

1 NEW YORK STATE SENATE

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3  
4 THE STENOGRAPHIC RECORD

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8  
9 ALBANY, NEW YORK

10 April 20, 2010

11 4:35 p.m.

12  
13  
14 REGULAR SESSION

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18 SENATOR NEIL D. BRESLIN, Acting President

19 ANGELO J. APONTE, Secretary

1 P R O C E E D I N G S

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

4 I ask all to rise and repeat with  
5 me the Pledge of Allegiance.

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

8 ACTING PRESIDENT BRESLIN: The  
9 invocation today will be given by the Reverend  
10 Peter G. Young, of Mother Teresa Church in  
11 Albany, New York.

12 Father Young.

13 REVEREND YOUNG: Let us pray.

14 As we experience the awesome  
15 volcano and the effects on all our nations, we  
16 must acknowledge Your creation with awareness  
17 and thanks that whatever legislative efforts  
18 we accomplish is beyond our control, and that  
19 in that prayer, then, of serenity that we must  
20 gather and say: God grant me the serenity to  
21 change the things that we can, to accept those  
22 that we can't, and the wisdom to know the  
23 difference.

24 As we present these efforts today  
25 and resolutions on Earth Day and in the

1 preparation for Earth Day, may we again admit

2 You, O God, are our answer and our wisdom.

3 Amen.

4 ACTING PRESIDENT BRESLIN: The  
5 reading of the Journal.

6 The Secretary will read.

7 THE SECRETARY: In Senate,  
8 Monday, April 19, the Senate met pursuant to  
9 adjournment. The Journal of Sunday, April 18,  
10 was read and approved. On motion, Senate  
11 adjourned.

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

15 Presentation of petitions.

16 Messages from the Assembly.

17 Messages from the Governor.

18 Reports of standing committees.

19 Senator Klein.

20 SENATOR KLEIN: Mr. President, I  
21 believe there's a report of the Finance  
22 Committee at the desk.

23 ACTING PRESIDENT BRESLIN:  
24 Senator Klein, there is a report of the  
25 Finance Committee at the desk.

1                   The Secretary will read.

2                   THE SECRETARY:     Senator C.

3                   Kruger, from the Committee on Finance, reports  
4                   the following nominations.

5                   As members of the Advisory Council  
6                   on Alcoholism and Substance Abuse Services:  
7                   Carlos Blanco, of New York City; Sharon  
8                   Gillette, of Plattsburgh; and William Magwood,  
9                   of Newburgh.

10                  As director of the New York  
11                  Convention Center Operating Corporation:  
12                  Robert Azeke, of New York City.

13                  As a member of the Board of  
14                  Visitors of the Capital District Developmental  
15                  Disabilities Services Office:   Patricia K.  
16                  Wright, of Waterford.

17                  As a member of the Board of  
18                  Visitors of the Hudson River Psychiatric  
19                  Center:   Dean H. Poorman, of Poughkeepsie.

20                  As a member of the Board of  
21                  Visitors of the Staten Island Developmental  
22                  Disabilities Services Office:   Edward J.  
23                  Checkett, of Staten Island.

24                  And as a member of the Board of  
25                  Visitors of the Sunmount Developmental

1       Disabilities Services Office:   Gilbert A.  
2       Duken, of Plattsburgh.

3                ACTING PRESIDENT BRESLIN:  
4       Senator Kruger.

5                SENATOR CARL KRUGER:       Mr.  
6       President, can we please move the nominations.

7                ACTING PRESIDENT BRESLIN:       Are  
8       there any Senators wishing to be heard on the  
9       nominations?

10               The question, then, is on the  
11       nominations. All those in favor please  
12       signify by saying aye.

13               (Response of "Aye.")

14               ACTING PRESIDENT BRESLIN:  
15       Opposed, nay.

16               (No response.)

17               ACTING PRESIDENT BRESLIN:       The  
18       motion carries. The nominations are  
19       confirmed.

20               Returning to the regular order of  
21       business, reports of select committees.

22               Communications and reports from  
23       state officers.

24               Motions and resolutions.

25               Senator Klein.

1                   SENATOR KLEIN:     Mr. President, I  
2     think there are substitutions at the desk. I  
3     ask that we make the substitutions at this  
4     time.

5                   ACTING PRESIDENT BRESLIN:     The  
6     Secretary will read.

7                   THE SECRETARY:     On page 20,  
8     Senator Maziarz moves to discharge, from the  
9     Committee on Energy and Telecommunications,  
10    Assembly Bill Number 5800B and substitute it  
11    for the identical Senate Bill Number 7084,  
12    Third Reading Calendar 352.

13                  ACTING PRESIDENT BRESLIN:  
14    Substitution ordered.

15                  THE SECRETARY:     On page 20,  
16    Senator Foley moves to discharge, from the  
17    Committee on Local Government, Assembly Bill  
18    Number 2731 and substitute it for the  
19    identical Senate Bill Number 4660, Third  
20    Reading Calendar 355.

21                  ACTING PRESIDENT BRESLIN:  
22    Substitution ordered.

23                  THE SECRETARY:     On page 21,  
24    Senator Duane moves to discharge, from the  
25    Committee on Health, Assembly Bill Number

1       5894A and substitute it for the identical  
2       Senate Bill Number 5590, Third Reading  
3       Calendar 357.

4                ACTING PRESIDENT BRESLIN:  
5       Substitution ordered.

6                THE SECRETARY:     On page 22,  
7       Senator Little moves to discharge, from the  
8       Committee on Codes, Assembly Bill Number 7203C  
9       and substitute it for the identical Senate  
10      Bill Number 285C, Third Reading Calendar 373.

11              ACTING PRESIDENT BRESLIN:  
12      Substitution ordered.

13              THE SECRETARY:     And on page 23,  
14      Senator Sampson moves to discharge, from the  
15      Committee on Codes, Assembly Bill Number 4300  
16      and substitute it for the identical Senate  
17      Bill Number 5445, Third Reading Calendar 377.

18              ACTING PRESIDENT BRESLIN:  
19      Substitution ordered.

20              Senator Klein.

21              SENATOR KLEIN:     Mr. President, I  
22      believe there's a resolution at the desk by  
23      Senator Ruth Hassell-Thompson. I ask that the  
24      resolution be read in its entirety and move  
25      for its immediate adoption.

1                   ACTING PRESIDENT BRESLIN:  
2       Senator Klein, has this resolution been deemed  
3       privileged and submitted by the office of the  
4       Temporary President?

5                   SENATOR KLEIN:       Yes, it has,  
6       Mr. President.

7                   ACTING PRESIDENT BRESLIN:       The  
8       Secretary will read.

9                   THE SECRETARY:       By Senator  
10       Hassell-Thompson, legislative resolution  
11       memorializing Governor David A. Paterson to  
12       proclaim April 21, 2010 as Denim Day in the  
13       State of New York.

14                   "WHEREAS, It is the custom of this  
15       Legislative Body to recognize official days  
16       that are set aside to increase awareness of  
17       serious issues that affect the lives of  
18       citizens of New York State; and

19                   "WHEREAS, The United States  
20       government has declared April as Sexual  
21       Assault Awareness Month, and Start Strong  
22       Bronx has proclaimed April 21, 2010, as Denim  
23       Day in New York State. These two events are  
24       intended to draw much-needed attention to the  
25       fact that both rape and sexual assault remain



1       serious issues in our society today; and

2               "WHEREAS, Harmful attitudes about  
3       rape and sexual assault allow these crimes to  
4       persist and allow victim survivors to be  
5       revictimized; and

6               "WHEREAS, Sexual Assault Awareness  
7       Month and Denim Day were also instituted to  
8       call attention to misconceptions and  
9       misinformation about rape and sexual assault  
10      and the prevalence of sexual assault in  
11      abusive dating relationships, a problem that  
12      many in society, including adolescents, remain  
13      disturbingly uninformed with respect to issues  
14      of assault and forceable rape; and

15              "WHEREAS, Every two minutes,  
16      someone in America is sexually assaulted.  
17      Approximately one in six women are raped  
18      during their lifetime; youth under 18 account  
19      for 44 percent of all sexual assaults  
20      reported; 8.3 percent of New York City teens  
21      say they have been forced to have sexual  
22      intercourse; and over 90 percent of the  
23      perpetrators are known to the victim; and

24              "WHEREAS, With proper education on  
25      the matter, there is compelling evidence that

1 we can be successful in reducing incidents of  
2 this alarming and psychologically damaging  
3 crime; and

4 "WHEREAS, Start Strong Bronx  
5 promotes healthy relationship skills among  
6 11-to-14-year-olds and the adults in their  
7 lives; and

8 "WHEREAS, Denim Day was coined  
9 after an Italian judge overturned a rape  
10 verdict on the basis that the woman was  
11 wearing skinny jeans that required two people  
12 to remove; and

13 "WHEREAS, This year's theme of  
14 Denim Day is 'Sexual Assault is as Common As  
15 Wearing Jeans' or 'Sexual Assault is a Rite of  
16 Passage as Common as Wearing Jeans'; and

17 "WHEREAS, This Legislative Body  
18 strongly supports the efforts of Start Strong  
19 Bronx to educate persons in our community  
20 about the true impact of rape and sexual  
21 assault in New York City; now, therefore, be  
22 it

23 "RESOLVED, That this Legislative  
24 Body pause in its deliberations to memorialize  
25 Governor David A. Paterson to proclaim

1 April 21, 2010, as Denim Day in the State of  
2 New York, and be it further

3 "RESOLVED, That copies of this  
4 resolution, suitably engrossed, be transmitted  
5 to the Honorable David A. Paterson, Governor  
6 of the State of New York, and Start Strong  
7 Bronx."

8 ACTING PRESIDENT BRESLIN:  
9 Senator Hassell-Thompson.

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

12 I didn't anticipate that the  
13 resolution was going to be read in its  
14 entirety, but I do appreciate the Secretary  
15 doing so.

16 Let me just say that there is just  
17 a slight history, I think, which you have just  
18 heard as to why we would commemorate Denim  
19 Day.

20 In Italy, on July 12, 1992, an  
21 18-year-old student reported to the police  
22 that her 45-year-old driving instructor had  
23 raped her the previous day during a driving  
24 lesson. She recounted that the man had driven  
25 her to a secluded pathway outside the

1       inhabited area where, after flinging her down  
2       on the ground and slipping off her blue jeans  
3       from one leg, he brutally raped her.

4               A different version of the facts  
5       was reported to the police by the driving  
6       instructor once he was arrested. Indeed, he  
7       confirmed in having had sexual intercourse  
8       with the student at the time, but claimed it  
9       had been consensual.

10              The Italian supreme court rebutted  
11       the appellate court's decision ruling in favor  
12       of the victim that had evaluated the partial  
13       removal of the blue jeans as evidence of the  
14       victim's lack of consent, stating on the  
15       contrary that it would have been peculiar for  
16       a girl to undress in the middle of the day  
17       even if she had consented.

18              Moreover, the supreme court pointed  
19       out that it is a fact of common experience  
20       that it is nearly impossible to slip off tight  
21       jeans, even partially, without the active  
22       collaboration of the person who is wearing  
23       such. Considering this, the supreme court  
24       conclusively squashed the previous conviction  
25       and remanded the case to the court of appeals

1 of Naples, which ultimately acquitted the man.

2 Every two minutes, someone in  
3 America is sexually assaulted. Approximately  
4 one in six women are raped during their  
5 lifetime. Youth under 18 account for  
6 44 percent of all sexual assaults reported.  
7 8.3 percent of New York City teens say that  
8 they have been forced to have sexual  
9 intercourse. Over 90 percent of their  
10 perpetrators are known to the victims.

11 The consequences of sexual violence  
12 are far-ranging, causing long-term physical  
13 and emotional damage. Sexual violence does  
14 not always manifest itself in physical form.  
15 It also involves coercion, threats and  
16 intimidation. Sexual violence does not  
17 discriminate. There is no single race,  
18 religion or socioeconomic status associated  
19 with this violent act.

20 In order to successfully educate  
21 all people, both young and old, about the  
22 devastating consequences of violence and  
23 abuse, we must take the scourge and fear away  
24 from discussions involving sexual violence and  
25 abuse.

1                   Mr. President, I would like to hope  
2                   that those of my colleagues in this chamber  
3                   would understand the importance of this act of  
4                   violence and commemorate with me tomorrow  
5                   Denim Awareness Day, and break the dress code  
6                   and wear denim in commemoration of this act.

7                   Thank you, Mr. President.

8                   ACTING PRESIDENT BRESLIN:       Thank  
9                   you, Senator Hassell-Thompson.

10                  Are there any other Senators  
11                  wishing to be heard on the resolution?

12                  The question is then on the  
13                  resolution. All those in favor please signify  
14                  by saying aye.

15                  (Response of "Aye.")

16                  ACTING PRESIDENT BRESLIN:  
17                  Opposed, nay.

18                  (No response.)

19                  ACTING PRESIDENT BRESLIN:       The  
20                  resolution is adopted.

21                  Senator Hassell-Thompson has  
22                  indicated that she would like to open up the  
23                  resolution for cosponsorship by the entire  
24                  house. Any Senator wishing not to be on the  
25                  resolution please signify by coming to the

1 desk.

2 Senator --

3 SENATOR MARCELLINO: It's  
4 Marcellino.

5 ACTING PRESIDENT BRESLIN: Yes, I  
6 know who it is.

7 SENATOR MARCELLINO: It's been a  
8 while.

9 ACTING PRESIDENT BRESLIN: Why do  
10 you rise?

11 SENATOR MARCELLINO: On Senator  
12 Hassell-Thompson's bill -- or resolution,  
13 rather -- I would love to be in absolute  
14 support but unfortunately did not bring the  
15 kind of clothes you're asking for with me.  
16 And I don't want that to be perceived as a  
17 lack of support for the issue.

18 So I will be happy to be of  
19 support, but I cannot with the dress code that  
20 you're asking for. Please forgive.

21 ACTING PRESIDENT BRESLIN: Thank  
22 you, Senator Marcellino.

23 Senator Klein.

24 SENATOR KLEIN: Mr. President, at  
25 this time I move that we pass the Resolution

1       Calendar in its entirety, with the exception  
2       of Resolutions 4727 and 4503.

3                ACTING PRESIDENT BRESLIN:     All  
4       those in favor of adopting the Resolution  
5       Calendar in its entirety, with the exception  
6       of Senate Resolutions 4727 and 4503, please  
7       signify by saying aye.

8                (Response of "Aye.")

9                ACTING PRESIDENT BRESLIN:  
10      Opposed, nay.

11               (No response.)

12               ACTING PRESIDENT BRESLIN:     The  
13      Resolution Calendar is adopted.

14               Senator Klein.

15               SENATOR KLEIN:     Mr. President, at  
16      this time I move to take up Senate Resolution  
17      Number 4727, by Senator Antoine Thompson. I  
18      ask that the title of the resolution be read  
19      and move for its immediate adoption.

20               ACTING PRESIDENT BRESLIN:     The  
21      Secretary will read.

22               THE SECRETARY:     By Senator  
23      Thompson, Legislative Resolution Number 4727,  
24      commemorating the 40th Anniversary of Earth  
25      Day on April 22, 2010.



1                   ACTING PRESIDENT BRESLIN:

2           Senator Thompson.

3                   SENATOR THOMPSON:     Yes, sir,  
4           Mr. President.  I won't be long, because I'm  
5           sure the debate on many bills today will be  
6           long.

7                   But I want to just thank you first  
8           for recognizing me.  And I also would like to  
9           say that this Thursday we will celebrate the  
10          40th Earth Day in the United States of  
11          America.

12                   And Earth Day has grown, and many  
13          people are becoming more and more aware about  
14          environmental policy.  And it really  
15          represents not only the growth of America but  
16          also it represents the growth of the world as  
17          well.

18                   In fact, because of the extreme  
19          changes in our weather patterns -- in places  
20          that never received snow, now they're  
21          receiving snow on a regular basis.  In fact, I  
22          often tease my colleagues here on both sides  
23          of the aisle that, you know, New York City and  
24          Long Island got a lot of snow this year.  So  
25          that's part of, I believe, climate change.

1                   But also, the reality is that years  
2                   ago we had a place in Niagara County called  
3                   Niagara Falls, and there was a little  
4                   community within Niagara Falls out in La Salle  
5                   they were impacted by a place and they called  
6                   it the Love Canal. And because of a young  
7                   lady named Lois Gibbs and some committed  
8                   residents from Niagara County, they spawned an  
9                   entire environmental justice movement because  
10                  they refused to accept what local government  
11                  officials and corporate people said, that  
12                  nothing was wrong related to the chemical  
13                  pollution in their community.

14                 They fought back. It wasn't easy.  
15                 People said they were crazy. They thought  
16                 that were from Mars or from the moon. But it  
17                 turned out that those committed group of  
18                 residents were right.

19                 And because of people like Lois  
20                 Gibbs and all the folks out in the La Salle  
21                 community of Niagara Falls, now we have more  
22                 environmental protection in the United States  
23                 of America and particularly in New York State.

24                 We know that we must protect not  
25                 only our current residents but future

1       generations as well. And so on Earth Day, on  
2       our 40th Earth Day, I hope that today that we  
3       will pass a number of good bills that have  
4       been debated. Some of these bills are on  
5       G print. And as all the more experienced  
6       members know -- I'm only in my second term --  
7       G print means that we made a number of  
8       revisions listening to the concerns of various  
9       people.

10               So I'm glad that we are celebrating  
11       the 40th Earth Day, and let's get down to the  
12       people's business so we can pass some good  
13       bills today.

14               Thank you.

15               (Applause from the gallery.)

16               ACTING PRESIDENT BRESLIN:

17       Senator Marcellino.

18               SENATOR MARCELLINO:       It's not  
19       often we get applauded for it before we act.

20               Senator Thompson, thank you for  
21       putting the resolution up. I appreciate the  
22       fact this is Earth Day and it is a day we  
23       should be celebrating the earth.

24               Frankly, it bothers me that we  
25       relegate it to one day; 365 days a year should

1 be Earth Day. There should be no day when it  
2 isn't Earth Day. There's no such thing as a  
3 Republican Clean Water Act, there's no such  
4 thing as a Democrat Clean Air Act. We all  
5 breathe the same air, we all drink the same  
6 water, and we all live on the same planet.  
7 And the last time I looked, they ain't making  
8 any more of them.

9 So we've got to protect the one  
10 that we live on so that we can pass it on in  
11 better form than we have found it so that our  
12 grandchildren and their children's children  
13 can live on this planet in safety, with clean  
14 air and clean water and plenty of open space  
15 and lots of critters to look at and to have  
16 some fun with.

17 Unfortunately, in some cases we  
18 have a bit of revisionist history that has  
19 come out. And it comes to my attention in a  
20 memo put out in support of the resolution and  
21 in support of some of the legislation that has  
22 come out today. And I'll read just a bit of  
23 it.

24 It says, "We are delighted" -- and  
25 this comes from one of the organizations in

1 support, and I won't name it because I don't  
2 want to get personal. But "We are delighted  
3 that the Senate is moving a package of  
4 environmental bills on Earth Day this year.  
5 This could be the first time in the 20-year  
6 history of Earth Day that both houses bring  
7 key priority bills of New York's environmental  
8 community to the floor for a vote, such as  
9 e-waste and restoring the public's right to  
10 enforce the SEQRA law."

11 It's interesting because, as you  
12 know on this floor, in this house, I chaired  
13 the committee from 1996 to 2008. And during  
14 those years we passed what I consider to be a  
15 number of very powerful and very strong  
16 environmental laws -- not only on Earth Day,  
17 but on other days during the year.

18 Senator Thompson spoke about Love  
19 Canal, one of the driving forces behind the  
20 brownfields Superfund Reform Act, which was  
21 Chapter 1 of 2003, a bill that I was  
22 privileged to be one of the prime sponsors of.  
23 We passed a whole host of bills: The  
24 pesticide notification law, something we'll be  
25 talking about perhaps a little bit later. The

1 nation's first law phasing out the groundwater  
2 contaminant MTBE from gasoline. The Clean Air  
3 Clean Water Bond Act in 1996. The law  
4 enacting tax credits for alternative-fuel  
5 vehicles.

6 These bills, by the way, for the  
7 most part passed unanimously in this chamber  
8 and in the other chamber as well. So these  
9 are bipartisan bills. You know, I'm not  
10 looking to take sole credit for this, but this  
11 is bipartisan behavior that has occurred in  
12 this chamber and in this Legislature.

13 And I think it's worth noting that  
14 this is not the first time in 20 years we've  
15 done this kind of stuff; we've been doing it  
16 all along. And I think credit should be given  
17 where credit is due.

18 The Net Electric Metering Act to  
19 encourage solar power, done in 1997. The  
20 emissions testing for heavy-duty diesel  
21 vehicles in 1998. The ban on lead sinkers.  
22 The Acid Rain Prevention Act. I could go on  
23 and read a bunch of other bills, all of which  
24 I consider significant improvements to the  
25 environment, that were passed between 1996 and

1           2008.

2                   I look forward to helping and being  
3           there and working with my colleagues on the  
4           other side of the aisle so we can add to that  
5           long list of illustrious laws that this  
6           Legislature, led by this chamber, has passed.  
7           And I think I am very proud of this set of  
8           bills -- I am very proud of this set of laws.  
9           Because these were not just bills, these were  
10          all laws, signed into law. Over 112 during  
11          that same period of time that I just  
12          mentioned, passed into law. Laws. Not  
13          one-house bills, laws.

14                   So, ladies and gentlemen, we have a  
15          lot to be proud of in this state on  
16          environmental issues. I've been proud to be  
17          part of it. Look forward to being part of it  
18          for a long time to come. I intend to be here  
19          for a long time to come.

20                   Thank you, Senator. And I  
21          appreciate the attention to the environment.

22                   ACTING PRESIDENT BRESLIN:     Thank  
23          you, Senator Marcellino.

24                   Senator Foley.

25                   SENATOR FOLEY:     Thank you,

1 Mr. President.

2 And I stand also to commend the  
3 chair of the Environmental Conservation  
4 Committee on this anniversary for Earth Day.  
5 It's a very important anniversary. And also  
6 with a series of bills which we will be  
7 reviewing and hopefully approving today that  
8 also speak to the nexus between public health  
9 and our environment.

10 So while we do celebrate Earth Day  
11 and all that that means, I think it's also a  
12 way for us to reemphasize, if you will, the  
13 very basic proposition of how a healthy earth  
14 and environment and how public health and  
15 environment are intertwined, and today's bills  
16 will in fact emphasize and amplify that  
17 particular point.

18 So again, I want to thank Senator  
19 Thompson for putting this bill forward. This  
20 is perhaps one of the most successful areas of  
21 public policy. And as Senator Marcellino said  
22 a short while back, that over a period of  
23 years both Republicans and Democrats have  
24 supported environmental initiatives, although  
25 there's been an ebb and flow to those kinds of



1 initiatives over these past number of years,  
2 particularly at the federal level.

3 But let's just say that today we  
4 hope we can find common ground in the, let's  
5 say, twin pursuit of protecting the  
6 environment and protecting public health.

7 Thank you, Mr. President.

8 ACTING PRESIDENT BRESLIN: Thank  
9 you, Senator Foley.

10 Are there any other Senators  
11 wishing to be heard on the resolution?

12 Hearing none, the question is on  
13 the resolution. All those in favor please  
14 signify by saying aye.

15 (Response of "Aye.")

16 ACTING PRESIDENT BRESLIN:  
17 Opposed nay.

18 (No response.)

19 ACTING PRESIDENT BRESLIN: The  
20 resolution is adopted.

21 Senator Thompson has indicated that  
22 he would like to open the resolution up for  
23 cosponsorship by the entire house. Any  
24 Senator wishing not to be on the resolution  
25 please notify the desk.

1 Senator Klein.

2 SENATOR KLEIN: Mr. President, at  
3 this time can we take up Resolution Number  
4 4503, by Senator Thompson. I ask that the  
5 title of the resolution be read and move for  
6 its immediate adoption.

7 ACTING PRESIDENT BRESLIN: The  
8 Secretary will read.

9 THE SECRETARY: By Senator  
10 Thompson, Legislative Resolution Number 4503,  
11 urging the New York State Congressional  
12 delegation to address the problem of shipping  
13 electronic waste to developing countries,  
14 including consideration of legislation similar  
15 to HR2595.

16 ACTING PRESIDENT BRESLIN: Are  
17 there any Senators wishing to speak on the  
18 resolution?

19 Hearing none, the question is on  
20 the resolution. All those in favor please  
21 signify by saying aye.

22 (Response of "Aye.")

23 ACTING PRESIDENT BRESLIN:  
24 Opposed, nay.

25 (No response.)

1                   ACTING PRESIDENT BRESLIN:     The  
2     resolution is adopted.

3                   Senator Klein.

4                   SENATOR KLEIN:     Mr. President,  
5     there will be an immediate meeting of the  
6     Rules Committee in the Majority Conference  
7     Room.

8                   Pending the return of the Rules  
9     Committee, can we please stand at ease.

10                  ACTING PRESIDENT BRESLIN:     There  
11     will be an immediate meeting of the Rules  
12     Committee in Room 332.

13                  Pending the return of the Rules  
14     Committee, the Senate will stand at ease.

15                  (Whereupon, the Senate stood at  
16     ease at 5:02 p.m.)

17                  (Whereupon, the Senate reconvened  
18     at 5:42 p.m.)

19                  ACTING PRESIDENT BRESLIN:  
20     Senator Klein.

21                  SENATOR KLEIN:     Mr. President, at  
22     this time can we go to a reading of the  
23     calendar.

24                  ACTING PRESIDENT BRESLIN:     Yes.  
25     The Secretary will read.

1                   THE SECRETARY:     Calendar Number  
2     29, by Senator Thompson, Senate Print 1635, an  
3     act to amend the Environmental Conservation  
4     Law.

5                   SENATOR LIBOUS:     Lay it aside.

6                   ACTING PRESIDENT BRESLIN:     The  
7     bill is laid aside.

8                   THE SECRETARY:     Calendar Number  
9     82, by Senator Thompson, Senate Print 3777A,  
10    an act to amend the Environmental Conservation  
11    Law.

12                  ACTING PRESIDENT BRESLIN:     Read  
13    the last section.

14                  THE SECRETARY:     Section 3.  This  
15    act shall --

16                  SENATOR LIBOUS:     Lay it aside.

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

19                  THE SECRETARY:     Calendar Number  
20    133, by Senator Squadron, Senate Print 6141B,  
21    an act to amend the Environmental Conservation  
22    Law.

23                  ACTING PRESIDENT BRESLIN:     Read  
24    the last section.

25                  SENATOR LIBOUS:     Lay it aside.

1                   ACTING PRESIDENT BRESLIN:     The  
2     bill is laid aside.

3                   THE SECRETARY:     Calendar Number  
4     160, by Senator Stewart-Cousins, Senate Print  
5     5119, an act to amend the State Finance Law.

6                   ACTING PRESIDENT BRESLIN:     Read  
7     the last section.

8                   SENATOR LIBOUS:     Lay it aside.

9                   ACTING PRESIDENT BRESLIN:     The  
10    bill is laid aside.

11                  THE SECRETARY:     Calendar Number  
12    297, by Senator L. Krueger, Senate Print  
13    3593B, an act to amend the Environmental  
14    Conservation Law.

15                  ACTING PRESIDENT BRESLIN:     Read  
16    the last section.

17                  THE SECRETARY:     Section 3.   This  
18    act shall take effect on the 90th day.

19                  ACTING PRESIDENT BRESLIN:     Call  
20    the roll.

21                  (The Secretary called the roll.)

22                  ACTING PRESIDENT BRESLIN:  
23    Announce the results.

24                  THE SECRETARY:     In relation to  
25    Calendar Number 297:   Ayes, 58.   Nays, 2.

1       Senators Flanagan and Little recorded in the  
2       negative.

3                ACTING PRESIDENT BRESLIN:       The  
4       bill is passed.

5                THE SECRETARY:       Calendar Number  
6       330, by Senator Foley, Senate Print 4983C, an  
7       act to amend the Environmental Conservation  
8       Law.

9                SENATOR LIBOUS:       Lay it aside.

10               ACTING PRESIDENT BRESLIN:       The  
11       bill is laid aside.

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

14               SENATOR KLEIN:       Mr. President, on  
15       Calendar Number 82, Senate Number 3777A,  
16       Senator Thompson's bill, can we please lay  
17       that bill aside for the day.

18               ACTING PRESIDENT BRESLIN:       The  
19       bill is laid aside for the day.

20               Senator Klein.

21               SENATOR KLEIN:       Mr. President,  
22       upon unanimous consent, I ask that the  
23       calendar be opened so that Senator Savino and  
24       Senator Schneiderman can vote on the bills.

25               SENATOR LIBOUS:       Agreed.

1                   ACTING PRESIDENT BRESLIN:     The  
2     Secretary will open the roll for each of the  
3     bills.

4                   THE SECRETARY:           Calendar Number  
5     29, by Senator Thompson, Senate Print 1635, an  
6     act to amend the Environmental Conservation  
7     Law.

8                   ACTING PRESIDENT BRESLIN:     Read  
9     the last section.

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

12                  ACTING PRESIDENT BRESLIN:     Call  
13     the roll.

14                  (The Secretary called the roll.)

15                  ACTING PRESIDENT BRESLIN:  
16     Senator Savino.

17                  SENATOR SAVINO:          Yes.

18                  THE SECRETARY:           Senator  
19     Schneiderman.

20                  SENATOR SCHNEIDERMAN:        Yes.

21                  ACTING PRESIDENT BRESLIN:     The  
22     roll is withdrawn, and the bill is laid aside.

23                  THE SECRETARY:           Calendar Number  
24     133, by Senator Squadron, Senate Print 6141B,  
25     an act to amend the Environmental Conservation

1 Law.

2 ACTING PRESIDENT BRESLIN: Read  
3 the last section.

4 THE SECRETARY: Section 3. This  
5 act shall take effect on the first of January  
6 next succeeding.

7 ACTING PRESIDENT BRESLIN: Call  
8 the roll.

9 (The Secretary called the roll.)

