

1 NEW YORK STATE SENATE

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3
4 THE STENOGRAPHIC RECORD

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8
9 ALBANY, NEW YORK

10 May 17, 2010

11 4:20 p.m.

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13
14 REGULAR SESSION

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18 SENATOR DIANE SAVINO, Acting President

19 ANGELO J. APONTE, Secretary

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

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

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

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

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

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

13 ACTING PRESIDENT SAVINO: The
14 reading of the Journal.

15 The Secretary will read.

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

21 ACTING PRESIDENT SAVINO: Without
22 objection, the Journal stands approved as
23 read.

24 Presentation of petitions.

25 Messages from the Assembly.

1 Messages from the Governor.
2 Reports of standing committees.
3 Reports of select committees.
4 Communications and reports from
5 state officers.
6 Motions and resolutions.
7 Senator Klein.
8 SENATOR KLEIN: Thank you, Madam
9 President.
10 On behalf of Senator Serrano, on
11 page 29 I offer the following amendments to
12 Calendar Number 514, Senate Print Number 7776,
13 and ask that said bill retain its place on
14 Third Reading Calendar.
15 ACTING PRESIDENT SAVINO: So
16 ordered.
17 SENATOR KLEIN: On behalf of
18 Senator Duane, on page 23 I offer the
19 following amendments to Calendar Number 418,
20 Senate Print Number 5000A, and ask that said
21 bill retain its place on Third Reading
22 Calendar.
23 ACTING PRESIDENT SAVINO: So
24 ordered.
25 SENATOR KLEIN: On behalf of

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

6 ACTING PRESIDENT SAVINO: So
7 ordered.

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

14 ACTING PRESIDENT SAVINO: So
15 ordered.

16 SENATOR KLEIN: On behalf of
17 Senator Foley, I move that the following bill
18 be discharged from its respective committee
19 and be recommitted with instructions to strike
20 the enacting clause: Senate Number 6361B.

21 ACTING PRESIDENT SAVINO: So
22 ordered.

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

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

4 ACTING PRESIDENT SAVINO: So
5 ordered.

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

9 ACTING PRESIDENT SAVINO: The
10 Secretary will read.

11 THE SECRETARY: Calendar Number
12 432, by Member of the Assembly Gottfried,
13 Assembly Print Number 6011, an act to amend
14 the Uniform City Court Act and others.

15 ACTING PRESIDENT SAVINO: Senator
16 Klein.

17 SENATOR KLEIN: I now move to
18 reconsider the vote by which this Assembly
19 bill was substituted for Senate Print Number
20 4781 on May 4th.

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

24 (The Secretary called the roll.)

25 THE SECRETARY: Ayes, 59.

1 ACTING PRESIDENT SAVINO: Senator
2 Klein.

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

8 ACTING PRESIDENT SAVINO: So
9 ordered.

10 SENATOR KLEIN: I now offer the
11 following amendments.

12 ACTING PRESIDENT SAVINO:
13 Amendments received.

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

17 ACTING PRESIDENT SAVINO: Senator
18 Libous.

19 SENATOR LIBOUS: Thank you, Madam
20 President.

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

1 ACTING PRESIDENT SAVINO: So
2 ordered, Senator Libous.

3 SENATOR LIBOUS: Thank you, Madam
4 President.

5 ACTING PRESIDENT SAVINO: Senator
6 Klein.

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

9 ACTING PRESIDENT SAVINO: Senator
10 Stachowski.

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

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

23 ACTING PRESIDENT SAVINO: Thank
24 you, Senator Stachowski.

25 (Applause.)

1 ACTING PRESIDENT SAVINO: Senator
2 Klein.

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

7 ACTING PRESIDENT SAVINO: The
8 Secretary will read.

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

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

21 ACTING PRESIDENT SAVINO:
22 Substitutions ordered.

23 Senator Klein.

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

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

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

8 SENATOR KLEIN: Yes, it has,
9 Madam President.

10 ACTING PRESIDENT SAVINO: The
11 Secretary will read.

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

18 ACTING PRESIDENT SAVINO: Senator
19 Serrano.

20 SENATOR SERRANO: Thank you,
21 Madam President.

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

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

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

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

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

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

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

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

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

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

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

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

16 Thank you very much.

17 (Standing ovation.)

18 ACTING PRESIDENT SAVINO: Senator
19 DeFrancisco, on the resolution.

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

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

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

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

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

1 want to perpetrate against us.

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

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

7 ACTING PRESIDENT SAVINO: Senator
8 Montgomery.

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

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

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

1 Assemblymember, we honor you today.

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

7 Thank you, Madam President.

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

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

14 (Response of "Aye.")

15 ACTING PRESIDENT SAVINO:
16 Opposed, nay.

17 (No response.)

18 ACTING PRESIDENT SAVINO: The
19 resolution is adopted.

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

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

1 please notify the desk.

2 Senator Klein.

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

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

12 SENATOR KLEIN: Yes, it has,
13 Madam President.

14 ACTING PRESIDENT SAVINO: The
15 Secretary will read.

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

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

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

1 by saying aye.

2 (Response of "Aye.")

3 ACTING PRESIDENT SAVINO:

4 Opposed, nay.

5 (No response.)

6 ACTING PRESIDENT SAVINO: The
7 resolution is adopted.

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

13 Senator Klein.

14 SENATOR KLEIN: Madam President,
15 there will be an immediate meeting of the
16 Finance Committee, followed by a meeting of
17 the Rules Committee in the Majority Conference
18 Room, Room 332.

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

21 ACTING PRESIDENT SAVINO: There
22 will be an immediate meeting of the Finance
23 Committee, followed by an immediate meeting of
24 the Rules Committee in Room 332.

25 Pending the return of the Rules

1 Committee, the Senate will stand at ease.

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

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

6 ACTING PRESIDENT SAVINO: Senator
7 Klein.

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

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

16 The Secretary will read.

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

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

22 ACTING PRESIDENT SAVINO: Senator
23 Kruger.

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

1 nomination.

