0.

ACTING PRESIDENT VALESKY: The bill is passed.

THE SECRETARY: Calendar Number 353, by Member of the Assembly Cusick, Assembly Print Number 2369, an act to amend the General --

SENATOR LIBOUS: Explanation, please.

ACTING PRESIDENT VALESKY: Senator Breslin, an explanation has been requested by Senator Libous.

SENATOR BRESLIN: Thank you, Mr. President.

This bill amends the General Obligations Law by voiding construction clauses that condition a subcontractor or supplier's right to file a claim and commence an action for payment bond.

This law would prohibit construction clauses that require the exhaustion of another legal remedy before filing a lawsuit.

ACTING PRESIDENT VALESKY:

Senator Saland.

SENATOR SALAND: Thank you, Mr. President. Mr. President, would Senator Breslin yield to a question?

ACTING PRESIDENT VALESKY: Senator Breslin, do you yield?

SENATOR BRESLIN: I certainly do.

ACTING PRESIDENT VALESKY: The sponsor yields.

SENATOR SALAND: Thank you, Senator. Excuse me while I try and locate on this messy desk my copy of the bill.

As I do that, Senator Breslin, perhaps you can tell me, under this proposed change in the law, would the burden of whatever loss might have been experienced, been experienced by a subcontractor in the situation you describe, be borne now by an owner or a contractor?

SENATOR BRESLIN: Senator Saland, really what it is, as you know, through you, Mr. President, a subcontractor sits there. If he has to use the lien that he's filed, that lien goes towards the owner. But as you know,

Senator Saland, the obligation is from a contractor to the subcontractor, their contract.

And this legislation would allow the subcontractor, and particularly in these difficult economic times, to be able to commence a lawsuit directly, directly against the general contractor and not have to, first of all, by the contract that he's signed, enforce himself through the lien.

SENATOR SALAND: If the Senator will continue to yield.

ACTING PRESIDENT VALESKY: Senator Breslin, do you continue to yield?

SENATOR BRESLIN: Certainly.

ACTING PRESIDENT VALESKY: The sponsor continues.

SENATOR SALAND: Assume for the moment that the owner of whatever the property that the project is being constructed on has run out of money. The contractor has not been paid, the subcontractor has not been paid. Who, under your construct now, gets to bear the burden of this lack of payment?

SENATOR BRESLIN: Well, under basic contract law, the subcontractor and the contractor contracted with each other, so the obligation flows from the contractor to the subcontractor. That doesn't preclude -- even though it would be fruitless if there were no money -- it wouldn't preclude the general contractor from actioning in a third-party action, actioning over against the owner of the land.

SENATOR SALAND: If the Senator would continue to yield.

ACTING PRESIDENT VALESKY: Senator Breslin, do you continue?

SENATOR BRESLIN: Certainly.

SENATOR SALAND: But if the third-party owner has no assets or his assets have been depleted --

SENATOR BRESLIN: Well, he has the land itself.

But that doesn't, in my opinion, it doesn't reduce under this legislation the obligation that a contractor has to a subcontractor who enters into the contract

between the two of them, and he understands that obligation. And the contractor should know whether there's sufficient monies to pay a subcontractor.

SENATOR SALAND: I would merely suggest in this economy I'm sure there are many contractors, and perhaps subcontractors as well, who didn't anticipate the inability of an owner to be able to abide by their obligation.

SENATOR BRESLIN: And perhaps -- through you, Mr. President -- perhaps that will make a subcontractor more sensitive to who the owner is and entering into the subcontract with the subcontractor.

SENATOR SALAND: Senator Breslin, under our Lien Law, is a lien renewable?

SENATOR BRESLIN: Sure. Absolutely. But it's a refiling process. It isn't in this bill. Through you, Mr. President. I believe it's just a refiling process.

And I know there's been some amendments as to the length of time you can --

or the number of times you can refile. But I know you can refile.

SENATOR SALAND: Interestingly, I posed that question to one of our colleagues. It's been a long time since I've seen one of these cases --

SENATOR BRESLIN: And that's why I'm suggesting I believe it's that way, Senator.

SENATOR SALAND: And I recall it being renewable, but I didn't recall how many times it could be renewed. I thought perhaps you might know.

One last question, if I might, Senator Breslin.

ACTING PRESIDENT VALESKY: Senator Breslin, do you continue to yield?

SENATOR BRESLIN: I continue to yield, Mr. President, certainly.

