NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

June 21, 2010

1:00 p.m.

REGULAR SESSION

SENATOR CRAIG M. JOHNSON, Acting President

ANGELO J. APONTE, Secretary

P R O C E E D I N G S

ACTING PRESIDENT CRAIG JOHNSON: The Senate will please come to order.

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

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

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

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

Ever-living God, on this day, the first day of summer, you have given us 15 hours and 26 minutes to gather here in daylight in this Senate chamber, as members representing our constituents, to provide leadership for our New York State citizens.

Let Your spirit enlighten our minds and guide our actions, that we may be united in love and bring to fulfillment the work of government for the greater honor and glory of our citizens.

By being a Senator, you have been accepted into the leadership position so that you can more fully serve the people of New York State. In the spirit of community and prayer today, we will better achieve the goal of dedicated representation in the power that is entrusted to all of our legislative leadership. May you attain your satisfaction in your services to your constituents.

Amen.

ACTING PRESIDENT CRAIG JOHNSON: The reading of the Journal.

The Secretary will read.

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

ACTING PRESIDENT CRAIG JOHNSON: 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: Mr. President, on behalf of Senator Squadron, on page number 25 I offer the following amendments to Calendar Number 676, Senate Print Number 5597A, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT CRAIG JOHNSON: So ordered.

Senator Klein.

SENATOR KLEIN: On behalf of Senator Stavisky, on page 37 I offer the following amendments to Calendar Number 901, Senate Print Number 5954B, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT CRAIG JOHNSON: So ordered.

Senator Klein.

SENATOR KLEIN: On behalf of Senator Breslin, on page 29 I offer the

following amendments to Calendar Number 754, Senate Print Number 7220, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT CRAIG JOHNSON: So ordered.

Senator Klein.

SENATOR KLEIN: On behalf of Senator Craig Johnson, I move that the following bill be discharged from its respective committee and be recommitted with instructions to strike the enacting clause: Senate Number 8216.

ACTING PRESIDENT CRAIG JOHNSON: So ordered.

Senator Klein.

SENATOR KLEIN: Mr. President, I believe Senator Perkins has a resolution at the desk. I ask that the title of the resolution be read and move for its immediate adoption.

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

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

ACTING PRESIDENT CRAIG JOHNSON: The Secretary will read.

THE SECRETARY: By Senator Perkins, legislative resolution commending Maysles Cinema upon the occasion of presenting the Second Annual "Homo-Harlem" Film Festival on June 21 through 26, 2010.

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

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

(Response of "Aye.")

ACTING PRESIDENT CRAIG JOHNSON: Opposed, nay.

(Response of "Nay.")

ACTING PRESIDENT CRAIG JOHNSON: The resolution is adopted.

Senator Klein.

SENATOR KLEIN: Mr. President, can you please call on Senator Libous. I think he has a floor motion.

ACTING PRESIDENT CRAIG JOHNSON: Of course. Senator Libous.

SENATOR LIBOUS: Thank you.

Mr. President, on behalf of Senator Volker, I call up Calendar Number 344, Assembly Print 9070A.

ACTING PRESIDENT CRAIG JOHNSON: The Secretary will read.

THE SECRETARY: Calendar Number 344, by Member of the Assembly Hoyt, Assembly Print Number 9070A, an act to amend the Real Property Law.

SENATOR LIBOUS: I now move to reconsider the vote by which this Assembly bill was substituted for Senator Volker's bill, Print Number 7170A, on May 10th in the year 2010.

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

(The Secretary called the roll.)

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT CRAIG JOHNSON: Senator Libous.

SENATOR LIBOUS: Thank you,

Mr. President. I now move that Assembly Bill Number 9070A be committed to the Committee on Rules and that Senator Volker's bill be restored to the order of Third Reading Calendar.

ACTING PRESIDENT CRAIG JOHNSON: So ordered.

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

ACTING PRESIDENT CRAIG JOHNSON: Amendments received.

SENATOR LIBOUS: Thank you, sir.

ACTING PRESIDENT CRAIG JOHNSON: Thank you, Senator Libous.

Senator Klein.

