NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

May 17, 2010

4:20 p.m.

REGULAR SESSION

SENATOR DIANE SAVINO, Acting President

ANGELO J. APONTE, Secretary

P R O C E E D I N G S

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

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

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

ACTING PRESIDENT SAVINO: In the absence of clergy, may we all bow our heads in a moment of silence.

(Whereupon, the assemblage respected a moment of silence.)

ACTING PRESIDENT SAVINO: The reading of the Journal.

The Secretary will read.

THE SECRETARY: In Senate, Sunday, May 16, the Senate met pursuant to adjournment. The Journal of Saturday, May 15, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT SAVINO: 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, Madam President.

On behalf of Senator Serrano, on page 29 I offer the following amendments to Calendar Number 514, Senate Print Number 7776, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT SAVINO: So ordered.

SENATOR KLEIN: On behalf of Senator Duane, on page 23 I offer the following amendments to Calendar Number 418, Senate Print Number 5000A, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT SAVINO: So ordered.

SENATOR KLEIN: On behalf of

Senator Krueger, on page number 20 I offer the following amendments to Calendar Number 365, Senate Print Number 3584A, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT SAVINO: So ordered.

SENATOR KLEIN: On behalf of Senator Schneiderman, on page number 16 I offer the following amendments to Calendar Number 270, Senate Print Number 6987, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT SAVINO: 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 6361B.

ACTING PRESIDENT SAVINO: So ordered.

SENATOR KLEIN: On behalf of Senator Sampson, I move that the following bills be discharged from their respective

committees and be recommitted with instructions to strike the enacting clause: Senate Numbers 63, 71, 89, 97 and 98.

ACTING PRESIDENT SAVINO: So ordered.

SENATOR KLEIN: On behalf of Senator Krueger, I wish to call up Calendar Number 432, Assembly Print Number 6011.

ACTING PRESIDENT SAVINO: The Secretary will read.

THE SECRETARY: Calendar Number 432, by Member of the Assembly Gottfried, Assembly Print Number 6011, an act to amend the Uniform City Court Act and others.

ACTING PRESIDENT SAVINO: Senator Klein.

SENATOR KLEIN: I now move to reconsider the vote by which this Assembly bill was substituted for Senate Print Number 4781 on May 4th.

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

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT SAVINO: Senator Klein.

SENATOR KLEIN: I now move that the Assembly bill, Print Number 6011, be recommitted to the Committee on Judiciary, and my Senate bill be restored to the order of Third Reading Calendar.

ACTING PRESIDENT SAVINO: So ordered.

SENATOR KLEIN: I now offer the following amendments.

ACTING PRESIDENT SAVINO: Amendments received.

SENATOR KLEIN: Madam President, can you please recognize Senator Libous. He has some floor motions as well.

ACTING PRESIDENT SAVINO: Senator Libous.

SENATOR LIBOUS: Thank you, Madam President.

On behalf of Senator Leibell, Madam President, on page 26 I offer the following amendments to Calendar Number 468, Senate Print 7086A, and I ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT SAVINO: So ordered, Senator Libous.

SENATOR LIBOUS: Thank you, Madam President.

ACTING PRESIDENT SAVINO: Senator Klein.

SENATOR KLEIN: Madam President, can you please recognize Senator Stachowski.

ACTING PRESIDENT SAVINO: Senator Stachowski.

SENATOR STACHOWSKI: Yes, Madam President. Today I just wanted to point out that we're joined by two guests, Rob Ray and Larry Playfair, both of whom played for the Sabres, doing some good work on behalf of the some of the fundraising that the Sabres do, and they'll be available later to tell people about it.

But I just wanted to recognize the fact that they've joined us in the chamber, and we'd just like to welcome them here to Albany.

ACTING PRESIDENT SAVINO: Thank you, Senator Stachowski.

(Applause.)

ACTING PRESIDENT SAVINO: Senator Klein.

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

ACTING PRESIDENT SAVINO: The Secretary will read.

THE SECRETARY: On page 29, Senator Hassell-Thompson moves to discharge, from the Committee on Crime Victims, Crime and Correction, Assembly Bill Number 3814 and substitute it for the identical Senate Bill Number 4689, Third Reading Calendar 509.

And on page 29, Senator Espada moves to discharge, from the Committee on Housing, Construction and Community Development, Assembly Bill Number 2364 and substitute it for the identical Senate Bill Number 7127, Third Reading Calendar 512.

ACTING PRESIDENT SAVINO: Substitutions ordered.

Senator Klein.

SENATOR KLEIN: Madam President, I believe there's a resolution at the desk by

Senator Serrano. I ask that the title of the resolution be read and move for its immediate adoption.

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

SENATOR KLEIN: Yes, it has, Madam President.

ACTING PRESIDENT SAVINO: The Secretary will read.

THE SECRETARY: By Senator Serrano, legislative resolution honoring Lance Orton upon his heroic actions that played a crucial role in saving the lives of many New Yorkers and visitors to our state on May 1, 2010.

ACTING PRESIDENT SAVINO: Senator Serrano.

SENATOR SERRANO: Thank you, Madam President.

It's a great honor to be in the presence of a great American hero.

On May 1st of this year, there was an attempt, a terrorist attempt in Times

Square in New York City -- an attempt that, had it not been thwarted, would have caused the loss of large numbers of people, there would have been tremendous injuries and damage and great loss of life.

But thanks to the keen eye and the courage of Lance Orton, who's here with us today, a disaster was avoided. Lance reached out to the local police officer, and the rest is history, as we all know. The police came in, they brought in the FBI, and it was determined that there was a large explosive device in a car situated right next to Lance Orton.

But it should come as no surprise to people who know Lance that he would do such a heroic act. Being a Vietnam veteran, being a leader in the community, being someone who is known and has many, many friends, Lance is trained to see things that are out of whack. And he said something and saved many lives.

His father, who's with us today, Horace Orton, is also a leader in the community in the 28th Senate District. And I see that the apple does not fall far from the

tree. You have always been a very strong pillar, and you've raised your son in such a way that not only is he an upstanding citizen and obviously a good son to you, but also someone who saved many, many lives.

Since 9/11, we have been at a heightened sense of alert. This recent act shows that we are not safe, that New York continues to be a target, that Times Square is very much a place that terrorists are looking to attack.

But it's good to know, it's good for this message to go out -- to tourists, to people around the country and around the world -- that New York is filled with people like Lance who are willing to take a stand, who are willing to be courageous and step forward when they see something. And folks should know that their safety is ensured because of the heroic acts of this person as well as the Police Department.

And I think it's just a tremendous honor and privilege that here in the State Senate we have Lance as our guest and he has graced us with his presence.

A little bit earlier this afternoon, my Assembly member, Vanessa Gibson, honored Lance in the Assembly chamber with this same resolution. And Assemblywoman Gibson as a leader in our community -- and she is my Assembly member -- also recognizes how important this is, not only for Lance and his family, but for sending a very strong message that we will not be deterred by terrorism and that we will do what we have to do to keep our communities safe and our streets safe.

So I congratulate Lance Orton for his heroic act and for thwarting what would have been a very devastating terrorist attack on Times Square.

Thank you very much.

(Standing ovation.)

ACTING PRESIDENT SAVINO: Senator DeFrancisco, on the resolution.

SENATOR DeFRANCISCO: Yes, I'd also like to rise, as a Central New Yorker and also a member of the Republican Conference, to join in this great resolution by Senator Serrano.

I think it's -- you know, more than

once I've heard people talk about, and I've felt myself, how you just wonder whether or not, you know, there are any things that make any sense anymore. You read the news, you hear horrible acts by individuals, you see people doing the wrong thing and not really responding the way they should and, most importantly, not even doing the wrong thing but just not wanting to get involved, to just look the other way even while crimes are being committed, look the other way -- violent crimes are being committed, look the other way, let's not get involved.

Well, it's truly a pleasure to have Mr. Orton in our presence to show that there still is a sense of responsibility among our citizens, there still are people that do the right thing despite the fact that they don't get the publicity that they otherwise should get.

And I hope you serve as an example to many, many more New Yorkers that we're in this thing together and, unless we all participate, we're not going to be able to survive some of the awful things that others

want to perpetrate against us.

So thank you, Senator Serrano, for bringing this great resolution.

And thank you for coming here to be recognized so that we could meet you firsthand, and thank you for your efforts.

ACTING PRESIDENT SAVINO: Senator Montgomery.

SENATOR MONTGOMERY: Yes, Madam President, thank you. I want to join my colleagues in thanking Mr. Lance Orton.

And I just want to say, on behalf of all of the citizens of the City of New York, we thank you. Because if it were not for your attention and quick action, we would -- many of us, some of us perhaps would not be here. And we certainly know that many of the citizens and tourists of the City of New York would not be here today, they would have been lost, would have lost their lives, and it would have disrupted tremendously the economy of the City of New York.

And so we owe you much more than a resolution. But certainly we here in the State Senate and in the Assembly, through our

Assemblymember, we honor you today.

And as far as I am concerned, and I think all of us here, today is the day that should be named for you because you have done so much for the citizens of this state and the city. We thank you and certainly applaud you.

Thank you, Madam President.

ACTING PRESIDENT SAVINO: Are there any other Senators wishing to be heard on the resolution?

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

(Response of "Aye.")

ACTING PRESIDENT SAVINO: Opposed, nay.

(No response.)

ACTING PRESIDENT SAVINO: The resolution is adopted.

Mr. Orton is joined here today with his father, Horace.

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

please notify the desk.

Senator Klein.

SENATOR KLEIN: Madam President, I believe there's a resolution at the desk by Senator Sampson. I ask that the title of the resolution be read and move for its immediate adoption.

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

SENATOR KLEIN: Yes, it has, Madam President.

ACTING PRESIDENT SAVINO: The Secretary will read.

THE SECRETARY: By Senator Sampson, legislative resolution commending Sybil F. Chester upon the occasion of being honored on May 20, 2010, in conjunction with Women of Valor Day in the State of New York.

ACTING PRESIDENT SAVINO: Are there any Senators wishing to be heard on the resolution?

Seeing none, the question is on the resolution. All those in favor please signify

by saying aye.

(Response of "Aye.")

ACTING PRESIDENT SAVINO:

Opposed, nay.

(No response.)

ACTING PRESIDENT SAVINO: The resolution is adopted.

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

Senator Klein.

SENATOR KLEIN: Madam President, there will be an immediate meeting of the Finance Committee, followed by a 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 SAVINO: There will be an immediate meeting of the Finance Committee, followed by an immediate meeting of the Rules Committee in Room 332.

Pending the return of the Rules

Committee, the Senate will stand at ease.

(Whereupon, the Senate stood at ease at 4:35 p.m.)

(Whereupon, the Senate reconvened at 5:30 p.m.)

ACTING PRESIDENT SAVINO: Senator Klein.

SENATOR KLEIN: Madam President, if we can return to the order of reports of standing committees, I believe there's a report of the Finance Committee at the desk. I ask that it be read at this time.

ACTING PRESIDENT SAVINO: There is a report of the Finance Committee at the desk.

The Secretary will read.

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

As a member of the Workers' Compensation Board, Loren Lobban, of Buffalo.

ACTING PRESIDENT SAVINO: Senator Kruger.

SENATOR CARL KRUGER: Thank you, Madam President. Will you please move that

nomination.

ACTING PRESIDENT SAVINO: Are there any Senators wishing to be heard on the nomination?

Senator Thompson.

SENATOR THOMPSON: Thank you, Madam President. It's good to see you up there. You haven't been up there in a while.

ACTING PRESIDENT SAVINO: Nice to see you too, Senator Thompson.

SENATOR THOMPSON: It is with great pleasure and honor that I stand today to support the nomination of Mr. Lobban, an attorney, someone who is from Buffalo, from Western New York, who I believe will provide leadership and a good set of skills to a body that is very important to the State of New York, the Workers' Comp Board.

And so I'm happy that he is here today. So I'm really excited, and I support his nomination.

ACTING PRESIDENT SAVINO: Senator Ranzenhofer.

SENATOR RANZENHOFER: Thank you, Madam President.

I'd like to join with Senator Thompson and offer my words of congratulation. I've known Mr. Lobban for over 30 years. He's a well-respected member of the Western New York and Buffalo community. He'll do a good job on the Workers' Compensation Board.

ACTING PRESIDENT SAVINO: Are there any other Senators who wish to be heard on the nomination?

Seeing none, the question is on the nomination of Loren Lobban, of Buffalo, as a member of the Workers' Compensation Board. All those in favor please signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT SAVINO: Opposed, nay.

(No response.)

ACTING PRESIDENT SAVINO: The motion carries. The nomination is confirmed.

Congratulations to Mr. Lobban.

(Applause.)

ACTING PRESIDENT SAVINO: The Secretary will continue to read.

THE SECRETARY: As a member of

the Workers' Compensation Board, Samuel G. Williams, of Lockport.

ACTING PRESIDENT SAVINO: Senator Kruger.

SENATOR CARL KRUGER: Thank you, Madam President. Can we please move the nomination.

ACTING PRESIDENT SAVINO: Senator Maziarz, on the nomination.

SENATOR MAZIARZ: Thank you very much, Madam President. I rise to second this nomination of my constituent, Sam Williams.

Sam has been a long-time proponent of workers, of union members. And I don't think there's anybody who could have more knowledge about the challenges that a member of the Workers' Compensation Board faces in the protection of those hardworking men and women of the State of New York who have been injured on the job.

So I gladly second this nomination, Madam President. Thank you.

ACTING PRESIDENT SAVINO: Senator Stachowski.

SENATOR STACHOWSKI: Yes, Madam

President, I too rise to second the nomination of Sam Williams.

He's been a terrific representative of the working men and women in the UAW for the last number of years, and a wonderful individual in the community and just an asset to Western New York. And now Western New York will share that asset with the rest of the state.

And in spite of the things you said, I'm glad to second the nomination of Sam Williams.

ACTING PRESIDENT SAVINO: Senator Thompson.

SENATOR THOMPSON: I am excited to second the nomination as well of Mr. Williams. This is exciting. Today in Western New York we have two distinguished gentlemen; I can't remember the last time we had two folks from western New York being appointed to two very important boards on one day.

But Sam is a great guy. He has a great heart for the people. And this was a tremendous step for him, leaving some of the

other things he was doing with the UAW and other activities.

And I know that he will be a tremendous asset to this organization to help reform the Workers' Comp Board, provide his leadership and good negotiating skills to really improve the Workers' Comp Board in the State of New York.

So thank you. And I proudly support his nomination.

ACTING PRESIDENT SAVINO: Senator Volker.

SENATOR VOLKER: Thank you, Madam President.

I kiddingly said to Sam Williams the reason I decided to retire was when I saw he was retiring.

But be that as it may, he's an old friend, one of the real towers of strength, in my opinion, in Western New York, one of those union leaders who knows how to negotiate and who to negotiate with. And well-respected by the community, not only the labor community but the business community also.

So I'm more than happy to support

Sam, and wish him the best of luck.

ACTING PRESIDENT SAVINO: Are there any other Senators wishing to be heard on the nomination?

Seeing none, the question is on the motion to confirm the nomination of Samuel G. Williams, of Lockport, as a member of the Workers' Compensation Board. All those in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT SAVINO: Opposed, nay.

(No response.)

ACTING PRESIDENT SAVINO: The motion carries. The nomination is confirmed.

Congratulations, Sam Williams.

(Applause.)

ACTING PRESIDENT SAVINO: Senator Klein.

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

ACTING PRESIDENT SAVINO: 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 5921A, by Senator Stavisky, an act to amend the Education Law;

7778, by the Senate Committee on Rules, an act to amend Part B of Chapter 58 of the Laws of 2005;

7846, by the Senate Committee on Rules, an act making appropriations for the support of government;

And Senate Print 7847, by the Senate Committee on Rules, an act to amend the State Finance Law.

All bills ordered direct to third reading.

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

(Response of "Aye.")

ACTING PRESIDENT SAVINO: Opposed, nay.

(No response.)

ACTING PRESIDENT SAVINO: The Rules Committee report is adopted.

Senator Klein.

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

ACTING PRESIDENT SAVINO: The Secretary will read.

THE SECRETARY: Calendar Number 71, by Member of the Assembly Aubry, Assembly Print Number 5462A, an act to amend the Social Services Law.

SENATOR LIBOUS: Lay it aside.

ACTING PRESIDENT SAVINO: The bill is laid aside.

THE SECRETARY: Calendar Number 236, by Member of the Assembly Stirpe, Assembly Print Number 8693, an act to amend the Election Law.

ACTING PRESIDENT VALESKY: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 90th day.

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT VALESKY: The bill is passed.

THE SECRETARY: Calendar Number 293, by Senator Addabbo, Senate Print 2867C, an act to amend the Real Property Law.

