NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

June 7, 2010

5:43 p.m.

REGULAR SESSION

SENATOR DIANE J. SAVINO, Acting President

ANGELO J. APONTE, Secretary

P R O C E E D I N G S

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

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

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

ACTING PRESIDENT SAVINO: Today's invocation will be provided by the Reverend Peter G. Young, of Mother Teresa Community Church in Albany.

REVEREND YOUNG: Thank you, Senator. Let us pray.

And let us remember all our Senators so that they will guide our government for a just and caring society. May God strengthen them, lead them and give them wisdom and understanding as they work for our good and the good of all of our New York State citizens.

It's not always easy to be gentle. And in the political world, we're taught to be tough, competitive and assertive. But there are times when we like to be soothed and

treated gently. We treat packages with gentleness when they are labeled "Fragile: Handle With Care."

So we ask You, our compassionate God, to give the sensitivity to our Senators and the courage to be gentle with other people. Help us to hear the anguish and the hurt in other people and treat them with kindly care.

Amen.

ACTING PRESIDENT SAVINO: The reading of the Journal.

The Secretary will read.

THE SECRETARY: In Sunday, June 6, the Senate met pursuant to adjournment. The Journal of Saturday, June 5, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Klein.

SENATOR KLEIN: Madam President, on page number 36 I offer the following amendments to Calendar Number 638, Senate Print Number 1837A, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT SAVINO: So ordered.

SENATOR KLEIN: On behalf of Senator Foley, on page number 14 I offer the following amendments to Calendar Number 172, Senate Print Number 4322A, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT SAVINO: So ordered.

SENATOR KLEIN: Madam President, on behalf of Senator Savino, on page number 32 I offer the following amendments to Calendar Number 593, Senate Print Number 7452, and ask that said bill retain its place on Third

Reading Calendar.

ACTING PRESIDENT SAVINO: So ordered.

SENATOR KLEIN: Madam President, on behalf of Senator Aubertine, I wish to call up Print Number 6237, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT SAVINO: The Secretary will read.

THE SECRETARY: Calendar Number 58, by Senator Aubertine, Senate Print 6237, an act to amend the Highway Law.

ACTING PRESIDENT SAVINO: Senator Klein.

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

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

(The Secretary called the roll.)

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT SAVINO: Senator Klein.

SENATOR KLEIN: Madam President,

I now offer the following amendments.

ACTING PRESIDENT SAVINO: Amendments received.

SENATOR KLEIN: Madam President, on behalf of Senator Peralta, I move that the following bill be discharged from its respective committee and be recommitted with instructions to strike the enacting clause: Senate Print Number 7317.

ACTING PRESIDENT SAVINO: So ordered.

SENATOR KLEIN: Madam President, on behalf of Senator Andrea Stewart-Cousins, on page number 32 I offer the following amendments to Calendar Number 590, Senate Print Number 6651A, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT SAVINO: So ordered.

Senator Klein.

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

ACTING PRESIDENT SAVINO: The

Secretary will read.

THE SECRETARY: On page 39, Senator Diaz moves to discharge, from the Committee on Aging, Assembly Bill Number 2548 and substitute it for the identical Senate Bill Number 7567, Third Reading Calendar 690.

ACTING PRESIDENT SAVINO: Substitution ordered.

Senator Klein.

SENATOR KLEIN: Madam President, can you please recognize Senator Libous for some motions.

ACTING PRESIDENT SAVINO: Senator Libous.

SENATOR LIBOUS: Madam President, do you recognize me?

ACTING PRESIDENT SAVINO: I do.

SENATOR LIBOUS: Thank you, Madam President.

On behalf of Senator DeFrancisco, on page number 23 I offer the following amendments to Calendar Number 390, Senate Print 6464, and I ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT SAVINO: So

ordered.

SENATOR LIBOUS: Madam President, on behalf of Senator Farley, I wish to call up his bill, Print Number 1260A, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT SAVINO: The Secretary will read.

THE SECRETARY: Calendar Number 91, by Senator Farley, Senate Print 1260A, an act to authorize.

SENATOR LIBOUS: Madam President, I now wish to reconsider the vote by which this bill was passed.

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

(The Secretary called the roll.)

THE SECRETARY: Ayes, 57.

ACTING PRESIDENT SAVINO: Senator Libous.

SENATOR LIBOUS: Madam President, I offer up the following amendments.

ACTING PRESIDENT SAVINO: Amendments received.

Senator Klein.

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

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

SENATOR KLEIN: Yes, it has, Madam President.

ACTING PRESIDENT SAVINO: The Secretary will read.

THE SECRETARY: By Senator Sampson, legislative resolution commending Pastor Joseph Victor upon the occasion of receiving the Men of Distinction Award on June 10, 2010.

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

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

(Response of "Aye.")

ACTING PRESIDENT SAVINO: Opposed, nay.

(No response.)

ACTING PRESIDENT SAVINO: The resolution is adopted.

Senator Klein.

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

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

SENATOR KLEIN: Yes, it has, Madam President.

ACTING PRESIDENT SAVINO: The Secretary will read.

THE SECRETARY: By Senator Sampson, legislative resolution commending William Scott Wilkins upon the occasion of receiving the Men of Distinction Award on June 10, 2010.

ACTING PRESIDENT SAVINO: Are

there any Senators wishing to be heard on the resolution?

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

(Response of "Aye.")

ACTING PRESIDENT SAVINO: Opposed, nay.

(No response.)

ACTING PRESIDENT SAVINO: The resolution is adopted.

Senator Klein.

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

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

SENATOR KLEIN: Yes, it has, Madam President.

ACTING PRESIDENT SAVINO: The Secretary will read.

THE SECRETARY: By Senator Sampson, legislative resolution commending David Best upon the occasion of receiving the Men of Distinction Award on June 10, 2010.

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

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

(Response of "Aye.")

ACTING PRESIDENT SAVINO: Opposed, nay.

(No response.)

ACTING PRESIDENT SAVINO: The resolution is adopted.

Senator Klein.

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

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

Temporary President?

SENATOR KLEIN: Yes, it has, Madam President.

ACTING PRESIDENT SAVINO: The Secretary will read.

THE SECRETARY: By Senator Sampson, legislative resolution commending Mitchell S. Pinsky upon the occasion of receiving the Men of Distinction Award on June 10, 2010.

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

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

(Response of "Aye.")

ACTING PRESIDENT SAVINO: Opposed, nay.

(No response.)

ACTING PRESIDENT SAVINO: The resolution is adopted.

Senator Klein.

SENATOR KLEIN: Madam President, I believe there's another resolution at the

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

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

SENATOR KLEIN: Yes, it has, Madam President.

ACTING PRESIDENT SAVINO: The Secretary will read.

THE SECRETARY: By Senator Sampson, legislative resolution commending Philip Giller upon the occasion of receiving the Men of Distinction Award on June 10, 2010.

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

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

(Response of "Aye.")