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

ACTING PRESIDENT CRAIG JOHNSON: The Secretary will read.

THE SECRETARY: Calendar Number 37, by Member of the Assembly Bing, Assembly Print Number 10038A, an act to amend the Insurance Law.

ACTING PRESIDENT CRAIG JOHNSON: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 60th day.

ACTING PRESIDENT CRAIG JOHNSON: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT CRAIG JOHNSON: Announce the results.

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT CRAIG JOHNSON: The bill is passed.

THE SECRETARY: Calendar Number 208, by Senator Dilan, Senate Print --

SENATOR LIBOUS: Lay it aside, please.

ACTING PRESIDENT CRAIG JOHNSON: The bill is laid aside.

THE SECRETARY: Calendar Number 702, by Member of the Assembly Benedetto, Assembly Print Number 11064, an act to amend Chapter 618 of the Laws of 1998, amending the General Municipal Law and the Education Law.

ACTING PRESIDENT CRAIG JOHNSON: Read the last section.

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

ACTING PRESIDENT CRAIG JOHNSON:

Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT CRAIG JOHNSON:

Announce the results.

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT CRAIG JOHNSON:

The bill is passed.

THE SECRETARY: Calendar Number 704, by Member of the Assembly Maisel, Assembly Print Number 11067, an act to amend Chapter 552 of the Laws of 1995 amending the Education Law.

ACTING PRESIDENT CRAIG JOHNSON:

Read the last section.

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

ACTING PRESIDENT CRAIG JOHNSON:

Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT CRAIG JOHNSON:

Announce the results.

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT CRAIG JOHNSON:

The bill is passed.

THE SECRETARY: Calendar Number 739, by Senator Foley, Senate Print 7703, an act to amend Chapter 397 --

SENATOR LIBOUS: Lay the bill aside, please.

ACTING PRESIDENT CRAIG JOHNSON: The bill is laid aside.

THE SECRETARY: Calendar Number 785, by Senator Oppenheimer, Senate Print 6466A, an act to authorize approval of certain transportation contracts.

ACTING PRESIDENT CRAIG JOHNSON: Read the last section.

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

ACTING PRESIDENT CRAIG JOHNSON: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT CRAIG JOHNSON: Announce the results.

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT CRAIG JOHNSON: The bill is passed.

THE SECRETARY: Calendar Number 788, by Senator McDonald, Senate Print 6967A,

an act to authorize the Town of North Greenbush to offer an optional 20-year retirement plan.

ACTING PRESIDENT CRAIG JOHNSON: There is a home-rule message at the desk.

The Secretary will read the last section.

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

ACTING PRESIDENT CRAIG JOHNSON: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT CRAIG JOHNSON: Announce the results.

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT CRAIG JOHNSON: The bill is passed.

THE SECRETARY: Calendar Number 893, by the Assembly Committee on Rules, Assembly Print Number 11324, an act to amend Chapter 199 of the Laws of 2008 amending the Private Housing Finance Law.

ACTING PRESIDENT CRAIG JOHNSON: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect immediately.

ACTING PRESIDENT CRAIG JOHNSON: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT CRAIG JOHNSON: Announce the results.

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT CRAIG JOHNSON: The bill is passed.

THE SECRETARY: Calendar Number 905, by Member of the Assembly Wright, Assembly Print Number 9512, an act to amend the Education Law.

ACTING PRESIDENT CRAIG JOHNSON: Read the last section.

THE SECRETARY: Section 3. This act shall take effect on the first of July.

ACTING PRESIDENT CRAIG JOHNSON: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT CRAIG JOHNSON: Announce the results.

THE SECRETARY: Ayes, 53.

ACTING PRESIDENT CRAIG JOHNSON: The bill is passed.

THE SECRETARY: Calendar Number 915, by Member of the Assembly Sweeney, Assembly Print Number 10512A, an act authorizing the assessor of the Town of Babylon.

ACTING PRESIDENT CRAIG JOHNSON: Read the last section.

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

ACTING PRESIDENT CRAIG JOHNSON: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT CRAIG JOHNSON: Announce the results.

THE SECRETARY: Ayes, 52. Nays, 1. Senator Larkin recorded in the negative.

