NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

April 20, 2010

4:35 p.m.

REGULAR SESSION

SENATOR NEIL D. BRESLIN, Acting President

ANGELO J. APONTE, Secretary

P R O C E E D I N G S

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

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

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

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

Father Young.

REVEREND YOUNG: Let us pray.

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

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

preparation for Earth Day, may we again admit You, O God, are our answer and our wisdom.

Amen.

ACTING PRESIDENT BRESLIN: The reading of the Journal.

The Secretary will read.

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

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Senator Klein.

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

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

The Secretary will read.

THE SECRETARY: Senator C. Kruger, from the Committee on Finance, reports the following nominations.

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

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

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

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

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

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

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

ACTING PRESIDENT BRESLIN: Senator Kruger.

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

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

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

(Response of "Aye.")

ACTING PRESIDENT BRESLIN: Opposed, nay.

(No response.)

ACTING PRESIDENT BRESLIN: The motion carries. The nominations are confirmed.

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

Communications and reports from state officers.

Motions and resolutions.

Senator Klein.

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

ACTING PRESIDENT BRESLIN: The Secretary will read.

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

ACTING PRESIDENT BRESLIN: Substitution ordered.

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

ACTING PRESIDENT BRESLIN: Substitution ordered.

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

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

ACTING PRESIDENT BRESLIN: Substitution ordered.

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

ACTING PRESIDENT BRESLIN: Substitution ordered.

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

ACTING PRESIDENT BRESLIN: Substitution ordered.

Senator Klein.

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

ACTING PRESIDENT BRESLIN:

Senator Klein, has this resolution been deemed privileged and submitted by the office of the Temporary President?

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

ACTING PRESIDENT BRESLIN: The Secretary will read.

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

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

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

serious issues in our society today; and

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

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

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

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

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

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

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

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

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

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

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

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

ACTING PRESIDENT BRESLIN: Senator Hassell-Thompson.

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

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

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

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

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

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

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

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

of Naples, which ultimately acquitted the man.

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

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

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

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

Thank you, Mr. President.

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

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

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

(Response of "Aye.")

ACTING PRESIDENT BRESLIN: Opposed, nay.

(No response.)

ACTING PRESIDENT BRESLIN: The resolution is adopted.

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

desk.

Senator --

SENATOR MARCELLINO: It's Marcellino.

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

SENATOR MARCELLINO: It's been a while.

ACTING PRESIDENT BRESLIN: Why do you rise?

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

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

ACTING PRESIDENT BRESLIN: Thank you, Senator Marcellino.

Senator Klein.

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

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

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

(Response of "Aye.")

ACTING PRESIDENT BRESLIN: Opposed, nay.

(No response.)

ACTING PRESIDENT BRESLIN: The Resolution Calendar is adopted.

Senator Klein.

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

ACTING PRESIDENT BRESLIN: The Secretary will read.

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

ACTING PRESIDENT BRESLIN:

Senator Thompson.

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

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

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

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

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

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

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

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

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

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

Thank you.

(Applause from the gallery.)

ACTING PRESIDENT BRESLIN: Senator Marcellino.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2008.

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

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

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

ACTING PRESIDENT BRESLIN: Thank you, Senator Marcellino.

Senator Foley.

SENATOR FOLEY: Thank you,

Mr. President.

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

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

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

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

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

Thank you, Mr. President.

ACTING PRESIDENT BRESLIN: Thank you, Senator Foley.

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

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

(Response of "Aye.")

ACTING PRESIDENT BRESLIN: Opposed nay.

(No response.)

ACTING PRESIDENT BRESLIN: The resolution is adopted.

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

Senator Klein.

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

ACTING PRESIDENT BRESLIN: The Secretary will read.

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

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

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

(Response of "Aye.")

ACTING PRESIDENT BRESLIN: Opposed, nay.

(No response.)

ACTING PRESIDENT BRESLIN: The resolution is adopted.

Senator Klein.

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

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

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

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

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

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

ACTING PRESIDENT BRESLIN: Senator Klein.

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

ACTING PRESIDENT BRESLIN: Yes. The Secretary will read.

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

SENATOR LIBOUS: Lay it aside.

ACTING PRESIDENT BRESLIN: The bill is laid aside.

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

ACTING PRESIDENT BRESLIN: Read the last section.

THE SECRETARY: Section 3. This act shall --

SENATOR LIBOUS: Lay it aside.

ACTING PRESIDENT BRESLIN: The bill is laid aside.

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

ACTING PRESIDENT BRESLIN: Read the last section.

SENATOR LIBOUS: Lay it aside.

ACTING PRESIDENT BRESLIN: The bill is laid aside.

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

ACTING PRESIDENT BRESLIN: Read the last section.

SENATOR LIBOUS: Lay it aside.

ACTING PRESIDENT BRESLIN: The bill is laid aside.

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

ACTING PRESIDENT BRESLIN: Read the last section.

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

ACTING PRESIDENT BRESLIN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT BRESLIN: Announce the results.

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

Senators Flanagan and Little recorded in the negative.

ACTING PRESIDENT BRESLIN: The bill is passed.

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

SENATOR LIBOUS: Lay it aside.

ACTING PRESIDENT BRESLIN: The bill is laid aside.

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

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

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

Senator Klein.

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

SENATOR LIBOUS: Agreed.

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

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

ACTING PRESIDENT BRESLIN: Read the last section.

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

ACTING PRESIDENT BRESLIN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT BRESLIN: Senator Savino.

SENATOR SAVINO: Yes.

THE SECRETARY: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Yes.

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

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

Law.

ACTING PRESIDENT BRESLIN: Read the last section.

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

ACTING PRESIDENT BRESLIN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT BRESLIN: Senator Savino.

SENATOR SAVINO: Yes.

ACTING PRESIDENT BRESLIN: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Yes.

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

The Secretary will continue to read.

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

ACTING PRESIDENT BRESLIN: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT BRESLIN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT BRESLIN: Senator Savino.

SENATOR SAVINO: Yes.

THE SECRETARY: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Yes.

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

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

ACTING PRESIDENT BRESLIN: Read the last section.

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

ACTING PRESIDENT BRESLIN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT BRESLIN: Senator Savino.

SENATOR SAVINO: Yes.

ACTING PRESIDENT BRESLIN: Senator Schneiderman.

SENATOR SCHNEIDERMAN: Yes.

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

Senator Klein.

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

ACTING PRESIDENT BRESLIN: The Secretary will read.

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

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

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

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

All bills ordered direct to third reading.

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

(Response of "Aye.")

ACTING PRESIDENT BRESLIN: Opposed, nay.

(No response.)

ACTING PRESIDENT BRESLIN: The Rules Committee report is adopted.

Senator Klein.

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

ACTING PRESIDENT BRESLIN: The Secretary will read.

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

SENATOR LIBOUS: Lay it aside.

ACTING PRESIDENT BRESLIN: Excuse me, Senator Libous.

Senator Winner, why do you rise?

SENATOR WINNER: Mr. President, I

do not have a copy of the supplemental calendar.

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

SENATOR WINNER: Thank you.

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

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

ACTING PRESIDENT BRESLIN: Read the last section.

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

ACTING PRESIDENT BRESLIN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT BRESLIN: Announce the results.

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT BRESLIN: The

bill is passed.

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

ACTING PRESIDENT BRESLIN: Read the last section.

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

ACTING PRESIDENT BRESLIN: Call the roll.

(The Secretary called the roll.)

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

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

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

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

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

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

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

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

ACTING PRESIDENT BRESLIN: Thank you, Senator Johnson.

Senator Marcellino, to explain his vote.

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

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

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

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

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

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

Senator Thompson, to explain his vote.

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

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

Thank you for your support.

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

Announce the results.

THE SECRETARY: Ayes, 60. Nays, 0.

ACTING PRESIDENT BRESLIN: The bill is passed.

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

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

ACTING PRESIDENT BRESLIN: The Secretary will read.

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

ACTING PRESIDENT BRESLIN: Read the last section.

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

ACTING PRESIDENT BRESLIN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT BRESLIN: Senator Savino.

SENATOR SAVINO: Yes.

ACTING PRESIDENT BRESLIN:

Senator Schneiderman.

SENATOR SCHNEIDERMAN: Yes.

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

Senator Klein.

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

ACTING PRESIDENT BRESLIN: The Secretary will read.

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

SENATOR LIBOUS: Explanation.

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

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

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

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

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

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

SEQRA is virtually unenforceable in

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

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

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

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

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

questions, please.

ACTING PRESIDENT BRESLIN: Senator Thompson, will you yield to several questions from Senator Flanagan?

SENATOR THOMPSON: Yes, sir.

ACTING PRESIDENT BRESLIN: You may proceed, Senator Flanagan.

SENATOR FLANAGAN: Thank you.

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

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

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

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

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

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

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

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

SENATOR FLANAGAN: Yes, Mr. President.

ACTING PRESIDENT BRESLIN: Continue.

SENATOR FLANAGAN: Would Senator Thompson yield?

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

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

Appeals case.

SENATOR THOMPSON: Yes.

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

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

ACTING PRESIDENT BRESLIN: Senator Thompson.

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

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

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

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

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

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

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

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

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

ACTING PRESIDENT BRESLIN: Senator Flanagan.

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

SENATOR THOMPSON: Excuse me?

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

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

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

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

ACTING PRESIDENT BRESLIN: Senator Flanagan.

SENATOR FLANAGAN: Mr. President, on the bill.

Thank you, Senator Thompson.

ACTING PRESIDENT BRESLIN: Senator Flanagan, on the bill.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Thank you, Mr. President.

ACTING PRESIDENT BRESLIN: Thank you, Senator Flanagan.

Senator Oppenheimer.

SENATOR OPPENHEIMER: I would yield to the sponsor.

ACTING PRESIDENT BRESLIN: Senator Thompson, have you completed your

presentation?

SENATOR THOMPSON: Yes.

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

Senator Marcellino.

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

ACTING PRESIDENT BRESLIN: Senator Oppenheimer, on the bill.

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

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

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

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

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

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

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

ACTING PRESIDENT BRESLIN: Thank you, Senator Oppenheimer.

Senator Marcellino, on the bill.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ACTING PRESIDENT BRESLIN: Thank you, Senator Marcellino.

Senator Ranzenhofer, on the bill.

SENATOR RANZENHOFER: Thank you, Mr. President.

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

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

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

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

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

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

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

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

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

competitive disadvantages."

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

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

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

Because as some of my colleagues

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

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

Thank you, Mr. President.

ACTING PRESIDENT BRESLIN: Thank you, Senator Ranzenhofer.

Senator DeFrancisco, on the bill.

