

1 NEW YORK STATE SENATE

2  
3 THE STENOGRAPHIC RECORD  
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8 ALBANY, NEW YORK

9 February 22, 2010

10 3:35 p.m.  
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12

13 REGULAR SESSION  
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17 SENATOR DAVID J. VALESKY, Acting President

18 ANGELO J. APONTE, Secretary  
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1 P R O C E E D I N G S

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

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

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

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

13 REVEREND YOUNG: Thank you,  
14 Senator. Let us pray.

15 God has given us many different  
16 gifts, but it is always Your spirit, O God, as  
17 we return after this brief recess, to guide us  
18 in the many things and the many ways of  
19 serving our Senators. But it is always  
20 important that You, O God, have given and  
21 granted them to be used for the good of our  
22 New York State citizens.

23 God has gifted each of these  
24 members of the Senate chamber with a special  
25 potential to help their constituents. Let us

1       take a moment to thank God for their talents  
2       and for their skills.

3               God, we thank You for these gifts  
4       unique to each Senator. Let us rejoice in who  
5       You are that have made these gifts to them and  
6       dedicate our gifts then to the good of our  
7       New York State people, O God.

8               Amen.

9               ACTING PRESIDENT VALESKY:     The  
10       reading of the Journal.

11              The Secretary will read.

12              THE SECRETARY:     In Senate,  
13       Friday, February 19, the Senate met pursuant  
14       to adjournment. The Journal of Thursday,  
15       February 18, was read and approved. On  
16       motion, Senate adjourned.

17              ACTING PRESIDENT VALESKY:  
18       Without objection, the Journal stands approved  
19       as read.

20              Presentation of petitions.

21              Messages from the Assembly.

22              Messages from the Governor.

23              Reports of standing committees.

24              Reports of select committees.

25              Communications and reports from

1 state officers.

2 Motions and resolutions.

3 Senator Klein.

4 SENATOR KLEIN: Mr. President, I  
5 have several motions. First, on behalf of  
6 Senator Johnson, on page number 12 I offer the  
7 following amendments to Calendar Number 64,  
8 Senate Print Number 2753, and ask that said  
9 bill retain its place on Third Reading  
10 Calendar.

11 ACTING PRESIDENT VALESKY: So  
12 ordered.

13 SENATOR KLEIN: Second,  
14 Mr. President, on behalf of Senator Parker, I  
15 move that the following bills be discharged  
16 from their respective committees and be  
17 recommitted with instructions to strike the  
18 enacting clause: Senate Numbers 1699, 2452,  
19 and 5616.

20 ACTING PRESIDENT VALESKY: So  
21 ordered.

22 SENATOR KLEIN: Third,  
23 Mr. President, on behalf of Senator Squadron,  
24 I move that the following bills be discharged  
25 from their respective committees and be

1 recommitted with instructions to strike the  
2 enacting clause: Senate Number 5829.

3 ACTING PRESIDENT VALESKY: So  
4 ordered.

5 SENATOR KLEIN: And last,  
6 Mr. President, on behalf of Senator Krueger,  
7 on page number 10 I offer the following  
8 amendments to Calendar Number 33, Senate Print  
9 Number 4960A, and ask that said bill retain  
10 its place on Third Reading Calendar.

11 ACTING PRESIDENT VALESKY: So  
12 ordered.

13 Senator Klein.

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

16 ACTING PRESIDENT VALESKY: Yes,  
17 there are substitutions at the desk,  
18 Senator Klein.

19 The Secretary will read.

20 THE SECRETARY: On page 11,  
21 Senator Klein moves to discharge, from the  
22 Committee on Judiciary, Assembly Bill Number  
23 1239A and substitute it for the identical  
24 Senate Bill Number 2614A, Third Reading  
25 Calendar 53.

1                   ACTING PRESIDENT VALESKY:

2           Substitution ordered.

3                   THE SECRETARY:       On page 11,  
4           Senator Klein moves to discharge, from the  
5           Committee on Elections, Assembly Bill Number  
6           1308 and substitute it for the identical  
7           Senate Bill Number 1836A, Third Reading  
8           Calendar 63.

9                   ACTING PRESIDENT VALESKY:  
10          Substitution ordered.

11                  THE SECRETARY:       On page 12,  
12          Senator Addabbo moves to discharge, from the  
13          Committee on Elections, Assembly Bill Number  
14          5276B and substitute it for the identical  
15          Senate Bill Number 2868B, Third Reading  
16          Calendar 65.

17                  ACTING PRESIDENT VALESKY:  
18          Substitution ordered.

19                  THE SECRETARY:       On page 12,  
20          Senator Montgomery moves to discharge, from  
21          the Committee on Finance, Assembly Bill Number  
22          5462A and substitute it for the identical  
23          Senate Bill Number 2233A, Third Reading  
24          Calendar 71.

25                  ACTING PRESIDENT VALESKY:

1 Substitution ordered.

2 THE SECRETARY: On page 13,  
3 Senator Duane moves to discharge, from the  
4 Committee on Social Services, Assembly Bill  
5 Number 2565 and substitute it for the  
6 identical Senate Bill Number 2664, Third  
7 Reading Calendar 78.

8 ACTING PRESIDENT VALESKY:  
9 Substitution ordered.

10 THE SECRETARY: On page 14,  
11 Senator Maziarz moves to discharge, from the  
12 Committee on Energy and Telecommunications,  
13 Assembly Bill Number 7557A and substitute it  
14 for the identical Senate Bill Number 6700,  
15 Third Reading Calendar 89.

16 ACTING PRESIDENT VALESKY:  
17 Substitution ordered.

18 THE SECRETARY: And on page 14,  
19 Senator Valesky moves to discharge, from the  
20 Committee on Local Government, Assembly Bill  
21 Number 1808 and substitute it for the  
22 identical Senate Bill Number 3087, Third  
23 Reading Calendar 92.

24 ACTING PRESIDENT VALESKY:  
25 Substitution ordered.

1 Senator Klein.

2 SENATOR KLEIN: Mr. President, at  
3 this time can we please move to a reading of  
4 the calendar.

5 ACTING PRESIDENT VALESKY: The  
6 Secretary will proceed with the reading of the  
7 active bills on today's calendar.

8 THE SECRETARY: Calendar Number  
9 28, by Senator Perkins, Senate Print 1145A, an  
10 act to amend --

11 SENATOR KLEIN: Lay the bill  
12 aside for the day.

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

15 THE SECRETARY: Calendar Number  
16 30, by Senator Schneiderman, Senate Print  
17 4407, an act to amend the Environmental  
18 Conservation --

19 SENATOR LIBOUS: Lay it aside.

20 ACTING PRESIDENT VALESKY: The  
21 bill is laid aside.

22 THE SECRETARY: Calendar Number  
23 39, by Senator Young, Senate Print 2420, an  
24 act to amend the Agriculture and Markets Law,  
25 in relation to confidentiality.



1                   ACTING PRESIDENT VALESKY:     Read  
2     the last section.

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

5                   ACTING PRESIDENT VALESKY:     Call  
6     the roll.

7                   (The Secretary called the roll.)

8                   THE SECRETARY:     Ayes, 56.

9                   ACTING PRESIDENT VALESKY:     The  
10    bill is passed.

11                   THE SECRETARY:     Calendar Number  
12    59, by Senator Klein, Senate Print 5981, an  
13    act to amend the Education Law, in relation to  
14    granting.

15                   ACTING PRESIDENT VALESKY:     Read  
16    the last section.

17                   THE SECRETARY:     Section 4.   This  
18    act shall take effect on the first of July.

19                   ACTING PRESIDENT VALESKY:     Call  
20    the roll.

21                   (The Secretary called the roll.)

22                   THE SECRETARY:     In relation to  
23    Calendar Number 59:   Ayes, 55.   Nays, 1.  
24    Senator LaValle recorded in the negative.

25                   ACTING PRESIDENT VALESKY:     The

1 bill is passed.

2 THE SECRETARY: Calendar Number  
3 67, by Senator LaValle, Senate Print 1447A, an  
4 act to amend the Education Law, in relation to  
5 authorizing.

6 ACTING PRESIDENT VALESKY: Read  
7 the last section.

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

10 ACTING PRESIDENT VALESKY: Call  
11 the roll.

12 (The Secretary called the roll.)

13 THE SECRETARY: Ayes, 56.

14 ACTING PRESIDENT VALESKY: The  
15 bill is passed.

16 THE SECRETARY: Calendar Number  
17 68, by Senator LaValle, Senate Print 3292, an  
18 act to amend the Education Law, in relation to  
19 authorizing pharmacists.

20 ACTING PRESIDENT VALESKY: Read  
21 the last section.

22 THE SECRETARY: Section 5. This  
23 act shall take effect on the 120th day.

24 ACTING PRESIDENT VALESKY: Call  
25 the roll.

1 (The Secretary called the roll.)

2 THE SECRETARY: Ayes, 57.

3 ACTING PRESIDENT VALESKY: The  
4 bill is passed.

5 THE SECRETARY: Calendar Number  
6 77, by Senator Nozzolio, Senate Print 4893, an  
7 act to amend the Executive Law, in relation to  
8 prohibiting.

9 ACTING PRESIDENT VALESKY: Read  
10 the last section.

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

13 ACTING PRESIDENT VALESKY: Call  
14 the roll.

15 (The Secretary called the roll.)

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

18 SENATOR DeFRANCISCO: Yes, I'm  
19 going to vote no. Not because we in any way  
20 want to further add to the aggravation and  
21 heartache of a crime victim, but the problem  
22 here is the procedure for protecting the  
23 state's rights in trying to collect whatever  
24 they've paid by the Crime Victims Board  
25 against the potential settlement or verdict

1       against the person responsible for the  
2       injuries to the victim.

3               And there's a simple, better way to  
4       do it. And that would be rather than filing  
5       these documents, these liens in the county  
6       clerk's office, a better way is to make it a  
7       lien against recovery, just like we have liens  
8       against all kinds of recoveries for personal  
9       injuries and do that through the CPLR.

10              By simply providing the relief in  
11       this bill, it's going to cause a nightmare for  
12       title companies and people doing real estate  
13       work to determine the effect of these  
14       so-called liens that are filed in the county  
15       clerk's office.

16              So there's a better way to do what  
17       the sponsor intends. For that reason, I vote  
18       no.

19              ACTING PRESIDENT VALESKY:  
20       Senator DeFrancisco to be recorded in the  
21       negative.

22              Announce the results.

23              THE SECRETARY:     Ayes, 57. Nays,  
24       1. Senator DeFrancisco recorded in the  
25       negative.

1                   ACTING PRESIDENT VALESKY:     The  
2     bill is passed.

3                   THE SECRETARY:     Calendar Number  
4     79, by Senator Valesky, Senate Print 5440B, an  
5     act to amend the Alcoholic Beverage Control  
6     Law, in relation to allowing.

7                   ACTING PRESIDENT VALESKY:     Read  
8     the last section.

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

11                  ACTING PRESIDENT VALESKY:     Call  
12    the roll.

13                  (The Secretary called the roll.)

14                  THE SECRETARY:     Ayes, 58.

15                  ACTING PRESIDENT VALESKY:     The  
16    bill is passed.

17                  THE SECRETARY:     Calendar Number  
18    81, by Senator Duane, Senate Print 4998A, an  
19    act to amend the Public Health Law, in  
20    relation to --

21                  SENATOR LIBOUS:     Lay the bill  
22    aside, please.

23                  ACTING PRESIDENT VALESKY:     The  
24    bill is laid aside.

25                  THE SECRETARY:     Calendar Number

1       88, by Senator Parker, Senate Print 3712, an  
2       act to amend the Public Service Law, in  
3       relation to gas corporations.

4                ACTING PRESIDENT VALESKY:     Read  
5       the last section.

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

8                ACTING PRESIDENT VALESKY:     Call  
9       the roll.

10               (The Secretary called the roll.)

11               THE SECRETARY:     Ayes, 58.

12               ACTING PRESIDENT VALESKY:     The  
13       bill is passed.

14               THE SECRETARY:     Calendar Number  
15       89, substituted earlier today by Member of the  
16       Assembly Cahill, Assembly Print Number 7557A,  
17       an act to amend the Public Service Law.

18               ACTING PRESIDENT VALESKY:     Read  
19       the last section.

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

22               ACTING PRESIDENT VALESKY:     Call  
23       the roll.

24               (The Secretary called the roll.)

25               ACTING PRESIDENT VALESKY:

1 Senator Maziarz, to explain his vote.

2 SENATOR MAZIARZ: Thank you very  
3 much, Mr. President. To explain my vote.

4 Mr. President, this legislation  
5 eliminates the peak load limitation on the  
6 size of nonresidential solar and wind  
7 electric-generating equipment eligible for net  
8 metering.

9 This legislation was originally  
10 passed in 2008 with some very hard work by my  
11 colleague Senator Owen Johnson and Senator  
12 Kevin Parker. We worked very diligently in  
13 2008 to get a good net metering bill passed.  
14 It wasn't a perfect bill. This legislation  
15 that we are passing today will improve greatly  
16 upon that net metering legislation that we  
17 passed in 2008.

18 And this legislation is going to  
19 allow commercial and residential users to  
20 benefit immensely from investing in net  
21 metering in both their businesses and in their  
22 residences.

23 And another I think very important  
24 point is there is actually, believe it or not,  
25 Mr. President, there is actually three-way

1       agreement on this legislation. This piece of  
2       legislation is going to become law. I know  
3       that's sort of unusual around here. But  
4       three-way agreement on this bill which is  
5       going to help consumers, businesses, residents  
6       throughout our great state.