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

5 Senator Thompson.

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

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

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

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

22 ACTING PRESIDENT SAVINO: Senator
23 Ranzenhofer.

24 SENATOR RANZENHOFER: Thank you,
25 Madam President.

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

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

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

15 (Response of "Aye.")

16 ACTING PRESIDENT SAVINO:
17 Opposed, nay.

18 (No response.)

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

21 Congratulations to Mr. Lobban.

22 (Applause.)

23 ACTING PRESIDENT SAVINO: The
24 Secretary will continue to read.

25 THE SECRETARY: As a member of

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

3 ACTING PRESIDENT SAVINO: Senator
4 Kruger.

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

8 ACTING PRESIDENT SAVINO: Senator
9 Maziarz, on the nomination.

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

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

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

23 ACTING PRESIDENT SAVINO: Senator
24 Stachowski.

25 SENATOR STACHOWSKI: Yes, Madam

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

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

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

13 ACTING PRESIDENT SAVINO: Senator
14 Thompson.

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

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

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

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

9 So thank you. And I proudly
10 support his nomination.

11 ACTING PRESIDENT SAVINO: Senator
12 Volker.

13 SENATOR VOLKER: Thank you, Madam
14 President.

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

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

25 So I'm more than happy to support

1 Sam, and wish him the best of luck.

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

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

10 (Response of "Aye.")

11 ACTING PRESIDENT SAVINO:
12 Opposed, nay.

13 (No response.)

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

16 Congratulations, Sam Williams.

17 (Applause.)

18 ACTING PRESIDENT SAVINO: Senator
19 Klein.

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

24 ACTING PRESIDENT SAVINO: There
25 is a report of the Rules Committee at the

1 desk.

2 The Secretary will read.

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

6 Senate Print 5921A, by Senator
7 Stavisky, an act to amend the Education Law;

8 7778, by the Senate Committee on
9 Rules, an act to amend Part B of Chapter 58 of
10 the Laws of 2005;

11 7846, by the Senate Committee on
12 Rules, an act making appropriations for the
13 support of government;

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

17 All bills ordered direct to third
18 reading.

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

22 (Response of "Aye.")

23 ACTING PRESIDENT SAVINO:
24 Opposed, nay.

25 (No response.)

1 ACTING PRESIDENT SAVINO: The
2 Rules Committee report is adopted.

3 Senator Klein.

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

7 ACTING PRESIDENT SAVINO: The
8 Secretary will read.

9 THE SECRETARY: Calendar Number
10 71, by Member of the Assembly Aubry, Assembly
11 Print Number 5462A, an act to amend the Social
12 Services Law.

13 SENATOR LIBOUS: Lay it aside.

14 ACTING PRESIDENT SAVINO: The
15 bill is laid aside.

16 THE SECRETARY: Calendar Number
17 236, by Member of the Assembly Stirpe,
18 Assembly Print Number 8693, an act to amend
19 the Election Law.

20 ACTING PRESIDENT VALESKY: Read
21 the last section.

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

24 ACTING PRESIDENT VALESKY: Call
25 the roll.

1 (The Secretary called the roll.)

2 THE SECRETARY: Ayes, 61.

3 ACTING PRESIDENT VALESKY: The
4 bill is passed.

5 THE SECRETARY: Calendar Number
6 293, by Senator Addabbo, Senate Print 2867C,
7 an act to amend the Real Property Law.

8 ACTING PRESIDENT VALESKY: Read
9 the last section.

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

12 ACTING PRESIDENT VALESKY: Call
13 the roll.

14 (The Secretary called the roll.)

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

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

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

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

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

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

14 Announce the results.

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

23 Ayes, 37. Nays, 24.

24 ACTING PRESIDENT VALESKY: The
25 bill is passed.

1 THE SECRETARY: Calendar Number
2 367, by Senator Addabbo, Senate Print 7221, an
3 act to amend the Election Law.

4 ACTING PRESIDENT VALESKY: Read
5 the last section.

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

8 ACTING PRESIDENT VALESKY: Call
9 the roll.

10 (The Secretary called the roll.)

11 THE SECRETARY: Ayes, 61.

12 ACTING PRESIDENT VALESKY: The
13 bill is passed.

14 THE SECRETARY: Calendar Number
15 439, by Senator Sampson --

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

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

20 THE SECRETARY: Calendar Number
21 456, by Senator Thompson, Senate Print 3560A,
22 an act to amend the Public Authorities Law.

23 ACTING PRESIDENT VALESKY: Read
24 the last section.

25 THE SECRETARY: Section 2. This

1 act shall take effect immediately.

2 ACTING PRESIDENT VALESKY: Call
3 the roll.

4 (The Secretary called the roll.)

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

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

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

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

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

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

10 Thank you.

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

14 Announce the results.

15 THE SECRETARY: Ayes, 61. Nays,
16 0.

17 ACTING PRESIDENT VALESKY: The
18 bill is passed.

19 THE SECRETARY: Calendar Number
20 495, by Senator Huntley --

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

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

25 Senator Klein, that completes the

1 noncontroversial reading of the calendar.

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

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

8 ACTING PRESIDENT VALESKY:
9 Senator Klein.

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

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

17 The Secretary will read.

18 THE SECRETARY: Calendar Number
19 71, by Member of the Assembly Aubry, Assembly
20 Print Number 5462A, an act to amend the Social
21 Services Law.

22 SENATOR SALAND: Explanation.

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

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

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

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

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

1 And as you know, for a child who is
2 14 or older, that child can refuse to be
3 adopted in the first place. However, for
4 younger children, this provides an additional
5 option to local social services districts to
6 in fact allow for there to be a relationship
7 between a parent and a child to be maintained
8 even though the parent is incarcerated.

9 ACTING PRESIDENT VALESKY:
10 Senator Saland.

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

13 ACTING PRESIDENT VALESKY:
14 Senator Saland, on the bill.

15 SENATOR SALAND: Mr. President,
16 some dozen or more years ago, probably 1996,
17 1997, so-called ASFA was a federally enacted
18 law which required states to do certain things
19 to comply in order to receive federal dollars.

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

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

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

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

1 planning.