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

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

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

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

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

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

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

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

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

SENATOR DeFRANCISCO: Okay, thank you.

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

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

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

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

the general public.

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

Thank you.

ACTING PRESIDENT BRESLIN: Thank you, Senator DeFrancisco.

Senator LaValle, on the bill.

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

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

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

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

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

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

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

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

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

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

ACTING PRESIDENT BRESLIN: Thank you, Senator LaValle.

Senator Saland, on the bill.

SENATOR SALAND: Thank you, Mr. President.

Would Senator Thompson yield to a

question, please?

ACTING PRESIDENT BRESLIN: Senator Thompson, would you yield for a question from Senator Saland?

SENATOR THOMPSON: Yes.

ACTING PRESIDENT BRESLIN: You may proceed, Senator Saland.

SENATOR SALAND: Thank you, Senator Thompson.

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

SENATOR THOMPSON: Can you repeat your question?

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

SENATOR THOMPSON: Yes.

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

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

SENATOR THOMPSON: Yes, that would be correct.

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

On the bill.

ACTING PRESIDENT BRESLIN: Senator Saland, on the bill.

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

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

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

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

in life have the ability to grind out their opposition.

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

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

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

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

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

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

Thank you, Mr. President.

ACTING PRESIDENT BRESLIN: Thank

you, Senator Saland.

Senator Liz Krueger, on the bill.

SENATOR LIZ KRUEGER: Thank you, Mr. President.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

So I'm very appreciative that this

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

ACTING PRESIDENT BRESLIN: Thank you, Senator Krueger.

Senator Farley, on the bill.

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

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

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

ACTING PRESIDENT BRESLIN: Thank you, Senator Farley.

Senator Volker, on the bill.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ACTING PRESIDENT BRESLIN: Thank you, Senator Volker.

Senator Padavan, on the bill.

SENATOR PADAVAN: Thank you,

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

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

SENATOR THOMPSON: Yes.

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

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

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

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

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

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

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

ACTING PRESIDENT BRESLIN:

Senator Thompson.

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

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

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

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

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

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

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

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

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

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

ACTING PRESIDENT BRESLIN: Senator Padavan.

SENATOR PADAVAN: If I may, Mr. President.

ACTING PRESIDENT BRESLIN: Certainly.

Senator Thompson, do you yield to another question?

SENATOR THOMPSON: Absolutely. Absolutely.

ACTING PRESIDENT BRESLIN: You may proceed.

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

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

SENATOR THOMPSON: I heard that

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

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

SENATOR THOMPSON: Yes.

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

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

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

So I can't speak for New York City.

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

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

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

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

SENATOR THOMPSON: Absolutely.

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

SENATOR PADAVAN: I did already.

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

SENATOR PADAVAN: I thought you did.

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

SENATOR PADAVAN: Okay.

ACTING PRESIDENT BRESLIN: Will you yield, Senator Thompson?

SENATOR THOMPSON: Yes,

absolutely.

ACTING PRESIDENT BRESLIN: You may proceed, Senator Padavan.

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

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

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

SENATOR PADAVAN: I understand that.

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

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

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

ACTING PRESIDENT BRESLIN: Senator Padavan.

SENATOR PADAVAN: Well, would the Senator yield again.

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

SENATOR THOMPSON: Sure.

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

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

ACTING PRESIDENT BRESLIN: Senator Thompson.

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

ACTING PRESIDENT BRESLIN: Either way.

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

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

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

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

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

SENATOR PADAVAN: Thank you.

One more question, Mr. President.

ACTING PRESIDENT BRESLIN: Senator Thompson, do you yield for one more question from Senator Padavan?

SENATOR THOMPSON: Absolutely.

ACTING PRESIDENT BRESLIN: You may proceed, Senator Padavan.

SENATOR PADAVAN: And now in a completely different venue.

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

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

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

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

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

SENATOR PADAVAN: Thank you.

You've been very kind.

Mr. President, on the bill.

ACTING PRESIDENT BRESLIN:

Senator Padavan, on the bill.

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

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

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

establishment of this type of facility.

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

ACTING PRESIDENT BRESLIN: Thank you, Senator Padavan.

Senator Thompson.

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

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

ACTING PRESIDENT BRESLIN: Thank you, Senator Thompson.

Are there any other Senators wishing to be heard?

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

Read the last section.

THE SECRETARY: Section 3. This

act shall take effect immediately.

ACTING PRESIDENT BRESLIN: Call the roll.

(The Secretary called the roll.)

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

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

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

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

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

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

Thank you.

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

Announce the results.

THE SECRETARY: Ayes, 29. Nays, 32.

ACTING PRESIDENT BRESLIN: The bill fails.

The Secretary will continue to read.

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

SENATOR LIBOUS: Explanation.

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

SENATOR SQUADRON: Thank you, Mr. President.

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

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

from 25 to 45 miles per gallon.

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

ACTING PRESIDENT BRESLIN: Thank you, Senator Squadron.

Senator DeFrancisco.

SENATOR DeFRANCISCO: Would Senator Squadron yield --

ACTING PRESIDENT BRESLIN: Excuse me, Senator DeFrancisco.

Can we have some quiet, please.

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

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

SENATOR SQUADRON: Happy to.

ACTING PRESIDENT BRESLIN: You may proceed.

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

ACTING PRESIDENT BRESLIN: Senator Squadron.

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

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

ACTING PRESIDENT BRESLIN:

Senator DeFrancisco.

SENATOR DeFRANCISCO: Would Senator Squadron answer another question?

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

SENATOR SQUADRON: Yes, I'll yield.

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

SENATOR SQUADRON: Through you, Mr. President --

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

ACTING PRESIDENT BRESLIN: Senator Squadron.

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

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

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

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

ACTING PRESIDENT BRESLIN: Senator DeFrancisco.

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

ACTING PRESIDENT BRESLIN: Senator DeFrancisco, on the bill.

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

(Laughter.)

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

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

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

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

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

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

dealers.

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

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

Senator Fuschillo, on the bill.

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

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

SENATOR SQUADRON: I'd be happy to.

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

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

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

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

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

ACTING PRESIDENT BRESLIN: Senator Fuschillo.

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

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

SENATOR SQUADRON: Yes.

ACTING PRESIDENT BRESLIN: You may proceed, Senator.

SENATOR FUSCHILLO: Senator, one

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

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

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

ACTING PRESIDENT BRESLIN: Senator Fuschillo.

SENATOR FUSCHILLO: Thank you, Senator.

ACTING PRESIDENT BRESLIN:

Senator Larkin, on the bill.

SENATOR LARKIN: Would Senator Squadron respond to one question?

ACTING PRESIDENT BRESLIN:

Senator Squadron, would you yield for one question from Senator Larkin?

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

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

ACTING PRESIDENT BRESLIN:

Senator Squadron.

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

ACTING PRESIDENT BRESLIN:

Senator Larkin.

SENATOR LARKIN: On the bill.

ACTING PRESIDENT BRESLIN: On the bill, Senator Larkin.

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

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

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

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

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

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

Read the last section.

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

ACTING PRESIDENT BRESLIN: Call the roll.

(The Secretary called the roll.)

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

SENATOR SALAND: Thank you, Mr. President.

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

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

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

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

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

Mr. President, I vote in the negative.

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

Senator Squadron, to explain his vote.

SENATOR SQUADRON: Thank you, Mr. President.

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

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

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

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

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

Thank you, Mr. President.

ACTING PRESIDENT BRESLIN: Thank you, Senator Squadron.

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

SENATOR LIBOUS: Thank you, Mr. President.

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

(Laughter.)

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

ACTING PRESIDENT BRESLIN: Senator Libous will be recorded in the

negative.

Senator DeFrancisco, to explain his vote.

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

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

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

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

ACTING PRESIDENT BRESLIN:

Senator DeFrancisco will be recorded in the negative.

Senator Libous, why do you rise?

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

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

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

ACTING PRESIDENT BRESLIN: Pardon?

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

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

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

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

SENATOR LIBOUS: They were empty

six or seven minutes ago, Mr. President.

ACTING PRESIDENT BRESLIN: No, they weren't.

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

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

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

ACTING PRESIDENT BRESLIN: Thank you, Senator Libous.

Announce the results.

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

Volker, Winner and Young.

Ayes, 35. Nays, 26.

ACTING PRESIDENT BRESLIN: The bill is passed.

The Secretary will continue to read.

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

SENATOR LITTLE: Explanation, please.

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

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

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

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

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

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

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

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

ACTING PRESIDENT BRESLIN: Senator Little.

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

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

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

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

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

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

SENATOR STEWART-COUSINS: Absolutely.

ACTING PRESIDENT BRESLIN: You may proceed, Senator Little.

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

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

effective?

ACTING PRESIDENT BRESLIN: Senator Stewart-Cousins.

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

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

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

So the municipalities -- my

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

ACTING PRESIDENT BRESLIN: Senator Stewart-Cousins.

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

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

ACTING PRESIDENT BRESLIN: Senator Stewart-Cousins.

SENATOR STEWART-COUSINS: Well, I

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

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

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

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

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

SENATOR STEWART-COUSINS: Yes.

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

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

ACTING PRESIDENT BRESLIN: Senator Stewart-Cousins.

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

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

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

ACTING PRESIDENT BRESLIN: Senator Stewart-Cousins.

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

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

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

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

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

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

ACTING PRESIDENT BRESLIN: Senator Little.

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

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

SENATOR STEWART-COUSINS: I do.

ACTING PRESIDENT BRESLIN: Senator Little.

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

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

ACTING PRESIDENT BRESLIN: Senator Stewart-Cousins.

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

ACTING PRESIDENT BRESLIN: Senator Little.

SENATOR LITTLE: Thank you. If I may --

ACTING PRESIDENT BRESLIN: Would you continue to yield?

SENATOR STEWART-COUSINS: Of course.

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

ACTING PRESIDENT BRESLIN: Senator Stewart-Cousins.

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

purchase that they make be of recyclable paper.

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

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

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

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

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

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

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

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

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

SENATOR STEWART-COUSINS: Absolutely.

ACTING PRESIDENT BRESLIN: You may proceed, Senator Little.

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

ACTING PRESIDENT BRESLIN: Senator Stewart-Cousins.

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

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

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

ACTING PRESIDENT BRESLIN: Senator Little.

SENATOR LITTLE: Mr. President, yes, please.

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

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

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

SENATOR STEWART-COUSINS: Yes, certainly.

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

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

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

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

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

SENATOR LITTLE: Thank you.

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

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

SENATOR STEWART-COUSINS: Absolutely.

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

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

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

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

SENATOR STEWART-COUSINS: Certainly.

ACTING PRESIDENT BRESLIN: You may proceed, Senator Little.