7               So I passionately vote yes for this  
8       legislation. Thank you, Mr. President.

9               ACTING PRESIDENT VALESKY:  
10       Senator Maziarz to be recorded in the  
11       affirmative.

12              Senator Saland.

13              SENATOR SALAND:     Thank you,  
14       Mr. President. I would merely like to  
15       piggyback on Senator Maziarz's comments.

16              I do have a business in my district  
17       that is very much into renewable energy and  
18       has long sought some of the corrections that  
19       this bill will now provide. It will probably  
20       have an immediate benefit in my district,  
21       particularly for this particular company, in  
22       that it will open the door to a number of  
23       projects that will not only benefit the  
24       Hudson Valley but benefit our state, in that  
25       it's a commitment to renewable energy,



1 creation of jobs that we've all been talking  
2 about, and a firsthand example of it right in  
3 my own back yard.

4 So thank you, Mr. President, and I  
5 vote in support.

6 ACTING PRESIDENT VALESKY:  
7 Senator Saland to be recorded in the  
8 affirmative.

9 Senator Parker, to explain his  
10 vote.

11 SENATOR PARKER: Mr. President,  
12 to explain my vote.

13 I'm voting aye to this bill.  
14 Again, that's enthusiastically. We've  
15 actually gotten to that point in this bill  
16 where, as David Dinkins says, everything has  
17 been said but everybody hasn't said it. But I  
18 want to congratulate my colleagues for working  
19 both in a bipartisan way but also across  
20 houses to make sure that we pass this  
21 important legislation.

22 Net metering was one of the first  
23 steps that we really took in really making  
24 sure that New York is in the vanguard of a  
25 green-collar economy. This is in fact to make

1       sure that ordinary citizens and small  
2       businesses can produce their own power and  
3       then sell that energy back to the grid.

4               We have now made some adjustments  
5       with this bill that in fact brings us closer  
6       to perfection. We're not quite there, and I  
7       think there may be some other tweaks as we go  
8       down the line. But this is another big step  
9       to make sure that New York State is in the  
10      lead in energy independence.

11             I vote aye.

12             ACTING PRESIDENT VALESKY:  
13       Senator Parker to be recorded in the  
14       affirmative.

15             Announce the results.

16             THE SECRETARY:     Ayes, 59.   Nays,  
17       0.

18             ACTING PRESIDENT VALESKY:     The  
19       bill is passed.

20             THE SECRETARY:     Calendar Number  
21       90, by Senator Farley, Senate Print 1172, an  
22       act to authorize the Union Graduate College to  
23       file an application.

24             ACTING PRESIDENT VALESKY:     Read  
25       the last section.

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

3 ACTING PRESIDENT VALESKY: Call  
4 the roll.

5 (The Secretary called the roll.)

6 THE SECRETARY: Those recorded in  
7 the negative on Calendar Number 90 are  
8 Senators Bonacic and Larkin.

9 Ayes, 57. Nays, 2.

10 ACTING PRESIDENT VALESKY: The  
11 bill is passed.

12 THE SECRETARY: Calendar Number  
13 92, substituted earlier today by Member of the  
14 Assembly Morelle, Assembly Print Number 1808,  
15 an act --

16 SENATOR LIBOUS: Lay it aside.

17 ACTING PRESIDENT VALESKY: The  
18 bill is laid aside.

19 THE SECRETARY: Calendar Number  
20 93, by Senator Thompson, Senate Print 4921, an  
21 act to amend Chapter 616 of the Laws of 1992,  
22 relating to authorizing.

23 ACTING PRESIDENT VALESKY: Read  
24 the last section.

25 THE SECRETARY: Section 2. This

1 act shall take effect immediately.

2 ACTING PRESIDENT VALESKY: Call  
3 the roll.

4 (The Secretary called the roll.)

5 THE SECRETARY: Ayes, 59.

6 ACTING PRESIDENT VALESKY: The  
7 bill is passed.

8 THE SECRETARY: Calendar Number  
9 95, by Senator Morahan, Senate Print 5906, an  
10 act to authorize the Town of Ramapo to file an  
11 application.

12 ACTING PRESIDENT VALESKY: Read  
13 the last section.

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

16 ACTING PRESIDENT VALESKY: Call  
17 the roll.

18 (The Secretary called the roll.)

19 THE SECRETARY: Those recorded in  
20 the negative on Calendar Number 95 are  
21 Senators Bonacic and Larkin.

22 Ayes, 57. Nays, 2.

23 ACTING PRESIDENT VALESKY: The  
24 bill is passed.

25 THE SECRETARY: Calendar Number

1 97, by Senator Squadron, Senate Print 37 --

2 SENATOR KLEIN: Lay it aside for  
3 the day, please.

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

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

8 SENATOR KLEIN: Mr. President, at  
9 this time can we please have a reading of the  
10 controversial calendar.

11 ACTING PRESIDENT STEWART-COUSINS:  
12 The Secretary will read.

13 THE SECRETARY: Calendar Number  
14 30, by Senator Schneiderman, Senate Print  
15 4407, an act to amend the Environmental  
16 Conservation Law.

17 SENATOR LIBOUS: Explanation.

18 ACTING PRESIDENT STEWART-COUSINS:  
19 Senator Schneiderman, an explanation has been  
20 requested.

21 SENATOR SCHNEIDERMAN: Thank you,  
22 Mr. President.

23 This bill corrects an error, I  
24 believe, it fills in a gap in the declaration  
25 of the policy of the State of New York when it

1 comes to our Environmental Conservation Law.  
2 The State of New York, unlike the federal  
3 government, does not have as a part of our  
4 declaration of policy regarding environmental  
5 law any statement that one of the purposes of  
6 such law is environmental justice.

7 Unlike the federal Environmental  
8 Protection Agency, which has language very  
9 similar to the language in my proposed bill,  
10 we do not as a state stake out a position that  
11 one of the goals of our environmental policy,  
12 in addition to health and safety of all of our  
13 citizens, is to ensure that no community is  
14 discriminated against in terms of the placing  
15 of toxic facilities or power plants, that no  
16 community suffers an inequitable burden.

17 This language that is proposed in  
18 my bill would simply remedy this problem. And  
19 it states, Madam President, that no population  
20 should be forced to bear a disproportionate  
21 share of exposure to the negative effects of  
22 pollution or be deprived of locally accessible  
23 open space due to a lack of political or  
24 economic strength.

25 What this bill would do is

1 recognize the fact that in the United States  
2 of America, while 58 percent of our white  
3 citizens live in counties that do not meet the  
4 federal requirements for air pollution,  
5 71 percent of Africans live in such counties;  
6 that 80 percent of all the Latinos in the  
7 United States live in counties which fail to  
8 meet federal air quality standards.

9 Environmental injustice,  
10 environmental racism is a part of life that we  
11 have to recognize. Unfortunately, in the  
12 State of New York, unlike the federal  
13 government, we have never been able to insert  
14 the language in my proposed bill into our  
15 statement of policy to ensure that all of the  
16 people who work on environmental policy in the  
17 Department of Environmental Conservation and  
18 elsewhere, anyone whose job it is to enforce  
19 the environmental laws of this state,  
20 understands that remedying environmental  
21 injustice is part of their work.

22 This bill harms no one, this bill  
23 does not delete any of our commitments  
24 elsewhere in the statement of policy, this  
25 bill simply puts us all on the record as

1 supporting the movement to remedy  
2 environmental injustice. This is a serious  
3 problem in our state. This is a serious  
4 problem in our country.

5 African-Americans in New York State  
6 are four times more likely than whites to die  
7 from asthma. A significant contributing  
8 factor, as every study has shown, is  
9 environmental injustice. A 2008 report  
10 entitled "A Climate of Change" documented in  
11 excruciating detail all of these problems. I  
12 commend this report to everyone here in this  
13 house.

14 And I would urge that all of my  
15 colleagues vote in support of this bill. Let  
16 us ensure that in the policy of the State of  
17 New York, environmental justice is part of our  
18 guidelines, part of our standards, part of the  
19 mandate that we give to everyone who works in  
20 the area of environmental conservation in our  
21 state.

22 I hope everyone will vote yes in  
23 support of this bill, Madam President.

24 ACTING PRESIDENT STEWART-COUSINS:  
25 Thank you, Senator.



1 Senator Bonacic.

2 SENATOR BONACIC: Thank you,  
3 Madam President. Will the sponsor yield for a  
4 couple of questions?

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

7 SENATOR SCHNEIDERMAN: I'd be  
8 happy to yield.

9 SENATOR BONACIC: Senator  
10 Schneiderman, welcome back.

11 My first question is, doesn't some  
12 of the state agencies, as part of a  
13 consideration of an application to build a  
14 power plant or whether grants are issued, or  
15 programs, have this environmental justice as a  
16 consideration?

17 SENATOR SCHNEIDERMAN: Through  
18 you, Madam President, there certainly are some  
19 programs in which that is specifically a part  
20 of our public policy that it's in application  
21 forms. But there is no overall requirement  
22 that that be the case.

23 We do have -- and I think that  
24 there are some environmental justice issues  
25 that are covered under our civil rights laws.

1 All this legislation would do is it would  
2 ensure that we don't have piecemeal  
3 enforcement or spotty attention to this issue  
4 and that we add to the declaration of overall  
5 policy of the Department of Environmental  
6 Conservation the commitment to environmental  
7 justice.

8 So I would say the Senator is  
9 correct. In some cases, it is considered; in  
10 some cases, it is not considered. But the  
11 overall result is really not what we need and  
12 not what the people of the State of New York  
13 deserve.

14 When it comes to fairness, when it  
15 comes to equity, when it comes to the health  
16 of our children, we should not allow any  
17 discrimination based on race or class. And  
18 this would make it clear that every policy of  
19 enforcement of the Environmental Conservation  
20 Law would have to take into account the issue  
21 of environmental justice.

22 SENATOR BONACIC: Will the  
23 sponsor yield for a couple of other questions?

24 ACTING PRESIDENT STEWART-COUSINS:  
25 Senator Schneiderman, do you continue to

1       yield.

2                   SENATOR SCHNEIDERMAN:       Yes, I  
3       will continue to yield.

4                   SENATOR BONACIC:       What I'm  
5       struggling with with this legislation is that  
6       it becomes a tool that anyone can cite that  
7       there is environmental injustice.

8                   So I guess my first question is,  
9       can an individual stop a project on the  
10      grounds that taxpayer does not meet a standard  
11      of environmental justice? Is there a private  
12      right of action?

13                  SENATOR SCHNEIDERMAN:       Through  
14      you, Madam President, no.

15                  This law, this statement of policy  
16      that is declared in this bill, this particular  
17      piece of legislation does not create any new  
18      private right of action. It does not actually  
19      change the laws regarding torts or liability  
20      in any way.

21                  But it does provide that in the  
22      setting of policy going forward, whoever the  
23      governor is, whoever is in charge of the  
24      Department of Environmental Conservation -- as  
25      we have a great commissioner of environmental

1 conservation now, but who knows who will be  
2 there in the future -- that no matter who that  
3 is, that they must take into account the issue  
4 of environmental justice in setting  
5 regulations and enforcing these laws.

6 It does not affect the tort system  
7 or any private right of action.

8 SENATOR BONACIC: Okay. Will the  
9 Senator yield to another question?

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

13 SENATOR SCHNEIDERMAN: Yes, Madam  
14 President, I'd be happy to yield.

15 SENATOR BONACIC: In promoting  
16 this legislation do you have benchmarks of  
17 what would constitute environmental injustice?

18 SENATOR SCHNEIDERMAN: Well,  
19 certainly, Madam President, I don't think  
20 there is any legitimate dispute that in the  
21 State of New York and in the United States of  
22 America as of today, in spite of the best  
23 intentions of many people over many decades,  
24 our environmental laws have not produced  
25 environmental justice.

1                   And I would again cite to the  
2           Senator the report "A Climate of Change" that  
3           was produced by the Environmental Justice and  
4           Climate Change Initiative in 2008. This is  
5           up-to-date data showing that in spite of, you  
6           know, many people of good conscience working  
7           over the years, we still have uneven  
8           distribution of power plants, of toxic waste  
9           sites, of other environmental hazards, and  
10          that can be clearly tracked by race.

11                   So my benchmark is when all of our  
12          children are free from living with exposure to  
13          these plants. But certainly it should be  
14          unacceptable to anyone, and I trust it's  
15          unacceptable to the Senator, that  
16          African-Americans in New York State are four  
17          times more likely than whites to die from  
18          asthma. My benchmark is equality, and I think  
19          that should be all of our benchmark. And if  
20          you support this bill, we'll be making a  
21          declaration that that is our benchmark.

22                   SENATOR BONACIC:     Will the  
23          sponsor yield for one more question?

24                   ACTING PRESIDENT STEWART-COUSINS:  
25          Senator Schneiderman, do you continue to

1       yield?

2                   SENATOR SCHNEIDERMAN:       I'll be  
3       happy to yield.

4                   SENATOR BONACIC:       So if we wanted  
5       to locate, meaning the state wants to locate  
6       an Article X power plant, fast-track it, for  
7       electricity in New York City -- and assuming  
8       we want to locate the plant close to where the  
9       demand is needed, because the argument is  
10      that's where plants should be located, closer  
11      to where it's needed -- are you saying that in  
12      the name of environmental justice, if it's a  
13      poverty area, that plant could not be located  
14      there? Or if it's an African-American  
15      community, that plant can't be located there,  
16      assuming your facts are right that  
17      African-Americans are more susceptible to  
18      asthma with four times, you know, the  
19      incidence of, say, a Caucasian or a Hispanic?  
20      Would you say that if your law was adopted,  
21      those areas are out of bounds?

22                   SENATOR SCHNEIDERMAN:       Through  
23      you, Madam President, no, the law does not say  
24      that.