ACTING PRESIDENT SAVINO: Oppose nay.

(No response.)

ACTING PRESIDENT SAVINO: The resolution is adopted.

Senator Klein.

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

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

SENATOR KLEIN: Yes, it has, Madam President.

ACTING PRESIDENT SAVINO: The Secretary will read.

THE SECRETARY: By Senator Sampson, legislative resolution commending Dean Curtis Elmore upon the occasion of receiving the Men of Distinction Award on June 10, 2010.

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

Seeing none, the question is on the

resolution. All those in favor please signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT SAVINO: Opposed, nay.

(No response.)

ACTING PRESIDENT SAVINO: The resolution is adopted.

Senator Klein.

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

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

SENATOR KLEIN: Yes, it has, Madam President.

ACTING PRESIDENT SAVINO: The Secretary will read.

THE SECRETARY: By Senator Sampson, legislative resolution honoring Bishop Walter Dunlap upon the occasion of his

designation for special recognition by the Free Mission Temple, Inc.

ACTING PRESIDENT SAVINO: Are there any Senators wishing to be heard on the resolution? Seeing none, the question is on the resolution. All those in favor please signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT SAVINO: Opposed, nay.

(No response.)

ACTING PRESIDENT SAVINO: The resolution is adopted.

Senator Klein.

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

ACTING PRESIDENT SAVINO: The Secretary will read.

THE SECRETARY: Calendar Number 84, by Senator Parker, Senate Print 2286A, an act to amend the Election Law.

ACTING PRESIDENT SAVINO: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT SAVINO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT SAVINO: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 84 are Senators Lanza, Larkin, Marcellino, Saland, Squadron and Volker. Also Senator C. Kruger.

Ayes, 51. Nays, 7.

ACTING PRESIDENT SAVINO: The bill is passed.

The Secretary will continue to read.

THE SECRETARY: Calendar Number 164, by Member of the Assembly Maisel, Assembly Print Number 5320A, an act to amend the Public Health Law.

ACTING PRESIDENT SAVINO: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 180th day.

ACTING PRESIDENT SAVINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT SAVINO: The bill is passed.

THE SECRETARY: Calendar Number 222, by Senator Dilan, Senate Print 1083A, an act to amend the Social Services Law.

ACTING PRESIDENT SAVINO: Read the last section.

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

ACTING PRESIDENT SAVINO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT SAVINO: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 222 are Senators DeFrancisco, Farley, Flanagan, Golden, Griffo, Lanza, Larkin, LaValle, Leibell, Libous, Marcellino, Maziarz, McDonald, Nozzolio, Ranzenhofer, Saland, Skelos, Volker and Young.

Ayes, 39. Nays, 19.

ACTING PRESIDENT SAVINO: The

bill is passed.

THE SECRETARY: Calendar Number 270, by Senator Schneiderman, Senate Print 6987A, an act to amend the Penal Law and others.

ACTING PRESIDENT SAVINO: Read the last section.

THE SECRETARY: Section 16. This act shall take effect on the 90th day.

ACTING PRESIDENT SAVINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT SAVINO: The bill is passed.

THE SECRETARY: Calendar Number 348, by Senator Hassell-Thompson, Senate Print 5207, an act to amend the Correction Law.

ACTING PRESIDENT SAVINO: Read the last section.

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

ACTING PRESIDENT SAVINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT SAVINO: The bill is passed.

THE SECRETARY: Calendar Number 442, by Senator Foley, Senate Print 5531A, an act to amend the Environmental Conservation Law.

ACTING PRESIDENT SAVINO: Read the last section.

THE SECRETARY: Section 7. This act shall take effect on the 120th day.

ACTING PRESIDENT SAVINO: Call the roll.

(The Secretary called the roll.)

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

SENATOR DeFRANCISCO: Yes, I'm going to vote no on this.

We have in this great state many different nationalities, many different languages spoken, many different people from different backgrounds. If we require one language to be posted for pesticides in an area where the individuals are predominantly of that particular background, then I can't

see how we don't end up doing the same for every single language where there's a substantial number of people that speak that language.

On pesticide signs, you can certainly do some type of symbol or color of the flag or whatever to show that there's danger without having to require several different languages on the same little flag -- or maybe it will be a very big flag after we get several different languages.

So I'm going to vote no.

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

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 442 are Senators DeFrancisco, Flanagan, Golden, Griffo, Lanza, Larkin, Leibell, Libous, Little, Maziarz, Nozzolio, Ranzenhofer, Robach, Saland, Skelos, Volker and Young.

Ayes, 41. Nays, 17.

ACTING PRESIDENT SAVINO: The bill is passed.

THE SECRETARY: Calendar Number

558, by Senator Foley, Senate Print 6699, an act to amend Chapter 591 of the Laws of 2001 amending the Banking Law.

ACTING PRESIDENT SAVINO: Read the last section.

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

ACTING PRESIDENT SAVINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT SAVINO: The bill is passed.

THE SECRETARY: Calendar Number 563, by Member of the Assembly Farrell, Assembly Print Number 8556A, an act to amend the Tax Law.

ACTING PRESIDENT SAVINO: Read the last section.

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

ACTING PRESIDENT SAVINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT SAVINO: The bill is passed.

THE SECRETARY: Calendar Number 607, by Senator Aubertine, Senate Print 7656, an act to amend the Agriculture and Markets Law.

ACTING PRESIDENT SAVINO: Read the last section.

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

ACTING PRESIDENT SAVINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT SAVINO: The bill is passed.

THE SECRETARY: Calendar Number 611, by Member of the Assembly Latimer, Assembly Print Number 5823, an act to amend the Environmental Conservation Law.

ACTING PRESIDENT SAVINO: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the 180th day.

ACTING PRESIDENT SAVINO: Call

the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT SAVINO: The bill is passed.

THE SECRETARY: Calendar Number 616, by Senator Stavisky, Senate Print 6307B, an act to amend the Education Law.

ACTING PRESIDENT SAVINO: Read the last section.

THE SECRETARY: Section 7. This act shall take effect in the 90th day.

ACTING PRESIDENT SAVINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT SAVINO: The bill is passed.

THE SECRETARY: Calendar Number 617, by Senator Montgomery --

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

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

THE SECRETARY: Calendar Number

624, by Senator Montgomery --

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

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

THE SECRETARY: Calendar Number 625, by Senator Montgomery --

SENATOR KLEIN: Lay the bill aside for the day.

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

THE SECRETARY: Calendar Number 633, by Senator Espada, Senate Print 7422, an act relating to redistributing 2009 bond volume allocations.

ACTING PRESIDENT SAVINO: Read the last section.

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

ACTING PRESIDENT SAVINO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT SAVINO: The bill is passed.

THE SECRETARY: Calendar Number 646, by Senator Thompson, Senate Print 6864, an act to amend the Executive Law.

ACTING PRESIDENT SAVINO: Read the last section.

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

ACTING PRESIDENT SAVINO: Call the roll.