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

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

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

ACTING PRESIDENT BRESLIN: Senator Little.

SENATOR LITTLE: If I may, Mr. President.

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

ACTING PRESIDENT BRESLIN: Would you continue to yield, Senator

Stewart-Cousins?

SENATOR STEWART-COUSINS: Of course.

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

ACTING PRESIDENT BRESLIN: Senator Stewart-Cousins.

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

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

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

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

ACTING PRESIDENT BRESLIN: Senator Little.

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

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

SENATOR STEWART-COUSINS: Yes, of course.

ACTING PRESIDENT BRESLIN: You may continue, Senator Little.

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

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

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

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

ACTING PRESIDENT BRESLIN: Senator Little.

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

If I can, on the bill.

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

SENATOR LITTLE: Thank you.

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

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

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

So I would ask that we not pass

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

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

Thank you.

ACTING PRESIDENT BRESLIN: Thank you, Senator Little.

Are there any other Senators wishing to be heard?

Senator Marcellino.

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

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

SENATOR STEWART-COUSINS: Yes.

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

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

SENATOR MARCELLINO: Thank you.

SENATOR STEWART-COUSINS: You're welcome.

ACTING PRESIDENT BRESLIN: Thank you, Senator Marcellino.

Are there any other Senators wishing to be heard?

SENATOR LIBOUS: Read the last section.

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

Read the last section.

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

ACTING PRESIDENT BRESLIN: Call

the roll.

(The Secretary called the roll.)

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

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

(Laughter.)

SENATOR LIBOUS: I appreciate the affection.

ACTING PRESIDENT BRESLIN: Announce the results.

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

Ayes, 40. Nays, 21.

ACTING PRESIDENT BRESLIN: The bill is passed.

The Secretary will continue to

read.

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

SENATOR YOUNG: Explanation.

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

SENATOR FOLEY: Thank you, Mr. President --

ACTING PRESIDENT BRESLIN: Excuse me, Senator Foley.

Senator Klein.

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

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

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

ACTING PRESIDENT BRESLIN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT BRESLIN: Senator Golden.

SENATOR GOLDEN: No.

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

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

SENATOR GOLDEN: Yes, Mr. President.

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

The Secretary will call the roll on Calendar Number 399.

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

ACTING PRESIDENT BRESLIN: Read the last section.

THE SECRETARY: Section 4. This

act shall take effect immediately.

ACTING PRESIDENT BRESLIN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT BRESLIN: Senator Golden.

SENATOR GOLDEN: No.

ACTING PRESIDENT BRESLIN: Senator Golden recorded in the negative.

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

We will now return to Calendar Number 330.

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

SENATOR LIBOUS: Mr. President.

ACTING PRESIDENT BRESLIN: Senator Libous.

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

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

objection, the reading is waived.

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

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

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

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

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

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

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

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

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

they're not necessarily elected to any particular place.

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

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

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

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

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

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

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

ACTING PRESIDENT BRESLIN: Can we please have some quiet.

SENATOR MARCELLINO: Thank you.

Appreciate it.

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

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

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

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

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

Thank you, Mr. President.

ACTING PRESIDENT BRESLIN: Thank you, Senator Marcellino.

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

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

Announce the results.

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

ACTING PRESIDENT BRESLIN: The motion fails.

We're now back to the bill in chief.

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

SENATOR FOLEY: Thank you,

Mr. President.

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

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

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

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

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

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

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

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

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

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

ACTING PRESIDENT BRESLIN: Senator Young.

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

(Laughter.)

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

ACTING PRESIDENT BRESLIN:

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

SENATOR FOLEY: From Senator Young, yes.

SENATOR YOUNG: Thank you very much.

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

ACTING PRESIDENT BRESLIN: Senator Foley.

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

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

ACTING PRESIDENT BRESLIN: Senator Young.

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

SENATOR FOLEY: Yes.

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

SENATOR FOLEY: Yes, Mr. President.

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

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

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

ACTING PRESIDENT BRESLIN:

Senator Foley.

SENATOR FOLEY: Thank you.

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

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

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

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

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

ACTING PRESIDENT BRESLIN: Senator Young.

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

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

SENATOR FOLEY: Yes, Mr. President.

ACTING PRESIDENT BRESLIN: You may proceed, Senator.

SENATOR YOUNG: Thank you very much.

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

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

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

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

ACTING PRESIDENT BRESLIN:

Senator Foley.

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

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

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

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

apply that.

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

ACTING PRESIDENT BRESLIN: Senator Young.

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

ACTING PRESIDENT BRESLIN: Senator Foley, will you continue to yield to Senator Young?

SENATOR FOLEY: Yes, Mr. President.

ACTING PRESIDENT BRESLIN: You may proceed, Senator Young.

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

disagree with what you just said.

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

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

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

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

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

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

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

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

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

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

ACTING PRESIDENT BRESLIN: Senator Young.

SENATOR YOUNG: Through you, Mr. President.

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

SENATOR FOLEY: Yes, Mr. President.

ACTING PRESIDENT BRESLIN: You may proceed, Senator.

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

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

ACTING PRESIDENT BRESLIN: Senator Foley.

SENATOR FOLEY: Yes, thank you.

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

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

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

minutes ago.

ACTING PRESIDENT BRESLIN: Senator Young.

SENATOR YOUNG: Through you, Mr. President.

ACTING PRESIDENT BRESLIN: Will you continue to yield, Senator Foley?

SENATOR FOLEY: Yes, Mr. President.

SENATOR YOUNG: So, Senator Foley, you're saying that you don't have a list with you today. Have you ever seen a list?

ACTING PRESIDENT BRESLIN: Senator Foley.

SENATOR FOLEY: Thank you. As I mentioned earlier, I'd be more than happy to put together the scientific information that you need to help in your decision-making. Do I have a list of particular students? No. We don't have that list, no.

SENATOR YOUNG: Okay, so the answer is no.

ACTING PRESIDENT BRESLIN: Senator Young.

SENATOR YOUNG: Mr. President, through you. Senator Foley --

ACTING PRESIDENT BRESLIN: Do you continue to yield?

SENATOR FOLEY: Yes, Mr. President.

SENATOR YOUNG: Senator Foley, it's my understanding that deer ticks and Lyme disease are a tremendous problem on Long Island. Is that true?

SENATOR FOLEY: It's true in may parts of the state. But it's true in our region, yes, it is.

SENATOR YOUNG: Right. It's my understanding that it's Long Island, Hudson Valley especially. Of course it's an issue across all of New York State. But when you have a serious issue with deer ticks and Lyme disease, why would you disallow school districts from being able to treat for deer tick infestation if they have it? Aren't you putting children at risk that way?

ACTING PRESIDENT BRESLIN: Senator Foley.

SENATOR FOLEY: Senator Young, do

you care to rephrase your question?

SENATOR YOUNG: Why should I rephrase my question? I'm asking you a question.

SENATOR FOLEY: Because it doesn't prohibit that use. Through the President. Thank you.

This is what happens, Mr. President, when one goes on for hours and it's getting late into the evening and they try to find any reason to hang their hat to oppose a bill.

I'll speak for a moment as a former chairman of the Health Committee in Suffolk County that had, in fact, a number of public hearings on the whole issue of deer tick population. And as Senator LaValle may recall, there's a certain Dr. Duttweiler from Stony Brook University, one of the foremost experts in the world on deer tick population.

I can say unequivocally to you, Senator Young, I would never put forward any kind of legislation that would put in harm's way any child or any adult as it relates to deer ticks.

Let me go on further. I would say to you and to any who, again, are looking for a reason to vote no, I have not heard of one example where one football field, where one soccer field, where one baseball field ever had a deer tick problem.

Now, that may happen. But there are mechanisms through this resolution, if and when approved, that would enable those school districts to apply that particular substance, whatever it might be, to attack that particular problem. But I can tell you, standing here tonight and having been involved in scholastic athletics for many decades, I have not heard of one example of that. But if it would happen, in the most remote of possibilities, there are mechanisms within this bill that would address that problem, however remote that it is.

ACTING PRESIDENT BRESLIN: Senator Young.

SENATOR YOUNG: Thank you, Mr. President. Through you. Senator Foley --

ACTING PRESIDENT BRESLIN: Would you continue to yield, Senator Foley?

SENATOR FOLEY: Certainly.

SENATOR YOUNG: Senator Foley, it's interesting you bring that up, because you touched on it just briefly in your explanation, but you talked about there are provisions in the bill that allow for emergency application. But could you explain exactly how that would work, what kind of hoops you would have to jump through to get that kind of allowance?

SENATOR FOLEY: Sure.

ACTING PRESIDENT BRESLIN: Senator Foley.

SENATOR FOLEY: The simple answer is that it's contained in the resolution itself. But since that's not enough of an answer, even though it's contained in the body of the resolution, I would then go on to the question at hand.

If in fact the school board had a problem where there was a need to apply a pesticide, the school board itself can make that decision and then they can move forward to apply that particular -- make that particular application.

For a daycare or others, they could then appeal to the local county health department. If there is no local county health department, it can go through a designee of the county legislature, as one example.

But the important part is that if and when the bill is approved, the Departments of Environmental Conservation and Education would promulgate the rules and regulations, and this would lead to the administration of this law. Those two departments would promulgate the rules and regulations that would put in place the process that would be followed in order to make those particular applications if it's not a school board.

And I am going to ensure or let's say request of the departments, of those two departments when they promulgate these rules that it will be as small of a window of time of response as possible. And I'm highly confident that they could put together a very short window that they would be able to give a response to that organization that needs to use that pesticide, in the remote case that it

might need it.

ACTING PRESIDENT BRESLIN: Senator Young.

SENATOR YOUNG: Mr. President, will Senator Foley continue to yield.

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

SENATOR FOLEY: Yes, Mr. President.

ACTING PRESIDENT BRESLIN: You may proceed, Senator Young.

SENATOR YOUNG: Thank you.

Well, Senator Foley, it sounds from what you just said that there's an awful lot of red tape that would go along with this bill and that it could get jammed up in the process.

But I wanted to ask you some additional questions. Can you describe what anaphylactic shock is?

SENATOR FOLEY: How does it relate to the resolution?

SENATOR YOUNG: Oh, it absolutely relates to it, and I'll tell you why. Under your bill, you would not allow for the

treatment of clover on athletic fields. Clover is a food source for bees and other flying insects that sting. And if you eliminate the food source, you eliminate the bees.

But I asked you about anaphylactic shock because that's a very serious health issue. Again, that could occur if this bill goes through. So I just wanted to ask you if you knew what it was.

ACTING PRESIDENT BRESLIN: Senator Foley.

SENATOR FOLEY: Thank you, Mr. President.