10 ACTING PRESIDENT BRESLIN:  
11 Senator Savino.

12 SENATOR SAVINO: Yes.

13 ACTING PRESIDENT BRESLIN:  
14 Senator Schneiderman.

15 SENATOR SCHNEIDERMAN: Yes.

16 ACTING PRESIDENT BRESLIN: The  
17 roll is withdrawn, and the bill is laid aside.

18 The Secretary will continue to  
19 read.

20 THE SECRETARY: Calendar Number  
21 160, by Senator Stewart-Cousins, Senate Print  
22 5119, an act to amend the State Finance Law.

23 ACTING PRESIDENT BRESLIN: Read  
24 the last section.

25 THE SECRETARY: Section 2. This



1 act shall take effect immediately.

2 ACTING PRESIDENT BRESLIN: Call  
3 the roll.

4 (The Secretary called the roll.)

5 ACTING PRESIDENT BRESLIN:  
6 Senator Savino.

7 SENATOR SAVINO: Yes.

8 THE SECRETARY: Senator  
9 Schneiderman.

10 SENATOR SCHNEIDERMAN: Yes.

11 ACTING PRESIDENT BRESLIN: The  
12 roll is withdrawn, and the bill is laid aside.

13 THE SECRETARY: Calendar Number  
14 330, by Senator Foley, Senate Print 4983C, an  
15 act to amend the Environmental Conservation  
16 Law.

17 ACTING PRESIDENT BRESLIN: Read  
18 the last section.

19 THE SECRETARY: Section 5. This  
20 act shall take effect on the 180th day.

21 ACTING PRESIDENT BRESLIN: Call  
22 the roll.

23 (The Secretary called the roll.)

24 ACTING PRESIDENT BRESLIN:  
25 Senator Savino.

1                   SENATOR SAVINO:       Yes.

2                   ACTING PRESIDENT BRESLIN:

3       Senator Schneiderman.

4                   SENATOR SCHNEIDERMAN:       Yes.

5                   ACTING PRESIDENT BRESLIN:       The  
6       roll is withdrawn, and the bill is laid aside.

7                   Senator Klein.

8                   SENATOR KLEIN:       Mr. President, I  
9       believe there's a report of the Rules  
10      Committee at the desk. I move we adopt the  
11      report at this time.

12                  ACTING PRESIDENT BRESLIN:       The  
13      Secretary will read.

14                  THE SECRETARY:       Senator Smith,  
15      from the Committee on Rules, reports the  
16      following bills:

17                  Senate Print 3296G, by Senator  
18      Thompson, an act to amend the Environmental  
19      Conservation Law;

20                  3788C, by Senator Libous, an act to  
21      amend the Environmental Conservation Law and  
22      the Public Health Law;

23                  And Senate Print 6047A, by Senator  
24      Thompson, an act to amend the Environmental  
25      Conservation Law.

1 All bills ordered direct to third  
2 reading.

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

6 (Response of "Aye.")

7 ACTING PRESIDENT BRESLIN:  
8 Opposed, nay.

9 (No response.)

10 ACTING PRESIDENT BRESLIN: The  
11 Rules Committee report is adopted.

12 Senator Klein.

13 SENATOR KLEIN: Mr. President, at  
14 this time can we please go to a  
15 noncontroversial reading of Supplemental  
16 Calendar Number 37A.

17 ACTING PRESIDENT BRESLIN: The  
18 Secretary will read.

19 THE SECRETARY: Calendar Number  
20 399, by Senator Thompson, Senate Print --

21 SENATOR LIBOUS: Lay it aside.

22 ACTING PRESIDENT BRESLIN: Excuse  
23 me, Senator Libous.

24 Senator Winner, why do you rise?

25 SENATOR WINNER: Mr. President, I

1 do not have a copy of the supplemental  
2 calendar.

3 ACTING PRESIDENT BRESLIN: I  
4 certainly will make sure that we hold all  
5 proceedings until you are afforded a chance to  
6 have a copy.

7 SENATOR WINNER: Thank you.

8 ACTING PRESIDENT BRESLIN: The  
9 bill is laid aside, and the Secretary will  
10 continue to read.

11 THE SECRETARY: Calendar Number  
12 400, by Senator Libous, Senate Print 3788C, an  
13 act to amend the Environmental Conservation  
14 Law and the Public Health Law.

15 ACTING PRESIDENT BRESLIN: Read  
16 the last section.

17 THE SECRETARY: Section 5. This  
18 act shall take effect immediately.

19 ACTING PRESIDENT BRESLIN: Call  
20 the roll.

21 (The Secretary called the roll.)

22 ACTING PRESIDENT BRESLIN:  
23 Announce the results.

24 THE SECRETARY: Ayes, 60.

25 ACTING PRESIDENT BRESLIN: The

1 bill is passed.

2 THE SECRETARY: Calendar Number  
3 401, by Senator Thompson, Senate Print 6047A,  
4 an act to amend the Environmental Conservation  
5 Law.

6 ACTING PRESIDENT BRESLIN: Read  
7 the last section.

8 THE SECRETARY: Section 5. This  
9 act shall take effect immediately.

10 ACTING PRESIDENT BRESLIN: Call  
11 the roll.

12 (The Secretary called the roll.)

13 ACTING PRESIDENT BRESLIN:  
14 Senator Craig Johnson, to explain his vote.

15 SENATOR CRAIG JOHNSON: Thank you  
16 very much, Mr. President. I rise today to  
17 support this piece of legislation.

18 First, I want to thank the sponsor,  
19 Senator Thompson. Last year we had a very  
20 vigorous debate on the floor of this house  
21 concerning this legislation involving e-waste  
22 recycling. And at that time, myself and  
23 others had expressed significant concerns  
24 about the bill. Notwithstanding our support  
25 of the concept of e-waste, we had trouble with

1 the bill language and in particular had hoped  
2 to see particular amendments.

3 Today we've seen that amended bill.  
4 And I want to thank Senator Thompson for  
5 working with my office and others to make sure  
6 that some of these concerns were addressed.

7 There are -- I think we can go a  
8 little bit farther. But right now there is  
9 such a need to finally address the issue  
10 statewide when it comes to e-waste recycling  
11 that this a good first start.

12 And so, Senator Thompson, I want to  
13 thank you again for your stringent advocacy,  
14 but also, more importantly, sitting down and  
15 working with myself and others who did express  
16 concerns about the scope of the bill.

17 So today I'm proud to say that I  
18 will be voting yes for this piece of  
19 legislation.

20 ACTING PRESIDENT BRESLIN: Thank  
21 you, Senator Johnson.

22 Senator Marcellino, to explain his  
23 vote.

24 SENATOR MARCELLINO: Yes, thank  
25 you, Mr. President. To explain my vote.

1                   Again, I also would like to add my  
2                   voice to the thank-yous because this bill was  
3                   a pet of mine for some seven or eight years  
4                   prior, bringing this bill first up to the  
5                   state so that we could get it negotiated,  
6                   going through an awful lot of negotiations  
7                   throughout the Northeast to try to bring this  
8                   bill in concert with the Northeast region.

9                   This bill is a good bill. It is a  
10                  bill that addresses an issue that must be  
11                  addressed now. If we don't address this bill  
12                  now and the recycling of e-waste, we end up  
13                  with another tire problem. Where we had  
14                  mountains of tires all over the place, we'll  
15                  have more than mountains. The mountains of  
16                  electronic waste substances will make the  
17                  mountains of tires that used to be around the  
18                  state look like, you know, the Catskills  
19                  compared to the Alps.

20                  This is an important bill. This  
21                  bill is timely. I hope the other house takes  
22                  it up. I don't believe there's at this point  
23                  in time a same-as, but we have hopes. And I  
24                  hope that it does get through and does pass,  
25                  because it's a worthy bill and a worthy cause.

1 I will be voting aye and am very  
2 proud to do so.

3 ACTING PRESIDENT BRESLIN:  
4 Senator Marcellino will be recorded in the  
5 affirmative.

6 Senator Thompson, to explain his  
7 vote.

8 SENATOR THOMPSON: Thank you,  
9 Mr. Chairperson. I won't be long.

10 I want to thank my colleagues for  
11 supporting this bill. We've put a lot of time  
12 and effort into this. Most of the major  
13 computer companies across the state and that  
14 do business in the state are supporting the  
15 bill. And we look forward to moving this bill  
16 forward as well.

17 Thank you for your support.

18 ACTING PRESIDENT BRESLIN: Thank  
19 you, Senator Thompson. Senator Thompson will  
20 be recorded in the affirmative.

21 Announce the results.

22 THE SECRETARY: Ayes, 60. Nays,  
23 0.

24 ACTING PRESIDENT BRESLIN: The  
25 bill is passed.



1                   Senator Klein, that completes the  
2                   reading of the noncontroversial portion of the  
3                   supplemental calendar.

4                   SENATOR KLEIN:       Mr. President,  
5                   upon unanimous consent, I ask that the  
6                   supplemental calendar be opened so that  
7                   Senator Savino and Senator Schneiderman can  
8                   vote on each of the bills.

9                   ACTING PRESIDENT BRESLIN:       The  
10                  Secretary will read.

11                  THE SECRETARY:       Calendar Number  
12                  399, by Senator Thompson, Senate Print 3296G,  
13                  an act to amend the Environmental Conservation  
14                  Law.

15                  ACTING PRESIDENT BRESLIN:       Read  
16                  the last section.

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

19                  ACTING PRESIDENT BRESLIN:       Call  
20                  the roll.

21                  (The Secretary called the roll.)

22                  ACTING PRESIDENT BRESLIN:  
23                  Senator Savino.

24                  SENATOR SAVINO:       Yes.

25                  ACTING PRESIDENT BRESLIN:

1 Senator Schneiderman.

2 SENATOR SCHNEIDERMAN: Yes.

3 ACTING PRESIDENT BRESLIN: The  
4 roll is withdrawn, and the bill is laid aside.  
5 Senator Klein.

6 SENATOR KLEIN: Mr. President, at  
7 this time can we please go to the reading of  
8 the controversial calendar.

9 ACTING PRESIDENT BRESLIN: The  
10 Secretary will read.

11 THE SECRETARY: Calendar Number  
12 29, by Senator Thompson, Senate Print 1635, an  
13 act to amend the Environmental Conservation  
14 Law.

15 SENATOR LIBOUS: Explanation.

16 ACTING PRESIDENT BRESLIN: An  
17 explanation has been requested, Senator  
18 Thompson.

19 SENATOR THOMPSON: First let me  
20 thank you for the opportunity to speak on this  
21 very important piece of legislation.

22 The SEQRA bill is something that  
23 many of us have been working on for some time.  
24 And some individuals may cast negative  
25 thoughts about the bill, but it simply gives

1 people in various communities an opportunity  
2 to sue when they think that they have been  
3 done wrong by an institution or an  
4 organization.

5 This is not what some people have  
6 tried to display or demonstrate or  
7 characterize as a citizens' suit bill. It is  
8 not an opportunity where anyone who believes  
9 that they are -- one of the things that people  
10 have tried to suggest that, well, that you can  
11 live in one part of the state and go to  
12 another part and sue for a case in another  
13 part of the state and actually slow down  
14 projects. We would never, ever, and I would  
15 never support a type of bill that would allow  
16 that to happen.

17 This bill simply removes barriers  
18 to the courts for plaintiffs in controversies  
19 around SEQRA, New York's time-honored  
20 environmental review mechanism for  
21 community-based development, restoring the  
22 injury in fact/zones of interest. It provides  
23 standing tests for SEQRA claims which served  
24 the state well for many years.

25 SEQRA is virtually unenforceable in

1 many cases if not most cases. One of the  
2 issues that has been brought forward is that  
3 this will clog up the courts. And I want you  
4 to know that the New York Bar Association and  
5 others have provided documentation. Since  
6 1990 -- they gave us a nice report -- since  
7 1990, over 300,000 cases have been settled in  
8 State Supreme Court, and less than 100 every  
9 year are settled based on SEQRA. So to  
10 suggest that this will tie up the courts is  
11 simply not true.

12 And we know that hiring attorneys  
13 is not a cheap endeavor. We also know that  
14 courts today take many cases seriously, but  
15 they also throw out frivolous cases as well.

16 And so I believe that this is a  
17 good bill. I believe that it will protect  
18 people. But also, we don't go to the extreme  
19 of making it possible for just anyone who  
20 wants to clog up the courts. I would never  
21 support that type of endeavor.

22 ACTING PRESIDENT BRESLIN: Why do  
23 you rise, Senator Flanagan?

24 SENATOR FLANAGAN: Mr. President,  
25 would Senator Thompson yield to several

1       questions, please.

2               ACTING PRESIDENT BRESLIN:

3       Senator Thompson, will you yield to several  
4       questions from Senator Flanagan?

5               SENATOR THOMPSON:     Yes, sir.

6               ACTING PRESIDENT BRESLIN:     You  
7       may proceed, Senator Flanagan.

8               SENATOR FLANAGAN:     Thank you.

9               Senator Thompson, I listened to  
10      your comments, and it covers part of what I  
11      wanted to ask you about. But let me just  
12      start off by talking about the DEC for a  
13      moment, because you characterized this that  
14      SEQRA actions are virtually unenforceable or  
15      completely unenforceable.

16              Do you have any reports or facts or  
17      statistics that can back up the claim?  
18      Because it sounds like you're saying that the  
19      DEC is simply not doing their job.

20              SENATOR THOMPSON:     I'm not  
21      suggesting that. What I am suggesting, sir,  
22      is that the issue of determining special harm  
23      sometimes can be challenging.

24              What I'm also suggesting is that  
25      whether at the local level or -- at the local

1 level, you really don't have -- or at the  
2 court level you really don't have a lot of  
3 these cases being tied up in the courts, which  
4 has been one of the bones of contention.

5 I think the DEC does a very good  
6 job. However, in terms of when it comes down  
7 to SEQRA, you really need a little more teeth.  
8 But I don't think we're giving them, you know,  
9 a thousand extra teeth.

10 SENATOR FLANAGAN: I would  
11 assume, based on your work on this --

12 ACTING PRESIDENT BRESLIN:  
13 Senator Flanagan, do you wish to ask another  
14 question?

15 SENATOR FLANAGAN: Yes,  
16 Mr. President.

17 ACTING PRESIDENT BRESLIN:  
18 Continue.

19 SENATOR FLANAGAN: Would Senator  
20 Thompson yield?

21 SENATOR THOMPSON: Yes,  
22 absolutely. Yes, sir. I got all day.

23 SENATOR FLANAGAN: I would assume  
24 that based on your work on this issue that you  
25 are familiar with the Pine Bush Court of

1 Appeals case.

2 SENATOR THOMPSON: Yes.

3 SENATOR FLANAGAN: Is it your  
4 belief that this legislation codifies that  
5 case, or does it lessen that case, or does it  
6 go beyond that case?

7 It's a three-part question,  
8 Mr. President.

9 ACTING PRESIDENT BRESLIN:  
10 Senator Thompson.

11 SENATOR THOMPSON: Yes, I believe  
12 that under the -- this particular bill will  
13 not only codify it but also clarify it as well  
14 in terms of what the -- it would also clarify  
15 it.

16 SENATOR FLANAGAN: Mr. President,  
17 through you. Senator Thompson, how would you  
18 suggest that this bill provides clarification  
19 beyond what the Court of Appeals decided?

20 Because in my reading, right in the  
21 beginning of the case it says: "We hold that  
22 a person who can prove that her or she uses  
23 and enjoys a natural resource more than most  
24 other members of the public has standing under  
25 SEQRA to challenge government actions that

1       threaten that resource." That seems pretty  
2       clear to me.

3               What does your legislation -- how  
4       does it provide more clarity?

5               SENATOR THOMPSON: I would  
6       suggest that people would be able to bring a  
7       suit in a particular situation.

8               It also would allow, for example,  
9       if there were parents who were impacted by a  
10      particular project, they would be able to  
11      bring -- it would allow the parents of the  
12      children to bring a suit against a particular  
13      company for air pollution or other things that  
14      they can prove that they have been impacted  
15      by, whether it's asthma, cancer, or something  
16      of that nature.

17              I don't believe it's a situation  
18      where someone is driving down the street and  
19      they happen to drive past a factory that has  
20      black smoke coming out of the factory and then  
21      they can then say "I happened to be driving  
22      down the street this day and I believe I  
23      inhaled fumes, and now I can sue." I think  
24      that's the more extreme measure that some  
25      people have tried to suggest.



1                   So I think this bill simply allows  
2                   folks who believe that they have been harmed,  
3                   they have to, one, plea and be able to  
4                   demonstrate that they've been harmed and then  
5                   take that to court.

6                   ACTING PRESIDENT BRESLIN:  
7                   Senator Flanagan.

8                   SENATOR FLANAGAN:     Mr. President,  
9                   through you. Senator Thompson, can you point  
10                  to me -- this is a relatively short bill.  
11                  Point to me in the bill where that says that.  
12                  Because I don't see at all.

13                 SENATOR THOMPSON:     Excuse me?

14                 SENATOR FLANAGAN:     Can you point  
15                  to the portion of the bill that clearly  
16                  delineates what you're suggesting? Because I  
17                  don't see that at all.

18                 SENATOR THOMPSON:     Yeah. It  
19                  simply says that -- let me find the bill. It  
20                  simply says in the bill that they do not have  
21                  to show special harm.

22                 It basically goes back to the  
23                  original bill. But it just simply says if a  
24                  person institutes a proceeding under  
25                  Article 78 of the Civil Practice Law and Rules

1       alleging violations of this article, such  
2       persons shall not be denied standing solely on  
3       the grounds that the injury alleged by such  
4       person does not differ in kind or degree from  
5       injury that would be suffered by the public at  
6       large.

7                   ACTING PRESIDENT BRESLIN:

8       Senator Flanagan.

9                   SENATOR FLANAGAN:       Mr. President,  
10       on the bill.

11                   Thank you, Senator Thompson.

12                   ACTING PRESIDENT BRESLIN:

13       Senator Flanagan, on the bill.

14                   SENATOR FLANAGAN:       I respectfully  
15       completely disagree with what the sponsor just  
16       said. And I think a fair reading of this, you  
17       have to look at the backdrop prior to the  
18       Court of Appeals case and some of the cases  
19       that had preceded that. In my reading, and  
20       I've spoken to a number of different people  
21       and read a lot of the memos, there are  
22       certainly some in favor, but there are plenty  
23       in opposition.

24                   This takes what was an expansion of  
25       the law by the Court of Appeals and takes it

1 way down the road. It goes far beyond what  
2 the Court of Appeals decided. The Court of  
3 Appeals, to repeat, said that a person who can  
4 prove that he or she uses and enjoys a natural  
5 resource more than most other members has  
6 standing to challenge government actions. And  
7 that was an expansion from the existing law.

8 Now, we can quibble about whether  
9 or not the Court of Appeals decision was  
10 decided correctly or not. But your  
11 legislation is actually very helpful, because  
12 it is concise, because it focuses in right on  
13 what that issue is.

14 You go on to say, as you just did,  
15 that you can't be denied standing solely on  
16 the grounds that the injury alleged by such  
17 person does not differ in kind or degree from  
18 the injury that would suffered by the public  
19 at large.

20 This would be great fodder for  
21 lawyers. And I listened to what you said  
22 about the idea that there are 300,000 cases  
23 and only a hundred of them or so were  
24 SEQRA-related. That's under the old law.  
25 Under the new law, I absolutely believe and I

1 think there are plenty of people who would say  
2 I could come up to your community and work  
3 myself or work with other people and bring an  
4 action.

5 Now, I may not win. And in fact,  
6 in the Pine Bush case, that's what happened.  
7 They got the standing to sue, but they lost on  
8 the merits.

9 But I look at this and think, all  
10 right, somebody wants to stop a project.  
11 Plaintiff A goes in and brings an action.  
12 That starts to wind its way through the  
13 courts. As that starts to finish up,  
14 Plaintiff B comes in. Or Plaintiff C, an  
15 organization. There's no limit on who can  
16 bring these kinds of actions. This, to me, is  
17 indicative of many of the problems that we  
18 have here in the State of New York.

19 You represented that the DEC is  
20 doing a good job. If they are doing a good  
21 job, then we shouldn't have to be dealing with  
22 issues like this.

23 And I'm going to just close on this  
24 point. And I have a number of memos, but I'm  
25 going to read a portion of a memo that you

1 will clearly understand because this is more  
2 in your backyard than it is in mine.

3 "Unshackle Upstate strongly  
4 believes that the Legislature should be  
5 mindful of the high cost of doing business in  
6 the State of New York before this legislation  
7 is advanced. By allowing any individual to  
8 bring a SEQRA claim, this bill will lead to  
9 uncertainty and delays in construction of new  
10 homes, facilities or businesses because of  
11 concerns raised by unrelated third parties.

12 "This type of situation could occur  
13 when a local developer with an excellent  
14 working relationship with the local community  
15 advances a project subject to SEQRA and that  
16 project is then opposed by outside interests  
17 due to their claims that the project is not  
18 consistent with what those outside interests  
19 believe are in the best interests of the host  
20 municipality.

21 "And private projects are not the  
22 only ones that could become hostage to outside  
23 interests. A municipality looking to build a  
24 simple salt shortage shed could be exposed to  
25 litigation because of concerns by

1 singular-minded opposition groups, resulting  
2 in an increased tax burden."

3 Now, I know that there were  
4 amendments brought to you for your  
5 consideration that would have made it tighter  
6 and would have asked that the person have to  
7 have some legitimate nexus with the project.  
8 You have every right to bring the legislation  
9 as you deem fit. You chose not to include  
10 that. And by doing that, you've made this a  
11 much worse bill and went way beyond what the  
12 Court of Appeals decided.

13 I think this is going to be  
14 extremely detrimental to all communities  
15 across the State of New York, and it will  
16 really undermine any efforts that we may be  
17 making towards enhanced economic development.

18 Thank you, Mr. President.

19 ACTING PRESIDENT BRESLIN: Thank  
20 you, Senator Flanagan.

21 Senator Oppenheimer.

22 SENATOR OPPENHEIMER: I would  
23 yield to the sponsor.

24 ACTING PRESIDENT BRESLIN:  
25 Senator Thompson, have you completed your

1 presentation?

2 SENATOR THOMPSON: Yes.

3 ACTING PRESIDENT BRESLIN: Any  
4 other Senators wishing to speak on the bill?

5 Senator Marcellino.

6 SENATOR MARCELLINO: Mr.  
7 President, I will yield to Senator  
8 Oppenheimer, who stood up before I did. I'll  
9 speak after she does.

10 ACTING PRESIDENT BRESLIN:  
11 Senator Oppenheimer, on the bill.

12 SENATOR OPPENHEIMER: We look  
13 like jack-in-the-boxes.

14 Well, I want to speak in favor of  
15 the bill. Because as I see it -- and I was  
16 here when the legislation was originated --  
17 this act returns the test for standing under  
18 SEQRA to what was originally intended, to what  
19 we had originally meant.

20 And I see the nature of  
21 environmental harms, such as air and water  
22 pollution or loss of our wild habitat, I think  
23 they are experienced by everyone. And  
24 everyone should have a voice in this equally.  
25 I think without this bill, citizens are only

1 eligible for standing if they can prove an  
2 injury different from that experienced by  
3 people generally.

4 And I feel that DEC has been  
5 strapped and does not have the kind of staff  
6 it did have a year or two ago and therefore it  
7 is difficult for them to pursue every  
8 violation, and they need our eyes on the job.  
9 They need people that live locally in the  
10 region looking at these issues, because they  
11 cannot be everywhere with their decreased  
12 staff.

13 So I think it is up to those of us,  
14 the environmental activists, to bring these  
15 lawsuits on behalf of the public at large in  
16 order to require that DEC's environmental  
17 enforcement voice will be heard.

18 So I think this is a very important  
19 bill, as we're all witnessing environmental  
20 degradation, hoping to do something about it.  
21 It affects every one of us. I'll be voting  
22 yes.

23 ACTING PRESIDENT BRESLIN: Thank  
24 you, Senator Oppenheimer.

25 Senator Marcellino, on the bill.



1                   SENATOR MARCELLINO:     Thank you,  
2     Mr. President. I appreciate being recognized  
3     on the bill.

4                   Senator Oppenheimer just made the  
5     point that I'm going to make. And that is the  
6     SEQRA bill, the SEQRA law was never designed  
7     to prevent development, economic change, usage  
8     of land, whatever. It wasn't designed to  
9     prevent these things, it was designed to  
10    discover problems. It came out of the old  
11    NEPA act, passed in 1970 or '71, in that  
12    range. The idea, go through an open process  
13    where those involved have input.

14                  Any developer knows that you go  
15    through the SEQRA process, it could take,  
16    minimum, nine months. Maximum, it could take  
17    two years -- in some cases longer, depending  
18    upon the complexity of the project involved  
19    because of the public hearings, the  
20    rehearings, the adoptions of the book that's  
21    produced, the answering all of the suggestions  
22    and recommendations. This process can go on  
23    and on and on and on.

24                  But SEQRA was designed to cover and  
25    expose potential difficulties, potential

1 problems. Air pollution problems, water  
2 pollution problems, traffic problems that  
3 might be created as a result of some  
4 development that's going in in a particular  
5 area.

6 It's also designed to pose  
7 solutions. And that's the key element here.  
8 It's designed to provide and produce solutions  
9 to those problems. The developer has the  
10 responsibility to come up with answers to the  
11 questions raised by the affected community.  
12 And that affected community could be defined  
13 in a lot of different ways. But an affected  
14 community.

15 I could define an affected  
16 community, for example, with the drilling of  
17 Marcellus Shale, up in the regions upstate  
18 where the shale is located, you might have an  
19 affected community in the City of New York,  
20 because it could impact their water quality if  
21 there was drilling in the watershed. They  
22 could be defined as an affected community  
23 relative to drilling several hundred miles  
24 away from the city itself. So there's a SEQRA  
25 definition that could be brought here.

1                   But the idea is to provide  
2                   solutions, not just create obstacles to  
3                   development. I could see, for example, a  
4                   developer come in, want to put in a project --  
5                   and we have one in my own district going on  
6                   right now, two powerful mall-developing  
7                   companies are fighting over a piece of land.  
8                   One wants to stop the other one from building  
9                   on it. And the lawsuits have been going on  
10                  for five years. Five years. Nothing's  
11                  happened. The land is still sitting there and  
12                  nothing's going on. It's been in a lot of  
13                  courts. Lawyers have made livings, sent their  
14                  children to college. Their grandchildren  
15                  already are putting in accounts for this  
16                  particular litigation. It's going on and on  
17                  and on.

18                  It can be used as a tool to  
19                  obstruct. We have the Article 10 siting bill.  
20                  We can't get an Article 10 siting bill agreed  
21                  upon here because there's no way. If you open  
22                  this bill up, you would never site anything  
23                  relative to a power plant anywhere in this  
24                  state, anywhere. It just wouldn't exist, it  
25                  just wouldn't be permitted. Any group could

1       come in and say, I object, I raise an  
2       objection, I file an Article 78 -- and they  
3       can't be denied. Defense has to brought up,  
4       lawyers have to be hired, and the process goes  
5       on. And then, as Senator Flanagan rightly  
6       pointed out, you finish that one, the next one  
7       jumps in.

8                     It can be used and abused here.  
9       There's too much opportunity for abuse. A  
10      project that the local community wants and the  
11      SEQRA process is carried out and the  
12      objections are raised, the problems are  
13      identified, solutions proposed, everyone  
14      accepts it, it's adopted and someone someplace  
15      else from outside the district can say, We  
16      know better than you, local community, we're  
17      going to stop that project. And they can do  
18      it, under this law. Under this expanded  
19      ability of this law.

20                    That, ladies and gentlemen, is  
21      dangerous. That's not what SEQRA is all  
22      about. That's not what it's for. That's why  
23      you have a process. If those people had  
24      objections, they should have come in during  
25      the hearings and be heard. File briefs, file

1 reports, show studies. Encourage the process,  
2 but on-site during the original process, not  
3 coming in from the outside after facts and  
4 then bringing up objections to stall and stall  
5 and stall and stall.

6 If this bill becomes law, economic  
7 development in this state will be put into  
8 sincere question. Maybe not initially. And I  
9 don't believe that Senator Thompson's desire.  
10 Let me say that upfront, I do not believe that  
11 is Senator Thompson's wish. I don't think he  
12 wants to do that. I don't think that what's  
13 he intends to do. But that's the language in  
14 the bill would permit.

15 Ladies and gentlemen, as we all  
16 know, we make our living with words. Words  
17 mean things. The way you construct them, the  
18 way you put them together, they mean things.  
19 That's why we have people called lawyers and  
20 other people called judges, to decide what  
21 words mean when there are conflicting  
22 decisions and conflicting opinions.

23 I would suggest to you this opens  
24 the door for too many conflicting opinions.  
25 This would make New York State, which already

1       has a record and a history of being hostile to  
2       economic development -- to say the least --  
3       even more so. It would put a crimp in  
4       anyone's attempt to bring development,  
5       positive development of any kind into a  
6       community.

7               Why would banks lend money? Why  
8       would they throw money into these communities?  
9       Why would they throw money behind these  
10      projects if anybody from anywhere, without any  
11      warning, who doesn't live anywhere near the  
12      project can raise an objection? That's what  
13      that bill allows. It may not be Senator  
14      Thompson's intention, but that's what the bill  
15      allows.

16             Read the words. Read the words.  
17      You cannot point out a place in the language  
18      of the bill where it says that can't happen,  
19      because they don't exist. Senator Flanagan  
20      pointed it out. And if you read the bill, it  
21      doesn't provide any relief.

22             This is a dangerous bill. It needs  
23      to be fixed. If you want to fix it and want  
24      to put something up like Senator Oppenheimer  
25      talked about, this bill needs serious

1       amending. This bill needs serious work and  
2       rework. As is, it's a danger and a threat.  
3       And I don't see it as being anything effective  
4       in the environmental community. I don't think  
5       it would impact or improve our environment in  
6       any way, shape or form.