25                   It simply adds the broad

1 declaration to the overall statement of policy  
2 in our Environmental Conservation Law that it  
3 is the policy of the State of New York that  
4 all races, cultures, religions, incomes,  
5 education levels, and sexual preferences be  
6 treated equally with respect to the  
7 development and enforcement of environmental  
8 laws and regulations.

9 So it would not automatically  
10 exclude any community. It requires us to take  
11 issues of environmental justice into account.

12 And I assure the Senator that we do  
13 not have a problem of power plants and other  
14 facilities being excluded from poor  
15 communities of color. I do think you will  
16 find very few rich white communities that have  
17 such facilities in them, and this simply  
18 requires us to take these issues into account.  
19 But it does not exclude any particular  
20 geographical area or community from any  
21 specific project.

22 SENATOR BONACIC: I thank the  
23 sponsor.

24 On the bill.

25 ACTING PRESIDENT STEWART-COUSINS:

1 Senator Bonacic on the bill.

2 SENATOR BONACIC: I believe the  
3 bill is not necessary, number one. I think in  
4 the ongoing practice of our state agencies,  
5 particularly the DEC, when it comes to  
6 programs, when it comes to grants, when it  
7 comes to siting of facilities, they take into  
8 consideration the concerns as raised by the  
9 sponsor.

10 One of the things I am concerned  
11 about is that what I have seen over the years  
12 in the name of environmentalism, things have  
13 been blocked for economic progress, to keep up  
14 with commerce, to keep up with the needs of  
15 utilities mainly to the metropolitan area.  
16 And this language, if implemented, is another  
17 obstacle that an applicant or an agency has  
18 got to jump through hoops in order to move a  
19 project forward.

20 I don't think it's necessary. And  
21 as a result, if this becomes law, the spirit  
22 of what we would have adopted will give more  
23 ammunition to stop all commerce in the State  
24 of New York. So I think it's not necessary.  
25 I think there are enough protections now, both



1 constitutionally and agency protections, that  
2 does not warrant this legislation.

3 I'm going to vote in the negative.  
4 Thank you, Madam President.

5 ACTING PRESIDENT STEWART-COUSINS:  
6 Thank you, Senator.

7 Senator Diaz.

8 SENATOR DIAZ: Thank you, Madam  
9 President. Would the sponsor yield for a  
10 question or two, please.

11 ACTING PRESIDENT STEWART-COUSINS:  
12 Senator Schneiderman, do you yield for a  
13 question?

14 SENATOR SCHNEIDERMAN: Yes, I  
15 will yield, Madam President.

16 SENATOR DIAZ: Senator  
17 Schneiderman, I heard you saying, a few times  
18 mention that you're doing this for the  
19 African-Americans and the Hispanics. And you  
20 mentioned a few times about how concerned are  
21 you about African-Americans and Hispanics.  
22 And also you mentioned there had to be, when  
23 it comes to fairness and when it comes to  
24 protecting our children, we have to be fair.

25 Why, when Mayor Bloomberg used

1       those same words, knowing that the South  
2       Bronx, Hunts Point and the South Bronx, the  
3       area that I am, is infested with those kind of  
4       transfer station plants and all those kinds of  
5       polluters, and when Mayor Bloomberg wanted to  
6       build one in Manhattan because he wanted to be  
7       fair, you opposed that?

8                SENATOR SCHNEIDERMAN:       Through  
9       you, Madam President.   Build one what?

10               SENATOR DIAZ:       Build a marine  
11       transfer station plant in Manhattan last year.

12               SENATOR SCHNEIDERMAN:       Through  
13       you, Madam President, I think the proposal was  
14       for alternative sites all in Manhattan for  
15       marine transfer stations.   But I certainly am  
16       not opposed to any marine transfer station in  
17       Manhattan.

18               SENATOR DIAZ:       Yes, you did,  
19       Senator --

20               ACTING PRESIDENT STEWART-COUSINS:  
21       Senator --

22               SENATOR DIAZ:       Through you, Madam  
23       President.

24               ACTING PRESIDENT STEWART-COUSINS:  
25       Yes, Senator Diaz.

1                   SENATOR DIAZ:     Would the sponsor  
2     yield?

3                   ACTING PRESIDENT STEWART-COUSINS:  
4     I will ask the sponsor to yield, but it should  
5     be germane to the bill, Senator Diaz.

6                   SENATOR DIAZ:     I'm on the bill.  
7     I'm on the bill. Don't tell me that I'm not  
8     on the bill.

9                   ACTING PRESIDENT STEWART-COUSINS:  
10    I didn't tell you, I just suggested --

11                  SENATOR DIAZ:     I want to speak  
12    about the bill.

13                  ACTING PRESIDENT STEWART-COUSINS:  
14    Thank you.

15                  SENATOR DIAZ:     And also, Madam  
16    President, about the intention of the sponsor  
17    to protect blacks and Hispanics.

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

21                  SENATOR SCHNEIDERMAN:    I am yield  
22    for another question, Madam President.

23                  SENATOR DIAZ:     So when, Senator,  
24    when did you suddenly became aware of us  
25    blacks and Hispanics being discriminated when

1       it comes to this kind of plant? Because for  
2       so many years, they've been building these in  
3       the Bronx, South Bronx, and you never came out  
4       so strong to defend us. So when did you  
5       become aware that we need help?

6                SENATOR SCHNEIDERMAN:     Well,  
7       through you, Madam President, I actually I  
8       guess first got engaged in issues related to  
9       civil rights and environmental justice  
10      probably going back to when I was in high  
11      school, where I was a part of an organization  
12      that did work on that.

13               I've worked with many  
14      organizations, including West Harlem  
15      Environmental Action, which I brought lawsuits  
16      with as a public interest lawyer and as a  
17      volunteer lawyer over the years. When I went  
18      through a period of time representing  
19      Congressman Jose Serrano, who represents the  
20      South Bronx, there were quite a few issues, as  
21      you correctly point out. It's an area that is  
22      tremendously burdened by toxic environmental  
23      facilities. It's an area with a tremendously  
24      high asthma rate. I was involved in trying to  
25      shut down a plant that was processing waste in

1 a way that was particularly harmful.

2 So it's an issue that I've been  
3 engaged in for quite some time. My district,  
4 in Washington Heights and the Northwest Bronx,  
5 is very close, and Washington Heights shares  
6 some of the same issues; in particular, the  
7 problem of transportation facilities, of the  
8 truck traffic and things that affect our  
9 children. So it's something that I've been  
10 engaged with for a long time.

11 But I would like to point out that  
12 this is an issue that is not specifically  
13 about my district or your district. This is a  
14 bill that's about the statewide policy of  
15 New York, that we have for years lagged behind  
16 the federal government in terms of our  
17 recognition of and acknowledgment of the  
18 problem of environmental injustice.

19 I've carried this particular bill  
20 since 1998, but it was never able to come to  
21 the floor until we were in the majority. I'm  
22 happy it's coming to the floor now. And I  
23 hope that all of my colleagues will vote yes  
24 so we can have this declaration of policy  
25 relating to environmental justice in the law,

1 in the declaration of policy of the  
2 Environmental Conservation Law where it  
3 belongs.

4 SENATOR DIAZ: Thank you. On the  
5 bill.

6 ACTING PRESIDENT STEWART-COUSINS:  
7 Senator Diaz, on the bill.

8 SENATOR DIAZ: I am kind of tired  
9 of people using the blacks and Hispanics, the  
10 Hispanic community when it's convenient to  
11 them. We are in power since last year. This  
12 bill didn't come to the floor last year. So  
13 it comes today, very convenient, when there  
14 might be an opening for statewide office.

15 And this is a bill -- and I  
16 remember last year when Mayor Bloomberg wanted  
17 that transfer station plant in Manhattan  
18 because Mayor Bloomberg said that we have to  
19 be fair with everyone and that the minority  
20 community already have too many of them.  
21 Well, I remember Senator Schneiderman and many  
22 others strongly opposed that.

23 But now, today, we're talking about  
24 fairness and we're talking about how we have  
25 to protect blacks and Hispanics. When they

1       have been building and infesting my community  
2       in the South Bronx for many -- I didn't see  
3       that kind of strong opposition. And this is  
4       too little, too late, and I'm voting no.

5                   ACTING PRESIDENT STEWART-COUSINS:

6       Thank you, Senator.

7                   Senator Saland.

8                   SENATOR SALAND:       Thank you, Madam  
9       President. Madam President, would Senator  
10      Schneiderman yield, please?

11                  ACTING PRESIDENT STEWART-COUSINS:

12      Senator Schneiderman, will you yield for a  
13      question?

14                  SENATOR SCHNEIDERMAN:       Yes, Madam  
15      President.

16                  SENATOR SALAND:       Senator, you  
17      mentioned somewhere during the course of your  
18      comments that this language was similar to  
19      language that the EPA currently has. Are you  
20      familiar with that language, and do you have  
21      it before you?

22                  SENATOR SCHNEIDERMAN:       Through  
23      you, Madam President, I do not actually have  
24      the EPA language in front of me. But it is in  
25      the agency's definition of environmental

1 justice. And I know that when we were  
2 drafting this, that was one of the sources.

3 SENATOR SALAND: Well, permit me  
4 to tell you and the rest of the body what the  
5 EPA uses for its definition. And you'll find  
6 it on their website in several places.

7 For example, the United States  
8 Environmental Protection Agency Office of  
9 Environmental Justice defines environmental  
10 justice as follows: "Environmental justice is  
11 the fair treatment and meaningful involvement  
12 of all people regardless of race, color,  
13 national origin or income, with respect to the  
14 development, implementation, and enforcement  
15 of environmental laws, regulations, and  
16 policies. EPA has this goal for all  
17 communities and persons across the nation. It  
18 will be achieved when everyone enjoys the same  
19 degree of protection from environmental and  
20 health hazards and equal access to the  
21 decision-making process to have a healthy  
22 environment in which to live, learn and work."

23 That is repeated several times on  
24 their website. It's repeated under basic  
25 information. In response to what they term



1 "Frequently Asked Questions," "How does EPA  
2 define environmental justice," "Environmental  
3 justice is the fair treatment and meaningful  
4 involvement of all people regardless of race,  
5 color, national origin, culture, education or  
6 with respect to the development,  
7 implementation and enforcement of  
8 environmental laws, regulations, and policies.  
9 Fair treatment means that no group of people,  
10 including racial, ethnic, or socioeconomic  
11 groups, should bear a disproportionate share  
12 of the negative environmental consequences  
13 resulting from industrial, municipal, and  
14 commercial operations or the execution of  
15 federal, state, local and tribal environmental  
16 programs and policies. Meaningful involvement  
17 means that potentially affected community  
18 residents have an appropriate opportunity to  
19 participate in decisions about a proposed  
20 activity that will affect their environment  
21 and/or health, the public's contribution, and  
22 can influence the regulatory agency's  
23 decision, the concerns of all participants  
24 involved will be considered in the  
25 decision-making process, and fourth and last,

1       the decision-makers seek out and facilitate  
2       the involvement of those potentially  
3       affected."

4                   I would respectfully submit that  
5       the policy that you cite or define as being  
6       the state's policy is well above and well  
7       beyond anything that approximates what the EPA  
8       is requiring. You are requiring a standard in  
9       terms that can only invite litigation.

10                  I'm not quite sure what you mean by  
11       being treated equally, in the sense that if in  
12       fact it's equal, is it demographically equal,  
13       it is regionally equal, it is statewide equal?  
14       If there's a facility in Buffalo that's  
15       contemplated being built, do we have to weigh  
16       27 different facilities in 27 different  
17       locations throughout the state and determine  
18       in fact if there's some kind of balance of  
19       equality in terms of the impacts on the  
20       environment?

21                  And let me ask you to yield to a  
22       question, if I might. One of the things that  
23       was not discussed by anybody, nor did you  
24       approach during the course of your  
25       explanation, is on lines 7 through 9: "It is

1 a basic right of all New Yorkers to live and  
2 work in safe, healthful, productive and  
3 aesthetically and culturally pleasing  
4 surroundings."

5 If, for example, I worship in a  
6 particular faith and that faith calls upon me  
7 to pray several times a day, am I required as  
8 an employer to ensure that that person can  
9 pray several times a day? If I work in a  
10 garage where there's a multitude of, let's  
11 say, tools, toolboxes, jacks, lifts -- there's  
12 nothing aesthetically pleasing about that, but  
13 it is a common practice and it is one which  
14 certainly would fail the test of whatever  
15 aesthetic standard you may use.

16 What constitutes the degree to  
17 which something is either aesthetically or  
18 culturally pleasing? And is it in the eyes of  
19 the beholder, or are we going to have to rely  
20 on a court to determine a reasonable person  
21 standard?

22 SENATOR SCHNEIDERMAN: Through  
23 you, Madam President, this is a broad  
24 statement of policy. It doesn't address any  
25 of the detailed issues in the hypotheticals

1       that the Senator has presented.

2               But I would note that the other  
3       provisions of the statement of policy in the  
4       Environmental Conservation Law are equally  
5       broad. There is a statement that follows the  
6       language that I would like us to all support  
7       inserting in the law to declare our commitment  
8       to equality and justice that states that it's  
9       the policy of the State of New York to foster,  
10      promote, create, and maintain conditions under  
11      which people and nature can thrive in harmony  
12      with each other and achieve social, economic,  
13      technological progress for present and future  
14      generations. That's already in the law.

15              There are broad statements of  
16      policy that, as the Senator knows, declare our  
17      intentions and provide guidance to an agency  
18      administering the law.

19              I think it a bad mistake, and I  
20      think it does us an injustice here in this  
21      house, to suggest that a broad statement of  
22      policy that in addition to all the other  
23      salutary purposes of the Environmental  
24      Conservation Law requests -- no, not requests,  
25      but insists that we also take into account the

1 issue of environmental justice, somehow  
2 creates burdens or imposes challenges that the  
3 other broad statements of policy do not.

