NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

May 3, 2010

4:12 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 everyone to rise and recite with me the Pledge of Allegiance.

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

ACTING PRESIDENT BRESLIN: The Reverend Peter G. Young will give the invocation, from Mother Teresa Community Church.

REVEREND YOUNG: Thank you.

May I remember with prayer the death anniversary of Senator John Marchi today, who had served in this house for over 50 years, and all of those who have served in this house, the Senators who have been so dedicated, so that they will be remembered by way of their leadership in New York State.

Because You, Almighty and Eternal God, have revealed Your glory to all nations, God of power and might and wisdom and justice, come to our Senators through Your authority with the prayer that Your laws are enacted and the judgments are decreed, with our citizens

benefiting from their dedication and of our session today.

Amen.

ACTING PRESIDENT BRESLIN: Thank you, Father Young.

The reading of the Journal.

The Secretary will read.

THE SECRETARY: In Senate, Sunday, May 2nd, the Senate met pursuant to adjournment. The Journal of Saturday, May 1st, 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.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Klein.

SENATOR KLEIN: Thank you,

Mr. President.

On behalf of Senator Aubertine, on page number 23 I offer the following amendments to Calendar Number 371, Senate Print Number 7181, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT BRESLIN: So ordered.

SENATOR KLEIN: On behalf of Senator Foley, I move that the following bill be discharged from its respective committee and be recommitted with instructions to strike the enacting clause: Senate Number 4985.

ACTING PRESIDENT BRESLIN: So ordered.

SENATOR KLEIN: On behalf of Senator Foley again, on page number 24 I offer the following amendments to Calendar Number 389, Senate Print Number 5995, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT BRESLIN: So ordered.

SENATOR KLEIN: Mr. President, I move to amend Senate Bill Number 1901A by

striking out the amendments made on April 1, 2009, and restoring it to its original print number, 1901.

ACTING PRESIDENT BRESLIN: So ordered.

SENATOR KLEIN: Mr. President, I wish to call up my bill, Print Number 5896C, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT BRESLIN: The Secretary will read.

THE SECRETARY: Calendar Number 378, by Senator Klein, Senate Print 5896C, an act to amend the Real Property Law.

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

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

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

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

ACTING PRESIDENT BRESLIN: The

amendments are received, Senator Klein.

SENATOR KLEIN: Mr. President, at this time can you please call on Senator Parker.

ACTING PRESIDENT BRESLIN: Senator Parker.

SENATOR PARKER: Mr. President, point of personal privilege.

ACTING PRESIDENT BRESLIN: You may proceed, Senator Parker.

SENATOR PARKER: Thank you, Mr. President.

I'd like to take a few moments of personal privilege to address my words and actions of last week.

I ran for this office to bring change. The communities I represent of the 21st District, which include Flatbush and East Flatbush, Midwood, Ditmas Park, Kensington and Boro Park, have long been shortchanged. On every single issue that matters to my constituents -- affordable housing, immigration access, access to healthcare, quality education, mass transit and public safety -- this state, this Senate, has let

them down.

The seat I occupy was created in 2002 during redistricting. I ran and ran hard on all those issues, to make change. When I got here, I was somewhat surprised to learn that as a freshman Senator in the minority, I was expected to be unseen, unheard and uninvolved. It was implicit but clear my constituents were expected to be disenfranchised. My vote and their votes were effectively irrelevant, and I was urged by some in this chamber to go along and get along. I think everybody knows that didn't happen.

I was sent here to be a voice for the voiceless. One month within my first term, the New York Times ran an editorial when I had the nerve, the gall, to actually ask questions in a committee meeting. I asked questions about the nominee's qualifications to run one of the most important agencies in the state. He had failed the bar several times, for example, but I never asked him questions about his race, his ethnicity, and his religion.

And as a matter of fact, post that questioning, him and I actually developed, I think, a very good relationship, and I consider him a friend even to this day.

The next day Senator Duane tried to ask the same questions of a nominee in the Senate Finance Committee. As Senator Duane went further, asking questions the nominee's involvement in allegedly helping fix a case where a worker was killed on a job site, the committee chair simply ruled his questions as not relevant. The chair decided the questions had gone on long enough and called for the vote.

We've come a long way since 2003. In terms of process, we became more active as a minority conference. We worked with communities across the state and won elections to transform this chamber. And when we took the majority, we didn't stifle debate, strip minority resources, or bottle things up in committee.

Instead, under Malcolm Smith and John Sampson, we opened this house up in ways never seen before, offering members of the

minority conference the ability to exercise their rights, privileges of being a Senator, and the ability to represent their constituents, a courtesy we had never previously received.

Mr. President, I would much prefer today's spotlight be on the environmental or labor bills and the budget extenders. And to the extent that my words last week brought commotion and emotion to this house in ways that may distract or divide us or divert us from the important work of the people of New York State -- this work that's so important for all of us, the work that New Yorkers sent us here to accomplish -- if I have offended people in this chamber in any way, I offer my sincerest apologies for my zealous advocacy.

But to the extent that my words bring debate and discussion to this house on the issue of race, exclusion and, conversely, new opportunity, I offer my sincerest commitment to continue that debate and that discussion and ask you to be partners in that debate.

It is also exceedingly important for me to explain to this house, through you, Mr. President, that my criticisms are not, in fact, at bottom personal. I can't see into anyone's soul. And I should not have personalized my comments, because the issues I spoke about are larger than any one individual or group. The problems of race, lack of access to opportunity, and the economic disparities in New York existed long before any of us were elected to this chamber. And to the extent they persist, in many ways we are all complicit.

All that is necessary for evil to triumph is for good people to do nothing. The failures of this chamber to right historic and current wrongs were and are not personal. Rather, they are institutional, and we are all of us not doing enough.

We need to do more to ensure diversity on the bench and the commissions, authorities, and boards. We need to do more to ensure fair and less political contracting and investment opportunities through OGS and the agencies and departments and office of the

State Comptroller.

We need to look more closely at hiring an opportunity agenda for the Senate itself. It would be easy to look at either side of this chamber, compare the compositions of our conferences and call it a day. It would be easy to look at their respective hiring records and draw conclusions. But that would only further divide us, fuel the dysfunction, and weaken our state even more in these difficult times.

I regret seeking to ascribe blame in such personal terms rather than focusing on the broader nature of the work that we must do. We don't need to fix blame, we need to fix the problem. And we can really only do that if we work together.

I think everyone knows that I am a loud and passionate advocate for my community and for the people of the State of New York. I will never shrink away from my responsibility to speak up for those who sent me here and, by extension, for those I love.

Even before former Governor Spitzer said it, I have long believed that you don't

change the world by a whisper. I believe, in my responsibility to speak the truth as I know it, that we still have far to go on issues of race, gender, class and sexuality, and to confront those hard truths in all their complexity whenever I can.

Much has been said about what people describe as my anger. I still believe there is much to be confronted and much to be fought over. And in recent days I have been reminded of President Obama's speech on race, and I have read it again in the context of this moment. It was an amazing speech at an amazing time in our collective histories. And in it our President spoke of anger on both sides of the racial divide.

One particular passage about black anger struck me, and it stays with me. He said, and I quote, "That anger is not always productive. Indeed, more often it distracts attention from solving real problems. It keeps us from squarely facing our own complexity and our condition and prevents the African-American community from forging the alliances it needs to bring about real change.

But the anger is real; it is powerful; and it simply can't be wished away. To condemn it without understanding its roots only serves to widen the chasm of misunderstanding that exists between the races."

The President went on to say that a similar anger exists in the white community and how anger on both sides distracts from the real challenges, he says. Again, in quotes, "Just as black anger often proved counterproductive, so have these white resentments distracted attention from the real culprits of the middle-class squeeze -- a corporate cultural rift with inside dealings; questionable accounting practices and short-term greed; a Washington dominated by lobbyists and special interests; economic policies that favor the few over the many. And yet to wish away the resentment of white Americans, to label them as misguided or even racist without recognizing they are grounded in legitimate concerns, this too widens the racial divide and blocks our path to understanding."

Here we are, two years after the

speech, facing the same problems of the economy, class, and special influence -- and here we are with no real cooperation to fix the problems, to form a more perfect union, or to build a safer, stronger or more prosperous New York.

I also agree with the President that we cannot view racial relations as static, as if no progress has been made and we are bound to a tragic past. America has changed, but that change has not come easily or quietly. Nor has that change come without hard work, sacrifice, and the willingness to work together. And for most times it has been New York leading that change -- in the labor movement, the abolitionist movement, the suffrage movement, the Stonewall uprisings and others.

I believe it is time for us to lead again. It is my hope today that hard as my words were last week, we can use these coming weeks of our session to have a conversation and to do that hard work that we need to do around these difficult issues.

It is my hope that today can be a

starting point for real conversation based on a commitment on my part to work on both sides of the aisle to find ways to give real people access to real jobs, capital and the opportunities of this state.

It is my hope today that we can lead a meaningful effort to bring our people together instead of continuing the divisions that have manifested themselves in conflictive governmental dysfunction.

Mr. President, I wish to make one more point. Over the past few days, I've had a relatively unique set of experiences. I have received more requests for media interviews than at any other time in my career. Not for legislation I passed or demonstrating for more education funding or for the free breast cancer or dental screenings I offer in my district, or for the prom dresses I will give away to many young women of low-income households this Saturday, but solely for this issue.

I have also, for the first time in my life, received death threats. My office has received multiple threats, one of which

also threatened the President. The authorities are investigating, and I hope not much more will come of it. But the threats tell me that that conversation we need -- we really need to have this conversation.

The threats are also a clear reminder to me that we are not alone and that I am not alone. That those around me -- my staff, my family, you, my colleagues -- may all be impacted by my actions. And I say to all of you that I will work to make better choices.

I'm not afraid. I know that there are consequences for those choices that I make. But I believe that conversation is too important to back away from, and I'll tell you why. Last Wednesday reporters descended upon my district office seeking comments from me and my constituency. Tragically, right across the street, a young man in his early thirties was shot and killed. The media was there to cover me but ended up covered the shooting. I can tell you they don't usually cover shootings in Brooklyn, particularly in Flatbush. If it weren't so tragic, that irony

could make one laugh or cry.

Where were the schools and the after-school programs, the prenatal care, the social workers, the cops on the beat when that young man was shot? That's why I'm here. For all the young men and women who are murdered over economic scrapes, or who live in poverty and fear, and those kids we have failed. The reality is I cannot fix these problems by working alone. I need your help, and I want your help to fix them.

That's the real test for us. We can -- the real test for us is whether we can work together across regions, across racial and political lines, and invest in each other to save our state. Can we reject the old arrangements, the old disagreements to build a stronger and fairer economy for everyone? Can we come together to build a safe, strong and more just New York? Can we suffer together in the deepest, most savage economic upset since the Great Depression?

I believe we can. I know we can. I am willing to step back from the rhetoric alone if we were all willing to step up and do

the work. I am willing to work with anyone in this chamber to make that a reality, and I ask you for all your help in this effort.

Thank you, Mr. President.

ACTING PRESIDENT BRESLIN: Thank you, Senator Parker.

Senator Klein.

SENATOR KLEIN: Mr. President, can you recognize Senator Libous. I believe he has a motion.

ACTING PRESIDENT BRESLIN: Senator Libous.

SENATOR LIBOUS: Mr. President, on page 19 I offer the following amendments to Calendar Number 311, Senate Print 5863A, on behalf of Senator Fuschillo, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT BRESLIN: So ordered.

Senator Klein.

SENATOR KLEIN: Mr. President, I believe there's a resolution at the desk by Senator Sampson. 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 to the offices of the Temporary President?

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

ACTING PRESIDENT BRESLIN: The Secretary will read.

THE SECRETARY: By Senator Sampson, legislative resolution recognizing Saturday, May 1, 2010, as Law Day USA in the State of New York.

"WHEREAS, For over two centuries our state and nation have adhered to the rule of law as the foundation for a safe, free and justice society. Seeking to formally recognize this tradition, President Eisenhower established Law Day in 1958 as a day of national dedication to the principles of government under the law; and

"WHEREAS, This Legislative Body celebrates the importance of Law Day USA in the State of New York. In doing so, we as citizens of this great state and nation

recommit ourselves to the rule of law and to upholding the fundamental principles enshrined in our founding documents; and

"WHEREAS, The theme of this year's Law Day, 'Law in the 21st Century: Enduring Traditions and Emerging Challenges,' reminds us to draw upon and adapt to our time-honored legal traditions to meet the demands of a global world; and

"WHEREAS, As we begin the second decade of the 21st century, new communications technologies are rapidly emerging, connecting the world. Legal issues of human rights, migration, environmental regulation, and outsourcing are now internationally commingled due to the ease of communicating and traveling across borders. Accordingly, the law is also dramatically changing; and.

WHEREAS, This Legislative Body is committed to ensuring that the citizens of New York State understand and remain dedicated to and are protected by the principles of government under the law; now, therefore, be it resolved

"RESOLVED, That this Legislative

Body pause in its deliberations to recognize Saturday, May 1, 2010, as Law Day USA in the State of New York; and be it further

"RESOLVED, That copies of this resolution, suitably engrossed, be transmitted to Carolyn B. Lamm, President, American Bar Association, and to Michael E. Getnick, President, New York State Bar Association."