7               So, ladies and gentlemen, I would  
8       urge a no vote on this particular piece of  
9       legislation. And hopefully the bill goes back  
10      to committee and gets reworked and amended so  
11      that it can produce and do what it's supposed  
12      to do, what it's intended to do, not what  
13      someone thinks it might intend itself to do.  
14      Read the bill.

15             ACTING PRESIDENT BRESLIN:     Thank  
16      you, Senator Marcellino.

17             Senator Ranzenhofer, on the bill.

18             SENATOR RANZENHOFER:     Thank you,  
19      Mr. President.

20             I'd like to echo some of the  
21      thoughts and the comments made by my  
22      colleagues. And probably the main issue up in  
23      my neck of the woods is economic development  
24      and job creation. In other words, in upstate  
25      New York, in Western New York and throughout

1 much of the state it's very hard to conduct  
2 business under the regulations and the rules  
3 that we have right now.

4 I think that the passage of this  
5 bill will put up a sign that New York State is  
6 now closed for business. And I know that  
7 Senator Marcellino had used the word -- I  
8 think you had said that this would put a crimp  
9 in economic development and business. I  
10 actually think it goes even a little bit  
11 further from that. I think this will be  
12 devastating for my community.

13 I understand -- and there's  
14 actually a lot of opinions on both sides of  
15 the issue. But if you have to make a choice  
16 and you have to make a decision, one of the  
17 things that's happening in this state is that  
18 we are continuing to bleed people and  
19 businesses. And I think this will be one of  
20 the final nails in the coffin to trying to  
21 create jobs, to try to create economic  
22 development, to try to create prosperity in  
23 New York State and upstate New York.

24 I just want to read from some of  
25 the memos that we have here about different



1 people who are involved in economic  
2 development and who are involved in business,  
3 what their opinions are.

4 They say that "For the building and  
5 development industries, construction projects  
6 will be completely shut down and local  
7 community taxpayers will be the ones that  
8 ultimately pay the price." They go on to say  
9 that "Providing individuals with standing in  
10 actions alleging violations of ECL will only  
11 solicit uncertainty on behalf of investors and  
12 developers, making New York State even less  
13 attractive for economic development."

14 In other words, right now New York  
15 State is very unattractive for doing business.  
16 That's why the growth areas are not in  
17 New York State. They're in Tennessee, they're  
18 in North Carolina, they're in Florida, they're  
19 in other areas where taxes are lower, where  
20 regulations are less burdensome. They're  
21 where people are moving to, not from.

22 Another opinion that was expressed  
23 in some of the memos that we received, that  
24 "This will discourage new investment and job  
25 creation in the state as well as create

1 competitive disadvantages."

2 And finally, in a third memo, it  
3 talks about "Our primary opposition to this  
4 legislation is that it will encourage  
5 additional litigation without significantly  
6 enhancing environmental protection in  
7 New York."

8 If this bill actually helped the  
9 residents of my community and the taxpayers of  
10 my community, I would be all for it. But it  
11 doesn't help. The only thing it does is it  
12 continues to chase them away, where we see, on  
13 Main Street in Buffalo, we see boarded-up  
14 building after building after building where  
15 people are trying to rehab, people want to do  
16 economic development.

17 You know, they don't want to,  
18 because it's just -- it's too expensive, it's  
19 too burdensome, it's too costly, there are too  
20 many mandates. This will shut down the  
21 remaining buildings on Main Street in Buffalo  
22 and other areas, not only in upstate New York  
23 and Western New York, but throughout the  
24 state.

25 Because as some of my colleagues

1       have said, people are not going to want to  
2       lend money. The uncertainty of being able to  
3       get development projects on board will just be  
4       totally out of hand, even much more difficult  
5       than it is now.

6               So while the intentions may have  
7       been pure, I think the unintended consequences  
8       will be devastating for my community. And for  
9       that reason, I will not be supporting the  
10      legislation when it comes for a vote.

11             Thank you, Mr. President.

12             ACTING PRESIDENT BRESLIN:     Thank  
13      you, Senator Ranzenhofer.

14             Senator DeFrancisco, on the bill.

15             SENATOR DeFRANCISCO:     Yes. You  
16      know, we have public institutions to protect  
17      the public at large. For example, if there's  
18      some group of companies that are causing  
19      problems generally to the public, on consumer  
20      issues we have the Attorney General enforcing  
21      the laws to make sure that the general public  
22      is protected from some companies doing fraud  
23      to the general public.

24             I think everyone in this room would  
25      think it would be pretty absurd for John Jones

1 to go in to protect the general public because  
2 they see a danger that's to the general public  
3 about some company that's committing fraud to  
4 the general public. Not to them individually,  
5 but to the general public.

6 We have situations where the county  
7 attorneys or the city counselors that  
8 represent the city, the attorneys, bring cases  
9 because of housing violations that affect the  
10 general public. We would think it would be  
11 sort of ridiculous for John Jones two streets  
12 away to say "I don't like the way this house  
13 looks, I'm going to bring a lawsuit because it  
14 affects me and the general public." Because  
15 it's so costly otherwise to they have every  
16 individual running around being the police  
17 officer for all the laws of the State of  
18 New York. It makes sense.

19 That's what's happening in this  
20 bill, however. I just hope people really read  
21 this and understand it. Senator Oppenheimer  
22 says we've got to give it back to the people.  
23 Well, we have a DEC to protect the public  
24 interest from these types of situations that  
25 this bill attempts to present.

1                   Can you imagine if a developer  
2           wants to build a house, housing project --

3                   ACTING PRESIDENT BRESLIN:     Excuse  
4           me, Senator Thompson.   Why do you rise?

5                   SENATOR THOMPSON:     I just wanted  
6           to state for the record that the DEC currently  
7           is not charged with enforcement of SEQRA.   I  
8           didn't say that my colleague was suggesting  
9           that, I just wanted to make sure that was  
10          clear.

11                  ACTING PRESIDENT BRESLIN:  
12          Senator DeFrancisco, I apologize.   You may  
13          continue.

14                  SENATOR DeFRANCISCO:     Okay, thank  
15          you.

16                  The point simply is the process  
17          that's in effect is a process that protects  
18          the general public.   And we're all public  
19          officials.   Has anyone in this room ever gone  
20          to a public meeting where everybody's  
21          satisfied?   There's always going to be one  
22          person or two people or a group of three  
23          people that claim they're some organization  
24          that decide they don't want this in their  
25          neighborhood.

1                   You know, this is a very, very  
2                   dangerous bill. And I happen to be a lawyer  
3                   who tries cases. And if you want -- I'm  
4                   sometimes accused of supporting trial lawyers'  
5                   bills. This is the lawyers' full employment  
6                   act, because any individual can bring a  
7                   lawsuit to stop a project. My God, we're  
8                   hemorrhaging jobs in this state.

9                   And it seems to me that if your  
10                  only interest is that you're harmed as the a  
11                  general public is, and you don't have any  
12                  special harm, this is a dangerous bill. I'm  
13                  calling upon people not to think about a  
14                  party-line position in this. Think of what  
15                  it's going to mean to your contractors in your  
16                  jurisdiction if this bill, God forbid, ever  
17                  passed.

18                 There are ways to protect the  
19                 environment, but you don't have to stop  
20                 projects by one individual who happens to  
21                 think that they're going to be the sheriff of  
22                 their neighborhood. And that individual, if  
23                 that individual has a lot of money, that  
24                 sheriff will be the individual to impose his  
25                 or her will over the will of the community and

1 the general public.

2 So this is a no vote as far as I'm  
3 concerned and should be not even on the floor  
4 for discussion, quite frankly.

5 Thank you.

6 ACTING PRESIDENT BRESLIN: Thank  
7 you, Senator DeFrancisco.

8 Senator LaValle, on the bill.

9 SENATOR LaVALLE: Thank you very  
10 much, Mr. President.

11 I want to congratulate my colleague  
12 Senator Flanagan for very artfully putting  
13 forth the legal discussion on this bill. And  
14 the first paragraph of the Pine Bush decision  
15 has the holding, and he read right from the  
16 decision.

17 Senator Marcellino talked about the  
18 SEQRA process. And many of us understand that  
19 process in our community in terms of the air,  
20 water, traffic. As a matter of fact, in a  
21 project in my district I was able to show that  
22 the traffic impact was far greater than what  
23 the developer put forth.

24 It's a very good process. The  
25 issue that we're -- we're not talking here

1       about the SEQRA act or process, we're talking  
2       about the standing here. And this decision  
3       was enacted about six months ago, October of  
4       2009. Here we are, after a significant  
5       decision, we are saying, Well, we want to  
6       change it, we want to go further, we want to  
7       go a place other than where the Court of  
8       Appeals went.

9               This was not a four-three decision  
10       by the Court of Appeals. It was not a  
11       four-three decision. So it was a very  
12       thoughtful decision.

13              And the point I want to make here  
14       is that the court created a balancing act. It  
15       talked about not setting the standard too high  
16       or too low. And the court said, "Even  
17       good-faith environmental challenges like the  
18       one brought by these petitioners can be very  
19       burdensome. Striking the right balance in  
20       these cases will often be difficult, but we  
21       believe that our rule requiring a  
22       demonstration that a plaintiff's use of a  
23       resource is more than that of the general  
24       public will accomplish that task better than  
25       the alternatives."



1                   Now, Senator Thompson, if this bill  
2                   that you have on the floor were brought a year  
3                   ago, prior to, and we had a vote on this  
4                   before the Pine Bush decision, you might have  
5                   had a different result. Timing on legislation  
6                   is so critical.

7                   This bill, after the Pine Bush  
8                   decision, really doesn't give us an  
9                   opportunity to see whether the balancing act  
10                  that the court has established works. And so  
11                  I think that's a key element here. And I  
12                  think that a lot of the individuals speaking  
13                  on the bill are expressing that frustration.

14                  Let's give the court's decision a  
15                  chance to work, see whether we need to tweak  
16                  it down the road. But we really need time to  
17                  really demonstrate what we need to do. Six  
18                  months to come in with a bill like this, I  
19                  think is premature.

20                  ACTING PRESIDENT BRESLIN:     Thank  
21                  you, Senator LaValle.

22                  Senator Saland, on the bill.

23                  SENATOR SALAND:     Thank you,  
24                  Mr. President.

25                  Would Senator Thompson yield to a

1 question, please?

2 ACTING PRESIDENT BRESLIN:

3 Senator Thompson, would you yield for a  
4 question from Senator Saland?

5 SENATOR THOMPSON: Yes.

6 ACTING PRESIDENT BRESLIN: You  
7 may proceed, Senator Saland.

8 SENATOR SALAND: Thank you,  
9 Senator Thompson.

10 Senator Thompson, in your bill you  
11 talk in terms of a person. And I'm sure that  
12 a person is expanded, by definition, to  
13 include more than a mere individual. Am I  
14 correct?

15 SENATOR THOMPSON: Can you repeat  
16 your question?

17 SENATOR SALAND: Your bill, on  
18 line 6, refers to a person, a person  
19 instituting a proceeding.

20 SENATOR THOMPSON: Yes.

21 SENATOR SALAND: Routinely -- and  
22 we can take a look at the Environmental  
23 Conservation Law -- "person" is generally  
24 defined as not merely an individual but a  
25 corporate entity and a host of others that for

1 purposes of brevity are included under the  
2 term "person." And I assume that is the case  
3 here, is it not?

4 SENATOR THOMPSON: Yes, that  
5 would be correct.

6 SENATOR SALAND: Thank you. I  
7 have no further questions.

8 On the bill.

9 ACTING PRESIDENT BRESLIN:  
10 Senator Saland, on the bill.

11 SENATOR SALAND: Mr. President, I  
12 believe on at least one and perhaps more  
13 occasions I have said that government doesn't  
14 have the ability, whether it be national  
15 government or state government, to control the  
16 economy. If we did, regardless of which party  
17 was in power, Republican or Democrat, the  
18 economy would never go south because nobody on  
19 their watch would want the economy to be bad.

20 But the reality is is government is  
21 limited in what it can do. It can incentivize  
22 through means of legislation and regulation,  
23 or it can impede economic development. In  
24 this case, this is not merely impeding, this  
25 is almost like putting up a stone wall.

1                   The reality is is that any  
2           entity -- for example, let's assume that  
3           there's an organization or an individual with  
4           deep pockets in Manhattan who doesn't  
5           particularly like the idea of some project  
6           that may be occurring in Central New York, in  
7           Western New York, in the Adirondacks or the  
8           Hudson Valley. They now have standing,  
9           despite the fact -- under this proposal --  
10          that they don't live within a hundred miles of  
11          the project and have absolutely no bearing  
12          whatsoever on the community other than their  
13          ability to interfere in the actions of the  
14          community.

15                 What this bill does, it says that  
16          if you are competing with somebody for a  
17          contract to do some sort of development,  
18          whether it be waterfront development, whether  
19          it be residential development, whether it be  
20          commercial development, if in fact you're not  
21          happy with the results, you, as a private  
22          enterprise, have now been given the  
23          opportunity to prevent that project from going  
24          forward by just grinding it out. And people  
25          with deep pockets who have particular missions

1       in life have the ability to grind out their  
2       opposition.

3               We are living through some  
4       extraordinarily difficult financial times. We  
5       are sending signal after signal that New York  
6       is closing down for business, whether it be  
7       tax increases, whether it be regulations,  
8       whether it be excessive spending.

9               And now what we want to say is  
10       anybody in any community, regardless of the  
11       fact that they have absolutely no nexus  
12       whatsoever, and despite the Pine Bush decision  
13       that says there are a class of people  
14       apparently, under the Court of Appeals  
15       decision, who do have greater standing than  
16       the general public even if they're not part of  
17       the general public, we are saying here that  
18       anybody, any Tom, Dick and Harry, any  
19       organization that is so inclined has the  
20       ability to prevent development or delay it  
21       long enough so that it becomes financially  
22       imprudent to go any further.

23               Now, I live in the Hudson Valley.  
24       It's a wonderful part of the state. It's a  
25       wonderful part of the world. We've had the

1       good fortune to have some riverfront  
2       development in one of the cities in the Hudson  
3       Valley, and there's some other in another  
4       city, in my district. And I'm talking about  
5       the City of Poughkeepsie, I'm talking about  
6       the City of Beacon. Many of the Hudson Valley  
7       communities look to the riverfront as a means  
8       by which to revitalize their communities, to  
9       improve their quality of life, to bring on  
10      economic development.

11               I have no doubt whatsoever that  
12      these projects would have been either  
13      blackmailed, extorted, or simply held up if  
14      there were people who had the ability that  
15      Senator Thompson proposes to give them under  
16      this bill.

17               We're really saying that New York  
18      doesn't give a damn about economic  
19      development. This is yet another instance of  
20      our spitting in the face of those who might  
21      otherwise be willing to spend money to create  
22      jobs here and develop economically here in  
23      New York.

24               Thank you, Mr. President.

25               ACTING PRESIDENT BRESLIN:       Thank

1       you, Senator Saland.

2                   Senator Liz Krueger, on the bill.

3                   SENATOR LIZ KRUEGER:     Thank you,  
4       Mr. President.

5                   I found the debate very  
6       interesting. And I was reading the bill, as  
7       was suggested by my colleagues during the  
8       course of the discussion. And I feel like  
9       we've magically imagined this bill to be so  
10      much more than it is.

11                  This bill would bring us back to  
12      original intent of the legislation when it  
13      passed in 1975. It would bring us back to a  
14      model that in fact seemed to have worked  
15      between '75 and '91. I don't believe there  
16      was any end of development in the State of  
17      New York at that time. In fact, I think we  
18      were doing better during most of that time  
19      period.

20                  It would bring us back consistent  
21      with our federal counterpart legislation, the  
22      National Environmental Policy Act, NEPA.

23                  It wouldn't provide for anyone in  
24      the world to have standing and to get a court  
25      to stop everything forever. In fact, the

1 courts are pretty good about not giving  
2 standing to people who don't have a serious  
3 case to bring and move through the courts.

4 I appreciate one of my colleague's  
5 arguments that would you want to have this  
6 type of standing available for any consumer  
7 complaint. Well, some people might say yes.  
8 One colleague just did. It would be an  
9 interesting question, given what just happened  
10 to the economy of the world based on  
11 interpretation of what is safe financial  
12 investments and derivative pooling. I might  
13 argue it would have been really handy to have  
14 something like this bill apply to actions that  
15 took place in the investment world, because  
16 maybe we wouldn't be dealing with a trillions  
17 and trillions of dollars crisis that we still  
18 cannot get out of.

19 But this bill has nothing to do  
20 with that. Maybe somebody wants to write one  
21 of those bills. This bill is specific to  
22 environmental issues.

23 And I have to say when it comes to  
24 the environment, we are supposed to have a  
25 broader interpretation about people's ability



1       to raise their hand and say "There's a really  
2       big risk here that everyone hasn't perhaps  
3       thought about."

4               Because as my colleague from Long  
5       Island mentioned when he used the analogy  
6       about the Marcellus Shale, that in fact if  
7       something goes wrong with fracking far, far  
8       away, New York City's water could be  
9       destroyed. And therefore there's, I think, an  
10      understandable concern about things that  
11      impact the watershed.

12             Well, the environment -- clean air,  
13      clean water, protection of our land,  
14      stewardship of our environment, stewardship of  
15      the nature around us -- it isn't just  
16      personal, it actually impacts all of us even  
17      if it's a personal act. It impacts the  
18      children, it impacts the great-grandchildren.

19             And so I think it makes sense to  
20      have laws that affect decisions that impact  
21      the environment actually have a bit of a  
22      standard that have to be tested. But again,  
23      it's not an untested set of questions. It's  
24      not even a new idea for New York State. All  
25      this bill is doing is bringing us back to the

1 original legislation as passed and as we lived  
2 under in New York State for 16 years. No  
3 more, no less.

4 So a lot of times we try to make  
5 things more complicated. I want to say thank  
6 you, Senator Thompson, for drafting and moving  
7 this bill to the floor. I know that it's  
8 controversial. I hear all my colleagues. I  
9 don't know how they'll vote.

10 I think when you ask yourself the  
11 question should a little more protection be  
12 built in, just in case when a major change of  
13 the use of land is going to be involved, when  
14 potentially something serious could go wrong,  
15 to even admit that your local government, your  
16 state government might be wrong when they make  
17 the determination that they think it's okay --  
18 there's lots of things you can fix afterwards  
19 when you get it wrong. Thank goodness, for  
20 most of us, there's lots of things you can fix  
21 afterwards when you get it wrong. But as we  
22 all know, if you make a big mistake impacting  
23 the environment, you very often don't really  
24 get a chance to fix it.

25 So I'm very appreciative that this

1 bill is on the floor of the Senate, that we  
2 are debating it, and I'll be voting yes,  
3 Mr. President. Thank you.

4 ACTING PRESIDENT BRESLIN: Thank  
5 you, Senator Krueger.

6 Senator Farley, on the bill.

7 SENATOR FARLEY: I'm going to  
8 keep it brief and I'm going to keep it simple.  
9 There isn't a poll that has been done in this  
10 state that hasn't said the issues important to  
11 our people are jobs and the economy. Jobs and  
12 the economy. People are leaving this state.  
13 If we've got an Achilles heel here, it's that  
14 we're anti-business.

15 And the state is absolutely  
16 bleeding because of this image that we're  
17 creating. And this bill is very, very clearly  
18 anti-business, anti-development.

19 And I'll tell you what. Every  
20 district in this house speaks to this issue:  
21 Jobs and the economy. If you've got a  
22 political death wish, this is the bill to vote  
23 for. I'll tell you what, I'm voting no.

24 ACTING PRESIDENT BRESLIN: Thank  
25 you, Senator Farley.

1                   Senator Volker, on the bill.

2                   SENATOR VOLKER:       Mr. President, I  
3                   will try to be brief.

4                   Senator Thompson, I am certain that  
5                   your intentions are good with this bill. But  
6                   I have to tell you that there is a project  
7                   that is in your district that many people  
8                   believe is the most important project in  
9                   upstate New York, that has now been held up  
10                  for somewhere between 12 and 15 years. It's  
11                  the Peace Bridge. It started out when it when  
12                  a group of preservationists decided to oppose  
13                  it. A judge issued an order -- a judge, by  
14                  the way, whose wife was a big preservationist.  
15                  You know, that's the way it is.

16                  It started a series of orders on  
17                  environmental issues. Several of those  
18                  environmental issues have basically been  
19                  thrown out. A fellow claimed, a doctor  
20                  claimed that he had this big study that showed  
21                  there were a lot of sick people. And that  
22                  disappeared years ago.

23                  But the problem is that that Peace  
24                  Bridge now, which was supposed to cost  
25                  somewhere between \$200 million and

1       \$300 million, is probably up around a billion  
2       dollars now at least.

3               And the City of New York is  
4       complaining that that Peace Bridge, because it  
5       was not developed -- that is, the expanded  
6       Peace Bridge and the double bridge -- is  
7       hurting the City of New York, it is holding up  
8       the entire Northeastern roadway, including  
9       Canada. Canada was going to build a -- was  
10      going to widen the QEW and decided not to do  
11      it because of the Peace Bridge.

12             Why do I mention it in regards to  
13      this bill? Because this bill -- and I think I  
14      know a little bit about tort law and about  
15      that. I was chairman of Codes for many years.  
16      I led the attempts to reform tort law. And we  
17      did, I think, some pretty good things. But  
18      this bill -- and when you heard from the  
19      Senator to my friend on the right here that  
20      this is a lawyer's bill, he knows. Because  
21      he's one of the best trial lawyers in this  
22      state.

23             The trouble is that we have to be  
24      very careful. We have been trying to limit,  
25      wherever possible, the hold of lawyers and

1 environmentalists on projects all over the  
2 state. In our region there are projects that  
3 have been held up for one to two years because  
4 of various reasons, some that have to do with  
5 the fact that people tried to claim that, oh,  
6 wetlands are really wetlands and all kinds of  
7 things.

8 This bill, as I see it, is one of  
9 the greatest expanses of lawyers' ability to  
10 hold up -- not just hold up projects, but to  
11 dictate how the development of this state is  
12 going to go. And, you know, the  
13 environmentalists, they don't think that  
14 that's happening. They don't understand.  
15 They have never really understood how  
16 dangerous some of these things could be.

17 I say to you and I know that you  
18 never intended this to be. But as my friend  
19 Senator DeFrancisco said, this is the "Full  
20 Employment for Lawyers Act." In fact, we may  
21 lose a couple of lawyers in this Legislature  
22 if this bill passes and becomes law. You  
23 know, I mean, hanging around here and not  
24 making a lot of money is something that some  
25 lawyers have some problems with. And it's one

1       reason, by the way, why there are fewer  
2       lawyers than at any time in the history of  
3       this Legislature.

4               But the big thing about this bill,  
5       Senator, is that it will create new havoc in  
6       the real estate area, I believe, and in the  
7       development area. And if this is not dealt  
8       with some way, it will create a situation  
9       where we will rue the day that this bill  
10      became law.

11             And I know you don't want to do  
12      that. I'm convinced of that. But I say to  
13      you, coming from Buffalo, coming from an area  
14      that needs more housing, needs more  
15      development, and certainly needs to expand  
16      that Peace Bridge and get the development that  
17      we so desperately need and that the state so  
18      desperately needs, I just don't think this is  
19      the bill that fits the bill. This is a bill  
20      that will create, I believe, environmental  
21      havoc.

22             ACTING PRESIDENT BRESLIN:     Thank  
23      you, Senator Volker.

24             Senator Padavan, on the bill.

25             SENATOR PADAVAN:     Thank you,

1 Mr. President. Would the sponsor yield to one  
2 or two questions?

3 ACTING PRESIDENT BRESLIN:  
4 Senator Thompson, will you yield to Senator  
5 Padavan?

6 SENATOR THOMPSON: Yes.

7 SENATOR PADAVAN: Senator, under  
8 the presumption that virtually every bill that  
9 we deal with, every proposal in legislative  
10 form is intended to correct existing law,  
11 improve upon it in some fashion, with that in  
12 mind I have in front of me an article that  
13 appeared in the New York Law Journal. And the  
14 title of it is "Court of Appeals Expands  
15 SEQRA, SEQRA Standing After an 18-Year  
16 Detour." And it goes on at some length making  
17 reference to the case that we've heard here  
18 frequently, the Pine Bush case.

19 "The court explicitly addressed one  
20 of the two major scenarios in which the old  
21 ruling was seen to have created an obstacle,  
22 and it showed the path to pleading around the  
23 obstacle in the other scenario.

24 "It is now easier than it has been  
25 for 18 years. Standing in New York has been



1       so confusing, but since they still had a shot  
2       at prevailing under this new case, it will  
3       allow more suits to stay in court, especially  
4       if they're carefully pled."

5               Now, the essence of this very  
6       lengthy article is that the SEQRA law, as the  
7       recent Court of Appeals decision revealed, is  
8       now working rather well and can work in the  
9       future.

10              And therefore, this bill that you  
11       proposed may have some unintended  
12       consequences. Yet based on this latest  
13       decision by our highest court, it would  
14       interfere, potentially, with now what is  
15       considered to be an effective vehicle for  
16       pleadings in areas where individuals or groups  
17       of individuals would have a concern.

18              Now, do you take issue with this  
19       article? Which, by the way, was written by  
20       Professor Gerrard, who is director of the  
21       Center for Climate Change Law at Columbia Law  
22       School, an environmental lawyer by any means.  
23       This is his decision -- or his conclusion, I  
24       should say, based on that decision. Do you  
25       take issue with this?

1                   ACTING PRESIDENT BRESLIN:

2           Senator Thompson.

3                   SENATOR THOMPSON:       First, let me  
4           thank Senator Padavan for his reference to  
5           Mr. Gerrard's article.

6                   And I have talked with him. In  
7           fact, last June we were going to have him come  
8           up on June 8th, but we had a little  
9           disturbance. So we pulled the bill that day.

10                   What I would say is that his  
11           article does talk about that there will be  
12           some expansion. However, his article also  
13           says that "A potential difficulty arises from  
14           the court's new rule requiring a demonstration  
15           that a plaintiff's use of a resource is more  
16           than that of the general public. This rule is  
17           directly aimed at the first scenario and not  
18           the second. It remains to be seen how  
19           narrowly or broadly this rule will be  
20           interpreted in future decisions."

21                   And what I want to emphasize is  
22           that if there were a situation, as some have  
23           suggested, that there was some massive  
24           explosion of frivolous cases in the courts,  
25           then clearly, as someone who's involved with

1 development initiatives at the local level and  
2 currently at the state level, I would support  
3 some amending if we saw some massive spike.

4 And that has not happened in the  
5 past. I don't believe it will happen in the  
6 future. We have less than 100 cases  
7 currently. And I don't believe we're going to  
8 have some massive expansion.

9 In addition to that, I think his  
10 article also looks at another issue that you  
11 have to -- as I've stated earlier, you have to  
12 show that you have been affected. You have to  
13 plead harm, you have to prove harm. So that's  
14 what -- and if you don't, the court should  
15 throw it out.

16 And bad lawyers will get  
17 sanctioned, they'll get fined, they'll get  
18 disciplined if they bring frivolous cases  
19 before judges.

20 So to say that this is like, you  
21 know, the -- I don't know what somebody said,  
22 the Lawyers Employment Act, I think is -- it's  
23 a little overgenerous in terms of explaining  
24 the bill. And I know you didn't say that.  
25 I'm not saying you said that, Senator. Yes.

1                   SENATOR PADAVAN:     You know, I  
2     heard your answer, Senator, and I'm not going  
3     to quarrel with it --

4                   ACTING PRESIDENT BRESLIN:  
5     Senator Padavan.

6                   SENATOR PADAVAN:     If I may,  
7     Mr. President.

8                   ACTING PRESIDENT BRESLIN:  
9     Certainly.

10                  Senator Thompson, do you yield to  
11     another question?

12                  SENATOR THOMPSON:     Absolutely.  
13     Absolutely.

14                  ACTING PRESIDENT BRESLIN:     You  
15     may proceed.

16                  SENATOR PADAVAN:     As I started to  
17     say, I don't quarrel with your answer. But  
18     again, I draw your attention that this  
19     article, which is a very well constructed one,  
20     says it will allow more suits to stay in  
21     court. So I would assume it's an improvement.

22                  Are you aware of the fact, Senator,  
23     that the City of New York is opposed to this  
24     legislation?

25                  SENATOR THOMPSON:     I heard that

1 late today. That was news to me. But I did  
2 hear that late today.

3 SENATOR PADAVAN: Well, if you  
4 will further yield, I -- Mr. President.

5 SENATOR THOMPSON: Yes.

6 SENATOR PADAVAN: Now, the City  
7 of New York obviously has a great deal -- if  
8 you'd yield again. I think the President is  
9 busy, but I'm sure you'll yield.

10 The city has a great deal at stake  
11 with regard to environmental issues, our  
12 watersheds in the Catskills and so on. Why  
13 would they be opposed to this legislation if  
14 it had a positive aspect or connotation  
15 regarding environmental issues in our state?

16 SENATOR THOMPSON: I cannot speak  
17 for New York City on this particular bill. I  
18 do know that on other bills they have  
19 contacted us and, when appropriate, we've  
20 addressed them. I also know that we had a  
21 civil rights bill last year that got vetoed by  
22 the Governor as a result of New York City,  
23 which it passed the Senate for the first time  
24 ever.

25 So I can't speak for New York City.

1       If they had contacted me about it, I'm certain  
2       that we would have responded and tried to  
3       address that particular issue.

4                SENATOR PADAVAN:     Well,  
5       Mr. President, if the Senator would yield.  
6       Wouldn't it be --

7                ACTING PRESIDENT BRESLIN:     Do you  
8       continue to yield, Senator Thompson?

9                SENATOR PADAVAN:     Wouldn't it be  
10      a good idea --

11               SENATOR THOMPSON:     Absolutely.

12               ACTING PRESIDENT BRESLIN:     Excuse  
13      me, Senator Padavan. Let me ask Senator  
14      Thompson --

15               SENATOR PADAVAN:     I did already.

16               ACTING PRESIDENT BRESLIN:     I will  
17      ask him, Senator, if he --

18               SENATOR PADAVAN:     I thought you  
19      did.

20               ACTING PRESIDENT BRESLIN:     I was  
21      in the process of asking. Excuse me.

22               SENATOR PADAVAN:     Okay.

23               ACTING PRESIDENT BRESLIN:     Will  
24      you yield, Senator Thompson?

25               SENATOR THOMPSON:     Yes,

1       absolutely.