The reason I asked why it's relevant to the legislation is the fact that this was brought up in committee. And I had mentioned to Senator Young at that time that clover is also an excellent source of nitrogen, and there would be less of a need to in fact put down some fertilizers that you otherwise would have to if you didn't have clover as part of the mix for those particular fields.

Again, these are very, very remote,

very extreme examples, Senator Young. I very much doubt that those problems would arise. And if they do, there already are protocols within schools if and when a child comes -- I'll say comes down or has an anaphylactic reaction, whether in the school or in the fields. So those particular, let's say, protocols are already in place in every school district if that would happen either in the school building or on school grounds. So those same protocols would still hold true if and when this legislation would be approved.

ACTING PRESIDENT BRESLIN: Senator Young.

SENATOR YOUNG: Thank you, Mr. President. Would Senator Foley continue to yield?

ACTING PRESIDENT BRESLIN: Will you continue to yield, Senator Foley?

SENATOR FOLEY: Yes, Mr. President.

SENATOR YOUNG: I just want to remark first that those protocols are after the fact. And clover is a very common problem that we see in our athletic fields. And even

if you aerate the soil, you can avoid all that and all that additional cost if you treat a field for clover, and it can last up to five years. But right now, if this bill goes through, you're going to tie the school district's hands to be able to deal with that situation.

But I wanted to ask you about athletic injuries. And there's a real problem when grubs attack the root systems of athletic fields, because the ground becomes unstable, you see a dramatic increase in ankles being broken, legs being broken, arms, collarbones, head injuries.

And I guess, again, I'd like to ask if you can't treat for grubs under this bill, and you're going to see an increase in children's injuries if they're playing sports, how can you justify this?

ACTING PRESIDENT BRESLIN: Senator Foley.

SENATOR FOLEY: Again, Mr. President, I dispute the exaggerated claims about what would happen if in fact there's a grub infestation on the fields.

And again, the bill allows for emergency applications of a pesticide if in fact the need arises. And again, if it's on school grounds in public schools, there are other mechanisms contained in the law in a very clear and simple way that school boards could in fact move forward with making that quick determination.

So again, there's no -- there is -- we would hope that there will be far less need to use these particular pesticides, or no need to use it, but particularly to take alternative turf guidelines that can help to strengthen that turf and in so doing make it far less likely that there will be anything that would occur that will put stress on the turf.

But in the remote -- again, the remote possibility of these things happening, there arse mechanisms in the bill that will allow those applications to occur.

ACTING PRESIDENT BRESLIN: Senator Young.

SENATOR YOUNG: Will Senator Foley continue to yield?

SENATOR FOLEY: Yes, Mr. President.

ACTING PRESIDENT BRESLIN: Senator Foley continues to yield.

SENATOR YOUNG: I'd just like to follow up on that point about grubs. Because what, Senator Foley, you're talking about is waiting until this problem gets out of control and then trying to deal with it.

Basically, what happens with grubs is if you treat the field two years in a row in early July when school is out of session, then you totally avoid the problem. And what you're saying now is that wait until there's a huge problem, kids are getting hurt, and then maybe we'll treat it through some kind of an emergency application. I don't see how that makes sense.

ACTING PRESIDENT BRESLIN: Senator Foley.

SENATOR FOLEY: Again, that's not the scenario that I would foresee. If in fact the grounds supervisor sees that there's an initial problem or, let's say, the initial phase of that particular grub problem --

because it all doesn't happen at once -- he can then immediately -- he or she can then immediately appeal to the school district officials to trigger the process that would quickly respond to the problem.

SENATOR YOUNG: Mr. President.

ACTING PRESIDENT BRESLIN: Would you continue to yield to Senator Young?

SENATOR FOLEY: Yes, Mr. President.

SENATOR YOUNG: Senator Foley, have you ever had poison ivy?

SENATOR FOLEY: Again, I don't see the relevancy of the question. But I think, given the tenor of the day, where such kinds of questions have been asked on other bills, the answer is no.

SENATOR YOUNG: Okay. So --

ACTING PRESIDENT BRESLIN: Senator Young.

SENATOR YOUNG: Through you.

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

SENATOR FOLEY: On non-poison ivy questions, sure.

SENATOR YOUNG: The reason, Senator Foley, that I'm asking about poison ivy is again, under your legislation, school districts and daycares would not just be able to go out and treat poison ivy if they see it growing on a tree or a fence near a playground, for example, or on school grounds.

I can't think of any parent who I know who would want their child to come home with a bad case of poison oak or poison ivy. Now, a lot of times people will say that, well, we train the kids, it has three leaves, so they'll identify it. Do you know what poison ivy looks like in March?

ACTING PRESIDENT BRESLIN: Senator Foley.

SENATOR FOLEY: Well, let me answer the question this way. Again, similar to the earlier question about fungicides, Mr. President, this bill focuses on pesticides. In order to combat poison ivy, that would then be a select application of an herbicide. So again, we're not talking about herbicides or fungicides here, we're talking about pesticides.

A pesticide has no role with poison ivy. So again, just as the protocol has been all these years when it comes to trying to eradicate poison ivy on school grounds or other grounds, the same protocols can be used even when this legislation is approved.

SENATOR YOUNG: Thank you. Mr. President, one more question.

ACTING PRESIDENT BRESLIN: One more question, Senator Foley. Will you yield to Senator Young?

SENATOR FOLEY: I'll be happy to yield to Senator Young.

SENATOR YOUNG: I just want to go back to the emergency procedures one more time. Because you talked about how you were going to mitigate the amount of time that it took to get emergency appeals through.

SENATOR FOLEY: Yes.

SENATOR YOUNG: But exactly how long would the emergency procedures take to effectuate a treatment from identification of a problem to the application of the accepted pesticides?

SENATOR FOLEY: That's an

excellent question, a fair question. Probably the best question that's been asked so far tonight.

That's why I said earlier the same principles apply whether at the county level, city level, state level. We as legislators will propose and approve laws. Then we then turn to the administrative branch of government, and then they will promulgate the rules and regulations that will effectuate the law.

And as I said earlier, it's my expectation and the way that this Senator works, if and when a bill of his is approved, is to follow through and speak with the relevant departments to make sure that they promulgate rules and regulations that reflect both the intent and the spirit of the bill that this Senator proposes.

So I would say most directly to Senator Young that through the process of promulgation of the rules and regs, it will in fact be a period of time that will enable the school or the other institution to address it that timely, effective manner.

ACTING PRESIDENT BRESLIN: Senator Young.

SENATOR YOUNG: On the bill.

ACTING PRESIDENT BRESLIN: Senator Young, on the bill.

SENATOR YOUNG: Thank you, Mr. President.

You know, this particular piece of legislation is totally unnecessary. Because our school districts already are very responsible in dealing with this issue. And basically what this would do is drive up costs. It's another unfunded mandate from New York State that would burdened on our school districts at a time when they are suffering mightily. They are facing tremendous budget cuts right now. And to put this on their backs is totally wrong.

And, you know, we talk a lot in this chamber about unintended consequences. The unintended consequences of this bill are that children could be hurt, not helped.

We talked about the fact that Lyme disease is a tremendous problem across the state, particularly in Long Island and the

Hudson Valley. And I was talking to a pesticide applicator who deals with a lot of school districts recently, and he told me a story. He said that he went to a woman's house in the Hudson Valley and she had him applying pesticides to deal with deer ticks, but she wanted it all over her property, way beyond what he would normally recommend.

And he said to her, "Don't you think you're going a little bit overboard on this?" And she said, "Come in my house, I want to show you something."

So he went in her house, and on her couch was a little two-year-old girl on a respirator. And she said, "When I was pregnant, I took care of myself, I ate well, I walked every day on my property. And I didn't know it, but I contracted Lyme disease while I was pregnant. And as a result, my baby will never be able to breathe on her own."

Those are the effects of Lyme disease on people's lives. And I think you have to take that into account.

Anaphylactic shock is another very serious problem. And as I said, it's very

difficult to treat for clover once it takes hold. And you have to have the ability to get it off the athletic fields.

I have personal experience with this, because when my son Patrick was a little boy, we were on school grounds, he went running up to a chain link fence, and being a little boy, he shook it. And what he did not know is that there was a yellow-jacket nest next to the fence. Yellow jackets, as we all know in this chamber, are extremely aggressive. Some flew out, and they started to sting him. The next thing I knew, his face was swelling up, he was turning blue. I had to rush him to the emergency room.

Fifty people in this country die every year from anaphylactic shock. Millions of people are allergic to bee stings. Why wouldn't we give the school districts the ability to fend off a serious problem before the fact and not wait for some tragedy to happen?

You know, it's time that we applied a little common sense in this chamber. And on the surface, this bill sounds like a good

idea. But I believe very strongly it's the wrong thing to do, it's the wrong action to take. I would urge everyone to vote no on this legislation for all the things that we talked about.

But to create more bureaucracy, more red tape, tie the districts' hands and create another financial burden on them and jeopardize our children's health and safety is the wrong way to go.

Thank you.

ACTING PRESIDENT BRESLIN: Thank you, Senator Young.

Senator Libous, on the bill.

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

You know, when I heard the exchange between Senator Young and Senator Foley, I was a little disappointed, Senator Foley. I felt that maybe you didn't take Senator Young's questions serious, because there were some flippant answers that were given back.

And I just want to back up some of the things that she said. And I think the best way to do it is to read a letter that I

received today.

It says: "Good morning. I am writing from the Union-Endicott Central School District to ask that you please consider our concerns regarding the fact that the Senate and Assembly are planning on passing legislation this week for Earth Day that would prohibit the use of certain pesticides on school properties.

"While well-meaning, the bill is harmful. In the midst of weathering the financial crisis, the state would force schools to buy new products as well as hire and pay to train new staff. It would also impose a senseless, uniform approach to problems that are unique in each school district.

"The legislation purports to advance the safety of children but ignores the threat of Lyme disease and other pest-borne diseases and, just as importantly, the history of the school district's judicious use of these products.

"Please know that we are not endangering the health of our students, as

claimed by the sponsor. Please realize that this bill will add another unfunded mandate to an already long list of unnecessary, unpaid requirements placed upon us and our taxpayers with no evidence of necessity.

"Thank you for any help you can give us on this matter.

"Suzanne E. McLeod, Superintendent of the Union-Endicott School District."

So, Mr. President, Senator Young's questions are serious questions. They are questions that not only she has on behalf of our constituents, I have on behalf of mine. And one who is a superintendent responsible -- Union-Endicott happens to be one of the biggest school districts in my area. And this superintendent is responsible for her children and is concerned about this legislation.