ACTING PRESIDENT BRESLIN: 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 Sampson has indicated that he would like to open the resolution to joint cosponsorship by the entire house. Any Senator wishing not to be on the resolution please notify the desk.

Senator Klein.

SENATOR KLEIN: Mr. President, there will be an immediate meeting of the

Finance Committee, followed by an immediate meeting of the Rules Committee in the Majority Conference Room, Room 332.

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

ACTING PRESIDENT BRESLIN: There will be an Immediate meeting of the Finance Committee in Room 332, followed by a meeting of the Rules Committee.

Pending the return of those committees, the Senate stands at ease.

(Whereupon, the Senate stood at ease at 4:32 p.m.)

(Whereupon, the Senate reconvened at 5:15 p.m.)

ACTING PRESIDENT BRESLIN: Senator Klein.

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

ACTING PRESIDENT BRESLIN: There is a report of the Rules Committee at the desk.

The Secretary will read.

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

Senate Print 7678, by the Senate Committee on Rules, an act to amend the Education Law;

7686, by Senator Dilan, an act to amend the State Finance Law; and

Senate Print 7689, by the Senate Committee on Rules, an act making appropriations for the support of government.

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, can we please go to a reading of the calendar

at this time.

ACTING PRESIDENT BRESLIN: The Secretary will read.

THE SECRETARY: Calendar Number 123, by Member of the Assembly Lancman, Assembly Print Number 2374A, an act to amend the Judiciary 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 315, by Senator Stewart-Cousins, Senate Print 7129B, an act to amend Chapter 118 of the Laws of 1969.

SENATOR LIBOUS: Lay it aside.

ACTING PRESIDENT BRESLIN: The bill is laid aside.

THE SECRETARY: Calendar Number 346, by Senator Onorato, Senate Print 7053, an act to amend the Labor 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: Announce the results.

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT BRESLIN: The bill is passed.

THE SECRETARY: Calendar Number 402, by Member of the Assembly Destito, Assembly Print Number 8313A, an act to amend the Executive 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: Announce the results.

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT BRESLIN: The bill is passed.

THE SECRETARY: Calendar Number 403, by Member of the Assembly DelMonte --

SENATOR KLEIN: Lay the bill aside for the day, please.

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

THE SECRETARY: Calendar Number 405, by Member of the Assembly Latimer --

SENATOR KLEIN: Lay the bill aside for the day, please.

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

THE SECRETARY: Calendar Number 408, by Member of the Assembly Abbate, Assembly Print Number 7173, an act to amend the Executive 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: Announce the results.

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT BRESLIN: The bill is passed.

THE SECRETARY: Calendar Number 409, by Member of the Assembly Rosenthal, Assembly Print Number 5655, an act to amend the Energy 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: Announce the results.

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT BRESLIN: The bill is passed.

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

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

ACTING PRESIDENT BRESLIN: The

Secretary will ring the bell.

The Secretary will read.

THE SECRETARY: Calendar Number 123, by Member of the Assembly Lancman, Assembly Print Number 2374A, an act to amend the Judiciary Law.

SENATOR BONACIC: Will the sponsor explain the bill, please? Explanation.

ACTING PRESIDENT BRESLIN: Senator Klein, Senator Bonacic has requested an explanation.

SENATOR KLEIN: Yes, Mr. President.

This legislation requires each commissioner of jurors, one for each county, to collect demographic information on the jurors who present for jury service. Some of the information could include but is not limited to a juror's age, ethnicity, age and sex.

ACTING PRESIDENT BRESLIN: Senator Bonacic.

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

ACTING PRESIDENT BRESLIN:

Senator Klein, do you yield to Senator Bonacic?

SENATOR KLEIN: Yes, Mr. President.

ACTING PRESIDENT BRESLIN:

Senator Bonacic.

SENATOR BONACIC: Senator Klein, I'm under the impression that the Office of Court Administration is doing this now. Is this something different than what they're doing in the jury pool when they come in?

ACTING PRESIDENT BRESLIN:

Senator Klein.

SENATOR KLEIN: Through you, Mr. President. To my knowledge, in my office's conversation with the Office of Court Administration, they're not doing this. And they support this specific legislation.

I think what you're getting at are the broader terms that were used in the original bill before the bill was amended, they were opposed to. But they support this legislation.

ACTING PRESIDENT BRESLIN:

Senator Bonacic.

SENATOR BONACIC: Can I ask Senator Klein one more question?

ACTING PRESIDENT BRESLIN: Will you yield to an additional question, Senator Klein?

SENATOR KLEIN: Yes, Mr. President.

ACTING PRESIDENT BRESLIN: Senator Bonacic.

SENATOR BONACIC: Senator Klein, when all of this information is finally collected, what is the end game? What's the next step?

SENATOR KLEIN: Well, a study put out several years ago which showed that this was a problem, that most juries and some juries around the state, specifically downstate, don't reflect adequately the people who live there.

So this is a way to finally have this information, which was never collected before, done in a very easy way by just adding another checkoff box on the existing questionnaires that they distribute, and then

we can determine how we can potentially open up the jury pool that much further.

Right now we're limited to voter registration and other means as far as the ways we get information or the way we can actually pick jurors from specific lists. So I guess in the long run we can see if the claims that have been talked about are actually warranted.

ACTING PRESIDENT BRESLIN: Senator Bonacic.

SENATOR BONACIC: Another question, Senator Klein?

ACTING PRESIDENT BRESLIN: Senator Klein, will you yield to an additional question?

SENATOR KLEIN: Yes, Mr. President.

ACTING PRESIDENT BRESLIN: Senator Bonacic.

SENATOR BONACIC: Okay, I want to make sure I understand this. If I live in a county where I have 25 percent of my population is Asian, 25 percent is Afro-American, 25 percent is Hispanic, and the

other 25 percent is Caucasian, is it the ultimate goal, when we have a jury of 12, that we have three members from each of those races? Would that be the ideal goal of eventually where we want to go with this information?

SENATOR KLEIN: I don't think that's what the goal is, Senator. But I do believe that once we have this information -- and by the way, this legislation is only going to require that we gather this information to see if a lot of the claims that are out there and the studies that we've seen in the past are warranted.

ACTING PRESIDENT BRESLIN: Senator Bonacic.

SENATOR BONACIC: Okay, on the bill.

ACTING PRESIDENT BRESLIN: Senator Bonacic, on the bill.

SENATOR BONACIC: I'm not going to support this legislation for a variety of reasons.

Number one, the courts have held just recently, on March 30th of this year, in

Berghuis v. Smith, that unless you can show there's systematic exclusion in your minority pool, then it makes no difference what your jury composition is. And there have been attacks on verdicts because of racial composition, and therefore the verdict should be set aside.

And I don't generally support that policy. I think regardless of the racial composition, we're basically Americans. We can come together on a jury deliberation, in a common goal, and do justice. So I don't like the basis of why you're collecting the information.

And the second thing is the courts have held if there's no attempt at systematic exclusion, regardless of what the racial composition of the jury is, you can't set the verdict aside.

For example, it's hard to get people to come to jury pools. They're busy. And for some reason the commissioner of jurors sends out these subpoenas to a generally Afro-American community, and 95 percent of the minority pool is Afro-American. And that jury

is all Afro-American, and there is an Asian or a Caucasian or a Hispanic being tried. And the verdict is -- they come together and they make the verdict based on the facts to render justice.

The court decision here, the Supreme Court in the case that I cited, just five weeks ago said unless can you prove there's a systematic exclusion on how you've put the people in the jury pool, it's never going to support a motion to set aside a verdict on racial composition.

So I think this is an exercise in futility. The courts just recently are closing the door on it. And to suggest that the racial composition has got to reflect the population of the county, it undercuts who Americans are and how they can come together and render justice. For that reason, I'm voting no.

Thank you, Mr. President.

ACTING PRESIDENT BRESLIN: Thank you, Senator Bonacic.

Are there any other Senators wishing to be heard?

Hearing none, the Secretary will ring the bell. Members are asked to come to the chamber for the vote.

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: Senator Klein, to explain his vote.

SENATOR KLEIN: Thank you, Mr. President.

I just want to make sure my colleagues are clear that, you know, this legislation is not mandating any expansion of any jury pool. It's just requiring more information be gathered to see more ways we can get more and more people eligible to be jurors.

I think that certainly should be the intent, based on a 2006 Citizen Action study which showed that many people aren't participating in the jury process.

So I think the combination of

having more information at the disposal of the OCA can only help in getting more and more people involved in the jury process. So of course I vote yes, Mr. President.

ACTING PRESIDENT BRESLIN: Thank you, Senator Klein.

Senator Klein will be recorded in the affirmative.

Senator Farley, to explain his vote.

SENATOR FARLEY: Before I explain my vote, I'd just like to complain how long it takes to get somebody to be able to vote on this. I wish the members would be in their seats so that they could vote. We wait and wait and wait for them to come to the chamber.

I'm going to vote up on this bill. But I do have some concerns that perhaps this could be just another example of where the court could change its mind in saying the jury pool was not reflective of the community or something and therefore we need a new trial.

But I will vote aye. But again, Mr. President, I wish you could get them in the room faster on a vote.

ACTING PRESIDENT BRESLIN: I'll do my best, Senator Farley.

Senator Farley to be recorded in the affirmative.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 123 are Senators Bonacic, Flanagan, Golden, Griffo, O. Johnson, Lanza, Larkin, LaValle, Leibell, Little, Nozzolio, Padavan, Saland, Skelos, Volker and Young.

Ayes, 44. Nays, 16.

ACTING PRESIDENT BRESLIN: The bill is passed.

THE SECRETARY: Calendar Number 315, by Senator Stewart-Cousins, Senate Print 7129B, an act to amend Chapter 118 of the Laws of 1969, relating to a separate union free school district.

SENATOR LIBOUS: Explanation.

ACTING PRESIDENT BRESLIN: Senator Stewart-Cousins, an explanation has been requested.

SENATOR STEWART-COUSINS: Thank you, Mr. President.

This is a bill that would allow the Greenburgh North Castle Union Free School District to establish -- which is, by the way a Special Acts District -- to establish a school for special needs children in Orange County. It is hoped that about 155 residents will be served by this school.

It is cosponsored by Senator Larkin, who represents Orange County. And I think he would certainly attest to the need for --

SENATOR LIBOUS: Explanation satisfactory.

SENATOR STEWART-COUSINS: Was that enough?

ACTING PRESIDENT BRESLIN: Thank you very much, Senator Stewart-Cousins.

Are there any other Senators wishing to be heard?

Hearing none, the Secretary will ring the bell.

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: Announce the results.

THE SECRETARY: Ayes, 60.

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 to a reading of the supplemental calendar.

ACTING PRESIDENT BRESLIN: The Secretary will read the supplemental calendar.

THE SECRETARY: Calendar Number 475, by the Senate Committee on Rules, Senate Print 7678, an act to amend the Education Law.

ACTING PRESIDENT BRESLIN: Read the last section.

THE SECRETARY: Section 18. This act shall --

SENATOR MONTGOMERY: Lay it aside.

ACTING PRESIDENT BRESLIN: The bill is laid aside.

THE SECRETARY: Calendar Number 477, by the Senate Committee on Rules, Senate Print 7689, an act making appropriations for the support of government.

ACTING PRESIDENT BRESLIN: Read the last section.

SENATOR LIBOUS: Lay it aside.

ACTING PRESIDENT BRESLIN: The bill is laid aside.

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

SENATOR KLEIN: Mr. President, can we please go to a reading of the controversial supplemental calendar.

ACTING PRESIDENT BRESLIN: The Secretary will read.

THE SECRETARY: Calendar Number 475, by the Senate Committee on Rules, Senate Print 7678, an act to amend the Education Law.

SENATOR MONTGOMERY: Explanation.

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

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

This bill is an act that amends the Education Law in relation to the powers and the duties of Boards of Cooperative Educational Services, to the operation and management of and enrollment at charter schools, and to increasing the cap on the number of charter schools.

This bill, Mr. President, increases the cap that strengthens our ability for Race to the Top, it makes services for high-needs students a critical part of the process, gives priorities to students with special needs, requires open board meetings for transparency and accountability, prevents conflicts of interest, requires public reports to be reported, and also has a common application process that develops a standard.

ACTING PRESIDENT BRESLIN: Thank you, Senator Smith.

Senator Liz Krueger, on the bill.

SENATOR LIZ KRUEGER: Thank you, Mr. President.

Will the sponsor yield to a question?

ACTING PRESIDENT BRESLIN:

Senator Smith, will you yield to a question from Senator Krueger?

SENATOR SMITH: Yes, I will, Mr. President.

And, Mr. President, I also ask that Senator Craig Johnson, who is also a cooperating person on the bill with me, will be available for questions as well.

ACTING PRESIDENT BRESLIN: Thank you, Senator Smith.

SENATOR LIZ KRUEGER: Thank you. Senator Smith, I understood your explanation, but there's a lot of details in this bill. And because it didn't go through the Education Committee, the Senate didn't really have a chance to review fully all of the changes to state law that would be applied if this became law.

Can you just clarify for me what the role of for-profit corporations and management companies would be in both operating charter schools and also overseeing the evaluation of charter schools?

SENATOR SMITH: Right. In this particular bill, Mr. President, this bill does

not address the change in management of private corporations. However, Mr. President, the bill does allow for for-profit corporations to manage charter schools with regard to curriculum, with regards to the management of their employees such as teachers and maintenance.