ACTING PRESIDENT CRAIG JOHNSON: The bill is passed.

THE SECRETARY: Calendar Number 929, by Senator --

SENATOR LIBOUS: Lay it aside.

ACTING PRESIDENT CRAIG JOHNSON: The bill is laid aside.

THE SECRETARY: Calendar Number 963, by Senator Stewart-Cousins, Senate Print

4057B, an act to amend the Public Health Law and the --

SENATOR LIBOUS: Lay it aside.

ACTING PRESIDENT CRAIG JOHNSON: The bill is laid aside.

THE SECRETARY: Calendar Number 987, by Senator C. Johnson, Senate Print 766, an act to amend the --

SENATOR LIBOUS: Lay this bill aside also, please.

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

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

THE SECRETARY: Calendar Number 1013, by Senator Klein, Senate Print 3194, an act to amend the Public --

SENATOR LIBOUS: Lay it aside.

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

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

THE SECRETARY: Calendar Number 1042, by Senator Breslin, Senate --

SENATOR LIBOUS: Lay the bill

aside for the day, please.

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

THE SECRETARY: Calendar Number 1048, by Senator Foley, Senate Print 7427, an act to authorize --

SENATOR LIBOUS: Lay it aside.

ACTING PRESIDENT CRAIG JOHNSON: The bill is laid aside.

THE SECRETARY: Calendar Number 1057, by Member of the Assembly --

SENATOR LIBOUS: Lay this bill aside too, please.

ACTING PRESIDENT CRAIG JOHNSON: The bill is laid aside.

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

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

ACTING PRESIDENT CRAIG JOHNSON: The Secretary will ring the bell. Members are all asked to come to the chamber for a reading of the controversial calendar.

And I remind all members to please

stay within the chamber as we read the controversial calendar and then vote. It makes things a lot easier for all of us.

Senator Klein.

SENATOR KLEIN: Mr. President, on Calendar Number 1048, Senate Print Number 7427, Senator Foley's bill, can we please lay the bill aside for the day.

ACTING PRESIDENT CRAIG JOHNSON: Calendar Number 1048 is laid aside for the day.

The Secretary will read.

THE SECRETARY: Calendar Number 208, by Senator Dilan, Senate Print 1434A, an act to amend the Election Law.

ACTING PRESIDENT CRAIG JOHNSON: Are there any Senators wishing to be heard on the bill?

SENATOR LIBOUS: Explanation, please.

ACTING PRESIDENT CRAIG JOHNSON: Senator Dilan, an explanation of your bill has been requested by Senator Libous.

SENATOR DILAN: Yes, this bill would prevent election commissioners and

deputy commissioners from holding a publicly elected office. And this bill would also --

SENATOR LIBOUS: Excuse me. Excuse me, Senator. I am having trouble hearing.

There's a lot of side conversations going on, Mr. President. I know it's very important; I would like to hear Senator Dilan's explanation.

ACTING PRESIDENT CRAIG JOHNSON: Of course. I remind both sides, since the side conversations are coming from both sides, to please keep it down. If you have conversations, please exit the chamber to have those conversations. If you're members of the Senate, stay close.

Senator Dilan, if you wouldn't mind to repeat your explanation for Senator Libous.

SENATOR DILAN: This bill will prohibit election commissioners and deputy commissioners from holding publicly elected offices. It will also prevent county leaders from the two respective parties from also serving as commissioners or deputy commissioners.

ACTING PRESIDENT CRAIG JOHNSON: Are there any other Senators who wish to be heard?

Senator Libous.

SENATOR LIBOUS: Yeah, would Senator Dilan yield for a few questions.

ACTING PRESIDENT CRAIG JOHNSON: Senator Dilan, will you yield for a question?

SENATOR DILAN: Sure.

ACTING PRESIDENT CRAIG JOHNSON: Senator Libous, he will yield.

SENATOR LIBOUS: Thank you, Mr. President.

Senator Dilan, why -- I mean, I know you explained what the bill does, but what's the purpose of the bill? Why, is there a problem throughout the state with those folks who are commissioners and --

SENATOR DILAN: Well, it's just closing --

SENATOR LIBOUS: I'm not done yet.