4 This is simply a recognition of the  
5 fact that in spite of all the other statements  
6 of policy and the laws and regulations that  
7 have been enacted in response to those  
8 statements of policy, we in the State of  
9 New York have a situation in which there is  
10 significant discrimination in terms of  
11 exposure to environmental hazards based on  
12 race and ethnicity.

13 And I hope that there's no one in  
14 this house that would object to adding to our  
15 broad statements of the policy that have  
16 salutary goals and broad aspirations, not just  
17 in this statute but in many other areas of the  
18 law, a commitment to justice. This simply  
19 states, Madam President, that this policy is  
20 based on the concept of fundamental fairness,  
21 which implies that no population should be  
22 forced to bear a disproportionate share of  
23 exposure to the negative effects of pollution.

24 I hope there's no one here who  
25 would object to that. I don't think that it

1 is fair to say this would create all sorts of  
2 hypothetical situations, because this is a  
3 broad statement of policy. It does not  
4 establish a new cause of action. It does not  
5 create liability for anyone.

6 But I hope that in response to this  
7 the laws that we enact and the regulations  
8 that are passed in the future would address  
9 more effectively the significant problem of  
10 environmental injustice and disparity in the  
11 State of New York.

12 SENATOR SALAND: Thank you.

13 On the bill, Madam President.

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

16 SENATOR SALAND: Madam President  
17 and my colleagues, the enormous disparity  
18 between the tenets described by the EPA as  
19 constituting their policy and the policy that  
20 Senator Schneiderman would have us adopt here  
21 today are really not merely broad but  
22 startling.

23 The current policy which Senator  
24 Schneiderman referred to talks about creating  
25 conditions under which people and nature can

1 thrive in harmony with each other. I don't  
2 think anybody can be troubled by the idea of  
3 there being environmental justice. It's the  
4 draftsmanship of this that just opens  
5 virtually anybody and everything up to  
6 lawsuits.

7 Being treated equally, I'm not  
8 exactly sure how we define treated equally.  
9 Again, as I said earlier in my remarks, are we  
10 talking about demographically? Are we talking  
11 about geographically? If we're talking  
12 geographically, what are the parameters of  
13 that geography? Are we talking a 50-mile  
14 radius, a 100-mile radius? Are we talking  
15 Long Island has to be offset by Buffalo, that  
16 it has to be offset by Plattsburgh, that it  
17 has to be offset by Syracuse? What is equal?  
18 There's no effort in here to tell us what  
19 equal is.

20 There are certainly included in  
21 here conditions that well exceed anything that  
22 the feds have proposed. And as left  
23 undiscussed both in the description of the  
24 bill and in the dialogue that preceded my  
25 engaging with Senator Schneiderman, this idea

1       that somehow or other there's a basic right  
2       to -- and I'm not even sure what the words  
3       mean, "productive and aesthetically and  
4       culturally pleasing surroundings." You're  
5       opening up a guaranteed lawsuit haven.

6               Now, I guess if I were an attorney  
7       general and I aspired to be busy, this could  
8       keep me busy for a very long time.

9               I just would suggest that this come  
10       back, perhaps in another form, one which is  
11       far tighter than what's being proposed here,  
12       where I for one might be willing to seriously  
13       consider supporting it.

14              But I just view this as a statement  
15       that's so overreaching and overly broad and  
16       totally lacking in definition as to ensure  
17       this as being an absolute treasure trove or  
18       marketplace of lawsuits that will certainly  
19       keep lawyers busy and will certainly drive  
20       employers to despair. And that's not as if  
21       they don't have enough to contend with now.

22              So I will be voting in opposition  
23       to this bill. And I would urge my colleagues  
24       very similarly to do so and would hope that  
25       Senator Schneiderman would reconsider -- in



1 fact, attempt to come back with a bill that  
2 does what he wants it to do but in a fashion  
3 that's capable of standing up to more  
4 scrutiny.

5 Thank you, Madam President.

6 ACTING PRESIDENT STEWART-COUSINS:

7 Thank you, Senator.

8 Senator Montgomery.

9 SENATOR MONTGOMERY: Yes, thank  
10 you, Madam President.

11 I rise to speak in favor of this  
12 legislation. And I want to thank my  
13 colleagues Senator Schneiderman and Senator  
14 Thompson for introducing it.

15 And all due respect to my  
16 colleagues on the other side who complain  
17 about what's going to happen and the lawsuits  
18 and all of that, I would invite them to take a  
19 boat on the Hudson and when you get to the  
20 point where you have the beginning of the  
21 smokestacks from the treatment center in  
22 Farragut and all of the waste transfer  
23 stations in Red Hook, in my district, and all  
24 of the cement plants in Red Hook, in my  
25 district, and all of the power plants along

1 the part of my district that is Sunset Park, a  
2 little further out, you will know -- and when  
3 you get to Gowanus Canal, which my  
4 constituents call the Open Sewer Canal, which  
5 we've been trying to clean up for the last 30  
6 years at least, and when you get to Buttermilk  
7 Basin and you see all of those polluting,  
8 polluting businesses in an area where there  
9 are 10,000 families in the Red Hook East and  
10 West Houses, and along Sunset Park, and in  
11 Farragut, in my district, you will  
12 understand -- it doesn't require a rocket  
13 scientist to know -- that that's a cluster of  
14 polluting facilities.

15 Now, the Environmental Advocates of  
16 New York give us an interesting source of  
17 information. They say 78 percent of  
18 African-Americans live within 30 miles of a  
19 coal-fired power plant, as compared to  
20 56 percent of non-Hispanic whites.

21 So there is no secret that there is  
22 environmental injustice in this nation. And  
23 the proof is right there in the 18th Senate  
24 District, which I represent. So we have been  
25 fighting year in and year out. Every so often

1       there's a huge organizing effort to avoid  
2       having one more waste transfer business sited  
3       in that district, in the same area where there  
4       are already several.

5               And so I'm happy to support this.  
6       It is about time that we have a policy which  
7       says equal distribution under the law for  
8       those facilities that pollute the  
9       environment -- air, water and/or land -- so  
10      that none of us bear an unequal burden of  
11      having everything sited in one place.

12             So I support this legislation. We  
13      should be voting for it. It is way overdue.  
14      And there are a large number of people,  
15      especially in my district but all over the  
16      state, who are going to be very happy when we  
17      have a policy that protects all New Yorkers  
18      equally.

19             Thank you, Madam President. I vote  
20      aye.

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

23             Senator Winner.

24             SENATOR WINNER:       Thank you, Madam  
25      President. Will Senator Schneiderman yield

1       for a few questions?

2                   ACTING PRESIDENT STEWART-COUSINS:

3       Senator Schneiderman, do you yield?

4                   SENATOR SCHNEIDERMAN:     Yes, Madam  
5       President.

6                   SENATOR WINNER:     Senator, it's my  
7       understanding that in the current DEC there's  
8       a commissioner's policy designated as  
9       Commissioner's Policy Number 29 that  
10      specifically requires under SEQR process that  
11      all projects have to be dealt with as far as  
12      environment and comply with the principles of  
13      environmental justice as you are outlining in  
14      this statement of policy yourself.

15                   Is that your understanding as well,  
16      that since 2003 that commissioner's policy has  
17      been in place with respect to the SEQR process  
18      to require environmental justice  
19      considerations?

20                   SENATOR SCHNEIDERMAN:     Through  
21      you, Madam President, as I indicated in  
22      response to an earlier question by Senator  
23      Bonacic, there are areas of law and regulation  
24      that do make reference to environmental  
25      justice, and SEQR is one of those.

1                   What this legislation does -- and  
2                   I'm assuming that the Senator is not  
3                   criticizing the fact that in the SEQRA  
4                   regulations, environmental justice is an issue  
5                   that is mentioned. What this bill would do is  
6                   simply take broad language reflecting our  
7                   commitment to environmental justice and place  
8                   it in the statement of policy that governs all  
9                   of the Environmental Conservation Law, so that  
10                  this would be noted as a factor to be taken  
11                  into account for all legislation and all  
12                  regulations.

13                 SENATOR WINNER:       Will the Senator  
14                  yield?

15                 ACTING PRESIDENT STEWART-COUSINS:  
16                  Senator Schneiderman, will you continue to  
17                  yield?

18                 SENATOR SCHNEIDERMAN:    Yes, Madam  
19                  President, I'll continue to yield.

20                 SENATOR WINNER:       Well, Senator,  
21                  I'm a little bit confused, and perhaps you can  
22                  help me, tell me under what circumstances the  
23                  current policy, as set down by Commissioner  
24                  Grannis and the commissioner since 2003,  
25                  operates as it relates to the requirement that

1 environmental justice considerations be  
2 undertaken.

3 What does this policy, in your  
4 mind, in your intent, intend to do to change  
5 the existing process under which these  
6 projects are determined to be sited or  
7 approved as it relates to the Commissioner's  
8 Policy Number 29, and how that would then  
9 differ, your policy being in place would  
10 differ from the current operation of siting a  
11 plant or a project or approving a site plan  
12 for a business or whatever under SEQ?R?

13 SENATOR SCHNEIDERMAN: Through  
14 you, Madam President, there are hundreds and  
15 hundreds of policies that have been enacted  
16 since the Environmental Conservation Law was  
17 passed. There are regulations in all areas of  
18 environmental policy that relate to this  
19 principle.

20 So I don't know that I can cite a  
21 specific example of a regulation that exists  
22 now that might be altered, but I think that  
23 there are quite a few of them.

24 What I would suggest to the Senator  
25 is that perhaps he is looking at this the

1       wrong way. The issue is not really to say,  
2       okay, we're going to go back and criticize  
3       regulations and laws that were enacted prior  
4       to us making this declaration that  
5       environmental justice is a fundamental  
6       commitment that we're making in our  
7       Environmental Conservation Law, the question  
8       is how much better can we do.

9               And I would respectfully submit,  
10       without singling out any particular individual  
11       for criticism or any particular policy enacted  
12       by any of those individuals for criticism,  
13       that the net result speaks for itself.

14              The reason we need to insert into  
15       the statement of purpose of our Environmental  
16       Conservation Law a commitment to environmental  
17       justice is that the results aren't what they  
18       should be. And as Senator Montgomery just  
19       pointed out and as I pointed out and as every  
20       study has documented, we have substantial  
21       inequities in our state. People in poor  
22       communities of color are exposed to  
23       environmental hazards at a rate far in excess  
24       of that in white communities.

25              I think that the right way to

1 approach this is to start with a broad  
2 declaration of policy, which is all that this  
3 is, and then let us move forward together to  
4 try and see where our laws and policies can be  
5 improved.

6 But the point of this legislation  
7 is not to single anyone out. I mean, a lot of  
8 the policies that have produced the results  
9 that we're living with today came under prior  
10 administrations. And I'm not trying to go  
11 back and cast blame, I'm trying to say let's  
12 now go forward with a clearer vision, let's go  
13 forward with a statement of policy that in  
14 addition to talking about health and aesthetic  
15 issues and other things that are already in  
16 the statement of purpose, that we make it  
17 clear that environmental justice is a goal and  
18 an objective of New York State's Environmental  
19 Conservation Law.

20 And I would challenge the Senator  
21 in response and say what area of law would be  
22 harmed, what area of law would be made less  
23 just, what area of law would be made less  
24 effective if we affirm our commitment to  
25 environment policy as a state?



1                   SENATOR WINNER:     Will the sponsor  
2     yield for another question?

3                   ACTING PRESIDENT STEWART-COUSINS:  
4     Senator Schneiderman, do you continue to  
5     yield.

6                   SENATOR SCHNEIDERMAN:     Yes, Madam  
7     President.

8                   SENATOR WINNER:     Senator, I don't  
9     want to be difficult, I'm just asking you to  
10    be specific with respect to the response to my  
11    concerns.

12                   My concerns are since 2003 there  
13    has been a commissioner's policy in the  
14    Department of Environmental Conservation that  
15    requires environmental justice to be a  
16    consideration in the siting of the power  
17    plants, in the siting of solid waste  
18    facilities, in the siting of business plans --  
19    roads, highways, you name it, it is there. It  
20    is policy. Since 2003, that is the policy of  
21    the Department of Environmental Conservation.

22                   You have indicated, and I quote  
23    you, that there continues to be significant  
24    discrimination in environmental policy,  
25    unquote. Those are your words. This is your

1       proposal. This isn't my proposal.

2               I'm asking you very specifically  
3       how will this proposal change the procedures  
4       that currently are required in the Department  
5       of Environmental Conservation since 2003? I  
6       don't think it's a very difficult question.

7               SENATOR SCHNEIDERMAN:     And  
8       through you, Madam President, I appreciate the  
9       fact that the Senator does not want to be  
10      difficult.

11              (Laughter.)

12              SENATOR SCHNEIDERMAN:     But I  
13      would respond very similarly to the way I just  
14      responded. This is a broad statement of  
15      policy. This is almost -- this is like our  
16      environmental constitution. This sets the  
17      framework through which all other policies and  
18      regulations should be examined.

19              Now, it is true that there are, as  
20      I've repeatedly said, several areas of  
21      environmental policy where environmental  
22      justice is already included as a factor in  
23      those policies. He's referring specifically  
24      to SEQRA. Absolutely correct.

25              My purpose in changing the broad

1 statement of policy and making it clear that  
2 before you get into the details, everyone  
3 should be focused, when you get to the  
4 statutes that define the law for which the  
5 regulations are issued, you are focusing, in  
6 addition to everything else that are already  
7 in broad statements of policy in this law, on  
8 environmental justice.