ACTING PRESIDENT VALESKY: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 30th day.

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

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

SENATOR DeFRANCISCO: Yes. At the risk of being accused of being anti-voter in the State of New York, a closing is a real estate transaction, and a real estate transaction is really to transfer property from one person to the other.

When I first started practicing law, to accomplish a closing you had a deed and the closing statement, and that was it.

Now you need about an hour and a half to go through every different new form that government is imposing on people at a business transaction.

I don't think it's any more valid to hand out voting registration forms at a real estate closing as it might be at any other business transaction. And I just think enough forms are enough for real estate transactions. That's why I'm voting no.

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

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 293 are Senators Alesi, Bonacic, DeFrancisco, Farley, Flanagan, Fuschillo, Golden, Griffo, O. Johnson, Lanza, Larkin, LaValle, Leibell, Maziarz, Nozzolio, Ranzenhofer, Robach, Saland, Seward, Skelos, Volker, Winner and Young. Also Senator Hannon.

Ayes, 37. Nays, 24.

ACTING PRESIDENT VALESKY: The bill is passed.

THE SECRETARY: Calendar Number 367, by Senator Addabbo, Senate Print 7221, an act to amend the Election Law.

ACTING PRESIDENT VALESKY: Read the last section.

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

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT VALESKY: The bill is passed.

THE SECRETARY: Calendar Number 439, by Senator Sampson --

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

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

THE SECRETARY: Calendar Number 456, by Senator Thompson, Senate Print 3560A, an act to amend the Public Authorities Law.

ACTING PRESIDENT VALESKY: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

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

SENATOR THOMPSON: Yes, first -- something changed. It's good to see you up there, too, Mr. President. You haven't been up there in a while.

Let me just first thank my colleagues for supporting this bill. We did make some adjustments to the bill so that not only will Niagara County have a permanent seat on this board, it also would ensure that another upstate community, St. Lawrence County, will also have a seat.

And these, particularly Niagara County -- both Niagara Falls and Lewiston are really the mainstay communities for the Power Authority. And we actually pulled a list of folks who have served from Niagara County and from St. Lawrence over the last 60-plus years. And according to the Senate central staff and also NYPA, there have only been eight

appointees on that board in the last 60-plus years.

So this is a very important piece of legislation, and I'm glad that we are moving forward with this today and look forward to the Assembly passing it and the Governor signing this into law so that Niagara County and St. Lawrence County would also always have a seat on this board.

Thank you.

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

Announce the results.

THE SECRETARY: Ayes, 61. Nays, 0.

ACTING PRESIDENT VALESKY: The bill is passed.

THE SECRETARY: Calendar Number 495, by Senator Huntley --

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

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

Senator Klein, that completes the

noncontroversial reading of the calendar.

Senator Klein, it's my understanding that Calendar Number 514 has been removed from the active list pending amendments.

SENATOR KLEIN: That's correct, Mr. President.

ACTING PRESIDENT VALESKY: Senator Klein.

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

ACTING PRESIDENT VALESKY: The Secretary will ring the bells and place Calendar Number 71 before the house on the controversial calendar.

The Secretary will read.

THE SECRETARY: Calendar Number 71, by Member of the Assembly Aubry, Assembly Print Number 5462A, an act to amend the Social Services Law.

SENATOR SALAND: Explanation.

ACTING PRESIDENT VALESKY: Senator Montgomery, an explanation has been requested by Senator Saland.

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

This bill, as I refer to it, is the Incarcerated Parents Bill. That's not the official name, but that's how I refer to it. It simply provides local social services districts with the discretion of being able to delay the filing of a petition to terminate parental rights for those parents who are incarcerated or who are receiving residential drug treatment.

And so it's an optional -- it provides an option for social services officials to make a decision not to in fact terminate the rights of a parent prematurely simply because they're away from their child. In this particular specific instance, because they are incarcerated or are away because they are in treatment.

The bill would require that the district in fact prove that the parent has had a meaningful relationship with their child prior to being incarcerated and that it is in the best interest of the child to maintain a relationship with their parent.

And as you know, for a child who is 14 or older, that child can refuse to be adopted in the first place. However, for younger children, this provides an additional option to local social services districts to in fact allow for there to be a relationship between a parent and a child to be maintained even though the parent is incarcerated.

ACTING PRESIDENT VALESKY: Senator Saland.

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

ACTING PRESIDENT VALESKY: Senator Saland, on the bill.

SENATOR SALAND: Mr. President, some dozen or more years ago, probably 1996, 1997, so-called ASFA was a federally enacted law which required states to do certain things to comply in order to receive federal dollars.

New York at the time had basically what was called then a family preservation model. It had a woeful record with regard to permanency planning for children. And both of the -- and I should have prefaced my remarks by saying at that time I was the chairman of

the Senate Children and Families Committee and was involved with the negotiations on this bill.

The inability in some timely fashion to provide for permanency planning, the inability to free up children for adoption were really at the heart of the federal legislation. And we complied, although it wasn't an easy task to get there. My recollection was that we actually failed to comply with the federal deadline because the folks in the Assembly who were making policy were not keenly interested in either of those two topics, and it wasn't until there was a threatened loss of some $400 million that the Assembly finally acquiesced and we enacted the legislation which is currently on the books.

The prime force, the prime issue, the principal concern of both the federal and in turn the state legislation was best interests of the child. We are now talking about tampering with a model that to date has worked, although my understanding is that New York is having problems complying with federal audits with respect to its permanency

planning.

But what this bill proposes to do is really to change that paradigm somewhat. Currently there is not the ability to terminate a parent's rights simply because they're incarcerated. There has to be some effort on the parent's part to maintain and plan for the child's future. Failing that, there can be an application made to terminate the parental rights, but that is something which certainly can be accomplished and is accomplished, I'm sure, notwithstanding the fact that there may be some parents who are incarcerated.

We are substituting here in this bill -- and in turn, I believe, jeopardizing federal monies -- we are substituting for the best interests of the child a standard which really relies upon the status of a parent. Vastly different than what we were required to do in order to comply with ASFA.

So I am not going to prolong a debate and ask questions. But suffice it to say even if you want to travel this route and hope that you're okay, you're rolling the

dice, and you're rolling the dice when we're already more than $9 billion in the hole.

And if you think you may be right but you're not certain, and you want to carve out an exception, you can kiss off I don't know how many hundreds of millions of dollars if you guessed wrong. This is not the time to play craps. This is not the time to be gambling. This is the worst time.

And if that's what you choose to do, if you want to change the standard and you want to run the risk of losing federal money, woe be it to you if those chickens come home to roost.

Mr. President, I certainly would urge my colleagues to vote no on this measure and really not only turn its back on the proposal to walk away from the best interests of the child standard but also to turn its back on the potential loss of hundreds of millions of dollars in federal aid.

Thank you, Mr. President.

ACTING PRESIDENT VALESKY: Thank you, Senator Saland.

Senator Savino, on the bill.

SENATOR SAVINO: Thank you, Mr. President.

First, I want to thank Senator Montgomery for sponsoring this bill, and I'm proud to cosponsor it with her.

I want to state that Senator Saland is correct with respect to the decision made by the federal government when they enacted ASFA. As many of you know, I was a caseworker in the New York City child welfare system in the early 1990s when, as a result of the crack epidemic, the economic downturn, and the explosion of the kinship foster care system, we had the highest caseloads ever in the history of the City of New York and other parts of the state as well.

We had incredibly high caseloads, we had a tremendous number of parents and a tremendous number of children who were now under foster care. And as a result of that, we saw foster care placements hit an average of seven years.

And so in an effort to try and develop permanency plans that made sense, some bureaucrats in Washington, without consulting

the practitioners in the field, came up with the idea that if we tied funding to a deadline, to a calendar, that that would force the agencies to develop better permanency plans. And in some instances it may have worked.

But we're not dealing with widgets in the child welfare system. And here's what happens -- I'm going to give you the timeline of a traditional case in the child welfare system, from the initial child protective service investigation when you receive that report. And some of you know this; you've worked in the system.

You get the first report, you start your investigation, you make the determination that a child must be removed because you believe that they are at risk to life and/or health if they remain in that parent's home. When you go into court and you get that remand and take the child out, then you have to come out and file an Article 10. You have to file a complaint of abuse and neglect, and that then sets the stage for a fact-finding hearing in the Family Court.

In the New York City Family Court system, which is already tremendously overburdened, and we know we're short of judges -- in fact, the Office of Court Administration has requested that the Legislature allow for the hiring of 39 additional Family Court judges to deal with the cases that are before them.

So we have a dispositional hearing on the initial neglect case or the abuse case or the abandonment case. Oftentimes you don't get a finding on the original case for 24 to 28 months. So you don't even have a situation where a parent has been found guilty of neglect or abuse on the initial charge.

So burdening the worker now with immediately file for a termination of parental rights if a child has been in placement for 15 of the last 22 months doesn't necessarily make sense. And all this legislation would allow people to do is to have the discretion that the professionals in the field who service that family should be able to make.

Some parents are going to be found guilty of neglect. Some parents will also be

found guilty of failure to plan, which should trigger a termination of parental rights. Some parents will be found guilty of abandonment, which should trigger a termination of parental rights. All this would do is say that the caseworker, the social worker, the supervising social workers and the family be able to have some input as to whether we should automatically trigger.

Now, with respect to the funding, the Federal Administration for Children and Families has confirmed with us that this would not affect New York's compliance with ASFA. And in fact, six other states have requested and received this waiver: Massachusetts, Missouri, Nebraska, New Hampshire, New Mexico and Oklahoma.

This legislation, Senator Saland, is supported by every practitioner in the field, including Gladys Carrion, who's the Commissioner of the Office of Children and Family Services. Social workers, Legal Aid, Family Court judges, everyone recognizes that you can't have a one-size-fits-all approach in these cases.

And if a parent is incarcerated but they are working with their agency, they are maintaining contact with the child, they are planning for their eventual return or some alternative -- it could be parole to parent -- the decision to terminate their rights should not be set up by an artificial calendar.

In addition, the Legislature, I think it was three years ago, in an effort to further deal with permanency -- which is critically important in this field, there's no doubt about that -- we put another burden on the Family Courts when we required them to hold permanency hearings every six months.

So now you have Article 10 cases that may not be adjudicated within 15 or even 24 months, where you don't have an initial finding. You have termination of parental rights filings that are being put in because if the agencies feel if they don't, they won't be in compliance with ASFA. And then we have permanency hearings on cases where we don't have an initial finding.

So bureaucrats sometimes, with the best of intentions, put additional burdens on

these agencies, and they don't necessarily address the issue of permanency. The best people to determine when you reach that permanency milestone are those working with the family and those who can make the best determination about what's in the best interests of that child.

So I urge everyone to support this legislation and restore the discretion to the professionals who work in this field, the social workers, the child protective service workers, the attorneys and the judges.

Thank you.

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

SENATOR SALAND: Will Senator Savino yield to a question?

ACTING PRESIDENT VALESKY: Senator Savino, would you yield to a question?

SENATOR SAVINO: Certainly.

SENATOR SALAND: Senator Savino, so you're telling us, then, that New York has a waiver already?

SENATOR SAVINO: We have been instructed by the federal agency that this

will not be held against us with respect to the federal funding on ASFA.

SENATOR SALAND: But -- you're telling us that we have a waiver.

SENATOR SAVINO: That is my understanding. I'm --

SENATOR SALAND: Is there some way you can verify that we have a waiver?

SENATOR SAVINO: If I could verify for you -- the information I was provided is we do have the ability to get that waiver.

Which is why Gladys Carrion, who is the Commissioner of the Office of Children and Family Services, supports this. She stood with us at a press conference on this.

SENATOR SALAND: On the bill.

ACTING PRESIDENT VALESKY: Senator Saland.

SENATOR SALAND: I'm well familiar with the system. I used to handle these cases. I've handled neglect and abuse cases, I handled permanency proceedings, I did this all for the Department of Social Services in Dutchess County.

This bill is changing standards. It's not as simple as saying we're going to let the opinions of those in the field make these determinations. This is changing the standards by which the evaluations will be made. It's no longer the best interests of the child.

If you remember the ASFA legislation, the reason it came about was because there were a host of cases, particularly in family preservation states, where children who had been abused were returned to homes where they were once again abused, abused severely, and even killed. And this was really a mandate by the feds to say, you know what, you can't function that way any longer. And they tied it to purse strings.

So in the absence of a waiver, I wouldn't care who came down and said this is a good idea. In the absence of a waiver, I think it is at the very least imprudent, I think it takes away from the protection of children, and I think we run the risk, as I said earlier, of losing hundreds of millions of dollars.

You show me a waiver, I will say okay, that takes care of the fiscal problem. It does not take care of changing the best interests of the child standard. It does not do that. You're elevating one segment of the population over any other segment of people who are affected by this kind of proposal. The mayor's office opposes it. The --

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

SENATOR SALAND: -- the organization that represents the social service protective services --

SENATOR MONTGOMERY: Mr. President, I rise because my colleague is giving some wrong information and I take exception to --

ACTING PRESIDENT VALESKY: Senator Montgomery, are you asking Senator Saland to yield to a question?

SENATOR MONTGOMERY: Yes.

ACTING PRESIDENT VALESKY: Senator Saland, do you yield?

SENATOR SALAND: Yes.

ACTING PRESIDENT VALESKY:

Senator Saland yields.

SENATOR MONTGOMERY: Yes.

Senator Saland, you say that there is no waiver for this. Is that your claim, that the State of New York is not allowed to do this? Then how do we have six other states that have already implemented this, one. And two, how is it that we have the Commissioner of the Office of Children and Family Services who has said in no uncertain terms that we can do this without jeopardizing those millions of dollars? Where do you get your information from?

SENATOR SALAND: Let me answer -- let me answer your question. Does the language of our existing law parallel verbatim the language of those six other states?

SENATOR MONTGOMERY: Yes.

SENATOR SALAND: It does?

SENATOR MONTGOMERY: Yes.

SENATOR SALAND: Our current 384B, word for word --

SENATOR MONTGOMERY: It allows --

SENATOR SALAND: -- is the same -- that's a rather bold statement.

SENATOR MONTGOMERY: It allows for a waiver of the strict regulation 15 of the last 22 months, yes. That is exactly what we are allowed to do. That is what the waiver means.

SENATOR SALAND: I understand what the waiver means. My question to you is does -- there are 50 states in this union.

ACTING PRESIDENT VALESKY: Senator Saland -- Senator Saland, you currently have the floor. Okay?

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

ACTING PRESIDENT VALESKY: Senator Montgomery, are you asking if Senator Saland would yield to an additional question?

SENATOR MONTGOMERY: He's answering the last question that I asked.

ACTING PRESIDENT VALESKY: Okay. Senator Saland, please proceed with your response.

SENATOR SALAND: As we all know, there are 50 states in this union. And at one time I had the opportunity to be the president of the National Conference of State

Legislatures, and I'm well familiar with the fact that statutes from state to state even dealing with the same subject matter can vary dramatically. And very often it's nuance and very often it's clearly leagues apart.

And the purpose of my question to Senator Montgomery was, Can you tell me that in the six states that were cited that they are identical, verbatim, to the multiple pages of our 384B? I would suspect it would be a little difficult to do that unless you had the unannotated codes or unannotated codes of those six states.

So the fact that they may have some waiver would be based certainly on the particulars of whatever their statute was and may not be the same as ours. And the language they used to get their waiver may not be the same as ours.

And I said further, in response to the comments by Senator Savino, that even if you were to secure the waiver and not jeopardize the funding, you're changing the best interests of the child standard. That is simply not deniable in this language. I mean,

it's repeated in several different places. And it's supposed to be about the best interests of the child, pure and simple.

ACTING PRESIDENT VALESKY: Senator Montgomery.

SENATOR MONTGOMERY: If Senator Saland would yield for one more question.

ACTING PRESIDENT VALESKY: Senator Saland, would you yield for another question?

SENATOR SALAND: Certainly, Senator.

ACTING PRESIDENT VALESKY: The Senator yields.

SENATOR MONTGOMERY: Senator Saland, I certainly respect your long years of involvement and your expertise on this particular issue.

I just would ask, are you saying, then, that if the federal law allows for states to have some latitude in defining what happens to a child which is in the best interest of the child as it relates to terminating parental rights while parents are incarcerated, if there is -- if the federal

government allows for states to do that, are you saying that our language has to be exactly like the language of Colorado or all the other states' law?

SENATOR SALAND: No, I'm not saying that. No, I'm not saying that.

SENATOR MONTGOMERY: If we adopt that as part of our law using the language that we have here, is that not also acceptable by the federal government?

SENATOR SALAND: Thank you, Senator Montgomery. No, I am not saying that our language has to be identical to Colorado or any one of the other five states.