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

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

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

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

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

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

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

22 Thank you, Mr. President.

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

25 Senator Savino, on the bill.

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

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

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

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

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

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

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

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

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

9 So we have a dispositional hearing
10 on the initial neglect case or the abuse case
11 or the abandonment case. Oftentimes you don't
12 get a finding on the original case for 24 to
13 28 months. So you don't even have a situation
14 where a parent has been found guilty of
15 neglect or abuse on the initial charge.

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

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

1 found guilty of failure to plan, which should
2 trigger a termination of parental rights.

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

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

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

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

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

15 So now you have Article 10 cases
16 that may not be adjudicated within 15 or even
17 24 months, where you don't have an initial
18 finding. You have termination of parental
19 rights filings that are being put in because
20 if the agencies feel if they don't, they won't
21 be in compliance with ASFA. And then we have
22 permanency hearings on cases where we don't
23 have an initial finding.

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

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

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

13 Thank you.

14 ACTING PRESIDENT VALESKY:

15 Senator Saland, why do you rise?

16 SENATOR SALAND: Will Senator
17 Savino yield to a question?

18 ACTING PRESIDENT VALESKY:

19 Senator Savino, would you yield to a question?

20 SENATOR SAVINO: Certainly.

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

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

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

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

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

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

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

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

17 SENATOR SALAND: On the bill.

18 ACTING PRESIDENT VALESKY:
19 Senator Saland.

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

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

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

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

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

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

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

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

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

21 SENATOR MONTGOMERY: Yes.

22 ACTING PRESIDENT VALESKY:
23 Senator Saland, do you yield?

24 SENATOR SALAND: Yes.

25 ACTING PRESIDENT VALESKY:

1 Senator Saland yields.

2 SENATOR MONTGOMERY: Yes.

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

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

18 SENATOR MONTGOMERY: Yes.

19 SENATOR SALAND: It does?

20 SENATOR MONTGOMERY: Yes.

21 SENATOR SALAND: Our current
22 384B, word for word --

23 SENATOR MONTGOMERY: It allows --

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

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

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

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

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

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

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

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

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

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

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

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

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

1 it's repeated in several different places.

2 And it's supposed to be about the best
3 interests of the child, pure and simple.

4 ACTING PRESIDENT VALESKY:

5 Senator Montgomery.

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

8 ACTING PRESIDENT VALESKY:

9 Senator Saland, would you yield for another
10 question?

11 SENATOR SALAND: Certainly,
12 Senator.

13 ACTING PRESIDENT VALESKY: The
14 Senator yields.

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

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

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

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

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

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

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

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

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

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

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

22 ACTING PRESIDENT VALESKY:

23 Senator Savino, why do you rise?

24 SENATOR SAVINO: Yes, would

25 Senator Saland yield for a question?

1 ACTING PRESIDENT VALESKY:

2 Senator Saland, do you yield?

3 SENATOR SALAND: Yes,

4 Mr. President.

5 ACTING PRESIDENT VALESKY: The

6 Senator yields.

7 SENATOR SAVINO: Thank you.

8 Through you, Mr. President. I understand the
9 concern you have, Senator Saland, and I
10 believe it's heartfelt, because you do know
11 this system probably as well as I do, maybe
12 Senator Montgomery. But how should one
13 determine what is in the best interest of a
14 child?

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

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

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

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

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

21 SENATOR SALAND: Yes,
22 Mr. President.

23 ACTING PRESIDENT VALESKY: The
24 Senator yields.

25 SENATOR SAVINO: During the

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

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

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

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

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

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

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

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

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

10 SENATOR SALAND: Yes,
11 Mr. President.

12 ACTING PRESIDENT VALESKY: The
13 Senator yields.

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

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

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

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

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

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

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

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

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

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

4 ACTING PRESIDENT VALESKY:
5 Senator Savino.

6 SENATOR SAVINO: Thank you.

7 ACTING PRESIDENT VALESKY: Thank
8 you. Thank you, Senator Saland.
9 Senator Hassell-Thompson, on the
10 bill.

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

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

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

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

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

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

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

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

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

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

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

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

17 Senator Duane, on the legislation.

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

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

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

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

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

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

1 want to implement.

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

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

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

25 And the same is true of alcohol and

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

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

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

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

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

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

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

7 Thank you, Mr. President.

8 ACTING PRESIDENT VALESKY: Thank
9 you, Senator Duane.

10 Senator Schneiderman, on the bill.

11 SENATOR SCHNEIDERMAN: Thank you,
12 Mr. President.

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

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

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

3 The federal law explicitly allows a
4 state to do exactly what we're doing here.

5 The federal law says the state shall file a
6 petition to terminate the parental rights of
7 the child's parents unless -- and there's
8 several categories. And one is a state agency
9 has documented in the case plan, which shall
10 be available for court review, a compelling
11 reason for determining that filing such a
12 petition would not be in the best interests of
13 the child.

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

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

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

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

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

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

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

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

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

25 This is a bill that corrects a flaw

1 in the law, in my view. I understand there
2 are a lot of disagreements. But it is very
3 difficult for those of us who deal with issues
4 related to -- have districts with a lot of
5 people who are incarcerated and are dealing
6 with reentry problems, to allow the law to
7 exist as it does today, where you have -- you
8 know, we don't have a couple of hundred
9 thousand people in prison in the United States
10 anymore, ladies and gentlemen. We now have
11 2.3 million people in prison. They come from
12 particular communities.

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

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

1 ACTING PRESIDENT VALESKY: Thank
2 you, Senator Schneiderman.

3 Senator Liz Krueger, on the bill.

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

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

10 ACTING PRESIDENT VALESKY: Thank
11 you, Senator Krueger.

12 Senator Stewart-Cousins, on the
13 bill.

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

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

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

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

5 So clearly we don't want -- I think
6 if we look at the 384B that's referred to
7 through the entire bill, the first part of
8 384B talks about how important it is, when it
9 works, to have children and their families
10 together. So rather than create impediments
11 that would disallow for that to happen, this
12 bill allows for the right things to happen for
13 the right reasons when it's right.