9 I think that over the next couple  
10 of decades my hope would be that this would  
11 provide guidance to us and to the people in  
12 the various departments -- not just the  
13 Department of Environmental Conservation, but  
14 other offices that deal with environmental  
15 issues and deal with environmental justice  
16 issues -- that this would provide guidance  
17 that would lead us in a better direction.

18 Again, I'm not trying to pick on  
19 anyone, I'm not trying to cast blame. I think  
20 that there are a broad variety of issues that  
21 this would help us do better on.

22 Again, I think it's missing the  
23 point of this legislation to focus on the  
24 language in SEQRA. This is something that  
25 amends extremely broad statements of policy

1       that set the framework for our environmental  
2       conservation laws, to add one more broad  
3       statement of policy that is a glaring  
4       omission, in my view, from the Environmental  
5       Conservation Law of the State of New York,  
6       which is to say that no population should be  
7       forced to bear a disproportionate share of  
8       exposure to the negative effects of pollution.

9               And I don't see how this can do any  
10       harm with regard to our revision of any  
11       statutes, our revision of any regulations  
12       going forward. This is a prospective bill.  
13       We are looking forward to things that we can  
14       do better.

15              Is it possible we may be able to  
16       change the SEQRA rules to do even better?  
17       Absolutely. Would I be willing to talk to the  
18       Senator about that? Sure.

19              But it's missing the point to say  
20       that a broad statement of policy looking  
21       prospectively can be judged by past conduct.  
22       I mean, it's really a shame that we didn't  
23       have this enshrined in our law before. I  
24       think we could have done better. But I'm not  
25       trying to get into a blame game. The point is

1       that going forward we can all do better  
2       together, Madam President.

3               SENATOR WINNER:       Madam President,  
4       will the Senator yield for another question?

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

8               SENATOR SCHNEIDERMAN:     I will  
9       continue to yield for another question.

10              ACTING PRESIDENT STEWART-COUSINS:  
11       Senator Winner.

12              SENATOR WINNER:       Senator  
13       Schneiderman, since 2003 when the  
14       commissioner's policy requiring environmental  
15       justice to be considered with respect to the  
16       projects that are covered by the Department of  
17       Environmental Conservation law is required to  
18       be made, can you cite me some specific  
19       examples of discriminatory projects that have  
20       been improved by the Department of  
21       Environmental Conservation that would be  
22       otherwise covered under your policy statement?

23              SENATOR SCHNEIDERMAN:     Through  
24       you, Madam President, I don't have a list  
25       right now, but I would be glad to provide the

1        Senator -- it's not a matter of discriminatory  
2        projects, it's a matter of a pattern of siting  
3        projects in areas that creates the problem of  
4        environmental injustice.

5                This is again -- and maybe there's  
6        some misunderstanding here. This is not to  
7        say that a particular power plant in and of  
8        itself is discriminatory. It's saying the  
9        overall pattern of how we spread out the  
10       burdens has the cumulative effect of affecting  
11       some communities badly and unfairly. It's not  
12       an issue that is a project-by-project matter.

13               And that's why I am suggesting that  
14       it belongs in the broad statement of policy.  
15       Because while you may follow the SEQRA  
16       proceedings and you may follow them to the T  
17       and you may do exactly what you're supposed to  
18       do under the regulations as they exist now,  
19       the cumulative effect of the application of  
20       those regulations and many other regulations  
21       may have this sort of discriminatory impact.

22               And that's the reason this belongs  
23       in a broad statement of policy. And quite  
24       frankly, Madam President, that's why a  
25       discussion of which specific projects might

1       have had a worse impact, you know, is really  
2       missing the point.

3               SENATOR WINNER:       Will Senator  
4       Schneiderman yield to a question?

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

8               SENATOR SCHNEIDERMAN:       I will  
9       yield for another question.

10              SENATOR WINNER:       Thank you,  
11       Senator.

12              Your memorandum in support of the  
13       legislation which we put in there,  
14       specifically in your justification section  
15       says that "As the City of New York embarks on  
16       finding new locations for solid waste transfer  
17       operations, the prospect looms that minority  
18       communities will be exposed to even more  
19       pollution."

20              Is that one of the primary  
21       motivations of the introduction of this  
22       measure? It seems to be the only specific  
23       area of projects that you are identifying as  
24       being concerned with in your justification  
25       section.

1                   SENATOR SCHNEIDERMAN:       Through  
2       you, Madam President, no, it certainly is not.

3                   I think that the reason that we  
4       want to, again, add to a broad statement of  
5       policy entitled "Declaration of Policy" that  
6       frames the Environmental Conservation Law and  
7       the State of New York's policies with regards  
8       to the environment, the reason that I want to  
9       add the language in this bill is that in  
10      addiction to the broad statements of policy to  
11      conserve, improve, and protect the natural  
12      resources of our environment, to prevent,  
13      abate, and control water, land, and air  
14      pollution -- the broad statements that already  
15      exist -- I think that it is incumbent on us to  
16      add a provision that a broad commitment to  
17      environmental justice, to ending the historic  
18      discrimination -- not since 2003, but for  
19      hundreds of years -- by which poor communities  
20      of color find themselves overburdened with  
21      hazardous and polluting sites, projects and  
22      frankly, also -- as there's a positive side to  
23      this -- lacking the facilities such as parks  
24      and recreational facilities that they really  
25      deserve. There's a positive as well as a



1 negative aspect to this.

2 I think we need a broad statement  
3 of policy because we haven't -- over hundreds  
4 of years, we haven't gotten the job done. I'm  
5 not saying it's not gone better in recent  
6 years. I'm not saying there aren't policies  
7 that have attempted to address this. I'm  
8 saying this should be a part of our overall  
9 broad statement of purpose. That's what this  
10 does.

11 And I don't, frankly, see any  
12 reason why anyone who's concerned about  
13 justice or fairness should vote against this  
14 bill.

15 SENATOR WINNER: Thank you,  
16 Senator Schneiderman.

17 On the bill.

18 ACTING PRESIDENT STEWART-COUSINS:  
19 Senator Winner, on the bill.

20 SENATOR WINNER: Thank you, Madam  
21 President.

22 You know, I'm not trying to be  
23 difficult as far as trying to elicit some  
24 responses as to the Senator's complaints over  
25 the administration of the Department of

1 Environmental Conservation as it relates to  
2 the enforcement of their own policy on  
3 environmental justice.

4 You know, in my colloquy with  
5 Senator Schneiderman, it's sort of like trying  
6 nail a custard pie to the wall. I really  
7 can't quite get much of an answer as far as  
8 what the specific complaints are as to how the  
9 DEC has in fact administered its regulatory  
10 agency as it relates to the projects that are  
11 somewhat controversial as it determined on the  
12 siting particularly of power plants and solid  
13 waste facilities and the like.

14 I just am trying to find out how  
15 we're going to be changing the way we do  
16 business in New York. Because, you know,  
17 believe it or not, ladies and gentlemen, we  
18 have an uncompetitive state as it relates to  
19 doing business. And trying to change the way  
20 we permit and operate and approve the SEQ  
21 process as it relates to every single site  
22 plan and every single town planning board from  
23 one end of the state to the other, just adding  
24 certain statutory requirements and/or policy  
25 directives, as you want to say it, has

1       implications as far as our ability to move  
2       forward on an economic prosperous basis.

3               And so I don't take these statutes  
4       very, very lightly as it relates to the  
5       already existing unfair and oppressive  
6       regulatory burden in New York State.

7               So I am going to oppose this bill,  
8       because I don't know what the implications of  
9       it will be as it relates to economic  
10      development in New York. I don't think the  
11      sponsor understands what the ramifications  
12      will be. He hasn't cited one specific project  
13      since 2003 to allege the existence of  
14      environmental injustice as it relates to the  
15      operations of the Department of Environmental  
16      Conservation. I don't think that that was an  
17      unreasonable burden to ask.

18              And as such, if we don't know what  
19      the implications of that which we're going to  
20      do and what that will impact on the way with  
21      we do business in New York, I don't think that  
22      we can afford to place into the law statutes  
23      that are of this vagueness and lack of  
24      understanding.

25              And certainly in an area such as I

1 represent in upstate New York that needs  
2 economic development, I don't think we need  
3 any more burdens placed upon them other than  
4 encouragements to go forward to create jobs in  
5 this state.

6 This would appear to me to be an  
7 anti-jobs proposal. And as such, I think that  
8 we should be very, very wary as we go forward  
9 with this. We already have adequate  
10 protections -- which have not been refuted by  
11 the sponsor -- to the provisions of the  
12 environment justice in this state. So to add  
13 further regulatory burden on us and on our  
14 business community at this time, in this  
15 precarious economic condition of this state, I  
16 think would be extraordinarily unwise.

17 And for those reasons, for jobs in  
18 New York, I'm going to vote no.

19 ACTING PRESIDENT STEWART-COUSINS:  
20 Senator DeFrancisco.

21 SENATOR DeFRANCISCO: I think I  
22 forgot what I was going to ask, quite frankly.

23 But much has been already asked  
24 that I would have, but I just had a couple of  
25 questions of the sponsor if he would be

1 willing to answer them.

2 ACTING PRESIDENT STEWART-COUSINS:

3 Senator Schneiderman, will you yield for  
4 questions?

5 SENATOR SCHNEIDERMAN: Yes, Madam  
6 President, I will yield for -- and I  
7 appreciate the Senator's concern with not  
8 asking questions that have been asked before.

9 SENATOR DeFRANCISCO: Senator,  
10 you had mentioned the empirical data that you  
11 had to justify the need for this particular  
12 bill, and you talked about asthma rates in  
13 minority communities, how they exceed the  
14 rates in nonminority communities.

15 Did that -- I didn't see that  
16 study, but did that study relate back to  
17 decisions made by the DEC or governmental  
18 bodies that sited various unhealthy facilities  
19 in those areas with higher asthma rates? Or  
20 is it just documentation that -- data that  
21 says that certain members of certain races  
22 have a higher incident rate without any  
23 relationship to those sites?

24 SENATOR SCHNEIDERMAN: Well,  
25 Madam President, through you, I have to say

1       that I feel as though there are things that  
2       are right in front of us sometimes that we  
3       choose not to see. And in this case, this  
4       debate appears to demonstrate that some of my  
5       colleagues are willfully blind to something  
6       that I think is fairly obvious. I cited the  
7       study "A Climate Of Change." There's also an  
8       older study that was done by the Commission  
9       for Racial Justice of the United Church of  
10      Christ, which I cite. There are studies that  
11      have been done by a variety of environmental  
12      groups that I will be happy to cite for my  
13      colleagues.

14               There can be no dispute that poor  
15      communities of color are overly burdened with  
16      environmentally harmful projects and do not  
17      have their fair share of environmentally  
18      beneficial projects, such as parks. And I  
19      think that this whole dialogue, which really  
20      is a dialogue of people who appear to be --  
21      and maybe I'm misreading how they intend to  
22      vote -- but appear to be prepared to vote  
23      against a broad statement of purpose that the  
24      State of New York believes in equality and  
25      justice when what it comes to environment law,

1       are missing the point.

2                   We know this is true. There's no  
3       study that finds otherwise. The fact of the  
4       matter is that when you have -- you know, a  
5       four-to-one disparity in asthma rates, that's  
6       not a margin of error issue. And if you just  
7       will come and walk, as Senator Montgomery  
8       cited numerous facilities in and around her  
9       district, if you would just come and look at  
10      the poor communities that are unduly burdened  
11      by these facilities and these projects, I  
12      think the answer will be pretty clear.

13                  But there is no question that this  
14      issue, the issue of health, the issue of  
15      asthma and other health concerns are  
16      environmentally related. This is not a  
17      finding that there are some groups with a  
18      genetic predisposition to asthma. This is a  
19      problem of environmental injustice. This is a  
20      problem that the Commission for Racial Justice  
21      of the United Church of Christ called  
22      environmental racism.

23                  This is not something that hasn't  
24      been documented and discussed over and over  
25      again. All we're doing with this legislation

1 is getting into the broad statements of  
2 purpose that frame the Environmental  
3 Conservation Law of the State of New York a  
4 statement that we are opposed to such  
5 injustice.

6 SENATOR DeFRANCISCO: Too bad  
7 there's not a judge here that could answer the  
8 objection that the answer was not responsive.  
9 Because I'd like to ask it again and see if it  
10 could be responsive this time, if he would  
11 please yield to another question.

12 ACTING PRESIDENT STEWART-COUSINS:  
13 Senator Schneiderman, do's you continue to  
14 yield.

15 SENATOR SCHNEIDERMAN: I will  
16 yield for another question, Madam President.  
17 But if the question continues to miss the  
18 point of my legislation, I will provide an  
19 answer that returns us to the point of my  
20 legislation.

21 SENATOR DeFRANCISCO: The  
22 question is simply this. Do any of the  
23 studies that you have cited -- not your  
24 feelings and your desire to do justice -- any  
25 of the studies that you cited link the asthma



1 rates to bad projects that are in the various  
2 communities that you're concerned about? Do  
3 the studies say that? I'm not asking what you  
4 think or what we should all know by osmosis or  
5 just common sense. Do the studies say that?

6 SENATOR SCHNEIDERMAN: Through  
7 you, Madam President. Yes, the studies say  
8 that. Studies for decades have demonstrated  
9 the harmful effects on poor people of --

10 SENATOR DeFRANCISCO: Thank you.  
11 He's answered -- he's answered the question.

12 SENATOR SCHNEIDERMAN: I'm sorry,  
13 Madam President, if the questioner would allow  
14 me the courtesy that I've extended to him and  
15 his colleagues.