ACTING PRESIDENT BRESLIN: Senator Krueger.

SENATOR LIZ KRUEGER: Thank you. Through you, Mr. President, if the sponsor would continue to yield.

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

SENATOR SMITH: Yes, Mr. President.

ACTING PRESIDENT BRESLIN: You may proceed, Senator Krueger.

SENATOR KRUEGER: Thank you very much. So as I understand it, for-profit companies could manage charter schools, or run them, and they could in fact be responsible for the evaluations of them.

Under this bill, either explicitly or not dealt with in the bill, could I be a

staff and/or board member of a for-profit charter school but also be the separate for-profit company evaluating the outcomes in the charter school? Would that be allowed?

SENATOR SMITH: Well, Mr. President, through you, Mr. President, there is the conflict of interest portion of this bill which is very critical with regard to those type of challenges. And I believe that portion addresses her concern with regard to conflict of interest.

ACTING PRESIDENT BRESLIN: Senator Krueger.

SENATOR LIZ KRUEGER: Thank you, Mr. President. If the sponsor would still continue to yield.

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

SENATOR SMITH: Absolutely, Mr. President.

ACTING PRESIDENT BRESLIN: You may proceed, Senator Krueger.

SENATOR LIZ KRUEGER: Thank you very much.

There was a previous bill that was

actually what we recall of S6468, which sometimes is called the Sampson/Silver Charter School Bill. And this bill has many of the same sections but a number of changes or exclusions from the previous bill.

Can you explain to me how this bill deals with the question of co-location of charters and public schools and decision-making over where the schools will be located, what happens if the existing public school believes that it is not able to accommodate an additional school or multiple schools run by people in the same building? How does this bill address those problems?

SENATOR SMITH: Through you, Mr. President, this particular bill does not address the issue of co-location. It leaves it as it was in the former charter school bills.

ACTING PRESIDENT BRESLIN: Senator Krueger.

SENATOR LIZ KRUEGER: Thank you, Mr. President. If the sponsor would please continue to yield.

ACTING PRESIDENT BRESLIN: Would

you continue to yield, Senator Smith?

SENATOR SMITH: Absolutely, Mr. President.

ACTING PRESIDENT BRESLIN: You may proceed.

SENATOR LIZ KRUEGER: Mr. President, through you. This bill says that it would permit authorizing entities to grant approval for the board of a single charter school to offer a single grade at multiple sites, with each additional site counted against the cap.

I don't quite understand this. Are we talking about physically a school being all fifth grade, a school being all fourth grade, a school -- how does that -- I don't understand that. Could you explain that, please?

ACTING PRESIDENT BRESLIN: Senator Smith.

SENATOR SMITH: Yes, through you, Mr. President. That reference that she is talking about with regard to lock sites is a charter school actually operating a particular grade at one site and at another site. And

that would also account for -- toward the cap, if you will.

The challenge that charter schools have now which we are trying to address in this bill has to do with multiple locations as well as trying to deal with charters in particular where they are sited.

ACTING PRESIDENT BRESLIN: Senator Krueger.

SENATOR LIZ KRUEGER: Thank you, Mr. President. Through you, if the sponsor would continue to yield.

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

SENATOR SMITH: Yes, Mr. President.

SENATOR LIZ KRUEGER: So it's also my understanding that through this bill there could somehow be some connection between multiple charter schools for different not necessarily grades but the categories of school. So we usually define K through 5, then 5 through 8 are middle school, then a high school.

At least in the City of New York

right now, you would apply through a lottery for the elementary charter school, and then the assumption is you would apply separately for a lottery into a middle school and/or a high school. How would this work under this bill for providing that people can take the opportunity to apply to charters at different grade levels?

ACTING PRESIDENT BRESLIN: Senator Smith.

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

With regard to the question by my colleague as it relates to multiple locations, the challenge with the charter schools that we addressed earlier has to do with multiple locations. And if she's referencing -- and I have a question of her if she's referencing zone versus district.

Is that what you're referring to?

SENATOR LIZ KRUEGER: Well, I understand the difference between zone and district, at least as it applies to New York City. We have zone elementary schools and we have zone middle schools, but we don't have

zone high schools.

But I think in the example I was asking you if there was a charter school -- oh, I don't know, the Liz Krueger For-Profit Charter School Corporation that had 10 different schools. They would each apply one for the cap, so you'd have 10 schools counted toward the cap. But in this corporation I might want children to start with my system and then keep moving through my system.

Is that possible, or is there a model where other children might attempt to apply to the school, some in kindergarten, some in the first grade, some at the middle-school level, some at the high-school? How would this work?

SENATOR SMITH: Through you, Mr. President, many parents are concerned with their children when they go into these charter schools if in fact they can continue on and not have to go into the public school system.

In addition, when you have an operator of a school that operates the school well, as opposed to having to apply for another charter application, which is a very

cumbersome process, this bill allows for that particular operator to open additional schools under the performance of their current charter, which we assume is doing well, which is why it's been extended.

ACTING PRESIDENT BRESLIN: Senator Krueger.

SENATOR LIZ KRUEGER: Thank you, Mr. President. If the sponsor would continue to yield.

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

SENATOR SMITH: Yes, sir, Mr. President.

ACTING PRESIDENT BRESLIN: Senator Krueger.

SENATOR LIZ KRUEGER: As I understand your explanation, Senator, under this bill, if this became law, a private corporation, the Liz Krueger Charter School Corporation, could have as many schools as a public school system in any specific area. Granted, in the City of New York, with 1100 public schools, obviously that couldn't be the case, because there's even in your bill a

maximum I believe of 460 charter schools or somewhere close to that.

But in a relatively smaller geographic area -- say, Albany -- is it conceivable that over time you could have one company running a school system equal in size to the public school system?

SENATOR SMITH: Through you, Mr. President, I believe the bill has parts of it that will not allow that to happen.

However, we also know the authorizer would have to grant that. And we suspect the authorizer would have a good eye and overview of that process to make sure it didn't occur.

ACTING PRESIDENT BRESLIN: Senator Krueger.

SENATOR LIZ KRUEGER: Thank you, Mr. President. If the sponsor would continue to yield.

ACTING PRESIDENT BRESLIN: Do you continue to yield, Senator Smith.

SENATOR SMITH: Yes, Mr. President.

SENATOR LIZ KRUEGER: Thank you.

There was also some confusion, perhaps, about the treatment of both special-needs populations in this bill compared to existing charter law and rules for English-as-a-second-language students, this bill, to previous charter law. So I'll try to take it apart.

Under existing charter law, what are the requirements for serving children with special needs or educational -- so sorry. The term is -- it's three letters. It involves children who have special -- IEPs. Thank you very much, Chair Oppenheimer.

So there's one rule under current law about treatment for children with IEP, and I believe that changes in this law. Can you explain how it changes?

SENATOR SMITH: Through you, Mr. President. Under existing law, we are required, charter schools are required to service that population.

ACTING PRESIDENT BRESLIN: Senator Krueger.

SENATOR LIZ KRUEGER: Thank you, Mr. President. If, through you, the sponsor would continue to yield.

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

SENATOR SMITH: Yes, Mr. President.

ACTING PRESIDENT BRESLIN: You may proceed, Senator Krueger.

SENATOR LIZ KRUEGER: As I read the new bill, they would be required to serve at least 50 percent of children with disabilities and English-language learners as a ratio of the percentage of those children in the school district or zone. So as I'm reading the law under your bill, charter schools would have to serve at least 50 percent of the children, not 50 percent of the children in their school.

But if -- I'll make this up. I'm already the for-profit company, so I can't be the school district. So in the Malcolm Smith School District, if 20 percent of the children are defined as special needs and 20 percent of the children are defined as ELL, English language learners, that means that under your law any charter school would have to be serving at least 10 percent special needs and

10 percent ELL? Is that a correct analysis?

ACTING PRESIDENT BRESLIN: Senator Smith.

SENATOR SMITH: Thank you, Mr. President. Through you, Mr. President, this particular bill allows charter schools to give admission preference to students with disabilities and students who are English-language learners and mandates enrollment preference for charter schools serving under half of the percentage of students in the school district or the community district in which that charter school is located.

SENATOR LIZ KRUEGER: Through you, Mr. President, if the sponsor would continue to yield.

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

SENATOR SMITH: Absolutely, Mr. President.

SENATOR LIZ KRUEGER: I believe you were agreeing with me. So I just want to double-check that the charter schools would

have to serve at least 50 percent of the students with these definitions in any given district.

ACTING PRESIDENT BRESLIN: Senator Smith.

SENATOR SMITH: Through you, Mr. President, not necessarily agreeing, but they would have to give a preference, as I formerly stated.

SENATOR LIZ KRUEGER: I'm sorry, I didn't hear you.

SENATOR SMITH: That's a designated preference, as I formerly stated.

SENATOR LIZ KRUEGER: As a designated preference. So --

ACTING PRESIDENT BRESLIN: Senator Krueger.

SENATOR LIZ KRUEGER: Thank you. Excuse me, Mr. President. Through you, if the sponsor would continue to yield.

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

SENATOR SMITH: Yes, Mr. President.

SENATOR LIZ KRUEGER: Thank you.

So again, let's go back to my hypothesis that in any given geographic area there might be a large enough number of charter schools to not necessarily equal but come close to equalling the number of public schools. But under this law, the charter schools would only have an obligation to provide preference for admission for half the number of children in these categories, children who have special needs and/or children with ELL needs.

So does that mean in the public schools, by definition, they would end up with double the percentage of children with special needs and with ELL needs?

SENATOR SMITH: Through you, Mr. President. Her assumptions are correct. But remember, Mr. President, there is a lottery. And these students also could be accepted through the lottery as well.

ACTING PRESIDENT BRESLIN: Senator Krueger.

SENATOR LIZ KRUEGER: Thank you. Thank you very much. If the sponsor would continue to yield.

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

SENATOR SMITH: Yes, Mr. President.

SENATOR LIZ KRUEGER: So again, my understanding -- you're right, it's a lottery, it could be a hundred percent of the children with special needs and/or a hundred percent of the children who are ELL that could be accepted through the lottery. But the mandate is only up to 50 percent.

And so I believe that my math is right that it could leave the public school system with dramatically greater percentages of children with special needs and dramatically greater percentages of children who have English as a second language issues that need to be resolved. Is that your understanding also?

SENATOR SMITH: Through you, Mr. President. Yes, Mr. President, for my colleagues as well as many of the advocates and those who even oppose the bill, whether it's the UFT or NYSUT, that was a big concern of many of them. There were no basic

requirements before. And in trying to address their particular needs, we move that up to a percentage, yes.

ACTING PRESIDENT BRESLIN: Senator Krueger.

SENATOR LIZ KRUEGER: Thank you. If, through you, Mr. President, the sponsor would continue to yield.

ACTING PRESIDENT BRESLIN: Senator Smith, do you continue to yield?

SENATOR SMITH: Yes, Mr. President.

SENATOR LIZ KRUEGER: Thank you.

My understanding also from this bill is that it would allow charter schools to provide alternative sites for children with special needs, either for services for children with special needs or an entirely separate school for children with special needs.

Could you clarify that for me?

SENATOR SMITH: Yes, Mr. President. Yes, it would do so. But this is in the spirit of the concern about saturation. And by giving the charter school

the ability to have other locations, other sites, it will obviously ameliorate some of that concern about pressing the students that are in that current location against the wall in terms of space and location, being sensitive to that need.

ACTING PRESIDENT BRESLIN: Senator Krueger.

SENATOR LIZ KRUEGER: Thank you.

And certainly there are justifiable reasons to have special services for children with special needs off-site or subcontracted. And obviously in the public school system we even sometimes separate out children with special needs into separate buildings and separate schools, and I certainly recognize that from the City of New York.

But under this law, could the following scenario happen? A consortium of separate charters that are each approved individually under the cap, and approved by either -- by one of the, I guess, two options we're keeping in place with this bill, a Regents approval or a SUNY approval process -- could a group of charters who are not

otherwise related from a corporate perspective pool all of their special needs children into some other location somewhere outside all of their buildings?

SENATOR SMITH: Through you, Mr. President. No, I don't believe so. But that was also assumed that there would be that kind of interest to do such, and I doubt charter operators would do so.

ACTING PRESIDENT BRESLIN: Senator Krueger.

SENATOR LIZ KRUEGER: If through you, Mr. President, the sponsor would continue to yield.

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

SENATOR SMITH: Yes, Mr. President.

ACTING PRESIDENT BRESLIN: You may proceed.

SENATOR LIZ KRUEGER: Mr. President, I read the bill and it seemed to me fairly vague about whether or not charter schools could do that, which is why I'm very concerned.

And so I'll ask the sponsor again, what in the bill would prevent that situation from happening? Let's say in the City of New York the charter schools from throughout a fairly large geographic area, five boroughs, 8.5 million people, making the determination that they were going to find one, two, three locations and define them as the places where these special needs children go to so that they've met their state obligation but don't actually have, then, what we define I think more as a normal community-based public school where children with diverse needs and at different levels of learning all get served together. Your bill doesn't stop that.

SENATOR SMITH: Through you, Mr. President. Yes, obviously the schools have to still follow IP rules. But more importantly, what would make sure that wouldn't happen is we still are required to follow federal law.

ACTING PRESIDENT BRESLIN: Senator Krueger.