ACTING PRESIDENT VALESKY: The sponsor yields.

SENATOR SALAND: Senator Breslin, I would merely like to come back to the situation which I described before. And I

think in your memo you refer to a Court of Appeals case --

SENATOR BRESLIN: Yeah, the Court of Appeals case I believe is West-Fair Electric versus Aetna Casualty. And in that case, the court ruled that the general contractor's liability to pay a subcontractor is not contingent upon the general contractor receiving money from the owner, that it's their contractual obligation.

SENATOR SALAND: Correct. And I had the opportunity to read the case, and really with the fact that it was a case that was sent by the federal Court of Appeals to our Court of Appeals.

But I come back to somebody in this scenario has to bear the burden of a loss. And if the owner's assets are depleted, what we're doing here I believe is saying that the contractor shall be the party that will bear that loss.

SENATOR BRESLIN: I think that's correct. And I think the Court of Appeals decision pretty much said we're going to go

back to basic contract law. The subcontractor contracts with the contractor, so we'll look to the four walls of the contract to determine who should pay whom.

And the owner, you're right, if there isn't enough money, it appears as though the contractor would be the odd person out.

SENATOR SALAND: Thank you, Senator Breslin. Thank you, Mr. President.

SENATOR BRESLIN: Thank you.

ACTING PRESIDENT VALESKY: Thank you, Senator Saland.

Any other Senators wish to be heard on the bill?

Senator Ranzenhofer.

SENATOR RANZENHOFER: If the sponsor will yield.

ACTING PRESIDENT VALESKY: Senator Breslin, do you yield?

SENATOR BRESLIN: Certainly, Mr. President, I'll be glad to.

ACTING PRESIDENT VALESKY: The sponsor yields.

SENATOR RANZENHOFER: Does your

bill now protect an owner who will no longer have to pay because the subcontractor will be able to go against the contractor?

SENATOR BRESLIN: I really couldn't hear you, Senator. If you could repeat that.

SENATOR RANZENHOFER: Will this now let an owner off the hook because the subcontractor will now have to go against the contractor?

SENATOR BRESLIN: No. Quite frankly, no. I think that a subcontractor will look to his basic contract. He'll probably make some initial decisions, because there still would be a lien. And they'll all each, the contractor and the subcontractor, practically speaking, will know how much the owner has.

What it's saying is that if the owner has nothing, the subcontractor will be allowed to sue the contractor. Now, the contractor also has the right, if there's assets there, to do a third-party action over against the owner. But as Senator Saland

said, if the owner has nothing and there's liens that precede the lien of the subcontractor, that contractor still should be obligated to someone that he hired to do work for him.

SENATOR RANZENHOFER: Another question. Does that, then, let the owner off the hook if the subcontractor can more easily go after the person that owns the land?

SENATOR BRESLIN: Through you, Mr. President. No. Again, the contractor has the right, if he is sued by the subcontractor, to action over against the owner for whatever assets may be available.

Now, if there are no assets left, then it appears as though the owner has no assets, so he's out of luck a little bit because something happened business-wise. And the contractor is not out of luck; he understands the risks when he hires subcontractors and he enters into agreements.

And it's really, in many ways -- through you, Mr. President -- it's helping the little guy, the subcontractor, the upstate

businesses, the small businesses that are trying to do a day in, day out job, they're not sophisticated, they're doing a little plumbing job, a little electrical job, a roofing job. And these generally much bigger general contractors are much more sophisticated, much more knowledgeable, and much more likely to put into contracts "you can't sue me, you've got to enforce the lien."

And this is suggesting that that little contractor, that subcontractor, will and should be protected.

SENATOR RANZENHOFER: Another question, through you, Mr. President.

ACTING PRESIDENT VALESKY: Senator Breslin, do you continue to yield?

SENATOR BRESLIN: I of course continue to yield.

ACTING PRESIDENT VALESKY: The sponsor continues.

SENATOR RANZENHOFER: Don't you often have a situation where you have three, four, five, six contractors and subcontractors down the line? So you'll have a general

contractor and then you'll have, say, five subcontractors after that. Aren't we buy by this legislation picking and choosing who the winner should be in terms of which contractor?

And the second question is, aren't all contractors really small-to-medium-sized business? I mean, in my neck of the woods a general contractor is not some big conglomerate but is also, you know, maybe an operation that might have a few more people than what you call the little guy. Aren't they both really little people?