16 ACTING PRESIDENT STEWART-COUSINS:  
17 Senator Schneiderman, please continue.

18 SENATOR SCHNEIDERMAN: Thank you.  
19 Every study has documented this for  
20 decades. If you want to hide and you want to  
21 pretend we don't know this, if you want to  
22 pretend that we don't know there's  
23 environmental injustice in our state, that  
24 poor communities of color have a higher  
25 proportion of harmful environmental projects

1 in them, go ahead. But you're not fooling  
2 everyone. You're not fooling the people of  
3 this state. You're not fooling your  
4 constituents. We know this is a problem.  
5 Dozens of studies have shown this.

6 I will be happy to send to Senator  
7 DeFrancisco's office a copy of a list of some  
8 of those studies. But to suggest that there  
9 is somehow or other -- because this is a broad  
10 statement of policy and not a list of specific  
11 projects, that somehow it's something we  
12 shouldn't do, I think is frankly a little bit  
13 offensive. It's almost suggesting that the  
14 problem that we all know exists of  
15 environmental injustice in this state doesn't  
16 exist, that we're making it up, that we're  
17 asking you to believe in it by osmosis or  
18 common sense.

19 This is a problem. We know it's a  
20 problem. Let's put in our Environmental  
21 Conservation Law a statement of our commitment  
22 to justice and equality and the enforcement of  
23 the environmental laws and the enforcement of  
24 the rules regarding siting of projects, both  
25 good and bad projects -- parks and power

1       plants -- let's put that in our statement of  
2       policy. That's what this bill does.

3               And to suggest that there's  
4       anything else going on here, Madam President,  
5       I think is really unfair and dishonest. This  
6       is a simple bill. And I am surprised that our  
7       discussion has gone on this long, because I  
8       would think you'd be able to decide if you  
9       want to vote in support of the broad statement  
10      of policy in this short paragraph pretty  
11      easily. It is the policy of the State of  
12      New York, according to this language, which  
13      I'm asking you to support, that people of all  
14      races, cultures, religions, incomes, education  
15      levels and sexual -- it should be sexual  
16      orientation -- be treated equally with respect  
17      to the development and enforcement of  
18      environmental laws, regulations and policies.  
19      Not complicated, Madam President.

20              And I really would challenge anyone  
21      who would suggest that this is making up a  
22      problem, that we are creating the notion that  
23      there is environmental injustice, that you are  
24      badly out of touch with reality.

25              SENATOR DeFRANCISCO:       Now that

1 he's answered the question, would he please  
2 answer another question, hopefully more  
3 succinctly.

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

7 SENATOR SCHNEIDERMAN: I will  
8 yield for one more question.

9 SENATOR DeFRANCISCO: Senator,  
10 since you've obviously done your homework and  
11 you've got all of this empirical data to  
12 protect minority communities by this  
13 particular legislation, my question is what  
14 empirical data that you have that shows that  
15 religions have to be protected.

16 How do you provide equal treatment  
17 to religions? Or better yet, how do you  
18 provide equal treatment to sexual orientation?  
19 Are there communities where we can identify  
20 people of the various sexual orientations that  
21 we've got to provide equal treatment for?  
22 Could you tell me what empirical data you have  
23 to require protection, equal protection for  
24 these groups, environmental protection?

25 SENATOR SCHNEIDERMAN: Through

1       you, Madam President, statements of policy  
2       include very broad language. And the first  
3       sentence of this proposed legislation does  
4       identify cultures, races, religions. But the  
5       point of that language is really to frame up  
6       our commitment to equality that's set forth  
7       later in the paragraph.

8               The point is that no one should be  
9       discriminated against on any basis and that in  
10      the application of our environmental laws, we  
11      should not accept injustice on any basis.

12             And I would urge the Senator that  
13      it was because of the opposition to including  
14      certain groups in other civil rights laws that  
15      we now are careful to include broad language  
16      whenever we refer to the issue of justice and  
17      equality in New York. I recall being here for  
18      years when the Hate Crimes Law was failing  
19      because my colleagues on the other side of the  
20      aisle refused to include sexual orientation  
21      along with race and religion.

22             I don't think we should be passing  
23      laws with broad declarations of our civil  
24      rights commitment and our commitment to  
25      justice and equality that exclude any

1 particular group.

2 Having said that, you know, I'm not  
3 sure I can answer the question specifically if  
4 there is a particular community that is  
5 suffering environmental injustice because of  
6 sexual orientation. I can tell you that there  
7 certainly are communities where groups of  
8 people who follow a particular religious  
9 teaching are clustered, where there are  
10 sometimes very crowded communities, in fact,  
11 where people who are of a particular religious  
12 belief, belong to a particular sect, are  
13 concentrated. And it's very possible that  
14 some such group could be faced with an  
15 environmental justice issue at some point in  
16 time.

17 So I think if the complaint is that  
18 we're providing for too much justice and  
19 equality, then I plead guilty to that  
20 complaint. The point is that no one -- and  
21 the statement here, after we talk about all  
22 the various populations of the state, the  
23 statement here that really is the heart of  
24 this bill that you will vote against if you  
25 vote against this bill, is no population,

1       however you define population, should be  
2       forced to bear a disproportionate share of  
3       exposure to the negative effects of pollution  
4       or be deprived of locally accessible open  
5       space due to a lack of political or economic  
6       strength.

7               That is a statement that should  
8       apply to everyone. And frankly, I think it's  
9       kind of offensive to suggest that we don't  
10      support equality because we may have included  
11      categories of people who may have suffered  
12      inequitable treatment but we can't necessarily  
13      document it. I'm sure the Senator is not  
14      suggesting that he would support a policy of  
15      environment injustice towards people of a  
16      particular religion, but that's what it sounds  
17      like from the way he framed the question.

18             SENATOR DeFRANCISCO:     I have one  
19      last question if the Senator would be kind  
20      enough to answer it.

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

24             SENATOR SCHNEIDERMAN:     I will  
25      yield for one last question.

1                   ACTING PRESIDENT STEWART-COUSINS:

2       Senator DeFrancisco, one last question.

3                   SENATOR SCHNEIDERMAN:       And I  
4       trust everyone has empowered you to ask that  
5       last question, Senator.

6                   SENATOR DeFRANCISCO:       Who has  
7       empowered me? It's my own question. I'm not  
8       quite sure what you mean by that remark.

9                   But whatever you mean, the question  
10       is simply this. Senator Montgomery made a  
11       compelling case, and apparently it was  
12       compelling to you because it's part of your  
13       memo, concerning some areas that are  
14       disproportionately treated unfairly.

15                   If this becomes law, could an  
16       attorney general of the State of New York, no  
17       matter who that person be, bring a lawsuit to  
18       stop the siting of a plant in Senator  
19       Montgomery's district because she would not be  
20       being treated -- those people would not be  
21       treated equally, according to your  
22       legislation, because they're already  
23       overpopulated with these sites that are not  
24       good for health?

25                   SENATOR SCHNEIDERMAN:       Thank you,



1       Madam President. A great last question.

2                   SENATOR DeFRANCISCO:     Well, I'd  
3       love a great answer too.

4                   SENATOR SCHNEIDERMAN:     Certainly  
5       the attorney general of the State of New York  
6       has broad powers in the area of environmental  
7       protection and can choose to exercise those  
8       powers and has a fair amount of flexibility as  
9       to how those powers are exercised.

10                   This statute does not change the  
11       laws that the attorney general enforces and,  
12       as I think I've made clear repeatedly, does  
13       not create any new rights of action. This  
14       statute in and of itself would not change the  
15       actions an attorney general could bring, but  
16       this statute that puts into our broad  
17       statement of purpose in our environmental  
18       conservation laws the principle of equality  
19       and justice for all New Yorkers I think could  
20       lead a future attorney general to propose  
21       program bills that could make such  
22       modifications, that could build on the work  
23       that's been done in other states to ensure  
24       that projects are located on an equitable  
25       basis, and in fact to ensure that in

1 communities that overly burdened by  
2 preexisting projects that we take additional  
3 steps to provide open space, to provide  
4 mitigation for the harmful effects of  
5 pollution that is the result of decisions  
6 made, in some cases, many decades ago.

7 So I would suggest that while this  
8 doesn't change the body of law that the  
9 attorney general can enforce, this would be  
10 something that I think might inspire an  
11 attorney general to have a broader array of  
12 program bills dealing with issues of  
13 environmental justice and to work together  
14 with the Legislature to try and improve our  
15 laws in that area. I do think that this would  
16 be something that would be welcomed by anyone  
17 who wants to enforce the Constitution of the  
18 State of New York, be the top law enforcement  
19 officer of the State of New York and provide  
20 justice and equality to the best of their  
21 ability for the people of the State of  
22 New York.

23 SENATOR DeFRANCISCO: On the  
24 bill, please.

25 ACTING PRESIDENT STEWART-COUSINS:

1 Senator DeFrancisco, on the bill.

2 SENATOR DeFRANCISCO: You know,  
3 it's very difficult to ask questions and get a  
4 filibuster about things that have nothing to  
5 do with the nature of the question nor the  
6 intent of the question.

7 And to somehow imply bad motives or  
8 that someone does not want to be just or fair  
9 or wants to discriminate or not discriminate,  
10 I mean, that kind of rhetoric's going on for  
11 years, and quite frankly it's annoying, let  
12 alone not accurate.

13 The fact of the matter is I think  
14 when you propose a bill, you ought to have  
15 some kind of empirical data or something  
16 behind the bill and some reasons you want to  
17 have the bill passed. And it seems to me that  
18 a question concerning whether or not the  
19 studies that are being cited actually connect  
20 the health hazards to some type of facility  
21 that is unequally distributed in a district, I  
22 think that's a relevant question. And I think  
23 it's pretty important to determine whether or  
24 not those studies that are being relied upon  
25 are accurate or not.

1           I don't think there's anything  
2       wrong with that, especially since Senator  
3       Saland made the excellent point that Senator  
4       Schneiderman cited the EPA and the broad  
5       language of the EPA that was almost identical  
6       to his language and how could we not want the  
7       same language in our state, the great State of  
8       New York. Well, the language was  
9       substantially different once you read it.

10           There's a big difference between  
11       saying that all of these groups have to be  
12       treated equally, as this legislation says --  
13       that sounds like a head count, or the number  
14       of plants in a certain area, a count of those  
15       plants depending upon the type of population.  
16       As opposed to the EPA language that says  
17       "shall have meaningful involvement in the  
18       process." There's a huge difference. And I  
19       think that was a relevant point made by  
20       Senator Saland.

21           And Senator Bonacic mentioned about  
22       is there a private right of action. And  
23       Senator Schneiderman said there is no private  
24       right of action. But the way I understood his  
25       answer, and I think I understood it, is that

1       the attorney general has broad enforcement  
2       authority over the laws of the State of  
3       New York and could bring suits along the  
4       spirit of this bill.

5               For example, the suit that I posed  
6       about Senator Montgomery's district. Clearly,  
7       if the attorney general felt that her district  
8       was being or her population was being treated  
9       unequally, because it's got to be equal  
10      treatment -- count some numbers of plants and  
11      the like -- well, that violates the policy of  
12      the State of New York if this bill in fact  
13      becomes law.

14             So I don't think any of the  
15      questions or responses or argument made by  
16      anybody on this side of the aisle showed  
17      anything close to discrimination or possibly a  
18      desire to discriminate against people. It's a  
19      question of whether the legislation makes any  
20      sense and whether it's going to create more  
21      problems than it's going to correct.

22             And I know everyone wants to  
23      include every imaginable group in every piece  
24      of civil rights legislation. But how does  
25      anybody in the DEC ever administer this

1       problem of whether or not there's unequal  
2       treatment of religious groups? How do you  
3       determine that? I mean, what a burden that's  
4       got to be. What religion has more steam  
5       plants? The religions are mostly all over the  
6       state in different locations. And what a  
7       great tool for a religious group that wouldn't  
8       want something in their neighborhood to say  
9       we're being treated unequally because we have  
10      one down the block, even though their religion  
11      is spread out throughout the state.

12               And sexual orientation is really  
13      the more interesting one. How do you  
14      determine where the communities of different  
15      sexual orientations are? And how do you  
16      determine whether they're being treated  
17      equally or not?

18               Now, it's nice to have a broad,  
19      general piece of legislation, but generally I  
20      think you want to try to enforce these things  
21      and have some standards that you can enforce.  
22      And if you can't enforce the standards or  
23      they're so overly broad that it's going to  
24      create more problems than it's going to solve,  
25      then under those circumstances you've got to

1 think twice about the bill.

2 So those are my concerns about the  
3 bill, and that's why I'm going to vote no.

4 Thank you, Madam President.

5 ACTING PRESIDENT STEWART-COUSINS:  
6 Senator Parker.

7 SENATOR PARKER: Thank you, Madam  
8 President. On the bill.

9 ACTING PRESIDENT STEWART-COUSINS:  
10 Senator Parker, on the bill.

11 SENATOR PARKER: Colleagues,  
12 racism exists. Point-blank, period. And I  
13 know people here are looking for clarity, so  
14 let me be clear. Racism exists.

15 Let me explain to you what racism  
16 is. Racism is the ability for one to use  
17 racial discrimination and turn it into public  
18 policy. Let me be clearer. The only kind of  
19 functional racism that exists in the State of  
20 New York or the country is white supremacy.  
21 When you in fact see racial discrimination  
22 being turned into public policy based on  
23 discrimination, it is places where white  
24 people have in fact discriminated and turned  
25 the discrimination of blacks, Latinos, Asians

1 and others into public policy. Clear.

2 This piece of legislation, which I  
3 really commend both Senator Schneiderman and  
4 Senator Thompson for bringing forth, helps to  
5 start the conversation about how we in fact  
6 deal with that ugly problem that we have in  
7 America, here in the state around the issue of  
8 environmental protection.