SENATOR LIZ KRUEGER: Thank you. Through you, Mr. President.

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

SENATOR SMITH: Yes. Absolutely, Mr. President.

SENATOR LIZ KRUEGER: Thank you.

Under your bill, who's reviewing the charter schools to make sure that they are meeting the requirements of the law both on acceptance, on services provided, on outcomes, on the money, the public money being spent and accounted for? What's the process for that?

SENATOR SMITH: There is -- one, Mr. President, they're required under this bill to provide public reports on that. Two, obviously you have the Regents as well as SUNY, and then you have the localities over a million.

And more importantly, Mr. President, these charters, as they have done, their boards, in addition. But what's critical for this, Mr. President, is the accountability and transparency that's in here that's required, similar to the public school system.

ACTING PRESIDENT BRESLIN:

Senator Krueger.

SENATOR LIZ KRUEGER: Thank you, Mr. President. If the sponsor would continue to yield.

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

SENATOR SMITH: Yes.

SENATOR LIZ KRUEGER: Thank you.

Could publicly traded companies run charter schools under this law?

ACTING PRESIDENT BRESLIN: Senator Smith.

SENATOR SMITH: Through you, Mr. President, no.

SENATOR LIZ KRUEGER: I'm sorry I didn't hear. Excuse me.

SENATOR SMITH: No, not that I'm aware of.

SENATOR LIZ KRUEGER: No, they couldn't?

SENATOR SMITH: Not that I'm aware of.

ACTING PRESIDENT BRESLIN: Senator Krueger.

SENATOR LIZ KRUEGER: Through

you, Mr. President, if the sponsor would continue to yield.

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

SENATOR SMITH: Yes, Mr. President.

SENATOR LIZ KRUEGER: Since the bill doesn't explicitly lay out the definitions of a for-profit corporation or management company, how do we know a publicly traded company couldn't run charter schools?

ACTING PRESIDENT BRESLIN: Senator Smith.

SENATOR SMITH: Mr. President, that is why we have our overseers, such as SUNY, Board of Regents, in addition to the charter's board as well.

ACTING PRESIDENT BRESLIN: Senator Krueger.

SENATOR LIZ KRUEGER: Through you, Mr. President, if the sponsor would continue to yield.

ACTING PRESIDENT BRESLIN: Senator Smith?

SENATOR SMITH: Yes,

Mr. President.

SENATOR LIZ KRUEGER: Thank you.

So you listed out a number of entities who might or could or would evaluate how the money is spent, how the students are doing, how the students are accepted, whether there's retention, whether they're moved off-campus to some other sites. Is there no role for the State Comptroller or, in the City of New York, the City Comptroller in actually looking at how these monies are spent and these children are educated?

ACTING PRESIDENT BRESLIN: Senator Smith.

SENATOR SMITH: Through you, Mr. President, we know the Appellate Court, Mr. President, has made a ruling on that, and obviously we understand what that position was.

But it is clear that the Comptroller has the right and has the authority to audit charter schools if he so chooses to.

ACTING PRESIDENT BRESLIN: Senator Krueger.

SENATOR LIZ KRUEGER: Thank you, Mr. President. If the sponsor will continue to yield.

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

SENATOR SMITH: Yes, absolutely.

ACTING PRESIDENT BRESLIN: Senator Krueger.

SENATOR LIZ KRUEGER: Thank you.

Can you just clarify again this 50 percent versus 75 percent lottery application process and how that works?

ACTING PRESIDENT BRESLIN: Senator Smith.

SENATOR SMITH: Through you, Mr. President, I was just conferring with counsel.

And what my colleague is referring to is once the schools hit a 50 percent enrollment piece of special ed students in surrounding areas, at that point they are allowed to -- until they get to 75 percent, I should say -- at that point, right, then they're allowed to?

ACTING PRESIDENT BRESLIN:

Senator Krueger.

SENATOR LIZ KRUEGER: I'm sorry, I have to ask the Senator to repeat himself. Either I didn't hear or I didn't quite understand.

ACTING PRESIDENT BRESLIN: Would you repeat your answer, Senator Smith?

SENATOR SMITH: The question was the 50 percent/75 percent enrollment; correct? Fifty percent enrollment of special ed students around them. Once we hit that mark, then that's when we'll -- and when we get to 75 percent, we're allowed to go back to the 50 percent. That's as simple as it is.

ACTING PRESIDENT BRESLIN: Senator Krueger.

SENATOR LIZ KRUEGER: Thank you. Maybe there's another interpretation, so I will -- I also believe there's some attempt in this bill -- excuse me. Through you, Mr. President, if the sponsor would continue to yield.

SENATOR SMITH: Absolutely.

SENATOR LIZ KRUEGER: Thank you very much. There was also something about if

the schools had failed to meet their obligation to hit the 50 percent mark for serving the special-needs children and children with English-language needs, that their target would be raised to 75 percent. Am I misunderstanding that portion of the bill?

ACTING PRESIDENT BRESLIN: Senator Smith.

SENATOR SMITH: Yes, through you, Mr. President, if I can just read that section of the bill my colleague is referring to.

It simply requires that charter schools which are found to be serving less than 50 percent of the population of students with disabilities and English-language learners represented in the school district of the location to automatically admit students in these subgroups outside of the lottery until all applicants are admitted or the population reaches 75 percent, to give you a little more language.

ACTING PRESIDENT BRESLIN: Senator Krueger.

SENATOR LIZ KRUEGER: Thank you,

Mr. President. If the sponsor would please continue to yield.

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

SENATOR SMITH: Of course, Mr. President.

SENATOR LIZ KRUEGER: Thank you.

SENATOR SMITH: Mr. President, just to ask my colleague that I'm probably going to refer to Craig Johnson. There is something I have to take care of off the floor. So I will take a few more questions and then Senator Johnson.

SENATOR LIZ KRUEGER: Thank you. I think I only have a few more questions, Senator.

ACTING PRESIDENT BRESLIN: Senator Krueger.

SENATOR LIZ KRUEGER: So on this issue I understand how you evaluate the population for a school when we're talking about elementary schools, at least in the City of New York, where we have what's called zone schools. But in my understanding, in the bill the zone for high schools -- so for charter

high schools, under this law, the zone would be the City of New York. So how would this 50 percent be applied to lotteries for high schools in the City of New York?

ACTING PRESIDENT BRESLIN: Senator Smith.

SENATOR SMITH: Thank you, Mr. President. One moment.

Thank you, Mr. President. Through you, Mr. President, they would have to reach the citywide total. They would have to reach the citywide total.

ACTING PRESIDENT BRESLIN: Senator Krueger.

SENATOR LIZ KRUEGER: Thank you.

Sorry, just thinking. I know other people have additional questions so I don't want to take up everyone's time.

I guess on the bill, Mr. President.

ACTING PRESIDENT BRESLIN: Thank you, Senator Smith.

Senator Krueger on the bill.

SENATOR LIZ KRUEGER: Thank you very much. Thank you for your responses, Senator. And I feel that I will have more

questions, but I won't take up the time on the floor.

Here's my dilemma today. I'm not an opponent of charter schools by definition, and I think that they can be excellent alternatives for public schools. But I also worry about going too far too fast.

I'm not concerned about raising the cap. And my understanding is that for Race to the Top issues, which we also must confront in this Legislature within the next few weeks, the only portion of this bill that applies to the debate around the Race to the Top federal funds is the cap. Everything else in this bill is a separate discussion and not relevant for being approved or not being approved for federal money.

I'm frustrated that we're not sitting either around a table somewhere or on the floor of the Legislature today discussing what we need to do to change our laws to assure that we can compete for Round 2 Race to the Top money, because it's up to $700 million. And most of us are pretty simple about these things: If there's federal

money to be gotten, we would like to get it here in New York State. And we certainly need it for our public school system.

But I just want to go on record, I do not see this bill as a bill that resolves our Race to the Top legislative assignment. And so I worry that this pulls us off the discussion that is very time-sensitive and pulls us off the questions about changing a cap to a whole new scenario of accountability or a lack thereof when talking about spending what may be greater and greater amounts of public education money in a system -- with all due respect to the Senator, the sponsor of bill -- that we don't have enough answers for.

The language is too vague. The question of whether for-profit companies who are publicly traded can in fact run our school system; the question of whether the people who are good at doing audits, the comptrollers of the state and of counties and of the City of New York, have a role to play in evaluating what is going on with public monies; the concern -- and it's a big concern for me -- that the same entities or the same people who

might run these charter school companies might also run the companies who are assigned to do the evaluation of the charter schools.

It has been brought to my attention in my raising concerns over the last few days -- because we've only had a couple of days to look at the bill -- that the same complaints can be made of the public school system and that we need to reform the public school system. So, for the record, no disagreement. We need to do better with our public school system also.

But I am very concerned that not dealing with that question and not dealing with the Race to the Top question, we're here on the floor of the Senate being asked to vote for or against a bill that doesn't have enough answers to the real concerns I have about accountability: Accountability for the money, accountability for who will be running the schools, accountability for who will close down the bad charters -- because all the research shows and recent newspaper stories show there are good charters and there are bad charters. And I don't see anything in this

bill that makes more explicit than current law what can be done and who has the authority to take a school that isn't working and close it down.

And I was hoping that the next time this house dealt with the question of expanding charters or defining reform of charter schools, that that would be up front and central for us: Who had the authority to say, No, it's not working, we don't care if it's a five-year authorization or a five-year plus whatever time it took to get started authorization, that government -- because government is responsible for the public education of our children, and government is who's funding both the public school system and the charter school system -- that we would do better at getting clarification for how government would evaluate what was happening what worked, what didn't work, both in charter schools and public schools, and would be held accountable to immediately fix the problems that they saw. And I don't see that in these bills.

I do see much broader options

available to charters. And I've been told, in fairness, that the reason charters work so well in many parts of the State of New York and the country is because they're allowed more independence and freedom to innovate, to adjust for the needs of children, to be creative. I think that's the right answer.

My frustration is we live at the same time where government, for its public school system, seems to be dictating just the opposite. We don't allow them to innovate. We don't allow them to be creative. We don't allow them to go off-script.

And so I find an irony in how we, the government, are approaching what's different and better about charities versus public, that we want to allow all these options for charter schools and yet we don't want to allow any of these options for the public school system. And I don't actually understand that.

So I feel that this requires more research, greater debate, more analysis of this bill, how it's written, what it will and will not allow. And that in fact what we

should be spending our time on this week is understanding what the State of New York needs to do in order to be more successful in competing for Race to the Top monies or if we even agree that that's what we should be doing.

I just want to repeat, on the record, this bill doesn't address the questions for Race to the Top. Because I think there is confusion out there. And I don't want anyone to choose to vote yes or no on this bill because they think they are voting for or against changes in the state law that will get us federal dollars from the Race to the Top.

I don't believe I have enough satisfactory answers to the questions in my mind about this bill, so I will be voting no.

Thank you, Mr. President.

ACTING PRESIDENT BRESLIN: Thank you, Senator Krueger.

Senator Oppenheimer, on the bill.

SENATOR OPPENHEIMER: Yes. Yes, on the bill.

Well, I'll be joining my colleague

and voting no. And certainly several interesting discussions just took place, and there's philosophical issues which were very interesting. And it would have been very welcome to be able to discuss them at greater length.

I will say of this bill that there are many parts that I do support. In fact, I was seeing at least seven which were my stand-alone bills, and of course I support them -- having BOCES provide services to charter schools and doing the duration of a charter for five instructional years. Because as it is now, they usually count the first and second years of the charter when the school is first being formed, they're not doing any instruction. So we changed the bill to say that it would have to be -- the charter's duration had to be for five instructional years.

We dealt with conflicts of interest. We talked about retaining students who are at risk of educational failure. We talked about just bringing in more students who were ELL students or learning disabled

students or more seriously disabled students. And a lot of that is in this bill, and I'm very pleased with that.

But there are some things that have been left out and need to be negotiated. And those are things like the current exemption from auditing by our Comptroller. In this bill, it still stays with the Board of Regents. And it is felt that since all our school districts in New York State are audited by the Comptroller, that it seems logical and necessary to also audit charter schools in the same way.

Issues of co-location are not mentioned in this bill, even though co-location, when a chart school takes over a floor or two of a public school, it is co-locating with this regular public school. And there are many issues that have to be dealt with in co-location.

And suggestions have been made that perhaps if we had a list of maybe 20 or 30 or 40 schools specifically, let's say, in New York City, where there was additional space within the schools, and then we would be

able to co-locate in that additional space in the schools and perhaps offer something to the existing schools. Perhaps we will fix your roof or we will fix your bathrooms or we will do something to make the process of the two schools locating in one school work more cooperatively with one another and make them more welcomed into the school.

The issue of oversaturation is not mentioned in this bill, and I think that's a serious one. It's particularly serious for right where we are now, in Albany, and particularly serious for Buffalo, where a huge percentage of the students of that area are choosing to go to charter schools and therefore greatly reducing the number of children in the regular schools and causing enormous dislocation.

So those are a few of the things that are concerning me. But I guess what concerns me the most is that I felt negotiations were going on fairly well between all the entities and we had seen several concessions being made by the teachers unions and by the school administrators and by the --

we hope by the charter people, the supporters of charters.