So I think that anytime anything is discussed in this chamber, while from time to time we may disagree and have different feelings and sometimes, you know, we get a chuckle out of a bill, as we did earlier with Senator Squadron -- and certainly that was important to him, and it passed -- I would

hope that all of our colleagues take very serious that those of us, in this case in upstate districts who are concerned about the children of their school district and certainly concerned about additional mandates and concerned about what is going to be placed on school districts in a fiscal crisis -- and again, Mr. President, I will say it, at a time when we don't have a budget done -- I think these are very serious concerns.

And as Senator Young pointed out, I too share the concerns, the questions that she asked, as do superintendents in my district.

Thank you, Mr. President.

ACTING PRESIDENT BRESLIN: Thank you, Senator Libous.

Senator Marcellino, on the bill.

SENATOR MARCELLINO: Thank you, Mr. President. Will Senator Foley please yield to a question?

SENATOR FOLEY: Sure.

ACTING PRESIDENT BRESLIN: Senator Foley, will you yield to Senator Marcellino?

SENATOR FOLEY: Yes,

Mr. President.

SENATOR MARCELLINO: Senator Foley, you mentioned before in your cross-conversation with Senator Young that pesticides, as you define them, do not include fungicides, herbicides and others? I don't know the full length of it, but you did mention fungicides and herbicides?

SENATOR FOLEY: The bill is focused on pesticides, correct.

SENATOR MARCELLINO: Are you familiar with the definition of "pesticides" in the ECL? I'm sorry, through you, Mr. President.

ACTING PRESIDENT BRESLIN: Yes. Senator Foley, do you yield to another question?

SENATOR FOLEY: Yes.

ACTING PRESIDENT BRESLIN: You may proceed, Senator Marcellino.

SENATOR MARCELLINO: The definition of "pesticides" in the ECL includes insecticides, rodenticides, and fungicides.

Factually -- your statement, sir, is factually incorrect. Go right ahead.

ACTING PRESIDENT BRESLIN: Senator Foley.

SENATOR FOLEY: Thank you, Mr. President, for the opportunity to respond. And I'll certainly take that correction to heart.

SENATOR MARCELLINO: It's --

SENATOR FOLEY: Let me finish the point.

But it also speaks to the point I raised earlier, which is the fact that there are mechanisms within the bill, if it becomes law, that would enable the schools to move forward with applications of those particular chemicals if in fact it's required under an emergency situation.

So while there is an initial prohibition of the use, if in fact there is an emergency situation, they could still then be used within the rules and regulations that will be promulgated by the relevant departments.

ACTING PRESIDENT BRESLIN: Senator Marcellino.

SENATOR MARCELLINO: Now that

we've cleared up with the definition of "pesticides" is --

ACTING PRESIDENT BRESLIN: Would you like to ask an additional question?

SENATOR MARCELLINO: If I could just preamble it, I'll then get to that, sir. With all due respect.

ACTING PRESIDENT BRESLIN: Pardon?

SENATOR MARCELLINO: I just want to preamble it, and then I'll ask him a question. Is that okay?

ACTING PRESIDENT BRESLIN: Sure.

SENATOR MARCELLINO: Thank you very much.

ACTING PRESIDENT BRESLIN: Would you yield to a question, Senator Foley?

SENATOR FOLEY: Yes, Mr. President.

SENATOR MARCELLINO: Thank you, sir.

The section of the bill reads from -- I'm starting at line 19 on page 2 of the bill. Starting at "No school shall apply pesticide to any playgrounds, turf, athletic

fields except that emergency applications of a pesticide may be made as determined by the county health department or, in a county not having a health department, such authority as the county legislature shall designate, the commissioner of health or his or her designee, the commissioner of environmental conservation or his or her designee, or, in the case of a public school, the school boards."

In my amendment before, I asked that we include private and parochial schools in that list. Because the way I read this section, they're not included here. They don't have elected school boards. They have trustees, maybe an owner, whatever. But they don't have elected school boards as defined by this bill. So all we wanted to ask in the definition was to include them in the list.

ACTING PRESIDENT BRESLIN: Senator Foley.

SENATOR FOLEY: Yes, thank you, Mr. President.

In those particular instances, say either in our counties -- in Suffolk County or Nassau County, for example, those particular

schools would be able to appeal directly to the local county health department for an emergency application of the required pesticide.

SENATOR MARCELLINO: Mr. President, if the Senator would continue to yield.

ACTING PRESIDENT BRESLIN: Senator Foley, would you continue to yield to Senator Marcellino?

SENATOR FOLEY: Yes, Mr. President.

ACTING PRESIDENT BRESLIN: You may proceed, Senator Marcellino.

SENATOR MARCELLINO: Thank you.

As I said earlier, words matter, Senator. It says clearly here "or, in the case of public schools." It says "no school shall apply," and then it excludes public schools by allowing them to go to their school boards. Private schools do not have that. They just don't. Therefore, they're excluded here. They don't have that.

They have to go up to the Commissioner of Health in the state, because

there are counties in the state, as you recognized by accepting the amendments, that don't have health departments. There are at least 10 counties that don't have health departments. Some counties don't have county legislators.

So, you know, you're dealing with a situation that we asked to correct, and all we're saying, put nonpublic schools, parochial schools on the same playing field so that they too can be protected by your law. That's all we're saying.

ACTING PRESIDENT BRESLIN: If you consider it a question, can you answer that, Senator Foley?

SENATOR MARCELLINO: I thought it was a question.

SENATOR FOLEY: Again, Senator Marcellino, they can appeal to, in this case, the State Health Department. In fact, I would say this. This particular section of law -- this particular section of the bill, rather, came from a suggestion that you had made at our Environmental Conservation Committee meeting, and it was a point well-taken, as far

as either DEC or the Health Department or their designee.

So again, the way the bill is constructed, those particular schools would have several options that they could pursue in order to receive the approval to move forward with a pesticide application. And again, that would be reflected in the rules and regs promulgated by the relevant department.

ACTING PRESIDENT BRESLIN: Senator Marcellino.

SENATOR MARCELLINO: Mr. President, through you, if the Senator will continue to yield.

ACTING PRESIDENT BRESLIN: Senator Foley, will you continue to yield?

SENATOR FOLEY: Yes, Mr. President.

SENATOR MARCELLINO: Senator, you can say it every way you wish. The language in the bill -- and I agree, the language in the bill simply excludes nonpublic schools. That's what the phrase means at the end.

And had we added that amendment, had we added that fix, I wouldn't have a

problem with that. I don't necessarily agree that this bill is absolutely necessary. I think it's covered in a whole bunch of different rules. And a whole bunch of different laws take into consideration most of what you want to do. I think basically we're looking -- we have a solution looking for a problem here.

But that being said, in order to fix the bill -- and I believe it can be fixed, that was the purpose of the amendment. Not to derail the bill, not to stop the bill, but to fix it. I believe there's a fix necessary here.

ACTING PRESIDENT BRESLIN: Senator Foley.

SENATOR FOLEY: Thank you.

In past conversations that I've had with Senator Marcellino, certainly you've expressed support for the bill. And in prior conversations that we've had -- in fact, even at committee -- once we made the initial amendments, and Senator Thompson will recall this as well, when we made the amendments as suggested by Senator Marcellino several weeks

ago, there was -- in fact, he supported the bill being reported out of committee with those amendments.

So again, I'm a little surprised by the fact that several hours ago we did in fact receive some hostile amendments by the Senator who had heretofore supported the bill.

Certainly, going forward --

ACTING PRESIDENT BRESLIN: Senator Duane -- excuse me, Senator Foley. Senator Duane, why do you rise?

SENATOR DUANE: Thank you, Mr. President. I'm assuming that Senator Foley has the floor, and I would like to ask the Senator --

ACTING PRESIDENT BRESLIN: At this point, Senator Marcellino has the floor.

SENATOR MARCELLINO: I believe I have the floor, Mr. President.

SENATOR DUANE: No, I think Senator Foley has the floor.

SENATOR MARCELLINO: No, he's yielding to a question.

ACTING PRESIDENT BRESLIN: No, Senator Marcellino has asked if -- Senator

Marcellino has the floor.

SENATOR FOLEY: We'll get to it, Tom.

Mr. President --

ACTING PRESIDENT BRESLIN: Senator Duane, to explain, earlier I recognized Senator Marcellino, and he's been asking questions of Senator Foley. So Senator Marcellino has the floor to ask those questions. Thank you, Senator Duane.

SENATOR FOLEY: Thank you.

So again, there were amendments that were suggested by Senator Marcellino, we incorporated those amendments, he supported the bill. So I was a little surprised to see the hostile amendments today.

Let me just say this. Some of the elements of the amendment that he proposed certainly can be entertained in the future. But I would submit to Senator Marcellino that the failure of the amendment to be approved, to me, does not make this bill a fatally flawed one. You may believe that there needs to be improvements to the bill. But as I've said many times, I don't think we ever passed

a perfect bill in any deliberative body.

So certainly, going forward, if in fact there are other chapter amendments that would be, let's say, mutually supported, we can move forward with those. Absent the approval of the hostile amendment this afternoon I would submit is not enough of a reason to oppose this bill.

ACTING PRESIDENT BRESLIN: Senator Marcellino.

SENATOR MARCELLINO: If the Senator would continue to yield.

ACTING PRESIDENT BRESLIN: Do you continue to yield to Senator Marcellino?

SENATOR FOLEY: Yes, Mr. President.

ACTING PRESIDENT BRESLIN: You may continue, Senator Marcellino.

SENATOR MARCELLINO: The Senator mentioned the fact of our suggesting amendments during the committee meeting process, which we did. Those amendments were ultimately, although not immediately, incorporated. I think a couple of days later we had a meeting and the bill had not been

amended. I voted at that time without recommendation, because the bill wasn't amended at that point in time to see that the bill in fact was. So while --

ACTING PRESIDENT BRESLIN: Senator Duane -- excuse me, Senator Marcellino.

SENATOR MARCELLINO: I'm not finished, Mr. President. If I might --

ACTING PRESIDENT BRESLIN: Senator Marcellino, Senator Duane has risen. I can ask him why he has risen.

SENATOR DUANE: Because, Mr. President -- and maybe --

SENATOR MARCELLINO: So has the sun, sir.

ACTING PRESIDENT BRESLIN: Excuse me?

SENATOR MARCELLINO: I'm just suggesting that --

SENATOR DUANE: Mr. President, the reason that I -- I just heard Senator Marcellino ask Senator Foley if he would yield. Thereby, I assumed that that -- and maybe Senator Marcellino was incorrect in his

questioning that Senator Foley didn't have to yield. But it was the second time I heard it, and that's why I was presuming that Senator Foley, if he was being asked to yield, he was being asked to yield.