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

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

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

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

22 The Secretary will read the last
23 section.

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

1 ACTING PRESIDENT VALESKY: Call
2 the roll.

3 (The Secretary called the roll.)

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

6 SENATOR FARLEY: Thank you,
7 Mr. President.

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

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

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

23 Senator Savino, to explain her
24 vote.

25 SENATOR SAVINO: Thank you,

1 Mr. President.

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

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

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

1 Thank you.

2 ACTING PRESIDENT VALESKY:

3 Senator Savino to be recorded in the
4 affirmative.

5 Senator Montgomery, to explain her
6 vote.

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

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

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

25 Two, I want to make sure that our

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

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

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

1 all recognize, Mr. President --

2 ACTING PRESIDENT VALESKY: Thank
3 you, Senator.

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

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

8 SENATOR MONTGOMERY: I vote yes.

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

12 Senator Winner, to explain his
13 vote.

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

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

1 making reasonable plans for the future of that
2 child.

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

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

25 And I vote no, Mr. President.

1 Thank you.

2 ACTING PRESIDENT VALESKY:

3 Senator Winner to be recorded in the negative.

4 Senator Squadron, to explain his
5 vote.

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

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

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

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

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

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

12 I thank Senator Montgomery, and I
13 vote aye.

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

17 Senator Saland, to explain his
18 vote.

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

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

1 neglect portion that this bill would seek to
2 amend.

3 I would also mention that there
4 were, as of I believe February of 2002, some
5 17 waivers pending at the federal Department
6 of Health and Human Services, and they only
7 had the authority to grant 10. And they've
8 granted either five or six of them to this
9 point.

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

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

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

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

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

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

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

3 Mr. President, I vote in the
4 negative.

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

7 Senator Oppenheimer, to explain her
8 vote.

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

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

20 SENATOR SCHNEIDERMAN: Jean
21 Harris.

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

25 But once she was there, she did

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

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

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

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

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

1 ACTING PRESIDENT VALESKY:

2 Senator Oppenheimer to be recorded in the
3 affirmative.

4 Senator Liz Krueger, to explain her
5 vote.

6 SENATOR LIZ KRUEGER: Thank you.

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

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

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

25 It will not be used willy-nilly.

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

8 I vote yes, Mr. President.

9 ACTING PRESIDENT VALESKY:

10 Senator Liz Krueger to be recorded in the
11 affirmative.

12 Announce the results.

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

22 Ayes, 32. Nays, 29.

23 ACTING PRESIDENT VALESKY: The
24 bill is passed.

25 Senator Klein, that completes the

1 reading of the calendar.

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

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

8 THE SECRETARY: Calendar Number
9 552, by Senator Stavisky, Senate Print 5921A,
10 an act to amend the Education Law.

11 SENATOR LIBOUS: Lay it aside.

12 ACTING PRESIDENT VALESKY: The
13 bill is laid aside.

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

20 ACTING PRESIDENT SAVINO:
21 Substitution ordered.

22 The Secretary will read.

23 THE SECRETARY: Calendar Number
24 553, by the Assembly Committee on Rules,
25 Assembly Print Number 11012, an act to amend

1 Part B of Chapter 58 of the Laws of 2005.

2 ACTING PRESIDENT SAVINO: Read
3 the last section.

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

6 ACTING PRESIDENT SAVINO: Call
7 the roll.

8 (The Secretary called the roll.)

9 SENATOR WINNER: Lay it aside.

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

12 THE SECRETARY: Calendar Number
13 554, by the Senate Committee on Rules, Senate
14 Print Number 7846, an act making
15 appropriations for the support of government.

16 ACTING PRESIDENT SAVINO: Senator
17 Klein.

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

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

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

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

5 (Response of "Aye.")

6 ACTING PRESIDENT SAVINO:
7 Opposed, nay.

8 (No response.)

9 ACTING PRESIDENT SAVINO: The
10 message is accepted.

11 Read the last section.

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

14 ACTING PRESIDENT SAVINO: Call
15 the roll.

16 (The Secretary called the roll.)

17 SENATOR LIBOUS: Madam President.

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

20 SENATOR LIBOUS: This is the
21 extender?

22 ACTING PRESIDENT SAVINO: This is
23 Calendar 554.

24 SENATOR LIBOUS: Is this the
25 extender?

1 ACTING PRESIDENT SAVINO: Yes.

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

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

8 SENATOR LIBOUS: Thank you.

9 SENATOR WINNER: Madam President.

10 ACTING PRESIDENT SAVINO: Yes,
11 Senator Winner.

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

14 ACTING PRESIDENT SAVINO: The
15 lay-aside is lifted.

16 The Secretary will put 553 before
17 the house.

18 THE SECRETARY: Calendar Number
19 553, substituted earlier by the Assembly
20 Committee on Rules, Assembly Print Number
21 11012, an act to amend Part B of Chapter 58 of
22 the Laws of 2005.

23 ACTING PRESIDENT SAVINO: Read
24 the last section.

25 THE SECRETARY: Section 2. This

1 act shall take effect immediately.

2 ACTING PRESIDENT SAVINO: Call
3 the roll.

4 (The Secretary called the roll.)

5 ACTING PRESIDENT SAVINO:
6 Announce the results.

7 THE SECRETARY: Ayes, 61.

8 ACTING PRESIDENT SAVINO: The
9 bill is passed.

10 The Secretary will continue to
11 read.

12 THE SECRETARY: Calendar Number
13 555, by the Senate Committee on --

14 SENATOR LIBOUS: Lay it aside.

15 ACTING PRESIDENT SAVINO: The
16 bill is laid aside.

17 The Secretary will read.

18 THE SECRETARY: Calendar Number
19 555, by the Senate Committee on Rules, Senate
20 Print 7847, an act to amend the State Finance
21 Law.

22 ACTING PRESIDENT SAVINO: Senator
23 Klein.

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

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

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

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

9 (Response of "Aye.")

10 ACTING PRESIDENT SAVINO:
11 Opposed, nay.

12 (No response.)