2                   ACTING PRESIDENT BRESLIN:       You  
3       may proceed, Senator Padavan.

4                   SENATOR PADAVAN:       Thank you,  
5       Mr. President.   You're very kind.

6                   In view of that fact, that you've  
7       just learned of the city's opposition,  
8       wouldn't it be a good idea to find out what  
9       their problems are and, if possible, address  
10      them?

11                  SENATOR THOMPSON:       Through you,  
12      Mr. Chair.   First, I just learned about this  
13      probably around 2 o'clock today.

14                  SENATOR PADAVAN:       I understand  
15      that.

16                  SENATOR THOMPSON:       And because  
17      there's been enormous debate about a number of  
18      bills, whether they were sponsored by me or  
19      not sponsored by me, I have been trying to  
20      assist on a number of the particular bills.  
21      So that is why I have not had the opportunity  
22      to contact them.

23                  In addition to that, I am not  
24      certain whether or not they contacted me  
25      directly.   But as I stated before, we have a

1       very good relationship with their  
2       environmental policy department and their  
3       government affairs folks. And so if there's  
4       something that they want to have addressed in  
5       the future, we'll definitely, as always, keep  
6       that door open.

7                ACTING PRESIDENT BRESLIN:  
8       Senator Padavan.

9                SENATOR PADAVAN:       Well, would the  
10       Senator yield again.

11               ACTING PRESIDENT BRESLIN:       Do you  
12       continue to yield, Senator Thompson?

13               SENATOR THOMPSON:       Sure.

14               SENATOR PADAVAN:       I respect fully  
15       your point of view, and I don't quarrel with  
16       it at all.

17               But it would seem that we are very  
18       early in the session; we're going to be here  
19       for a long time. Wouldn't it be a good idea  
20       just to lay this aside temporarily until we  
21       found out what the city's problem is and if we  
22       can possibly address it without dealing in any  
23       negative way with your goal?

24               ACTING PRESIDENT BRESLIN:  
25       Senator Thompson.



1                   SENATOR THOMPSON:     Yes, through  
2     you, Mr. Chairman.   First -- Mr. President.

3                   ACTING PRESIDENT BRESLIN:     Either  
4     way.

5                   SENATOR THOMPSON:     The State  
6     Assembly has passed this bill today.   And I  
7     know that they have a disproportionate number  
8     of members from New York City.

9                   And in addition to that, as I've  
10    stated, this has been out there for a great  
11    number of months.   It's been on the third  
12    reading of the Senate for at least 60 days,  
13    and I have not heard from them.

14                   And as I previously stated, I  
15    believe we have an open door.   I meet with  
16    groups all the time from all over the state.  
17    I have a stack of letters here before me on  
18    crossbow hunting.   I've never gone hunting,  
19    but I have a lot of friends that do hunt.   So  
20    I read letters, I respond to letters from  
21    people from all over the state.   Sometimes I  
22    even hand-write the letters.   In fact, I even  
23    call people that are in my district or not.

24                   So if they had contacted me prior  
25    to today, I am certain that being the people

1 person and the nice guy that I tend to be  
2 99.9 percent of the time, I would have  
3 responded to them.

4 SENATOR PADAVAN: Thank you.

5 One more question, Mr. President.

6 ACTING PRESIDENT BRESLIN:

7 Senator Thompson, do you yield for one more  
8 question from Senator Padavan?

9 SENATOR THOMPSON: Absolutely.

10 ACTING PRESIDENT BRESLIN: You  
11 may proceed, Senator Padavan.

12 SENATOR PADAVAN: And now in a  
13 completely different venue.

14 If an organization were to acquire  
15 a sizable piece of property and wished to  
16 build a group of homes for physically and  
17 mental disabled individuals in a given  
18 community, would your bill expand upon the  
19 prerogative of some individual or group of  
20 individuals for initiating an action that  
21 currently would not be appropriate under  
22 existing law, SEQRA law, as currently defined  
23 by the courts?

24 SENATOR THOMPSON: Through you,  
25 Mr. Chair -- Mr. President.

1 I would state that whether it's  
2 this law or any -- this proposed law, the  
3 current law or local zoning laws as well, that  
4 they can always have an impact, the potential  
5 of slowing down development projects.

6 As someone who has lots of friends  
7 that are developers and builders, many of the  
8 top builders in Western New York's phone  
9 number are in my cellphone, so I'm not  
10 opposed -- I'm not suggesting that we want to  
11 make it so onerous that no one wants to build  
12 a house.

13 And in conclusion, I would just  
14 state that yes, it will create a potential for  
15 a problem, but I don't believe it's that  
16 extreme compared to existing zoning laws for  
17 people who want to build supermarkets,  
18 drugstores, big box retailers. As you know  
19 and many people in this room, whether they're  
20 from upstate or downstate, know, there are  
21 currently lots of laws on the books that make  
22 it difficult for development that will be more  
23 extreme than this particular issue right now  
24 as we speak.

25 SENATOR PADAVAN: Thank you.

1       You've been very kind.

2                   Mr. President, on the bill.

3                   ACTING PRESIDENT BRESLIN:

4       Senator Padavan, on the bill.

5                   SENATOR PADAVAN:       The answer to  
6       my last question was yes, it would. It would  
7       make it more difficult, potentially a problem  
8       for some organization that was seeking to  
9       establish a group of community residences for  
10      the disabled, whether they be young or old or  
11      seniors.

12                   And that is not a hypothetical  
13      situation. I have one such development going  
14      on in my district right now. We have dealt  
15      with existing zoning. We have precluded  
16      zoning from being a preventer from such  
17      facilities from opening up in this state. And  
18      it's under the site selection law which we put  
19      in place back in the late '70s.

20                   But what I am concerned about is  
21      that this bill -- and the sponsor agrees --  
22      would expand the opportunity for the NIMBY  
23      persons in our state, those individuals who  
24      have their own agenda, from initiating legal  
25      actions that would be detrimental to the

1 establishment of this type of facility.

2 I think that's something we should  
3 be very concerned about, and I would urge  
4 everyone in this chamber to consider it when  
5 they vote on this bill.

6 ACTING PRESIDENT BRESLIN: Thank  
7 you, Senator Padavan.

8 Senator Thompson.

9 SENATOR THOMPSON: Yeah, before  
10 I -- I'll explain my vote later. I just  
11 wanted to make sure it was clear. I'm just  
12 told by staff although this bill has passed  
13 the Assembly on numerous occasions, they have  
14 not technically voted on it today, but they  
15 intend on passing it again today as they have.

16 So I just wanted to make sure that  
17 was stated for the record.

18 ACTING PRESIDENT BRESLIN: Thank  
19 you, Senator Thompson.

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

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

24 Read the last section.

25 THE SECRETARY: Section 3. This

1       act shall take effect immediately.

2                   ACTING PRESIDENT BRESLIN:     Call  
3       the roll.

4                   (The Secretary called the roll.)

5                   ACTING PRESIDENT BRESLIN:  
6       Senator Thompson, to explain his vote.

7                   SENATOR THOMPSON:     First,  
8       Mr. President, I want to thank you for  
9       recognizing me.

10                   We've had a very spirited debate  
11       about this particular issue. But I want to  
12       emphasize that first, in order to get this  
13       bill passed, we spent a lot of time listening  
14       to a number of groups.

15                   One of my colleagues talked about  
16       Michael Gerrard, who wrote a very good expert  
17       analysis in the New York Law Journal that  
18       talks about this particular piece of  
19       legislation. And he also states in his  
20       article that there was a lot of momentum going  
21       towards passing this particular legislation,  
22       and it was slowed down last year for a variety  
23       of reasons.

24                   He also states that because of the  
25       Pine Bush decision, that it will not lead to

1 more lawsuits being filed, that there's still  
2 other work to be done. So this particular  
3 issue that people raised, according to the  
4 expert, he already says that this will not  
5 lead to more cases in the state, or the  
6 floodgates, as some people have suggested.

7 Thank you.

8 ACTING PRESIDENT BRESLIN: Thank  
9 you, Senator Thompson. You will be recorded  
10 in the affirmative.

11 Announce the results.

12 THE SECRETARY: Ayes, 29. Nays,  
13 32.

14 ACTING PRESIDENT BRESLIN: The  
15 bill fails.

16 The Secretary will continue to  
17 read.

18 THE SECRETARY: Calendar Number  
19 133, by Senator Squadron, Senate Print 6141B,  
20 an act to amend the Environmental Conservation  
21 Law.

22 SENATOR LIBOUS: Explanation.

23 ACTING PRESIDENT BRESLIN: An  
24 explanation has been requested, Senator  
25 Squadron.

1                   SENATOR SQUADRON:     Thank you,  
2                   Mr. President.

3                   This bill would create a -- would  
4                   put on the table for the first time in the  
5                   nation a gallons-per-mile standard for  
6                   consumers to make use of when considering what  
7                   car to purchase. Gallons per mile is a much  
8                   better standard than miles per gallon for  
9                   consumers who are conscious about the effect  
10                  on the environment or the effect on their  
11                  wallets of different cars they might be  
12                  choosing and trying to find the most efficient  
13                  one.

14                  It does so with the very modest  
15                  requirement that every auto dealer selling new  
16                  cars put up a single poster in the auto  
17                  dealership that explains the gallons per mile  
18                  relative to miles per gallon and to the amount  
19                  of relative savings, in increments of 5 miles  
20                  per gallon, from 5 to 50, for each level. So  
21                  that you can really see that, for example,  
22                  you're much better off going from a car -- if  
23                  you're choosing between a car that goes 10  
24                  miles per gallon and 15, you save a lot more  
25                  gas over 1,000 miles than if you take a car



1 from 25 to 45 miles per gallon.

2 Gallons per mile has been shown in  
3 studies to really drive consumers to choose  
4 vehicles that use less gas. Less gas is great  
5 for the environment and great for wallets.  
6 This bill will put New York on the cutting  
7 edge of how to really think about fuel  
8 efficiency in the 21st century. It's great  
9 for the 40th Earth Day that we are going to be  
10 starting to think about how we consider fuel  
11 efficiency and making good choices on fuel  
12 efficiency for the next hundred Earth Days.

13 ACTING PRESIDENT BRESLIN: Thank  
14 you, Senator Squadron.

15 Senator DeFrancisco.

16 SENATOR DeFRANCISCO: Would  
17 Senator Squadron yield --

18 ACTING PRESIDENT BRESLIN: Excuse  
19 me, Senator DeFrancisco.

20 Can we have some quiet, please.

21 SENATOR DeFRANCISCO: Would  
22 Senator Squadron please yield to a question?

23 ACTING PRESIDENT BRESLIN: Do you  
24 yield to a question, Senator Squadron, from  
25 Senator DeFrancisco?

1                   SENATOR SQUADRON:     Happy to.

2                   ACTING PRESIDENT BRESLIN:     You  
3     may proceed.

4                   SENATOR DeFRANCISCO:     Can you  
5     tell me what additional information a consumer  
6     gets by learning the gallons per mile versus  
7     miles per gallon?

8                   ACTING PRESIDENT BRESLIN:  
9     Senator Squadron.

10                  SENATOR SQUADRON:     Well,  
11     comparatively, when you have the miles per  
12     gallon number in front of you, what you learn  
13     is the relative gallon per mile of -- or  
14     gallon per thousand miles, in the case of this  
15     bill -- of different vehicles. You don't have  
16     that in a miles-per-gallon standard. It is a  
17     relatively simple calculation, but it's not  
18     one that consumers normally do.

19                  And it's -- frankly, the  
20     gallon-per-mile standard isn't one that most  
21     consumers are aware of. So the other thing  
22     they learn through this bill is about the  
23     gallons-per-mile standard and why it's so  
24     important.

25                  ACTING PRESIDENT BRESLIN:

1 Senator DeFrancisco.

2 SENATOR DeFRANCISCO: Would  
3 Senator Squadron answer another question?

4 ACTING PRESIDENT BRESLIN: Would  
5 you continue to yield, Senator Squadron,  
6 through the President?

7 SENATOR SQUADRON: Yes, I'll  
8 yield.

9 SENATOR DeFRANCISCO: I know the  
10 miles per gallon. Are you saying we get  
11 additional information if you require a  
12 signage reversing that as to gallons per mile?  
13 What additional information do we get?

14 SENATOR SQUADRON: Through you,  
15 Mr. President --

16 SENATOR DeFRANCISCO: Can't you  
17 easily convert that by a simple mathematical  
18 formula?

19 ACTING PRESIDENT BRESLIN:  
20 Senator Squadron.

21 SENATOR SQUADRON: Through you,  
22 Mr. President. And someone had mentioned that  
23 it was the inverse.

24 This bill, the information that you  
25 get out of this bill is twofold. First, you

1       get the existence of the gallons-per-mile  
2       standard and why it's so important. And  
3       secondly, you do get a nice side-by-side  
4       comparison of miles per gallon and gallons per  
5       thousand miles, in fact, and the relative  
6       savings as you sort of climb the ladder on  
7       miles per gallon.

8               So it is information that would be  
9       available to a savvy consumer who was  
10      considering it. But as we well know, gallons  
11      per mile is probably a new concept to most  
12      people in this room today.

13             ACTING PRESIDENT BRESLIN:  
14      Senator DeFrancisco.

15             SENATOR DeFRANCISCO:     I'd just  
16      like to speak on the bill.

17             ACTING PRESIDENT BRESLIN:  
18      Senator DeFrancisco, on the bill.

19             SENATOR DeFRANCISCO:     I think I  
20      just discovered the reason why no other state  
21      has this bill.

22             (Laughter.)

23             SENATOR DeFRANCISCO:     Every new  
24      car in every dealership posts miles per  
25      gallon. And it's a simple conversion of

1 numbers to make a simple calculation as to  
2 what gallons per mile are.

3 We're going to require our auto  
4 dealers in our state to be less competitive to  
5 talk about gallons per mile rather than miles  
6 per gallon, when the federal government  
7 already requires this disclosure -- it's on  
8 every place.

9 In addition, this bill, believe it  
10 or not -- I didn't ask about this. I was  
11 afraid of the answer. Because you have to  
12 also post the cost of fuel per 1,000 miles  
13 based upon the most recent United States  
14 Environmental Protection Agency's Fuel Economy  
15 Guide price of gas. Guide price of gas.

16 So I guess the dealer's going to  
17 have to go out periodically, see what the  
18 price of gas is, put up all new signs. And if  
19 you don't have the sign up, you get a free  
20 pass the first time, then it's a hundred  
21 dollar per car. I mean, are we trying to be  
22 business-unfriendly?

23 There's absolutely no additional  
24 value to what is being required to be provided  
25 by our auto dealers than any other auto

1 dealers.

2 This is not -- does nothing for the  
3 environment. It does a lot for making our  
4 auto dealers noncompetitive. I urge a  
5 unanimous no vote.

6 ACTING PRESIDENT BRESLIN: Thank  
7 you, Senator DeFrancisco. You will be  
8 recorded in the negative.

9 Senator Fuschillo, on the bill.

10 SENATOR FUSCHILLO: Would the  
11 sponsor yield for a few questions?

12 ACTING PRESIDENT BRESLIN:  
13 Senator Squadron, do you yield for questions  
14 from Senator Fuschillo?

15 SENATOR SQUADRON: I'd be happy  
16 to.

17 SENATOR FUSCHILLO: Senator  
18 Squadron, this is for every model that the  
19 dealership would have? If they have 10  
20 different models, they have to post 10  
21 different signs?

22 SENATOR SQUADRON: Through you,  
23 Mr. President, no, it's not.

24 A couple of points of fact just on  
25 the previous speaker, very briefly. There's a

1 standard EPA that comes out annually. It says  
2 "based on," so it wouldn't have to be exactly  
3 what it is if there were slight shifts, so it  
4 wouldn't have to be sort of regularly putting  
5 up new posters. It's a \$50 fine the second  
6 time, not a hundred-dollar time.

7 But to answer this question, no,  
8 it's a single poster. And in fact the  
9 legislation would require DEC to create a  
10 model poster that would be exactly what you  
11 would use. It would be posted on the website  
12 and could therefore be printed out by any of  
13 the dealers. It would be a single standard  
14 one based on, as I say, miles per gallon  
15 increments of 5 from 5 to 50.

16 ACTING PRESIDENT BRESLIN:  
17 Senator Fuschillo.

18 SENATOR FUSCHILLO: Would the  
19 sponsor yield for one more question?

20 ACTING PRESIDENT BRESLIN: Do you  
21 continue to yield, Senator Squadron?

22 SENATOR SQUADRON: Yes.

23 ACTING PRESIDENT BRESLIN: You  
24 may proceed, Senator.

25 SENATOR FUSCHILLO: Senator, one

1 of the things that concerns me is the way it's  
2 written, the bill. You just said the DEC, but  
3 in the legislation you write "the Department  
4 shall develop a model sign which provides  
5 consumer fuel consumption information."  
6 Nowhere in the bill do you reference what  
7 department.

8 Now, I've read this bill multiple  
9 times, and I don't know if it's the Department  
10 of Consumer Protection, Environmental  
11 Conservation or DEC. Because if this becomes  
12 law, the law will not specify which department  
13 has the responsibility to do exactly what  
14 you're asking them to do.

15 SENATOR SQUADRON: Through you,  
16 Mr. President. In answer to that question,  
17 this language was drafted in coordination with  
18 DEC. It exists in Section 3 of the  
19 Environmental Conservation Law, which is the  
20 section that lays out the responsibilities of  
21 the commissioner of DEC.

22 ACTING PRESIDENT BRESLIN:  
23 Senator Fuschillo.

24 SENATOR FUSCHILLO: Thank you,  
25 Senator.



1                   ACTING PRESIDENT BRESLIN:

2       Senator Larkin, on the bill.

3                   SENATOR LARKIN:     Would Senator  
4       Squadron respond to one question?

5                   ACTING PRESIDENT BRESLIN:  
6       Senator Squadron, would you yield for one  
7       question from Senator Larkin?

8                   SENATOR SQUADRON:    I will yield  
9       for one to begin and then a second if needed.

10                  SENATOR LARKIN:     Daniel, who's  
11       going to hire all these inspectors to see that  
12       this is done?

13                  ACTING PRESIDENT BRESLIN:  
14       Senator Squadron.

15                  SENATOR SQUADRON:    Through you,  
16       Mr. President. There are, as I'm sure many of  
17       the Senators in the room know, any number of  
18       requirements put on auto dealers and others in  
19       the State of New York. Some, in fact, under  
20       the ECL that have to deal with auto dealers.  
21       And presumably this would be enforced the way  
22       other laws are enforced.

23                  ACTING PRESIDENT BRESLIN:  
24       Senator Larkin.

25                  SENATOR LARKIN:     On the bill.

1                   ACTING PRESIDENT BRESLIN:     On the  
2     bill, Senator Larkin.

3                   SENATOR LARKIN:     You know, every  
4     one of us have automobile dealers. I hope  
5     you've all gone home and asked them about  
6     this.

7                   And one fellow said to me, "Are you  
8     crazy? We're having a hard time selling cars  
9     as it is. Why don't you stop punishing us?"

10                  Gentlemen, ladies and gentlemen,  
11     think of what you did yesterday. You stuck a  
12     knife into the contractors and cut them loose.  
13     A few minutes ago we wanted to cut out the  
14     industry for jobs. And I hear this from  
15     Washington to here: Jobs, jobs, jobs. What  
16     we ought to be starting to say is, How much  
17     can we do to you so we'll get you to move out  
18     of New York?

19                  When are we going to wake up and  
20     start to remember that this is our state? As  
21     we look at it, everybody is looking at us as a  
22     bunch of jerks. You know what they said?  
23     Dan, just for your information, they said,  
24     "Why don't you guys sit down and do the budget  
25     instead of the nonsense?"

1                   ACTING PRESIDENT BRESLIN:     Are  
2     there any other Senators wishing to be heard?

3                   Hearing none, the debate is closed.  
4     The Secretary will ring the bells.

5                   Read the last section.

6                   THE SECRETARY:     Section 3.   This  
7     act shall take effect on the first of January  
8     next succeeding.

9                   ACTING PRESIDENT BRESLIN:     Call  
10    the roll.

11                   (The Secretary called the roll.)

12                   ACTING PRESIDENT BRESLIN:  
13    Senator Saland, to explain his vote.

14                   SENATOR SALAND:     Thank you,  
15    Mr. President.

16                   Mr. President, this just flies in  
17    the face of common sense.  If you want to talk  
18    about extraneous, superfluous legislation,  
19    this one takes the prize.

20                   If I'm interested in buying a car  
21    and gas mileage is my concern, I don't need to  
22    figure out another way to calibrate or compute  
23    whatever it's going to be.  If I want to buy a  
24    car, I look at the sticker that comes with the  
25    car and it says so much per miles per gallon

1       for city driving, so much for highway driving,  
2       whatever the average may be.

3               If I'm concerned about fuel  
4       efficiency, I don't look at the model that  
5       gives me 15 miles to the gallon, I look at the  
6       model that gives me 25 to 30 miles to the  
7       gallon.

8               Purely extraneous, superfluous, and  
9       a hardship on an already struggling industry  
10      that's been through the most difficult  
11      challenges of any industry that we have seen  
12      in our state.

13              Mr. President, I vote in the  
14      negative.

15              ACTING PRESIDENT BRESLIN:  
16      Senator Saland will be recorded in the  
17      negative.

18              Senator Squadron, to explain his  
19      vote.

20              SENATOR SQUADRON:     Thank you,  
21      Mr. President.

22              You know, it's really a shame that  
23      the idea of giving consumers better  
24      information that research that shows again and  
25      again that different kinds of information

1       presented to consumers lead to different  
2       conclusions is considered quite so absurd in  
3       this chamber.

4                You know, it's sometimes said that  
5       doing something for the environment and doing  
6       something for the economy are in conflict.  
7       This bill actually proves that doing something  
8       for the environment and doing something for  
9       consumers' wallets in the State of New York,  
10      so they have the information in front of them  
11      to make better choices in purchasing -- it's  
12      right there for them in a way that it wouldn't  
13      be in any other state -- is such a ridiculous  
14      concept in this chamber.

15               The fact is miles per gallon is a  
16      standard that was created many, many years ago  
17      when folks were not nearly as interested in  
18      actually comparison shopping around  
19      efficiency, when gas didn't cost nearly as  
20      much as it does today.

21               And I think that frankly it's only  
22      a matter of time before the gallons-per-mile  
23      standard is used. And I'm very pleased that  
24      as part of the Earth Day package, the Senate  
25      has taken it up today. I'll be voting yes.

1                   Thank you, Mr. President.

2                   ACTING PRESIDENT BRESLIN:       Thank  
3                   you, Senator Squadron.

4                   Senator Libous, excuse me, but if  
5                   we could see the show of hands of those voting  
6                   in the negative while Senator Libous is  
7                   explaining his vote.

8                   SENATOR LIBOUS:       Thank you,  
9                   Mr. President.

10                  Senator Squadron, in all due  
11                  respect, obviously your constituents in  
12                  Brooklyn, am I correct -- in lower Manhattan,  
13                  I apologize -- must take a very different  
14                  approach than those in Binghamton. Because if  
15                  I vote for this bill, they'll run me over with  
16                  their cars.

17                  (Laughter.)

18                  SENATOR LIBOUS:       I mean, we sit  
19                  here on what, is today the 20th? And no state  
20                  budget. And if I vote for this bill and go  
21                  back home and tell them I did it --  
22                  Mr. President, I vote no. This is just not  
23                  something that's needed.

24                  ACTING PRESIDENT BRESLIN:  
25                  Senator Libous will be recorded in the

1 negative.

2 Senator DeFrancisco, to explain his  
3 vote.

4 SENATOR DeFRANCISCO: If this  
5 bill provided consumers more information and  
6 helped them to make an environmentally sound  
7 decision on what car to buy, I would consider  
8 voting for it.

9 But you're getting no more  
10 information by getting gallons-per-mile  
11 information as opposed to miles-per-gallons.  
12 You compare apples to apples. You compare  
13 miles per gallon to miles per gallon, no  
14 matter what the price of the gasoline is.

15 The only effect this has on the  
16 environment is all the placards that are going  
17 to be on the thousands and hundreds of  
18 thousands of cars in the State of New York  
19 will result in destruction of trees in the  
20 Adirondacks or someplace else.

21 There's no additional information.  
22 It can't possibly benefit the environment, and  
23 it just puts us, our car dealers, at a  
24 competitive disadvantage. I vote no.

25 ACTING PRESIDENT BRESLIN:

1 Senator DeFrancisco will be recorded in the  
2 negative.

3 Senator Libous, why do you rise?

4 SENATOR LIBOUS: Mr. President,  
5 on the roll call, I thought members had to be  
6 in their seats for a vote. I thought that's  
7 what the rule said.

8 ACTING PRESIDENT BRESLIN: I  
9 believe that's correct, Senator Libous.

10 SENATOR LIBOUS: And I see a lot  
11 of empty seats in the chamber, Mr. President.

12 ACTING PRESIDENT BRESLIN:  
13 Pardon?

14 SENATOR LIBOUS: I see a lot of  
15 empty seats in the chamber.

16 ACTING PRESIDENT BRESLIN:  
17 Senator Libous, the vote was recorded more  
18 than 10 --

19 SENATOR LIBOUS: Well, if the  
20 seat is empty, I mean -- no, no. No, no.  
21 Hang on. Mr. President --

22 ACTING PRESIDENT BRESLIN: We  
23 recorded the vote probably six or seven  
24 minutes ago, Senator Libous.

25 SENATOR LIBOUS: They were empty



1       six or seven minutes ago, Mr. President.

2               ACTING PRESIDENT BRESLIN:       No,  
3       they weren't.

4               SENATOR LIBOUS:       Listen, I know  
5       the hour is late. I'm not trying to give a  
6       hard time. But the Senate rules are pretty  
7       specific that you have to be in your seat for  
8       a roll call.

9               ACTING PRESIDENT BRESLIN:       Duly  
10       noted, Senator Libous. And we'll enforce it  
11       for both sides.

12              SENATOR LIBOUS:       We would  
13       appreciate it if you do that, Mr. President.  
14       Thank you, and we'll be anxious to see what  
15       happens on the next vote, sir.

16              ACTING PRESIDENT BRESLIN:       Thank  
17       you, Senator Libous.

18              Announce the results.

19              THE SECRETARY:       Those recorded in  
20       the negative on Calendar Number 133 are  
21       Senators Alesi, Bonacic, DeFrancisco, Farley,  
22       Flanagan, Fuschillo, Golden, Griffio, Hannon,  
23       O. Johnson, Larkin, Leibell, Libous, Little,  
24       Marcellino, Maziarz, McDonald, Nozzolio,  
25       Ranzenhofer, Robach, Saland, Seward, Skelos,

1 Volker, Winner and Young.

2 Ayes, 35. Nays, 26.

3 ACTING PRESIDENT BRESLIN: The  
4 bill is passed.

5 The Secretary will continue to  
6 read.

7 THE SECRETARY: Calendar Number  
8 160, by Senator Stewart-Cousins, Senate Print  
9 5119, an act to amend the State Finance Law.

10 SENATOR LITTLE: Explanation,  
11 please.

12 ACTING PRESIDENT BRESLIN: An  
13 explanation has been requested by Senator  
14 Little. Senator Stewart-Cousins, for the  
15 explanation.

16 SENATOR STEWART-COUSINS: Yes,  
17 thank you, Mr. President.

18 This bill would move us a little  
19 bit farther along in our efforts as a state to  
20 practice what we preach. Just recently the  
21 DEC, in their executive summary, talked about  
22 solid waste management, talked about how as  
23 New York State moves forward it has to address  
24 the different ways to reduce the amount of  
25 waste generated, and talked about how we can

1        help the general public to be more conscious  
2        about what they use and whether or not it can  
3        be recycled to reduce the waste.

4                This bill asks us to do the same  
5        thing in our own house. We are looking at  
6        having our state agencies not use paper that  
7        cannot be recycled. It's very simple. In  
8        2008, the Governor did an executive order  
9        asking for all the state agencies to work as  
10       he had established a state green procurement  
11       and agency sustainability program. That was,  
12       I suppose, to celebrate Earth Day in 2008.  
13       And what this would do would encourage our  
14       various agencies to develop programs that  
15       would again reduce the level of products we  
16       use that cannot be recycled.

17               So we've done that in many areas --  
18       napkins, paper in our restroom facilities, and  
19       even everyday papers, but we haven't done it  
20       with envelopes. So what this would do is take  
21       a look at what we use in the way of envelopes,  
22       specifically goldenrod, which is for all  
23       intents and purposes not recyclable, and move  
24       as a state to using even envelopes that we can  
25       recycle.

1           It is very simply what Montana does  
2           when they say they lead by example. And of  
3           course, among the things that they say they  
4           don't use is goldenrod. There's another list,  
5           but the first thing actually is goldenrod.

6           So I think that we can be as smart  
7           about our products as Montana or Kansas or any  
8           of the other states that understand that we  
9           have a responsibility to lead by example.

10           ACTING PRESIDENT BRESLIN:  
11           Senator Little.

12           SENATOR LITTLE:     Thank you,  
13           Mr. President. And thank you, Senator  
14           Stewart-Cousins.

15           I'd like to begin by saying that I  
16           served on the county board of supervisors in  
17           Warren County, and one of the first things I  
18           did as a supervisor there was establish a  
19           recycling program. And so I am a recycling  
20           advocate. As a matter of fact, my father tore  
21           down houses and resold all the materials from  
22           them. The house I live in has lot of  
23           materials from other old homes.

24           However, this particular bill I  
25           have some concerns about. And certainly one

1 of the major concerns I have is how it affects  
2 a corporation, International Paper, which has  
3 a paper plant in my district. And so that's a  
4 major concern.