SENATOR BRESLIN: Again, through you, Mr. President, I might have overemphasized big versus little. And there might well be situations where the general contractor isn't that much bigger than a sub.

But it would still be, under basic contract law -- again, through you, Mr. President -- that the subcontractor and a contractor, the subcontractor says, I will perform certain services for you, Mr. General Contractor, if you pay me for those services. And to me it's as simple as that. And it's a

recognition by the Court of Appeals that it is basic contract law and it shouldn't be abrogated or changed by the ability to put something in a contract.

That that basic law should survive, and the general contractor should be obligated, if the work is performed -- remember, the work has to be performed under the contract in a satisfactory and timely way.

SENATOR RANZENHOFER: So is this legislation really, instead of putting the subcontractor out of business, you're really putting the subcontractor who's one above out of business when you run into that situation when there aren't funds paid by the owner?

SENATOR BRESLIN: Through you, Mr. President. That may in fact -- it may be a Hobson's choice. There may be no winners.

And really what it's doing is placing a preference for a subcontractor who performed his portion of the contract. The general contractor is the one who didn't. He didn't pay. And so this law would cure that.

SENATOR RANZENHOFER: Thank you.

ACTING PRESIDENT VALESKY: Thank you, Senator Ranzenhofer.

Are there any other Senators who wish to be heard?

Senator Winner.

SENATOR WINNER: Thank you. Would Senator Breslin yield for a few questions?

ACTING PRESIDENT VALESKY: Senator Breslin, do you yield?

SENATOR BRESLIN: I'd be delighted to yield.

ACTING PRESIDENT VALESKY: The sponsor yields.

SENATOR WINNER: Thank you, Senator.

Through you, Mr. President, Senator, the basic system under the Lien Law, as I understand it, is that the owner is supposed to pay the general and the general is supposed to pay the sub, and the money flows down the hill. And when the sub gets involved in the contract with the general, he or she does so with the full knowledge that the money

is coming from the owner.

And that's the traditional way that the Lien Law has worked, such that if the owner pays the general and the general doesn't pay the sub, then the remedy has always been for the sub then to sue the general.

SENATOR BRESLIN: But not now -- not without this law.

SENATOR WINNER: Well, no, the sub can now sue the general if the general has been paid and he hasn't been paid, but he can't lien the job. Isn't that --

SENATOR BRESLIN: Well, I think the contracts that they operate under are saying that they must exercise the enforcement of the lien first. And I'm suggesting that shouldn't be the way it happens.

SENATOR WINNER: But you can't exercise your lien rights if you're a subcontractor if the general has been paid.

SENATOR BRESLIN: Well, that would be something that would be argued. If there's knowledge that he's been paid and there's contract language that says you're

precluded from suing a general contractor, you don't want to be placed in that situation. You want to be able to sue the contractor, whether he's been paid or not.

SENATOR WINNER: But the whole system that you're in, the fact of the matter is that you're supposed to get the money from the owner and that's why you bid the job. You got involved in the bid with the general knowing full well that the money comes from the owner, it doesn't come from the general.

SENATOR BRESLIN: Generally the bid goes -- through you, Mr. President. The bid is by the general contractor. He awarded the contract, he chooses the subcontractors. Who does the subcontractor contract with? He doesn't contract with the owner, he contracts with the general contractor.

SENATOR WINNER: But every --

SENATOR BRESLIN: So you're bypassing language that would preclude him from going directly against the general contractor.

If you disagree with that, that's

fine. But it's pretty simple, the bill, I thought.

SENATOR WINNER: Well, it's not simple from the standpoint if you're the general and you don't get paid by the owner. Then, right now, the sub has the option to lien the job. The sub can lien the job and get paid through its own lien foreclosure proceeding against the owner and protect themselves, assuming that the value that they put into the project, which has priority --

SENATOR BRESLIN: And from a business perspective -- through you, Mr. President. From a business perspective, it would be obvious that maybe a subcontractor in that situation would say that his enforcement on the lien would be futile. And if it was futile, then he should be allowed and not, by contract, precluded from going directly against the contractor.

SENATOR WINNER: Well, isn't -- through you, Mr. President, thank you for the liberty that --

ACTING PRESIDENT VALESKY: You're

quite welcome, Senator Winner.

SENATOR WINNER: The Lien Law is a rather perilous path to undertake to understand in the first place. But suffice it to say that Senator Breslin is quite knowledgeable on it, so I appreciate the latitude of being able to ask him the question.