9 We are in fact used to somebody  
10 being called an ugly name, Madam President,  
11 and that being the only kind of racism that we  
12 understand. But the reality is that there's  
13 institutional racism, there's structural  
14 racism, there is labor market discrimination,  
15 and there's environmental racism.

16 What this bill simply does is  
17 create a policy statement that is strong  
18 enough to protect everyone, not just around  
19 racism, where this is in fact the most obvious  
20 problem, but around other categories.

21 Senator DeFrancisco, you are quite  
22 wrong when you in fact say that groups of  
23 people live in other places. If you look at  
24 four years ago, the Harvard School of  
25 Education did a study based on Brown vs. Board



1 of Education and looked at concentrations of  
2 people and demographics. And what you saw in  
3 the study is that actually New York City has  
4 one of the most segregated cities in the  
5 entire country, because you can actually look  
6 at communities where in fact people live.

7 If you tell me -- when you live in  
8 New York City and you tell me your race or  
9 your religion or your ethnicity, I can put you  
10 within blocks of your house, for the most  
11 part. And we all know that.

12 I represent Borough Park, the  
13 largest concentration of Orthodox Jews in the  
14 entire country. We all know that. Ask Dov  
15 Hikind, my colleague who represents them in  
16 the Assembly. Right? So when you look at --  
17 if you want to ask the question of where in  
18 fact people of religions live, they live in  
19 many cases in very tight concentrations.  
20 Senator Montgomery and Senator Squadron  
21 represent parts of Boerum Hill, which has a  
22 large Muslim population, actually one of the  
23 largest concentrations of Muslims, again, in  
24 the entire country live in Boerum Hill in  
25 Brooklyn. Right?

1                   These are not things that we're  
2                   unaware of. There are in fact many, many  
3                   instances where based on race, religion, or  
4                   even sexual orientation we know there are in  
5                   fact concentrations of people. And we  
6                   understand that we need to protect people  
7                   regardless of their race, their religion,  
8                   their sexual orientation, their ethnicity,  
9                   their handicaps, whatever. We want people to  
10                  be protected. I know you all want people to  
11                  be protected.

12                 This is a simple bill. And I'm  
13                 really -- frankly, I'm appalled that we're  
14                 having this much discussion about it, frankly,  
15                 because I don't think that it in fact does  
16                 many of the things that people are fantasizing  
17                 about.

18                 The extrapolations about this being  
19                 an anti-jobs bill or an anti-business bill  
20                 frankly are ridiculous. I mean, the reality  
21                 is we have to do business in a way in this  
22                 state that does not disenfranchise other  
23                 people and does not cause harm to them. That  
24                 has been a theory and public policy practice  
25                 in this country going back to Teddy Roosevelt,

1       when you first started having, you know, state  
2       parks being created. Right?

3               I mean, Senator Little, you  
4       represent the Adirondacks. How do you in  
5       fact, you know, protect the Adirondacks and  
6       say that this needs to be a protected area and  
7       then don't protect the South Bronx and don't  
8       protect Sunset Park and don't protect Staten  
9       Island?

10              I mean, the reality is there are  
11       places all over this state, both upstate and  
12       downstate, that ought to be protected, and  
13       where people live in conditions that they  
14       frankly ought not to.

15              I'm very surprised that, frankly,  
16       the mayor has not come out stronger in terms  
17       of support of this bill, inasmuch as he talked  
18       about congestion pricing, that he wanted to in  
19       fact see, you know, asthma rates go down, and  
20       cases in which cancer and other things are  
21       affected by environmental problems in our  
22       communities. This is the kind of bill that we  
23       really need to begin with in terms of making a  
24       broad policy statement.

25              And just so you understand, the

1 difference between what Senator Schneiderman  
2 and Senator Thompson are proposing here and  
3 what the EPA has is that that was something,  
4 that broad statement was actually created  
5 under a Republican administration where  
6 Christy Todd Whitman, the former governor of  
7 the New Jersey, the toxic shock state -- and I  
8 know I'll get some letters behind that. But,  
9 you know, that is where the EPA statement  
10 comes from. And it's a much weaker statement  
11 and frankly does not do the job, which is part  
12 of why states are being called on. That's  
13 part of why the leadership of this body is  
14 being called on to in fact protect our  
15 communities. We need to do the right thing  
16 here, and we need to pass this simple bill  
17 that makes a simple statement, that we as  
18 members of the New York State Senate are not  
19 going to be allow people to be discriminated  
20 upon by companies that want to create waste  
21 and create environmental hazards in our  
22 communities.

23 Let me get the record straight  
24 around SEQRA, Senator Winner. SEQRA does not  
25 provide for environmental justice language.

1       It does not. I'm being as clear as I can.  
2       SEQRA does not provide for environmental  
3       justice language. This language in this bill  
4       is necessary because SEQRA does not in fact  
5       protect black and Latino communities that are  
6       put upon by coal-burning plants, they're put  
7       upon by garbage stations, that are put upon by  
8       chemical plants, that are put upon by other  
9       kinds of plants that put toxins into the air  
10      and into the water.

11               There are organizations like  
12      Sustainable South Bronx that have done  
13      numerous studies and numerous actions -- you  
14      can call my good friend Majora Carter there,  
15      and she can give you a whole dissertation on  
16      it if you need to be.

17               I'm surprised that I hear that  
18      Senator Diaz is voting against this, because  
19      this is in fact the kind of bill that will  
20      begin to protect his community. He has the  
21      most put-upon community in the entire State of  
22      New York as relates to these kind of plants,  
23      you know. I think second only to George  
24      Onorato, maybe. And actually between  
25      George -- if you look at their districts,

1       between George's district in Queens and  
2       Senator Diaz's district in the South Bronx,  
3       right, just separated by less than a mile of  
4       water between them, they have, you know, more  
5       plants and more carbon and environmentally  
6       hazardous plants than almost any other  
7       communities in the entire country -- not just  
8       the entire state, the entire country.

9               It is for no other reason than for  
10       that community, and those are those  
11       communities, that we ought to be passing this  
12       language. Because SEQRA does not provide it.  
13       In fact, part of the argument around creating  
14       an Article X, which is a fast-track power  
15       plant siting bill that I've worked on and  
16       Senator Maziarz has worked on, that Senator  
17       Wright before us worked on -- part of the idea  
18       of in fact doing that type of bill was in fact  
19       to get environment justice language into the  
20       debate around the siting of power plants. So  
21       it is not just power plants, it is lots of  
22       different kinds of plants now.

23               We're in a jobs crisis. Everybody  
24       here, when you talk about the idea of creating  
25       jobs, it's job one for this body. And I

1       certainly would not be voting for this bill if  
2       I thought it was something that hurt job  
3       creation. But let me say this. Job creation  
4       is not more important than the sustainability  
5       of life. We cannot create jobs in this state  
6       at the expense of the health of our children.  
7       We can't create jobs at the expense of another  
8       case of asthma, another case of cancer,  
9       another case of lymphoma. We can't do it.

10               That being said, is that that's a  
11       false dichotomy. It is not a matter of  
12       polluting the earth and the environment or  
13       creating jobs -- in fact, just the opposite.  
14       And this body proved that a few months ago  
15       when we passed the green-collar jobs bill.

16               We in fact have an opportunity here  
17       to do the good work of this country, and that  
18       is to create jobs that in fact are good and  
19       sustainable for this nation and for this  
20       country. The kind of jobs that are good for  
21       me, that are good for your community, that are  
22       good for everybody's community in this great  
23       state.

24               So we don't have to create these  
25       dichotomies between jobs and the environment.

1       They in fact have created a beautiful nexus  
2       for us where companies can create profits,  
3       people can have jobs, people can lower their  
4       energy bills and at the same time have the  
5       kind of environment and be the kind of  
6       stewards of this environment that we ought to  
7       be not just for our children but for our  
8       grandchildren and our great-grandchildren.

9               Ladies and gentlemen, I hope that  
10       we can resolve some of people's concerns both  
11       around litigation that's probably likely not  
12       to come, because the reality is we're not  
13       looking to grandfather existing plants into  
14       this, we're really just looking prospectively  
15       and in fact saying, as we go forward, let's in  
16       fact be sensitive to the makeup of  
17       communities, let's make sure that the  
18       communities that people are living in are  
19       sustainable for their lives.

20              It's not much to ask that all of  
21       our children be able to breathe clean air.  
22       It's not much to ask to say that every drop of  
23       water that our children and our grandchildren  
24       drink and that our mothers and our  
25       grandmothers and our grandfathers drink is



1 clean water. It's not much to ask. Those  
2 should be basic things that all of us want for  
3 everybody in the state.

4 And I'm saying up until this point,  
5 I get that many people -- that we didn't know  
6 at one point, you know, what DDT did to our  
7 communities. We didn't know what CO2 was, let  
8 alone what it did to our lungs and to the  
9 atmosphere. We didn't know. But my  
10 grandfather always told me, Senator Espada,  
11 when you know better, you do better. And now  
12 we know better. And what I'm simply asking  
13 you is to vote on this bill yes so that we as  
14 a state can do better because we now know  
15 better.

16 There is a significant amount of  
17 distrust between communities of color in  
18 particular and corporations. And that extends  
19 to government exactly because we have failed  
20 to police our communities in the right way.  
21 And this is a great opportunity for us as we  
22 go forward, as we go forward to make sure that  
23 all of our communities have the same kind of  
24 environmental protection that every other  
25 community has.

1 All of us are not, you know, lucky  
2 enough to live in, you know, the great, you  
3 know, rural communities that some others  
4 represent in this state. And so finding a  
5 tree in Brooklyn, although easier than it was,  
6 you know, a couple of years ago, is not as  
7 easy as it is in other places.

8 So that's why particularly in urban  
9 areas, this kind of legislation is necessary.  
10 And let's be clear. New York City is not the  
11 only urban area in the state. If you live in  
12 Syracuse, you ought to be concerned about  
13 this. If you live in Rochester, you ought to  
14 be concerned about this. If you live in  
15 Buffalo or Niagara Falls or Albany, you ought  
16 to be concerned about this. If you live in  
17 Utica or Binghamton, you ought to be concerned  
18 about this. Anyplace that we are doing, you  
19 know, significant manufacturing or if you  
20 have, you know, Senator Aubertine, a power  
21 plant in your district, you ought to be  
22 concerned about this, because those particular  
23 matters are falling on everybody, on the just  
24 and the unjust alike.

25 And so, again, I'm pleading with my

1 colleagues to do the right thing, to protect  
2 all of our communities, to make sure that the  
3 ugly history of our past doesn't continue to  
4 dictate the policies of the future. We know  
5 better, and we can do better.

6 I'm voting aye.

7 ACTING PRESIDENT STEWART-COUSINS:  
8 Senator Lanza.

9 SENATOR LANZA: Thank you, Madam  
10 President. It isn't often enough that I'm  
11 able to agree with my good friend Senator  
12 Parker, so let me begin by saying that I agree  
13 with him.

14 Sadly, of course we know that  
15 racism exists and discrimination exists. But  
16 I think it is probably a racist notion to  
17 suggest that only one race is capable of  
18 harboring those type of ignorant and hateful  
19 thoughts.

20 And of course let me say that we  
21 agree with the justification for this  
22 legislation, that there ought to be equality  
23 and justice in our community when it comes to  
24 everything, including how we treat the  
25 environment and how we place facilities that

1       may have a negative impact on the environment.

2               I think more than anyone in this  
3       room I can speak to the ills that occur when  
4       it comes to discriminatorily placing  
5       facilities that affect the environment.  
6       Senator DeFrancisco was looking for a study.  
7       Senator Schneiderman said it was right in  
8       front of us. Senator Parker said that clearly  
9       you can't ignore what has occurred in this  
10      state. And so let me point out to all of you  
11      that the greatest environmental crime  
12      committed by the people of the City of  
13      New York was perpetrated against the people of  
14      Staten Island, in a community that is  
15      predominantly white.

16              And of course I speak of the Fresh  
17      Kills Landfill, an unpermitted, unlined,  
18      environmental disaster, more than 2000 acres,  
19      which eventually, because of the stroke of  
20      many pens that were put down on pieces of  
21      paper -- by, it just so happens, Democrat  
22      elected officials, mostly in Manhattan, but  
23      throughout the rest of the city -- had all of  
24      the garbage of the City of New York come to  
25      Staten Island.

1                   Now, Fresh Kills Landfill was  
2                   probably the worst place in the world to even  
3                   site a landfill. Tribal estuaries, brackish  
4                   waters, streams, wetlands -- really a unique  
5                   environmental area that has been decimated and  
6                   destroyed over 50 years by the people outside  
7                   of Staten Island who were elected in the City  
8                   of New York.

9                   One of the last things that I was  
10                  part of when I left the City Council was the  
11                  solid waste management plan that had --  
12                  mindful of that environmental discrimination  
13                  that was perpetrated against the people of  
14                  Staten Island -- that had as one of its  
15                  principles borough-based sufficiency requiring  
16                  each borough to handle its share of its waste.

17                 Part of that plan requires the  
18                 placement of waste transfer stations. The  
19                 first, of course, to be established happened  
20                 and was established on Staten Island. We're  
21                 still waiting in Manhattan.

22                 And I find it ironic that the  
23                 people and elected officials in Staten Island  
24                 are trying to prevent marine stations from  
25                 being placed in Manhattan so that Manhattan

1       can deal with its fair share of garbage.

2               I am all for accomplishing what  
3       that legislation sets out to do. But as I  
4       listened to Senator Winner try to elicit how  
5       this legislation would play out, what rules  
6       would be changed, I didn't really get a  
7       satisfactory explanation. And so one of my  
8       concerns is that this legislation might do the  
9       opposite, or allow it. I know that is not the  
10      intent of the sponsor. I know that. But my  
11      concern is that this might create a cause of  
12      action for everyone but the kind of community  
13      that I have in Staten Island that's suffered  
14      for 50 years the environmental discrimination  
15      perpetrated upon it.