5 But the second one is really how  
6 this would be implemented. And I have a  
7 series of questions I would like to ask  
8 Senator Stewart-Cousins.

9 ACTING PRESIDENT BRESLIN:  
10 Senator Stewart-Cousins, do you yield?

11 SENATOR STEWART-COUSINS:  
12 Absolutely.

13 ACTING PRESIDENT BRESLIN: You  
14 may proceed, Senator Little.

15 SENATOR LITTLE: All right.  
16 Senator Stewart-Cousins, the bill talks  
17 about -- it identifies what nonrecyclable  
18 materials are that we are going to prohibit  
19 being purchased. And these nonrecyclable  
20 materials are materials that cannot be sorted,  
21 cleansed and reconstituted using available  
22 recycling collection programs.

23 If there is not an available  
24 recycling program in that municipality or that  
25 community, is this bill going to still be

1 effective?

2 ACTING PRESIDENT BRESLIN:

3 Senator Stewart-Cousins.

4 SENATOR STEWART-COUSINS: Well,  
5 again, this bill impacts what we do in our  
6 state government. So from what I understand  
7 from DEC and OGS, the movement has been and  
8 continues to be to make sure that we use paper  
9 we can recycle. So this is inner-directed.  
10 This is for us.

11 SENATOR LITTLE: Well, if I may,  
12 Senator Stewart-Cousins, I should have begun  
13 with the first question. But the bill  
14 prohibits the purchase of nonrecyclable paper  
15 products, and the state and any governmental  
16 agency or political subdivision or public  
17 benefit corporation of the state shall not  
18 purchase or obtain nonrecyclable paper  
19 products.

20 That would include napkins, paper  
21 towels, and things that I do not really think  
22 could be sorted, cleansed, or reconstituted --  
23 and certainly not in any recycling program of  
24 any of the six counties that I represent.

25 So the municipalities -- my

1 question is according to the bill every  
2 municipality would be affected by this bill.

3 ACTING PRESIDENT BRESLIN:

4 Senator Stewart-Cousins.

5 SENATOR STEWART-COUSINS: Yes,  
6 I'm just wondering in terms of the local  
7 municipalities. And again, I certainly  
8 welcome this discussion. But is there no  
9 ability to recycle paper in the local  
10 municipalities in your area, Senator Little?  
11 I mean, is there no recycling of napkins or  
12 paper?

13 SENATOR LITTLE: Oh, no, we have  
14 plenty of recycling. And we try to have  
15 recycling where we have markets. But this  
16 would be a mandate, basically, upon  
17 communities that did not have a recycling  
18 program that does napkins, paper towels and  
19 all of that kind of paper, which I'm not  
20 certain -- I don't know of a program -- maybe  
21 you do, Senator -- where they do recycle  
22 napkins and paper towels, et cetera.

23 ACTING PRESIDENT BRESLIN:

24 Senator Stewart-Cousins.

25 SENATOR STEWART-COUSINS: Well, I

1 know that we have here, within our government,  
2 state government, the ability to purchase  
3 products that are recyclable. So I think that  
4 talking about purchasing products that are  
5 recyclable is really what the issue here is.

6 If we continue to promote or to  
7 suggest that there are no alternatives to  
8 products that actually are not of any value to  
9 the earth after they're used, then people will  
10 continue to create them.

11 So the issue here is whether we can  
12 make a conscious decision to actually promote  
13 products that can be recycled.

14 SENATOR LITTLE: Thank you. If I  
15 may, Mr. President.

16 ACTING PRESIDENT BRESLIN: Do you  
17 yield continue to yield, Senator  
18 Stewart-Cousins?

19 SENATOR STEWART-COUSINS: Yes.

20 SENATOR LITTLE: But in answer to  
21 the other question, Senator Stewart-Cousins,  
22 aren't we making a decision in this bill that  
23 will affect every municipality, I would assume  
24 every political distinction, and every public  
25 benefit corporation in the State of New York,



1 prohibiting them from purchasing anything of  
2 this category that doesn't have a recycling  
3 program?

4 ACTING PRESIDENT BRESLIN:  
5 Senator Stewart-Cousins.

6 SENATOR STEWART-COUSINS: Again,  
7 I hope that most municipalities, most local  
8 municipalities, not only do have a recycling  
9 program but understand the importance of a  
10 recycling program.

11 But what, again, we are in this  
12 bill trying to do is to create the reality  
13 that there are options, that one need not  
14 purchase paper that has such a level of  
15 metallic dye that it cannot be recycled  
16 whether you had a program or not. There are  
17 options. And this bill suggests strongly that  
18 those options be used.

19 SENATOR LITTLE: If I may,  
20 Mr. President, wouldn't one of the options be  
21 a better educational program rather than a  
22 prohibition and a mandate upon all of these  
23 municipalities and government entities?

24 ACTING PRESIDENT BRESLIN:  
25 Senator Stewart-Cousins.

1                   SENATOR STEWART-COUSINS:     I must  
2 apologize, would you repeat your question?

3                   SENATOR LITTLE:     Wouldn't it be  
4 better to have an educational program for this  
5 kind of thing rather than a prohibition and  
6 actually a mandate upon all of these  
7 municipalities, public benefit corporations,  
8 government entities?

9                   SENATOR STEWART-COUSINS:     Well, I  
10 do believe that all of this is part of an  
11 education program, Senator Little. I mean,  
12 we're celebrating the 40th Earth Day. There  
13 is, perpetual education, that goes on even in  
14 this chamber as we've discussed so many of the  
15 bills that we've discussed.

16                   The opportunity to purchase goods  
17 that are recyclable is ever-present. And I  
18 think that as municipalities, if we move in  
19 that direction, we will see that we will be  
20 teaching and we will be preserving the  
21 environment, which is what we need to do.

22                   So this really has to do with  
23 interoffice -- this is the discussion that we  
24 were having. This really has to do with the  
25 interoffice things. Not napkins and other

1        sorts of paper goods, but the interoffice  
2        products that we use.

3                ACTING PRESIDENT BRESLIN:  
4        Senator Little.

5                SENATOR LITTLE:        Thank you.    If I  
6        may, Mr. President.    But it is far more  
7        extensive --

8                ACTING PRESIDENT BRESLIN:  
9        Senator Stewart-Cousins, will you yield for an  
10       additional question?

11               SENATOR STEWART-COUSINS:        I do.

12               ACTING PRESIDENT BRESLIN:  
13       Senator Little.

14               SENATOR LITTLE:        I think my point  
15       is this is far more extensive than any kind of  
16       just interoffice prohibition that we're  
17       talking about.

18               How would this affect existing  
19       state contracts and contracts that  
20       municipalities, the state agencies, the state  
21       itself, the school districts, libraries and  
22       all of those have in the purchase of paper  
23       products?

24               ACTING PRESIDENT BRESLIN:  
25       Senator Stewart-Cousins.

1                   SENATOR STEWART-COUSINS:     We had  
2     made that inquiry, Senator Little, and we were  
3     told that in terms of paper products they  
4     generally don't enter into long-term  
5     contracts, that it's generally a pay as -- a  
6     buy as they go, pay as they go.

7                   ACTING PRESIDENT BRESLIN:  
8     Senator Little.

9                   SENATOR LITTLE:        Thank you.   If I  
10    may --

11                  ACTING PRESIDENT BRESLIN:        Would  
12    you continue to yield?

13                  SENATOR STEWART-COUSINS:        Of  
14    course.

15                  SENATOR LITTLE:        Then I would  
16    assume that the contracts that are in  
17    existence should be sent a notice that you can  
18    no longer purchase them from that company  
19    again.

20                  ACTING PRESIDENT BRESLIN:  
21    Senator Stewart-Cousins.

22                  SENATOR STEWART-COUSINS:        Well,  
23    again, I don't think that people are  
24    suggesting that they can't purchase from a  
25    company.   What the suggestion is is that the

1 purchase that they make be of recyclable  
2 paper.

3 There are a number of options in  
4 terms of the types of paper that can be used,  
5 the types of envelopes that can be used. And  
6 you know, so I think it's not about not using  
7 certain people, it's about what it is that's  
8 being bought.

9 SENATOR LITTLE: Thank you. If  
10 you may, though, Mr. President --

11 ACTING PRESIDENT BRESLIN:  
12 Senator Little, do you wish Senator  
13 Stewart-Cousins to continue to yield?

14 SENATOR LITTLE: So if they're  
15 purchasing this product and they can no longer  
16 purchase this product and that company no  
17 longer has any other product, then that's it  
18 for that company. So how do they break the  
19 contract, or how do they stop? Your bill says  
20 this act shall take effect immediately.

21 SENATOR STEWART-COUSINS: Well,  
22 again, from what I understand, there isn't a  
23 contract. So what would happen -- and I'm  
24 sure that most paper companies have more than  
25 one paper product or type of paper available.

1       So I have -- you know, I mean, I certainly can  
2       talk about what's available, moss and okra --  
3       even different colors. It just so happens  
4       that this goldenrod is goldenrod because of  
5       the level of dyeing that happens, heavy  
6       metallic dyes that happen to make it that  
7       color.

8                So again, we have an opportunity to  
9       move to something that would be a little less  
10      toxic for the environment and still, you know,  
11      serve the purpose.

12               SENATOR LITTLE:     Thank you. If I  
13      may, though --

14               ACTING PRESIDENT BRESLIN:  
15      Senator Stewart-Cousins, will you continue to  
16      yield to Senator Little?

17               SENATOR STEWART-COUSINS:  
18      Absolutely.

19               ACTING PRESIDENT BRESLIN:     You  
20      may proceed, Senator Little.

21               SENATOR LITTLE:     However,  
22      Senator, are you aware that goldenrod and  
23      kraft papers are recyclable?

24               ACTING PRESIDENT BRESLIN:  
25      Senator Stewart-Cousins.

1                   SENATOR STEWART-COUSINS:     Well,  
2           again, I -- you know, you say that. I have a  
3           report here called Winners and Sinners in  
4           Recycling. And this was a report of a  
5           not-for-profit coalition of universities, and  
6           this included Cornell, NYU, SUNY Albany: The  
7           top three villains in deskside recycling,  
8           number one being goldenrod.

9                   I had, as I began my description of  
10          some of the research that we've done, talked  
11          about Montana. Emory University in Georgia  
12          seems to feel that goldenrod isn't recyclable.  
13          You know, there's a number of different places  
14          that I can tell you that actually disagrees  
15          with what you just asserted. So it seems the  
16          general -- California is another one, I have a  
17          number of them here: "Avoid fluorescents and  
18          goldenrod papers."

19                   So I think it's pretty nationally  
20          proclaimed that goldenrod is probably the  
21          least desirable. And again, there are  
22          alternatives. It's not like we won't be using  
23          envelopes anymore.

24                   ACTING PRESIDENT BRESLIN:  
25          Senator Little.

1                   SENATOR LITTLE:     Mr. President,  
2     yes, please.

3                   ACTING PRESIDENT BRESLIN:     Would  
4     you like Senator Stewart-Cousins to continue?

5                   SENATOR LITTLE:     Yes, if I may,  
6     to continue.

7                   ACTING PRESIDENT BRESLIN:     Would  
8     you continue to yield, Senator  
9     Stewart-Cousins?

10                  SENATOR STEWART-COUSINS:     Yes,  
11     certainly.

12                  SENATOR LITTLE:     Well,  
13     International Paper makes these goldenrod  
14     envelopes. And according to them, it is a  
15     coating -- it is not a coating, on the bill,  
16     as your bill says it is a coating.  
17     International Paper also says these are  
18     recyclable, as are the brown kraft materials.

19                  Now, they're not recyclable -- they  
20     can't be made into white paper. But they are  
21     recyclable into cardboard and to other means,  
22     darker kind of materials.

23                  I also have a note from DEC that  
24     says that goldenrod paper and kraft stationery  
25     are recyclable. So it would seem that, you



1 know, maybe we ought to, you know, relook at  
2 this again.

3 SENATOR STEWART-COUSINS: I think  
4 the reality is that if the paper is  
5 recyclable, then this wouldn't impact the  
6 paper that you're talking about. So if  
7 whatever -- as you're saying, International  
8 Paper, if the goldenrod paper that they are  
9 putting forth is indeed recyclable, then this  
10 wouldn't apply to them.

11 SENATOR LITTLE: Thank you.

12 If I may, Mr. President, to Senator  
13 Stewart-Cousins.

14 ACTING PRESIDENT BRESLIN: Will  
15 you continue to yield, Senator  
16 Stewart-Cousins, to Senator Little?

17 SENATOR STEWART-COUSINS:  
18 Absolutely.

19 SENATOR LITTLE: However, the  
20 bill mentions goldenrod papers coated with a  
21 dye found on masking paper commonly used for  
22 interoffice mailing envelopes and kraft  
23 stationery and paper products, that they would  
24 be affected this because they are listed as  
25 being nonrecyclable.

1                   SENATOR STEWART-COUSINS:     Well, I  
2     think that the specificity here is the  
3     goldenrod paper is coated with a dye. So  
4     again, if what is being produced does not fit  
5     that description, then it would not be  
6     applicable.

7                   SENATOR LITTLE:     However,  
8     Mr. President, if I may, again, Senator --

9                   ACTING PRESIDENT BRESLIN:  
10    Senator Stewart-Cousins, will you continue to  
11    yield?

12                  SENATOR STEWART-COUSINS:  
13    Certainly.

14                  ACTING PRESIDENT BRESLIN:     You  
15    may proceed, Senator Little.

16                  SENATOR LITTLE:     But anyone who  
17    looks at this piece of legislation and sees  
18    that goldenrod and kraft papers are  
19    nonrecyclable would assume that that's  
20    correct. And yet we are hearing from the  
21    company that manufactures it, they use it.  
22    And corrugated paper can be recycled to that,  
23    it can be recycled to cardboard. And DEC  
24    itself is saying that these products are  
25    recyclable.

1                   SENATOR STEWART-COUSINS:     Well,  
2     you know, again, I think it's very clear that  
3     this bill is targeting nonrecyclable paper.  
4     And again, the description that was given with  
5     regard to the goldenrod paper was that it was  
6     coated with a dye. So I think that the  
7     entity, the manufacturer, they will be able to  
8     prove if they're recyclable. And that is  
9     fine; then this does not apply.

10                   What we are trying to do -- and I'm  
11     sure you clearly know what we're trying to  
12     do -- is, again, move to the next level.  
13     There are many ways that we can do our  
14     interoffice correspondence. There are many  
15     ways that we can deliver our proclamations or  
16     whatever in envelopes that indeed are  
17     friendlier to the environment.

18                   ACTING PRESIDENT BRESLIN:  
19     Senator Little.

20                   SENATOR LITTLE:     If I may,  
21     Mr. President.

22                   Senator, would you consider  
23     amending the bill to take out --

24                   ACTING PRESIDENT BRESLIN:     Would  
25     you continue to yield, Senator

1       Stewart-Cousins?

2                   SENATOR STEWART-COUSINS:       Of  
3       course.

4                   SENATOR LITTLE:       Thank you.  
5       Senator, would you consider amending the bill  
6       to take out those materials, goldenrod papers  
7       and the things -- kraft stationery, so that  
8       there is not misleading information in the  
9       legislation?

10                  ACTING PRESIDENT BRESLIN:  
11       Senator Stewart-Cousins.

12                  SENATOR STEWART-COUSINS:       If I  
13       thought that it indeed was misleading, I would  
14       take it out. But as I'm saying to you, it is  
15       universally and certainly nationally accepted  
16       that goldenrod paper is problematic.

17                  Now, if your particular industry --  
18       or, rather, if your particular corporation  
19       uses paper that they call goldenrod that  
20       indeed is recyclable, then this does not  
21       apply. And so therefore there's not a need to  
22       amend. Because if we -- if I take out  
23       goldenrod, then we would be flying in the face  
24       of all of the data and the research that has  
25       led states all over the nation to say that

1       goldenrod is not the thing that we want to do  
2       because of the way that it becomes goldenrod.

3               If they have a different way of  
4       doing that which is recyclable, then I think  
5       that that's good, and it would not impact  
6       them.

7               ACTING PRESIDENT BRESLIN:  
8       Senator Little.

9               SENATOR LITTLE:     Thank you,  
10       Mr. President.   If I may, Senator, another  
11       question?

12              ACTING PRESIDENT BRESLIN:     Would  
13       you continue to yield, Senator  
14       Stewart-Cousins?

15              SENATOR STEWART-COUSINS:     Yes, of  
16       course.

17              ACTING PRESIDENT BRESLIN:     You  
18       may continue, Senator Little.

19              SENATOR LITTLE:     Thank you.   I  
20       will get you material from International Paper  
21       in regard to goldenrod.

22              But, Senator, you mentioned  
23       Montana.   And are there other states that  
24       prohibit the purchase of these non-recyclable  
25       paper products?

1                   SENATOR STEWART-COUSINS:     Well, I  
2     can tell you that there is an awful lot of  
3     research that's done that has asked people to  
4     not use, to recycle and to really, again, for  
5     the sake of the legacy that we want to leave,  
6     to move away from those things that will leave  
7     the kind of legacy that we don't want.

8                   So offhand, I could not tell you  
9     the pieces of legislation that have led to  
10    states and localities deciding that they're  
11    not using these products. But clearly, we  
12    have executive orders that tell us what kinds  
13    of products to use, and we have DEC and other  
14    entities that are asking everyone else to do  
15    the right thing. And I think that it's only  
16    fitting that we ourselves start moving in that  
17    direction.

18                  ACTING PRESIDENT BRESLIN:  
19    Senator Little.

20                  SENATOR LITTLE:     Thank you.  
21    Thank you, Senator Stewart-Cousins.

22                  If I can, on the bill.

23                  ACTING PRESIDENT BRESLIN:     On the  
24    bill. Senator Little on the bill.

25                  SENATOR LITTLE:     Thank you.

1           I just want to say that there's a  
2       difference between education and prohibition.  
3       And this bill prohibits the use of these  
4       materials if -- or whatever, being in an  
5       available recycling collection program. And  
6       it also lists materials that actually are  
7       recyclable and lists them as being  
8       nonrecyclable.

9           Now, obviously I have a concern  
10      about this because of International Paper,  
11      which is in my district. I have a plant.  
12      They do not make that type of paper there, but  
13      they certainly would be affected. And they  
14      employ 600 employees, 600-plus. So they are  
15      an important company.

16           They also have what's called Xpedx,  
17      and that is a warehouse and distributing  
18      facility in Western New York, Rochester,  
19      Syracuse, in the Capital Region, in New York  
20      City and on Long Island. And they are an  
21      office supply outfit that is part of  
22      International Paper. And they would be  
23      seriously affected by this bill and that  
24      prohibition.

25           So I would ask that we not pass

1       this bill today, because I thought that we  
2       were involved and working on job growth, not  
3       job reduction in New York State. And I am  
4       sincerely afraid that this type of prohibition  
5       of these products at this time would cause job  
6       reduction, the loss of jobs in New York State,  
7       and certainly would affect an important  
8       employer in New York State, International  
9       Paper. And I'm sure there are other companies  
10      that make these paper products that we need to  
11      have some consideration of.

12               Education, yes. Prohibition, I  
13      would vote no. And I would encourage my  
14      colleagues at this time to vote no.

15               Thank you.

16               ACTING PRESIDENT BRESLIN:     Thank  
17      you, Senator Little.

18               Are there any other Senators  
19      wishing to be heard?

20               Senator Marcellino.

21               SENATOR MARCELLINO:     Would the  
22      Senator yield just for one question?

23               ACTING PRESIDENT BRESLIN:     Do you  
24      yield for one question to Senator Marcellino,  
25      Senator Stewart-Cousins?



1                   SENATOR STEWART-COUSINS:     Yes.

2                   SENATOR MARCELLINO:     Senator  
3       Cousins, is there a fiscal note on this bill?

4                   SENATOR STEWART-COUSINS:     No,  
5       actually. No. We had talked to OGS about it,  
6       and again, because it's not a contractual  
7       thing, it's as you need it, so they had no  
8       fiscal implications that they could share with  
9       me.

10                  SENATOR MARCELLINO:     Thank you.

11                  SENATOR STEWART-COUSINS:     You're  
12       welcome.

13                  ACTING PRESIDENT BRESLIN:     Thank  
14       you, Senator Marcellino.

15                  Are there any other Senators  
16       wishing to be heard?

17                  SENATOR LIBOUS:     Read the last  
18       section.

19                  ACTING PRESIDENT BRESLIN:  
20       Hearing none, the debate is closed. The  
21       Secretary will ring the bells.

22                  Read the last section.

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

25                  ACTING PRESIDENT BRESLIN:     Call

1 the roll.

2 (The Secretary called the roll.)

3 ACTING PRESIDENT BRESLIN: I  
4 would also like to say for the record that  
5 upon the call of the roll, Senators are to be  
6 in their seats and voting in the order  
7 recorded.

8 And we'll take notice that you're  
9 one removed from yours, Senator Libous.

10 (Laughter.)

11 SENATOR LIBOUS: I appreciate the  
12 affection.

13 ACTING PRESIDENT BRESLIN:  
14 Announce the results.

15 THE SECRETARY: Those recorded in  
16 the negative on Calendar Number 160 are  
17 Senators Alesi, Bonacic, DeFrancisco, Farley,  
18 Flanagan, Golden, Griffo, O. Johnson, Larkin,  
19 Libous, Little, Maziarz, McDonald, Nozzolio,  
20 Ranzenhofer, Saland, Seward, Skelos, Volker,  
21 Winner and Young.

22 Ayes, 40. Nays, 21.

23 ACTING PRESIDENT BRESLIN: The  
24 bill is passed.

25 The Secretary will continue to

1 read.

2 THE SECRETARY: Calendar Number  
3 330, by Senator Foley, Senate Print 4983C, an  
4 act to amend the Environmental Conservation  
5 Law and others.

6 SENATOR YOUNG: Explanation.

7 ACTING PRESIDENT BRESLIN: An  
8 explanation, Senator Foley, has been requested  
9 by Senator Young.

10 SENATOR FOLEY: Thank you,  
11 Mr. President --

12 ACTING PRESIDENT BRESLIN: Excuse  
13 me, Senator Foley.

14 Senator Klein.

15 SENATOR KLEIN: Mr. President,  
16 upon unanimous consent, I ask that the  
17 supplemental calendar be opened so that  
18 Senator Golden can vote on the remainder of  
19 this calendar and the supplemental calendar,  
20 Mr. President.

21 ACTING PRESIDENT BRESLIN: The  
22 Secretary will read the last section on  
23 Calendar Number 330.

24 THE SECRETARY: Section 5. This  
25 act shall take effect on the 180th day.

1                   ACTING PRESIDENT BRESLIN:     Call  
2     the roll.

3                   (The Secretary called the roll.)

4                   ACTING PRESIDENT BRESLIN:  
5     Senator Golden.

6                   SENATOR GOLDEN:         No.

7                   And I would vote yes if I were here  
8     for the hostile amendment.

9                   ACTING PRESIDENT BRESLIN:     So you  
10    are recorded in the negative on the vote and  
11    would be yes on the hostile amendment if you  
12    were here.

13                  SENATOR GOLDEN:         Yes,  
14    Mr. President.

15                  ACTING PRESIDENT BRESLIN:     The  
16    roll is withdrawn, and the bill is laid aside.

17                  The Secretary will call the roll on  
18    Calendar Number 399.

19                  THE SECRETARY:         Calendar Number  
20    399, by Senator Thompson, Senate Print 3296G,  
21    an act to amend the Environmental Conservation  
22    Law.

23                  ACTING PRESIDENT BRESLIN:     Read  
24    the last section.

25                  THE SECRETARY:         Section 4.   This

1 act shall take effect immediately.

2 ACTING PRESIDENT BRESLIN: Call  
3 the roll.

4 (The Secretary called the roll.)

5 ACTING PRESIDENT BRESLIN:  
6 Senator Golden.

7 SENATOR GOLDEN: No.

8 ACTING PRESIDENT BRESLIN:  
9 Senator Golden recorded in the negative.

10 The roll call is withdrawn and the  
11 bill is laid aside.

12 We will now return to Calendar  
13 Number 330.

14 Senator Foley, an explanation has  
15 been requested by Senator Young.

16 SENATOR LIBOUS: Mr. President.

17 ACTING PRESIDENT BRESLIN:  
18 Senator Libous.

19 SENATOR LIBOUS: I believe  
20 there's an amendment at the desk. And we ask  
21 that you waive its reading and, if you would  
22 call on Senator Marcellino, that would be  
23 greatly appreciated at this time.

24 ACTING PRESIDENT BRESLIN: There  
25 is an amendment at the desk. Without

1 objection, the reading is waived.

2 And, Senator Marcellino, you may  
3 speak on the amendment.

4 SENATOR MARCELLINO: Thank you,  
5 Mr. President. I appreciate the recognition.

6 The term "hostile amendment," I  
7 really regret having to use it here because I  
8 don't think this is in fact -- is this on?  
9 The light's not. Okay, thank you.

10 I don't believe this is a hostile  
11 amendment. This is an attempt to take this  
12 bill and try to make it better, fairer to all  
13 parties that would be impacted by the bill.

14 There are a few subsections to this  
15 bill. The first amends the ECL. And in the  
16 bill, the language would read, between  
17 Sections -- the lines 18 -- just add it on to  
18 the end where it lists a series of chemicals  
19 or a series of stuff that could be used. This  
20 bill would add Sections 7 and 8 to that list  
21 and basically include the substances known as  
22 silica gels and other nonvolatile ready-to-use  
23 substances -- paste, foam or gel formulations  
24 of insecticides in areas inaccessible to  
25 children, or the application of a pesticide

1       which the United States Environmental  
2       Protection Agency has determined satisfies its  
3       reduced risk criteria, including a  
4       biopesticide. Which, for those who may not  
5       know, are naturally occurring pesticides in  
6       the plants or in the organisms. We would  
7       simply add that to this bill.

8               Section B or Amendment B to the  
9       legislation would allow nonpublic schools,  
10      which would come in the area of Line 25 in the  
11      bill, on page 2, would allow nonpublic schools  
12      to get approval from their trustees for  
13      emergency applications of pesticides.

14              Right now the bill reads "or in the  
15      case of public schools, the school boards  
16      could be used to declare an emergency." In  
17      other words, if an emergency was found, the  
18      school board would be able to say, in a public  
19      school situation, you could do this.

20              We're adding the language, we would  
21      simply say include "public and nonpublic  
22      schools" and the word "trustees," because  
23      nonpublic schools do not have school boards,  
24      necessarily. Some of them only have trustees.  
25      That would be -- and maybe one or two, and

1       they're not necessarily elected to any  
2       particular place.

3               So that, we think, would make the  
4       bill fairer for the nonpublic school and put  
5       them on the same plane with respect to this  
6       particular legislation. Those two would be  
7       amendments to the Environmental Law.

8               We would also add a section that  
9       would amend the Social Services Law, because  
10      as we know this bill also amends the Social  
11      Services Law with respect to daycare centers.  
12      And we would add the same lines 7 and 8 around  
13      Line 49 in the bill, which would again add  
14      those same chemicals that I mentioned and read  
15      before, the silica gels and the like, to the  
16      bill so that they could also be used.

17              These are non -- they're not  
18      neurotoxins, they would -- insects die and you  
19      could smother them. These are things that you  
20      would apply to an insect which would basically  
21      go over their outer shell and smother them and  
22      not engage in a neurotoxic thing.

23              This I don't think will -- I think  
24      this was left out inadvertently. I don't  
25      think this was left out for any particular



1       reason. I think this might be just something  
2       that was overlooked when the bill was written.  
3       So we feel that they should be added in  
4       because they're tools that could be used to  
5       assist anyone in a case where you want to  
6       engage in a program to get rid of a problem or  
7       a problem pest.

8               We would also add Section D, which  
9       would be Line 56 in the bill, which basically  
10      does the same thing for nonpublic daycare  
11      centers. It would allow them to be put on the  
12      same level as public daycare centers -- and  
13      frankly, nonpublic is 99 percent of the kind  
14      of daycare centers we deal with -- allow them  
15      the ability to go to their trustees or their  
16      board of directors or whatever to declare an  
17      emergency situation. That would put them on a  
18      par again with the public situation.

19             This also would add Section E to  
20      this bill. We noticed in the reading --  
21      Mr. President, I am having cross-conversations  
22      here which I really can't --

23             ACTING PRESIDENT BRESLIN:     Can we  
24      please have some quiet.

25             SENATOR MARCELLINO:     Thank you.

1 Appreciate it.

2 Section E deals with the effective  
3 date. There are two different effective dates  
4 in this bill. One is six months after the  
5 application; one is as much as a year later.

6 We would request or suggest that  
7 the effective date be one year from the date  
8 the bill is signed into law for both schools  
9 and daycare centers, giving them both equal  
10 and ample time to address the needs and change  
11 their rules and so forth that is necessary for  
12 these entities to survive.

13 Basically, that is the amendments  
14 to the bill. Again, I don't consider any of  
15 them hostile to the actual nature of the bill.  
16 I know the bill has been amended before; this  
17 was done at the request of members of the  
18 Environmental Committee, myself included. In  
19 discussion, we came up with afterwards more  
20 issues were raised that were not addressed by  
21 those initial amendments. We think the bill  
22 becomes fairer when you do it this way and  
23 more acceptable to us for that.

24 So I would request that these  
25 amendments be taken, put into place and make

1       the bill -- amend the bill, and pass it on to  
2       the other house and let them adopt the bill.  
3       I certainly would recommend a yes vote on the  
4       amended version or the amendments to this  
5       bill.

6                   Thank you, Mr. President.

7                   ACTING PRESIDENT BRESLIN:       Thank  
8       you, Senator Marcellino.

9                   Are there any other Senators  
10       wishing to be heard on the amendment?

11                   Hearing none, the question is on  
12       the nonsponsor motion to amend Calendar Number  
13       330. Those Senators voting in support of the  
14       nonsponsor amendment please raise your hands.