SENATOR FOLEY: In fact, I had the floor, yeah.

SENATOR DUANE: And so --

ACTING PRESIDENT BRESLIN: Senator Duane, sometimes the correct terminologies aren't used. And it's up to the President to control the debate.

SENATOR DUANE: Certainly that's never happened in my case.

ACTING PRESIDENT BRESLIN: No, I'm well aware of that.

SENATOR DUANE: Thank you, Mr. President.

ACTING PRESIDENT BRESLIN: I will allow Senator Marcellino to continue to ask questions.

SENATOR DUANE: Thank you, Mr. President.

ACTING PRESIDENT BRESLIN: Senator Marcellino.

SENATOR MARCELLINO: I apologize, Mr. President. I didn't notice that Senator Duane had risen, and I interrupted your comment. I didn't mean to. No disrespect intended.

Senator, you mentioned the fact that in your mind the bill is not flawed enough to warrant the change and that we could address chapter amendments down the road. I've engaged in chapter amendments on occasion with other pieces of legislation. They're not always that reliable. You can't always count on the other house to finish and to do that. You can't always count on the Governor to sign them.

We do have an opportunity right now. The bill is here, the bill could be fixed, the bill could be amended, it could be sent over to the other house with the amendments added to it. And I'm sure none of these amendments would justify them not passing the bill. They would probably pass it. So we could kill two birds and not waste a lot of time if we did that.

All that being said, if I might,

the other point of the bill, too, goes to the same thing with the Social Services Law. The bill says the same language.

And I might add that the bill has a misprint in it, which I don't necessarily think we have to fix, but it could be when the bill is finally printed. Because the line says, at the end, "or in the case of public schools." Once again, I don't mean you mean public schools. I think you mean, at that point, daycare centers.

So that could be adjusted. Hopefully it's not a same-as as the other bill. That might impact it, if it's a problem.

ACTING PRESIDENT BRESLIN: Are you on the bill, Senator Marcellino?

SENATOR MARCELLINO: No, I'm not.

I would ask that the same thing be done, that we add into the section on Social Services Law for daycare centers, private daycare centers which do not have the benefit of boards and the like, that they be added, the language be put in. Instead of "public," that "private and/or trustees" be added, so

that they can declare an emergency --

ACTING PRESIDENT BRESLIN: Again, Senator Marcellino --

SENATOR MARCELLINO: Would you not agree?

ACTING PRESIDENT BRESLIN: Senator Marcellino -- okay, at the end there was a question.

SENATOR MARCELLINO: I thought there would be.

ACTING PRESIDENT BRESLIN: Senator Foley.

SENATOR FOLEY: I'm glad at the end you finally put the verb in that paragraph. It was at the end of the paragraph.

Again, in all due respect -- former chair of EnCon; again, neighborhood notification and other very good and groundbreaking pieces of legislation that the former chair had championed -- I would have to respectfully disagree with your characterization of it.

As the sponsor of the bill, I would not necessarily agree with all the provisions

that you had contained in the hostile amendment. That's why I believe, in a larger sense, hostile amendments is a rather ineffective way to try and change laws, because it's always done in confrontation with the sponsor of the bill, as opposed to a more collegial fashion, as was exhibited when we worked together in the committee structure to do those amendments, not to do an amendment two hours before we opened session.

So I'd have to disagree with your statement, Senator Marcellino.

ACTING PRESIDENT BRESLIN: Senator Marcellino.

SENATOR MARCELLINO: Mr. President, I'll go on the bill.

ACTING PRESIDENT BRESLIN: Senator Marcellino, on the bill.

SENATOR MARCELLINO: Simply saying that you disagree does not answer. Simply saying "I disagree with you" does not make the statement made incorrect.

The bill as written excludes private schools. It excludes private daycare centers from the same prerogatives that you're

giving to the public schools and public daycare centers. It is discriminatory in that respect and should be fixed.

There are huge populations of youngsters in the private daycare centers and in the private schools that will not get the same benefits -- if you want to accept the fact that this bill has benefits -- that the public schools and the public daycare centers have. It simply doesn't provide them. Saying it, I disagree with you -- it's a great answer, Senator, but it doesn't cut it. The language means something.

The language in this bill, as phrased in this bill, you can talk to any lawyer you want, they're going to tell you the same thing. It excludes the private schools, it excludes the private daycare centers. That's not what you want it to do. I don't believe that's what you intend it to do. I think it's just a case of poorly written language that could be fixed. That's all.

If you want to fix it, then let's fix it. If you're talking about a chapter amendment, I think that's unnecessary time.

You want to do that later, in fact, fine, let's do it later. But this is a problem with the bill that makes it, in my mind, difficult to support because it leaves out a huge population of youngsters.

It was talked about before that we have school districts -- I received a memo from an organization called Grassroots Environmental Education, and it lists a whole bunch of school districts that it says that these districts are involved right now in the organic pesticide applications. And it just so happens, we called some of them. We had people make some phone calls.

It lists the Jericho Union Free School District, which is one of the better school districts in the state, one of the larger ones in my district, and we called them. There is organic, by choice of the school board, in the elementary grades, but not at the high school, according to the school district. The high school does not engage in the organic pesticide situation, but the elementary grades, it does. Why? I don't know. But that was their choice.

In questioning some of the others, in calling some of the other districts, we found out some had engaged in it, no longer do -- by choice. Some are thinking about doing it but are not now doing it, but they might consider it. You know, you go down the list here, there's district after district. In other words, the list is not exactly complete. And the statement in the memo is not exactly accurate, as it should be.

Right now any school district that wants to, any school district that wants to, any municipality that wants to, any entity that wants to can on its own, right now, go organic. And I would have absolutely no problem with that. They would have the perfect right to do it. I would encourage most of it. I don't see the problem with that. Let them do it. But they have the right now.

This law doesn't give them the right, this law mandates that they do it. Whether they want to or not, whether the circumstances fit their needs or not, this bill says "you must."

I don't know that that's the way to go when they have the opportunity to do it and many are engaged. They are engaging. I know of some entities that started it and got away from it because the cost was too much to maintain and it was not an effective process. Could that have been the result of poorly trained personnel? Possibly.

Hence the need to engage with a group like Cornell Cooperative Extension, which was unfunded in the EPF and literally destroyed the program because it was no longer funded in the Governor's budget. So that program is shut down. So the schools have no place to go now. Who's going to provide the expertise and the training? That's what Cornell provided to these districts.

That's what generated the IPM programs, which taught them to use organic and non-pesticides insecticides, fungicides, rodenticides, anything you want to call them. It encouraged them not to use them first. It encouraged them to use them only as a last resort. Not as a first resort, as a last resort. Only in emergency circumstances, only

when it was absolutely necessary would they do it.

And only using it by trained personnel. Not just any Joe Blow off the street taking a bag of junk and saying, "Here, I'm going to throw it out there." This had to be done carefully, by trained personnel, under supervision, because these pesticides are dangerous chemicals. We all understand that. That's why it has the word "cide" on the end of it. That means to kill whatever precedes it. We're not looking for that.

But we all recognize, and so do you in this legislation, that there are emergencies. What we're saying is in some cases the declaration of the emergency means you've got to jump through 52 hoops to get there. And it might be too late to solve it, and it might be far more expensive to solve it.

If you're going to apply organics -- the claim has been made that in some cases studies have shown that it's cheaper. Not necessarily true. In some cases it is far more expensive because you have to

apply far more of the substance than you do of the pesticide to get the same result. So you're buying more of a product to get the same result as you would from a pesticide.

Is it worth it? Yeah. I might go with that. I would say yeah, I wouldn't mind spending more money if I'm going to get the same result and make it's safer. I'll do that. But let's not make the claim that it's cheaper when it isn't. The expenditure of the money when it comes, as you said in your comment, Senator, where we're talking about public health, I don't mind spending a little extra money. Spend it. I think that's money well spent.

But you can't claim something that simply isn't there. You can't make a claim when you can't back it up. The facts are otherwise. Anybody who uses this stuff will tell you that in order to get the same results, it costs more, because you have to apply more of the organics. It's not the same.

Now, as I said, I don't mind the application, I don't mind the extra expense,

because you're talking about public health and you're talking about the health of young people and our children. Do it. Do it. But let's not make a statement that it's easy. Let's not make a statement that simply isn't factual that pesticides don't include, by definition, fungicides and others that were mentioned. That simply isn't the case.

Let's not conclude that language in a bill that says one thing doesn't say what it says. I didn't write this bill. I didn't write this language. But that's what it says. It should be changed.

The bill is flawed and needs to be adjusted. Amendments would do that. We could do that tonight. We could do that now. We could send the amendments to the other house, let them pass it, and you'll get the pesticide bill that everybody wants. I have no problem with that. Let's do it. Let's do it. Instead of debating whether or not something says something that in fact it doesn't say. Pretending won't make it so. Words mean something.

Mr. President, I urged a vote of

yes on the amendments because I think and thought these were not hostile amendments, they were not intended to destroy the bill. There was nothing in those amendments that eviscerated the bill, that changed the point of the bill, that changed the momentum of the bill. I thought they would make the bill better -- and fairer, quite honestly.

The bill as it stands now is not a better bill and it's not a fair bill. It doesn't afford, as I said, privates the same benefits as the public schools or public daycare centers. These changes should be made before this bill becomes law. If it becomes law.

I will be voting no on the bill, sir.

ACTING PRESIDENT BRESLIN: Thank you, Senator Marcellino.

Senator Larkin, on the bill.

SENATOR LARKIN: Thank you, Mr. President. Would Mr. Foley --

ACTING PRESIDENT BRESLIN: Excuse me. Excuse me for a minute.

Senator Duane, why do you rise?

SENATOR DUANE: Thank you, Mr. President. Would the sponsor yield, please?

ACTING PRESIDENT BRESLIN: Again, just -- I will recognize Senator Larkin. I have given him the floor. I'll recognize you in due course.

SENATOR LARKIN: Thank you, Mr. President. Will Senator Foley yield?

SENATOR FOLEY: Yes, Mr. President.

SENATOR LARKIN: I know you've been on the hot seat all night long, but we'll make it a little short.

SENATOR FOLEY: That's fine.

SENATOR LARKIN: Have you heard from anybody at the school level or local level that supports this or opposes this?

SENATOR FOLEY: We've heard -- through you, Mr. President -- we've heard from a number of local organizations that are strongly supportive of this legislation.

SENATOR LARKIN: I'm talking about schools.

SENATOR FOLEY: School boards as

well as the School Board Association and the superintendents of grounds, no, they are opposed to the bill.