(The Secretary called the roll.)

SENATOR LIBOUS: Madam President, excuse me. Can we lay this bill aside?

ACTING PRESIDENT SAVINO: The bill is laid aside.

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

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

ACTING PRESIDENT SAVINO: The Secretary will ring the bell.

Members are asked to come to the chamber for the reading of the controversial calendar.

Senator Klein.

SENATOR KLEIN: Madam President, can we come back to the controversial calendar.

Right now, could we go to a meeting of the Finance Committee, followed by a meeting of the Rules Committee in Room 332.

And can I ask members to come right back after the meeting of the Finance and Rules Committees.

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

Members are asked to return immediately to the chamber upon the completion of the Rules Committee.

The Senate will stand at ease.

(Whereupon, the Senate stood at ease at 6:08 p.m.)

(Whereupon, the Senate reconvened at 7:09 p.m.)

ACTING PRESIDENT SAVINO: Senator Klein.

SENATOR KLEIN: Madam President, I believe there's a report of the Rules

Committee at the desk. I move that we adopt the report at this time.

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

The Secretary will read.

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

Senate Print 7178A, by Senator Dilan, an act to amend the Multiple Dwellings Law;

Senate Print 8080, by Senator C. Kruger, an act to amend the Executive Law and others;

Senate Print 8088, by the Senate Committee on Rules, an act to amend the Insurance Law;

Senate Print 8089, by the Senate Committee on Rules, an act making appropriations for the support of government;

And Senate Print 8090, by the Senate Committee on Rules, an act to amend the Public Health Law and others.

All bills ordered direct to third

reading.

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

(Response of "Aye.")

ACTING PRESIDENT SAVINO: Opposed, nay.

(No response.)

ACTING PRESIDENT SAVINO: The Rules Committee report is adopted.

Senator Klein.

SENATOR KLEIN: Madam President, can we return to Calendar Number 646, which was on the controversial calendar.

ACTING PRESIDENT SAVINO: The Secretary will ring the bells and call all the members to the chamber for the reading of the controversial calendar.

The Secretary will read.

THE SECRETARY: Calendar Number 646, by Senator Thompson, Senate Print 6864, an act to amend the Executive Law.

ACTING PRESIDENT SAVINO: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT SAVINO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT SAVINO: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 646 are Senators Bonacic, DeFrancisco, Farley, Flanagan, Fuschillo, Golden, Griffo, Hannon, Lanza, Larkin, LaValle, Leibell, Libous, Little, Marcellino, Maziarz, McDonald, Nozzolio, Padavan, Ranzenhofer, Robach, Saland, Skelos, Volker, Winner and Young.

Absent from voting: Senator Seward.

Ayes, 32. Nays, 26.

ACTING PRESIDENT SAVINO: The bill is passed.

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

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

ACTING PRESIDENT SAVINO: The

Secretary will read.

THE SECRETARY: Calendar Number 760, by the Senate Committee on Rules, Senate Print 8088, an act to amend the Insurance Law.

ACTING PRESIDENT SAVINO: Senator Klein.

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

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

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

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

(Response of "Aye.")

ACTING PRESIDENT SAVINO: Opposed, nay.

(No response.)

ACTING PRESIDENT SAVINO: The message is accepted.

Read the last section.

THE SECRETARY: Section 4. This

act shall --

SENATOR LIBOUS: Lay the bill aside.

ACTING PRESIDENT SAVINO: The bill is laid aside.

THE SECRETARY: Calendar Number 761, by the Senate Committee on Rules, Senate Print 8089, an act making appropriations for the support of government.

ACTING PRESIDENT SAVINO: Senator Klein.

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

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

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

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

(Response of "Aye.")

ACTING PRESIDENT SAVINO: Opposed, nay.

(Response of "Nay.")

ACTING PRESIDENT SAVINO: The message is accepted.

Read the last section.

THE SECRETARY: Section 20. This --

SENATOR LIBOUS: Lay it aside.

ACTING PRESIDENT SAVINO: The bill is laid aside.

THE SECRETARY: Calendar Number 762, by the Senate Committee on Rules, Senate Print 8090, an act to amend the Public Health Law, the State Finance Law, and the Elder Law.

ACTING PRESIDENT SAVINO: Senator Klein.

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

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

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

ACTING PRESIDENT SAVINO: The

question is on the acceptance of the message of necessity. All those in favor please signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT SAVINO: Opposed, nay.

(Response of "Nay.")

ACTING PRESIDENT SAVINO: The message is accepted.

Read the last section.

SENATOR LIBOUS: Lay it aside.

ACTING PRESIDENT SAVINO: Senator Klein.

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

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

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

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

(Response of "Aye.")

ACTING PRESIDENT SAVINO: Opposed, nay.

(Response of "Nay.")

ACTING PRESIDENT SAVINO: The message is accepted.

Read the last section.

SENATOR LIBOUS: Lay the bill aside.

ACTING PRESIDENT SAVINO: He didn't read the last section yet, Senator Libous.

SENATOR LIBOUS: Lay the bill aside.

ACTING PRESIDENT SAVINO: The bill is laid aside.

Senator Klein.

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

ACTING PRESIDENT SAVINO: The Secretary will ring the bells.

We ask all members to please return to the chamber and stay in the chamber for the reading of the controversial supplemental

calendar. The calendar will go much quicker, members, if we remain in the chamber.

The Secretary will read.

THE SECRETARY: Calendar Number 760, by the Senate Committee on Rules, Senate Print 8088, an act to amend the Insurance Law.

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

SENATOR LIBOUS: Thank you, Madam President. I believe there's an amendment by Senator Hannon at the desk. I would ask that you waive its reading and call on Senator Hannon.

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

SENATOR HANNON: Thank you, Madam President.

This amendment would take the provisions of the proposed bill and make it better. It would institute a system of prior approval on rates, but it would ensure that only the people who are pressing the limit, are raising their rates far too much on their

premium payers, would be subject to it.

It would also make sure that the Superintendent of Insurance had sufficient powers to ensure that those who are the most costly insurers would come under its provisions.

It would also add a definition of what is called the medical loss ratio. Because under the current proposal before us, there is no definition.

And that's really necessary because the Federal Healthcare Reform Bill, which was passed under President Obama's championship, requires that there be a federal medical loss ratio, and that federal medical loss ratio must be established before the end of this year and may well be established before that, because Health and Human Services Secretary Sebelius has asked the National Association of Insurance Commissioners to come up with one very soon, and they have said they'll do it by the end of this month or the end of next month. So we would cure that.

In addition, we would make sure that only the highest costly insurers are

covered. If they were not, then they would not have to go through the prior approval process. It would simplify the process. It would be cheaper for the state because, if they're meeting the goal of this bill, then they would not have to go through a costly application and the department would not have to go through a costly review procedure.

For those reasons, Madam President, I would submit the amendment ought to be accepted. This is something that was proposed as part of the Executive Budget. It's not necessary to do as part of the one-week extension of the budget, and therefore putting this off to get the amendment printed could be accomplished easily.