15                   Announce the results.

16                   THE SECRETARY:       Ayes, 29. Nays,  
17       32. Senator Golden recorded in the  
18       affirmative earlier today.

19                   ACTING PRESIDENT BRESLIN:       The  
20       motion fails.

21                   We're now back to the bill in  
22       chief.

23                   Senator Foley, there's been an  
24       explanation requested by Senator Young.

25                   SENATOR FOLEY:       Thank you,

1 Mr. President.

2 The hour is getting late, but  
3 certainly this resolution is something that is  
4 very timely and, as we said at the beginning  
5 of our proceedings today, the connection or  
6 the nexus between public health and good  
7 stewardship of our environment. And this bill  
8 exemplifies those two basic principles.

9 In short, this act would amend the  
10 Environmental Conservation Law, the Education  
11 Law, and the Social Services Law in relation  
12 to the use and guidance of pesticide  
13 alternatives. This bill, most importantly,  
14 will minimize the harmful effects of  
15 pesticides on children by limiting the use of  
16 aesthetic pesticides in sensitive outdoor  
17 areas such as in schools and daycare.

18 The bill provides that no school,  
19 nor will any daycare apply of these particular  
20 pesticides to any playgrounds, turf, athletic  
21 or playing fields, with the exception of  
22 emergency application. And by emergency  
23 application we mean, in effect, if there was  
24 some -- either some kind of pest that was  
25 affecting that particular turf and they had to

1       apply a particular kind of substance. Then  
2       there is an emergency procedure that can be  
3       followed.

4               And that emergency procedure is  
5       outlined in the law, whether it be a public  
6       school board or, in the case of a daycare and  
7       other institutions, it would be a local county  
8       health department or local commissioner of  
9       health or his or her designee.

10              What's most important here,  
11       Mr. Chairman, is that this particular  
12       resolution will do something that is very  
13       important when we want to try and protect  
14       children, and that is the principle of prudent  
15       avoidance. So I'll get into that more in  
16       detail, but that is let's say the overview,  
17       Senator Little, of the bill.

18              It would also require, once it's  
19       approved, for the commissioner of the  
20       Department of Environmental Conservation, in  
21       consultation with the Departments of Ed and  
22       Health, to develop guidelines on pesticide  
23       alternatives. That would be in the first six  
24       months. And then from that six-month period  
25       to the end of the year, those particular

1 pesticide alternative guidelines would then be  
2 sent to the relevant schools and other daycare  
3 centers.

4 And at the end of the first year,  
5 after the bill is signed into law, for that  
6 particular year those pesticides could be used  
7 for the year, but at the end of that year  
8 those pesticides would then be prohibited from  
9 future use.

10 So that is the -- it's Senator  
11 Young who asked after that? My apologies,  
12 Senator Young.

13 ACTING PRESIDENT BRESLIN:  
14 Senator Young.

15 SENATOR YOUNG: Thank you,  
16 Senator Foley. So you realized I'm Senator  
17 Young, then, right? Because I was going to  
18 say I guess to Democrats all Republican women  
19 must look alike.

20 (Laughter.)

21 SENATOR YOUNG: Thank you for  
22 that explanation. And I had a few questions  
23 that I'd like to pose to you, Senator Foley,  
24 if that's okay, Mr. President.

25 ACTING PRESIDENT BRESLIN:

1 Senator Foley, will you yield to questions  
2 from Senator Young?

3 SENATOR FOLEY: From Senator  
4 Young, yes.

5 SENATOR YOUNG: Thank you very  
6 much.

7 Senator Foley, what can you tell me  
8 what the definition of integrated pest  
9 management is?

10 ACTING PRESIDENT BRESLIN:  
11 Senator Foley.

12 SENATOR FOLEY: Yes.  
13 Mr. Chairman, over a period of time we've seen  
14 this courtroom strategy of trying to answer  
15 particular questions on particular areas of  
16 law.

17 And what I would say in this  
18 particular case is that IPM is not an area  
19 that is addressed in this bill. This is not  
20 about integrated pest management, this is  
21 about the avoidance of using pesticides as it  
22 relates to ballfields where children are  
23 playing.

24 ACTING PRESIDENT BRESLIN:  
25 Senator Young.

1                   SENATOR YOUNG:     Mr. President, if  
2     I could, Senator Foley.

3                   SENATOR FOLEY:     Yes.

4                   ACTING PRESIDENT BRESLIN:     Do you  
5     continue to yield, Senator Foley?

6                   SENATOR FOLEY:     Yes,  
7     Mr. President.

8                   SENATOR YOUNG:     This isn't a  
9     courtroom questioning, because integrated pest  
10    management is already being aggressively used  
11    by all of our school districts in New York  
12    State.

13                   So the reason that I asked you that  
14    question is that it's a way that schools use  
15    already to mitigate the use of pesticides and  
16    chemicals on school grounds, but it's a  
17    comprehensive approach. So you try to use  
18    natural methods first, and if those don't  
19    work, then you have to go to using some sort  
20    of pesticide if you have a serious problem  
21    that needs to be addressed.

22                   So the reason I asked you that is  
23    that it has a direct bearing on this  
24    particular piece of legislation.

25                   ACTING PRESIDENT BRESLIN:



1 Senator Foley.

2 SENATOR FOLEY: Thank you.

3 Certainly, yes, integrated pest  
4 management is an accepted practice. It's  
5 something that I know from my time of working  
6 with the Cornell Cooperative Extension  
7 sentence. Throughout the State of New York,  
8 they've been very much involved in integrated  
9 pest management.

10 However, I as one sponsor of the  
11 bill, as well as a number of organizations  
12 which I'll list later in the debate, believe  
13 that we need to go beyond integrated pest  
14 management and that in fact in this particular  
15 area we'll be able to have good turf, if you  
16 will, conditions for our children. And at the  
17 same time, instead of integrating pesticides  
18 into that management, we can avoid the use of  
19 pesticides almost, I'd say, totally in the  
20 care and maintenance of that turf.

21 So in other words, we want to go  
22 beyond IPM, we don't see the need for it if in  
23 fact, by adopting this bill -- and if in the  
24 remote condition that there's a need for some  
25 specialized application of pesticides, there

1 is that emergency mechanism within the bill to  
2 still provide for that.

3 But with integrated pest  
4 management, Mr. President, it still has an  
5 accepted practice the regular use of  
6 pesticides even though they do try to minimize  
7 it. This bill goes beyond IPM to say it  
8 should be even used less often than it is used  
9 under IPM conditions.

10 ACTING PRESIDENT BRESLIN:

11 Senator Young.

12 SENATOR YOUNG: Thank you,  
13 Mr. President. If Senator Foley would  
14 continue to yield.

15 ACTING PRESIDENT BRESLIN: Do you  
16 continue to yield, Senator Foley?

17 SENATOR FOLEY: Yes,  
18 Mr. President.

19 ACTING PRESIDENT BRESLIN: You  
20 may proceed, Senator.

21 SENATOR YOUNG: Thank you very  
22 much.

23 You know, just three weeks ago,  
24 approximately, the Senate Democrats in this  
25 house voted to slash school aid by

1       \$1.4 billion. And you talk about the need for  
2       not having to use pesticides. But when you  
3       break this down and look at the explosion of  
4       athletic sports fields, athletic sports, a lot  
5       of schools are putting up fields anywhere that  
6       they could. And as a result, they may not  
7       have proper irrigation, they have all kinds of  
8       needs that are very expensive to deal with.

9               And if you talk about, for example,  
10       if you have an athletic field that is attacked  
11       by some kind of fungus, it's going to cost  
12       \$75,000 or more to replace that field. Or if  
13       you use all these other methods that you're  
14       talking about, regular iteration, that costs  
15       tens of thousands of dollars to do that on a  
16       regular basis.

17               So on one hand, how can you vote to  
18       slash school aid and take away resources from  
19       our schools and then want to put through a  
20       piece of legislation that significantly  
21       increases costs to schools? This bill is a  
22       mandate on school districts. And so how can  
23       you justify that particular fact?

24               ACTING PRESIDENT BRESLIN:

25       Senator Foley.

1                   SENATOR FOLEY:     Thank you,  
2     Mr. President.  Obviously, I disagree with  
3     both contentions.

4                   Number one, when we speak about the  
5     whole issue of aid to education, in fact I as  
6     one Senator had stated on the floor that  
7     particular night that we would work day and  
8     night to try and restore as much of the cuts  
9     that were proposed by the Governor.  That's  
10    clear for the record.

11                  Number two, I would have to  
12    directly and also respectfully disagree with  
13    the cost estimates that you have cited in the  
14    case of different kinds of conditions that  
15    would have to be addressed if in fact those  
16    things happen to turf.

17                  I would also say -- through you,  
18    Mr. President -- you used the example of a  
19    fungicide.  This bill does not address the  
20    issues of fungicides for turf.  This is  
21    specifically a pesticide bill.  So the  
22    condition that you're speaking about, the  
23    school districts can simply go forward with  
24    how they work in that particular area of  
25    fungicides and the like if they needed to

1       apply that.

2                   This resolution is very narrowly  
3       focused. We heard from a whole host of folks  
4       who offered constructive criticism, so we  
5       narrowly focused the bill to schools and  
6       daycare and also to the use of pesticides. So  
7       I want to make it clear for the record, very  
8       clearly, it's not issues of either herbicides  
9       or fungicides, only of pesticides.

10                   ACTING PRESIDENT BRESLIN:

11       Senator Young.

12                   SENATOR YOUNG:     Thank you. Will  
13       Senator Foley continue to yield?

14                   ACTING PRESIDENT BRESLIN:

15       Senator Foley, will you continue to yield to  
16       Senator Young?

17                   SENATOR FOLEY:     Yes,  
18       Mr. President.

19                   ACTING PRESIDENT BRESLIN:     You  
20       may proceed, Senator Young.

21                   SENATOR YOUNG:     Thank you very  
22       much for that answer, but I have a whole sheet  
23       of additional costs right here as to what it  
24       would actually do to the school districts if  
25       you went ahead with this bill. So I have to

1 disagree with what you just said.

2           You know, when you pass legislation  
3 it's always critical, in my viewpoint, to have  
4 facts and to have evidence supporting your  
5 claim. So you're talking about that this is  
6 going to protect children and children are  
7 being harmed across the state because of the  
8 use of pesticides to deal with significant  
9 problems that may emerge at schools in the use  
10 of pesticides.

11           What actual cases can you cite  
12 today that support your contention?

13           SENATOR FOLEY:     Well, there's a  
14 body of scientific evidence to this effect.  
15 And certainly if I was in the opposition  
16 before today, I would have done my homework  
17 myself and looked up those particular cases.

18           What I would say is the following.  
19 Whether it's the National Academy of  
20 Sciences -- as a matter of fact, some years  
21 ago when I was in the county legislature and  
22 Senator Marcellino was carrying the  
23 neighborhood notification bill, they cited the  
24 National Academy of Science reports that dealt  
25 with neurotoxicity and pesticides and how

1       there is in fact some connection between the  
2       two, particularly with youngsters. And that  
3       was one of the reasons why there was  
4       widespread support for Senator Marcellino's  
5       neighborhood notification law that went into  
6       effect in the state and also in our county.

7               So you certainly just have to look  
8       through scientific journals and particularly  
9       the National Academy of Science. I'm not  
10      going to give you chapter and verse tonight,  
11      but certainly there is that body of evidence.

12             But I would also say there's also  
13      another principle that's at play here. And I  
14      can think for an example, Senator Young, that  
15      when we speak, for instance, with the  
16      Huntington Breast Cancer Action Coalition and  
17      the neighborhood network, as well as the  
18      Rochester Breast Cancer Coalition, one of the  
19      bedrock principles, again, of these  
20      organizations is that prevention is the cure.  
21      And the way that you prevent is by avoiding.

22             So if we have prudent avoidance,  
23      that's the way to prevent any kind of, let's  
24      say, any kind of interaction with these  
25      chemicals and pesticides, which in turn can in

1 fact cause not just problems with cancer, but  
2 they have proven before to cause respiratory  
3 illnesses. That is unimpeachable.

4 So again, if we believe that  
5 prevention is the cure and the way that one  
6 prevents is by avoidance, this particular  
7 approach will enable these children to avoid a  
8 situation that could cause some real harm to  
9 their health.

10 ACTING PRESIDENT BRESLIN:

11 Senator Young.

12 SENATOR YOUNG: Through you,  
13 Mr. President.

14 ACTING PRESIDENT BRESLIN: Do you  
15 continue to yield, Senator Foley?

16 SENATOR FOLEY: Yes,  
17 Mr. President.

18 ACTING PRESIDENT BRESLIN: You  
19 may proceed, Senator.

20 SENATOR YOUNG: So basically what  
21 you just said, Senator Foley, is that you  
22 cannot cite one particular incidence in this  
23 entire state, you can't cite one case that  
24 proves that this is harmful. You can't give  
25 me any example from any particular school



1 district or daycare in this state where a  
2 child was actually harmed.

3 ACTING PRESIDENT BRESLIN:  
4 Senator Foley.

5 SENATOR FOLEY: Yes, thank you.

6 Do I have in front of me a list,  
7 the chapter and verse of a list of children  
8 who have been impacted? No, not in front of  
9 me.

10 However, when you have -- again,  
11 when you have an array of different  
12 organizations that support this particular  
13 proposal, it speaks to the importance and the  
14 strength of the argument that if you want to  
15 have a principle of prudent avoidance and it's  
16 proven that these particular pesticides can  
17 cause problems -- now, can I give you chapter  
18 and verse of which school districts? No. I'd  
19 be happy to follow up with that.

20 And I think also, if I may say  
21 through the chair, that in fact if any Senator  
22 wanted this information, this resolution has  
23 been around for quite a number of months. I  
24 would have been more than happy to furnish  
25 that information before being asked just five

1 minutes ago.

2 ACTING PRESIDENT BRESLIN:

3 Senator Young.

4 SENATOR YOUNG: Through you,  
5 Mr. President.

6 ACTING PRESIDENT BRESLIN: Will  
7 you continue to yield, Senator Foley?

8 SENATOR FOLEY: Yes,  
9 Mr. President.

10 SENATOR YOUNG: So, Senator  
11 Foley, you're saying that you don't have a  
12 list with you today. Have you ever seen a  
13 list?

14 ACTING PRESIDENT BRESLIN:  
15 Senator Foley.

16 SENATOR FOLEY: Thank you. As I  
17 mentioned earlier, I'd be more than happy to  
18 put together the scientific information that  
19 you need to help in your decision-making. Do  
20 I have a list of particular students? No. We  
21 don't have that list, no.

22 SENATOR YOUNG: Okay, so the  
23 answer is no.

24 ACTING PRESIDENT BRESLIN:  
25 Senator Young.

1                   SENATOR YOUNG:     Mr. President,  
2     through you.   Senator Foley --

3                   ACTING PRESIDENT BRESLIN:     Do you  
4     continue to yield?

5                   SENATOR FOLEY:     Yes,  
6     Mr. President.

7                   SENATOR YOUNG:     Senator Foley,  
8     it's my understanding that deer ticks and Lyme  
9     disease are a tremendous problem on Long  
10    Island.  Is that true?

11                  SENATOR FOLEY:     It's true in may  
12    parts of the state.  But it's true in our  
13    region, yes, it is.

14                  SENATOR YOUNG:     Right.  It's my  
15    understanding that it's Long Island, Hudson  
16    Valley especially.  Of course it's an issue  
17    across all of New York State.  But when you  
18    have a serious issue with deer ticks and Lyme  
19    disease, why would you disallow school  
20    districts from being able to treat for deer  
21    tick infestation if they have it?  Aren't you  
22    putting children at risk that way?

23                  ACTING PRESIDENT BRESLIN:  
24    Senator Foley.

25                  SENATOR FOLEY:     Senator Young, do

1       you care to rephrase your question?

2                   SENATOR YOUNG:       Why should I  
3       rephrase my question? I'm asking you a  
4       question.

5                   SENATOR FOLEY:       Because it  
6       doesn't prohibit that use. Through the  
7       President. Thank you.

8                   This is what happens,  
9       Mr. President, when one goes on for hours and  
10      it's getting late into the evening and they  
11      try to find any reason to hang their hat to  
12      oppose a bill.

13                   I'll speak for a moment as a former  
14      chairman of the Health Committee in Suffolk  
15      County that had, in fact, a number of public  
16      hearings on the whole issue of deer tick  
17      population. And as Senator LaValle may  
18      recall, there's a certain Dr. Duttweiler from  
19      Stony Brook University, one of the foremost  
20      experts in the world on deer tick population.

21                   I can say unequivocally to you,  
22      Senator Young, I would never put forward any  
23      kind of legislation that would put in harm's  
24      way any child or any adult as it relates to  
25      deer ticks.

1           Let me go on further. I would say  
2           to you and to any who, again, are looking for  
3           a reason to vote no, I have not heard of one  
4           example where one football field, where one  
5           soccer field, where one baseball field ever  
6           had a deer tick problem.

7           Now, that may happen. But there  
8           are mechanisms through this resolution, if and  
9           when approved, that would enable those school  
10          districts to apply that particular substance,  
11          whatever it might be, to attack that  
12          particular problem. But I can tell you,  
13          standing here tonight and having been involved  
14          in scholastic athletics for many decades, I  
15          have not heard of one example of that. But if  
16          it would happen, in the most remote of  
17          possibilities, there are mechanisms within  
18          this bill that would address that problem,  
19          however remote that it is.

20                 ACTING PRESIDENT BRESLIN:

21          Senator Young.

22                 SENATOR YOUNG:       Thank you,  
23          Mr. President. Through you. Senator Foley --

24                 ACTING PRESIDENT BRESLIN:       Would  
25          you continue to yield, Senator Foley?

1                   SENATOR FOLEY:       Certainly.

2                   SENATOR YOUNG:       Senator Foley,  
3       it's interesting you bring that up, because  
4       you touched on it just briefly in your  
5       explanation, but you talked about there are  
6       provisions in the bill that allow for  
7       emergency application. But could you explain  
8       exactly how that would work, what kind of  
9       hoops you would have to jump through to get  
10      that kind of allowance?

11                  SENATOR FOLEY:       Sure.

12                  ACTING PRESIDENT BRESLIN:  
13      Senator Foley.

14                  SENATOR FOLEY:       The simple answer  
15      is that it's contained in the resolution  
16      itself. But since that's not enough of an  
17      answer, even though it's contained in the body  
18      of the resolution, I would then go on to the  
19      question at hand.

20                  If in fact the school board had a  
21      problem where there was a need to apply a  
22      pesticide, the school board itself can make  
23      that decision and then they can move forward  
24      to apply that particular -- make that  
25      particular application.

1                   For a daycare or others, they could  
2                   then appeal to the local county health  
3                   department. If there is no local county  
4                   health department, it can go through a  
5                   designee of the county legislature, as one  
6                   example.

7                   But the important part is that if  
8                   and when the bill is approved, the Departments  
9                   of Environmental Conservation and Education  
10                  would promulgate the rules and regulations,  
11                  and this would lead to the administration of  
12                  this law. Those two departments would  
13                  promulgate the rules and regulations that  
14                  would put in place the process that would be  
15                  followed in order to make those particular  
16                  applications if it's not a school board.

17                  And I am going to ensure or let's  
18                  say request of the departments, of those two  
19                  departments when they promulgate these rules  
20                  that it will be as small of a window of time  
21                  of response as possible. And I'm highly  
22                  confident that they could put together a very  
23                  short window that they would be able to give a  
24                  response to that organization that needs to  
25                  use that pesticide, in the remote case that it

1       might need it.

2                   ACTING PRESIDENT BRESLIN:

3       Senator Young.

4                   SENATOR YOUNG:     Mr. President,  
5       will Senator Foley continue to yield.

6                   ACTING PRESIDENT BRESLIN:     Do you  
7       continue to yield, Senator Foley?

8                   SENATOR FOLEY:     Yes,  
9       Mr. President.

10                  ACTING PRESIDENT BRESLIN:     You  
11       may proceed, Senator Young.

12                  SENATOR YOUNG:     Thank you.

13                  Well, Senator Foley, it sounds from  
14       what you just said that there's an awful lot  
15       of red tape that would go along with this bill  
16       and that it could get jammed up in the  
17       process.

18                  But I wanted to ask you some  
19       additional questions. Can you describe what  
20       anaphylactic shock is?

21                  SENATOR FOLEY:     How does it  
22       relate to the resolution?

23                  SENATOR YOUNG:     Oh, it absolutely  
24       relates to it, and I'll tell you why. Under  
25       your bill, you would not allow for the



1 treatment of clover on athletic fields.  
2 Clover is a food source for bees and other  
3 flying insects that sting. And if you  
4 eliminate the food source, you eliminate the  
5 bees.

6 But I asked you about anaphylactic  
7 shock because that's a very serious health  
8 issue. Again, that could occur if this bill  
9 goes through. So I just wanted to ask you if  
10 you knew what it was.

11 ACTING PRESIDENT BRESLIN:

12 Senator Foley.

13 SENATOR FOLEY: Thank you,  
14 Mr. President.

15 The reason I asked why it's  
16 relevant to the legislation is the fact that  
17 this was brought up in committee. And I had  
18 mentioned to Senator Young at that time that  
19 clover is also an excellent source of  
20 nitrogen, and there would be less of a need to  
21 in fact put down some fertilizers that you  
22 otherwise would have to if you didn't have  
23 clover as part of the mix for those particular  
24 fields.

25 Again, these are very, very remote,

1       very extreme examples, Senator Young. I very  
2       much doubt that those problems would arise.  
3       And if they do, there already are protocols  
4       within schools if and when a child comes --  
5       I'll say comes down or has an anaphylactic  
6       reaction, whether in the school or in the  
7       fields. So those particular, let's say,  
8       protocols are already in place in every school  
9       district if that would happen either in the  
10      school building or on school grounds. So  
11      those same protocols would still hold true if  
12      and when this legislation would be approved.

13                ACTING PRESIDENT BRESLIN:

14      Senator Young.

15                SENATOR YOUNG:       Thank you,  
16      Mr. President. Would Senator Foley continue  
17      to yield?

18                ACTING PRESIDENT BRESLIN:       Will  
19      you continue to yield, Senator Foley?

20                SENATOR FOLEY:       Yes,  
21      Mr. President.

22                SENATOR YOUNG:       I just want to  
23      remark first that those protocols are after  
24      the fact. And clover is a very common problem  
25      that we see in our athletic fields. And even

1 if you aerate the soil, you can avoid all that  
2 and all that additional cost if you treat a  
3 field for clover, and it can last up to five  
4 years. But right now, if this bill goes  
5 through, you're going to tie the school  
6 district's hands to be able to deal with that  
7 situation.

8 But I wanted to ask you about  
9 athletic injuries. And there's a real problem  
10 when grubs attack the root systems of athletic  
11 fields, because the ground becomes unstable,  
12 you see a dramatic increase in ankles being  
13 broken, legs being broken, arms, collarbones,  
14 head injuries.

15 And I guess, again, I'd like to ask  
16 if you can't treat for grubs under this bill,  
17 and you're going to see an increase in  
18 children's injuries if they're playing sports,  
19 how can you justify this?

20 ACTING PRESIDENT BRESLIN:  
21 Senator Foley.

22 SENATOR FOLEY: Again,  
23 Mr. President, I dispute the exaggerated  
24 claims about what would happen if in fact  
25 there's a grub infestation on the fields.

1                   And again, the bill allows for  
2                   emergency applications of a pesticide if in  
3                   fact the need arises. And again, if it's on  
4                   school grounds in public schools, there are  
5                   other mechanisms contained in the law in a  
6                   very clear and simple way that school boards  
7                   could in fact move forward with making that  
8                   quick determination.

9                   So again, there's no -- there is --  
10                  we would hope that there will be far less need  
11                  to use these particular pesticides, or no need  
12                  to use it, but particularly to take  
13                  alternative turf guidelines that can help to  
14                  strengthen that turf and in so doing make it  
15                  far less likely that there will be anything  
16                  that would occur that will put stress on the  
17                  turf.

18                  But in the remote -- again, the  
19                  remote possibility of these things happening,  
20                  there are mechanisms in the bill that will  
21                  allow those applications to occur.

22                  ACTING PRESIDENT BRESLIN:

23                  Senator Young.

24                  SENATOR YOUNG:       Will Senator  
25                  Foley continue to yield?

1                   SENATOR FOLEY:     Yes,  
2     Mr. President.

3                   ACTING PRESIDENT BRESLIN:  
4     Senator Foley continues to yield.

5                   SENATOR YOUNG:     I'd just like to  
6     follow up on that point about grubs.  Because  
7     what, Senator Foley, you're talking about is  
8     waiting until this problem gets out of control  
9     and then trying to deal with it.

10                  Basically, what happens with grubs  
11     is if you treat the field two years in a row  
12     in early July when school is out of session,  
13     then you totally avoid the problem.  And what  
14     you're saying now is that wait until there's a  
15     huge problem, kids are getting hurt, and then  
16     maybe we'll treat it through some kind of an  
17     emergency application.  I don't see how that  
18     makes sense.

19                  ACTING PRESIDENT BRESLIN:  
20     Senator Foley.

21                  SENATOR FOLEY:     Again, that's not  
22     the scenario that I would foresee.  If in fact  
23     the grounds supervisor sees that there's an  
24     initial problem or, let's say, the initial  
25     phase of that particular grub problem --

1       because it all doesn't happen at once -- he  
2       can then immediately -- he or she can then  
3       immediately appeal to the school district  
4       officials to trigger the process that would  
5       quickly respond to the problem.

6                SENATOR YOUNG:       Mr. President.

7                ACTING PRESIDENT BRESLIN:       Would  
8       you continue to yield to Senator Young?

9                SENATOR FOLEY:       Yes,  
10       Mr. President.

11               SENATOR YOUNG:       Senator Foley,  
12       have you ever had poison ivy?

13               SENATOR FOLEY:       Again, I don't  
14       see the relevancy of the question. But I  
15       think, given the tenor of the day, where such  
16       kinds of questions have been asked on other  
17       bills, the answer is no.

18               SENATOR YOUNG:       Okay. So --

19               ACTING PRESIDENT BRESLIN:  
20       Senator Young.

21               SENATOR YOUNG:       Through you.

22               ACTING PRESIDENT BRESLIN:       Do you  
23       continue to yield, Senator Foley?

24               SENATOR FOLEY:       On non-poison ivy  
25       questions, sure.

1                   SENATOR YOUNG:     The reason,  
2     Senator Foley, that I'm asking about poison  
3     ivy is again, under your legislation, school  
4     districts and daycares would not just be able  
5     to go out and treat poison ivy if they see it  
6     growing on a tree or a fence near a  
7     playground, for example, or on school grounds.

8                   I can't think of any parent who I  
9     know who would want their child to come home  
10    with a bad case of poison oak or poison ivy.  
11    Now, a lot of times people will say that,  
12    well, we train the kids, it has three leaves,  
13    so they'll identify it. Do you know what  
14    poison ivy looks like in March?

15                  ACTING PRESIDENT BRESLIN:  
16     Senator Foley.

17                  SENATOR FOLEY:     Well, let me  
18     answer the question this way. Again, similar  
19     to the earlier question about fungicides,  
20     Mr. President, this bill focuses on  
21     pesticides. In order to combat poison ivy,  
22     that would then be a select application of an  
23     herbicide. So again, we're not talking about  
24     herbicides or fungicides here, we're talking  
25     about pesticides.

1           A pesticide has no role with poison  
2     ivy. So again, just as the protocol has been  
3     all these years when it comes to trying to  
4     eradicate poison ivy on school grounds or  
5     other grounds, the same protocols can be used  
6     even when this legislation is approved.

7           SENATOR YOUNG:     Thank you.  
8     Mr. President, one more question.

9           ACTING PRESIDENT BRESLIN:     One  
10    more question, Senator Foley. Will you yield  
11    to Senator Young?

12          SENATOR FOLEY:     I'll be happy to  
13    yield to Senator Young.

14          SENATOR YOUNG:     I just want to go  
15    back to the emergency procedures one more  
16    time. Because you talked about how you were  
17    going to mitigate the amount of time that it  
18    took to get emergency appeals through.

19          SENATOR FOLEY:     Yes.

20          SENATOR YOUNG:     But exactly how  
21    long would the emergency procedures take to  
22    effectuate a treatment from identification of  
23    a problem to the application of the accepted  
24    pesticides?

25          SENATOR FOLEY:     That's an



1       excellent question, a fair question. Probably  
2       the best question that's been asked so far  
3       tonight.

4               That's why I said earlier the same  
5       principles apply whether at the county level,  
6       city level, state level. We as legislators  
7       will propose and approve laws. Then we then  
8       turn to the administrative branch of  
9       government, and then they will promulgate the  
10      rules and regulations that will effectuate the  
11      law.

12             And as I said earlier, it's my  
13      expectation and the way that this Senator  
14      works, if and when a bill of his is approved,  
15      is to follow through and speak with the  
16      relevant departments to make sure that they  
17      promulgate rules and regulations that reflect  
18      both the intent and the spirit of the bill  
19      that this Senator proposes.

20             So I would say most directly to  
21      Senator Young that through the process of  
22      promulgation of the rules and regs, it will in  
23      fact be a period of time that will enable the  
24      school or the other institution to address it  
25      that timely, effective manner.

1                   ACTING PRESIDENT BRESLIN:

2       Senator Young.

3                   SENATOR YOUNG:       On the bill.

4                   ACTING PRESIDENT BRESLIN:

5       Senator Young, on the bill.

6                   SENATOR YOUNG:       Thank you,  
7       Mr. President.

8                   You know, this particular piece of  
9       legislation is totally unnecessary. Because  
10      our school districts already are very  
11      responsible in dealing with this issue. And  
12      basically what this would do is drive up  
13      costs. It's another unfunded mandate from  
14      New York State that would be burdened on our  
15      school districts at a time when they are  
16      suffering mightily. They are facing  
17      tremendous budget cuts right now. And to put  
18      this on their backs is totally wrong.

19                  And, you know, we talk a lot in  
20      this chamber about unintended consequences.  
21      The unintended consequences of this bill are  
22      that children could be hurt, not helped.