SENATOR DILAN: Oh, I'm sorry. I'm sorry.

SENATOR LIBOUS: Thank you. Is

there a problem presently with some of our election commissioners and/or deputy election commissioners that are either holding elected office or -- I'm not aware of any issues here.

SENATOR DILAN: No, there are no issues. Through you, Mr. President.

However, there is a perception or closing a loophole that individuals who are either county chair of the two major parties serving as a commissioner or deputy commissioner could be perceived as a conflict of interest and they may have a direct involvement in some of the elections that they would be making decisions on.

ACTING PRESIDENT CRAIG JOHNSON: Senator Libous.

SENATOR LIBOUS: Mr. President, I guess my question to Senator Dilan would be --

ACTING PRESIDENT CRAIG JOHNSON: You wish him to yield again?

SENATOR LIBOUS: Oh, yeah, I'm sorry, Mr. President.

ACTING PRESIDENT CRAIG JOHNSON: Senator Dilan, do you continue to yield?

SENATOR LIBOUS: Senator Dilan,

would you continue to yield?

SENATOR DILAN: Yes.

ACTING PRESIDENT CRAIG JOHNSON: Senator Dilan will yield.

SENATOR LIBOUS: Thank you, Mr. President. It's Monday.

Is there a problem right now with individuals holding those positions and being party leaders or being -- I guess holding elective office?

SENATOR DILAN: I answered that question already. I said no, that there is no problem, it's just basically a loophole closure in preventing people who may have a conflict of interest from deciding, making these decisions as commissioner on a Board of Elections where they may have a direct connection to a particular election. And this is just preventing that in future cases.

SENATOR LIBOUS: Mr. President, would Senator Dilan continue to yield.

ACTING PRESIDENT CRAIG JOHNSON: Senator Dilan, do you continue to yield?

SENATOR DILAN: Yes.

SENATOR LIBOUS: Senator Dilan,

don't we usually -- you said there was no problem. Usually when we close loopholes, it's because there's a problem. So I guess I'm a little confused about the purpose of the bill.

SENATOR DILAN: Well, Senator Libous, I've had this bill in the Legislature for a few years now. And also there are colleagues from your conference who are also supporting this piece of legislation.

And I perceive that someone who holds a publicly elected office or someone who is a county leader in any particular county in both the Republican and the Democratic Party should not be in a position deciding the outcome of, let's say, a close election or a petition battle, and they should not be in that position.

SENATOR LIBOUS: Will Senator Dilan continue to yield.

ACTING PRESIDENT CRAIG JOHNSON: Senator Dilan, do you continue to yield?

SENATOR DILAN: Yes, sir.

ACTING PRESIDENT CRAIG JOHNSON: He does.

SENATOR LIBOUS: Senator Dilan, I would respectfully disagree. As I read your bill, it goes beyond county leaders. It says "or who is the chair of the representative Democratic or Republican committee in such county," and then it goes on to talk about others than county leaders.

SENATOR DILAN: I mentioned earlier, Mr. President, that this also involves publicly elected officials, that these individuals should not be in a publicly elected position and also serve in what is perhaps tantamount to a party position that would directly impact the results of an election.

SENATOR LIBOUS: Would he continue to yield.

ACTING PRESIDENT CRAIG JOHNSON: Senator Dilan --

SENATOR DILAN: Yes, sir.

ACTING PRESIDENT CRAIG JOHNSON: Senator Dilan will continue to yield.

SENATOR LIBOUS: I'm going to use my own county, Senator Dilan. I'm going to ask you a question here, but I'm going to use

my own county. I happen to have a county Republican leader who is -- she actually is the town supervisor in a local town, has gotten elected unanimously many times unopposed. The county legislature, which is Democratic, has appointed her a deputy commissioner of the election office.

So on one hand she gets elected by the people of her town, very well respected, a Republican, and then she gets appointed deputy commissioner by a heavily Democratic county legislature. Under your bill, would she have to resign?

SENATOR DILAN: If she's an elected representative, yes, she would have to resign.