What I am saying is in the absence of documentation that there's a waiver, we do not know and can't claim that we have a waiver. What I'm saying is their statutes and our statutes will not be of identical language. There will be terms they will use, there will be terms we will use.

And it may well be that citing their experience to justify our experience is inapposite, simply because there may be particulars about the language of their

statute that may not be in our statute that has enabled them to accomplish it. I don't know that, but I do know it's highly unlikely that you have six states that you're citing as an example or examples that have identical language.

What I'm saying, and as I've concluded, is even if you can document a waiver -- which at this point we can't -- that takes care of the financial issue, the potential loss of hundreds of millions of dollars.

But the second issue is -- and I would truly be troubled if this did not create a problem obtaining the waiver -- you're changing the standard and you are walking away, at least in part, for this particular segment of the population from the best interests of the child standard. And that's what drove ASFA, and that's what drove our legislation back in '96 or '97.

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

SENATOR SAVINO: Yes, would Senator Saland yield for a question?

ACTING PRESIDENT VALESKY: Senator Saland, do you yield?

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT VALESKY: The Senator yields.

SENATOR SAVINO: Thank you. Through you, Mr. President. I understand the concern you have, Senator Saland, and I believe it's heartfelt, because you do know this system probably as well as I do, maybe Senator Montgomery. But how should one determine what is in the best interest of a child?

SENATOR SALAND: That usually -- what you have here is you are allocating to the courts -- I'll cite, for example, on page 2, where you're dealing with the permanently neglected child, "The court shall consider the special circumstances of an incarcerated parent or parents or of a parent or parents participating in a residential abuse treatment center when determining whether a child is a permanently neglected child as defined in this paragraph."

So it's a question of fact, and the court will make that decision. It's not a decision that the social worker is going to make. It's not a decision that the department will make. The department may believe that something is not happening in the best interests of the child, and it will be up to the court to make that decision.

And here what you're doing in this particular situation is you are elevating the status of the parents, who currently still have the ability to sustain contact with their children, avoid a permanent neglect problem, and you're elevating their interest above the best interests of the child.

SENATOR SAVINO: Through you, Mr. President. Would Senator Saland continue to yield?

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

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT VALESKY: The Senator yields.

SENATOR SAVINO: During the

course of a placement, when you are the social worker, the supervising social worker who has to interact with that parent and that child, you are responsible for helping that parent plan for a permanency goal of return to parent, if that is the initial goal. You may have been responsible for helping that parent get into particularly the residential drug treatment programs. They're 24 months in general.

How is it possible, then, for the agency, which has the responsibility of helping plan with that child and that parent for reunification, having an artificial timeline that says once you hit the 15th month you must automatically file a termination of parental rights, in spite of the fact that you may have a parent who is incredibly engaged, who is helping plan, maintains contact, has visitation, participates in every planning level with their child?

And I believe, Senator Saland, that the purpose behind this legislation is not to put an artificial timeline on it, but to allow the discretion for the agencies to determine

what's in the best interests of that child in that case without just having to adhere to a calendar. Do you not see that?

SENATOR SALAND: Senator Savino, I would call your attention to the first page of the bill, going down to the second page of the bill. And it says, notwithstanding any other law to the contrary, the child -- whenever the child shall have been in foster care for 15 of the most recent 22 months, so on, so on, so on, down to -- well, let me read.

"The authorized agency having care of the child shall file a petition pursuant to this section unless, based on a case-by-case determination, the child is being cared for a relative or relatives, the agency is documenting the most recent plan, a copy of which is made available to the court, of compelling reason for determining that the filing of a petition will not be in the best interests of the child or the agency has not provided to the parent or parents of the child such services as deemed necessary for the safe return of the child."

Now, you already have, in subsection B, the very thing that you would need to resolve your issue. The agency would merely have to go to the court and say, "Well, we have more work to do."

SENATOR SAVINO: Senator Saland -- would he continue to yield?

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

SENATOR SALAND: Yes, Mr. President.

ACTING PRESIDENT VALESKY: The Senator yields.

SENATOR SAVINO: I can read that as well, Senator Saland.

The problem is because we have tied ASFA funding to this regulation that says you must file for termination of parental rights if a child's been in placement for 15 of the last 22 months, and these agencies depend upon federal money, they have interpreted ASFA to mean that they must do this. And they always do this.

And what they have asked of this Legislature is to grant them the ability to

make that determination based upon what they feel is in the best interests of that child and that family without being afraid of jeopardizing their federal funding.

I guess there's not a question there, is there?

SENATOR SALAND: (Laughing.) That is not a question.

SENATOR SAVINO: So it's not necessarily a question, that was more of a statement. But that is what has happened in practice.

SENATOR SALAND: Well, I certainly -- my experience certainly was not within the five boroughs of the City of New York, and I can't account for what is occurring in the five boroughs of the City of New York. And quite candidly, it's been a long time since I've handled one of these cases.

But the simple fact of the matter is that the statute anticipates the very issue that you raise. And if in fact in its application the relevant agency or agencies are not appropriately discharging their

duties, then that's where the problem lies. It doesn't lie in the statute, it lies in the discharge of the duties by the agency.

ACTING PRESIDENT VALESKY: Senator Savino.

SENATOR SAVINO: Thank you.

ACTING PRESIDENT VALESKY: Thank you. Thank you, Senator Saland.

Senator Hassell-Thompson, on the bill.

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

Most of the issues that I wanted to cover have been covered by Senator Savino. But I just want to reiterate a couple of things that got lost in this.

I don't see this legislation doing all these compelling things that Senator Saland has stated that it does. Rather, what it does is gives more discretion to the courts to expand on the time frame in which termination of parental rights can and should occur.

I agree with him that the safety of children is a major factor in this state. But

there's nothing in this bill that changes that situation. In the cases of abuse, this does not apply. In cases of mental illness, this does not apply. In cases of permanent neglect, this does not apply. In cases of abandonment, this does not apply.

What does apply is that in many of these situations the idea was to keep children from languishing in foster care for indeterminate amounts of time. One of the things that's very clear, Senator Saland, is that children of African descent, when those parental rights have been terminated, those children still don't get adopted.

This bill does not cover the wide range of ills that you'd like to believe that it does. Once those parental rights are terminated, those children have to stay in the system until they're 18 years old.

There are opportunities for mothers who -- one of the things I think that concerns me most is that when women are incarcerated, their median period is 36 months. And where they're placed in the state may not necessarily allow them to have the physical

contact that this bill implies that they should have in order to meet the standard.

The other thing is that when women come home, very different from men. Women wait for men to return from prison. Men don't wait for their women to come home from prison. And if they lose both family and their children, women have nothing to come home to. What this bill allows for is more discretion on behalf of the courts.

And under those circumstances, without causing any danger to the safety of children, Mr. President, I will in fact be voting yes on this bill. Thank you.

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

Senator Duane, on the legislation.

SENATOR DUANE: Thank you, Mr. President. I am in great support of this bill. And I really commend Senator Montgomery for her efforts in passage of this legislation.

And I have -- Senator Montgomery shares this experience of unfortunately, I think, in our minds, sitting on the other side

of the aisle and differing on implementation of some laws that impacted what happened to children.

And I think that there is no perfect solution. There is no one size fits all. And I think that there are no bad intentions. There weren't on our side when Senator Saland was working on this issue when he was sitting on this side of the aisle, and certainly there weren't when we were working or debating him on those issues, and the same situation as now.

We're talking about really an art and not a science. And we are, in today's real world, trying to find a way to provide the appropriate amount of discretion for foster care agencies and for the Family Courts.

I want to address the issue of a waiver just for a moment. All the time we are negotiating with Health and Human Services on what they believe will be acceptable language. They're very careful about it. But we don't move forward on anything unless we have an agreement in principle on what it is that we

want to implement.

I mean, this is true in this case; it's certainly true and will be true as we struggle to implement the federal health care reform. We'll have to implement things in our budget, in our language. And we will do that working with them in advance of getting a waiver. It happens all the time. It's very, very common in a state's relationship with the federal government.

And I think that one of the points or philosophies or beliefs that we try to get across, many of us, is that we actually truly believe that rehabilitation is rehabilitation. And maybe there should be more rehabilitation happening in our correctional facilities.

Certainly I would like to see more programs that would aid in rehabilitation, ranging from educational opportunities, including college education, to a whole host of other programs which would actually do more to help in rehabilitation, because I believe that incarceration should not just be about punishment but also about rehabilitation.

And the same is true of alcohol and

substance abuse. If you believe that someone being in rehabilitation is about being in rehabilitation and recovery from alcohol or drug use, then -- then I think -- then I also believe that this will help the person to be a better parent, that rehabilitation can do that.

You know, the reality in our state is that many of our correctional facilities are far away from where these families are. Not in every case, but in many, many cases. And so it's different for, for instance, a woman who's incarcerated in Bedford Hills than one that's incarcerated in Albion. And foster care agencies don't have the resources -- I wish they did, but they don't; it's tough economic times -- to be able to work with a parent in a place that's so far away. That's just the reality of the way New York State is.

And so the extension of 15 months to 22 months just allows for more discretion, more flexibility, and more of a chance. It doesn't say you have to, it doesn't tie anyone's hands. It's just providing for more flexibility and the reality of the world that

we're living in and the state that we're living in.

So I think this is a very good bill that -- it's not perfect. The old way wasn't perfect. It's another best-efforts attempt to keep families together. I think the difference is that there's more of a belief that rehabilitation is rehabilitation. And it provides our Family Courts -- and we just allowed for more Family Court judges to be appointed. So it allows the agencies and the courts more flexibility, more time, more opportunity to do the right thing by more children.

And so let's try it. Let's do this. It seems there's many people who share our interest in the best interests of children who support this. You know, the City of New York, they never support anything, frankly. You know, so I'm not surprised they're against this. But recognized -- I mean, people that I have the utmost respect for, and even those who people on the other side of the aisle may disagree with but who respect think that this is something we need to try.

And so I urge all of my colleagues to vote in favor of it and provide the agencies and the courts the chance to have this additional discretion, with the hope and belief that this will allow more families to be together.

Thank you, Mr. President.

ACTING PRESIDENT VALESKY: Thank you, Senator Duane.

Senator Schneiderman, on the bill.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

I rise in support of this legislation. I'd like to thank Senator Montgomery and the others, several of my colleagues who have spoken, who have been active in this area.

But I just want to correct a couple of misimpressions that people may be left with after the debate. This is very simply a bill that makes the federal law less of a blunt instrument. The policy is that there's a -- and I would urge Senator Saland that I have here the federal law, Title 42 of the Public Health and Welfare Act, Chapter 7, Social

Security Act. This is the federal law that everyone has been referring to.

The federal law explicitly allows a state to do exactly what we're doing here. The federal law says the state shall file a petition to terminate the parental rights of the child's parents unless -- and there's several categories. And one is a state agency has documented in the case plan, which shall be available for court review, a compelling reason for determining that filing such a petition would not be in the best interests of the child.

Senator Montgomery's bill simply amends our state law to provide that a social service agency may consider the incarceration of a parent in making the determination that there is a compelling reason that filing such a petition, a petition to sever the family relationship, would not be in the best interests of the child.

And I would urge all of my colleagues that all this does is really rectify a flaw in the current law. It is completely unreasonable to suggest that a

parent who's incarcerated has exactly the same standards when it comes to how much contact they're maintaining with the child, what they're doing. You could have a parent who, when they get out, might be the best parent on earth, but under the current federal law they would be faced with this sort of a petition.

So all this does -- and it doesn't say everyone who's incarcerated. It doesn't create a special category of people who favored treatment. It simply allows the discretion to take that into account. It is in the best interests of the child to have their parents with them. And the court has to determine -- I mean, unless, you know, there are egregious circumstances set forth in our laws and in the federal law.

Abandonment of a child is a very serious thing. But abandonment of a child due to incarceration is very different than abandonment of the child if someone is out walking around on the streets but not interested in seeing their children.

So I would urge all of my colleagues that all Senator Montgomery's bill

does is says let's comply with the federal law and let's modify our state law to say we're going to take into consideration this particular set of factors and allow an agency or the court to determine -- and the language "best interests of child" is throughout, is included throughout Senator Montgomery's bill.

I'm reading from page 2, line 27. This requires explicitly, contrary to what was stated earlier, that the court must find that the continued involvement of the parent in the child's life is in the child's best interests in order to apply this discretion that Senator Montgomery's bill would allow.

So all this does is says the court's hands are not tied, the agency's hands are not tied. They are allowed to take into consideration, as provided by federal law, the factor of incarceration and make a decision based wholly on these circumstances and then analyze what's in the best interests of the child without any rigid parameters that prevent an agency or a court from giving full and fair treatment to all factors.

This is a bill that corrects a flaw

in the law, in my view. I understand there are a lot of disagreements. But it is very difficult for those of us who deal with issues related to -- have districts with a lot of people who are incarcerated and are dealing with reentry problems, to allow the law to exist as it does today, where you have -- you know, we don't have a couple of hundred thousand people in prison in the United States anymore, ladies and gentlemen. We now have 2.3 million people in prison. They come from particular communities.

We have to allow the factor of incarceration to be considered in the determination of what's in the best interests of the child. That's all this bill does. That's all this bill does.

There are 11,000 children in New York State who have a parent in prison who are subject to this. This just allows an agency to take it into account. It is totally reasonable, it is totally lawful, it is in full compliance with the federal law. I urge everyone to vote for Senator Montgomery's bill, Mr. President.

ACTING PRESIDENT VALESKY: Thank you, Senator Schneiderman.

Senator Liz Krueger, on the bill.

SENATOR LIZ KRUEGER: Everything I intended to say has been said. I fully support this bill and I look forward to all of my colleagues voting yes.

Thank you, Senator. Excuse me, Mr. President.

ACTING PRESIDENT VALESKY: Thank you, Senator Krueger.

Senator Stewart-Cousins, on the bill.

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

I have to say that as well. I thought it was just very important that we understand that this is an addition to, it is not a subtraction. We're not taking away from the best interests of the children.

Clearly, the court will still have the discretion. All of the inputs will still be there. But what won't be there are those women who have come to my office year after year in tears because they were following

everything they were supposed to do but the regulations that existed did not allow them to be reunited with their children because of the time frames that were in place.

So clearly we don't want -- I think if we look at the 384B that's referred to through the entire bill, the first part of 384B talks about how important it is, when it works, to have children and their families together. So rather than create impediments that would disallow for that to happen, this bill allows for the right things to happen for the right reasons when it's right.

And I want to commend Senator Montgomery for having put this forward.

ACTING PRESIDENT VALESKY: Thank you, Senator Stewart-Cousins.

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

Seeing none, the debate is closed, and the Secretary will ring the bells.

The Secretary will read the last section.

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

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

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

SENATOR FARLEY: Thank you, Mr. President.

You know, I might be able to vote for this bill if it had a contingency in there that we could get a waiver. But the last time I looked, the United States has as bad a fiscal situation -- or worse -- than ours. And we're risking hundreds of millions of dollars.

And again, I say there's no contingency in this legislation that says if we don't get a waiver. We don't have a waiver. And the mere fact that somebody thinks we might get one is no reason to vote for this legislation. I vote no.

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

Senator Savino, to explain her vote.

SENATOR SAVINO: Thank you,

Mr. President.

Briefly, I just want to reiterate that the determination of what's in the best interests of a child should not be set by an arbitrary time clock, neither by Washington nor by the State of New York.

And I just want to emphasize as well that the termination of parental rights does not necessarily equate to permanency. The sad reality is that there are 7,000 children in the City of New York right now whose parents' rights were terminated in a court of law within the past three years, and they continue to languish in foster care because they're either too old or they have some issues and their foster parents are not interested in adopting them.

And there is no more tragic moment in the life of an adolescent than the day you hand them their new birth certificate and they see their mother's name has been stricken from it as if she never existed. All we're trying to do is say give agencies and caseworkers the discretion to make the determination for that child and that parent.

Thank you.

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

Senator Montgomery, to explain her vote.

SENATOR MONTGOMERY: Yes, Mr. President. I just would like to make sure that the citizens of our state understand the meaning of this legislation.

It is simply that we are allowing the discretion, on the part of the local districts and social service agencies, that they do not have to terminate immediately the rights of a parent based on the fact that the parent has been incarcerated, that they can allow for more time.

So in a real sense this bill allows for permanency to be maintained between a child and that child's biological parent, even though the parent may be incarcerated and unable to be with that child on a continuing basis for 15 of the last 22 months. So that's one thing.

Two, I want to make sure that our

citizens understand that there is no danger of the State of New York losing money, losing federal funding because of this bill. That is quite the contrary. In fact, we will be saving money, because keeping children -- putting children in foster care, terminating parental rights costs an awful lot more than allowing them to maintain the relationship with their parents.