In the event that you have a lien foreclosure proceeding brought by the general against the owner because they didn't get paid, under those circumstances would it be still permissible for the sub to sue the general while that lien foreclosure action is pending?

SENATOR BRESLIN: No, I think it -- and that's a little off the bill, through you, Mr. President. I think that would be kind of a choice of remedies. And if you choose one remedy versus another, you stick with the one remedy you've chosen.

The reason that you go after the contractor is I assume because you think there isn't sufficient there. And as you

suggested -- and you seem extremely knowledgeable in the area -- that as you suggested, the enforcement of a lien is not a pretty picture. They're painfully long. They're arcane.

And for a subcontractor, a small subcontractor who's got to hire a lawyer, filing a lawsuit against the general contractor generally is a much easier process.

SENATOR WINNER: Mr. President, on the bill.

ACTING PRESIDENT VALESKY: Senator Winner, on the bill.

SENATOR WINNER: The basic problem with Senator Breslin's bill is that it's not necessarily fair to the general contractor who did not get paid by the owner to then get sued by the sub before that general contractor has the opportunity to try to recover the money that is due him or her from the owner, who's the real source of where the default is.

There are remedies currently in the law whereby the sub does have the ability to

recover against the owner in the event that the general has not been paid and therefore is holding money, that is responsible and really is paying the value of that sub's contribution to the owner's property.

This upsets that element of fairness and allows that sub now to go after the general who didn't get paid and is basically out of luck himself, without exercising their duty to try to recover from the true individual at fault, and that is the owner.

And that is why I am opposed to this legislation.

ACTING PRESIDENT VALESKY: Thank you, Senator Winner.

Are there any other Senators who wish to be heard?

Hearing none, the debate is closed.

The Secretary will ring the bells.

The Secretary will read the last section.

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

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

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

SENATOR DeFRANCISCO: I think this is a good bill.

And there was a lot of discussion about fairness in the process. If it be remembered, the contractor is the one who contracted with the owner and should bear the risk if the owner doesn't pay.

The subcontractor contracted with the contractor to do some work. And if he did the work, I think under the contract alone he should be permitted to go against the general contractor who took the risk by picking the owner that he decided to work for.

And I don't think you should have to go for one remedy first, the longest possible remedy as a subcontractor -- namely, going through a lien process to get your rights again the person you contracted with, namely, the general contractor.

So I think this is a good bill. And besides, under the bill, I believe it can go against the bond that was posted to make sure that people who worked got paid. So I think it's a good bill, and I'm going to vote yes.

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

Senator Hassell-Thompson, to explain her vote.

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

Senator DeFrancisco explained it really very, very well. I too support this bill, as someone who worked as the executive director of the Westchester Minority Contractors Association for a very long time, and know that most subcontractors do not get relief.

And I appreciate this bill on behalf of those contractors who very clearly contract with the contractor, not with the owner. Therefore, some relief must be awarded

to them if they do their work, provide the materials.

And I want to thank Senator Breslin for putting this bill forward. And I know that small businesses and subcontractors will thank you as well.

ACTING PRESIDENT VALESKY: Senator Hassell-Thompson to be recorded in the affirmative.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 353 are Senators Golden, Libous, Little, Morahan, Maziarz, Nozzolio, Ranzenhofer, Saland and Young. Also Senator Winner.

Ayes, 49. Nays, 10.

ACTING PRESIDENT VALESKY: The bill is passed.

Senator Klein, that completes the reading of the active bills on Senate Calendar Number 52.

SENATOR KLEIN: Mr. President, I have two motions.

First, Mr. President, on behalf of

Senator Espada, on page 32 I offer the following amendments to Calendar Number 375, Senate Print 3458, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT VALESKY: Amendments received.

SENATOR KLEIN: The second, Mr. President, on behalf of Senator Huntley, on page 31 I offer the following amendments to Calendar Number 367, Senate Print 3653A, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT VALESKY: The amendments are received.

SENATOR KLEIN: Mr. President, is there any further business at the desk?

ACTING PRESIDENT VALESKY: There is no further business at the desk, Senator Klein.

SENATOR KLEIN: There being none, I move we adjourn until tomorrow, Tuesday, June 2nd, at 3:00 p.m.

ACTING PRESIDENT VALESKY: On motion, the Senate stands adjourned until

Tuesday, June 2nd, at 3:00 p.m.

(Whereupon, at 5:25 p.m., the Senate adjourned.)