23                  We talked about the fact that Lyme  
24      disease is a tremendous problem across the  
25      state, particularly in Long Island and the

1 Hudson Valley. And I was talking to a  
2 pesticide applicator who deals with a lot of  
3 school districts recently, and he told me a  
4 story. He said that he went to a woman's  
5 house in the Hudson Valley and she had him  
6 applying pesticides to deal with deer ticks,  
7 but she wanted it all over her property, way  
8 beyond what he would normally recommend.

9 And he said to her, "Don't you  
10 think you're going a little bit overboard on  
11 this?" And she said, "Come in my house, I  
12 want to show you something."

13 So he went in her house, and on her  
14 couch was a little two-year-old girl on a  
15 respirator. And she said, "When I was  
16 pregnant, I took care of myself, I ate well, I  
17 walked every day on my property. And I didn't  
18 know it, but I contracted Lyme disease while I  
19 was pregnant. And as a result, my baby will  
20 never be able to breathe on her own."

21 Those are the effects of Lyme  
22 disease on people's lives. And I think you  
23 have to take that into account.

24 Anaphylactic shock is another very  
25 serious problem. And as I said, it's very

1       difficult to treat for clover once it takes  
2       hold. And you have to have the ability to get  
3       it off the athletic fields.

4               I have personal experience with  
5       this, because when my son Patrick was a little  
6       boy, we were on school grounds, he went  
7       running up to a chain link fence, and being a  
8       little boy, he shook it. And what he did not  
9       know is that there was a yellow-jacket nest  
10      next to the fence. Yellow jackets, as we all  
11      know in this chamber, are extremely  
12      aggressive. Some flew out, and they started  
13      to sting him. The next thing I knew, his face  
14      was swelling up, he was turning blue. I had  
15      to rush him to the emergency room.

16             Fifty people in this country die  
17      every year from anaphylactic shock. Millions  
18      of people are allergic to bee stings. Why  
19      wouldn't we give the school districts the  
20      ability to fend off a serious problem before  
21      the fact and not wait for some tragedy to  
22      happen?

23             You know, it's time that we applied  
24      a little common sense in this chamber. And on  
25      the surface, this bill sounds like a good

1       idea. But I believe very strongly it's the  
2       wrong thing to do, it's the wrong action to  
3       take. I would urge everyone to vote no on  
4       this legislation for all the things that we  
5       talked about.

6               But to create more bureaucracy,  
7       more red tape, tie the districts' hands and  
8       create another financial burden on them and  
9       jeopardize our children's health and safety is  
10      the wrong way to go.

11             Thank you.

12             ACTING PRESIDENT BRESLIN:     Thank  
13      you, Senator Young.

14             Senator Libous, on the bill.

15             SENATOR LIBOUS:     Thank you,  
16      Mr. President. On the bill.

17             You know, when I heard the exchange  
18      between Senator Young and Senator Foley, I was  
19      a little disappointed, Senator Foley. I felt  
20      that maybe you didn't take Senator Young's  
21      questions serious, because there were some  
22      flippant answers that were given back.

23             And I just want to back up some of  
24      the things that she said. And I think the  
25      best way to do it is to read a letter that I

1 received today.

2 It says: "Good morning. I am  
3 writing from the Union-Endicott Central School  
4 District to ask that you please consider our  
5 concerns regarding the fact that the Senate  
6 and Assembly are planning on passing  
7 legislation this week for Earth Day that would  
8 prohibit the use of certain pesticides on  
9 school properties.

10 "While well-meaning, the bill is  
11 harmful. In the midst of weathering the  
12 financial crisis, the state would force  
13 schools to buy new products as well as hire  
14 and pay to train new staff. It would also  
15 impose a senseless, uniform approach to  
16 problems that are unique in each school  
17 district.

18 "The legislation purports to  
19 advance the safety of children but ignores the  
20 threat of Lyme disease and other pest-borne  
21 diseases and, just as importantly, the history  
22 of the school district's judicious use of  
23 these products.

24 "Please know that we are not  
25 endangering the health of our students, as

1       claimed by the sponsor. Please realize that  
2       this bill will add another unfunded mandate to  
3       an already long list of unnecessary, unpaid  
4       requirements placed upon us and our taxpayers  
5       with no evidence of necessity.

6               "Thank you for any help you can  
7       give us on this matter.

8               "Suzanne E. McLeod, Superintendent  
9       of the Union-Endicott School District."

10              So, Mr. President, Senator Young's  
11       questions are serious questions. They are  
12       questions that not only she has on behalf of  
13       our constituents, I have on behalf of mine.  
14       And one who is a superintendent responsible --  
15       Union-Endicott happens to be one of the  
16       biggest school districts in my area. And this  
17       superintendent is responsible for her children  
18       and is concerned about this legislation.

19              So I think that anytime anything is  
20       discussed in this chamber, while from time to  
21       time we may disagree and have different  
22       feelings and sometimes, you know, we get a  
23       chuckle out of a bill, as we did earlier with  
24       Senator Squadron -- and certainly that was  
25       important to him, and it passed -- I would

1 hope that all of our colleagues take very  
2 serious that those of us, in this case in  
3 upstate districts who are concerned about the  
4 children of their school district and  
5 certainly concerned about additional mandates  
6 and concerned about what is going to be placed  
7 on school districts in a fiscal crisis -- and  
8 again, Mr. President, I will say it, at a time  
9 when we don't have a budget done -- I think  
10 these are very serious concerns.

11 And as Senator Young pointed out, I  
12 too share the concerns, the questions that she  
13 asked, as do superintendents in my district.

14 Thank you, Mr. President.

15 ACTING PRESIDENT BRESLIN: Thank  
16 you, Senator Libous.

17 Senator Marcellino, on the bill.

18 SENATOR MARCELLINO: Thank you,  
19 Mr. President. Will Senator Foley please  
20 yield to a question?

21 SENATOR FOLEY: Sure.

22 ACTING PRESIDENT BRESLIN:  
23 Senator Foley, will you yield to Senator  
24 Marcellino?

25 SENATOR FOLEY: Yes,



1 Mr. President.

2 SENATOR MARCELLINO: Senator  
3 Foley, you mentioned before in your  
4 cross-conversation with Senator Young that  
5 pesticides, as you define them, do not include  
6 fungicides, herbicides and others? I don't  
7 know the full length of it, but you did  
8 mention fungicides and herbicides?

9 SENATOR FOLEY: The bill is  
10 focused on pesticides, correct.

11 SENATOR MARCELLINO: Are you  
12 familiar with the definition of "pesticides"  
13 in the ECL? I'm sorry, through you,  
14 Mr. President.

15 ACTING PRESIDENT BRESLIN: Yes.  
16 Senator Foley, do you yield to another  
17 question?

18 SENATOR FOLEY: Yes.

19 ACTING PRESIDENT BRESLIN: You  
20 may proceed, Senator Marcellino.

21 SENATOR MARCELLINO: The  
22 definition of "pesticides" in the ECL includes  
23 insecticides, rodenticides, and fungicides.

24 Factually -- your statement, sir,  
25 is factually incorrect. Go right ahead.

1                   ACTING PRESIDENT BRESLIN:

2           Senator Foley.

3                   SENATOR FOLEY:       Thank you,  
4           Mr. President, for the opportunity to respond.  
5           And I'll certainly take that correction to  
6           heart.

7                   SENATOR MARCELLINO:     It's --

8                   SENATOR FOLEY:       Let me finish the  
9           point.

10                   But it also speaks to the point I  
11           raised earlier, which is the fact that there  
12           are mechanisms within the bill, if it becomes  
13           law, that would enable the schools to move  
14           forward with applications of those particular  
15           chemicals if in fact it's required under an  
16           emergency situation.

17                   So while there is an initial  
18           prohibition of the use, if in fact there is an  
19           emergency situation, they could still then be  
20           used within the rules and regulations that  
21           will be promulgated by the relevant  
22           departments.

23                   ACTING PRESIDENT BRESLIN:

24           Senator Marcellino.

25                   SENATOR MARCELLINO:     Now that

1 we've cleared up with the definition of  
2 "pesticides" is --

3 ACTING PRESIDENT BRESLIN: Would  
4 you like to ask an additional question?

5 SENATOR MARCELLINO: If I could  
6 just preamble it, I'll then get to that, sir.  
7 With all due respect.

8 ACTING PRESIDENT BRESLIN:  
9 Pardon?

10 SENATOR MARCELLINO: I just want  
11 to preamble it, and then I'll ask him a  
12 question. Is that okay?

13 ACTING PRESIDENT BRESLIN: Sure.

14 SENATOR MARCELLINO: Thank you  
15 very much.

16 ACTING PRESIDENT BRESLIN: Would  
17 you yield to a question, Senator Foley?

18 SENATOR FOLEY: Yes,  
19 Mr. President.

20 SENATOR MARCELLINO: Thank you,  
21 sir.

22 The section of the bill reads  
23 from -- I'm starting at line 19 on page 2 of  
24 the bill. Starting at "No school shall apply  
25 pesticide to any playgrounds, turf, athletic

1 fields except that emergency applications of a  
2 pesticide may be made as determined by the  
3 county health department or, in a county not  
4 having a health department, such authority as  
5 the county legislature shall designate, the  
6 commissioner of health or his or her designee,  
7 the commissioner of environmental conservation  
8 or his or her designee, or, in the case of a  
9 public school, the school boards."

10 In my amendment before, I asked  
11 that we include private and parochial schools  
12 in that list. Because the way I read this  
13 section, they're not included here. They  
14 don't have elected school boards. They have  
15 trustees, maybe an owner, whatever. But they  
16 don't have elected school boards as defined by  
17 this bill. So all we wanted to ask in the  
18 definition was to include them in the list.

19 ACTING PRESIDENT BRESLIN:

20 Senator Foley.

21 SENATOR FOLEY: Yes, thank you,  
22 Mr. President.

23 In those particular instances, say  
24 either in our counties -- in Suffolk County or  
25 Nassau County, for example, those particular

1 schools would be able to appeal directly to  
2 the local county health department for an  
3 emergency application of the required  
4 pesticide.

5 SENATOR MARCELLINO: Mr.  
6 President, if the Senator would continue to  
7 yield.

8 ACTING PRESIDENT BRESLIN:  
9 Senator Foley, would you continue to yield to  
10 Senator Marcellino?

11 SENATOR FOLEY: Yes,  
12 Mr. President.

13 ACTING PRESIDENT BRESLIN: You  
14 may proceed, Senator Marcellino.

15 SENATOR MARCELLINO: Thank you.

16 As I said earlier, words matter,  
17 Senator. It says clearly here "or, in the  
18 case of public schools." It says "no school  
19 shall apply," and then it excludes public  
20 schools by allowing them to go to their school  
21 boards. Private schools do not have that.  
22 They just don't. Therefore, they're excluded  
23 here. They don't have that.

24 They have to go up to the  
25 Commissioner of Health in the state, because

1       there are counties in the state, as you  
2       recognized by accepting the amendments, that  
3       don't have health departments. There are at  
4       least 10 counties that don't have health  
5       departments. Some counties don't have county  
6       legislators.

7               So, you know, you're dealing with a  
8       situation that we asked to correct, and all  
9       we're saying, put nonpublic schools, parochial  
10      schools on the same playing field so that they  
11      too can be protected by your law. That's all  
12      we're saying.

13             ACTING PRESIDENT BRESLIN:     If you  
14      consider it a question, can you answer that,  
15      Senator Foley?

16             SENATOR MARCELLINO:        I thought it  
17      was a question.

18             SENATOR FOLEY:        Again, Senator  
19      Marcellino, they can appeal to, in this case,  
20      the State Health Department. In fact, I would  
21      say this. This particular section of law --  
22      this particular section of the bill, rather,  
23      came from a suggestion that you had made at  
24      our Environmental Conservation Committee  
25      meeting, and it was a point well-taken, as far

1 as either DEC or the Health Department or  
2 their designee.

3 So again, the way the bill is  
4 constructed, those particular schools would  
5 have several options that they could pursue in  
6 order to receive the approval to move forward  
7 with a pesticide application. And again, that  
8 would be reflected in the rules and regs  
9 promulgated by the relevant department.

10 ACTING PRESIDENT BRESLIN:

11 Senator Marcellino.

12 SENATOR MARCELLINO: Mr.

13 President, through you, if the Senator will  
14 continue to yield.

15 ACTING PRESIDENT BRESLIN:

16 Senator Foley, will you continue to yield?

17 SENATOR FOLEY: Yes,

18 Mr. President.

19 SENATOR MARCELLINO: Senator, you

20 can say it every way you wish. The language  
21 in the bill -- and I agree, the language in  
22 the bill simply excludes nonpublic schools.  
23 That's what the phrase means at the end.

24 And had we added that amendment,  
25 had we added that fix, I wouldn't have a

1       problem with that. I don't necessarily agree  
2       that this bill is absolutely necessary. I  
3       think it's covered in a whole bunch of  
4       different rules. And a whole bunch of  
5       different laws take into consideration most of  
6       what you want to do. I think basically we're  
7       looking -- we have a solution looking for a  
8       problem here.

9               But that being said, in order to  
10       fix the bill -- and I believe it can be fixed,  
11       that was the purpose of the amendment. Not to  
12       derail the bill, not to stop the bill, but to  
13       fix it. I believe there's a fix necessary  
14       here.

15               ACTING PRESIDENT BRESLIN:

16       Senator Foley.

17               SENATOR FOLEY:       Thank you.

18               In past conversations that I've had  
19       with Senator Marcellino, certainly you've  
20       expressed support for the bill. And in prior  
21       conversations that we've had -- in fact, even  
22       at committee -- once we made the initial  
23       amendments, and Senator Thompson will recall  
24       this as well, when we made the amendments as  
25       suggested by Senator Marcellino several weeks



1       ago, there was -- in fact, he supported the  
2       bill being reported out of committee with  
3       those amendments.

4               So again, I'm a little surprised by  
5       the fact that several hours ago we did in fact  
6       receive some hostile amendments by the Senator  
7       who had heretofore supported the bill.

8               Certainly, going forward --

9               ACTING PRESIDENT BRESLIN:  
10       Senator Duane -- excuse me, Senator Foley.  
11       Senator Duane, why do you rise?

12               SENATOR DUANE:       Thank you,  
13       Mr. President. I'm assuming that Senator  
14       Foley has the floor, and I would like to ask  
15       the Senator --

16               ACTING PRESIDENT BRESLIN:       At  
17       this point, Senator Marcellino has the floor.

18               SENATOR MARCELLINO:       I believe I  
19       have the floor, Mr. President.

20               SENATOR DUANE:       No, I think  
21       Senator Foley has the floor.

22               SENATOR MARCELLINO:       No, he's  
23       yielding to a question.

24               ACTING PRESIDENT BRESLIN:       No,  
25       Senator Marcellino has asked if -- Senator

1 Marcellino has the floor.

2 SENATOR FOLEY: We'll get to it,  
3 Tom.

4 Mr. President --

5 ACTING PRESIDENT BRESLIN:

6 Senator Duane, to explain, earlier I  
7 recognized Senator Marcellino, and he's been  
8 asking questions of Senator Foley. So Senator  
9 Marcellino has the floor to ask those  
10 questions. Thank you, Senator Duane.

11 SENATOR FOLEY: Thank you.

12 So again, there were amendments  
13 that were suggested by Senator Marcellino, we  
14 incorporated those amendments, he supported  
15 the bill. So I was a little surprised to see  
16 the hostile amendments today.

17 Let me just say this. Some of the  
18 elements of the amendment that he proposed  
19 certainly can be entertained in the future.  
20 But I would submit to Senator Marcellino that  
21 the failure of the amendment to be approved,  
22 to me, does not make this bill a fatally  
23 flawed one. You may believe that there needs  
24 to be improvements to the bill. But as I've  
25 said many times, I don't think we ever passed

1 a perfect bill in any deliberative body.

2 So certainly, going forward, if in  
3 fact there are other chapter amendments that  
4 would be, let's say, mutually supported, we  
5 can move forward with those. Absent the  
6 approval of the hostile amendment this  
7 afternoon I would submit is not enough of a  
8 reason to oppose this bill.

9 ACTING PRESIDENT BRESLIN:  
10 Senator Marcellino.

11 SENATOR MARCELLINO: If the  
12 Senator would continue to yield.

13 ACTING PRESIDENT BRESLIN: Do you  
14 continue to yield to Senator Marcellino?

15 SENATOR FOLEY: Yes,  
16 Mr. President.

17 ACTING PRESIDENT BRESLIN: You  
18 may continue, Senator Marcellino.

19 SENATOR MARCELLINO: The Senator  
20 mentioned the fact of our suggesting  
21 amendments during the committee meeting  
22 process, which we did. Those amendments were  
23 ultimately, although not immediately,  
24 incorporated. I think a couple of days later  
25 we had a meeting and the bill had not been

1       amended. I voted at that time without  
2       recommendation, because the bill wasn't  
3       amended at that point in time to see that the  
4       bill in fact was. So while --

5                ACTING PRESIDENT BRESLIN:  
6       Senator Duane -- excuse me, Senator  
7       Marcellino.

8                SENATOR MARCELLINO:     I'm not  
9       finished, Mr. President. If I might --

10               ACTING PRESIDENT BRESLIN:  
11       Senator Marcellino, Senator Duane has risen.  
12       I can ask him why he has risen.

13               SENATOR DUANE:        Because,  
14       Mr. President -- and maybe --

15               SENATOR MARCELLINO:     So has the  
16       sun, sir.

17               ACTING PRESIDENT BRESLIN:     Excuse  
18       me?

19               SENATOR MARCELLINO:     I'm just  
20       suggesting that --

21               SENATOR DUANE:        Mr. President,  
22       the reason that I -- I just heard Senator  
23       Marcellino ask Senator Foley if he would  
24       yield. Thereby, I assumed that that -- and  
25       maybe Senator Marcellino was incorrect in his

1       questioning that Senator Foley didn't have to  
2       yield. But it was the second time I heard it,  
3       and that's why I was presuming that Senator  
4       Foley, if he was being asked to yield, he was  
5       being asked to yield.

6                SENATOR FOLEY:       In fact, I had  
7       the floor, yeah.

8                SENATOR DUANE:       And so --

9                ACTING PRESIDENT BRESLIN:  
10       Senator Duane, sometimes the correct  
11       terminologies aren't used. And it's up to the  
12       President to control the debate.

13               SENATOR DUANE:       Certainly that's  
14       never happened in my case.

15               ACTING PRESIDENT BRESLIN:       No,  
16       I'm well aware of that.

17               SENATOR DUANE:       Thank you,  
18       Mr. President.

19               ACTING PRESIDENT BRESLIN:       I will  
20       allow Senator Marcellino to continue to ask  
21       questions.

22               SENATOR DUANE:       Thank you,  
23       Mr. President.

24               ACTING PRESIDENT BRESLIN:  
25       Senator Marcellino.

1                   SENATOR MARCELLINO:     I apologize,  
2     Mr. President. I didn't notice that Senator  
3     Duane had risen, and I interrupted your  
4     comment. I didn't mean to. No disrespect  
5     intended.

6                   Senator, you mentioned the fact  
7     that in your mind the bill is not flawed  
8     enough to warrant the change and that we could  
9     address chapter amendments down the road.  
10    I've engaged in chapter amendments on occasion  
11    with other pieces of legislation. They're not  
12    always that reliable. You can't always count  
13    on the other house to finish and to do that.  
14    You can't always count on the Governor to sign  
15    them.

16                  We do have an opportunity right  
17    now. The bill is here, the bill could be  
18    fixed, the bill could be amended, it could be  
19    sent over to the other house with the  
20    amendments added to it. And I'm sure none of  
21    these amendments would justify them not  
22    passing the bill. They would probably pass  
23    it. So we could kill two birds and not waste  
24    a lot of time if we did that.

25                  All that being said, if I might,

1       the other point of the bill, too, goes to the  
2       same thing with the Social Services Law. The  
3       bill says the same language.

4               And I might add that the bill has a  
5       misprint in it, which I don't necessarily  
6       think we have to fix, but it could be when the  
7       bill is finally printed. Because the line  
8       says, at the end, "or in the case of public  
9       schools." Once again, I don't mean you mean  
10      public schools. I think you mean, at that  
11      point, daycare centers.

12              So that could be adjusted.  
13      Hopefully it's not a same-as as the other  
14      bill. That might impact it, if it's a  
15      problem.

16              ACTING PRESIDENT BRESLIN:     Are  
17      you on the bill, Senator Marcellino?

18              SENATOR MARCELLINO:     No, I'm not.

19              I would ask that the same thing be  
20      done, that we add into the section on Social  
21      Services Law for daycare centers, private  
22      daycare centers which do not have the benefit  
23      of boards and the like, that they be added,  
24      the language be put in. Instead of "public,"  
25      that "private and/or trustees" be added, so

1       that they can declare an emergency --

2                   ACTING PRESIDENT BRESLIN:       Again,  
3       Senator Marcellino --

4                   SENATOR MARCELLINO:       Would you  
5       not agree?

6                   ACTING PRESIDENT BRESLIN:  
7       Senator Marcellino -- okay, at the end there  
8       was a question.

9                   SENATOR MARCELLINO:       I thought  
10      there would be.

11                  ACTING PRESIDENT BRESLIN:  
12      Senator Foley.

13                  SENATOR FOLEY:       I'm glad at the  
14      end you finally put the verb in that  
15      paragraph. It was at the end of the  
16      paragraph.

17                  Again, in all due respect -- former  
18      chair of EnCon; again, neighborhood  
19      notification and other very good and  
20      groundbreaking pieces of legislation that the  
21      former chair had championed -- I would have to  
22      respectfully disagree with your  
23      characterization of it.

24                  As the sponsor of the bill, I would  
25      not necessarily agree with all the provisions



1       that you had contained in the hostile  
2       amendment. That's why I believe, in a larger  
3       sense, hostile amendments is a rather  
4       ineffective way to try and change laws,  
5       because it's always done in confrontation with  
6       the sponsor of the bill, as opposed to a more  
7       collegial fashion, as was exhibited when we  
8       worked together in the committee structure to  
9       do those amendments, not to do an amendment  
10      two hours before we opened session.

11                So I'd have to disagree with your  
12      statement, Senator Marcellino.

13                ACTING PRESIDENT BRESLIN:  
14      Senator Marcellino.

15                SENATOR MARCELLINO:     Mr.  
16      President, I'll go on the bill.

17                ACTING PRESIDENT BRESLIN:  
18      Senator Marcellino, on the bill.

19                SENATOR MARCELLINO:     Simply  
20      saying that you disagree does not answer.  
21      Simply saying "I disagree with you" does not  
22      make the statement made incorrect.

23                The bill as written excludes  
24      private schools. It excludes private daycare  
25      centers from the same prerogatives that you're

1 giving to the public schools and public  
2 daycare centers. It is discriminatory in that  
3 respect and should be fixed.

4 There are huge populations of  
5 youngsters in the private daycare centers and  
6 in the private schools that will not get the  
7 same benefits -- if you want to accept the  
8 fact that this bill has benefits -- that the  
9 public schools and the public daycare centers  
10 have. It simply doesn't provide them. Saying  
11 it, I disagree with you -- it's a great  
12 answer, Senator, but it doesn't cut it. The  
13 language means something.

14 The language in this bill, as  
15 phrased in this bill, you can talk to any  
16 lawyer you want, they're going to tell you the  
17 same thing. It excludes the private schools,  
18 it excludes the private daycare centers.  
19 That's not what you want it to do. I don't  
20 believe that's what you intend it to do. I  
21 think it's just a case of poorly written  
22 language that could be fixed. That's all.

23 If you want to fix it, then let's  
24 fix it. If you're talking about a chapter  
25 amendment, I think that's unnecessary time.

1       You want to do that later, in fact, fine,  
2       let's do it later. But this is a problem with  
3       the bill that makes it, in my mind, difficult  
4       to support because it leaves out a huge  
5       population of youngsters.

6               It was talked about before that we  
7       have school districts -- I received a memo  
8       from an organization called Grassroots  
9       Environmental Education, and it lists a whole  
10      bunch of school districts that it says that  
11      these districts are involved right now in the  
12      organic pesticide applications. And it just  
13      so happens, we called some of them. We had  
14      people make some phone calls.

15             It lists the Jericho Union Free  
16      School District, which is one of the better  
17      school districts in the state, one of the  
18      larger ones in my district, and we called  
19      them. There is organic, by choice of the  
20      school board, in the elementary grades, but  
21      not at the high school, according to the  
22      school district. The high school does not  
23      engage in the organic pesticide situation, but  
24      the elementary grades, it does. Why? I don't  
25      know. But that was their choice.

1                   In questioning some of the others,  
2           in calling some of the other districts, we  
3           found out some had engaged in it, no longer  
4           do -- by choice. Some are thinking about  
5           doing it but are not now doing it, but they  
6           might consider it. You know, you go down the  
7           list here, there's district after district.  
8           In other words, the list is not exactly  
9           complete. And the statement in the memo is  
10          not exactly accurate, as it should be.

11                   Right now any school district that  
12          wants to, any school district that wants to,  
13          any municipality that wants to, any entity  
14          that wants to can on its own, right now, go  
15          organic. And I would have absolutely no  
16          problem with that. They would have the  
17          perfect right to do it. I would encourage  
18          most of it. I don't see the problem with  
19          that. Let them do it. But they have the  
20          right now.

21                   This law doesn't give them the  
22          right, this law mandates that they do it.  
23          Whether they want to or not, whether the  
24          circumstances fit their needs or not, this  
25          bill says "you must."

1           I don't know that that's the way to  
2       go when they have the opportunity to do it and  
3       many are engaged. They are engaging. I know  
4       of some entities that started it and got away  
5       from it because the cost was too much to  
6       maintain and it was not an effective process.  
7       Could that have been the result of poorly  
8       trained personnel? Possibly.

9           Hence the need to engage with a  
10      group like Cornell Cooperative Extension,  
11      which was unfunded in the EPF and literally  
12      destroyed the program because it was no longer  
13      funded in the Governor's budget. So that  
14      program is shut down. So the schools have no  
15      place to go now. Who's going to provide the  
16      expertise and the training? That's what  
17      Cornell provided to these districts.

18          That's what generated the IPM  
19      programs, which taught them to use organic and  
20      non-pesticides insecticides, fungicides,  
21      rodenticides, anything you want to call them.  
22      It encouraged them not to use them first. It  
23      encouraged them to use them only as a last  
24      resort. Not as a first resort, as a last  
25      resort. Only in emergency circumstances, only

1       when it was absolutely necessary would they do  
2       it.

3               And only using it by trained  
4       personnel. Not just any Joe Blow off the  
5       street taking a bag of junk and saying, "Here,  
6       I'm going to throw it out there." This had to  
7       be done carefully, by trained personnel, under  
8       supervision, because these pesticides are  
9       dangerous chemicals. We all understand that.  
10      That's why it has the word "cide" on the end  
11      of it. That means to kill whatever precedes  
12      it. We're not looking for that.

13             But we all recognize, and so do you  
14      in this legislation, that there are  
15      emergencies. What we're saying is in some  
16      cases the declaration of the emergency means  
17      you've got to jump through 52 hoops to get  
18      there. And it might be too late to solve it,  
19      and it might be far more expensive to solve  
20      it.

21             If you're going to apply  
22      organics -- the claim has been made that in  
23      some cases studies have shown that it's  
24      cheaper. Not necessarily true. In some cases  
25      it is far more expensive because you have to

1       apply far more of the substance than you do of  
2       the pesticide to get the same result. So  
3       you're buying more of a product to get the  
4       same result as you would from a pesticide.

5               Is it worth it? Yeah. I might go  
6       with that. I would say yeah, I wouldn't mind  
7       spending more money if I'm going to get the  
8       same result and make it's safer. I'll do  
9       that. But let's not make the claim that it's  
10      cheaper when it isn't. The expenditure of the  
11      money when it comes, as you said in your  
12      comment, Senator, where we're talking about  
13      public health, I don't mind spending a little  
14      extra money. Spend it. I think that's money  
15      well spent.

16             But you can't claim something that  
17      simply isn't there. You can't make a claim  
18      when you can't back it up. The facts are  
19      otherwise. Anybody who uses this stuff will  
20      tell you that in order to get the same  
21      results, it costs more, because you have to  
22      apply more of the organics. It's not the  
23      same.

24             Now, as I said, I don't mind the  
25      application, I don't mind the extra expense,

1       because you're talking about public health and  
2       you're talking about the health of young  
3       people and our children. Do it. Do it. But  
4       let's not make a statement that it's easy.  
5       Let's not make a statement that simply isn't  
6       factual that pesticides don't include, by  
7       definition, fungicides and others that were  
8       mentioned. That simply isn't the case.

9               Let's not conclude that language in  
10       a bill that says one thing doesn't say what it  
11       says. I didn't write this bill. I didn't  
12       write this language. But that's what it says.  
13       It should be changed.

14              The bill is flawed and needs to be  
15       adjusted. Amendments would do that. We could  
16       do that tonight. We could do that now. We  
17       could send the amendments to the other house,  
18       let them pass it, and you'll get the pesticide  
19       bill that everybody wants. I have no problem  
20       with that. Let's do it. Let's do it.

21       Instead of debating whether or not something  
22       says something that in fact it doesn't say.  
23       Pretending won't make it so. Words mean  
24       something.

25              Mr. President, I urged a vote of



1       yes on the amendments because I think and  
2       thought these were not hostile amendments,  
3       they were not intended to destroy the bill.  
4       There was nothing in those amendments that  
5       eviscerated the bill, that changed the point  
6       of the bill, that changed the momentum of the  
7       bill. I thought they would make the bill  
8       better -- and fairer, quite honestly.

9               The bill as it stands now is not a  
10       better bill and it's not a fair bill. It  
11       doesn't afford, as I said, privates the same  
12       benefits as the public schools or public  
13       daycare centers. These changes should be made  
14       before this bill becomes law. If it becomes  
15       law.