And three, I want to just make sure that people understand that there are safeguards in this bill that require, one, evidence of a relationship between the parent and the child; and, two, that it is in the best interests of the child that we do not violate those standards in this legislation. It is expressly stated.

And I want to say, Mr. President, just in conclusion, I certainly am going to be voting yes on my bill, but I want to -- I would like to have my colleagues review the number of agencies and organizations, judges, other people, including the New York State Correctional Officers Association, many, many others who are in support of this. Because we

all recognize, Mr. President --

ACTING PRESIDENT VALESKY: Thank you, Senator.

SENATOR MONTGOMERY: -- that we want to maintain parental contact.

ACTING PRESIDENT VALESKY: Senator Montgomery, how do you vote?

SENATOR MONTGOMERY: I vote yes.

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

Senator Winner, to explain his vote.

SENATOR WINNER: Thank you, Mr. President.

I'm voting no on this measure because the language of this bill specifically states that the court, in the determination as to whether or not to make a determination of permanent neglect, specifically has to make a consideration and take into account the circumstances as to whether the parent is incarcerated. And the mere fact of the incarceration serves as an excuse for failure to maintain any kind of reasonable contact and

making reasonable plans for the future of that child.

And that the court now is required to take into consideration the mere fact of that incarceration and can treat it as a total excuse for its failure to have any meaningful contact with that child, by the mere fact of its incarceration, that is a radical departure from the standard of permanent neglect in this state, moving away from what is in the best interests of the child, and will also create circumstances where there will be a substantial increase in the length of time that children are in foster care in this state.

And while the secondary reasons that many of my colleagues have pointed out on the financial considerations of the waiver are important, the fact of the change of the standard, of moving away from the best interests of the child to fundamentally excusing the incarceration and using it as a shield to have any limited contact in planning for that child, is a reason to vote no.

And I vote no, Mr. President.

Thank you.

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

Senator Squadron, to explain his vote.

SENATOR SQUADRON: Thank you, Mr. President. I rise in support of this bill.

I want to commend and thank Senator Montgomery for her leadership on this issue and so many issues involving the most vulnerable children in the state and families who need the state's support. She has been a real leader.

This bill is a very easy one, I guess, to put up a boogeyman and start attacking. But of course that's not based on the reality of the bill. The reality of the bill is that this gives local social services districts, folks on the ground the ability to make the best decision for kids and for families on the ground across the state.

I am shocked that anyone would be opposed to that. I really am. I guess that when you get the word "incarceration" or you

get some of the other concepts in there that were throw out today, it's just too tempting to say, you know what, best interests of the kids come after the ability to create a political football here.

The fact is this will give an enormous amount of local freedom in a place that it's needed. It will hold families together that are otherwise being torn apart. And that's good for the state, it's good for the children and families of the state.

I thank Senator Montgomery, and I vote aye.

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

Senator Saland, to explain his vote.

SENATOR SALAND: Thank you, Mr. President.

Mr. President, first let me echo Senator Winner's comments with regard to the permanent neglect. I had mentioned that during the course of the debate; there is no best-interest standard in the permanent

neglect portion that this bill would seek to amend.

I would also mention that there were, as of I believe February of 2002, some 17 waivers pending at the federal Department of Health and Human Services, and they only had the authority to grant 10. And they've granted either five or six of them to this point.

So there are some 10 or 11 waivers left, with the authority to grant four of them. So some states are going to get burned. I have absolutely no idea which states are going to get burned unless there's a different reauthorization.

And let me conclude by reading from the memo of the New York Public Welfare Association in opposition to this bill. And that's the association that represents I guess the 57 social service departments outside of the City of New York.

I'll read, in part: "A parent's incarceration or substance abuse is not grounds to terminate parental rights in New York. There must be clear and convincing

proof that the parent has failed to resolve their issues and that the district made diligent efforts to return the child to the parent.

"Current law clearly allows the agency not to file to terminate parental rights of any parent -- regardless of what the parent's issues are -- if being freed for adoption is not in the child's best interests. However, the exception is now correctly based on the child's best interests, and the bill would inappropriately place the exception on the parent's situation."

And it concludes with a fiscal impact statement: "This bill would lead to much longer stays in foster care, putting the state out of compliance with federal laws on permanency and risking fiscal penalties to the state. Since the state limits its fiscal liability under the Foster Care Block Grant, the entire cost of the additional time in foster care would be applied to counties and New York City. This bill would significantly increase costs to local government without providing a revenue source. As a result, it

is in directl conflict with Executive Order Number 17, issues on April 17, 2009."

Mr. President, I vote in the negative.

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

Senator Oppenheimer, to explain her vote.

SENATOR OPPENHEIMER: I'll be voting yes, because I think that there's little question that the best place for a child to be is with their parent or in contact with their parent.

And I can only tell you what happens at a prison near my home, which is Bedford Hills prison. Which, when -- what's her name? I forgot the woman that got incarcerated, before she got incarcerated she was headmistress of a --

SENATOR SCHNEIDERMAN: Jean Harris.

SENATOR OPPENHEIMER: Thank you. Couldn't think of the name. Jean Harris. She killed her lover, that's how she got there.

But once she was there, she did

amazing things. She started a program for mothers and children so that children would be brought to the Bedford Hills maximum security prison in Bedford, in Westchester.

This program has been a huge success. It is so important that they even made a special stipulation so that the first year of the child's life, the child could live in the prison with the mother. And thereafter the mothers and the children got together on weekends.

And so, I mean, it undermines the significance -- maybe if prisons were closer to where some of our -- the families of incarcerated women are, perhaps it would be easy to put in this place. But you have to be able to get the children to the prison, and then they can maintain this contact with their parent the entire time.

And I think it's just a pity that so many of our prisons are all the way upstate. And that's a whole other subject.

But I certainly will be voting yes because maintaining connection with the parent is most important.

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

Senator Liz Krueger, to explain her vote.

SENATOR LIZ KRUEGER: Thank you.

Well, before, I thought everything had been said on the bill, but apparently it hadn't. So let me just for this record clarify as I explain my vote as a yes.

We know from the federal government we are not losing money. We know -- all this discussion about waivers is moot. There will be no waivers needed, no waivers having to be chosen between -- other states have done this. It has worked.

We are not -- I repeat, we are not with this bill changing the standard of the best interests of the child framework for decision-making. We are allowing the courts and the social service experts to make an exception to a very short timeline if they believe that it is in the best interests of the child to have some additional time.

It will not be used willy-nilly.

It will not throw off any of the fiscal or timeline situation of ensuring that children are placed in the best, safest and healthiest environment for them. I really think we've gotten a little off-track with this debate. And I hope that we are now going to hear that this vote has passed.

I vote yes, Mr. President.

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

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 71 are Senators Alesi, Bonacic, DeFrancisco, Farley, Flanagan, Fuschillo, Golden, Griffo, Hannon, O. Johnson, Lanza, Larkin, LaValle, Leibell, Libous, Little, Marcellino, Maziarz, McDonald, Nozzolio, Padavan, Ranzenhofer, Robach, Saland, Seward, Skelos, Volker, Winner and Young.

Ayes, 32. Nays, 29.

ACTING PRESIDENT VALESKY: The bill is passed.

Senator Klein, that completes the

reading of the calendar.

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

ACTING PRESIDENT VALESKY: The Secretary will proceed with the reading of Senate Supplemental Calendar 48A.

THE SECRETARY: Calendar Number 552, by Senator Stavisky, Senate Print 5921A, an act to amend the Education Law.

SENATOR LIBOUS: Lay it aside.

ACTING PRESIDENT VALESKY: The bill is laid aside.

THE SECRETARY: In relation to Calendar Number 553, Senator C. Kruger moves to discharge, from the Committee on Finance, Assembly Bill Number 11012 and substitute it for the identical Senate Bill Number 7778, Third Reading Calendar 553.

ACTING PRESIDENT SAVINO: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 553, by the Assembly Committee on Rules, Assembly Print Number 11012, an act to amend

Part B of Chapter 58 of the Laws of 2005.

ACTING PRESIDENT SAVINO: Read the last section.

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

ACTING PRESIDENT SAVINO: Call the roll.

(The Secretary called the roll.)

SENATOR WINNER: Lay it aside.

ACTING PRESIDENT SAVINO: The bill is laid aside.

THE SECRETARY: Calendar Number 554, by the Senate Committee on Rules, Senate Print Number 7846, an act making appropriations for the support of government.

ACTING PRESIDENT SAVINO: Senator Klein.

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

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

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

ACTING PRESIDENT SAVINO: 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 SAVINO: Opposed, nay.

(No response.)

ACTING PRESIDENT SAVINO: The message is accepted.

Read the last section.

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

ACTING PRESIDENT SAVINO: Call the roll.

(The Secretary called the roll.)

SENATOR LIBOUS: Madam President.

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

SENATOR LIBOUS: This is the extender?

ACTING PRESIDENT SAVINO: This is Calendar 554.

SENATOR LIBOUS: Is this the extender?

ACTING PRESIDENT SAVINO: Yes.

SENATOR LIBOUS: Could I ask that we withdraw the roll call and lay the bill aside, please.

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

SENATOR LIBOUS: Thank you.

SENATOR WINNER: Madam President.

ACTING PRESIDENT SAVINO: Yes, Senator Winner.

SENATOR WINNER: I'd like to remove the lay-aside on Calendar Number 553.

ACTING PRESIDENT SAVINO: The lay-aside is lifted.

The Secretary will put 553 before the house.

THE SECRETARY: Calendar Number 553, substituted earlier by the Assembly Committee on Rules, Assembly Print Number 11012, an act to amend Part B of Chapter 58 of the Laws of 2005.

ACTING PRESIDENT SAVINO: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT SAVINO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT SAVINO: Announce the results.

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT SAVINO: The bill is passed.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 555, by the Senate Committee on --

SENATOR LIBOUS: Lay it aside.

ACTING PRESIDENT SAVINO: The bill is laid aside.

The Secretary will read.

THE SECRETARY: Calendar Number 555, by the Senate Committee on Rules, Senate Print 7847, an act to amend the State Finance Law.

ACTING PRESIDENT SAVINO: Senator Klein.

SENATOR KLEIN: Madam President, is there a message of necessity at the desk?

ACTING PRESIDENT SAVINO: There is a message of necessity at the desk.

SENATOR KLEIN: Madam President, I ask that we move to accept the message of necessity at this time.

ACTING PRESIDENT SAVINO: All those in favor of accepting the message of necessity please signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT SAVINO: Opposed, nay.

(No response.)

ACTING PRESIDENT SAVINO: The message is accepted.

Read the last section.

SENATOR LIBOUS: Lay it aside.

ACTING PRESIDENT SAVINO: The bill is laid aside.

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

SENATOR KLEIN: Madam President, at this time can we please to a reading of the controversial supplemental calendar.

ACTING PRESIDENT SAVINO: The

Secretary will ring the bell.

Members are all asked to come to the chamber and stay here for the reading of the controversial supplemental calendar.

The Secretary will read.

THE SECRETARY: Calendar Number 552, by Senator Stavisky, Senate Print 5921A, an act to amend the Education Law.

SENATOR SALAND: Explanation, please.

ACTING PRESIDENT SAVINO: Senator Stavisky, an explanation has been requested.

SENATOR STAVISKY: In 2002, legislation was passed for the licensure of clinical -- first, licensed master social worker, licensed clinical social worker, licensed mental health counseling, licensed marriage and family therapy, licensed creative arts therapy, licensed psychoanalysts, and licensing of the psychologists.

When the bill was passed eight years ago, they created a temporary exemption from the licensing requirements to allow state and localities to provide services with unlicensed professional personnel. And that

has continued. Negotiations have transpired over the last eight years or so. And the state agencies have not yet come into compliance, and many are still staffed with the nonlicensed personnel.

The exemption expires on June 1st. They are concerned, the state agencies are concerned that they have to provide notice to those people if they're going to be laid off. And that's why we were asked to do the bill, to give them some time.

This bill is an extension of the existing exemption until 2013. But it requires detailed reporting by the agencies to ensure compliance by 2013. But there are reporting requirements due in July of 2011 to show the progress that's being made.

This is a continuation of what we have done in the Article 7 language in the past budgets to continue the extension of time for them to comply with the license areas. And the Governor's program bill did not have as many safeguards as this bill has, which is why we have sponsored this bill.

ACTING PRESIDENT SAVINO: Senator

Saland.

SENATOR SALAND: Thank you, Madam President. Would Senator Stavisky yield to a couple of questions?

ACTING PRESIDENT SAVINO: Senator Stavisky, will you yield?

SENATOR STAVISKY: Yes, sir.

SENATOR SALAND: Thank you, Senator Stavisky.

Senator Stavisky, am I correct, then, based upon your explanation, in the fact that to the extent that there are waivers permitted, those waivers are permitted only to those entities referred to on the first page of the bill, 6053-a, paragraph 1: Not-for-profits formed for charitable, educational or religious purposes or an education corporation as defined in some other section of law? Are these the entities to which the waiver will continue to be applicable?

SENATOR STAVISKY: Waivers address the corporate practice issues. The law did not contain a general exemption for the community-based providers. They provide a

whole variety of services in the license areas that I described.

SENATOR SALAND: So these additional providers are community-based providers, not-for-profits, such as I just made reference to?

SENATOR STAVISKY: There are two sections to the bill. One is the exemption for the entity. And we're talking about -- and it's the entity, not the individuals. The second section deals with the corporate practice, and that's the exemptions for the waivers.

SENATOR SALAND: If I may -- if the Senator will continue to yield.

ACTING PRESIDENT SAVINO: Senator Stavisky, will you continue to yield?

SENATOR STAVISKY: Yes.

SENATOR SALAND: Over on page 5, Section 5 makes reference to Section 7706 of the Education Law --

SENATOR STAVISKY: Excuse me one second while I get the bill. Page 5?

SENATOR SALAND: Beginning at line 25 -- actually, at line 27 it makes

reference to Section 7706 of the Education Law.

SENATOR STAVISKY: Yes.

SENATOR SALAND: I don't have the context for that paragraph. Could you tell me what that paragraph does and the context in which it is located?

SENATOR STAVISKY: I don't have the McKinney's with me. You'll have to bear with me for a second. (Pause.)

No, I don't have the McKinney's with me.

SENATOR SALAND: Okay. Perhaps I could ask you --

SENATOR STAVISKY: That section apparently, I've been advised, discusses the professions that are able to be licensed. It deals with the licensing of professions.

SENATOR SALAND: So under this subdivision or section, a licensed master social worker, in order to be able to practice under I assume the exemption, has to practice through an individual appropriately licensed or otherwise authorized to provide such services or a professional entity authorized

to provide such services? Or in fact those are the entities which can provide the services?

SENATOR STAVISKY: Those entities are already existing in the statute. Nothing in this bill prohibits them from continuing to practice. There's nothing new in this bill.

SENATOR SALAND: Lastly -- if I can continue, Madam President.

ACTING PRESIDENT SAVINO: Senator Stavisky, do you continue to yield?

SENATOR STAVISKY: Yes.

ACTING PRESIDENT SAVINO: Senator Stavisky yields.

SENATOR SALAND: Over on page 6, Section 8, the existing law begins at page 14, and it makes reference to experience. Somewhere -- am I looking at the right section? Excuse me one minute.

Did I see somewhere either in the existing language or in this bill, Senator Stavisky, a 3,000-hour requirement for a graduating --

SENATOR STAVISKY: I believe they are negotiating to reduce that number. It's

what they call the funneling issue, and they're trying to make it less onerous. There's going to be a board or a working group set up to try to take a look at the number -- the clinical experience that's required.

It's very difficult for many social workers to qualify, and they're taking a very close look. And that's why we have the extension, so that they have time to review the clinical hours that are needed.

SENATOR SALAND: Thank you, Senator.

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

Seeing 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 15. This act shall take effect immediately.

ACTING PRESIDENT SAVINO: Call the roll.

(The Secretary called the roll.)

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

SENATOR LaVALLE: Thank you very much, Madam President.

As everyone knows, in licensure bills dealing with professionals, the whole thrust behind licensure is to protect the public. It's consumer protection, protecting the public.

The licensure law for those individuals practicing psychotherapy was my legislation. And I can tell you that this area of licensing psychotherapy professionals has been in the halls of this Legislature for many, many decades. It has been very, very contentious.

The last piece in the bill was the licensure of social workers. And to say that this has been a work in progress is an understatement. The time has come, Senator Stavisky -- and both Senator Stavisky and I have talked about this, is that this waiver has -- we bounced it now for a number of years.