And the idea was to try and bring as many entities together so that our application to Race to the Top would be a strong one and, as has been mentioned earlier, is not just -- it is certainly not just adding numbers to charter schools, it is adding accountability. And even Arne Duncan, who is our Secretary of Education in the United States, he has said that also, that the accountability issue is much more important than just growing numbers.

And we were working in a direction, I felt, that we were going to be able to present something that was very substantial and had a good deal of agreement among all the parties involved. I feel that this will be a distraction, to say the least. I think it will drive us further apart instead of bringing us all together.

And my request was that we could hold off for another week or maybe two weeks and see what could be achieved by everybody working together, which has been happening.

So I'll be voting no, because I think this is -- it's much too early. If we had waited those two weeks, I probably would have been able to vote yes. But under the circumstances, I think it's more divisive than it is helpful.

ACTING PRESIDENT BRESLIN: Thank you, Senator Oppenheimer.

Senator Diaz, on the bill.

SENATOR DIAZ: Will the sponsor yield for a question or two, please?

ACTING PRESIDENT BRESLIN: Senator Johnson, will you yield to a question from Senator Diaz?

SENATOR CRAIG JOHNSON: I will.

ACTING PRESIDENT BRESLIN: You may proceed, Senator Diaz.

SENATOR DIAZ: Thank you. Senator Johnson.

SENATOR CRAIG JOHNSON: Senator Diaz.

SENATOR DIAZ: Will you please tell me, enlighten me about where are the charter schools located in majority districts?

SENATOR CRAIG JOHNSON: Sure.

Thank you. Through you, Mr. President, charter schools obviously -- and public charter schools, may I add -- are located throughout the state: Buffalo, Albany, about five on Long Island. But the predominant amount happen to be in New York City, areas like Harlem, South Bronx, Brooklyn. So the concentration right now we see are predominantly in New York City.

SENATOR DIAZ: Mr. President, would the sponsor continue to yield.

ACTING PRESIDENT BRESLIN: Senator Johnson, will you yield to another question from Senator Diaz?

SENATOR CRAIG JOHNSON: Of course I do.

ACTING PRESIDENT BRESLIN: You may proceed, Senator Diaz.

SENATOR DIAZ: So you are telling me that the majority of charter schools are located in black and Hispanic neighborhoods and that black and Hispanic children are the ones taking advantage of it?

SENATOR CRAIG JOHNSON: Through you, Mr. President, let me just -- if my words

don't necessarily do it, let me offer some statistics provided to me by the New York City Department of Education as well as the Charter Schools Institute from SUNY, State University of New York.

According to the New York City Department of Education, 90 percent of students in public charity schools are either black or Hispanic. Those are the New York City-authorized schools.

In terms of SUNY, who authorizes as well, as you know, 91 percent of those students in SUNY-authorized public charter schools are identified as students of color.

Let me also add, Senator Diaz, that of the SUNY schools, 76 percent of the students in SUNY charter schools qualify for free or reduced lunch. In New York City, according to the New York City Department of Education, in the charter public schools 71 percent of charter students are eligible for free or reduced-price lunch. And that's as compared to 61 percent of students citywide, those in the district schools.

ACTING PRESIDENT BRESLIN:

Senator Diaz.

SENATOR DIAZ: Mr. President, will the sponsor continue to yield, please?

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

SENATOR CRAIG JOHNSON: Of course, Senator Breslin.

ACTING PRESIDENT BRESLIN: You may proceed.

SENATOR DIAZ: So, Senator Johnson, this bill requires the charter schools to be doubled to 460. That means that if we could, from 200, go from 200 to 460, you're telling me that children in my district, parents in my district, the 32nd Senatorial District that I represent, black and Hispanic in the majority, that the parents in my district will get more opportunities to get their children to a charter school to get a good education and to have what other people have that we don't have?

SENATOR CRAIG JOHNSON: Through you, Mr. President, the answer is yes.

SENATOR DIAZ: Will the sponsor yield.

ACTING PRESIDENT BRESLIN: Will you continue to yield for another question?

SENATOR CRAIG JOHNSON: Of course, Mr. President.

ACTING PRESIDENT BRESLIN: You may proceed, Senator Diaz.

SENATOR DIAZ: So you are telling me again, Senator Johnson -- I have to see if I can get you right -- you are telling me that by doing this and voting in favor of this bill to expand charter schools, the black and Hispanic community, the black and Hispanic parents, the black and Hispanic children would benefit?

SENATOR CRAIG JOHNSON: Through you, Mr. President, the answer is yes.

But let me expand, because I think what's being lost so far in this debate is how all of New York State's children and all of New York State's parents will benefit.

Remember where we are, ladies and gentlemen, right now in terms of education here in New York State. Right now we are in the midst of a nationwide competition known as Race to the Top. And if we may, let's go back

a little ways to January of this past year, because I think it's important that we get out on the floor of the Senate what happened in January when a bill was thrown into committees in the Senate and in the Assembly on the claim to get Race to the Top dollars. And that bill would have done no such thing.

We are competing right now against a number of states when it comes to education reform in order to qualify for $700 million. And guess what? Out of that $700 million, more than 99 percent of that money will go to traditional public schools. So the schools in Senator Diaz's district, Senator Krueger's district, Senator Oppenheimer's district, my district, the traditional public schools will have access to that money, $700 million.

But we need to compete for that. And if you look how well we did last time, we came 15th out of 16 states for that money.

Well, we need to improve our score. And there are multiple ways to do it. There are some ways that it seems that it will never happen, some ways that are off the table when it comes to improving our scores. But there

are other ways we can do it. And this is one way. This is one way to do it.

And so yes, Senator Diaz, we have the opportunity to put additional public charter schools into your district, should they qualify -- because they need to go through an application process, a rigorous application process that at Senator Perkins' hearing in detail went through how that process goes about.

But what's important to recognize and what the studies show, from Hoxby and from the recent CREDO study that was released in January 2010, is that your students will benefit from these schools.

Thank you.

SENATOR DIAZ: Mr. President, on the bill.

ACTING PRESIDENT BRESLIN: Senator Diaz, on the bill.

SENATOR DIAZ: Mr. President and ladies and gentlemen, there is a saying "Put your money where your mouth is." And there are some people saying that they always care for the black and Hispanic and the minority

children and that they're all looking out for the best.

Here is an opportunity that we could show, as Democrats, as Republicans, that we could really show that we care for children. Not for people personally, for power for people, but for children. And to give some parents in the City of New York, in my district, the opportunity to send their children to a good school and to get a good education and to compete, not to be left behind.

And today, I am proud and have to congratulate Leader Sampson, John Sampson, for the courage, the initiative, the caring for children in the State of New York and to present this bill, to allow this bill to come to the floor.

And I am proud and honored -- to me, it's an honor, Mr. President, it's an honor to me that this body and Chairman Sampson have given me to go back to my district, to look at the parents of the children in my district and tell them I voted for more charter schools and I want to give

you the opportunity that you deserve. I'm proud and honored. This is the biggest honor they're giving me, the biggest honor they're giving me, telling me to go back to my district to tell all the little Juanas -- like Congressman Serrano used to say, little Juana and Luisa and Pepe in my district, telling them: We did it for you. We're opening doors for you children. Go enjoy it.

And in fact, if I cannot do anything else, I'll be more than happy to do this. And I ask all of you to think of children first, children first, and to vote for this bill and to allow this bill to go through and to give the parents in my district the opportunity that they deserve. That's all we're asking for. We're not asking for more. We're not asking for more than for whatever we get.

So we are going to stop and don't give the opportunity to people to decide to be able to do this? This is a great opportunity. This is the opportunity of our life. And I am going to be part of history. And I am honored, again, happy to be part of this

history today with voting for more charter schools. We voted to give the parents in my district opportunity, we voted for the children in my district. I'm honored. I will face them and tell them, with my head high: "I voted for you. I did it for you. We did it."

Thank you, Mr. President.

ACTING PRESIDENT BRESLIN: Thank you, Senator Diaz.

Senator Montgomery, on the bill.

SENATOR MONTGOMERY: Yes, thank you, Mr. President.

I would just start by reminding all of us that we all, every single one of us in this room, have been through an educational system. That's what separates America from most of the other parts of the world, especially those parts of the world where there is no such thing as access for all citizens. So I'm proud to be an American today.

We are talking about the underpinning of America, democracy. And that is education, free education. That is what

America represents. And through that, there's access to other things in America that America has to offer all of its citizens. But education is the access to those things.

So we're not talking about a program that is for my district or Senator Diaz's district or Senator Savino's district. We're talking about the underpinning of the American society. And it is what Martin Luther King and other people that were part of the so-called civil rights movement, it was part of the women's rights movement, it was part of the human rights movement, as of today -- access to education.

So I think we need to be very, very, very careful about what we do to make changes that are fundamental to changing that system. And certainly there are parts of the system that I would like to see changed. I do not like what public education represents totally, but I'm willing to work on positive and constructive involvement. But I certainly would want to make sure that we preserve it.

I want to say that I too supported the Sampson/Silver bill that was introduced

in -- I believe in March. It was S6468. I am not in favor of the bill that is before us today. Why? Because I believe that there are important and significant aspects to the issue of the charter school system that we need to be responsibly addressing. And the bill that we have before us does not address those.

The accountability I think is extremely important. How that system is funded, how it is accountable. We're talking about public dollars, public tax dollars going into another system. We need to understand and have accountability for what that system does, both with the funding as well as with the children that are in there.

It is my understanding that the charter school movement has gone to court to oppose the Comptroller having access to audit them. I think that is clearly a problem for us.

I think that we have not, in this bill -- there is no restriction for for-profit organizations actually sponsoring and managing charter schools. I think we need to be extremely cautious about the fact that if we

allow for-profit involvement in the charter school in public education, we're moving toward privatization. For-profit organizations are for profit. And so I think we need to be very careful. I'm very concerned about that.

I think that we need to also understand who's managing our schools. Are these charter schools being managed by outfits that are from outside of our state, outside of the community, and do not have the same interests, they do not have the same interest as the communities of the schools that are located? This is really, I think, an issue that we need to be talking about.

We have these charter schools -- ostensibly, the charter school movement was started to be an experimental movement giving us a picture of what kinds of things make a difference -- improve education, give us a road map, a blueprint for improving our public school system.

We have not yet seen that the State Ed Department has been able to take the best practices from the charter school system and

begin to translate those and transfer those to the larger system so we can benefit from the so-called improvements of the charter school. We need to make sure that what we're doing is actually funding a system that is indeed actually better for our children.

And let me just say this, Mr. President. I have here a report of two schools in my district, P.S. 15 and P.S. 256, Benjamin Banneker. P.S. 15 is in Red Hook. They have had to give up a good part of their school, including six full rooms and six half-rooms, to accommodate a charter school. These rooms include academic classrooms, a computer room, a science lab, and an occupational therapy room, a speech and language room, a professional development room, the special education office, and a room used by Good Shepherd Services for individual and family counseling. That's one school giving up all of that space for a charter school. It has created havoc in that community. It is absolutely awful.

And on top of that, this fall the Department of Education in New York City

announced that the charter school would stay in the building until 2015 and expand its grades, occupying more space each year and forcing P.S. 15 to shrink its size.

That's what's happening in New York City all over the city. I have other schools in my district that have had the same fate. And that's what the mayor of New York City has decided is his process of siting charter schools. We think that needs to be addressed. It was addressed in 6468, Senator Sampson's bill. This Rules bill has no such reference.

The Sampson/Silver bill authorized only not-for-profit EMOs. They prohibited EMOs -- that's the management organizations -- that are charter operators from working with school districts.

There are a number of safety measures in the bill that Senator Sampson introduced earlier. This Rules bill has none of those.

And, Mr. President, this is very, very serious. This is a step that we must not take, expanding this charter system without funding, without oversight, without

transparency, and without even isolating the things that we know are good about charter schools and using those, transferring those and figuring out a way to benefit all of the schools in the state that are failing.

So I'm going to be voting no on this bill because I think this is the wrong thing to do, the wrong decision. And if we do the wrong thing, if we don't address the issues that are being raised here tonight now, we stand a chance of this system getting so far out of hand, so far out that we will not be able to address it logically as a legislature.

For us in New York City, it will be the same thing as we have with giving the education system control to the mayor. This is another one of those giant steps, and I think we need to be very, very, very much more careful and thoughtful and we should not be doing this in this way.

So, Mr. President, I'm going to have to vote no. Thank you.

ACTING PRESIDENT BRESLIN: Thank you, Senator Montgomery.

Are there any other Senators wishing to be heard?

Senator Golden, on the bill.

SENATOR GOLDEN: Thank you, Mr. President.

I rise to explain and to say thank you for a bipartisan bill here today that is going to be passed here in the Senate. And hopefully it will be passed in the Assembly and the Governor will sign it into law.

It raises the cap of the number of charter schools from 200 to 460. And it's to be shared by SUNY, who gets 230 schools, and the Board of Regents and the local school districts get the additional 230 schools.

In this bill, 115 charter slots to be available for the City of New York. This bill responds to President Obama's call for high-quality charter public schools as a critical component of that Race to the Top. It expands again that number from 200 to 460, or about 10 percent of the total public schools here across the State of New York, about 4600 schools.