13 ACTING PRESIDENT SAVINO: The
14 message is accepted.

15 Read the last section.

16 SENATOR LIBOUS: Lay it aside.

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

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

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

25 ACTING PRESIDENT SAVINO: The

1 Secretary will ring the bell.

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

5 The Secretary will read.

6 THE SECRETARY: Calendar Number
7 552, by Senator Stavisky, Senate Print 5921A,
8 an act to amend the Education Law.

9 SENATOR SALAND: Explanation,
10 please.

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

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

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

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

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

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

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

25 ACTING PRESIDENT SAVINO: Senator

1 Saland.

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

5 ACTING PRESIDENT SAVINO: Senator
6 Stavisky, will you yield?

7 SENATOR STAVISKY: Yes, sir.

8 SENATOR SALAND: Thank you,
9 Senator Stavisky.

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

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

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

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

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

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

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

18 SENATOR STAVISKY: Yes.

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

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

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

1 reference to Section 7706 of the Education
2 Law.

3 SENATOR STAVISKY: Yes.

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

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

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

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

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

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

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

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

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

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

12 SENATOR STAVISKY: Yes.

13 ACTING PRESIDENT SAVINO: Senator
14 Stavisky yields.

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

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

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

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

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

11 SENATOR SALAND: Thank you,
12 Senator.

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

15 Seeing none, the Secretary will
16 ring the bell. Members are asked to come to
17 the chamber for the vote.

18 Read the last section.

19 THE SECRETARY: Section 15. This
20 act shall take effect immediately.

21 ACTING PRESIDENT SAVINO: Call
22 the roll.

23 (The Secretary called the roll.)

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

1 SENATOR LaVALLE: Thank you very
2 much, Madam President.

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

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

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

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

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

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

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

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

17 This has been hanging around since
18 2002. First of all, this bill is a result of
19 negotiations not just with the Governor's
20 office but also the stakeholders. They have
21 participated in extensive discussions.

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

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

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

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

16 Thank you, Madam President. I vote
17 aye.

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

21 Seeing none, announce the results.

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

25 Ayes, 60. Nays, 0.

1 ACTING PRESIDENT SAVINO: The
2 bill is passed.

3 The Secretary will read.

4 THE SECRETARY: Calendar Number
5 554, by the Senate Committee on Rules, Senate
6 Print 7846, an act making appropriations for
7 the support of government.

8 SENATOR DeFRANCISCO:
9 Explanation.

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

12 SENATOR CARL KRUGER: Thank you,
13 Madam President.

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

20 The difference with this bill from
21 previous extenders is that there are no
22 furloughs for state workers, pursuant to a TRO
23 which was issued in federal court last week,
24 and there is no longer language omitting the
25 4 percent salary increases for state workers

1 pursuant to that same TRO.

2 ACTING PRESIDENT SAVINO: Senator
3 DeFrancisco.

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

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

8 SENATOR CARL KRUGER: Or a series
9 of questions.

10 SENATOR DeFRANCISCO: Not
11 tonight.

12 ACTING PRESIDENT SAVINO: Senator
13 Kruger yields.

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

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

25 SENATOR DeFRANCISCO: Since last

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

4 SENATOR CARL KRUGER: Yes.

5 SENATOR DeFRANCISCO: And were
6 those --

7 ACTING PRESIDENT SAVINO: Senator
8 DeFrancisco.

9 SENATOR DeFRANCISCO: Would
10 Senator Kruger yield to another question?

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

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

15 ACTING PRESIDENT SAVINO: Thank
16 you.

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

20 SENATOR CARL KRUGER: Yes.

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

24 ACTING PRESIDENT SAVINO: Senator
25 Kruger, do you yield?

1 SENATOR CARL KRUGER: Yes, Madam
2 President.

3 ACTING PRESIDENT SAVINO: Yes.

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

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

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

15 ACTING PRESIDENT SAVINO: Senator
16 Kruger?

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

19 ACTING PRESIDENT SAVINO: Senator
20 Kruger yields.

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

25 SENATOR CARL KRUGER: The

1 Governor.

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

4 SENATOR CARL KRUGER: Yes, Madam
5 President.

6 ACTING PRESIDENT SAVINO: Senator
7 Kruger yields.

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

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

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

23 ACTING PRESIDENT SAVINO: Senator
24 Kruger?

25 SENATOR CARL KRUGER: Yes, Madam

1 President.

2 ACTING PRESIDENT SAVINO: Senator
3 Kruger continues to yield.

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

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

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

25 SENATOR CARL KRUGER: Absolutely.

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

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

21 SENATOR DeFRANCISCO: On the
22 bill.

23 SENATOR CARL KRUGER: Thank you,
24 Madam President.

25 ACTING PRESIDENT SAVINO: Senator

1 DeFrancisco, on the bill.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22 SENATOR CARL KRUGER: Thank you.

23 ACTING PRESIDENT SAVINO: Senator
24 DeFrancisco.

25 SENATOR DeFRANCISCO: Any school

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

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

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

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

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

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

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

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

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

3 I can go on to the other districts
4 that are almost as embarrassing, if not more
5 so. But if you take a look at the news
6 yesterday -- and the news yesterday was about
7 55 parks and historic sites closing. Now, I
8 don't know if we did it today or not -- it was
9 held, Senator Serrano's bill was held
10 directing the government to keep the parks
11 open, with no funding behind it. That's a
12 great way to cover up the real problem. The
13 real problem is getting a budget so we can
14 keep the parks open.

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

25 Central New York seems to get a

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

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

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

25 Doesn't it embarrass anybody that

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

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

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

25 ACTING PRESIDENT SAVINO: Senator

1 Krueger, why do you rise?

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

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

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

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

1 see whether that is happening.