I'm going to support the bill. I'm going to vote yes. I think that the sunset is probably a little too long. But I would say

this, and I hope that those people -- lobbyists and individuals involved as social workers who are not licensed -- understand the rubber has to hit the road. We cannot have individuals who are there who are getting waivers who are not fully trained under the laws. We're dealing with individuals who are fragile and need the utmost of professional care.

So as they say, one last time, I'm going to vote to extend the waivers to 2013.

ACTING PRESIDENT SAVINO: Senator Stavisky, to explain her vote.

SENATOR STAVISKY: Thank you, Senator LaValle, because I happen to agree with you.

This has been hanging around since 2002. First of all, this bill is a result of negotiations not just with the Governor's office but also the stakeholders. They have participated in extensive discussions.

The first question at the budget hearing that I asked the Commissioner of Education is "When are you going to resolve the issue involving the licensure of social

workers, et cetera?" As recently as half an hour ago, I explained to the State Education Department that they have to resolve this issue. It's time. It's time we resolved it, it's time we showed some concern for the consumers. They are our clients.

And hopefully meetings will continue. They've assured me that meetings will continue and they will continue to work cooperatively with the various stakeholders.

And the difference with this bill is they are required to give us progress reports as we proceed. There's a progress report due in July of next year, and we're going to hold them to it.

Thank you, Madam President. I vote aye.

ACTING PRESIDENT SAVINO: Are there any other Senators wishing to explain their vote?

Seeing none, announce the results.

THE SECRETARY: In relation to Calendar Number 552, absent from voting: Senator Montgomery. Excused, Senator Morahan.

Ayes, 60. Nays, 0.

ACTING PRESIDENT SAVINO: The bill is passed.

The Secretary will read.

THE SECRETARY: Calendar Number 554, by the Senate Committee on Rules, Senate Print 7846, an act making appropriations for the support of government.

SENATOR DeFRANCISCO: Explanation.

ACTING PRESIDENT SAVINO: Senator Kruger, an explanation has been requested.

SENATOR CARL KRUGER: Thank you, Madam President.

Today the Governor's emergency extender bill, the seventh, provides for the support of government for $4.2 billion in All Funds appropriation and $8.49 million in the General Fund appropriation that will run through May 23rd.

The difference with this bill from previous extenders is that there are no furloughs for state workers, pursuant to a TRO which was issued in federal court last week, and there is no longer language omitting the 4 percent salary increases for state workers

pursuant to that same TRO.

ACTING PRESIDENT SAVINO: Senator DeFrancisco.

SENATOR DeFRANCISCO: Would Senator Kruger yield to a question, please.

ACTING PRESIDENT SAVINO: Senator Kruger, will you yield for a question?

SENATOR CARL KRUGER: Or a series of questions.

SENATOR DeFRANCISCO: Not tonight.

ACTING PRESIDENT SAVINO: Senator Kruger yields.

SENATOR DeFRANCISCO: Since the last extender, since we were here a week ago, have there been any three-way negotiations between the leaders of the Senate -- Senator Sampson -- the Assembly -- Speaker Silver -- and the Governor?

SENATOR CARL KRUGER: No, there haven't been. But the good news is that there are public negotiations tomorrow, three-way negotiations at 11:00 a.m. Five-way, I'm sorry.

SENATOR DeFRANCISCO: Since last

week, were there any meetings of staff of the three leadership concerning not the extenders, concerning the budget itself?

SENATOR CARL KRUGER: Yes.

SENATOR DeFRANCISCO: And were those --

ACTING PRESIDENT SAVINO: Senator DeFrancisco.

SENATOR DeFRANCISCO: Would Senator Kruger yield to another question?

ACTING PRESIDENT SAVINO: Senator Kruger, do you continue to yield?

SENATOR CARL KRUGER: Through you, Madam President, yes.

ACTING PRESIDENT SAVINO: Thank you.

SENATOR DeFRANCISCO: And were those discussions between the staffs of the majority parties and the Governor only?

SENATOR CARL KRUGER: Yes.

SENATOR DeFRANCISCO: All right. And would Senator Kruger yield to another question?

ACTING PRESIDENT SAVINO: Senator Kruger, do you yield?

SENATOR CARL KRUGER: Yes, Madam President.

ACTING PRESIDENT SAVINO: Yes.

SENATOR DeFRANCISCO: Senator Kruger, were any issues resolved in those negotiations or discussions between the staffs of the majority parties and the Governor's office?

SENATOR CARL KRUGER: Through you, Madam President, "resolution" I guess is a broad statement. But negotiations and discussions continue.

SENATOR DeFRANCISCO: Well, would Senator Kruger yield to another question.

ACTING PRESIDENT SAVINO: Senator Kruger?

SENATOR CARL KRUGER: Yes, I would, Madam President.

ACTING PRESIDENT SAVINO: Senator Kruger yields.

SENATOR DeFRANCISCO: Senator Kruger, you say there's a five-way public meeting tomorrow. Who called that meeting, if you know?

SENATOR CARL KRUGER: The

Governor.

SENATOR DeFRANCISCO: Senator Kruger, would you yield to another question?

SENATOR CARL KRUGER: Yes, Madam President.

ACTING PRESIDENT SAVINO: Senator Kruger yields.

SENATOR DeFRANCISCO: Do you know whether or not that meeting is the occasion for which our leader of this house, Senator Sampson, of the majority party, is going to announce the membership of the conference committees and also the schedule for public conference committees of the membership who are also part of this Senate?

SENATOR CARL KRUGER: Through you, Madam President, the meeting will be a public one. And I guess we will at that time learn the substance of that meeting.

SENATOR DeFRANCISCO: Last question, Senator Kruger, if you'd yield, please.

ACTING PRESIDENT SAVINO: Senator Kruger?

SENATOR CARL KRUGER: Yes, Madam

President.

ACTING PRESIDENT SAVINO: Senator Kruger continues to yield.

SENATOR DeFRANCISCO: In your meetings that you've had among the majority party that runs the Senate, were you given any information that would lead you to believe that tomorrow at this five-way public meeting, such as it will be, whether there will be an attempt on behalf of the Senate Majority Leader to get a schedule for conference committees and name members to each public conference committee? Do you know, from your private discussions or public discussions with your leader, is that his intent?

SENATOR CARL KRUGER: Through you, Madam President, as I said and I will reiterate, the public meeting is an opportunity to create the public forum. The outcome of that public forum will be open for all of us to review and see.

SENATOR DeFRANCISCO: One other question I just thought of. Senator Kruger, would you yield?

SENATOR CARL KRUGER: Absolutely.

SENATOR DeFRANCISCO: Would you, as the Senate Finance chair, and certainly someone who wants to show that this body and the majority party in this body is following the laws of the State of New York, would you recommend to your leader on behalf of the entire Senate, both sides of the aisle, that he request at that public meeting and be prepared to provide to the other members of the public meeting a schedule for public conference committees and the membership of each of those conference committees?

SENATOR CARL KRUGER: Through you, Madam President, I think that the majority in the Assembly as well as the majority here has heard very, very loud and clear the messages that have been articulated concerning the idea of conference committees. I look forward to the outcome of the five-way negotiations tomorrow.

SENATOR DeFRANCISCO: On the bill.

SENATOR CARL KRUGER: Thank you, Madam President.

ACTING PRESIDENT SAVINO: Senator

DeFrancisco, on the bill.

SENATOR DeFRANCISCO: Well, this is the seventh extender, and I'm happy to report that the answers were as nonresponsive as the other six. And I shouldn't say "happy" to respond; it's just sad, actually.

And I don't want to be flippant about it, because right now we're in a situation where it's truly embarrassing. It's truly embarrassing to be a member of to body. And it's the first time I have ever said it and hopefully the last time I will ever say it.

You know, we go back to our districts and we're all painted with the same broad brush. And unfortunately, the members of the general public do not understand that there are some of us who are doing everything that we possibly can, especially on this side of the aisle, to get these open meetings going, to get answers, to try to get results, to try to get movement so that these dire problems don't continue.

And this is not a Republican/Democrat thing. It's obviously

Republican/Democrat in this house, because our side of the aisle is trying to get answers, trying to get public meetings; the other side is totally nonresponsive, the majority Democrats.

But there's a Democrat who happens to have a very important position in this state who has been sending out red flags for the last seven weeks. And let me read you some of the latest red flags that State Comptroller DiNapoli is sending to us.

His office's analysis of the report card of the Department of Education indicates that up to 285 school districts may have insufficient unrestricted fund balances to offset the payments that the Governor is withholding by June.

Now, think of that. Doesn't that embarrass anybody on the other side of the aisle? There's school district votes for budgets tomorrow. How do you in good faith go to the district without knowing not only what's in store for you in the future but whether you're going to be paid for what's due presently?

ACTING PRESIDENT SAVINO: Senator Krueger, why do you rise?

SENATOR LIZ KRUEGER: Will Senator DeFrancisco yield for a question?

ACTING PRESIDENT SAVINO: Senator DeFrancisco, will you yield for a question?

SENATOR DeFRANCISCO: I will be happy to yield as soon as I complete my entire statement. I will answer as many questions as you want, rather than have a disjointed statement about this whole situation.

Comptroller DiNapoli also says any school district that has already borrowed money against the receipt of June state aid --

ACTING PRESIDENT SAVINO: Senator Kruger, why do you rise?

SENATOR CARL KRUGER: Will the Senator yield to a question?

SENATOR DeFRANCISCO: As soon as I'm done with my statement, I'll be more than happy to.

SENATOR CARL KRUGER: Thank you.

ACTING PRESIDENT SAVINO: Senator DeFrancisco.

SENATOR DeFRANCISCO: Any school

district that has already borrowed against the receipt of June state aid could be at risk of default on its revenue anticipation notes.

Are you kidding me? Think about that. And I wouldn't be standing up here if we got some report one of these weeks that something is happening. Furloughs, the Governor is going to have. No meetings, even though furloughs are anticipated. We get a reprieve, the state does, from a court that's got a stay temporarily. So now the Governor is talking about permanent layoffs, not just furloughs. School districts can't -- but not even a meeting.

Now, tomorrow's meeting, let me make a prediction. There's going to be a five-way meeting that nothing is going to happen, a public display of nothing. Senator Kruger wouldn't even carry the message, the Senate Finance chair, to his leader to advocate for at that meeting, these public meetings, so we could get some type of progress.

State aid delays are having an impact on long-term credit ratings for school

districts as well. Recently, Fitch Ratings downgraded the State Dormitory Authority's school district revenue bond financing program from A plus to AA minus. That means dollars more has to be spent on various bonds.

According to School District Association reports, most districts assumed the Executive Budget aid levels in their proposed budgets. We don't know if that assumption is a valid one either.

It's not only school districts. We've talked before about contractors, where people are not being hired, others are being laid off -- when we've got unemployment rates that are absolutely unacceptable. And we're continuing not to have a budget, so we have increased those numbers.

In some of our districts it's actually embarrassing what these numbers are. Jefferson County, St. Lawrence County, Oswego County, 10.4, 10.7, 10.8 percent. Those numbers could be affected in Senator Aubertine's district if we start hiring back contractors who have employees of contractors who have contracts from the State of New York.

All we've got to do is have a budget. All we've got to do is have a budget.

I can go on to the other districts that are almost as embarrassing, if not more so. But if you take a look at the news yesterday -- and the news yesterday was about 55 parks and historic sites closing. Now, I don't know if we did it today or not -- it was held, Senator Serrano's bill was held directing the government to keep the parks open, with no funding behind it. That's a great way to cover up the real problem. The real problem is getting a budget so we can keep the parks open.

And there's parks closing all over the state, they're going to close, closing all over the state, in Senator Foley's district and Owen Johnson's district. I can't pronounce it -- Connetquot River State Park? Closed weekdays. In Senator Stewart-Cousins' district, Philipse Manor Historic Site. Saratoga Region -- Senator Breslin -- John Boyd Thacher State Park. Schuyler Mansion Historic Site, Senator Breslin.

Central New York seems to get a

greater share of these, I'm not quite sure why, but Chittenango Falls Park, Chittenango Falls Park, a magnificent park in Senator Valesky's district. It's closed. You see TV shows on the news about locks being put on the doors and people are complaining they can't go see these magnificent falls any longer. Because we are the embarrassment of the country. Chittenango Falls State Park.

Also in Senator Valesky's district, Helen McNitt State Park, Old Erie Canal State Park. I mean, these things are important to Central New York. Springbrook Greens State Park.

Senator Aubertine's district has quite a few that I'm sure there are people in his district aren't too happy about. Selkirk Shores State Park, closing the swimming beach. Close the park, Canoe Island State Park, Senator Aubertine. Cedar Island State Park, Aubertine. Eel Weir State Park, Aubertine. And there's five others. Some of them I can't even pronounce. But I know the people in his district can pronounce them.

Doesn't it embarrass anybody that

this is happening and we do nothing? If you want to do an extender, at least show that something's happening. And to announce a leader's meeting that we know what's going to be accomplished there as the progress, potential progress, when we're voting on an extender today, is truly, truly not an answer.

And I guess my point is -- and I saw one brave member from the majority conference tell it like it is on YNN News. And that member, when asked what's going on, "I don't know what's going on. We're merely pawns here in this particular area." Patsies. Not pawns, patsies. That's even better. Because pawns move every once in a while. But patsies, they don't move, they just wait for direction.

And that was a great word that that brave Senator from the majority party -- well, let me ask one thing. I would hope that all the majority members voted no again on this extender. And I'm asking for some former patsies to come forward and to just say enough is enough, we'll vote on a one-day extender --

ACTING PRESIDENT SAVINO: Senator

Krueger, why do you rise?

SENATOR LIZ KRUEGER: I'm sorry, is it appropriate for a member of the Senate to refer to his colleagues as patsies on the floor of the Senate?

ACTING PRESIDENT SAVINO: Senator DeFrancisco, unless you'd like to withdraw the comment "patsies," I'd just ask you to please keep it civil.

SENATOR DeFRANCISCO: Okay, I will not join in the criticism of one of the majority Senators who used that term about the Senators, and I'll use my own term.

I would hope that one of the former enablers who enabled this process to go forward, with nothing at all happening, nothing at all happening -- without someone saying, you know, enough is enough, what are we doing here? Enough is enough. And have a one-day extender. Let's amend this to a one-day extender. Let's say no, let the Governor come to a one-day extender, and let's see what happens tomorrow at this magnificent meeting. Let's see if there's open conference committee meetings that are scheduled. Let's

see whether that is happening.

And then we're only enabling a one day to see what progress is being made. And if there's progress, maybe a week extender after that.

Short of that, if no one's willing to that on the other side of the aisle, I would hope that somebody says here today, on the other side of the aisle: Enough is enough, we're going to do it one more week. That's it, because we're going to be in June. We're going to listen to the state comptroller, and when June comes around, it's time to pay the piper. We're going to give you one more week, leaders, to do what you're supposed to do -- namely, lead -- and we'll go with the extender, but next Monday -- and state it publicly today -- I'm not going to vote for it.

And that way you're sending a clear message that you've got a week to do something. And if you come back and do nothing, it's your fault, not ours, that either government shuts down or we have some type of progress.

So, Madam President, I would urge all of my colleagues on both sides of the aisle to vote no on this extender. As an alternative, seek a one-day extender from the Governor, who had the foresight to call meetings tomorrow -- because our legislative leaders apparently aren't talking with each other -- and see what the progress is. And then go forward from there based upon progress, not extenders based upon inactivity.

Thank you, Madam President. I'll answer any questions that Senators Krueger or Kruger are interested in asking me.

ACTING PRESIDENT SAVINO: Senator Carl Kruger.

SENATOR CARL KRUGER: Thank you, Madam President.

Senator, what year were you elected to the Senate?

SENATOR DeFRANCISCO: I was elected -- my first term was '93.

SENATOR CARL KRUGER: '93. So you were here in '95?

SENATOR DeFRANCISCO: I was here in '95. I was.

SENATOR CARL KRUGER: You were here in '95. Do you realize that you voted for 97 extenders between 1995 and 2006?

SENATOR DeFRANCISCO: You know, I don't know what the numbers are. But let me explain something on this answer.

SENATOR CARL KRUGER: No, I'm just asking a question.

SENATOR DeFRANCISCO: Well, I'm going to explain the answer. I'm not --

ACTING PRESIDENT SAVINO: Gentlemen -- Senators, please direct your comments through the chair.

SENATOR CARL KRUGER: Through you, Madam President.

SENATOR DeFRANCISCO: I'm sorry.

Seriously, I don't know what the numbers are, and I'm sure you could find other examples of extenders being done.

And let me tell you something that I learned long ago. The fact that someone did something that was not the prudent thing to do in the past in no way justifies a current situation that we have now. And in each one of the years -- I'm sure you're going to go

through every year, and I'd be more than happy to answer years individually.