I think that the way the law currently is, if you are a commissioner of the Board of Elections, you cannot hold a publicly elected position at this time other than perhaps judge or commissioner of deeds. But this is really closing the loophole for also the deputy commissioners.

SENATOR LIBOUS: Through you, Mr. President, so she would have to --

ACTING PRESIDENT CRAIG JOHNSON: Senator Dilan, do you wish to continue to yield?

SENATOR LIBOUS: I'm sorry, Senator Dilan --

SENATOR DILAN: Yes.

ACTING PRESIDENT CRAIG JOHNSON: Senator Dilan will yield.

SENATOR LIBOUS: Senator Dilan, so she would have to resign her position as town supervisor or as deputy election commissioner?

SENATOR DILAN: She would have to resign one or the other position.

SENATOR LIBOUS: What was that, sir?

ACTING PRESIDENT CRAIG JOHNSON: She would have to resign one or the other position.

SENATOR LIBOUS: And if I could continue to ask --

ACTING PRESIDENT CRAIG JOHNSON: Senator Dilan, do you continue to yield?

SENATOR DILAN: Yes.

ACTING PRESIDENT CRAIG JOHNSON:

He does.

SENATOR LIBOUS: Senator, this is obviously a problem in the metropolitan area. I mean, in upstate New York we sometimes have problems finding individuals that are qualified to take these positions. I guess why wouldn't you just have your bill focus on maybe the City of New York, if it seems to be an issue there, and leave the rest of the state alone?

ACTING PRESIDENT CRAIG JOHNSON: Senator Dilan.

SENATOR DILAN: I'm not aware of -- if there is any conflict in New York City, I'm not aware. But I am aware of several outside of New York City. You have Westchester County, where that will affect a Democrat. I think in Dutchess County we have the same situation. If there is any case within New York City, I'm not particularly aware of it. But basically I presented this bill to impact both parties across the whole state.

ACTING PRESIDENT CRAIG JOHNSON: Senator Padavan, why do you rise?

SENATOR PADAVAN: Would Senator Dilan yield to a question?

ACTING PRESIDENT CRAIG JOHNSON: I believe Senator Libous --

SENATOR LIBOUS: I would yield the floor to Senator Padavan.

ACTING PRESIDENT CRAIG JOHNSON: Senator Dilan has the floor.

SENATOR LIBOUS: Oh, Senator Dilan has the floor.

ACTING PRESIDENT CRAIG JOHNSON: I was going to say Senator Dilan has the floor.

SENATOR LIBOUS: I would be happy to sit if Senator Dilan would entertain Senator Padavan.

ACTING PRESIDENT CRAIG JOHNSON: Senator Dilan, do you yield to questions from Senator Padavan?

SENATOR DILAN: I'll answer a question, yes.

ACTING PRESIDENT CRAIG JOHNSON: He indicated, Senator Libous, he would.

Senator Padavan.

SENATOR PADAVAN: Thank you,

Senator.

You just said a moment ago that there are no problems in the City of New York.

SENATOR DILAN: I said I'm not aware if there are any problems.

SENATOR PADAVAN: Let me ask you a question about one that might be a problem.

Currently the Democratic county leader of Queens County, who recommends or appoints members of the Board of Elections, is a Congressman. Do you think that's a problem?

ACTING PRESIDENT CRAIG JOHNSON: Senator Dilan.

SENATOR DILAN: He's not a member of the Board of Elections. He's not a commissioner or a deputy commissioner. That's who this is affecting.

If that may be a problem, I think we could look at future legislation to address that.

ACTING PRESIDENT CRAIG JOHNSON: Senator Padavan.

SENATOR PADAVAN: Will he yield?

ACTING PRESIDENT CRAIG JOHNSON: Senator Dilan, will you continue to yield?

SENATOR DILAN: Yes.

SENATOR PADAVAN: Senator, I know this bill doesn't cover that situation. But my question to you is don't you think that's even a bigger problem in terms of appointing the majority members on the Board of Elections and being an elected official himself?

And I don't know where else that problem might exist. It might be beyond our county. But I certainly know it exists there. So if you're going to address an issue of conflict, that's as big as a barn door.