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

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

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

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

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

14 ACTING PRESIDENT SAVINO: Senator
15 Carl Kruger.

16 SENATOR CARL KRUGER: Thank you,
17 Madam President.

18 Senator, what year were you elected
19 to the Senate?

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

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

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

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

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

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

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

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

14 SENATOR CARL KRUGER: Through
15 you, Madam President.

16 SENATOR DeFRANCISCO: I'm sorry.

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

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

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

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

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

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

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

25 SENATOR CARL KRUGER: --

1 [inaudible] --

2 SENATOR DeFRANCISCO: And those
3 votes -- those votes --

4 SENATOR CARL KRUGER: --
5 [inaudible] --

6 ACTING PRESIDENT SAVINO:
7 Senators --

8 SENATOR CARL KRUGER: Through
9 you, Madam President.

10 SENATOR DeFRANCISCO: May I
11 finish?

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

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

21 ACTING PRESIDENT SAVINO: Yes.

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

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

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

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

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

20 SENATOR CARL KRUGER: Well, let
21 me tell you.

22 SENATOR DeFRANCISCO: Well, let
23 me --

24 SENATOR CARL KRUGER: Through
25 you, Madam President.

1 SENATOR DeFRANCISCO: May I
2 finish?

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

5 SENATOR LIBOUS: Madam President,
6 point of order.

7 ACTING PRESIDENT SAVINO: What is
8 your point of order?

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

14 ACTING PRESIDENT SAVINO:
15 Senator -- Senator Libous, I have granted -- I
16 have granted Senator DeFrancisco tremendous
17 leeway.

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

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

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

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

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

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

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

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

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

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

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

4 SENATOR DeFRANCISCO: Those are
5 two different questions.

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

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

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

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

5 SENATOR DeFRANCISCO: Is that a
6 question?

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

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

13 SENATOR DeFRANCISCO: Excuse
14 me --

15 ACTING PRESIDENT SAVINO: Senator
16 --

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

22 ACTING PRESIDENT SAVINO: Senator
23 DeFrancisco --

24 SENATOR CARL KRUGER: Through
25 you, Madam President --

1 ACTING PRESIDENT SAVINO: Yes.

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

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

6 SENATOR DeFRANCISCO: Absolutely.

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

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

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

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

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

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

3 SENATOR DeFRANCISCO: That's out
4 of order.

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

8 SENATOR DeFRANCISCO: Nor does
9 the discussion about prior years.

10 ACTING PRESIDENT SAVINO: Senator
11 Klein.

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

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

1 SENATOR LIBOUS: Madam President,
2 point of order.

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

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

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

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

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

22 Senator Kruger, do --

23 SENATOR DeFRANCISCO: I had the
24 floor.

25 ACTING PRESIDENT SAVINO: Excuse

1 me. Senator Libous.

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

5 ACTING PRESIDENT SAVINO: Senator
6 Libous.

7 SENATOR LIBOUS: Point of order,
8 Madam President.

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

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

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

16 ACTING PRESIDENT SAVINO: Thank
17 you.

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

20 SENATOR DeFRANCISCO: Uh ... yes.

21 (Laughter.)

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

1 SENATOR DeFRANCISCO: More than
2 happy to.

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

6 SENATOR DeFRANCISCO: Your
7 Honor -- Your Honor.

8 (Laughter.)

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

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

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

25 SENATOR CARL KRUGER: Well, yes,

1 I'll try to do that, Madam President.

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

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

10 ACTING PRESIDENT SAVINO: Senator
11 Kruger.

12 SENATOR CARL KRUGER: The
13 extender.

14 SENATOR DeFRANCISCO: I haven't
15 done a calculation of the spending plan of
16 this extender. The only thing I can really
17 talk about is the rate of inflation I think
18 was under 2 percent last year, and we
19 increased spending by \$10 billion -- we didn't
20 vote for it, the Republicans -- and taxes by
21 8 billion. So that's the most glaring example
22 I have of a budget that is so out of whack
23 with the rate of inflation.

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

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

5 SENATOR CARL KRUGER: Through
6 you, Madam President.

7 ACTING PRESIDENT SAVINO: Senator
8 DeFrancisco --

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

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

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

25 ACTING PRESIDENT SAVINO: Senator

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

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

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

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

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

25 As far as this extender is

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

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

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

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

16 SENATOR DeFRANCISCO: Yes.

17 ACTING PRESIDENT SAVINO: Senator
18 DeFrancisco yields.

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

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

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

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

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

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

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

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

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

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

1 SENATOR DeFRANCISCO: I
2 acknowledged that earlier.

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

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

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

14 SENATOR DeFRANCISCO: We have
15 recommendations for cuts, absolutely.

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

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

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

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

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

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

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

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

15 SENATOR LIBOUS: Excuse me, Madam
16 President.

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

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

22 ACTING PRESIDENT SAVINO: Senator
23 Kruger, on the bill.

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

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

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

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

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

25 Thank you.

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

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

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

9 SENATOR DeFRANCISCO: Yes, I
10 will.

11 ACTING PRESIDENT SAVINO: Senator
12 DeFrancisco yields.

13 SENATOR LIZ KRUEGER: Thank you
14 very much.

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

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

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

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

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

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

20 SENATOR DeFRANCISCO: Yes.

21 ACTING PRESIDENT SAVINO: Senator
22 DeFrancisco yields.

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

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

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

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

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

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

25 ACTING PRESIDENT CRAIG JOHNSON:

1 I could respond in all sorts of ways.

2 Senator Krueger.

3 SENATOR LIZ KRUEGER: Thank you.

4 On the bill, Mr. President.

5 ACTING PRESIDENT CRAIG JOHNSON:

6 Senator Krueger, on the bill.

7 SENATOR LIZ KRUEGER: Thank you.

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

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

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

1 well as clinics, doctors and pharmacies.

2 That's what's in this extender bill.

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

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

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

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

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

4 In 2009, for the same period, if we
5 assume approximately the same money,
6 \$850 million would not be collected next week.
7 And in fact since the Tax Department also
8 offers tax refunds, particularly heavy at this
9 time of year, if we shut down government, if
10 we don't pass an extender tonight, for this
11 same period, assuming equivalent numbers to
12 2009, 72,000 taxpayers are not going to
13 receive their income tax refund next week.