But I thought that you might want to know that in none of the years that I voted for an extender, or anybody else since 1993 did, was the state in a financial crisis. Never was the state in a financial crisis which required a situation where furloughs were being done, where budgets of school districts were in the situation where they're being cut -- because every one of those years, there was always increases.

So I think it's a little different situation. And the past certainly doesn't justify the inaction today in a time of crisis.

SENATOR CARL KRUGER: Okay. So just to characterize the statement, then you acted imprudently in the past, since you were elected in 1995, 97 times.

SENATOR DeFRANCISCO: I -- no, I didn't say imprudently 97 times. In some instances they were imprudent votes, I agree with you.

SENATOR CARL KRUGER: --

[inaudible] --

SENATOR DeFRANCISCO: And those votes -- those votes --

SENATOR CARL KRUGER: -- [inaudible] --

ACTING PRESIDENT SAVINO: Senators --

SENATOR CARL KRUGER: Through you, Madam President.

SENATOR DeFRANCISCO: May I finish?

ACTING PRESIDENT SAVINO: Senator DeFrancisco, do you continue to yield to Senator Kruger?

SENATOR DeFRANCISCO: Unlike Senator Kruger, I'd like to finish an answer and give some information that's worth hearing. So I'd like to finish my answer before I go to the next one. May I finish my answer?

ACTING PRESIDENT SAVINO: Yes.

SENATOR DeFRANCISCO: You know, in prior years this imprudence was not limited to one party, as it apparently is now. Because in those extenders, virtually everyone

that I remember -- it was bipartisan extender over the periods of time when those extenders took place.

This is a different situation. It's one party in control of the entire state government, which also never was the case in the past. And there was always some checks and balances. Now there's one party in charge, they're totally in charge, we're a fiscal disaster, according to the comptroller. And so there was imprudence to share on both sides of the aisle during those years.

SENATOR CARL KRUGER: So now, speaking of imprudence -- through you, Madam President -- Senator, do you know the growth in spending during the time that you were in the majority and voting on those budgets?

SENATOR DeFRANCISCO: You know, I really don't. And --

SENATOR CARL KRUGER: Well, let me tell you.

SENATOR DeFRANCISCO: Well, let me --

SENATOR CARL KRUGER: Through you, Madam President.

SENATOR DeFRANCISCO: May I finish?

ACTING PRESIDENT SAVINO: Senator DeFrancisco, finish, and then Senator Kruger.

SENATOR LIBOUS: Madam President, point of order.

ACTING PRESIDENT SAVINO: What is your point of order?

SENATOR LIBOUS: Is the questioning of Senator Kruger germane to this year's extender? I mean, what happened prior to this year doesn't appear to be germane to what's going on right now. I mean --

ACTING PRESIDENT SAVINO: Senator -- Senator Libous, I have granted -- I have granted Senator DeFrancisco tremendous leeway.

SENATOR LIBOUS: Is there -- am I being heckled, Madam President?

ACTING PRESIDENT SAVINO: No. You're being responded to, by me.

I have granted Senator DeFrancisco tremendous leeway with respect to his comments where he read out the names of parks and the amounts of money that they wouldn't be getting

when they are in fact not in this extender bill. So I may not allow --

SENATOR LIBOUS: I believe that's germane to this year's discussion, because I believe as of today parks are being closed throughout the state.

ACTING PRESIDENT SAVINO: Senator -- Senator Libous, that was my decision to make. I allowed him tremendous leeway. Now I'm going to allow these two gentlemen the leeway to continue their discussion.

SENATOR LIBOUS: Madam President, I will sit down, but before I sit down I just want to make a final statement that debating previous budgets that are history in my opinion are not germane to the extension of government for one more week.

ACTING PRESIDENT SAVINO: Senator Kruger, you may continue with your questioning.

SENATOR CARL KRUGER: Thank you very much, Madam President.

So just to recapitulate, my question to you, Senator, was do you know the

rate of spending during the time that you voted on those budgets and the imprudent move of the extenders.

SENATOR DeFRANCISCO: Those are two different questions.

If you're talking about the rate of growth of the budget, I don't know. But I would say that they are totally irrelevant, because none of those years were years where revenues were declining, where the economy was sunk, where we're getting over 10 percent unemployment. Those were years where there was a lot of extra money, and all of which the Democratic conference was more than happy to accommodate the increase in spending -- in fact, used to propose amendments looking for more spending.

So I can't tell you either how much spending occurred or how much more spending the Democrats wanted that the Republicans in the Senate chose not to accept.

SENATOR CARL KRUGER: Through you, Madam President, for the record, just so that we can have a bird's-eye view of what we're talking about, we're talking about a

rate of growth from $54 billion when the Senator was elected to $116 billion. He supported a 114 percent increase in spending in this house.

SENATOR DeFRANCISCO: Is that a question?

ACTING PRESIDENT SAVINO: Senator Kruger, are you asking Senator DeFrancisco --

SENATOR CARL KRUGER: No, that's a statement. Because since the Senator didn't have the information, I wanted to make that for the record.

SENATOR DeFRANCISCO: Excuse me --

ACTING PRESIDENT SAVINO: Senator --

SENATOR DeFRANCISCO: Excuse me, I think I have the floor and he's asking questions. And if he wants to make statements, then that should be at a later time.

ACTING PRESIDENT SAVINO: Senator DeFrancisco --

SENATOR CARL KRUGER: Through you, Madam President --

ACTING PRESIDENT SAVINO: Yes.

SENATOR CARL KRUGER: -- would the Senator yield for another question?

ACTING PRESIDENT SAVINO: Senator DeFrancisco, will you continue to yield?

SENATOR DeFRANCISCO: Absolutely.

SENATOR CARL KRUGER: Do you know the rate of inflation during the time that you were elected to current?

SENATOR DeFRANCISCO: I really don't. But you know what's kind of interesting -- I really don't know the rate of inflation. But again, I keep saying that that was in years where the state was flush with dollars. In fact, others wanted to spend more.

And it was also during the years where Senator Kruger decided he wanted to join with us Republicans and take the benefit of a lu-lu so that he had a chairmanship of a committee, he could make more money --

ACTING PRESIDENT SAVINO: Senator DeFrancisco, that is out of order.

SENATOR DeFRANCISCO: -- and to join us in this -- it's out of order?

ACTING PRESIDENT SAVINO: Senator DeFrancisco, that was out of order.

SENATOR DeFRANCISCO: That's out of order.

ACTING PRESIDENT SAVINO: Yes. That has nothing to do with the bill before the house.

SENATOR DeFRANCISCO: Nor does the discussion about prior years.

ACTING PRESIDENT SAVINO: Senator Klein.

SENATOR KLEIN: Madam President, I just -- you know, as a point of order, I mean, you know, this debate is going in all kinds of directions. I would really appreciate you limit Senator DeFrancisco to this specific bill.

I think Senator Kruger has asked some questions that are certainly germane to budget issues. But I think in order for us to proceed, you know, on this floor and uphold the dignity of the Senate, it's important for us not to talk about personal issues that have nothing to do with the bill at hand. Or the extender at hand.

SENATOR LIBOUS: Madam President, point of order.

ACTING PRESIDENT SAVINO: I'll rule on Senator Klein's point of order first, Senator Libous.

SENATOR LIBOUS: My point of order is in reference to Senator Klein's point of order, Madam President. I'm quite confused as to what Senator Klein's point of order was.

SENATOR KLEIN: One at a time, Senator Libous, okay?

ACTING PRESIDENT SAVINO: Senator Klein, your point of order is actually well taken.

And what I would instruct both Senator DeFrancisco and Senator Kruger to do is try and limit your questions and your comments to the bill that is before us, not to the past history of the house or the state. If we do could do that and be constructive, because we have a lot to discuss this evening.

Senator Kruger, do --

SENATOR DeFRANCISCO: I had the floor.

ACTING PRESIDENT SAVINO: Excuse

me. Senator Libous.

SENATOR DeFRANCISCO: I'm sorry, I didn't bring up past years, I just want you to know that.

ACTING PRESIDENT SAVINO: Senator Libous.

SENATOR LIBOUS: Point of order, Madam President.

So did I hear you say they would limit their questions not to past history but to the extender that's on the floor?

ACTING PRESIDENT SAVINO: That is what I said, Senator.

SENATOR LIBOUS: We would have no problem with that, Madam President.

ACTING PRESIDENT SAVINO: Thank you.

Senator DeFrancisco, do you continue to yield to Senator Kruger?

SENATOR DeFRANCISCO: Uh ... yes.

(Laughter.)

SENATOR CARL KRUGER: Well, if we can avoid personal attacks and deal with substantive areas, then I would like to continue.

SENATOR DeFRANCISCO: More than happy to.

SENATOR CARL KRUGER: Senator, do you know what the current rate of inflation is in terms of our spending plan?

SENATOR DeFRANCISCO: Your Honor -- Your Honor.

(Laughter.)

SENATOR DeFRANCISCO: Madam President -- Madam President, I thought we were talking about this particular extender. This has nothing to do with rates of inflation, this is just an extender of payment of certain things.

This sounds like a debate on the budget itself. And these are all relevant discussions; we'd love to have this debate on the floor or in conference committees. But as far as the rate of inflation, it has nothing to do with the extender.

ACTING PRESIDENT SAVINO: Senator Kruger, in an effort to clarify, could you please connect it to another question that is connected to the bill that's before the house?

SENATOR CARL KRUGER: Well, yes,

I'll try to do that, Madam President.

When we're talking about the rate of inflation, past or current, you're talking about a spending plan. How do you view the rate of inflation today as it relates to the spending plan?

SENATOR DeFRANCISCO: Could I please get a clarification of what spending plan he's referring to?

ACTING PRESIDENT SAVINO: Senator Kruger.

SENATOR CARL KRUGER: The extender.

SENATOR DeFRANCISCO: I haven't done a calculation of the spending plan of this extender. The only thing I can really talk about is the rate of inflation I think was under 2 percent last year, and we increased spending by $10 billion -- we didn't vote for it, the Republicans -- and taxes by 8 billion. So that's the most glaring example I have of a budget that is so out of whack with the rate of inflation.

Now, I'm not quite sure what they're going to come up with this year in

private meetings, but that should be discussed definitely on the floor once we see what we're debating, what the budget's going to be for this year, what the budget plan is.

SENATOR CARL KRUGER: Through you, Madam President.

ACTING PRESIDENT SAVINO: Senator DeFrancisco --

SENATOR CARL KRUGER: I guess in order to put into focus the Senator's issues concerning this extender, the majority in this house and our attempts to reach a budget agreement, we have to look at the mechanism and the methodology that brought us to this point.

And what brought us to this point was a budget passed by the Republican majority to the tune that the state spending surpassed the rate of inflation by 67 percent. That's why we're here today faced with the dilemma that we are.

SENATOR DeFRANCISCO: Point of order. Is this a question? I think I still was on the floor.

ACTING PRESIDENT SAVINO: Senator

Kruger, is there a question you have for Senator DeFrancisco?

SENATOR CARL KRUGER: Yes. The question is when we want to talk about the different spending plans and we want to talk about this particular extender, what was the rate of spending in the Senate minority plan during those same years?

SENATOR DeFRANCISCO: I'm sorry, I missed that.

SENATOR CARL KRUGER: Through you, Madam President. Once again, in order to understand the extender of today and the need to -- the position that we're in, let's look at what was the rate of spending in the plan that was proposed in the present Senate minority plan that you projected. Where is your road map for change?

SENATOR DeFRANCISCO: The road map for change will be fully discussed in the context of the two budget proposals of the Assembly and the Senate, in open, public conference committees, as soon as the Democrat majority gives us that opportunity.

As far as this extender is

concerned, this extender is not a financial plan. This extender has no financial plan, as did the Senate budget that was passed a few months ago -- or a month ago, two months ago. I lose track of time when I'm having so much fun.

But those questions are relevant in the context of a financial plan that we would be welcome to debate once we've got the opportunity to do that.

SENATOR CARL KRUGER: Through you, Madam President, would the Senator yield to a question.

ACTING PRESIDENT SAVINO: Senator DeFrancisco, do you continue to yield?

SENATOR DeFRANCISCO: Yes.

ACTING PRESIDENT SAVINO: Senator DeFrancisco yields.

SENATOR CARL KRUGER: At the beginning of this process we passed resolutions, which was categorized as a road map to get us to a budget. Would you explain to me what the Senate minority -- and you, as its ranking member of the Finance Committee -- used as the basis for your budgetary planning?

SENATOR DeFRANCISCO: You know, again, I'm a little bit confused because there is no financial plan, either in this resolution or in the budget resolution that was passed in this house. So I'm not so sure how I can compare the efficacy of our plan with a plan that doesn't exist.

And with respect to another point, I think that each one of those budgets that you're criticizing that happened in the past all were, by the way, balanced. And the deficit became a deficit -- because we have to balance the budget every year. The deficit became a deficit last year when we increased the spending and so forth.

In addition, you keep saying that the Republicans did this, the Republicans did that. I can tell you chapter and verse, for the years from 1995 to the present year, how many negative votes on the budgets there were. And at most, there were eight negative votes on the budgets that were all balanced. So I think both parties believed they were balanced and those discussions took place and the budgets were passed in a balanced fashion.

The difference this year and last year was that we had open conference committees -- the law said that we had to do it in 2008, and we did it. And we also had a balanced budget in 2008. The imbalance occurred in 2009, and the imbalance continues in this year because these are the situations that we're dealing with presently.

SENATOR CARL KRUGER: Through you, Madam President. I think that -- you know, now I'm getting confused. Because as a practical matter, those budgets were structurally never in balance; otherwise, we wouldn't be here today.

But getting back to my question to the Senator, if he would continue to yield.

ACTING PRESIDENT SAVINO: Senator DeFrancisco, do you continue to yield?

SENATOR DeFRANCISCO: I will continue to yield. And, in doing so, remind Senator Kruger that he voted yes on every single one of the budgets that he's criticizing.

SENATOR CARL KRUGER: Through you, Madam President, as you did as well.

SENATOR DeFRANCISCO: I acknowledged that earlier.

SENATOR CARL KRUGER: Now, just for my own clarification and for that of the house, can the Senator please indicate and explain the minority's spending plan for this current budget?

SENATOR DeFRANCISCO: There's -- we don't have a -- we have recommendations for cuts. And would you like me to go through them right now? I'd be more than happy to.

SENATOR CARL KRUGER: You want to go through your series of cuts?

SENATOR DeFRANCISCO: We have recommendations for cuts, absolutely.

SENATOR CARL KRUGER: Yeah, I would like to hear them.

SENATOR DeFRANCISCO: And we've mentioned those publicly and the like, and I'd be more than happy to go through it. How that's relevant to this extender is beyond me, but I'd be more than happy to do that.

But in lieu of that, I would strongly suggest that if you want to engage in this debate, let's do it according to the 2007

law. Break us down, the leadership, into separate conference committees, we deal with each aspect of the budget. We'll give you our opinions, you give us yours, the public will see whether they want to increase spending or reduce spending.

But if you want me to go forward, I'll start going right now.

SENATOR CARL KRUGER: Through you, Madam President, it's -- on the bill.

ACTING PRESIDENT SAVINO: On the bill. Senator Kruger on the bill.

SENATOR CARL KRUGER: It's obvious to me as well as it is --

SENATOR LIBOUS: Excuse me, Madam President.

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

SENATOR LIBOUS: Well, I was going to say that Senator DeFrancisco has the floor, but I guess he just relinquished it.

ACTING PRESIDENT SAVINO: Senator Kruger, on the bill.

SENATOR CARL KRUGER: It's obvious to me, as it is to everyone in this

house that wants to listen, that the reason why we're here today and the reason why we're in the position that we're in is because of runaway spending -- spending that was never in balance, spending that was never reflective of a spending plan, but was rather an opportunity to create debt.

And the debt grew from $31 billion, when the Senator was elected, to $54 billion, causing a debt load attributable to each and every man, woman and child in New York to soar from $1,774 to $2,675.

The point that I'm making here, the point that I'm making here, Madam President, is a very simple one. Today we are faced with a financial dilemma. Rather than relegating our role, as the Senator did today, to finger-pointing and to name-calling, let's deal with the substance of the issue at hand.

We wait for and eagerly seek a plan by the Senate Republican minority that reflects their road map to fiscal integrity, something that to this day they have failed to provide to us.

Thank you.

ACTING PRESIDENT SAVINO: Senator L. Krueger, on the bill.

SENATOR LIZ KRUEGER: I'm sorry, I actually would like to ask Senator DeFrancisco some questions.

ACTING PRESIDENT SAVINO: Senator DeFrancisco, will you yield for Senator Krueger?

SENATOR DeFRANCISCO: Yes, I will.