SENATOR DILAN: Well, there are many issues like this that I think we need to look at and work together to resolve these types of conflicts. I see it as a conflict. I think that if you're a member of a publicly elected office, I think we need to look at all these and address it.

However, my bill does not address that particular issue. It addresses elected officials within New York State and deputy commissioners and commissioners of the Board of Elections. And as I indicated, if we want to look at that in the future, we can.

SENATOR PADAVAN: On the bill.

ACTING PRESIDENT CRAIG JOHNSON: Actually, Senator Padavan, Senator Dilan has the floor right now.

SENATOR PADAVAN: I'm sorry, I thought he'd given it up.

ACTING PRESIDENT CRAIG JOHNSON: He yielded for a question.

Senator Dilan, you continue to have the floor.

SENATOR DILAN: Well, as I indicated, this bill was originally brought before this house several months ago. At that time several members had requested would I consider amending the bill. At that time I did accommodate that, and that's why this bill is back on the floor today.

I'm asking all my colleagues on both sides of the aisles to support this bill. I will be voting yes on it.

ACTING PRESIDENT CRAIG JOHNSON: Actually, Senator Maziarz requested the floor.

Senator Maziarz.

SENATOR MAZIARZ: Thank you very much, Mr. President. On the bill.

ACTING PRESIDENT CRAIG JOHNSON: On the bill, Senator Maziarz.

SENATOR MAZIARZ: First of all, I want to thank Senator Dilan. He's absolutely correct, this is a great piece of legislation. This may be the only ethics reform that we do this year in the State Legislature. Hopefully, this bill will pass in the Assembly and will be signed into law by the Governor.

Senator Dilan pointed out that several members on this side of the aisle made suggestions for improving this bill. I think Senator Padavan makes a very good point. And, you know, it's not exactly covered in this bill, but I think that clearly more could be done. But this is an excellent first step.

You know, when you have a county political leader whose job it is, in being a county political leader, to go out and to recruit candidates to run for office, to assist candidates in running for office -- now, part of that assistance is gathering petitions, finding volunteers that gather petitions, maybe assisting a candidate in filing and filling out their financial

disclosure forms, their election treasury and so forth -- and then that county leader happens to be the country on the county Board of Elections who's going to be deciding the validity, maybe, of those petitions or of that particular financial filing statement, it's a clear conflict of interest. A clear conflict of interest.

Now, there may be others, as Senator Padavan pointed out, and maybe we can do another bill to take those up. But right now I think this is a great piece of ethics reform legislation.

I am very proud of the fact that the County of Niagara, which I represent, as -- I don't know if we can get any more upstate than the County of Niagara, Senator Libous. But the County of Niagara actually did this in their county ethics law, prohibited political leaders from being the commissioners or deputy commissioners of the Board of Elections 10 years ago. So we're behind the times here in the State of New York.

It's a great bill, and I'm going to

vote for it.

ACTING PRESIDENT CRAIG JOHNSON: Thank you, Senator Maziarz.

Senator Padavan.

SENATOR PADAVAN: Mr. President, on the bill.

ACTING PRESIDENT CRAIG JOHNSON: On the bill, Senator Padavan.

SENATOR PADAVAN: I'm going to vote for the bill. But, you know, there is a certain amount of -- I don't want to use "hypocrisy," but that may be applicable.

You, in answer to a question from Senator Libous, said you don't know of any problems that this particular bill addresses that exist today. I think that was your answer, you didn't know any. But I know of at least two major problems where elected officials are county leaders -- your party -- who select members to the Board of Elections, where they exercise a great deal of power in that selection.

Believe me, those members of the board in any contentious situation, involving petitions or whatever, are not going to vote

against the guy who put them there. And to me, that is a major conflict. So really, if you want to deal with the problems that do exist, that's the direction we should be going in.

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

SENATOR LITTLE: Thank you. On the bill.

I would just question the slope that we're getting on going into this bill. I actually represent six counties. Each county has two election commissioners, one of each party. And one of mine is the county chair; the Democrat county chair in Warren County is also one of the election commissioners.

And if this has to happen immediately, then I would think that there needed to be some way of allowing a time span here where he could keep that job while, with elections coming, he would be able to continue to go forward with elections.