Thank you.

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

Seeing none, the question is on the nonsponsor motion to amend Calendar Number 760. Those Senators voting in support of the nonsponsor amendment please raise your hands.

Announce the results.

THE SECRETARY: Ayes, 26. Nays, 32.

ACTING PRESIDENT SAVINO: The motion fails.

Read the last section.

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

ACTING PRESIDENT SAVINO: Call the roll.

(The Secretary called the roll.)

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

SENATOR HANNON: While I support the goals of what we're trying to do -- hold down the rates of insurance for health insurance to the people who have to pay them -- I think that there are several problems involved with this.

The bill is patterned after the regulatory scheme that we had in the early '90s. That scheme led to the bankruptcy of an insurance company called WellCare. It led to enormous difficulties with the Empire Blue Cross-Blue Shield, which required a lot of attention by the Legislature at that Point.

And it fails to mesh with the federal new regulation of insurance. It does not have a definition of medical loss ratio in here. It gives untoward powers to the Superintendent of Insurance, which if done wisely is fine, but that's not always been the case.

For those reasons, while I am supporting the bill, I am putting on the record my doubts that this scheme will work properly.

Thank you.

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

SENATOR BRESLIN: Thank you very much, Madam President.

I think this is a very bright day for New Yorkers. For the last ten years, we have learned to live under bad policy, and that's file and use. For those who don't know, an HMO, when they want a rate increase for the last number of years have filed a sheet of paper and used that rate increase that they filed on that sheet of paper. Maybe a year and a half, a year later the Insurance Department might have discovered that the

raise was not appropriate. They have fined various insurance companies for that. But unfortunately, because those rates went up, people were driven off the insurance rolls.

And in the last ten years we've also learned, not only statewide but federally, that deregulation doesn't work. And I'll give us an example, the AIG nationally. AIG as a financial institution failed because it wasn't regulated. Its insurance arms worked just fine because there was sufficient regulation and sufficient reserves.

The prior approval that we pass here today will allow the Insurance Department, within a 60-day period -- as opposed to the bill that was used during the 1990s, the prior approval, this one will have 60 days for the Insurance Department to make a decision on whether a rate is justified or not.

The Insurance Department will have an opportunity to just not look at the minimum loss ratio, but will have the chance to look at the solvency of the company, the way

profits are going, are they going up and down, are there particular health insurance products that they have that need a review and some direction. This will take care of that.

And the minimum loss ratio is above the federal. It's at 82. And it is somewhat unclear in the statute we're passing here today. But there's a number of different things -- we want to make sure that health programs don't have the unintended consequences of being eliminated, that they would be included in the minimum loss ratio. There's also the situation with taxes that health insurance -- that health maintenance organizations use. So there will be a rule-making process within the department to accomplish those goals.

But today we satisfy small businesses. We satisfy chambers of commerce who have been crying out for better healthcare at a more affordable price. And this is the day that we will now have it.

Thank you, Madam President.

ACTING PRESIDENT SAVINO: Senator Breslin to be recorded in the affirmative.

I would like to remind members on explaining your vote the time limit is two minutes. Let us try and stick to that.

Are there any other Senators wishing to explain their vote?

Seeing none, announce the results.

THE SECRETARY: In reference to Calendar Number 760: Ayes, 58. Nays, 0.

Absent from voting: Senator Seward.

ACTING PRESIDENT SAVINO: The bill is passed.

THE SECRETARY: Calendar Number 761, by the Senate Committee on Rules, Senate Print 8089, an act making appropriations for the support of government.

SENATOR LIBOUS: Explanation.

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

SENATOR CARL KRUGER: Thank you, Madam President.

Through you, this is the tenth extender, which basically keeps government functioning during this period of budget negotiations. It provides for $55.9 billion

in All Funds appropriation and $12.4 billion in a General Fund appropriation.

ACTING PRESIDENT SAVINO: Senator DeFrancisco.

SENATOR DeFRANCISCO: Would Senator Kruger yield to a question.

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

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

ACTING PRESIDENT SAVINO: Senator Kruger yields.

SENATOR DeFRANCISCO: The appropriation that you just described is $55.9 billion. And from the bill, it appears that these pertain not only to one week but also throughout the entire year. And my question is, what percentage of the entire budget does this extender represent?

SENATOR CARL KRUGER: Through you, Madam President, approximately 40 percent.

SENATOR DeFRANCISCO: Would Senator Kruger yield to another question.

SENATOR CARL KRUGER: Yes, I do.

ACTING PRESIDENT SAVINO: Senator Kruger yields.

SENATOR DeFRANCISCO: Today we are passing 40 percent of the budget of the State of New York. Can you tell me by what process we arrived at this particular decision today?

SENATOR CARL KRUGER: Through you, Madam President, by legislation.

SENATOR DeFRANCISCO: Would Senator Kruger yield to another question.

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

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

SENATOR DeFRANCISCO: Would Senator Kruger tell me by whom -- and I don't mean bill drafting -- what individuals created the legislation and made the agreements upon which the legislation was based, and how did that happen from last Monday till today?

SENATOR CARL KRUGER: Through you, Madam President, these are Governor's bills.

SENATOR DeFRANCISCO: Would

Senator Kruger yield to another question.

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

ACTING PRESIDENT SAVINO: Senator Kruger yields.

SENATOR DeFRANCISCO: Was there any negotiations -- three ways, five ways -- between any leaders between last Monday and today to arrive at this 40 percent of the budget of the State of New York?

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

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

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

SENATOR CARL KRUGER: Yes, I do.

ACTING PRESIDENT SAVINO: Senator Krueger yields.

SENATOR DeFRANCISCO: Can you tell me when those meetings were held and who participated in those meetings to arrive at this agreement?

SENATOR CARL KRUGER: Through you, Madam President, I don't have dates,

times and places, but I will try to get them furnished to you.

SENATOR DeFRANCISCO: Would Senator Kruger yield to another question.

SENATOR CARL KRUGER: Yes, I do.

ACTING PRESIDENT SAVINO: Senator Kruger yields.

SENATOR DeFRANCISCO: Since we're going to vote on this presumably tonight sometime before midnight so government won't stop, when would you anticipate having that information for the rank and file of this chamber?

SENATOR CARL KRUGER: Through you, Madam President, I'm going to ask the staff to compile it as quickly as possible.

SENATOR DeFRANCISCO: Point of order. May we go at ease until we get this information, Madam President?

ACTING PRESIDENT SAVINO: Senator Klein.

SENATOR KLEIN: Madam President, if Senator DeFrancisco wants to stand at ease, he'll have to make a formal motion to do that.

SENATOR DeFRANCISCO: There's no

need for a formal motion. I would just like to ask Senator Kruger another question, if he'd be willing to answer it.

ACTING PRESIDENT SAVINO: Senator Kruger, will you yield?

SENATOR CARL KRUGER: Yes, certainly. Through you, Madam President.