SENATOR LARKIN: Yes. You know --

ACTING PRESIDENT BRESLIN: Senator Larkin --

SENATOR LARKIN: Thank you. On the bill.

ACTING PRESIDENT BRESLIN: Senator Larkin, on the bill.

SENATOR LARKIN: About two weeks ago, 16 members on that side of the aisle wrote a letter to the Governor and said don't cut any money out of education. Two days later, you voted on a resolution to take that money out -- the school boards, municipalities, everything.

Here's 700-plus school boards, 5,000 elected board officials are saying to us: This is a bad bill. It's going to cost us money. You're talking about what we're doing to our fields and that, and they're not true.

You know, I know Antoine Thompson

is sitting over there very happy. This is Earth Day's legislation. My question is, what is more important? To say that we passed all this legislation to prove we are concerned about the earth? Some guys my age will tell you we cared about the earth before you were born.

But what are we saying? Is it better to pass these bills that are not totally positive, to see that we got it done, or are we going to listen to somebody who's on 5,000 members of school boards and over 700 -- actually, 742 school districts in this state? And we're not even listening to them. We're saying yes.

My colleague Senator Marcellino, who's chaired this committee for a number of years, was very clear when he said let's treat everybody when we're talking about the public and the private sector. I mean, is it such a sin that we must pass this tonight rather than to sit down and look at what happened? Are we to sit here -- you can snigger over there all you want. I don't think it's funny. It may be funny to you, but it's not funny to me.

We have 742 school districts, 5,000 elected officials are saying to you, please do not pass this. What they also said, this bill creates a mandate on districts at a time when massive cuts and added pressures are being placed on our districts. The last thing we need now is another unfunded mandate.

Don't tell me that you're worried about money for education when you're saying be prepared to spend this. Because this just opens the door. I don't think there's anybody in here that doesn't want to see this right. This is a very important issue. But don't wash it around by the fact that, you know, all of the environmentalists are in town and they want us to do this as part of Earth Day.

Well, as part of Earth Day, I have 17 grandchildren. I'm worried about when they're at school. But they go to a daycare center, we don't take care of them. Not in this bill.

Why don't we just set this aside and correct it and make it positive by everybody supporting it? That's not a big deal. But if you want to say, well, I want to

show that we've got the power and we can get this done and to Hades with the other side, that doesn't make sense.

You all said we're going to work together. We're working together about as good as two goats that can't even talk to one another. This is a disgrace. A total disgrace -- yes, I did, Frank. You engineers don't understand that.

But what's so wrong about it? Anybody want to stand up and tell me over there? Mr. President, when are we in this chamber going to do something for the public, for the people who pay the taxes? We have a great opportunity --

SENATOR DUANE: Mr. President, I think there was a question to the other side. And, I'm sorry, I didn't get it.

SENATOR LARKIN: It's past tense.

SENATOR DUANE: I'm wondering if the Senator would yield, because he said there was a question he was asking this side of the aisle, and it was garbled. And I was wondering if the Senator would repeat it, because maybe it deserves an answer.

SENATOR LARKIN: I'm on the bill, and that's what I'm saying, period.

Mr. President --

ACTING PRESIDENT BRESLIN: I believe it was rhetorical in nature.

SENATOR LARKIN: -- I think it's very clear that, as I said earlier today, we stuck it to group one, we stuck it to group two, we stuck it to group three. You guys go home tomorrow, ladies and gentlemen go home and say, yeah, you invite us to meetings and we tell you what our problems are and we send you a memo -- and what did you say? How many of you over there that got this memo called your school boards and told them? Any one of you, tell me.

SENATOR ONORATO: I didn't get one.

SENATOR LARKIN: Everybody got one. I called today and I checked with the messenger service and they said there was one of these placed in everybody's box, George.

But has anybody called their people back home and told them? I did. I said, "Bet your bottom dollar they'll pass this and

they'll pass the costs on to you and they'll say 'We did it in honor of the students, we did it in honor of the future'."

You know what? If you think these people back home are that dumb, God bless you come November.

ACTING PRESIDENT BRESLIN: Senator Duane, on the bill.

SENATOR DUANE: Thank you, Mr. President. If the sponsor would yield.

ACTING PRESIDENT BRESLIN: Senator Foley, you're not going to yield to -- or will you yield to Senator Duane?

SENATOR FOLEY: I'm happy that I can finally yield to the fine Senator from Gramercy Park.

SENATOR DUANE: Thank you.

ACTING PRESIDENT BRESLIN: Senator Duane.

SENATOR DUANE: Mr. President, I would like to wish you and everyone here a happy Earth Day, and in particular to the sponsor of this legislation.

I'm wondering if the sponsor would tell us how long he's been a member of this

chamber, this body.

ACTING PRESIDENT BRESLIN: Senator Foley.

SENATOR FOLEY: Thank you, Mr. President. It's my honor and privilege, from the citizens of the Third Senatorial District, to represent them here in this fine institution since January of last year.

SENATOR DUANE: And through you, Mr. President, if the sponsor would continue to yield.

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

SENATOR FOLEY: Yes.

SENATOR DUANE: I would like to have my memory refreshed on what happened with this legislation -- the history of this legislation last year and through this point. How was this legislation moved forward? What happened last year, what's happened this year?

ACTING PRESIDENT BRESLIN: Senator Foley, do you yield to that question?

SENATOR FOLEY: Yes, Mr. President.

The legislative history of this

particular resolution was in 2001 and 2002 it was referred to Environmental Conservation from the Assembly side. '03-'04, same reference in that period of time. In '05-'06, the Assembly bill was referred to EnCon. '07-'08, the same. So in other words, there has never been any action on this side of the house.

SENATOR DUANE: And through you, Mr. President, if the sponsor would continue to yield.

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

SENATOR FOLEY: Yes, Mr. President.

SENATOR DUANE: It's my understanding that last year, despite all of the difficulty here -- which I need not remind everyone, sad and difficult though it was -- that this bill moved until it was placed on the Codes calendar; is that correct?

SENATOR FOLEY: That is correct, Mr. President.

SENATOR DUANE: And through you,

Mr. President, if the sponsor would continue to yield.

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

SENATOR FOLEY: Yes, Mr. President.

SENATOR DUANE: And if memory serves me -- and I just want to verify -- that this is probably the furthest that this legislation has moved in any form in this house to this point?

ACTING PRESIDENT BRESLIN: Senator Foley.

SENATOR FOLEY: Mr. President, that is correct. This is the farthest, if you will, this piece of legislation has come in this house over a period of years. I think last year it was approved in the Assembly by overwhelming numbers. And there was strong overwhelming bipartisan support in the Assembly. And I hope that we could reflect that same support here in this house.

ACTING PRESIDENT BRESLIN: Senator Duane.

SENATOR DUANE: Thank you,

Mr. President. If the sponsor would continue to yield.

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

SENATOR FOLEY: Yes, Mr. President.

SENATOR DUANE: And I just need to preface this by my definition of bipartisan now. Bipartisan, by my definition, means both sides of the aisle in this house, as opposed to previously bipartisan meant the majority party in this house and the majority party in the other house. That was the former definition of bipartisan.

But I'm talking about my definition, our definition of bipartisan, which is both sides of the aisle in this chamber.

I noticed that this bill is a C print. And I'm wondering if the sponsor could tell me whether or not he had discussions with members -- bipartisan discussions, as I define them in present day in this house -- if there were bipartisan discussions regarding this piece of

legislation.

ACTING PRESIDENT BRESLIN: Senator Foley.

SENATOR FOLEY: That's an excellent question. And as I mentioned earlier, when this bill was in the Environmental Conservation Committee, we were ready to move it out, there were several let's say elements of constructive criticism that was leveled at the bill by Senator Marcellino.

And as much as I could have reported the bill out of committee at that time, since we had the majority on the committee, I tabled the bill. And Senator Marcellino's staff, my legislative staff, as well as the committee staff, worked over together over several days' time, about a week, to make the changes that the good Senator had suggested at that time.

So we incorporated those changes -- we reported it out of committee, as he mentioned, but we then incorporated the changes to the bill. And that's why I was so surprised through the present to see that there further amendments now, three weeks

later, two hours before session.

SENATOR DUANE: And through you, Mr. President, if the sponsor would continue to yield.

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

SENATOR FOLEY: Yes, Mr. President.

ACTING PRESIDENT BRESLIN: You may proceed, Senator Duane.

SENATOR DUANE: I would like to ask the sponsor -- and I have to make for absolute certain so that I can sleep tonight with a clear conscience -- does the sponsor of this legislation care about children?

ACTING PRESIDENT BRESLIN: Senator Foley.

SENATOR FOLEY: Absolutely, Mr. Chairman. I think all of us in this house devote the time that we do away from our family and our neighborhoods, among other reasons, to protect children and to take that kind of faith, if you will, and translate that into meaningful legislation that will make a

difference in the lives of those children and the parents who are parenting those children.

SENATOR DUANE: And through you, Mr. President, if the sponsor would continue to yield.

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

SENATOR FOLEY: Yes, Mr. President.

SENATOR DUANE: I have to preface this by saying that I am not an avid golfer. I never have been. I don't envision that I will be, but who knows. But I'm wondering if the sponsor is a huge, every-weekend golfer.

ACTING PRESIDENT BRESLIN: Senator Foley.

SENATOR FOLEY: As much as I'm a fan of golf, unfortunately -- although since my hair's been turning gray, I've had more people ask me if I wanted to golf -- but no, I'm not a golfer. If I have free time on the weekend, Mr. President, I try to keep some semblance of harmony at home and spend some time around the home area as opposed to the links on Long Island.

SENATOR DUANE: And through you, Mr. President, if the sponsor would continue to yield.

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

SENATOR FOLEY: Yes, Mr. President.

SENATOR DUANE: I'm wondering if the sponsor -- and there may be schools like this, but I'm wondering if there are any schools in his district which have golf courses.

ACTING PRESIDENT BRESLIN: Senator Foley.

SENATOR FOLEY: There are no schools that have golf courses. The local schools in fact use both the county and the town courses in the Islip -- well, in Suffolk County, the county courses and the town courses.

ACTING PRESIDENT BRESLIN: Senator Duane.

SENATOR DUANE: And through you, Mr. President, if the sponsor would continue to yield.

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

SENATOR FOLEY: Yes, Mr. President.

SENATOR DUANE: Is the sponsor's intent of this legislation to substitute pesticides which are more natural in nature than the ones that, for instance, were the kind that I unfortunately breathed in when I was a child? And from the way a lot of people around here sound, apparently they were breathing it in too.

ACTING PRESIDENT BRESLIN: Senator Foley.