So I'm looking at a negative vote on this bill. Thank you.

ACTING PRESIDENT VALESKY: Thank

you, Senator Little.

Senator Leibell.

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

And, Senator Dilan, thank you very much for putting forth this piece of legislation, which I am in support of. In fact, I'm now on the bill.

For all too long, we have watched our publicly funded Boards of Elections act like they are political fiefdoms. They are not and should not be political fiefdoms. They should be in a position to make objective decisions when issues are brought before them.

How often have we in this business heard somebody said say "Well, I'm the Republican Commissioner of Elections" or "I'm the Democrat Commissioner of Elections, therefore." That's wrong. The people in those positions should be removed from, as much as possible, that political process. They are a Board of Elections, they are called upon frequently in any election cycle to make decisions, and they need to be objective in making those decisions.

If a Republican needs to side with a Democrat, so be it. And if a Democrat needs to side with a Republican, so it be. This is a good piece of legislation. It's a first step. I think it clears the air in our election commissioners positions throughout the State of New York, and I'm pleased to support it.

ACTING PRESIDENT VALESKY: Thank you, Senator Leibell.

Senator Saland.

SENATOR SALAND: Thank you, Mr. President.

I had intended to ask Senator Dilan to yield, but perhaps I could just mention it on the bill. I certainly applaud what you're attempting to do here. My concern, Senator, is your effective immediate date.

Now, right now, as you know, there's a petition process going on. And then there's a primary period. If your bill were to pass both houses and be signed into law, effective immediately, you would, I think, be perhaps causing a bit of a disservice to the general operation of those Boards of Elections

that might have deputy commissioners who are affected, removing somebody who might be experienced during the time of year when their services are most demanded.

So I would hope that -- and I'm not speaking in opposition to your bill. I would hope that you might consider amending your effective date so as to make it effective sometime perhaps starting the first of next year or thereafter, so as not to strip experienced persons currently serving on Boards of Elections from the ability to pursue their duties -- again, being very mindful of what it is that you're trying to accomplish here.

Thank you.

ACTING PRESIDENT VALESKY: Thank you, Senator Saland.

Senator Farley, on the bill.

SENATOR FARLEY: Thank you. I rise in support of this. It is a first step, as Senator Leibell said, towards trying to take some of the partisanship out of the Board of Elections. I always feel I don't care which party it is, you'd like to see those

people do their job fairly and to try to keep politics as much as possible out of that.

I don't think that you'll ever see that happen, but certainly when you're talking about a county chairman being on the Board of Elections, I think it's a little bit much. And I would agree with some of my colleagues that that is a good first step to try to take some of the politics out of the Board of Elections. And I do rise in support of this bill.

ACTING PRESIDENT VALESKY: Thank you, Senator Farley.

Are there any other Senators who wish to be heard?

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

Senators are asked to proceed to the chamber for purposes of a roll call.

Read the last section.

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

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT VALESKY: Senator Montgomery, to explain her vote.

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

I'm certainly going to be supporting this legislation. I understand -- Senator Dilan and I come from Brooklyn, and we understand the need for this perhaps even more than some others of our colleagues, that we should have a clear separation of publicly elected officials from serving as commissioners of the election process, so that it's purely, clearly nonpartisan and that the role of the election commissioners and the deputy commissioners of the Board of Elections should not be publicly elected officials at the same time. So I am supporting this.

And, Mr. President, I have a group of young people here today, and they're watching what we do. And so it makes it even more important that when we are taking our vote today that we're voting to clean up our election process so that our constituents maintain a level of trust and respect for the process.

So to those young people from P.S. 56 who are visiting today, I want to make sure that they are seeing this process and how it works.

And yes, Mr. President, I vote aye on Senator Dilan's bill.

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

Senator Dilan, to explain his vote.

SENATOR DILAN: Yes. Again, I'd like to first thank all my colleagues who are supporting this piece of legislation.

And just to add some clarity in terms of when this bill becomes effective, I've heard some members say that it becomes effective immediately upon the signature of the Governor. That is correct. But the six Republicans and the eight Democrats that this will affect across the State of New York will have a choice either of remaining as county leader or remaining as a commissioner of the Board of Elections.