ACTING PRESIDENT SAVINO: Senator Kruger will continue to yield.

SENATOR DeFRANCISCO: Are you telling this body and all the viewers that may be watching this, either through TV stations or the Internet, that you as chairman of Finance do not know as you stand here today, proposing a bill that includes 40 percent of the budget of the State of New York, who participated in the discussions to arrive at the legislation that is this bill that we're voting on today?

SENATOR CARL KRUGER: Through you, Madam President. I did not say, Senator, that I did not know who. I said that in order to put together the times, places and information, we would have staff do it and get it to you as expeditiously as possible.

SENATOR DeFRANCISCO: Would Senator Kruger yield to another question.

SENATOR CARL KRUGER: Yes. And the last one, Madam President.

ACTING PRESIDENT SAVINO: Senator Kruger yields for one more question.

SENATOR DeFRANCISCO: Well, I'll try to make this a good one since he's limited in time tonight in answering questions on 40 percent of the budget.

Can you tell me whether or not any members of the minority parties in either house participated in this drafting -- in the negotiations that led to the drafting? And I'm talking about either Senator Skelos or Minority Leader Kolb.

SENATOR CARL KRUGER: Through you, Madam President, to the best of my knowledge they did not.

Thank you.

SENATOR DeFRANCISCO: Would Senator Kruger yield to another question.

ACTING PRESIDENT SAVINO: Senator Kruger?

SENATOR CARL KRUGER: No.

ACTING PRESIDENT SAVINO: Senator Kruger will not yield for another question.

Senator DeFrancisco, on the bill.

SENATOR DeFRANCISCO: For so many years the Democrat Party lusted to become the majority party to run this house. It is absolutely amazing what we're viewing here today. We're in our tenth budget extender, tenth budget extender. And this extender miraculously results in the determination of 40 percent of the state budget of the New York State -- $55.9 billion, with a B.

And there's been no participation for the minority party, no public conference committee meetings, no determinations whatsoever of who the conference committee members are going to be by the Assembly, no schedule for conference committee meetings, and miraculously -- we don't when, we don't know how many meetings, we don't know who was there -- but all we do know is that no Republican minority members participated in those discussions.

I don't know how to aptly describe that process. But it certainly violates the

law, the letter of the law and the spirit of the law of 2007 which called for an open public process.

And the amazing part about all of this is that the mere fact that these cuts take place, you can't prioritize in this budget extender how these cuts compare to maybe other areas that could be cut. Maybe there's a better way to do it. Maybe if the public participated and there was discussions open among all the conference committees of members of this house, maybe there would be an idea how you wouldn't have to cut certain areas of this budget that are being cut by this miraculous process.

In addition, there are other areas of potential cuts. And at the next extender bill that's on the agenda there's going to be some suggestions, some amendments, since the Republican minority was not allowed to participate in the process. Senator Skelos and Assembly Minority Leader Kolb are invited to the five-way leaders' public show that goes on where nothing is decided. But where it really matters, behind closed doors, and where

it really would matter, at conference committees, they're not participating.

But we've got other suggestions which I've got a feeling -- I just have this feeling, I don't know where I get it from -- they're probably not going to be accepted by the majority party. But in any event, we're going to make that attempt later on.

So here we are doing a piecemeal budget. And when you do a budget -- at least I thought when a family does a budget, the state should do it the same way. Namely, you've got to make priorities. What -- maybe some of these cuts are not the cuts that are the most logical ones to be made when you consider the other 60 percent of the budget.

So apparently the process this year is going to be do 40 percent today, maybe 20 percent next week, maybe another 15 percent the week after that, and at some point in time we'll get to 100 percent by a piecemeal process that is totally violative of the rules and regulations by statute that were provided in 2007.

So for the reasons that I just

mentioned -- the process is faulty, it violates the law, the result is faulty because we're not laying one potential cut against another potential cut, we're not making priorities, we're just doing bits and pieces -- and who knows there might not be other cuts to healthcare in the next segment of our extenders -- no one in good conscience could vote on 40 percent of at budget not knowing what remains in the last 60 percent. Nobody can if you're being honest with yourself.

And I made the analogy with families. Can you imagine if you had a problem in your family as far as the budget is concerned and this week we're going to do 40 percent of it and we'll worry about the next 60 percent next week or 20 percent a week thereafter?

You may make mistakes in the first round. And I've got a feeling and you'll see from our potential amendments that a lot of mistakes were made in this particular extender.

So for I don't know what straight

week -- I think I may have vote for one or two in the beginning -- but for at least eight straight weeks I'm voting no on this budget. It's a piecemeal document that has such a great percentage of the total budget that it cannot possibly be passed or voted on by anybody who truly, truly is trying to make a good budget for the State of New York.

So when the vote is called I will be voting no. Thank you, Madam President.

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

Senator Nozzolio, on the bill.

SENATOR NOZZOLIO: Thank you, Madam President. Will Senator Kruger yield?

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

SENATOR NOZZOLIO: Yes, I would.

ACTING PRESIDENT SAVINO: Senator Kruger yields.

SENATOR NOZZOLIO: Thank you, Senator Kruger. Through you, Madam President.

Will the bill before us require any tax hikes?

SENATOR CARL KRUGER: Through

you, Madam President, no.

SENATOR NOZZOLIO: Will Senator Kruger continue to yield.

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

SENATOR CARL KRUGER: Yes, I do.

ACTING PRESIDENT SAVINO: Senator Kruger yields.

SENATOR NOZZOLIO: Senator Kruger, do you guarantee to the members who are looking at this measure -- and Senator DeFrancisco indicated 40 percent of the state budget contains the spending plan therein -- that there will be no tax hikes this year as a result of this spending plan?

SENATOR CARL KRUGER: Through you, Madam President. Firstly, no, I did not say that. The reference was to this bill.

Secondly, secondly -- you know, this is almost like Gaslight. Because, you know, let's just reflect back for a moment. Last week, at the five-way leaders' meeting, there was a request made and an affirmation that the scorecards would be distributed to the minority and the scorecards were

distributed to the minority. And part of that process was that the give-and-take where the recommendations and the suggestions and the minority's blueprint towards resolving this budget would become crystal-clear and available to everyone.

Well, the fact of the matter is that did not happen. So consequently, you know --

SENATOR SKELOS: Madam President.

SENATOR CARL KRUGER: -- when we have the chairman of our Health Committee, Senator Duane, send a letter --

ACTING PRESIDENT SAVINO: Senator Skelos.

SENATOR CARL KRUGER: -- send a letter to Senator Hannon -- I have the floor -- to Senator Hannon asking for participation on the health agenda of the budget and to participate in it --

SENATOR LIBOUS: Madam President.

SENATOR CARL KRUGER: -- he gets no response.

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

SENATOR LIBOUS: Senator Nozzolio has the floor, and Senator Skelos has risen.