SENATOR FOLEY: It's an absolutely crucial question, and it gets to the heart of the matter. Which is over a period of time there have been enough, let's say -- and in an evolving nature, turf maintenance has made great strides, particularly over the last 10 years, to where there is far less need for the application of pesticides as there was 10, 15, 20 years ago.

And there's a whole industry, in fact, creating more jobs where there are

alternative -- we can't even call them alternative anymore, Mr. President -- but in fact tried and true methods where we can improve the health of the turf so that there's far less need -- in fact, in many cases, no need -- to apply these chemicals as they were applied 15 to 20 years ago.

So we made great strides in the area that then allows us to offer a bill like this, where then we would avoid the interaction of pesticides with children and still have turf fields, with some possible remote exemptions, those turf fields being of such a nature that they could withstand all the running and to and fro that happens on the fields at the elementary and high school levels.

SENATOR DUANE: Thank you.

Mr. President, on the bill.

ACTING PRESIDENT BRESLIN: Senator Duane, on the bill.

SENATOR DUANE: I would like to in the strongest possible terms commend the sponsor of this legislation. I have known of his deep commitment to children throughout our

state, his deep commitment to the environment -- and not just on Long Island, which we're trying to preserve the environment on Long Island, which is probably far more fragile than we even imagined, but to commend him for this legislation which will help children and the environment throughout the state.

Senator Foley's arrival in this house and his putting forward this legislation and shepherding it through the house is exactly the reason why it is so advantageous to have a member such as the sponsor of this legislation. This is my 12th year here. I have been waiting to have pieces of legislation like this come to the floor to be voted on.

It's an enormous, giant leap forward for the children of the State of New York, for the environment of the State of New York. And I absolutely urge everyone to vote in favor of this legislation. And there will be much more to come, I'm sure. But at 9:30 at night, it's a pleasure to be able to vote -- I will be very happy to be able to

vote in favor of this legislation because of the wonderful results which it will bring to the State of New York.

Thank you, Mr. President.

ACTING PRESIDENT BRESLIN: Thank you, Senator Duane.

Senator Thompson, on the bill.

SENATOR THOMPSON: Yes, thank you, Mr. President. It is a privilege that I stand today in support of this bill.

It has been stated that we spent some time working on this bill. Back in February of this year, we had a roundtable on the first floor of this building, and it was standing room only. We had landscapers and businesspeople and advocates on both sides of the issue from all over the state that came in. And it was represented from people on both sides of the aisle who listened quite patiently to the debate.

And in fact, on this particular bill there really wasn't a lot of debate on this particular bill at the roundtable with all the industry people there. That's not to say that they were, you know, kicking their

heels about the bill. But this was out of all the bills that we talked about and issues that we talked about that day, this particular issue of safe playing fields was not viewed as an extreme measure.

And that's important to note, because there were other bills that they were concerned about that we said that we were not going to address. That we were only looking at passing two bills this year, and we would look to work towards, after we got the work day, to try to deal with the issue of IPM. And I think that's available online under the new Senate rules.

The other thing is that many -- I was sitting here and I did a quick Google search on my BlackBerry. And if you just Google while you're sitting here and type in "dangers, pesticides on playing fields," it is amazing what you will find in just a quick Google search, and all the different reports from people on both sides of the issue.

Let me say that this particular bill is limited in scope. We have lots of bills that are supported by -- that are

sponsored by both Democrats and Republicans in the Senate that deal with pesticides. And we tried this year to get -- we've tried this year to narrow it down so that we can do a couple things that make sense.

Protecting our children who are playing on sports fields is reasonable. We put in a provision that says that if an outbreak takes place, they can get it addressed immediately so that we don't lose whole entire playing fields.

But to protect our young people really is the right thing to do. It's beyond the right thing to do. And many newspapers have supported this, not that -- everyone knows that I'm not one who panders to what newspapers say. But many newspapers across the state, in addition to advocacy groups, in addition to the buildings and grounds folks who've actually got to do the job. They've said they can do it.

We had folks from the association that came to our roundtable and said that this is a good bill, this bill does not go too far, just give us the flexibility, in the event

that there's an outbreak, that we can then do something, so that we don't lose a lot of money.

The last thing I want to emphasize is that when we -- at least as the chair of the committee, when members bring bills, we put a lot of care into these bills. My colleague Senator Marcellino has been -- whether he's for something or against something, I think that whenever he or other members of the committee or people who are not on the committee -- we've always tried to be open and attentive. In fact, right after the committee meeting when this bill passed out of committee, we actually assigned two staffers to work on a number of recommendations.

And so I think this is a very good bill to do for Earth Day. It's a very good bill to do any day, but particularly on Earth Day. And I believe there are a lot of bills that are in committee that groups like Crop Life America support and don't support by Democrats and Republicans. There are groups like RISE, which was just in Buffalo last week doing something on pesticide awareness and

prevention, Responsible Industry for a Sound Environment, there are bills that are sponsored by Democrats and Republicans that they support and do not support.

So I believe this bill is a fair bill. It's a good bill. It's not extreme. It focuses on our young people when they're playing on playing fields and around daycare facilities. This is a good, reasonable bill.

And I don't believe -- and I don't have a crystal ball, and I don't know everything, but it's been a long time since we passed a major pesticide bill in this chamber. And I think now is the time, and this bill is a responsible bill. It does not go too far right or too far left. This is actually a bill right down the center.

Thank you.

ACTING PRESIDENT BRESLIN: Thank you, Senator Thompson.

Are there any other Senators wishing to be heard?

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

Read the last section.

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

ACTING PRESIDENT BRESLIN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT BRESLIN: Senator Foley, to explain his vote.

SENATOR FOLEY: Thank you, Mr. Chairman.

I'd like to thank everybody for the robust debate and discussion that we had this evening.

Let me just cite for the record the number of organizations in favor. We have the Center for Health and Environmental Justice, the Learning Disabilities Association, the Huntington Breast Cancer Action Coalition, the Rochester Breast Cancer Coalition, the Group for the East End, Citizens Campaign for the Environment, Environmental Advocates, Neighborhood Network Action, Audubon New York, NYPIRG, Vision Long Island.

And I'll end with this from the Huntington Breast Cancer Action Coalition: It is common sense that fetuses, newborns and our

children, as they are developing, are very vulnerable when exposed to toxins. The passage of this legislation initiated by you and Assemblymember Englebright truly represents child safety and protection."

I vote in the affirmative, Mr. President.

ACTING PRESIDENT BRESLIN: Senator Foley will be recorded in the affirmative.

Senator DeFrancisco, to explain his vote.

SENATOR DeFRANCISCO: I'm going to vote in the negative. And despite some of the comments, you're not against children by being against this bill. At least that was the clear implication.

I have seven grandchildren, four of school age in New York State. And there is nothing I would do to put those kids in jeopardy. And there is nothing I would do to not protect their safety.

And could you hammer the gavel a little bit so I can hear myself think?

ACTING PRESIDENT BRESLIN: Can we

have some quiet, please.

SENATOR DeFRANCISCO: So that's not the point. The point simply is this. And there's organizations that oppose this bill, including the School Boards Association, who everybody here has said at least once during their Senate career -- even Senator Foley, who's only been here since January of last year -- that we've got to stop the unfunded mandates to school districts. So we get a notice from the school districts saying it's an unfunded mandate.

Don't think we don't care about our kids. We care about our kids. We're not going to put them in a danger zone. Give us some kind of credit for being reasonable human beings. Besides, under the notification law, everybody is notified when pesticides are being applied.

So to make this a bill that is crucial to the life and safety of children and to just totally ignore school boards -- who are I believe doing the right things for our kids as far as this area is concerned -- and provide another unfunded mandate when we're

cutting their budgets I just don't think is the right thing to do at this time in history.

That's why I'm voting no.

ACTING PRESIDENT BRESLIN: Senator DeFrancisco will be recorded in the negative.

Senator Saland, to explain his vote.

SENATOR SALAND: Thank you, Mr. President.

Mr. President, I chaired the Senate Children and Families Committee for some 10 years, the Education Committee for some six years. I think I have an impeccable record when it comes to dealing with issues involving children, and certainly think I have been responsible for sensitizing the system to unfunded mandates.

I listened to the debate and response to the exchange between Senator Young and Senator Foley. Clearly Senator Foley could not cite one instance of a child being harmed, a reported instance of a child being harmed by a pesticide.

Now, I can cite for you in my

district alone dozens upon dozens upon dozens upon dozens of people who have been afflicted by Lyme disease, a horribly crippling disease which even when it goes into remission can still return with absolutely horrid consequences to a person who has been so afflicted.

So if my choice is to spray a field and save a child from Lyme disease versus a feel-good bill in which there has not been an acknowledgment of a single solitary child being adversely impacted by this pesticide menace, I opt to protect the children in my district, the athletes in my district, the families in my district from Lyme disease. Both in Dutchess and Columbia County, we at times have been the epicenter, percentage-wise, of cases of Lyme disease. It's a no-brainer. And in fact Lyme disease can at times make you a no-brainer.

I vote in the negative, Mr. President.

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

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 330 are Senators Bonacic, DeFrancisco, Farley, Golden, Griffo, Hannon, O. Johnson, Lanza, Larkin, Leibell, Libous, Little, Marcellino, Maziarz, Nozzolio, Ranzenhofer, Saland, Seward, Skelos, Volker, Winner and Young.

Ayes, 39. Nays, 22.

ACTING PRESIDENT BRESLIN: The bill is passed.

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

SENATOR KLEIN: Mr. President, at this time can we please go a controversial reading of the Senate supplemental calendar.

ACTING PRESIDENT BRESLIN: The Secretary will read.

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

ACTING PRESIDENT BRESLIN: Read the last section.

An explanation has been requested,

Senator Thompson.

SENATOR LIBOUS: Mr. President, who requested the explanation?

ACTING PRESIDENT BRESLIN: Far be it from me to hear it.

Read the last section.

SENATOR LIBOUS: Thank you.

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

ACTING PRESIDENT BRESLIN: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT BRESLIN: Announce the results.

THE SECRETARY: Ayes, 60. Nays, 1. Senator Golden recorded in the negative earlier today.

ACTING PRESIDENT BRESLIN: The bill is passed.

Senator Klein, that completes the reading of the controversial supplemental calendar.

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

ACTING PRESIDENT BRESLIN: No,

Senator Klein, there is no further business at the desk.

SENATOR KLEIN: There being no further business, Mr. President, I move that we adjourn until Wednesday, April 21st, at 11:00 a.m.

ACTING PRESIDENT BRESLIN: There being no further business to come before the Senate, on motion, the Senate stands adjourned until Wednesday, April 21st, at 11:00 a.m.

(Whereupon, at 9:47 p.m., the Senate adjourned.)