16               I will be voting no on the bill,  
17       sir.

18               ACTING PRESIDENT BRESLIN:     Thank  
19       you, Senator Marcellino.

20               Senator Larkin, on the bill.

21               SENATOR LARKIN:     Thank you,  
22       Mr. President. Would Mr. Foley --

23               ACTING PRESIDENT BRESLIN:     Excuse  
24       me. Excuse me for a minute.

25               Senator Duane, why do you rise?

1                   SENATOR DUANE:     Thank you,  
2     Mr. President.   Would the sponsor yield,  
3     please?

4                   ACTING PRESIDENT BRESLIN:     Again,  
5     just -- I will recognize Senator Larkin.   I  
6     have given him the floor.   I'll recognize you  
7     in due course.

8                   SENATOR LARKIN:     Thank you,  
9     Mr. President.   Will Senator Foley yield?

10                  SENATOR FOLEY:     Yes,  
11     Mr. President.

12                  SENATOR LARKIN:     I know you've  
13     been on the hot seat all night long, but we'll  
14     make it a little short.

15                  SENATOR FOLEY:     That's fine.

16                  SENATOR LARKIN:     Have you heard  
17     from anybody at the school level or local  
18     level that supports this or opposes this?

19                  SENATOR FOLEY:     We've heard --  
20     through you, Mr. President -- we've heard from  
21     a number of local organizations that are  
22     strongly supportive of this legislation.

23                  SENATOR LARKIN:     I'm talking  
24     about schools.

25                  SENATOR FOLEY:     School boards as

1 well as the School Board Association and the  
2 superintendents of grounds, no, they are  
3 opposed to the bill.

4 SENATOR LARKIN: Yes. You  
5 know --

6 ACTING PRESIDENT BRESLIN:  
7 Senator Larkin --

8 SENATOR LARKIN: Thank you. On  
9 the bill.

10 ACTING PRESIDENT BRESLIN:  
11 Senator Larkin, on the bill.

12 SENATOR LARKIN: About two weeks  
13 ago, 16 members on that side of the aisle  
14 wrote a letter to the Governor and said don't  
15 cut any money out of education. Two days  
16 later, you voted on a resolution to take that  
17 money out -- the school boards,  
18 municipalities, everything.

19 Here's 700-plus school boards,  
20 5,000 elected board officials are saying to  
21 us: This is a bad bill. It's going to cost  
22 us money. You're talking about what we're  
23 doing to our fields and that, and they're not  
24 true.

25 You know, I know Antoine Thompson

1 is sitting over there very happy. This is  
2 Earth Day's legislation. My question is, what  
3 is more important? To say that we passed all  
4 this legislation to prove we are concerned  
5 about the earth? Some guys my age will tell  
6 you we cared about the earth before you were  
7 born.

8 But what are we saying? Is it  
9 better to pass these bills that are not  
10 totally positive, to see that we got it done,  
11 or are we going to listen to somebody who's on  
12 5,000 members of school boards and over 700 --  
13 actually, 742 school districts in this state?  
14 And we're not even listening to them. We're  
15 saying yes.

16 My colleague Senator Marcellino,  
17 who's chaired this committee for a number of  
18 years, was very clear when he said let's treat  
19 everybody when we're talking about the public  
20 and the private sector. I mean, is it such a  
21 sin that we must pass this tonight rather than  
22 to sit down and look at what happened? Are we  
23 to sit here -- you can snigger over there all  
24 you want. I don't think it's funny. It may  
25 be funny to you, but it's not funny to me.

1                   We have 742 school districts, 5,000  
2                   elected officials are saying to you, please do  
3                   not pass this. What they also said, this bill  
4                   creates a mandate on districts at a time when  
5                   massive cuts and added pressures are being  
6                   placed on our districts. The last thing we  
7                   need now is another unfunded mandate.

8                   Don't tell me that you're worried  
9                   about money for education when you're saying  
10                  be prepared to spend this. Because this just  
11                  opens the door. I don't think there's anybody  
12                  in here that doesn't want to see this right.  
13                  This is a very important issue. But don't  
14                  wash it around by the fact that, you know, all  
15                  of the environmentalists are in town and they  
16                  want us to do this as part of Earth Day.

17                  Well, as part of Earth Day, I have  
18                  17 grandchildren. I'm worried about when  
19                  they're at school. But they go to a daycare  
20                  center, we don't take care of them. Not in  
21                  this bill.

22                  Why don't we just set this aside  
23                  and correct it and make it positive by  
24                  everybody supporting it? That's not a big  
25                  deal. But if you want to say, well, I want to

1 show that we've got the power and we can get  
2 this done and to Hades with the other side,  
3 that doesn't make sense.

4 You all said we're going to work  
5 together. We're working together about as  
6 good as two goats that can't even talk to one  
7 another. This is a disgrace. A total  
8 disgrace -- yes, I did, Frank. You engineers  
9 don't understand that.

10 But what's so wrong about it?  
11 Anybody want to stand up and tell me over  
12 there? Mr. President, when are we in this  
13 chamber going to do something for the public,  
14 for the people who pay the taxes? We have a  
15 great opportunity --

16 SENATOR DUANE: Mr. President, I  
17 think there was a question to the other side.  
18 And, I'm sorry, I didn't get it.

19 SENATOR LARKIN: It's past tense.

20 SENATOR DUANE: I'm wondering if  
21 the Senator would yield, because he said there  
22 was a question he was asking this side of the  
23 aisle, and it was garbled. And I was  
24 wondering if the Senator would repeat it,  
25 because maybe it deserves an answer.

1                   SENATOR LARKIN:     I'm on the bill,  
2     and that's what I'm saying, period.

3                   Mr. President --

4                   ACTING PRESIDENT BRESLIN:     I  
5     believe it was rhetorical in nature.

6                   SENATOR LARKIN:     -- I think it's  
7     very clear that, as I said earlier today, we  
8     stuck it to group one, we stuck it to group  
9     two, we stuck it to group three. You guys go  
10    home tomorrow, ladies and gentlemen go home  
11    and say, yeah, you invite us to meetings and  
12    we tell you what our problems are and we send  
13    you a memo -- and what did you say? How many  
14    of you over there that got this memo called  
15    your school boards and told them? Any one of  
16    you, tell me.

17                  SENATOR ONORATO:     I didn't get  
18    one.

19                  SENATOR LARKIN:     Everybody got  
20    one. I called today and I checked with the  
21    messenger service and they said there was one  
22    of these placed in everybody's box, George.

23                  But has anybody called their people  
24    back home and told them? I did. I said, "Bet  
25    your bottom dollar they'll pass this and

1       they'll pass the costs on to you and they'll  
2       say 'We did it in honor of the students, we  
3       did it in honor of the future'."

4                You know what? If you think these  
5       people back home are that dumb, God bless you  
6       come November.

7                ACTING PRESIDENT BRESLIN:  
8       Senator Duane, on the bill.

9                SENATOR DUANE:     Thank you,  
10       Mr. President. If the sponsor would yield.

11               ACTING PRESIDENT BRESLIN:  
12       Senator Foley, you're not going to yield to --  
13       or will you yield to Senator Duane?

14               SENATOR FOLEY:     I'm happy that I  
15       can finally yield to the fine Senator from  
16       Gramercy Park.

17               SENATOR DUANE:     Thank you.

18               ACTING PRESIDENT BRESLIN:  
19       Senator Duane.

20               SENATOR DUANE:     Mr. President, I  
21       would like to wish you and everyone here a  
22       happy Earth Day, and in particular to the  
23       sponsor of this legislation.

24               I'm wondering if the sponsor would  
25       tell us how long he's been a member of this



1 chamber, this body.

2 ACTING PRESIDENT BRESLIN:

3 Senator Foley.

4 SENATOR FOLEY: Thank you,  
5 Mr. President. It's my honor and privilege,  
6 from the citizens of the Third Senatorial  
7 District, to represent them here in this fine  
8 institution since January of last year.

9 SENATOR DUANE: And through you,  
10 Mr. President, if the sponsor would continue  
11 to yield.

12 ACTING PRESIDENT BRESLIN: Do you  
13 continue to yield, Senator Foley?

14 SENATOR FOLEY: Yes.

15 SENATOR DUANE: I would like to  
16 have my memory refreshed on what happened with  
17 this legislation -- the history of this  
18 legislation last year and through this point.  
19 How was this legislation moved forward? What  
20 happened last year, what's happened this year?

21 ACTING PRESIDENT BRESLIN:

22 Senator Foley, do you yield to that question?

23 SENATOR FOLEY: Yes,

24 Mr. President.

25 The legislative history of this

1 particular resolution was in 2001 and 2002 it  
2 was referred to Environmental Conservation  
3 from the Assembly side. '03-'04, same  
4 reference in that period of time. In '05-'06,  
5 the Assembly bill was referred to EnCon.  
6 '07-'08, the same. So in other words, there  
7 has never been any action on this side of the  
8 house.

9 SENATOR DUANE: And through you,  
10 Mr. President, if the sponsor would continue  
11 to yield.

12 ACTING PRESIDENT BRESLIN: Do you  
13 continue to yield, Senator Foley, to Senator  
14 Duane?

15 SENATOR FOLEY: Yes,  
16 Mr. President.

17 SENATOR DUANE: It's my  
18 understanding that last year, despite all of  
19 the difficulty here -- which I need not remind  
20 everyone, sad and difficult though it was --  
21 that this bill moved until it was placed on  
22 the Codes calendar; is that correct?

23 SENATOR FOLEY: That is correct,  
24 Mr. President.

25 SENATOR DUANE: And through you,

1 Mr. President, if the sponsor would continue  
2 to yield.

3 ACTING PRESIDENT BRESLIN: Do you  
4 continue to yield, Senator Foley?

5 SENATOR FOLEY: Yes,  
6 Mr. President.

7 SENATOR DUANE: And if memory  
8 serves me -- and I just want to verify -- that  
9 this is probably the furthest that this  
10 legislation has moved in any form in this  
11 house to this point?

12 ACTING PRESIDENT BRESLIN:  
13 Senator Foley.

14 SENATOR FOLEY: Mr. President,  
15 that is correct. This is the farthest, if you  
16 will, this piece of legislation has come in  
17 this house over a period of years. I think  
18 last year it was approved in the Assembly by  
19 overwhelming numbers. And there was strong  
20 overwhelming bipartisan support in the  
21 Assembly. And I hope that we could reflect  
22 that same support here in this house.

23 ACTING PRESIDENT BRESLIN:  
24 Senator Duane.

25 SENATOR DUANE: Thank you,

1 Mr. President. If the sponsor would continue  
2 to yield.

3 ACTING PRESIDENT BRESLIN: Do you  
4 continue to yield, Senator Foley?

5 SENATOR FOLEY: Yes,  
6 Mr. President.

7 SENATOR DUANE: And I just need  
8 to preface this by my definition of bipartisan  
9 now. Bipartisan, by my definition, means both  
10 sides of the aisle in this house, as opposed  
11 to previously bipartisan meant the majority  
12 party in this house and the majority party in  
13 the other house. That was the former  
14 definition of bipartisan.

15 But I'm talking about my  
16 definition, our definition of bipartisan,  
17 which is both sides of the aisle in this  
18 chamber.

19 I noticed that this bill is a  
20 C print. And I'm wondering if the sponsor  
21 could tell me whether or not he had  
22 discussions with members -- bipartisan  
23 discussions, as I define them in present day  
24 in this house -- if there were bipartisan  
25 discussions regarding this piece of

1       legislation.

2                   ACTING PRESIDENT BRESLIN:

3       Senator Foley.

4                   SENATOR FOLEY:       That's an  
5       excellent question. And as I mentioned  
6       earlier, when this bill was in the  
7       Environmental Conservation Committee, we were  
8       ready to move it out, there were several let's  
9       say elements of constructive criticism that  
10      was leveled at the bill by Senator Marcellino.

11                   And as much as I could have  
12      reported the bill out of committee at that  
13      time, since we had the majority on the  
14      committee, I tabled the bill. And Senator  
15      Marcellino's staff, my legislative staff, as  
16      well as the committee staff, worked over  
17      together over several days' time, about a  
18      week, to make the changes that the good  
19      Senator had suggested at that time.

20                   So we incorporated those changes --  
21      we reported it out of committee, as he  
22      mentioned, but we then incorporated the  
23      changes to the bill. And that's why I was so  
24      surprised through the present to see that  
25      there further amendments now, three weeks

1 later, two hours before session.

2 SENATOR DUANE: And through you,  
3 Mr. President, if the sponsor would continue  
4 to yield.

5 ACTING PRESIDENT BRESLIN: Do you  
6 continue to yield, Senator Foley, to Senator  
7 Duane?

8 SENATOR FOLEY: Yes,  
9 Mr. President.

10 ACTING PRESIDENT BRESLIN: You  
11 may proceed, Senator Duane.

12 SENATOR DUANE: I would like to  
13 ask the sponsor -- and I have to make for  
14 absolute certain so that I can sleep tonight  
15 with a clear conscience -- does the sponsor of  
16 this legislation care about children?

17 ACTING PRESIDENT BRESLIN:  
18 Senator Foley.

19 SENATOR FOLEY: Absolutely,  
20 Mr. Chairman. I think all of us in this house  
21 devote the time that we do away from our  
22 family and our neighborhoods, among other  
23 reasons, to protect children and to take that  
24 kind of faith, if you will, and translate that  
25 into meaningful legislation that will make a

1 difference in the lives of those children and  
2 the parents who are parenting those children.

3 SENATOR DUANE: And through you,  
4 Mr. President, if the sponsor would continue  
5 to yield.

6 ACTING PRESIDENT BRESLIN: Do you  
7 continue to yield, Senator Foley?

8 SENATOR FOLEY: Yes,  
9 Mr. President.

10 SENATOR DUANE: I have to preface  
11 this by saying that I am not an avid golfer.  
12 I never have been. I don't envision that I  
13 will be, but who knows. But I'm wondering if  
14 the sponsor is a huge, every-weekend golfer.

15 ACTING PRESIDENT BRESLIN:  
16 Senator Foley.

17 SENATOR FOLEY: As much as I'm a  
18 fan of golf, unfortunately -- although since  
19 my hair's been turning gray, I've had more  
20 people ask me if I wanted to golf -- but no,  
21 I'm not a golfer. If I have free time on the  
22 weekend, Mr. President, I try to keep some  
23 semblance of harmony at home and spend some  
24 time around the home area as opposed to the  
25 links on Long Island.

1                   SENATOR DUANE:     And through you,  
2     Mr. President, if the sponsor would continue  
3     to yield.

4                   ACTING PRESIDENT BRESLIN:     Do you  
5     continue to yield, Senator Foley?

6                   SENATOR FOLEY:     Yes,  
7     Mr. President.

8                   SENATOR DUANE:     I'm wondering if  
9     the sponsor -- and there may be schools like  
10    this, but I'm wondering if there are any  
11    schools in his district which have golf  
12    courses.

13                  ACTING PRESIDENT BRESLIN:  
14    Senator Foley.

15                  SENATOR FOLEY:     There are no  
16    schools that have golf courses. The local  
17    schools in fact use both the county and the  
18    town courses in the Islip -- well, in Suffolk  
19    County, the county courses and the town  
20    courses.

21                  ACTING PRESIDENT BRESLIN:  
22    Senator Duane.

23                  SENATOR DUANE:     And through you,  
24    Mr. President, if the sponsor would continue  
25    to yield.



1                   ACTING PRESIDENT BRESLIN:     Do you  
2     continue to yield, Senator Foley?

3                   SENATOR FOLEY:       Yes,  
4     Mr. President.

5                   SENATOR DUANE:       Is the sponsor's  
6     intent of this legislation to substitute  
7     pesticides which are more natural in nature  
8     than the ones that, for instance, were the  
9     kind that I unfortunately breathed in when I  
10    was a child? And from the way a lot of people  
11    around here sound, apparently they were  
12    breathing it in too.

13                  ACTING PRESIDENT BRESLIN:  
14    Senator Foley.

15                  SENATOR FOLEY:       It's an  
16    absolutely crucial question, and it gets to  
17    the heart of the matter. Which is over a  
18    period of time there have been enough, let's  
19    say -- and in an evolving nature, turf  
20    maintenance has made great strides,  
21    particularly over the last 10 years, to where  
22    there is far less need for the application of  
23    pesticides as there was 10, 15, 20 years ago.

24                  And there's a whole industry, in  
25    fact, creating more jobs where there are

1       alternative -- we can't even call them  
2       alternative anymore, Mr. President -- but in  
3       fact tried and true methods where we can  
4       improve the health of the turf so that there's  
5       far less need -- in fact, in many cases, no  
6       need -- to apply these chemicals as they were  
7       applied 15 to 20 years ago.

8               So we made great strides in the  
9       area that then allows us to offer a bill like  
10      this, where then we would avoid the  
11      interaction of pesticides with children and  
12      still have turf fields, with some possible  
13      remote exemptions, those turf fields being of  
14      such a nature that they could withstand all  
15      the running and to and fro that happens on the  
16      fields at the elementary and high school  
17      levels.

18               SENATOR DUANE:       Thank you.

19               Mr. President, on the bill.

20               ACTING PRESIDENT BRESLIN:

21      Senator Duane, on the bill.

22               SENATOR DUANE:       I would like to  
23      in the strongest possible terms commend the  
24      sponsor of this legislation. I have known of  
25      his deep commitment to children throughout our

1 state, his deep commitment to the  
2 environment -- and not just on Long Island,  
3 which we're trying to preserve the environment  
4 on Long Island, which is probably far more  
5 fragile than we even imagined, but to commend  
6 him for this legislation which will help  
7 children and the environment throughout the  
8 state.

9 Senator Foley's arrival in this  
10 house and his putting forward this legislation  
11 and shepherding it through the house is  
12 exactly the reason why it is so advantageous  
13 to have a member such as the sponsor of this  
14 legislation. This is my 12th year here. I  
15 have been waiting to have pieces of  
16 legislation like this come to the floor to be  
17 voted on.

18 It's an enormous, giant leap  
19 forward for the children of the State of  
20 New York, for the environment of the State of  
21 New York. And I absolutely urge everyone to  
22 vote in favor of this legislation. And there  
23 will be much more to come, I'm sure. But at  
24 9:30 at night, it's a pleasure to be able to  
25 vote -- I will be very happy to be able to

1       vote in favor of this legislation because of  
2       the wonderful results which it will bring to  
3       the State of New York.

4               Thank you, Mr. President.

5               ACTING PRESIDENT BRESLIN:       Thank  
6       you, Senator Duane.

7               Senator Thompson, on the bill.

8               SENATOR THOMPSON:       Yes, thank  
9       you, Mr. President.   It is a privilege that I  
10      stand today in support of this bill.

11              It has been stated that we spent  
12      some time working on this bill.   Back in  
13      February of this year, we had a roundtable on  
14      the first floor of this building, and it was  
15      standing room only.   We had landscapers and  
16      businesspeople and advocates on both sides of  
17      the issue from all over the state that came  
18      in.   And it was represented from people on  
19      both sides of the aisle who listened quite  
20      patiently to the debate.

21              And in fact, on this particular  
22      bill there really wasn't a lot of debate on  
23      this particular bill at the roundtable with  
24      all the industry people there.   That's not to  
25      say that they were, you know, kicking their

1       heels about the bill. But this was out of all  
2       the bills that we talked about and issues that  
3       we talked about that day, this particular  
4       issue of safe playing fields was not viewed as  
5       an extreme measure.

6               And that's important to note,  
7       because there were other bills that they were  
8       concerned about that we said that we were not  
9       going to address. That we were only looking  
10      at passing two bills this year, and we would  
11      look to work towards, after we got the work  
12      day, to try to deal with the issue of IPM.  
13      And I think that's available online under the  
14      new Senate rules.

15             The other thing is that many -- I  
16      was sitting here and I did a quick Google  
17      search on my BlackBerry. And if you just  
18      Google while you're sitting here and type in  
19      "dangers, pesticides on playing fields," it is  
20      amazing what you will find in just a quick  
21      Google search, and all the different reports  
22      from people on both sides of the issue.

23             Let me say that this particular  
24      bill is limited in scope. We have lots of  
25      bills that are supported by -- that are

1 sponsored by both Democrats and Republicans in  
2 the Senate that deal with pesticides. And we  
3 tried this year to get -- we've tried this  
4 year to narrow it down so that we can do a  
5 couple things that make sense.

6 Protecting our children who are  
7 playing on sports fields is reasonable. We  
8 put in a provision that says that if an  
9 outbreak takes place, they can get it  
10 addressed immediately so that we don't lose  
11 whole entire playing fields.

12 But to protect our young people  
13 really is the right thing to do. It's beyond  
14 the right thing to do. And many newspapers  
15 have supported this, not that -- everyone  
16 knows that I'm not one who panders to what  
17 newspapers say. But many newspapers across  
18 the state, in addition to advocacy groups, in  
19 addition to the buildings and grounds folks  
20 who've actually got to do the job. They've  
21 said they can do it.

22 We had folks from the association  
23 that came to our roundtable and said that this  
24 is a good bill, this bill does not go too far,  
25 just give us the flexibility, in the event

1       that there's an outbreak, that we can then do  
2       something, so that we don't lose a lot of  
3       money.

4               The last thing I want to emphasize  
5       is that when we -- at least as the chair of  
6       the committee, when members bring bills, we  
7       put a lot of care into these bills. My  
8       colleague Senator Marcellino has been --  
9       whether he's for something or against  
10      something, I think that whenever he or other  
11      members of the committee or people who are not  
12      on the committee -- we've always tried to be  
13      open and attentive. In fact, right after the  
14      committee meeting when this bill passed out of  
15      committee, we actually assigned two staffers  
16      to work on a number of recommendations.

17             And so I think this is a very good  
18      bill to do for Earth Day. It's a very good  
19      bill to do any day, but particularly on Earth  
20      Day. And I believe there are a lot of bills  
21      that are in committee that groups like Crop  
22      Life America support and don't support by  
23      Democrats and Republicans. There are groups  
24      like RISE, which was just in Buffalo last week  
25      doing something on pesticide awareness and

1 prevention, Responsible Industry for a Sound  
2 Environment, there are bills that are  
3 sponsored by Democrats and Republicans that  
4 they support and do not support.

5 So I believe this bill is a fair  
6 bill. It's a good bill. It's not extreme.  
7 It focuses on our young people when they're  
8 playing on playing fields and around daycare  
9 facilities. This is a good, reasonable bill.

10 And I don't believe -- and I don't  
11 have a crystal ball, and I don't know  
12 everything, but it's been a long time since we  
13 passed a major pesticide bill in this chamber.  
14 And I think now is the time, and this bill is  
15 a responsible bill. It does not go too far  
16 right or too far left. This is actually a  
17 bill right down the center.

18 Thank you.

19 ACTING PRESIDENT BRESLIN: Thank  
20 you, Senator Thompson.

21 Are there any other Senators  
22 wishing to be heard?

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

25 Read the last section.



1 THE SECRETARY: Section 5. This  
2 act shall take effect on the 180th day.

3 ACTING PRESIDENT BRESLIN: Call  
4 the roll.

5 (The Secretary called the roll.)

6 ACTING PRESIDENT BRESLIN:  
7 Senator Foley, to explain his vote.

8 SENATOR FOLEY: Thank you,  
9 Mr. Chairman.

10 I'd like to thank everybody for the  
11 robust debate and discussion that we had this  
12 evening.

13 Let me just cite for the record the  
14 number of organizations in favor. We have the  
15 Center for Health and Environmental Justice,  
16 the Learning Disabilities Association, the  
17 Huntington Breast Cancer Action Coalition, the  
18 Rochester Breast Cancer Coalition, the Group  
19 for the East End, Citizens Campaign for the  
20 Environment, Environmental Advocates,  
21 Neighborhood Network Action, Audubon New York,  
22 NYPIRG, Vision Long Island.

23 And I'll end with this from the  
24 Huntington Breast Cancer Action Coalition: It  
25 is common sense that fetuses, newborns and our

1 children, as they are developing, are very  
2 vulnerable when exposed to toxins. The  
3 passage of this legislation initiated by you  
4 and Assemblymember Englebright truly  
5 represents child safety and protection."

6 I vote in the affirmative,  
7 Mr. President.

8 ACTING PRESIDENT BRESLIN:  
9 Senator Foley will be recorded in the  
10 affirmative.

11 Senator DeFrancisco, to explain his  
12 vote.

13 SENATOR DeFRANCISCO: I'm going  
14 to vote in the negative. And despite some of  
15 the comments, you're not against children by  
16 being against this bill. At least that was  
17 the clear implication.

18 I have seven grandchildren, four of  
19 school age in New York State. And there is  
20 nothing I would do to put those kids in  
21 jeopardy. And there is nothing I would do to  
22 not protect their safety.

23 And could you hammer the gavel a  
24 little bit so I can hear myself think?

25 ACTING PRESIDENT BRESLIN: Can we

1       have some quiet, please.

2                   SENATOR DeFRANCISCO:       So that's  
3       not the point. The point simply is this. And  
4       there's organizations that oppose this bill,  
5       including the School Boards Association, who  
6       everybody here has said at least once during  
7       their Senate career -- even Senator Foley,  
8       who's only been here since January of last  
9       year -- that we've got to stop the unfunded  
10      mandates to school districts. So we get a  
11      notice from the school districts saying it's  
12      an unfunded mandate.

13                   Don't think we don't care about our  
14      kids. We care about our kids. We're not  
15      going to put them in a danger zone. Give us  
16      some kind of credit for being reasonable human  
17      beings. Besides, under the notification law,  
18      everybody is notified when pesticides are  
19      being applied.

20                   So to make this a bill that is  
21      crucial to the life and safety of children and  
22      to just totally ignore school boards -- who  
23      are I believe doing the right things for our  
24      kids as far as this area is concerned -- and  
25      provide another unfunded mandate when we're

1 cutting their budgets I just don't think is  
2 the right thing to do at this time in history.

3 That's why I'm voting no.

4 ACTING PRESIDENT BRESLIN:

5 Senator DeFrancisco will be recorded in the  
6 negative.

7 Senator Saland, to explain his  
8 vote.

9 SENATOR SALAND: Thank you,  
10 Mr. President.

11 Mr. President, I chaired the Senate  
12 Children and Families Committee for some  
13 10 years, the Education Committee for some six  
14 years. I think I have an impeccable record  
15 when it comes to dealing with issues involving  
16 children, and certainly think I have been  
17 responsible for sensitizing the system to  
18 unfunded mandates.

19 I listened to the debate and  
20 response to the exchange between Senator Young  
21 and Senator Foley. Clearly Senator Foley  
22 could not cite one instance of a child being  
23 harmed, a reported instance of a child being  
24 harmed by a pesticide.

25 Now, I can cite for you in my

1 district alone dozens upon dozens upon dozens  
2 upon dozens of people who have been afflicted  
3 by Lyme disease, a horribly crippling disease  
4 which even when it goes into remission can  
5 still return with absolutely horrid  
6 consequences to a person who has been so  
7 afflicted.

8 So if my choice is to spray a field  
9 and save a child from Lyme disease versus a  
10 feel-good bill in which there has not been an  
11 acknowledgment of a single solitary child  
12 being adversely impacted by this pesticide  
13 menace, I opt to protect the children in my  
14 district, the athletes in my district, the  
15 families in my district from Lyme disease.  
16 Both in Dutchess and Columbia County, we at  
17 times have been the epicenter,  
18 percentage-wise, of cases of Lyme disease.  
19 It's a no-brainer. And in fact Lyme disease  
20 can at times make you a no-brainer.

21 I vote in the negative,  
22 Mr. President.

23 ACTING PRESIDENT BRESLIN:  
24 Senator Saland will be recorded in the  
25 negative.

1                   Announce the results.

2                   THE SECRETARY:     Those recorded in  
3                   the negative on Calendar Number 330 are  
4                   Senators Bonacic, DeFrancisco, Farley, Golden,  
5                   Griffo, Hannon, O. Johnson, Lanza, Larkin,  
6                   Leibell, Libous, Little, Marcellino, Maziarz,  
7                   Nozzolio, Ranzenhofer, Saland, Seward, Skelos,  
8                   Volker, Winner and Young.

9                   Ayes, 39.   Nays, 22.

10                  ACTING PRESIDENT BRESLIN:     The  
11                  bill is passed.

12                  Senator Klein, that completes the  
13                  reading of the controversial calendar.

14                  SENATOR KLEIN:     Mr. President, at  
15                  this time can we please go a controversial  
16                  reading of the Senate supplemental calendar.

17                  ACTING PRESIDENT BRESLIN:     The  
18                  Secretary will read.

19                  THE SECRETARY:     Calendar Number  
20                  399, by Senator Thompson, Senate Print 3296G,  
21                  an act to amend the Environmental Conservation  
22                  Law.

23                  ACTING PRESIDENT BRESLIN:     Read  
24                  the last section.

25                  An explanation has been requested,

1 Senator Thompson.

2 SENATOR LIBOUS: Mr. President,  
3 who requested the explanation?

4 ACTING PRESIDENT BRESLIN: Far be  
5 it from me to hear it.

6 Read the last section.

7 SENATOR LIBOUS: Thank you.

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

10 ACTING PRESIDENT BRESLIN: Call  
11 the roll.

12 (The Secretary called the roll.)

13 ACTING PRESIDENT BRESLIN:  
14 Announce the results.

15 THE SECRETARY: Ayes, 60. Nays,  
16 1. Senator Golden recorded in the negative  
17 earlier today.

18 ACTING PRESIDENT BRESLIN: The  
19 bill is passed.

20 Senator Klein, that completes the  
21 reading of the controversial supplemental  
22 calendar.

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

25 ACTING PRESIDENT BRESLIN: No,

1 Senator Klein, there is no further business at  
2 the desk.

3 SENATOR KLEIN: There being no  
4 further business, Mr. President, I move that  
5 we adjourn until Wednesday, April 21st, at  
6 11:00 a.m.

7 ACTING PRESIDENT BRESLIN: There  
8 being no further business to come before the  
9 Senate, on motion, the Senate stands adjourned  
10 until Wednesday, April 21st, at 11:00 a.m.

11 (Whereupon, at 9:47 p.m., the  
12 Senate adjourned.)  
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