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

SENATOR SKELOS: Madam President, just as a point of clarification to Senator Kruger, last week at the five-way leaders' meeting we were told by the Governor and it was agreed upon by the two majorities that we would see the scoring by the Governor as to the actual numbers in the Senate majority resolution, the Assembly majority resolution, and what had been agreed upon between the two majorities concerning $6 billion in supposed cuts.

We have not received those scorings. We have not received them. So you stand corrected.

SENATOR CARL KRUGER: Through you, Madam President. Once again, to the best of my recollection, was that those scorecards were going to be distributed to both minorities and at that point both minorities were going to offer up their suggestions and their view as to the budget resolution

process. That's the way I heard it.

SENATOR NOZZOLIO: Will Senator Kruger continue to yield, Madam President?

ACTING PRESIDENT SAVINO: Senator --

SENATOR SKELOS: Point of clarification. What is the scoring --

ACTING PRESIDENT SAVINO: Senator Skelos --

SENATOR KLEIN: Madam President.

ACTING PRESIDENT SAVINO: Yes, Senator Klein.

SENATOR KLEIN: If Senator Skelos wants to speak, he has to yield to Senator Nozzolio, who now has the floor.

ACTING PRESIDENT SAVINO: Thank you, Senator Klein, I was just about to suggest that to Senator Skelos.

SENATOR SKELOS: Senator Nozzolio, would you yield to me?

ACTING PRESIDENT SAVINO: Senator Nozzolio, will you yield the floor to Senator Skelos?

SENATOR NOZZOLIO: Madam President, I'll be happy to yield to Senator

Skelos.

ACTING PRESIDENT SAVINO: Senator Skelos, on the bill.

SENATOR SKELOS: Madam President, again, I would suggest to Senator Kruger that he's confusing two issues that arose at the leaders' meeting.

The actual scoring of the proposed or suggested cuts by the Senate majority resolution, the Assembly majority resolution -- the Senate one, for example, I know every single member of the Senate majority Democrats voted for a billion-four in school aid cuts. We want to make sure those numbers are correct.

But the bottom line is we were given a commitment that we would receive those numbers forthwith prior to us having discussion in another extender, and we have not received them. I mean, that's the bottom line.

So, Senator Nozzolio, I appreciate you yielding to me, and carry on.

SENATOR NOZZOLIO: Senator Skelos, thank you for that clarification.

Madam President, on the bill.

ACTING PRESIDENT SAVINO: Senator Nozzolio, on the bill.

SENATOR NOZZOLIO: Madam President, as Senator DeFrancisco began the debate this evening, as Senator Skelos amplified that debate, we do not have a process at all for 40 percent of the state expenditures. The entire budget process over these past weeks has been ridiculous if not existent.

Today, as we're talking about very severe, significant substance, not even an indication by the chairman of the Finance Committee relative to the potential for additional tax hikes is forthcoming.

And when you are pursuing a budget on such a piecemeal basis, I believe that's the only conclusion that one can draw, that because all the information isn't before us, because all the spending plan is not in place, this body is voting in the dark on whether or not there is in fact a major tax hike coming down as a result of this spending plan.

I know Senator Kruger believes

there is a better way; at least I would hope he would. Certainly the members on this side of the aisle, the Republicans, believe that at the very least the lack of transparency in what's being proposed is unconscionable.

Madam President, one can only conclude that the taxpayers are going to be significantly hurt by this horrendous lack of transparency, by this cavalier attitude that a measure can go forward without any explanation, without any assurances, without any concrete evidence that in effect there will be no tax hike as a result.

I think those who vote for this measure are very likely to be voting for tax hikes. And that, Madam President, is what the taxpayers of this state can least afford. That's why I will be voting against this measure and urge my colleagues to do the same.

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

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

Senator Padavan.

SENATOR PADAVAN: Thank you,

Madam President. Would Senator Kruger yield to a question, please?

ACTING PRESIDENT SAVINO: Senator Kruger, will you yield to Senator Padavan?

SENATOR CARL KRUGER: Certainly, Madam President.

ACTING PRESIDENT SAVINO: Senator Kruger yields.

SENATOR PADAVAN: Senator Kruger, last week during your dialogue with Senator DeFrancisco the issue came up relevant to targets that we could deal with as committees -- or in any fashion that's appropriate -- and he asked you whether or not these targets would be available.

And I'd like to share with you your response. You said: "Yes, there are targets. Those targets will be discussed tomorrow at the five-way meeting. And with the leadership agreeing, the next step hopefully is the process to begin conference committees."

My question therefore, Senator, is the five leaders met, there were discussions. Are conference committees about to meet?

SENATOR CARL KRUGER: Through

you, Madam President. Firstly, I appreciate you refreshing my memory, Senator Padavan.

SENATOR PADAVAN: My pleasure.

SENATOR CARL KRUGER: Secondly, at that five-way leaders' meeting the representation that was made in terms of the scorecard, as outlined by Senator Skelos, was representations that were made by the Governor, not by this majority.

And secondly, the process that's going forward, these bills are Governor's bills. The Governor is driving these bills and this agenda. And I remain optimistic that as we go forward, conference committees will become part of the final budget process.

SENATOR PADAVAN: Madam President, will the Senator yield again?

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

SENATOR CARL KRUGER: Yes, I do.

SENATOR PADAVAN: I'm delighted that we're optimistic. But as we've heard earlier, we're at 40 percent of the budget. It seems to me that critical mass has long since passed us. Do you recall that phrase,

"critical mass"?

SENATOR CARL KRUGER: I recall the radar --

SENATOR PADAVAN: And you also recall the radar screen.

SENATOR CARL KRUGER: Right.

SENATOR PADAVAN: So the radar screen and the critical mass is behind us. Now, last week, hope springing in the hearts of men, you said we'd have conference committees or you thought we would. And here we are a week later. Now, I would say, you know, optimistic as we might wish to be, I think we've reached a certain point here where optimism has to give way to reality, and that reality is that we get together and start analyzing this budgeting in an appropriate way, so that the questions that were asked by Senator DeFrancisco would no longer be applicable. We'd know how we got where we're at.

And I realize these are not your proposals before us, they are the Governor's. We understand that. But we have a responsibility. And I don't believe we're

discharging it properly by not doing the things we're supposed to be doing, by law. Not by desire, not by inclination, but by law. Do you agree with me, Senator?

SENATOR CARL KRUGER: Do you have a question?

SENATOR PADAVAN: Yeah, do you agree with me? That's my question.

SENATOR CARL KRUGER: No, I don't agree with you. Thank you.

Thank you, Madam President.

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

Seeing none, debate is closed.

The Secretary will please ring the bells. I ask all members to return to the chamber as expeditiously as possible.

Read the last section.

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

ACTING PRESIDENT SAVINO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT SAVINO:

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 761 are Senators Bonacic, DeFrancisco, Farley, Flanagan, Fuschillo, Golden, Griffo, Hannon, Lanza, Larkin, LaValle, Leibell, Libous, Little, Marcellino, Maziarz, McDonald, Nozzolio, Padavan, Ranzenhofer, Robach, Saland, Skelos, Volker, Winner and Young.