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

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

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

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

9 ACTING PRESIDENT CRAIG JOHNSON:
10 Thank you, Senator Krueger.

11 Senator Klein.

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

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

20 Read the last section on Calendar
21 Number 554.

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

24 ACTING PRESIDENT CRAIG JOHNSON:
25 Call the roll.

1 (The Secretary called the roll.)

2 ACTING PRESIDENT CRAIG JOHNSON:

3 Senator Duane.

4 SENATOR DUANE: Aye.

5 ACTING PRESIDENT CRAIG JOHNSON:

6 Senator Duane, aye on the bill.

7 The Secretary will please call the
8 roll on Calendar 555.

9 THE SECRETARY: Calendar Number
10 555, by the Senate Committee on Rules, Senate
11 Print 7847, an act to amend the State Finance
12 Law.

13 ACTING PRESIDENT CRAIG JOHNSON:
14 Read the last section.

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

17 ACTING PRESIDENT CRAIG JOHNSON:
18 Call the roll.

19 (The Secretary called the roll.)

20 ACTING PRESIDENT CRAIG JOHNSON:

21 Senator Duane.

22 SENATOR DUANE: Aye.

23 ACTING PRESIDENT CRAIG JOHNSON:

24 Senator Duane is aye.

25 Please withdraw the rolls for each

1 of those two bills.

2 Calendar Number 554 is again before
3 the house.

4 Senator Bonacic.

5 SENATOR BONACIC: Thank you,
6 Mr. President.

7 ACTING PRESIDENT CRAIG JOHNSON:
8 On the bill?

9 SENATOR BONACIC: On the bill.

10 ACTING PRESIDENT CRAIG JOHNSON:
11 On the bill.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 ACTING PRESIDENT CRAIG JOHNSON:
11 Thank you, Senator Bonacic.

12 Senator Nozzolio.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 the bill?

2 Senator DeFrancisco, you, according
3 to the Senate stenographer, have exceeded the
4 30 minutes that a Senator can speak on a bill,
5 pursuant to Rule 9, Section 3(d). So I would
6 suggest you explain your vote if you would
7 like to continue to speak.

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

11 ACTING PRESIDENT SAVINO: Senator
12 DeFrancisco --

13 SENATOR DeFRANCISCO: -- I have
14 to ask --

15 ACTING PRESIDENT SAVINO: -- that
16 was not a request. That was a polite way of
17 telling you that you've exceeded the
18 30 minutes that you are entitled to as a
19 member of the Senate, but you may explain your
20 vote. You cannot continue to debate beyond
21 the 30 minutes.

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

25 ACTING PRESIDENT SAVINO: We have

1 been tracking the debate, Senator DeFrancisco.

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

4 ACTING PRESIDENT SAVINO: Senator
5 Klein.

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

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

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

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

1 took over the floor.

2 ACTING PRESIDENT SAVINO: Senator
3 Klein.

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

8 SENATOR LIBOUS: Madam President.
9 Madam President.

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

12 Senator Libous.

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

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

17 SENATOR WINNER: On the bill.

18 ACTING PRESIDENT SAVINO: Senator
19 Winner, on the bill.

20 SENATOR WINNER: Would Senator
21 DeFrancisco yield to a question.

22 SENATOR DeFRANCISCO: Yes.

23 ACTING PRESIDENT SAVINO:
24 Proceed, Senator Winner.

25 SENATOR WINNER: Thank you.

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

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

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

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

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

4 ACTING PRESIDENT SAVINO: Senator
5 Klein.

6 SENATOR KLEIN: Madam President,
7 another point of order.

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

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

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

22 SENATOR LIBOUS: Madam
23 President --

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

1 SENATOR LIBOUS: Madam President,
2 point of order.

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

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

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

10 SENATOR LIBOUS: Excuse me --

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

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

15 ACTING PRESIDENT SAVINO:
16 Gentlemen (gaveling).

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

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

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

1 asking a question.

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

4 SENATOR KLEIN: Madam President.

5 ACTING PRESIDENT SAVINO: Senator
6 Klein.

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

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

18 SENATOR KLEIN: Madam President.
19 Madam President.

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

22 ACTING PRESIDENT SAVINO: Senator
23 Klein, your point --

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

1 cannot --

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

4 SENATOR LIBOUS: Only not as
5 well, Madam President.

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

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

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

14 SENATOR KLEIN: Please rule on
15 that, Madam President.

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

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

21 ACTING PRESIDENT SAVINO: No.

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

25 ACTING PRESIDENT SAVINO: There

1 is nothing to be heard --

2 SENATOR KLEIN: -- [inaudible] --

3 Madam President.

4 SENATOR DeFRANCISCO: May I be
5 heard on the appeal.

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

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

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

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

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

23 SENATOR SALAND: Madam Chair,
24 point of order.

25 ACTING PRESIDENT SAVINO: He's

1 challenged my ruling.

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

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

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

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

18 Announce the results.

19 THE SECRETARY: Ayes, 29. Nays,
20 32.

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

23 SENATOR SALAND: Point of order,
24 Madam President. Point of order, Madam
25 President.

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

3 SENATOR LIBOUS: Madam President.

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

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

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

11 SENATOR SALAND: Madam President,
12 this was not my initial point of order. But
13 since Senator Duane has been excused and not
14 in the chamber, how did you come up with
15 32 votes? The roll was not open for him to
16 vote.

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

22 SENATOR SALAND: The clerk
23 announced 32 votes.

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

1 overturn the ruling of the chair.

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

4 ACTING PRESIDENT SAVINO:
5 Correct.

6 SENATOR SALAND: Madam President.

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

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

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

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

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

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

6 ACTING PRESIDENT SAVINO: Senator
7 Saland (gaveling).

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

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

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

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

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

25 In fact, I thought it was kind of a

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

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

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

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

1 no on this measure.

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

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

8 Read the last section.

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

11 ACTING PRESIDENT SAVINO: Call
12 the roll.

13 (The Secretary called the roll.)

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

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

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

1 because we're just doing extenders.

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

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

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

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

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

6 Thank you, Madam President.

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

9 Senator Saland, to explain his
10 vote.

11 SENATOR SALAND: Thank you, Madam
12 President.

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

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

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

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

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

21 I vote in the negative, Madam
22 President.

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

25 Are there any other Senators

1 wishing to explain their vote?