ACTING PRESIDENT SAVINO: Senator DeFrancisco yields.

SENATOR LIZ KRUEGER: Thank you very much.

Senator DeFrancisco, I believe you said that you won't be voting for this budget extender earlier. Can you tell me what the impact will be on healthcare in the state if we don't have a budget or a budget extender to continue spending in this state?

SENATOR DeFRANCISCO: Yes, I will. The impact would be that the Governor will -- by us not voting for this extender, it will force the Majority Leader of this house, the Speaker of the other house and the

Governor -- well, at least the two leaders of the houses to sit down, because otherwise government is going to stop and all the dire things that you want me to talk about will happen.

If we vote no, we could have a one-day extender, as I suggested earlier, we could have a 12-hour extender, do extenders as long as we're having progress. And that way we, as the rank and file, will have a legitimate role in the process, in moving things forward rather, than rather than giving blanket, enabling legislation on a weekly basis to do nothing.

SENATOR LIZ KRUEGER: Madam President, if through you Senator DeFrancisco would continue to yield.

ACTING PRESIDENT SAVINO: Senator DeFrancisco, do you continue to yield?

SENATOR DeFRANCISCO: Yes.

ACTING PRESIDENT SAVINO: Senator DeFrancisco yields.

SENATOR LIZ KRUEGER: It's actually ten to 8:00 at night, and this is the only extender bill we have a message of

necessity from. And either the other house has passed it or is in the process of passing it.

So your proposal is interesting, but objectively, if we don't pass this extender, does government not shut down?

SENATOR DeFRANCISCO: No, because we can get another extender bill for another day in a matter of hours.

The Governor I don't think is going to want to shut down government. I would guess he'd probably welcome some movement, because he's been calling on the leaders of each house to get something going. He's been threatening furloughs. He actually acted upon furloughs. Now he's threatening layoffs. I would think he'd probably welcome some type of leadership in one of the houses to get something done other than mere inaction.

SENATOR LIZ KRUEGER: Thank you, Madam -- oh, excuse me, Mr. President. Sorry, there was a sex change while I wasn't looking. Excuse me, I'm so sorry. Excuse me, Mr. President.

ACTING PRESIDENT CRAIG JOHNSON:

I could respond in all sorts of ways.

Senator Krueger.

SENATOR LIZ KRUEGER: Thank you. On the bill, Mr. President.

ACTING PRESIDENT CRAIG JOHNSON: Senator Krueger, on the bill.

SENATOR LIZ KRUEGER: Thank you.

Well, I don't know if the Governor had a different plan, because he didn't offer us a different plan, he gave us this bill, this extender bill. I can have as many frustrations as every other Senator on this floor. But again, for the record, when you don't vote for budget extenders, you vote to shut down government.

Michigan had a shutdown in 2007. It wasn't very pretty. Pennsylvania had a shutdown in 2007. New Jersey had a shutdown in 2006, Minnesota in 2005, Tennessee in 2002. Every state's story would be different. But I want to tell the story for this one week in our state if we don't pass an extender bill.

It will mean that the state doesn't pay out $1.85 billion to healthcare providers, including 250 hospitals, 400 nursing homes, as

well as clinics, doctors and pharmacies. That's what's in this extender bill.

If we shut down government, payroll and payments for agencies relating to public safety -- because again, in the furlough bill last week, even though many of us didn't love it but we voted for it, it would have exempted public safety workers. In a shutdown of government, there is no exemption. Everybody is furloughed.

Which would mean there would be no staff at 67 correctional facilities and more than 5500 state troopers and other officials of the Division of State Police and the Division of Criminal Justice would not be paid to be working or to come to their jobs.

If we shut down government without passing this extender bill, then the judiciary will no longer operate in 1300 courtrooms throughout the state, not to mention the thousands of support personnel.

If we shut down government by not passing the budget extender bill that has been given us by the Governor and approved to be taken up on this floor with a message of

necessity, the Tax Department will not collect revenue, which will put the state into a deeper economic weak-cash position.

In 2009, for the same period, if we assume approximately the same money, $850 million would not be collected next week. And in fact since the Tax Department also offers tax refunds, particularly heavy at this time of year, if we shut down government, if we don't pass an extender tonight, for this same period, assuming equivalent numbers to 2009, 72,000 taxpayers are not going to receive their income tax refund next week.

If we shut down government for all the concerns we have about education -- and you're right to have concerns about our schools, although, as was pointed out, we've played this game with 97 extenders between '95 and 2006. But our shutting down funding for education would have a much greater impact than another week's delay.

We wouldn't be having environmental laws operating. Our transportation systems wouldn't be functioning. Our Agriculture and Markets Department would not exist.

I think you get the point. Even if you don't like that we are not completing the budget, if we don't pass the extender, we're shutting down government. There is almost nothing that would be worse for the State of New York tomorrow morning.

I definitely am recommending a yes vote. Thank you, Mr. President.

ACTING PRESIDENT CRAIG JOHNSON: Thank you, Senator Krueger.

Senator Klein.

SENATOR KLEIN: Mr. President, upon unanimous consent, I ask that the roll be opened for each of the two bills on the supplemental calendar so that Senator Duane can vote on each bill.

ACTING PRESIDENT CRAIG JOHNSON: The Secretary will open the roll for each bill, please.

Read the last section on Calendar Number 554.

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

ACTING PRESIDENT CRAIG JOHNSON: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT CRAIG JOHNSON: Senator Duane.

SENATOR DUANE: Aye.

ACTING PRESIDENT CRAIG JOHNSON: Senator Duane, aye on the bill.

The Secretary will please call the roll on Calendar 555.

THE SECRETARY: Calendar Number 555, by the Senate Committee on Rules, Senate Print 7847, an act to amend the State Finance Law.

ACTING PRESIDENT CRAIG JOHNSON: Read the last section.

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

ACTING PRESIDENT CRAIG JOHNSON: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT CRAIG JOHNSON: Senator Duane.

SENATOR DUANE: Aye.

ACTING PRESIDENT CRAIG JOHNSON: Senator Duane is aye.

Please withdraw the rolls for each

of those two bills.

Calendar Number 554 is again before the house.

Senator Bonacic.

SENATOR BONACIC: Thank you, Mr. President.

ACTING PRESIDENT CRAIG JOHNSON: On the bill?

SENATOR BONACIC: On the bill.

ACTING PRESIDENT CRAIG JOHNSON: On the bill.

SENATOR BONACIC: You know, this is the seventh extender. And I think I got up once and asked Senator Kruger, the chairman of Ways and Means, a few brief questions and I sat down.

And I want to focus the discussion, if I may, on something a little different. I'm not going to talk about the history of past budgets, I'm not going to talk about the rate of inflation, I'm not going to talk about the spending of past budgets. What I am going to talk -- and I'll say that this is the worst recession that I have seen in my lifetime. And my parents talked about the Great

Depression in 1929, but for me it's something that started in December of 2007 and has got progressively worse, with a lot of pain for our constituents in all aspects.

And there's been a lot of rhetoric today about closing government. But let's recognize what is real and what is factual. What is factual is that the Democratic leadership controls each house, the Assembly and the Senate. What is factual is that our Governor has given us his budget. His responsibility under the State Constitution is done, it's done. And it's our responsibility under the State Constitution, the next step is to pass a legislative budget. Which means that both houses of the Democratic leadership have to communicate with each other, have a meeting of the minds and pass a legislative budget resolution.

Now, that has not been done, and we are in discussions of distraction. We beat the Governor up. He's a lame-duck Governor, his polling is down, and boy, he is a good target. And what is he trying to do? By not adopting a budget April 1st, the Democratic

leadership in both houses raises the possibility of shutting government down. Okay? You have that power. You have the power to pass the budget on April 1st and every week thereafter when we do the extenders to avoid the hard decisions.

The Governor is trying to get your attention. That's what he's trying to do. He's delaying school payments. He's cutting out contracts for state workers -- not for state workers, for contracting on state roads, layoffs. He's doing furloughs. And now he's talking of layoffs. He's doing everything in his power to bring the Democratic leadership in both houses to pass a legislative budget under the State Constitution.

Now, we have done this. You want to talk about history, Governor Pataki didn't agree with the Legislature, we had delays. We came together and we did a legislative budget. I don't know if you remember. But Assemblyman Silver and Majority Leader Bruno, we approved the budget. And we said: "Governor, we don't agree with what you gave us. We're doing our legislative budget."

But for some reason, the Democratic leadership in both houses are not taking the next step. Because maybe you fear what the Governor may do.

Back then, Governor Pataki exercised his line-item veto. It came back to the Legislature. Some we overrode, some we didn't. But we as a Legislature did our duty under the State Constitution, which the Democratic leadership in both houses is not doing.

So every week there's an extender and every week we want to keep government going, you blame the Governor, you blame the minority -- but all the power is with you to do the next step under the Constitution.

So you can continue to beat up the Governor, you can continue to talk about extenders. But these hard decisions have to be made. And the Democratic leadership in both houses are unable to make them. That's where the responsibility is.

So for that reason, I'm going to continue to vote no on the extender. And we're going to ask you, since you have all the

power, since you have excluded all of us, meaning the Republican minority in this house, from participating in any public discussion -- all of these back and forth between Senator Kruger and Senator DeFrancisco is just another distraction in not following the State Constitution.

I'm going to vote no on the extender, and I thank you, Mr. President.

ACTING PRESIDENT CRAIG JOHNSON: Thank you, Senator Bonacic.

Senator Nozzolio.

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

ACTING PRESIDENT CRAIG JOHNSON: Senator Nozzolio, on the bill. Senator Nozzolio.

SENATOR NOZZOLIO: Mr. President and my colleagues, I wish to follow up on comments made by Senator Bonacic about this process.

For weeks now, when Senator DeFrancisco called upon the Senate chairman of the Senate Finance Committee, Democrat Carl Kruger from Brooklyn, to give us a chronicle

of what took place the week before, we were basically insulted by his trivial comments. I have not risen to speak about this until this moment because my patience, I thought, would be the better of me. But my constituents are no longer patient. They've long since lost their patience.

And Senator Kruger's comments about budget negotiations are ongoing, when questioned about the substance, would say that the negotiations are very sensitive. Well, I can understand that the first week. I could understand it the second week. But the third week, fourth week, now to the seventh week of saying nothing more than that I think is an insult to this house, it's an insult to the discussion, and most importantly it's an insult to the people of New York State.

Senator Liz Krueger, from Manhattan, today gave us a long list of things that could happen if the budget is not in place for an extender. Well, maybe this Legislature and maybe the Democrats who control this Legislature should have thought about that before.

And for Senator Krugers and company to bring up prior budget extenders from 1993, when Senator DeFrancisco was first in this house, I think is a tremendous insult -- not to Senator DeFrancisco, but to the people of this state. Because using that obfuscation totally denies the fact that in 2007 Senator Kruger and Senator Krueger, both of them, championed the debate on legislation to create budget reform.

The law today requires certain benchmarks be established. The law of 2007 -- which you supported, which you voted for -- requires certain dates to take place, certain things to take place on those dates that move to eliminate the process of extenders, require that joint conference committees be held.

And you can tell us, Senator Kruger and Senator Krueger, all about prior extenders. But the fact of the matter is Senator DeFrancisco did not vote for an extender once the budget reform bill was enacted. This side of the body did not vote for a budget extender once budget reform was enacted. And what you have done as leaders of

the Senate today, as Democrats from New York City, is totally disobey and violate the very law you put on the books that reformed the budget process.

So to use those examples I believe was so disingenuous, Madam President, that I had to rise. To blame other Governors or other times for budget delays today? Why don't we blame Governor Pataki because there's not a budget in place today? Why don't we blame Governor Dewey, a Republican governor, because there is no open budget debate and government process? You're right, it is President Bush's fault that we are not providing the school districts with the appropriate information they need today. And while we're at it, why don't we throw in President Theodore Roosevelt as a Republican governor who's responsible for the Democrats in this house to close the parks today? Why not?

Let's see you all look in the mirror and say that person in the mirror who continues to allow this foot-dragging to occur, who continues to allow the budget

process to be ignored, who continues to provide answers that are trivial and insulting to the taxpayers of this state, that's the person that's responsible. Not prior governors, not prior legislators, the legislators who are in control today.

And for the first time, I tell my constituents, for the first time in what I believe is New York State history we have a Governor from New York City, a Senate leader from New York City -- or Senate leaders from New York City -- and we have an Assembly leader from New York City all together at the same time for the first time. That's where the responsibility of this process that's become a debacle lies.

Follow the law you enacted. Let's stop this charade, and let's get down to brass tacks and finish this budget this week. Madam President, that's why I'm voting against this extender. It's another example of delay, of procrastination, and of insult to the taxpayers of New York.

ACTING PRESIDENT SAVINO: Are there any other Senators wishing to speak on

the bill?

Senator DeFrancisco, you, according to the Senate stenographer, have exceeded the 30 minutes that a Senator can speak on a bill, pursuant to Rule 9, Section 3(d). So I would suggest you explain your vote if you would like to continue to speak.

SENATOR DeFRANCISCO: Thank you for the suggestion, but I respectfully decline. I have to ask you --

ACTING PRESIDENT SAVINO: Senator DeFrancisco --

SENATOR DeFRANCISCO: -- I have to ask --

ACTING PRESIDENT SAVINO: -- that was not a request. That was a polite way of telling you that you've exceeded the 30 minutes that you are entitled to as a member of the Senate, but you may explain your vote. You cannot continue to debate beyond the 30 minutes.

SENATOR DeFRANCISCO: Point of order. You indicated that the stenographer gave you the time.

ACTING PRESIDENT SAVINO: We have

been tracking the debate, Senator DeFrancisco.

SENATOR DeFRANCISCO: If the stenographer gave you the time --

ACTING PRESIDENT SAVINO: Senator Klein.

SENATOR DeFRANCISCO: May I just ask a question, a point of order. The question is very simple.

SENATOR KLEIN: Madam President, can I just refer you to the rule you cited. Maybe it will clarify for Senator DeFrancisco. It's Rule 9, Section 3(d). It states, very simply: "No single Senator shall debate any bill or concurrent resolution for more than 30 minutes."

And according to the time that was kept, it's far exceeded 30 minutes.

SENATOR DeFRANCISCO: Point of order. I have a simple question. The computing of the time that you've computed, does that include the time that people questioned me and I answered questions? Because I debated far shorter than 30 minutes with the comments that I wanted to make, and I yielded to Senator Kruger when he stood up and

took over the floor.

ACTING PRESIDENT SAVINO: Senator Klein.

SENATOR KLEIN: The rule does not distinguish between speaking as well as debate. It's the whole combination which exceeded 30 minutes.

SENATOR LIBOUS: Madam President. Madam President.

ACTING PRESIDENT SAVINO: Senator Klein, your point is well taken.

Senator Libous.

SENATOR LIBOUS: I would ask that you call on Senator Winner.

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

SENATOR WINNER: On the bill.

ACTING PRESIDENT SAVINO: Senator Winner, on the bill.

SENATOR WINNER: Would Senator DeFrancisco yield to a question.

SENATOR DeFRANCISCO: Yes.

ACTING PRESIDENT SAVINO: Proceed, Senator Winner.

SENATOR WINNER: Thank you.

Senator DeFrancisco, could you explain in a little bit more detail your specific objections to this extender?

SENATOR DeFRANCISCO: Right. And I appreciate the opportunity, because I think it's important with -- especially since Senator Liz Krueger had mentioned all the dire consequences of what would happen if we didn't pass this budget extender.

The fact of the matter is that these dire circumstances are happening right now. We have state employees facing either furloughs or layoffs. We have government contracts being ignored and earning interest for nonpayment, with people being laid off. We have parks that are closing. We have total uncertainty in school district budgets. And we have no progress -- by the extenders, we're just enabling people to continue a nonprocess and keep the State of New York in these dire circumstances.

And most importantly, as far as government stopping and us not being able to collect IRS checks and the like, the next payroll -- you know, we're paid through the

government that's -- the part of the government that's being paid is paid through --

ACTING PRESIDENT SAVINO: Senator Klein.

SENATOR KLEIN: Madam President, another point of order.

I am asking the chair to rule on my point of order, which clearly states that one Senator cannot speak nor debate any bill for more than 30 minutes. So please rule on my motion.

SENATOR WINNER: On the point of order, Madam President.

ACTING PRESIDENT SAVINO: Senator DeFrancisco, I'm going to rule you out of order. Because this is clearly nothing more than an attempt to get around the ruling of the chair, which spoke to the length of time that a member could speak directly on a bill. I have instructed you previously to this --

SENATOR LIBOUS: Madam President --

ACTING PRESIDENT SAVINO: Senator Libous, I'm ruling.

SENATOR LIBOUS: Madam President, point of order.