Absent from voting: Senator Seward.

Ayes, 32. Nays, 26.

ACTING PRESIDENT SAVINO: The bill is passed.

The Secretary will read.

THE SECRETARY: Calendar Number 762, by the Senate Committee on Rules, Senate Print 8090, an act to amend the Public Health Law and others.

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

SENATOR LIBOUS: Thank you, Madam President.

I believe there are two amendments at the desk by Senator Hannon. I'd ask that

you please waive the first one's reading and call on Senator Hannon.

ACTING PRESIDENT SAVINO: Senator Libous, there is an amendment here at the desk. Without objection, the reading is waived and Senator Hannon may speak on his amendment.

SENATOR HANNON: Thank you, Madam President.

New York State, because of Medicaid, is facing unprecedented budget gaps in the next two years, for this budget year and for next year. And there needs to be unprecedented addressing of the problem that Medicaid has.

A program that has afforded so many quality healthcare has to be, at a time when we have less money, intelligently pruned, intelligently managed, changed to a system that is a health system instead of something that is simply a bill-paying system. And that's all we have right now.

We have offered some amendments that will increase the savings from that system, and we will offer in part of those

amendments things that will address problems that are now in the main bill that I think are counterproductive, that are unwise, and will actually drive up the cost of Medicaid to the taxpayers of this state.

As part of our amendments we want to close the eligibility loopholes for certain services, we want to cap personal-care services, we want to reinstate some of the expansions of eligibility that were done just last year -- not talking about things done in the past decade, prior administrations, prior majorities -- just done last year, something we had a hand in.

We'd also want to do that in regard to postponing the expansion of Family Health Plus enrollment to well beyond any benefit that is offered to anyone in any other state.

We want to remove the readmission provision that's in the main bill. We want to evaluate the optional services and see what the priorities are of what's the most essential at a time of need. We want to establish the long-term-care financing demo program, because the long-term-care program in

this state is a hodgepodge of different programs put together, no rhyme and reason in meshing them together, no rhyme and reason in meshing the care for the patient, no vision as to where we're going -- all at a time when next January the number of baby boomers turning 65 in this nation will be about 10,000 a month.

We want to establish a county nursing home demo program to convert county nursing homes into long-term-care settings. We want to deal with the assisted living reimbursement rate. We want to deal with rightsizing the nursing homes. We want to up the reimbursement for buy-ins to Family Health Plus. And we want to take the penalties that are levied on individuals for Medicaid fraud and increase those.

This is a very extensive and I think comprehensive agenda, unlike the bill before us, which deals in a piecemeal way with so many of the budget problems, so many of the Medicaid programs. You don't know the full range of options when you're dealing with the healthcare budget in this fashion.

Senator Kruger talked about 40 percent of the total budget being addressed tonight, between the appropriation bill and the Article 7 bill. It's absolutely unprecedented that we have played touch football with this budget. We've abandoned the conference committees that's our immediate history in 2007. And every week we seem to have a new procedure -- you'll get a scorecard, you'll get some type of conference committees in the future. Meanwhile, we're locking people in without knowing the options.

This bill does not make the healthcare system go forward. It doesn't give any opportunities for us to shape what's happening. And there's one provision in particular that I think is particularly unwise. There is a penalty given for readmissions of a patient to a hospital. Now, some people may say the federal government's doing that. Well, they are, for three conditions: Heart attack, heart failure, and pneumonia.

The bill before us would do it for all conditions, and it would say that the

hospitals really have to change their mission. Right now their mission to the patient ends when the patient is discharged. If we now say 15 and 30 days out that they have to keep track of those patients and they'll be responsible for not getting paid if there's a readmission of those patients to the hospitals, then they're going to have to add staff, they're going to have to add computers, they're going to have to add databases they have to track. They have to make arrangements with everybody in their area -- arrangements that do not exist -- because they don't know if somebody who has been in their hospital is within a month in another hospital. So that doesn't exist whatsoever.

All of this, by the terms of the bill, is supposed to be implemented by July 2010. It's ridiculous. And what's more ridiculous is not you who want to vote for this because you feel a gun is to your head, it is the Division of the Budget and the Governor who are saying we want to make these policies with these enormous changes as to what's going to happen in a hospital, who's

going to have to pay for that, we want to do that as part of the budget process.

That's wrong. It's not good health, it's not good planning, it's not good budgeting, and we should not be doing it.

We have also pending right now what's known as Kendra's Law, how we treat the mentally ill and whether we can go through a procedure to make sure that they have drugs, the psychotropic drugs that help the mentally ill.

Well, the bill says, you know, you don't have to deal with the behavioral health readmissions. But we don't know when that is going to take place. Suppose it only occurs after they're discharged? We don't know the full scope of it. Many of the times the readmissions -- as we know, this is a difficult and fragile population; they may be readmitted for something else. This bill leaves all of that undefined, unsketched out.

The last part is why do we start to start to fine the hospitals when we may not have people who pay attention to their discharge requirements and instructions?

This whole process is wrong. We need to change the Medicaid system. We need to make sure that it becomes a healthcare system. This bill doesn't do it. You're purporting to address the entire healthcare bill in this emergency extender.

It doesn't have to be done this way. If you had had the conference committees, you could have had this discussion in public. You could have had it argued in public. If you don't agree with this amendment, you could have said it there. That's what democracy is all about, to have a public process, and you're not doing it. And it makes me mad because we have an opportunity to deliver better health for the people of New York.

I would offer this amendment, and I would suggest that everybody should support it.

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

Seeing none, the question is on the nonsponsor motion to amend Calendar Number

762. Those Senators voting in support of the nonsponsor amendment please signify by raising your hand.

Announce the results.

THE SECRETARY: Ayes, 26. Nays, 32.

ACTING PRESIDENT SAVINO: The motion fails.

Senator Libous.

SENATOR LIBOUS: Madam President, I believe there's another amendment by Senator Hannon at the desk. I ask that you waive its reading and please call on Senator Hannon to explain his amendment.

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

SENATOR HANNON: Thank you, Madam President.

I want to offer an amendment to the Article 7 bill which would deal just with the expansion of procedural eligibility to Medicaid that we enacted in last year's budget. We would reinstate the asset resource

test. We would reinstate face-to-face interviews for eligibility and recertification. And we would reinstate the finger-imaging requirements that were eliminated.

The savings to the state alone would be $34 million. The gross savings for all people contributing -- the federal government and state and local -- would be $89 million. It's a targeted amendment. I move its adoption.

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

Seeing none, the question is on the nonsponsor motion to amend Calendar Number 762. Those Senators voting in support of the nonsponsor amendment please signify by raising your hands.

Announce the results.

THE SECRETARY: Ayes, 26. Nays, 32.

ACTING PRESIDENT SAVINO: The motion fails.

We now return to the bill in chief.