2 Seeing none, announce the results.

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

12 Ayes, 32. Nays, 29.

13 ACTING PRESIDENT SAVINO: The
14 bill is passed.

15 The Secretary will read.

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

22 ACTING PRESIDENT SAVINO:
23 Substitution ordered.

24 Senator Libous.

25 SENATOR LIBOUS: Madam President,

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

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

8 SENATOR LIBOUS: Thank you, Madam
9 President.

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

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

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

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

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

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

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

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

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

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

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

20 The bill that you seek to amend
21 deals with the issuance of certain bonds.
22 This amendment addresses the Power for Jobs
23 program, which falls outside the scope of the
24 bill and is therefore not germane.

25 SENATOR LIBOUS: Madam President,

1 I know this is shocking to you, but I appeal
2 the ruling of the chair.

3 I believe that my amendment is
4 germane. It is a very serious issue. And
5 it's something that needs to be extended.
6 This program has run out.

7 ACTING PRESIDENT SAVINO: All
8 those wishing to overturn the ruling of the
9 chair please indicate by raising your hand.

10 Announce the results.

11 THE SECRETARY: Ayes, 29. Nays,
12 31.

13 ACTING PRESIDENT SAVINO: The
14 motion fails.

15 The bill is before the house. Are
16 there any members wishing to speak on the bill
17 before the house?

18 Seeing none, debate is closed. The
19 Secretary will ring the bells.

20 Read the last section.

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

23 ACTING PRESIDENT SAVINO: Call
24 the roll.

25 (The Secretary called the roll.)

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

3 SENATOR DeFRANCISCO: I'm going
4 to vote yes on this bill.

5 And I just want to put on the
6 record I asked a question in Finance whether
7 this bonding that we're authorizing is for
8 existing projects only and doesn't authorize
9 new borrowing for projects yet to be
10 determined. And the answer was yes, it's just
11 for existing contracts.

12 And on that grounds, I'm voting
13 yes, in order to try to get more people
14 working on existing projects rather than --
15 and not authorize additional borrowing until
16 our budget situation has been clarified.

17 Thank you.

18 ACTING PRESIDENT SAVINO: Senator
19 DeFrancisco will be recorded in the
20 affirmative.

21 Any other Senators wishing to
22 explain their vote?

23 Announce the results.

24 THE SECRETARY: Those recorded in
25 the negative on Calendar Number 555 are

1 Senators Hannon, Larkin and Marcellino.

2 Ayes, 58. Nays, 3.

3 ACTING PRESIDENT SAVINO: The
4 bill is passed.

5 Senator Klein, that completes the
6 reading of the controversial supplemental
7 calendar.

8 SENATOR KLEIN: Madam President,
9 at this time can we please go to a reading of
10 the supplemental active list.

11 ACTING PRESIDENT SAVINO: The
12 Secretary will read.

13 THE SECRETARY: Calendar Number
14 390, by Senator DeFrancisco, Senate Print
15 6464 --

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

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

20 THE SECRETARY: Calendar Number
21 465, by Member of the Assembly Thiele,
22 Assembly Print Number 9766A, an act to amend
23 the Public Officers Law.

24 ACTING PRESIDENT SAVINO: Read
25 the last section.

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

3 ACTING PRESIDENT SAVINO: Call
4 the roll.

5 (The Secretary called the roll.)

6 SENATOR SALAND: I don't have a
7 calendar.

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

10 Senator Saland, have you found a
11 calendar?

12 SENATOR SALAND: I have one.

13 ACTING PRESIDENT SAVINO: Read
14 the last section.

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

17 ACTING PRESIDENT SAVINO: Call
18 the roll.

19 (The Secretary called the roll.)

20 ACTING PRESIDENT SAVINO:
21 Announce the results.

22 THE SECRETARY: Ayes, 61.

23 ACTING PRESIDENT SAVINO: The
24 bill is passed.

25 THE SECRETARY: Calendar Number

1 467, by Member of the Assembly Amedore,
2 Assembly Print Number 10164, an act to amend
3 the General Municipal Law.

4 ACTING PRESIDENT SAVINO: Read
5 the last section.

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

8 ACTING PRESIDENT SAVINO: Call
9 the roll.

10 (The Secretary called the roll.)

11 ACTING PRESIDENT SAVINO:
12 Announce the results.

13 THE SECRETARY: Ayes, 61.

14 ACTING PRESIDENT SAVINO: The
15 bill is passed.

16 THE SECRETARY: Excuse me. In
17 relation to Calendar Number 467: Ayes, 60.
18 Nays, 1. Senator Parker recorded in the
19 negative.

20 ACTING PRESIDENT SAVINO: The
21 bill is passed.

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

25 SENATOR KLEIN: Madam President,

1 I believe Senator Libous has a floor motion.

2 ACTING PRESIDENT SAVINO: Senator
3 Libous.

4 SENATOR LIBOUS: Thank you, Madam
5 President.

6 On behalf of Senator Nozzolio, I
7 move the following bill be discharged from its
8 respective committee and be recommitted with
9 instructions to strike the enacting clause.
10 And it's Senate Print Number 2401.

11 ACTING PRESIDENT SAVINO: So
12 ordered.

13 SENATOR LIBOUS: Thank you, Madam
14 President.

15 ACTING PRESIDENT SAVINO: Senator
16 Klein.

17 SENATOR KLEIN: Madam President,
18 is there any further business at the desk?

19 ACTING PRESIDENT SAVINO: No,
20 Senator Klein, there is no further business at
21 the desk.

22 SENATOR KLEIN: There being no
23 further business, Madam President, I move we
24 adjourn until Tuesday, May 18th, at 11:00 a.m.

25 ACTING PRESIDENT SAVINO: Senator

1 Klein, there being no further business to come
2 before the Senate, on motion, the Senate
3 stands adjourned until Tuesday, May 18th, at
4 11:00 a.m.

5 (Whereupon, at 8:40 p.m., the
6 Senate adjourned.)
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