ACTING PRESIDENT SAVINO: Senator Libous, I'm ruling.

SENATOR LIBOUS: You cannot rule Senator DeFrancisco out of order.

SENATOR KLEIN: Madam President, I don't believe you recognized Senator Libous --

SENATOR LIBOUS: Excuse me --

SENATOR KLEIN: And you have the chair, Madam President.

SENATOR LIBOUS: Madam President, I am making a point of order. I --

ACTING PRESIDENT SAVINO: Gentlemen (gaveling).

SENATOR LIBOUS: Madam President, I have a right to make my point of order.

ACTING PRESIDENT SAVINO: Senator Libous, I have ruled --

SENATOR LIBOUS: The point of order is simple. It is simple. Senator Winner has the floor. He is asking a question of another member. That member cannot be called out of order because another member is

asking a question.

ACTING PRESIDENT SAVINO: Senator Libous, but I can rule you out of order.

SENATOR KLEIN: Madam President.

ACTING PRESIDENT SAVINO: Senator Klein.

SENATOR KLEIN: Being a jump-in-the-jack does not require you call on Senator Libous. You had a ruling, you were finishing the ruling. When you are finished with your ruling, then you will call on Senator Libous.

SENATOR LIBOUS: Senator Libous is pointing out that Madam President is ignoring a point of order that Senator Winner has the floor. And she cannot divert, under Mason's rules --

SENATOR KLEIN: Madam President. Madam President.

SENATOR LIBOUS: -- and I would be happy to go over the rules with you --

ACTING PRESIDENT SAVINO: Senator Klein, your point --

SENATOR LIBOUS: -- but you cannot -- when a member has the floor, you

cannot --

SENATOR KLEIN: I'm going to do the same thing that Senator Libous did --

SENATOR LIBOUS: Only not as well, Madam President.

SENATOR KLEIN: -- until you actually make your decision, Madam President.

ACTING PRESIDENT SAVINO: Senator Klein, your point of order is well taken.

SENATOR LIBOUS: Madam President, I will appeal the ruling of the chair on the basis that Senator Winner has the floor and not Senator DeFrancisco.

SENATOR KLEIN: Please rule on that, Madam President.

ACTING PRESIDENT SAVINO: All those in favor of overruling the rule of the chair please --

SENATOR DeFRANCISCO: I want to be heard on that --

ACTING PRESIDENT SAVINO: No.

SENATOR KLEIN: Please call a straight vote on the ruling. There is no one to be heard on it.

ACTING PRESIDENT SAVINO: There

is nothing to be heard --

SENATOR KLEIN: -- [inaudible] -- Madam President.

SENATOR DeFRANCISCO: May I be heard on the appeal.

SENATOR KLEIN: Again, Madam President, there's a straight vote on that. Call up that motion.

ACTING PRESIDENT SAVINO: I have called on the members who wish to overturn the ruling of the chair to please indicate by raising your hand.

SENATOR SALAND: Point of order. A point of order is always in order, under any rule of the house. Point of order, Madam President.

ACTING PRESIDENT SAVINO: Senator Saland, I will get to your point of order as soon as we're done with this attempt to overturn my ruling.

All those in favor of overturning the rule of the chair please raise your hand.

SENATOR SALAND: Madam Chair, point of order.

ACTING PRESIDENT SAVINO: He's

challenged my ruling.

SENATOR SALAND: Madam Chair, my point of order is on the motion.

SENATOR KLEIN: Madam President, could I refer once again -- because again, you know, we want to try to have some decorum here today.

And I really ask you, Madam President, to actually have them vote on that ruling, because according to Senate Rule Number 9, Section 4(b), it's very clear, the presiding officer may not be interrupted when speaking. So please speak, Madam President.

ACTING PRESIDENT SAVINO: Senator Klein, I have instructed the members who wish to overturn my ruling to signify by raising their hand.

Announce the results.

THE SECRETARY: Ayes, 29. Nays, 32.

ACTING PRESIDENT SAVINO: The ruling of the chair is upheld.

SENATOR SALAND: Point of order, Madam President. Point of order, Madam President.

ACTING PRESIDENT SAVINO: Senator Saland, what is your point of order?

SENATOR LIBOUS: Madam President.

ACTING PRESIDENT SAVINO: I've recognized Senator Saland, Senator Libous.

SENATOR LIBOUS: First of all, I'd like some order in the chamber.

ACTING PRESIDENT SAVINO: Senator Saland, you may proceed on your point of order.

SENATOR SALAND: Madam President, this was not my initial point of order. But since Senator Duane has been excused and not in the chamber, how did you come up with 32 votes? The roll was not open for him to vote.

ACTING PRESIDENT SAVINO: Senator Saland, you need 32 votes to overturn the ruling of the chair. You do not have 32 votes that have voted to overturn the ruling of the chair.

SENATOR SALAND: The clerk announced 32 votes.

ACTING PRESIDENT SAVINO: Senator Saland, there were 29 people who voted to

overturn the ruling of the chair.

SENATOR SALAND: So you're not voting Senator Duane in his absence.

ACTING PRESIDENT SAVINO: Correct.

SENATOR SALAND: Madam President.

ACTING PRESIDENT SAVINO: Do you have a second point of order, Senator Saland?

SENATOR SALAND: A second point of order, yes, I think a very critical point of order. What I just observed now is something that has certainly flown in the face of my two decades in this chamber.

There's something called custom and practice, and custom and practice in this chamber has always, always, always, always been that if a member spoke, his or her time was not allotted to the time taken when they were engaged in an exchange that was initiated by another member.

So you have effectively chosen to arbitrarily muzzle, by making new precedent in this house, the ability for people to engage in expression and debate. Shame on you, shame on Senator Klein, shame on this majority.

ACTING PRESIDENT SAVINO: Senator Saland, you are out of order.

SENATOR SALAND: I am not out of order. You are out of order. Your ruling was out of order, and it was a cheap stunt.

ACTING PRESIDENT SAVINO: Senator Saland (gaveling).

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

SENATOR WINNER: Yes, Madam President. I believe I have the floor.

ACTING PRESIDENT SAVINO: Yes, Senator Winner. You may proceed on the bill.

SENATOR WINNER: Thank you, Madam President, on the bill.

I'm a little surprised that as a -- not a member of the Finance Committee, and a member who's interested in the provisions of this extender and also was very interested in Senator DeFrancisco's concerns and representations with respect to this, as my leader on the Senate Finance Committee, that I was not able to ask him to yield for some specific questions.

In fact, I thought it was kind of a

violation of my privilege as a member of this house in order to seek information that I thought was pertinent to this debate.

You or someone -- I believe it was Senator Klein -- cut me off before I could continue with my line of questioning, assuming that it was open-ended, before I could get to any specific matters that I think are of particular concern as it relates to the provisions of this extender.

I think there are omissions in this extender that Senator DeFrancisco was attempting to point out that were important to this debate, omissions that are important to the people that I represent, omissions from this legislation -- in particular, things like Power for Jobs extenders, economic development provisions, payments for contractors, other issues that I think are extraordinarily important to this state that unfortunately I was not given the opportunity or the courtesy to be able to pursue in a line of questioning.

I think that that's really an unfortunate reflection on the actions of majority in this house, and I expect to vote

no on this measure.

ACTING PRESIDENT SAVINO: Are there any other Senators wishing to be heard on the bill?

Seeing none, the debate is closed. The Secretary will ring the bells. I ask all members to return to the chamber for the vote.

Read the last section.

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

ACTING PRESIDENT SAVINO: Call the roll.

(The Secretary called the roll.)

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

SENATOR DeFRANCISCO: Yes. As far as the comments of Senator Liz Krueger, everybody's paid through next Tuesday except the Legislature, so the tax collectors could certainly collect payroll. So the dire consequences that I mentioned -- that she mentioned really are not the case.

And what I tried to answer to Senator Winner, the fact of the matter is there's dire consequences going on right now

because we're just doing extenders.

Secondly, all the other budgets that Senator Carl Kruger was talking about were certified by the Comptroller, they were balanced. And in addition, they were voted on almost unanimously by both Democrats and Republicans and we were not in the financial situation we are now.

Lastly, we were not under the laws that we are now, except in 2008 when we followed those laws. And there's no reason in the world for us to ignore the law. We should have open conference committees.

And lastly, it's really a shame that we can't have open conference committees and we can't openly debate a bill on the floor. And now that I know the new rules in this house are that your 30-minutes count includes questions that other people ask you, I would imagine that a lot of questions are going to be asked of a lot of people trying to debate, in good faith, the legitimacy of a bill.

So I think it's -- as I said before, it's the first time I've been

embarrassed to be in this legislative body because of the substance of the extender and how we've been enabling the leaders to do nothing, and now the procedure is equally embarrassing.

Thank you, Madam President.

ACTING PRESIDENT SAVINO: Senator DeFrancisco will be recorded in the negative.

Senator Saland, to explain his vote.

SENATOR SALAND: Thank you, Madam President.

Madam President, as has been pointed out, the paradigm here supposedly changed in 2007 when we adopted the Budget Reform Act of 2007. We successfully passed a timely budget in 2008. It's been all downhill since then.

And what I have observed today really, I believe, takes an already rather ugly, ugly situation in which we find ourselves to depths that we've never really seen before.

We've changed not only the paradigm which, with both majorities having passed

budget resolutions, we should have been engaged in conference committees weeks ago, but we've now changed the process -- a process which will now encumber the ability to debate, a process which will now restrict the ability for anybody who wishes to engage in debate, a process which will now invite people to decline to answer questions for fear that their time will be so severely limited they will not be able to make their points.

I would hope that cooler heads would prevail, that your ruling with respect to the 30-minute rule will be just a passing, rather ugly scar on the face of this house, and that in fact we will engage in the process that we have engaged in previously, which basically did not, at no time -- and I've served in this house now for 20 years -- result in somebody being muzzled because somebody else was using their time.

I vote in the negative, Madam President.

ACTING PRESIDENT SAVINO: Senator Saland to be recorded in the negative.

Are there any other Senators

wishing to explain their vote?

Seeing none, announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 554 are Senators Alesi, Bonacic, DeFrancisco, Farley, Flanagan, Fuschillo, Golden, Griffo, Hannon, O. Johnson, Lanza, Larkin, LaValle, Leibell, Libous, Little, Marcellino, Maziarz, McDonald, Nozzolio, Padavan, Ranzenhofer, Robach, Saland, Seward, Skelos, Volker, Winner and Young.

Ayes, 32. Nays, 29.

ACTING PRESIDENT SAVINO: The bill is passed.

The Secretary will read.

THE SECRETARY: In relation to Calendar Number 555, Senator Kruger moves to discharge, from the Committee on Finance, Assembly Bill Number 11104 and substitute it for the identical Senate Bill Number 7847, Third Reading Calendar 555.

ACTING PRESIDENT SAVINO: Substitution ordered.

Senator Libous.

SENATOR LIBOUS: Madam President,

I have an amendment at the desk. I would ask that you waive the reading and if I could speak on it, please.

ACTING PRESIDENT SAVINO: Senator Libous, your amendment is at the desk. Without objection, the reading is waived and you may speak on the amendment.

SENATOR LIBOUS: Thank you, Madam President.

Last week in this chamber, Senator Aubertine had a bill on the floor that was a new and improved Power for Jobs legislation. And last week in this chamber I stood on this floor and said that the bill wasn't real, the bill wasn't going to extend Power for Jobs, it wasn't going to do anything for Power for Jobs, because there was no companion in the Assembly.

And I believe Senator Griffo mentioned that he was concerned because the deadline was coming for the Power for Jobs program.

I can't speak for every member of this chamber, but I do know in my district this is going to affect 7,314 jobs. Now, at a

time when every job that's created or every job that can be preserved in this state is extremely, extremely precious, we should not be playing games with such an important program.

I shared with you last week -- I'll share it again this week -- that I visited one of the companies that has Power for Jobs, and they talked about over the next three years doubling their workforce, but they can't do it without this very, very valuable program.

Last week I believe Senator Stachowski and Senator Duane, who unfortunately is not here right now, joined me in voting no, for whatever reasons they had. I can't speak for them. But I can tell you that I would hope that Senator Stachowski, you would join us today on this amendment. Because what this amendment does is extends the Power for Jobs as it is for another year.

Now, I hear in the Assembly they're going to pass a bill today that's going to extend it for two and a half weeks. That doesn't help any one of these particular companies or any company in any of our

districts. This is a bipartisan effort here. This is not something that is Republican or Democrat. This is about jobs, ladies and gentlemen. This is about helping these companies.

And it is very evident to me -- Senator Aubertine, all due respect to your efforts last week -- that the Assembly is not going to join us in moving forward on your legislation.

So I ask that you join me with this amendment. This amendment extends the program as we have the last several years so that we can protect the jobs in New York State and the companies that use this very important power.

ACTING PRESIDENT SAVINO: Senator Libous, after reviewing your amendment I unfortunately am compelled to rule it out of order.

The bill that you seek to amend deals with the issuance of certain bonds. This amendment addresses the Power for Jobs program, which falls outside the scope of the bill and is therefore not germane.

SENATOR LIBOUS: Madam President,

I know this is shocking to you, but I appeal the ruling of the chair.

I believe that my amendment is germane. It is a very serious issue. And it's something that needs to be extended. This program has run out.

ACTING PRESIDENT SAVINO: All those wishing to overturn the ruling of the chair please indicate by raising your hand.

Announce the results.

THE SECRETARY: Ayes, 29. Nays, 31.

ACTING PRESIDENT SAVINO: The motion fails.

The bill is before the house. Are there any members wishing to speak on the bill before the house?

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

Read the last section.

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

ACTING PRESIDENT SAVINO: Call the roll.

(The Secretary called the roll.)

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

SENATOR DeFRANCISCO: I'm going to vote yes on this bill.

And I just want to put on the record I asked a question in Finance whether this bonding that we're authorizing is for existing projects only and doesn't authorize new borrowing for projects yet to be determined. And the answer was yes, it's just for existing contracts.

And on that grounds, I'm voting yes, in order to try to get more people working on existing projects rather than -- and not authorize additional borrowing until our budget situation has been clarified.

Thank you.

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

Any other Senators wishing to explain their vote?

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 555 are

Senators Hannon, Larkin and Marcellino.

Ayes, 58. Nays, 3.

ACTING PRESIDENT SAVINO: The bill is passed.

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

SENATOR KLEIN: Madam President, at this time can we please go to a reading of the supplemental active list.

ACTING PRESIDENT SAVINO: The Secretary will read.

THE SECRETARY: Calendar Number 390, by Senator DeFrancisco, Senate Print 6464 --

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

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

THE SECRETARY: Calendar Number 465, by Member of the Assembly Thiele, Assembly Print Number 9766A, an act to amend the Public Officers Law.

ACTING PRESIDENT SAVINO: Read the last section.

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

ACTING PRESIDENT SAVINO: Call the roll.

(The Secretary called the roll.)

SENATOR SALAND: I don't have a calendar.

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

Senator Saland, have you found a calendar?

SENATOR SALAND: I have one.

ACTING PRESIDENT SAVINO: Read the last section.

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

ACTING PRESIDENT SAVINO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT SAVINO: Announce the results.

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT SAVINO: The bill is passed.

THE SECRETARY: Calendar Number

467, by Member of the Assembly Amedore, Assembly Print Number 10164, an act to amend the General Municipal Law.

ACTING PRESIDENT SAVINO: Read the last section.

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

ACTING PRESIDENT SAVINO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT SAVINO: Announce the results.

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT SAVINO: The bill is passed.

THE SECRETARY: Excuse me. In relation to Calendar Number 467: Ayes, 60. Nays, 1. Senator Parker recorded in the negative.

ACTING PRESIDENT SAVINO: The bill is passed.

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

SENATOR KLEIN: Madam President,

I believe Senator Libous has a floor motion.

ACTING PRESIDENT SAVINO: Senator Libous.

SENATOR LIBOUS: Thank you, Madam President.

On behalf of Senator Nozzolio, I move the following bill be discharged from its respective committee and be recommitted with instructions to strike the enacting clause. And it's Senate Print Number 2401.

ACTING PRESIDENT SAVINO: So ordered.

SENATOR LIBOUS: Thank you, Madam President.

ACTING PRESIDENT SAVINO: Senator Klein.

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

ACTING PRESIDENT SAVINO: No, Senator Klein, there is no further business at the desk.

SENATOR KLEIN: There being no further business, Madam President, I move we adjourn until Tuesday, May 18th, at 11:00 a.m.

ACTING PRESIDENT SAVINO: Senator

Klein, there being no further business to come before the Senate, on motion, the Senate stands adjourned until Tuesday, May 18th, at 11:00 a.m.

(Whereupon, at 8:40 p.m., the Senate adjourned.)