The bill is before the house.

Are there any Senators wishing to be heard on the bill?

Senator Skelos.

SENATOR SKELOS: Madam President, again, this extender and the previous extenders that we've witnessed come before this chamber again have been negotiated in secret by the Governor, the Senate Democrats and the Assembly Democrats. It's obvious that there were negotiations, secretive negotiations over the weekend, because the extender bill has been dramatically changed from what Budget Director Megna indicated that it would be this past Friday.

Now, the extender, as has been pointed out by Senator Hannon, really does not go far enough in reforming and reducing Medicaid spending. And it includes no provision -- in fact, every Democrat just voted against the proposed amendment that would really help crack down on Medicaid fraud and said I'm not going to vote for it.

The Governor and the Senate Democrats and the Assembly Democrats have

increasing the reestimation of Medicaid fraud by another $300 million. Now, certainly we believe and it's been the position of this minority Republican conference that there are billions that can be obtained through going after Medicaid fraud. The latest figures show and today we've recommended where you could save approximately $400 million through the amendment that was also defeated.

What's frightening is that state spending, as was indicated by Senator DeFrancisco, this April will be 4 percent higher than last April. That's $400 million more, almost all of it due to an increase in Medicaid spending. And the danger is -- and many will say that, well, it's federal money. That federal money disappears next year. So the Democrats, you're already digging a hole into next year's budget.

Senator Kruger indicated that with the extender we are spending about 40 percent of our entire state budget. I guess the question I would have to ask would be how does Senator Kruger even know it's 40 percent when he has not indicated what the total spending

or fiscal plan will be in this budget.

So again, we have offered responsible amendments of over $400 million to truly reform and start the restructuring that is necessary within the Medicaid system.

Again, I want to reemphasize that at the last five-way leaders' meeting it was agreed upon that Assemblyman Kolb and myself, our respective conferences would get the scoring or the marking, whatever you want to call it, as to the resolutions that were passed by the Democrat majorities and also a scoring of what had been agreed upon between the two majorities.

And of course that commitment has not been met, just like the Budget Reform Act of 2007 is being violated on a daily basis by both Assembly and Senate Democrats.

And I'm shocked by this because the great reformers, some of them not in the chamber right now, that were going to reform the way things were operating in Albany quite frankly is an embarrassment. You're embarrassing the public, and the dysfunction in Albany has only gotten worse.

So I would urge, again, the Senate Democrats, rather than just saying "We want to do it," do it. Let's start the joint conference committees, get the Speaker on board, let's start the negotiations, and this budget could be completed very quickly.

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

Senator Diaz, on the bill.

SENATOR DIAZ: Thank you, Madam President.

Today is the number-ten extension bill that we are doing. The first week, the first week, the first extension we did, we voted thinking that we cannot shut the government. There was panicking. It was never heard of -- how could we shut the government? People will suffer. Who's going to do that? Shut the government? You've got to vote for these cuts, you've got to vote for these extensions or you're going to shut the government.

So the first week we did it, I did it thinking that maybe by next week we will get a budget done. The second week came, and

there was again, You're going to shut the government? You can't do that. You're a Democrat. You've got to support your party. You've got to support your conference. You've got to support your leader. You can't shut the government. So I voted again.

The third week came, here we go again. You cannot shut the government. That's -- people are going to suffer.

So I have been voting for 10 weeks, praying, Madam President and ladies and gentlemen, praying that let's vote today, every week, maybe by next week we will solve the problem of the budget. But meanwhile, I keep voting against my conscience, against what I feel, against what I would like to do, cutting services, cutting money to people that I'm supposed to be helping. Thinking that we are going to get a budget.

But nothing's done with the budget. There is no move, there is nothing happening. And every week, 10 weeks, 10 weeks, 10 weeks: You cannot shut the government. People will suffer.

And let me tell you what we're

doing today. I have no hospitals in my district. There isn't a hospital in my district, there is not one. So I'm safe, praise God. There is no hospital.

But the people that I represent, Madam President, the people that I represent in my district, they go to all different hospitals in the Bronx. And today, Lincoln Hospital will be affected by $3 million. Bronx-Lebanon Hospital, $9 million. Montefiore Hospital, $10 million. North Central Bronx Hospital, $1 million. St. Barnabas Hospital, $6 million. Calvary Hospital, $346,000. Jacobi Medical Center, $2 million. Montefiore Hospital, $13 million. And so on and so on.

And then we have said, You voted for this, you have to vote for this or you will shut the government. Ten weeks. Ten weeks.

I'm going to vote for this today. I'm voting for this one today. But I want you, Madam President, to know that something has to be done from here till next Monday, because I am afraid, I am afraid that

government will get shut down next week. Because I'm not planning to vote for any more extensions. Either we fix the budget from here to Monday or the Governor will get what he wants, the Governor will get what he wants, to shut the government.

So I'm voting -- my heart is broken. I'm voting for this today. Painful. Because we don't want to shut the government. How could we do that? Ten weeks. So tonight -- and people could go to my office and picket, demonstrate in front of my office. The editorial boards could write whatever they want about me. You could say whatever you want to say about me. I am not voting no more to cut and to hurt the people that I'm supposed to be helping. This is the last one.

Monday coming, I'm putting -- I'm saying it publicly, I'm telling the whole world, I'm telling my district and the people in my community, I am in an election year, you could kick me out, you could vote for my opponent. I'm not voting, no more.

So you got my vote today, Madam President. And people are going to get hurt

and cuts are going to be done and health is going to be suffering. Close to a billion dollars cut in health.

So I hope that from here to Monday the budget gets solved and we do something. Because again, and I'm going to repeat myself again, I'm very, very afraid that Monday government will get shut down unless something extraordinary, very extraordinary happens.

So I'm voting yes tonight.

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

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

Seeing none, the debate is closed. The Secretary will ring the bells. We ask all members to return to the chamber so that we can vote on the bill.

Read the last section.

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

ACTING PRESIDENT SAVINO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT SAVINO:

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 762 are Senators Bonacic, DeFrancisco, Farley, Flanagan, Fuschillo, Golden, Griffo, Hannon, Lanza, Larkin, LaValle, Leibell, Libous, Little, Marcellino, Maziarz, McDonald, Nozzolio, Padavan, Ranzenhofer, Robach, Saland, Seward, Skelos, Volker, Winner and Young.

Ayes, 32. Nays, 27.

ACTING PRESIDENT SAVINO: The bill is passed.

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

SENATOR LIBOUS: Madam President, is there any further business at the desk?

ACTING PRESIDENT SAVINO: No, Senator Klein, there is not.

SENATOR KLEIN: There being no further business, Madam President, I move that we adjourn until Tuesday, June 8th, at 3:00 p.m.

ACTING PRESIDENT SAVINO: There

being no further business to come before the Senate, on motion, the Senate stands adjourned until Tuesday, June 8th, at 3:00 p.m.

(Whereupon, at 8:30 p.m., the Senate adjourned.)