By lifting that cap, that 10

percent of all public schools in this state, the legislation will enable New York to qualify for a maximum number of points related to charter schools, and therefore giving us the opportunity for Round 2 funding of $700 million, of which 50 percent of that grant will be received and will go to the New York State Department of Education to implement programs that are in that grant. And the other 50 percent will be allocated to local school districts, based upon their Title I student enrollment to help support efforts to improve that student performance.

Independent research has repeatedly found that New York City's charter schools dramatically outperform noncharter schools serving the same mix of students. A recent study by a research group in Stanford University, which has previously called out the weakness in the charter schools nationwide, identified New York's group of charter schools as a beacon.

On January 10, 2010, in a New York Times editorial it discussed "why charter schools in New York City are outperforming

charters elsewhere as well as their local 'traditional' school counterparts."

This legislation would also enact significant reforms through increased accountability and transparency of New York's charter schools and enhance the ability of these charter schools to serve special ed kids and to serve the ELL and give these students admission priorities to schools that serve low numbers of these students with special needs.

It requires the charter board members to meet the same conflicts of interest and ethics requirements as traditional school board members. And it establishes uniformity and oversight in the lottery and application process.

As many of you will remember, back in the '80s and '90s and the early 2000s there were two brothers, they set up this foundation, and they would give out these grants, these $2500 grants. And there were a relatively low number of grants that they would give out each and every year. Do you know how many parents would line up for those applications? Hundreds of thousands would

fill out those applications.

And, ladies and gentlemen, nothing has changed. Not in the '80s, not in the '90s, not in the 2000s. Our education standards have gotten better. Our children are getting a better education. But I have to tell you, ladies and gentlemen, our greatest treasures are our assets and our greatest assets are our children.

And those parents of today will do anything to make sure that their child gets a good education. And it's up to each of us here today to allow for that opportunity, to allow for those parents to have that competition, for our educational system to have that competition to be able to check, to be able to have those checks and balances and be able to see what's good, what's bad, what works and what doesn't work.

Ladies and gentlemen, this is a good day for all of us. This is a good day for each child across this state. There are 3 million kids that attend school systems across this great state. Out of that 3 million, a small number will go to charter

schools. But there are lines, ladies and gentlemen, to get into those charter schools and waiting lists to get into those charter schools. The question is why.

I've heard some of my colleagues say that the Department of Education hasn't been able to take those good practices and to be able to insert them into our educational system today. Well, they should do that. They should take the good practices and give every child across the state its opportunities. We owe it to those treasures. We owe it to the greatest assets of this great country. We owe it to those children.

I vote aye, Mr. President.

ACTING PRESIDENT BRESLIN: Senator Espada, on the bill.

SENATOR ESPADA: Thank you, Mr. President.

I rise because I'm very familiar with the subject matter, in that my first profession coming out of Fordham University was as a licensed bilingual teacher in the public school system, both in the early grades and in high school.

And growing up in the public school system, we often referred to 110 Livingston Street, the very centralized education system in the City of New York. Then we move towards the '60s and '70s, where the battle was fought on the ground for decentralization, what role would communities have, parents have in designing an educational system for their children.

Now, while we can start in the '60s and the '70s, you can go further back in the great American immigration stories at Ellis Island and how new immigrants came to this country, through New York City, the city I'm most familiar with, and sought to design a system of education that linguistically and culturally and otherwise would achieve mainstreaming them into the greater American society.

We're here today because there is a schism and the least of those priorities, quite frankly, has often been our children. We can wax eloquent about children; we're all professional orators and elected officials, we know how to do that. But the truth of the

matter is that there are some folks in the shadows, there are some serious power struggles that we have to bring out of those shadows. Because the truth is that children are not being heard here today, for the most part. Teachers are not necessarily being heard here, for the most part, nor those principals or parents or those children waiting on line.

We do have to have a bill before this house that deals with the role of for-profits, that deals with the role of management firms, that deals with the role of evaluating educational outcome, that deals with conflicts of interest, that deals with co-location, that deals with educational policy about high-needs children, special needs children.

And let me pause. As I became a father and I had a job as a teacher, my kids could not and should not and did not go to that public school system that was available to them. Because the fact of the matter was that given their learning disabilities, I would have been involved in malpractice as a

parent to put them in an educational system that was ill-equipped to deal with their special needs.

And so when we talk about an interest in defining special needs, in defining English-as-a-second-language students and their educational struggles, let's not just focus in on this charter school failure to deal with admissions policies. I've been around too long. We have to deal with 1 million children who have 60 percent of the English language students, failing out of the public school system.

And so it is an educational failure that we all have to deal with. Whether we talk about a public school charter experience or a public education experience, those that come to this country in search of the great American dream, we're failing them. And both systems have not lived up to their obligations. And both powers, whether they be the affluent, philanthropic, well-intentioned charter school folks or whether it be the principals or teachers union, have failed.

Because if we just focus in on how

to turn public education money into an economic or for-profit opportunity, or if we talk about protecting teachers at all costs and jobs at all costs and having tenure be redefined so that the worst teachers can continue to teach children, and so that when we attach merit to whether or not folks keep their job, that conversation can be had.

In other words, the politics and the polarization is the reason why we have to pass one-house bills. And so this debate has to get stimulated by more than just passing one-house bills. We have to have a real conversation about having children first, as Senator Diaz indicated.

And in doing that, we look forward to a bill that our leader, Senator Sampson, and that Assembly Leader Silver could put before both houses that will deal with accountability, transparency, audits, student accomplishments.

And yes, there is this notion that somehow we have to get stimulated, motivated, energized because we're in some Race to the Top. Again, both sides of this huge equation

are losing, and in the middle is the educational abyss where our children lie, where their educational failures could be countered by private institutes but mostly the parents that sit anxiously awaiting the day when they truly could have options.

So that, yeah, there's a public monopoly on education, there's a challenge, a challenge to that system which is incomplete in that you haven't dealt well with high-needs students, we have created a battle for space in our public school systems. This angst, this incredible anger that builds up in these public hearings that I've been to is only a by-product of the fact, again, that we haven't done our job.

Whatever we do, we have to have a bill that deals with the issues of access, issues of what defines educational achievement, issues of co-location, issues of getting capital into use for charter schools. Yes. Yes. The reason why you have these co-location battles is because we don't have the facilities available for this true competition or this true option to fully

blossom.

And so they're both public schools. One goes by the name of charter schools. One has a tremendous support in the private sector, and the philanthropic dollar has found it.

And the big public challenge to this house and to the Assembly, the Legislature and the Governor, is to deal with all of the elements that would make for a resolution in time for Race to the Top, yes, but in time so that next September, when the new class of students seeks admission into these schools, that they can truly have a choice.

I will be supporting this bill, Mr. President, because I think it starts the conversation. It doesn't finish it for sure.

ACTING PRESIDENT BRESLIN: Thank you, Senator Espada.

The debate is closed.

The Secretary will ring the bell.

Read the last section.

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

ACTING PRESIDENT BRESLIN: Call the roll.

(The Secretary called the roll.)

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

SENATOR DeFRANCISCO: Thank you, Mr. President.

I know there's some controversy about this bill and the unions are not in favor of it. However, we're in a financial disaster right now in the State of New York, where we're going to run out of money by June. It's just a shame we didn't pass a bill to put our application for Race to the Top money at the top of the pile a few months ago, and then we might have had some more money to count on for this year's budget.

So I'm voting yes on this to enhance our application for federal money, up to $700 million, to replace the cuts that otherwise would be necessary for education. And I'm doing this in favor of the teachers, those teachers which will otherwise be laid off and not be able to teach our students if we don't get the funding that we need to

provide to our districts.

So I vote aye. Thank you.

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

Senator Thompson, to explain his vote.

SENATOR THOMPSON: Thank you, Mr. President, for recognizing me today.

I just wanted to speak about this issue for a moment because charter schools and traditional public schools are very important institutions. While we know that this is a one-house bill today and probably will not pass the State Assembly, I think it does begin a needed debate.

And although I'm not voting for the bill -- because largely I believe it has today distracted us from the efforts to finalize the state budget -- this bill, however, does take some steps forward in terms of making reforms and providing more accountability. But the challenge for this bill is that still falls short.

It falls short in certain key

areas -- to make sure that the State Comptroller will have the ability to do audits of charter schools. It also falls short as well in making sure that we address the saturation language of oversaturation in certain communities. Hopefully, as we move forward, as well that it will address reforms that are needed on the public school side.

There was a report that was issued today by the teachers and some of their supporters that talk about what the charter schools do wrong or don't do effectively. And I believe that there are things that the public schools need to address and that they can learn and pick up from some of the charter schools.

For example, one of the things that many people have heard me talk about is parental involvement. I ran for the Senate on the issue of parental involvement. Whatever happens as a result of this or doesn't happen as a result of this must address the issue of the high rate of students dropping out in the state, the low literacy rates, bad test scores and low rates of parental involvement. Those

are the four cornerstone issues that I hold dear to my heart.

And so I support both school systems. However, this is not the best way to do it. And particularly as we move forward, we need to have a more transparent process.

Thank you, and I vote no.

ACTING PRESIDENT BRESLIN: Senator Thompson to be recorded in the negative.

Senator Stavisky, to explain her vote.

SENATOR STAVISKY: Thank you, Mr. President.

I'm not going to repeat what was said here, except a misconception was said. The Stanford Center for Research on Educational Outcomes, which studied the charter school movement nationally -- and is, incidentally, one of the most comprehensive studies on charter schools -- they found that fewer than one-fifth of the charter schools nationally offered a better education comparable to the local schools, about half offered an equivalent education, and more than

a third, 37 percent -- and this is the respected institute at Stanford University -- 37 percent of the charter schools were significantly worse.

And it seems to me that that's what it's about. To do kids do better in a charter school? In my opinion, they do not.

And I support the public schools, and I vote no.

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

Senator Saland, to explain his vote.

SENATOR SALAND: Thank you, Mr. President.

Mr. President, I certainly believe in competition. Competition in all avenues of the life I think is ultimately healthy and produces a better product.

Some of you may recall at the time that we increased the charter cap, we passed the portion of the budget containing the education funding and the education language with one dissenting vote. And I was

intimately involved in those negotiations because at the time I was the Education chair. And I was that lone dissenting vote.

And the reason for my dissenting at that time had nothing to do with the concept of charter schools, but it had everything to do with the fact that there was no effort to provide local control, something that in some 40-plus percent of the states that have charters is permitted by operation of law.

And I continue to believe that that's critically important. I welcome the city's embrace of charter schools. If it works for them, that's fine; they're funding it. They're a dependent school district, and they're funding it in substantial part.

I do think, however, that local school districts -- or, as the feds call them, LEAs -- should have some say in whether or not a charter school is in fact permitted to be part of their school program because they in fact are bearing a substantial portion of the cost.

So for that reason, Mr. President, I will be voting in negative on this bill.

Thank you.

ACTING PRESIDENT BRESLIN:

Senator Saland to be recorded in the negative.

Senator Montgomery, to explain her vote.

SENATOR MONTGOMERY: Yes, thank you, Mr. President.

In addition to the questions that I've already raised, I sure would like to know what is the rush.

And another question that I have is that most of the people, most of the Senators in here don't have any charter schools in their areas. And Senator Golden doesn't have any in his district. And so most of you don't even -- this is not even the issue that they have to concern themselves about as it relates to education in their districts.

But certainly I do. And I also know that schools don't fail by themselves. Their communities have an environment that doesn't support success.

So now I see -- another question I have is that we have people on Wall Street who have put together a fund, a pool, which they

intend to use against people who they view as being against charter schools. Now, why would people on Wall Street, the hedge fund people, be so interested in these children when they are the reason why we had so many foreclosures in the communities where those children with failing schools live?

So there's something very strange about this whole issue. And it doesn't seem like it's so much for the children. I don't see the same people who are so interested in children now, I have not seen them ever in my life standing up for what's good for those children, especially those children that they claim need these charter schools so much.

I'm not against charter schools. But I must say, on behalf of my son to all of his teachers -- there are some that I could name here, they were wonderful. He was a public school student. He did very well, and he is still doing well. I thank the public school system in this state and in my city.

So I'm voting no because I don't see the rush to take money out of a system that we should be improving and send it away

to a system for which there is no accountability or transparency. I vote no.

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

Senator Perkins, to explain his vote.

SENATOR PERKINS: Thank you very much, Mr. Chairman.

You know, no one here is against money coming to schools for education, if that's what it's really for. We are tying this legislation to something called Race to the Top, $2 billion of public money that will be spent without any auditing, without any oversight by the Comptroller.

For me, it's not simply about Race to the Top. I think that, for me, this is more like race to the trough. It's more like folks seeing an opportunity to get some public dollars without the kind of scrutiny, without the kind of transparency, without the kind of accountability that we would not allow in any other sector of public government but for this charter sector, and we are opening up the

floodgates in that regard.

Now, I know that a lot of us are concerned about the failure of our traditional public schools and are appreciative of those instances when the charter schools have proven themselves to be successful. But if you read the New York Times this Sunday, you'll find that the story is not that clear. It's a very murky record, to say the least. If you read the New York Times from last week you'll find that it's about the money, for many.

And many of you I hope have received what it is I sent out to you that spells it out from the perspective of the Times. And also you might want to make note of the Times Union this weekend, where they have a featured article "For the Kids," underscoring again that it's about the money and not about the kids.

So I can't vote for this. I think that there's something cynical about this type of legislation that does not speak to some of the reforms that have been written about in the public papers and that my hearings brought out, particularly when we talk about

co-location, where in some communities there are serious confrontations about this type of situation.