16             And that is my concern here, is  
17      that this will allow the people of Manhattan,  
18      for instance, to prevent a transfer station  
19      from being established in Manhattan to deal  
20      with their fair share of their own garbage,  
21      which would result in this being put back on  
22      the people of Staten Island.

23             So that's my concern. Not what  
24      that sets out to do -- because I support it --  
25      but what this might actually, in practice,

1 allow to happen, and that is the further  
2 perpetration of environmental injustice in the  
3 City of New York and elsewhere by the creation  
4 of a cause of action for some groups and not  
5 others.

6 And so, Madam President,  
7 unfortunately I will be voting in the negative  
8 on this legislation.

9 ACTING PRESIDENT STEWART-COUSINS:  
10 Senator L. Krueger.

11 SENATOR LIZ KRUEGER: Thank you,  
12 Madam President. Very briefly on the bill.

13 So everybody is imagining  
14 everything, and including imagining that  
15 there's not a problem of environmental racism  
16 or environmental injustice.

17 So it's not that complex a bill.  
18 It says we should factor in discrimination in  
19 the context of building, in the future, any  
20 kind of project that might in fact be  
21 environmentally damaging. It is the concept  
22 of fair share. It says government should  
23 factor this in. I don't see it as that  
24 complicated, that high-risk. And even many of  
25 my colleagues who have said we don't need it

1 have pointed out they think they read  
2 government policy as already doing this.

3 Well, there's lots of times we have  
4 voluntary governmental policy where we as a  
5 Legislature say, you know, this one is  
6 important enough to turn it into statute, to  
7 make it the law of the land, to not just count  
8 on some commissioner at some point in history  
9 to write regulations in such a way, but to  
10 actually say it's the law of the land, when  
11 planning for projects that can be  
12 environmentally harmful, not to discriminate.

13 I don't know why it's so  
14 complicated that it's taken us so many hours  
15 to get here. I have no problem supporting  
16 this bill. It should be the law of the land  
17 in New York State. I vote yes.

18 Thank you, Madam President.

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

22 Hearing none, debate is closed.  
23 The Secretary will please ring the bell.

24 Read the last section.

25 THE SECRETARY: Section 3. This



1 act shall take effect immediately.

2 ACTING PRESIDENT STEWART-COUSINS:

3 Call the roll.

4 (The Secretary called the roll.)

5 ACTING PRESIDENT STEWART-COUSINS:

6 Senator Montgomery, to explain her vote.

7 SENATOR MONTGOMERY: Yes, Madam  
8 President, to explain my vote.

9 I'm supporting this legislation.

10 As I said before, it is about time that we  
11 have this kind of protection against siting of  
12 environmentally harmful facilities, that the  
13 decision be made fairly across the state and  
14 not be clustered in districts like mine, in  
15 areas where the people who are primarily  
16 impacted by this cluster of environmentally  
17 harmful facilities are African-American and  
18 Latino New Yorkers.

19 And there is no question that these  
20 facilities are related specifically to the  
21 fact that I have the highest asthma rate in  
22 parts of my district in the whole state. So  
23 yes, there is a relationship between the  
24 environment. And it was not because they were  
25 born African-American and they have asthma,

1       it's because they were born into an  
2       environment that is toxic and polluted and  
3       because we have a cluster, oversaturation of  
4       these environmentally harmful facilities.

5               So it is time for us to have a  
6       policy that says New York State will not do  
7       that. So I vote aye.

8               ACTING PRESIDENT STEWART-COUSINS:  
9       Senator Montgomery to be recorded in the  
10      affirmative.

11              Senator Oppenheimer, to explain her  
12      vote.

13              SENATOR OPPENHEIMER:     Yes. I  
14      want to point out that the bill is not that  
15      dissimilar to the United States EPA law. So  
16      it isn't like we're creating something wildly  
17      different from what does exist at the federal  
18      level.

19              And also, I can't see that there's  
20      any harm in putting this in. I've listened to  
21      the other side of the aisle. But I think that  
22      all people, regardless of their color,  
23      ethnicity, their background, their race, I  
24      think everybody is entitled to the same equal  
25      protection when it comes to the water we drink

1           and the air we breathe.

2                       And I don't see that there could  
3           possibly be any harm in putting this into law,  
4           because it sounds rather basic, sort of  
5           primary. I don't see one could possibly -- in  
6           other words, how can it hurt you? It cannot  
7           hurt you. So let's see if it can help us.  
8           And I think it can help us.

9                       I vote aye.

10                      ACTING PRESIDENT STEWART-COUSINS:  
11           Senator Oppenheimer to be recorded in the  
12           affirmative.

13                      Senator Onorato, to explain his  
14           vote.

15                      SENATOR ONORATO:     Yes, Madam  
16           President, I rise to support this legislation.  
17           I'm sorry it didn't come sooner than now.

18                      As Senator Parker indicated  
19           earlier, I probably have the largest  
20           concentration of power plants in the entire  
21           country, where we supply the City of New York  
22           with over 70 percent of the electricity. And  
23           right now National Grid is contemplating  
24           building another plant in Astoria -- and not  
25           for the consumption of my community, but to

1       sell it outside of the state. Now we're  
2       producing electricity in my community to  
3       transport it out of the State of New York.  
4       Where is the justice in that?

5               And I support this bill  
6       wholeheartedly, and I ask my colleagues to  
7       reconsider. Someday they'll be trying the  
8       same thing in your community. Don't let it  
9       happen. I vote aye.

10              ACTING PRESIDENT STEWART-COUSINS:  
11       Senator Onorato to be recorded in the  
12       affirmative.

13              Any other Senator wishing to  
14       explain his or her vote?

15              Hearing none, announce the results.

16              THE SECRETARY:     Those recorded in  
17       the negative on Calendar Number 30 are  
18       Senators Bonacic, DeFrancisco, Diaz, Flanagan,  
19       O. Johnson, Lanza, Larkin, Leibell, Little,  
20       Nozzolio, Ranzenhofer, Saland, Volker, Winner  
21       and Young.

22              Ayes, 44. Nays, 15.

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

25              The Secretary will continue to

1 read.

2 THE SECRETARY: Calendar Number  
3 81, by Senator Duane, Senate Print 4998A, an  
4 act to amend the Public Health Law.

5 SENATOR LIBOUS: Read the last  
6 section.

7 ACTING PRESIDENT STEWART-COUSINS:  
8 Read the last section.

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

11 ACTING PRESIDENT STEWART-COUSINS:  
12 Call the roll.

13 (The Secretary called the roll.)

14 ACTING PRESIDENT STEWART-COUSINS:  
15 Announce the results.

16 THE SECRETARY: Ayes, 59. Nays,  
17 0.

18 ACTING PRESIDENT STEWART-COUSINS:  
19 The bill is passed.

20 The Secretary will continue to  
21 read.

22 THE SECRETARY: Calendar Number  
23 92, substituted earlier today by Member of the  
24 Assembly Morelle, Assembly Print Number 1808,  
25 an act to amend the Real Property Tax Law.

1                   SENATOR DeFRANCISCO:

2           Explanation.

3                   ACTING PRESIDENT STEWART-COUSINS:

4           Senator Valesky, an explanation is requested.

5                   SENATOR VALESKY:       Yes, Madam  
6           President. This bill would require that any  
7           taxpayer who is filing their STAR property tax  
8           application be provided with a receipt upon  
9           request, if in person. If it's made by mail,  
10          that it be provided in a self-addressed,  
11          postage-paid envelope.

12                   SENATOR DeFRANCISCO:       Will the  
13          Senator yield to a question?

14                   ACTING PRESIDENT STEWART-COUSINS:  
15          Senator Valesky, do you yield?

16                   SENATOR VALESKY:       Certainly.  
17          Certainly.

18                   SENATOR DeFRANCISCO:       What is the  
19          purpose of the legislation?

20                   SENATOR VALESKY:       Madam  
21          President, through you, the purpose of the  
22          legislation actually arose several years ago  
23          from a situation where an assessor indicated  
24          that an application for a STAR property tax  
25          exemption was denied and the property taxpayer

1       had no written record -- or the assessor had  
2       no written record of that application being  
3       received.

4               So this is simply meant to provide  
5       a taxpayer with additional information that  
6       their application was in fact received and  
7       processed.

8               SENATOR DeFRANCISCO:     Would the  
9       Senator yield to another question?

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

12              SENATOR VELELLA:     Certainly.

13              SENATOR DeFRANCISCO:     Is there  
14       any evidence in that example that you gave  
15       that the assessor refused to give a receipt  
16       upon request?

17              SENATOR VALESKY:     There is not.

18              SENATOR DeFRANCISCO:     So -- on  
19       the bill, please.

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

22              SENATOR DeFRANCISCO:     We have a  
23       bill here that seems to me to be totally  
24       unnecessary. The avowed purpose of the bill  
25       is to make sure that people who are denied an

1 exemption are allowed to get evidence of it.  
2 And the case cited as to why this is necessary  
3 is that a denial was given in the past and the  
4 taxpayer didn't have a receipt. But there was  
5 no evidence that the taxpayer asked for a  
6 receipt.

7 So this bill says taxpayers are  
8 entitled to a receipt if they ask for one.  
9 Now, doesn't that seem a little bit  
10 ridiculous? I can't imagine there's any  
11 instance where an assessor has denied anybody  
12 who asked for a receipt a receipt for  
13 anything. And if there's no known case where  
14 that ever happened, why do we have to have a  
15 statute requiring assessors to give receipts  
16 upon request?

17 Now, I think we have a lot more  
18 important things to do than bills like this,  
19 creating laws that have absolutely no purpose  
20 or no basis for it, no justification why it's  
21 necessary.

22 So I'm going to vote no, because I  
23 have a great respect for assessors and I think  
24 that there's no assessor in this state or in  
25 this country that would say to a taxpayer "You



1 cannot have a receipt" once it's requested.  
2 And we don't need a law to tell them their  
3 responsibility. So I'm voting no on this  
4 legislation.

5 ACTING PRESIDENT STEWART-COUSINS:  
6 Senator Johnson.

7 SENATOR CRAIG JOHNSON: Thank  
8 you, Madam President.

9 I rise in support of this piece of  
10 legislation. Because it's not just simply  
11 about the assessor, it's about the assessor's  
12 staff. And not always is the staff in tune  
13 with having to provide a receipt.

14 And I think what Senator Valesky is  
15 doing is creating a fail-safe protocol for all  
16 taxpayers in New York State. If they want a  
17 receipt and ask for it, you've got to provide  
18 them a receipt.

19 I don't know why my good friend  
20 from up north has a problem with that, but I  
21 certainly don't. I don't think our taxpayers  
22 will. So I'll be voting yes on this great  
23 piece of legislation.

24 Thank you very much, Madam  
25 President.

1                   ACTING PRESIDENT STEWART-COUSINS:

2       Senator Fuschillo.

3                   SENATOR FUSCHILLO:       Madam  
4       President, will the sponsor yield for a quick  
5       question?

6                   ACTING PRESIDENT STEWART-COUSINS:

7       Senator Valesky, do you yield?

8                   SENATOR VALESKY:       Absolutely.

9                   SENATOR FUSCHILLO:       Senator, just  
10      a quick question. What happens if the  
11      assessor does not give a receipt? Is there a  
12      penalty?

13                  SENATOR VALESKY:       There is not.

14                  SENATOR FUSCHILLO:       So there's no  
15      enforcement provision at all.

16                  SENATOR VALESKY:       That's correct.

17                  SENATOR FUSCHILLO:       Thank you  
18      very much.

19                  ACTING PRESIDENT STEWART-COUSINS:

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

22                  Hearing none, the debate is closed.

23                  Secretary, please ring the bell.

24                  Read the last section.

25                  THE SECRETARY:       Section 2. This

1       act shall take effect immediately.

2                ACTING PRESIDENT STEWART-COUSINS:

3       Call the roll.

4                (The Secretary called the roll.)

5                ACTING PRESIDENT STEWART-COUSINS:

6       Announce the results.

7                THE SECRETARY:       Those recorded in  
8       the negative on Calendar Number 92 are  
9       Senators DeFrancisco, O. Johnson, Libous,  
10      Winner and Young.

11               Ayes, 54.   Nays, 5.

12               ACTING PRESIDENT STEWART-COUSINS:

13      The bill is passed.

14               Senator Klein, that completes the  
15      controversial reading of the calendar.

16               SENATOR KLEIN:       Madam President,  
17      can we just briefly return to motions and  
18      resolutions.   I have one motion.

19               ACTING PRESIDENT STEWART-COUSINS:

20      Returning to the order of motions and  
21      resolutions.

22               Senator Klein.

23               SENATOR KLEIN:       Madam President,  
24      on behalf of Senator Perkins, on page number  
25      10 I offer the following amendments to

1       Calendar Number 28, Senate Print Number 1145A,  
2       and ask that said bill retain its place on  
3       Third Reading Calendar.

4                ACTING PRESIDENT STEWART-COUSINS:  
5       So ordered.

6                Senator Klein.

7                SENATOR KLEIN:       Madam President,  
8       is there any further business at the desk?

9                ACTING PRESIDENT STEWART-COUSINS:  
10       Senator Klein, the desk is clear.

11               SENATOR KLEIN:       There being none,  
12       Madam President, I move that we adjourn until  
13       Tuesday, February 23rd, at 3:00 p.m.

14               ACTING PRESIDENT STEWART-COUSINS:  
15       There being no further business to come before  
16       the Senate, on motion, the Senate stands  
17       adjourned until Tuesday, February 23rd, at  
18       3:00 p.m.

19                (Whereupon, at 5:51 p.m., the  
20       Senate adjourned.)