ACTING PRESIDENT BRESLIN: Senator Perkins --

SENATOR PERKINS: I also want --

ACTING PRESIDENT BRESLIN: Senator Perkins, how do you vote?

SENATOR PERKINS: -- in conclusion, to also talk about the saturation issues and the fact that the cherry-picking with respect to special ed children that's taking place.

So I'm going to be voting against this. I look forward to another episode where we can move forward in a more responsible, more creative way to make sure that if we're going to have charters or any kind of public schools that they are responsive, with the type of transparency and accountability that we would expect in any other part of public service.

Thank you.

ACTING PRESIDENT BRESLIN: Senator Perkins will be recorded in the

negative.

I remind people that there is two minutes to explain your vote.

Senator Craig Johnson, to explain his vote.

SENATOR CRAIG JOHNSON: Thank you very much, Mr. President.

First, let me say this to clarify for the record. Senator Stavisky, the study that you cited was the national CREDO study that did not even look at the New York City charter schools. CREDO then did the study of the New York City charter schools which Senator Golden commented about, and they praised the New York City charter schools. So you're looking at a national study.

Very similarly, in the New York Times piece this past week, what people pointed out is that nationally, when you don't have the accountability or the transparency, you have problems. The same piece, though, said that experts praised New York State's accountability and transparency and said we do a better job here in New York State.

So when you grab those studies,

make sure you're looking at the ones that talk about New York State versus the national studies.

But we're getting off the point. We talk about studies and we talk about for-profits, and we can all cite particular things. It's about the kids. It's about the parents. It's about the fact that we have Race to the Top, we have the ability to secure $700 million, and to do so we have to do particular things.

The $700 million, 99 percent of it will go to traditional public schools. Those will help Velmanette Montgomery's school districts. Those will help Liz Krueger's school districts. Those will help Marty Golden's school districts. It will help all of our school districts. We lose sight of that fact.

The fact is is that access to quality education should not be predetermined by somebody's zip code. And charter schools, public charter schools help children, predominantly African-American and Hispanic-American communities, get a better

education. If you don't believe me, go to the Harlem Success Academy, like I did, and see how these kids are succeeding. Who now have a 25 percent population of special ed kids, who scored 100 percent on their math scores and 97 percent on their English scores. One of the best schools in the state, public schools.

But let me say this, finally. If you have qualms, if you have questions, I urge you to go see the movie called "The Lottery." It's a very simple film. It involves --

ACTING PRESIDENT BRESLIN: Senator Johnson --

SENATOR CRAIG JOHNSON: It involves --

ACTING PRESIDENT BRESLIN: Senator Johnson, how do you vote?

SENATOR CRAIG JOHNSON: -- four families and talks about their struggles and their desire to get into these schools and have access to education these kids can't get today.

I vote yes.

ACTING PRESIDENT BRESLIN: Thank you, Senator Johnson. You will be recorded in

the affirmative.

Senator Onorato, to explain his vote.

SENATOR ONORATO: Thank you, Mr. President.

I rise to support this bill. I think it's a wake-up call, finally, for the public education system to get their act together.

I have probably the first charter school in Queens County, located in Woodside, and I have the most diversified district perhaps in the State of New York, where we have 130 different languages spoken in my area. And I have more and more requests than I can possibly handle with recommendations that they allow me to write a letter of recommendation to get them into the charter school that I have located in my district.

So I'm voting with my constituents who want a chance to give their children the same opportunity as the children that are already attending the charter school in Woodside. I vote yes.

ACTING PRESIDENT BRESLIN:

Senator Onorato will be recorded in the affirmative.

Senator Diaz, to explain his vote.

SENATOR DIAZ: Thank you, Mr. President.

I remember, Mr. President, many years, many years ago when there was no charter schools and three reverends, three ministers, Reverend Floyd Flake from Brooklyn, Reverend Wyatt Tee Walker from Manhattan, and myself, we conducted a press conference at City Hall asking Albany to approve charter schools. Way back. And now we -- I'm proud of what I did, I'm proud of what I'm doing.

But, Senator Golden, I heard that you don't have a charter school in your district and you are voting for it. Senator Golden, Senator Padavan, you guys that don't have my color skin, you guys that don't have charter schools, you are voting to help my children in my district.

I would like to extend an invitation to you, Golden, and to you, Padavan, to come to the South Bronx, to my charter school, and pay a visit with me. You

will see the parents. You will see the happiness. You will see the victory that we have achieved.

So anytime, you will be welcome to come with me. I am inviting you right now to come to my district and meet the parents of my district.

Thank you for your vote today. I'm voting yes.

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

Senator Stewart-Cousins, to explain her vote.

SENATOR STEWART-COUSINS: Thank you, Mr. President.

I rise because I think we can do better. I know that we are talking about our children, and I think it should be clear that I don't think anyone in this chamber is against charter schools. But I again repeat what has been repeated over and over again. It is the investment in our future. If New York City is doing it right, it can be codified, it can be put in our legislation.

Because there are many schools that are doing it wrong.

And if we have an opportunity to begin a conversation, we should begin it, but we shouldn't end it at a place that we know won't accomplish the goals. We want our children to be educated. Every single child does not want to stand in line in a lottery hoping against hope that education is in their future, a quality education that can allow them to sit in these chambers.

And if we can do better and if we have an opportunity to race to the top and actually get to the top by creating language and creating transparency and accountability as well as opportunity, we ought to do that.

So I at this point will vote no. I look forward for a real discussion, a continued conversation and a race to the top that actually includes all children in New York State.

ACTING PRESIDENT BRESLIN: Senator Stewart-Cousins will be recorded in the negative.

Senator L. Krueger, to explain her

vote.

SENATOR LIZ KRUEGER: Thank you.

Just for the record, sometimes the rhetoric gets hot when we're passionate about issues, and I respect that. But to clarify, just once and for all on the record, this bill doesn't get us the Race to the Top money. The Race to the Top has a series of evaluations that we need to do better on.

Based on the findings from our rejection, we only could have received an additional 12.6 points in our application for Race to the Top based on raising the charter cap. I think it's fine to raise the charter cap; 12.6 points isn't getting us the money. We still have the assignment. So the argument this bill, yes, means $700 million is a false statement.

Second, this money can't be used to -- the Race to the Top money, if we get it, can't be used to avoid teacher layoffs. That's not what it's there for.

So just two points. You can support charter schools or not support charter schools, you can debate what we need to do for

Race to the Top money, and we need to continue that. But this bill doesn't get us $700 million, although I would love to get us $700 million, and you can't use that $700 million to avoid layoffs. We still have an obligation to deal with the tough decisions in the state budget quickly.

I'll be voting no, as I said before. Thank you, Mr. President.

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

Senator Schneiderman, to explain his vote.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

I look forward to being able to vote for a bill to lift the cap on charter schools. I think the needs for further reforms have been discussed today.

But I have to say, listening to the debate, the thing that disturbs me the most about this is that while I think that there may be, as some have suggested, some people interested in education for bad reasons,

frankly, I think the overwhelming majority of people on both sides of this issue are concerned about kids and are concerned about schools and do want what's best for our children.

This is an issue that has become very polarized. And I think that in fact most of us here would look forward to a bill that would enable us to lift the cap. I hope that we can get back to the negotiations, as Senator Oppenheimer spoke about. My understanding is that there was a lot of progress being made on the issue of having a unified approach to the Race to the Top application.

But I would urge all my colleagues, there's a difference between an opponent and enemy. And demonizing anybody in this debate probably doesn't serve us well. So I'm going to vote no on this bill. I look forward to being able to vote yes on a bill down the road that has some further reforms.

Thank you, Mr. President.

ACTING PRESIDENT BRESLIN:

Senator Schneiderman will be recorded in the

negative.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 475 are Senators Breslin, Duane, L. Krueger, LaValle, Montgomery, Oppenheimer, Padavan, Perkins, Saland, Schneiderman, Serrano, Stachowski, Stavisky, Stewart-Cousins and Thompson.

Ayes, 45. Nays, 15.

ACTING PRESIDENT BRESLIN: The bill is passed.

The Secretary will read.

THE SECRETARY: In relation to Calendar Number 477, Senator C. Kruger moves to discharge, from the Committee on Finance, Assembly Bill Number 10924 and substitute it for the identical Senate Bill Number 7689, Third Reading Calendar 477.

ACTING PRESIDENT BRESLIN: Substitution ordered.

THE SECRETARY: Calendar Number 477, by the Assembly Committee on Rules, Assembly Print Number 10924, an act making appropriations for the support of government.

ACTING PRESIDENT BRESLIN:

Senator Klein.

SENATOR KLEIN: Mr. President, is there a message of necessity and appropriation at the desk?

ACTING PRESIDENT BRESLIN: Senator Klein, there is a message of necessity and appropriation at the desk.

SENATOR KLEIN: Mr. President, I move to accept the message at this time.

ACTING PRESIDENT BRESLIN: The question is on the acceptance of the message of necessity and appropriation. All those in favor please signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT BRESLIN: Opposed, nay.

(No response.)

ACTING PRESIDENT BRESLIN: The message is accepted.

Please read the last section.

SENATOR LIBOUS: Excuse me, Mr. President.

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

SENATOR LIBOUS: Thank you. I

believe there's an amendment by Senator LaValle at the desk. I would ask that you waive its reading and call on Senator LaValle, please.

ACTING PRESIDENT BRESLIN: Senator LaValle's amendment is here at the desk. Without objection, the reading is waived and you may speak on the amendment.

SENATOR LaVALLE: Thank you, Mr. President.

There is an inequity in the bill. This amendment tries to or does make it fair and equitable between the State University and the City University.

Under this budget, City University construction projects can move forward. Effective May 1, SUNY construction projects have come to a halt. Needless to say that workers, contractors throughout this state are in a neutral position, are not working, are not moving on projects that need to come to completion.

Our laws make an attempt to be equitable and fair. And clearly the budget bill before us treats one system fairly and

the other system, State University, unfairly.

This is analogous to the situation where contractors throughout the state had to cease to work on their road projects and other projects in the state.

So this amendment corrects that inequity that I can only assume was done through some oversight. Thank you.

ACTING PRESIDENT BRESLIN: Thank you, Senator LaValle.

Senator Klein.

SENATOR KLEIN: Mr. President, point of order.

ACTING PRESIDENT BRESLIN: Senator Klein, you may proceed.

SENATOR KLEIN: According to Article 7, Section 4 of the Constitution, the Legislature may only add single line-item appropriations stated separately and distinctly. Because the items in this amendment are not single, distinct line items, the amendment is unconstitutional and therefore out of order.

ACTING PRESIDENT BRESLIN: Senator Klein, your point of order is confirmed and

the nonsponsor amendment is out of order.

SENATOR LIBOUS: Mr. President -- Mr. President -- Mr. President --

ACTING PRESIDENT BRESLIN: Senator Libous.

SENATOR LIBOUS: Thank you for recognizing me. I'd like to challenge the ruling of the chair, Mr. President. Because as I mentioned last week and the previous week and the previous week before that, we believe that the amendment is not out of order. We believe that --

ACTING PRESIDENT BRESLIN: Senator Libous, would you like to make a motion to overrule the ruling of the chair?

SENATOR LIBOUS: Yes, Mr. President, I would.

ACTING PRESIDENT BRESLIN: All those in favor of overruling the ruling of the chair please signify by raising your hands.

Announce the results.

THE SECRETARY: Ayes, 27. Nays, 31.

ACTING PRESIDENT BRESLIN: The motion fails.

SENATOR DeFRANCISCO: Point of order.

ACTING PRESIDENT BRESLIN: Senator DeFrancisco.

SENATOR DeFRANCISCO: I thought there was a reform that said that there's no empty-chair voting in the State Senate any longer.

ACTING PRESIDENT BRESLIN: You're right. Senator Robach -- you're referring to Senator Robach?

SENATOR DeFRANCISCO: Well, that -- we can concede Senator Robach. But there's not too many chairs that are -- there are a lot of chairs empty on that side. You must have not looked to the left.

ACTING PRESIDENT BRESLIN: When voting on a motion with a show of hands, it is those people who are showing their hands.

SENATOR DeFRANCISCO: So under those circumstances you don't have to be in your chair, is that the ruling? If that's the case --

ACTING PRESIDENT BRESLIN: Senator Klein.

SENATOR KLEIN: Mr. President, just to clarify Senator DeFrancisco's point, that's only on controversial bills where a member has to be in their seat.

ACTING PRESIDENT BRESLIN: Announce the results.

THE SECRETARY: Ayes, 29. Nays, 31.

ACTING PRESIDENT BRESLIN: The motion fails.

The main bill is before the house.

SENATOR DeFRANCISCO: Explanation.

ACTING PRESIDENT BRESLIN: An explanation has been requested.

Senator C. Kruger.

SENATOR CARL KRUGER: How did I guess?

This bill is once again another extender covering the period from May 4th to May 11th. And it is a bill with $2.3 billion in an All Funds appropriation and $622 million in the General Fund appropriation.

ACTING PRESIDENT BRESLIN: Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes, before I ask Senator Kruger to yield, I'm speaking to all the people who left the chambers. This is going to be a very brief discussion, in view of the lateness of the hour. And if people would stay close so we don't have to wait a half an hour for those chairs to be filled.

ACTING PRESIDENT BRESLIN: It is hoped that everyone will stay close so that when the vote comes it will be expeditious.

SENATOR DeFRANCISCO: Would Senator Kruger yield to a question?

ACTING PRESIDENT BRESLIN: Senator Kruger, will you yield to a question from Senator DeFrancisco?

SENATOR CARL KRUGER: Yes. Through you, Mr. President.

SENATOR DeFRANCISCO: If I asked you the same questions that I've asked you in previous weeks concerning the progress of the negotiations that are being held privately between the three New York City leaders, whether or not -- would your answers be that the negotiations are ongoing, that you can't give us any specifics, the reasons you can't

give us specifics is because the negotiations are sensitive and the negotiations change from time to time and you don't want to upset the rhythm of the negotiations and as soon as we meets a critical mass we will hear from the leadership and have a budget bill to be discussed after it's already negotiated? Would that be the --

SENATOR CARL KRUGER: Give that man a cigar.

(Laughter.)

SENATOR DeFRANCISCO: Would that be your answer?

SENATOR CARL KRUGER: In all forms, yes.

SENATOR DeFRANCISCO: Okay. Would he yield to one last question?

ACTING PRESIDENT BRESLIN: Would you yield to one last question?

SENATOR CARL KRUGER: Yes, I will, Mr. President.

SENATOR DeFRANCISCO: Senator Kruger, do you have anything to add to enlighten us as to what's happened from last week to this week?

SENATOR CARL KRUGER: No.

SENATOR DeFRANCISCO: Thank you.

On the bill.

ACTING PRESIDENT BRESLIN: Senator DeFrancisco, on the bill.

SENATOR DeFRANCISCO: Now, I did that simply, quite frankly, to move the process along, because I think it was pretty obvious what the answer was going to be from prior weeks.

But I just wanted to add a couple new things that have developed over the last week as far as things that may be relevant in getting an open public process going.

Point number one is that the Associated General Contractors on April 30th brought a lawsuit against the state for withholding payments as well as bid awards on highways. And these payments relate to districts all throughout the State of New York, contractors not getting paid -- earning interest, by the way, for nonpayments that are due from the State of New York, which will further exacerbate the state's cash flow position.

Number two, there is such a thing as SUNY constructions that take place, and there's a very short window for SUNY projects to be done. There's only a 90-day recess, and that's the only construction window unless you're going to displace students. This work is going to be not done, we're going to lose the construction window, and we're going to have projects that were stalled for another year in order to get to that window.

Number three, Senator LaValle in his motion indicated another upstate/downstate dichotomy, and not a good one. I won't restate all the other ones we've brought up over the last year and a half, but this one is a serious one. Because of the statute, CUNY projects can go forward -- CUNY, from the City of New York, they can go forward. SUNY projects cannot.

Now, if that isn't a disparity between upstate and the downstate area that clearly controls this budget process that has gone nowhere and is over a month late now, then I don't know what does display that disparity.

Lastly and most importantly, while whatever is not going on continues to not go on behind closed doors, the Comptroller has advised us and advised the world that by the end of May -- it's not too far off, it's three more extenders -- the General Fund balance in the State of New York is going to be $500 million. And the DOB estimates that the short-term investment pool and other sole custody accounts will be $1 billion short as of June, making emergency bill payments and the payments to the schools unable to be paid made. So although we get the same answers to our same questions week after week, this is serious business.

And the most -- and lastly, the thing I almost forgot, the Governor has mentioned furloughs of state employees. And he's threatened next week that if we don't handle the furlough bill as a stand-alone bill, it's going to be part of the extender next week.

Now, that's going to put a lot of people in a very difficult vote. Do you vote to not have an extender as long as it has

furloughs for state employees? It's going to be a very difficult vote.

So I'm urging everyone, in view of all of those factors, in view of the fact that no progress has been made, we're over a month late, that we vote no at this time -- not wait till next week when we have to furlough employees -- so that we can make sure we get a budget. And a budget is necessary for all of us for many reasons, in addition to the reasons I gave you.

So I'm going to vote no when the vote is called today on this bill. Thank you.

ACTING PRESIDENT BRESLIN: Thank you, Senator DeFrancisco.

Senator Flanagan, on the bill.

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

I'm going to refrain from asking questions and just make a couple of points relative to the education portion of this budget.

Last week when we did the extender, there was about $2.5 billion appropriated in aid to education. All meritorious, all

valuable, all beneficial to our school districts. Last week we offered an amendment to allow for the employee liability reserve funds to be used as the Governor had proposed, as the Senate Democrats had proposed, and as the Assembly Democrats had proposed, and the amendment was defeated along party lines.

Last week, or as we came into this week, the Governor sent up two bills -- an appropriation bill, which we have before us, and an Article 7 bill, which very simply would have allowed for the use of those funds.

So I marvel at the discussion that we've had today talking about charter schools and the Race to the Top and public policy and education, and we spent about two hours talking about $700 million that we may get. And I think that discussion was worthwhile.

But it is appalling to me that we're standing here now and we are not going to take up a bill that was introduced by the Majority. That's a bill, ladies and gentlemen, that everyone knows doesn't cost the State of New York a dime. It doesn't cost the financial plan anything. The Comptroller

has come out and said there's over $400 million available to over 251 school districts in the State of New York where they could access that money to help prevent layoffs, help reduce their tax levy, and help the overburdened property taxpayer in the State of New York.

You failed to get it out here on the floor. That's a $400 million member item, like that [snapping fingers] that goes right to school districts that would be very beneficial to the vote that's coming up the third Tuesday in May.

So as we move ahead, I can guarantee you I'm going home and I'm putting the blame right at the Senate Democrats' door and the Assembly Democrats' door, because the chance is there, it's a no-brainer, it should have been done.

And I give credit to the Governor because he listened, he listened and put it in his appropriation bill. We should have acted on it. It should be here now, it could be chaptered tonight and school districts could plan accordingly and benefit the property

taxpayers. But you chose not to do the right thing, and they're going to be hurting as a result.

I'm going to vote no.

ACTING PRESIDENT BRESLIN: Thank you, Senator Flanagan.

Senator Marcellino, on the bill.

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

As I have on all the other extender bills that have come before us, I fully intend to vote no on this bill. I don't believe we need an extender, I know we need a budget. It's that simple. We need an on-time budget, we're a month past that deadline, and frankly, from what I'm hearing, absolutely nothing seems to be happening. Talk to people on the other side, they say they're not talking to us. Talk to people here, they don't know whether they're talking to them.

We are not getting the facts here. And there doesn't seem to be any movement moving along.

Where the Governor is picking to pay certain projects -- if it's federal money,

those workers who are lucky enough to be on that job will get paid. If it's state money or local money with some state add, those workers will not work. Now we're picking and choosing which families are going to have bread on the table or not. I think that's outrageous and not credible.

SUNY is not going to get its projects. These are projects with new buildings, repairs and maintenance of existing buildings that are necessary. Infrastructure, roads, all that not being done.

Now, Senator Little before was mentioning at one of our conferences that some of the asphalt plants upstate will close down when the weather starts getting cold. Which means those projects for road improvements and the like are not going to be able to move ahead because there's not going to be any asphalt. Well, that's going to be great. More workers unemployed, more people not getting a paycheck.

School districts, as our colleague Senator Flanagan just pointed out, have a vote coming. They're not sure what to do. Will

they take a high number, a low number? What's their state aid? What's going to impact their levy? What's going to impact their taxpayers? They don't know. They can't answer the question. They call me, I say I don't know. I go and ask my colleagues on the other side, and they don't know. So we're getting no help from anybody.

This is not a healthy situation. This is not a good situation for any one of us. And it looks bad, it smells bad and it is bad, quite honestly. Nobody can say this is a good thing. And I don't hear that happening. We're not moving forward in the right direction. The taxpayers are saying "What are you doing? Where's my budget? What's the deal? What are we going to do here?" And all we're getting is stall, stall, stall. Not helpful.

Mr. President, I'm going to vote no on this extender, and I intend to vote no on every extender until we get a budget. Because we don't need extenders, we need a budget.

ACTING PRESIDENT BRESLIN: Thank you, Senator Marcellino.

Senator Saland, on the bill.

SENATOR SALAND: Thank you, Mr. President.

Mr. President, I believe it was about three weeks ago when we did another extender bill -- and this is starting to seem like Groundhog Day -- that I stood up and said, "I've always supported extenders but at some point in time I'm not sure if I can continue to support extenders."

That point in time has arrived. We have passed with the great fanfare, great patting ourselves on the back in 2007 a budget reform act. And that Budget Reform Act was supposed to take us away from the bad old days and set us on a course where late budgets would now be a thing of the past.

Well, they're a thing of the present, and they seem to be going on here now, today, interminably. And it seems like there's nothing in sight, no light at the end of the tunnel.

The simple fact of the matter is that bill, as best as I can recall, was much heralded everywhere. We gave ourselves a lot

of credit, in bipartisan fashion, for accomplishing it. It was the beginning of a new day. It was a reform. And that reform has been absolutely, totally ignored. And instead, we get week by week these extenders.

And what we're doing is trying, somehow or other, to delay the inevitable. Dealing with the absolutely horrible fiscal plight that we find ourselves in, perhaps closing our eyes and trying to wish it away -- perhaps some of us would prefer putting our heads in the sand and maybe it will go away.

It is not going to go away. It will be here until we deal with it. No extender is going to get us any closer to a resolution. It requires the ability to make difficult decisions and make them now. Nobody enjoys that prospect. But delaying of its inevitability merely compounds the problem.

So why not, why not do what we were sent here to do and surprise people by showing that we can do it and get to the task of passing a budget? Is that not our responsibility? The Governor has given us his budget. Where is the legislative response?

I look around the other side of the aisle, I don't think there's eight to 10 people sitting in the chamber. This is an extender. It's supposed to be important stuff. This is the stuff that's supposed to keep us going. Well, the simple fact of the matter is it's not keeping us going, it's merely digging the hole deeper as we mire in our own mess. It's time for us to act.

Mr. President, I cannot support another extender. I will not support another extender. I implore this body, I beg this body to accept our responsibilities and get the job done. Delay is not an ally, it just causes more pain.

Thank you, Mr. President.

ACTING PRESIDENT BRESLIN: Thank you, Senator Saland.

The debate is closed.

The Secretary will ring the bell.

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 LaValle, to explain his vote.

SENATOR LaVALLE: Thank you, Mr. President. Very briefly.

All of us have heard throughout the preceding months about having projects that are shovel-ready. Shovel-ready, those were the magic words. Here we have projects that are being stopped. Others that should be online have never made it across the line.

It is shameful. And I don't know what the Governor is thinking to pit one area of the state, New York City, against those communities outside of New York City who will be hurt by not having their construction projects moving forward.

I vote no.

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

Senator Stavisky, to explain her vote.

SENATOR STAVISKY: Yes. I vote aye.

The budget resolution which we passed in this chamber took the SUNY Construction Fund off-budget so that it would be comparable to the CUNY Construction Fund. And I might remind you that everybody on the other side of the aisle voted against that.

Thank you. I vote aye.

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

Senator Owen Johnson, to explain his vote.

SENATOR JOHNSON: I am voting against this temporary budget measure, as I did last week.

And I discovered that we did have a procedure for conference committees to deal with issues like this, but we don't use that. We have a new system now we learned from China. It's called the Chinese water torture. And every week you drop a little piece of the budget on top of the people of this state and try to keep them happy. They're not happy. They don't like that procedure.

Ten days from now, we have the vote

on the school budgets. The schools don't know what money they have. They can't plan their budgets accordingly. Every municipality has the same thing, every business has the same problem.

So we can't go on like this. It's totally outrageous, it really is. And we had lamentations years ago about three men in a room. At least they got something done. Where's our three men? Where's anybody working on this budget?

It's terrible. I'm voting no.

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

Senator Griffo, to explain his vote.

SENATOR GRIFFO: Mr. President, thank you.

I have voted against the extenders because I believe that we need a budget. And I was disappointed today with the Senate Finance chair when he chuckled, actually, when he was responding to the question that Senator DeFrancisco asked because it was the same

question, indicating that there are ongoing negotiations. And yet the Assembly Majority Leader says that not the case. The Lieutenant Governor says that's not the case.

So where are we? What are we really doing here? You asked the people to entrust you, to put you in charge. You're in charge, and you're not getting the job done. People don't care about the past, that there were late budgets before. They want to know what you're doing now, today, to meet the challenges that are there before us.

I think this is unacceptable, to ignore, purposely, deadlines, to wilfully violate the Budget Reform Act of 2007. Get your act together. Let's get the job done.

I vote no.

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

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 477 are Senators DeFrancisco, Flanagan, Golden, Griffo, Hannon, O. Johnson, Larkin, LaValle,

Leibell, Little, Marcellino, Maziarz, Nozzolio, Padavan, Ranzenhofer, Saland, Seward, Skelos, Volker, Winner and Young.

Ayes, 39. Nays, 21.

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, the desk is clear.

SENATOR KLEIN: There being no further business, Mr. President, I move that we adjourn until Tuesday, May 4th, at 3:00 p.m.

ACTING PRESIDENT BRESLIN: There being no further business, the Senate is adjourned until Tuesday, May 4th, at 3:00 p.m.

(Whereupon, at 7:51 p.m., the Senate adjourned.)