And we have to also note that the position of commissioner, the Board of

Elections throughout this state pays these individuals between $80,000 and $110,000. So that choice they will have to make.

Thank you very much.

ACTING PRESIDENT VALESKY: Senator Dilan will be recorded in the affirmative.

Senator Libous, to explain his vote.

SENATOR LIBOUS: Thank you, Mr. President.

I guess for exactly that reason that Senator Dilan stated, I'm going to vote no on this bill. Certainly I'm all for fighting corruption, but in my debate with Senator Dilan he said that there were no issues that he was aware of. Certainly he knows how many members this is going to affect on both sides of the aisle.

But, Senator, I think it's wrong to have it go into effect immediately. I think that at least it would be fair to get through this election cycle, maybe go into effect on January 1. And I say that this because it's the only reason why I'm voting no. As I said

to you before, quite frankly in committee one year I voted without recommendation, this year I voted yes. But this particular issue is a concern to me.

I think in the middle of a gubernatorial election year, to make as many as six on one side, eight on the other, to make a decision and resign I think is just not right. I think if you wanted to make this bill go into effect on January 1 of 2011, I think it would make more sense.

So for that reason, Mr. President, I'm going to vote no.

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

Senator Oppenheimer, to explain her vote.

SENATOR OPPENHEIMER: Thank you.

Well, I find myself in complete accord with the prior speaker. I love the bill; I think it's a great bill. As most of you know, my background was president of the League of Women Voters, and that's how I got into government. And it's a good-government bill, and under normal circumstances I would

be voting yes.

But I feel that the date that it's supposed to become effective simply does not work at this time. And I would encourage a date that would be either the beginning of next year or the beginning of the following year.

Otherwise, I think it's a great bill, but I don't like the date that it starts, so I'll be voting no.

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

Senator Stavisky, to explain her vote.

SENATOR STAVISKY: Thank you, Mr. President.

We did, I think, have a situation in Queens County which, while not covered under the provisions of this legislation, nevertheless I find extremely troubling. We had a situation where a Queens member of the Board of Elections was sitting in on a recount of a particular political campaign. The problem is that that employee was also an

employee of the Senate, the Senate minority. And while the individual I happen to like and respect, nevertheless I think there's an innate conflict in that kind of situation.

Obviously it's not covered under the provisions of this legislation, but I certainly support the reform efforts and I vote aye.

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

Senator DeFrancisco, to explain his vote.

SENATOR DeFRANCISCO: Yes, I vote aye on this bill. I think it's a good-government bill. It avoids conflicts of interest that are extremely important in the election process. And for those who say that we don't vote in a bipartisan manner from time to time, I think this is an example of this body doing exactly that.

The last good-government bill that we passed in such a bipartisan fashion was a budget bill back in 2007, and we don't -- we followed it in 2008. The leadership over the

last two years, including this year, found that maybe it's not necessary, maybe it's just a suggestion rather than a law. So now we're here going to our 12th budget extender momentarily.

So to those who are concerned about the start date of this bill and how it's going to affect Boards of Elections this coming election, maybe they could take the same tack that the legislative leaders have taken: Just ignore the law. And then they won't have to worry, make their determination as to who to resign or not maybe next year or the year after or whenever it possibly fits their purpose to do so.

So I vote aye on this bill, I just hope it actually is followed, unlike many of our other reform bills. Thank you.

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

Senator Maziarz, to explain his vote.

SENATOR MAZIARZ: Thank you very much, Mr. President, to explain my vote.

I am going to be voting in the affirmative. I don't know, quite frankly, what the big concern is about the effective date. I think Senator Dilan hit it right on.

Hopefully when the bill becomes law, the individuals, the eight Democrats and six Republicans, are going to have to make a choice. They're either going to want to continue to be county leaders or elected officials, or they're going to want to be commissioners of the Board of Elections. No one says that the world has to stop, that the elections are somehow going to be interrupted because of that. Well, I would hope that they do the right thing then and stay on on the Board of Elections and give up their other jobs.

I vote in the affirmative, Mr. President. Thank you.

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

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 208 are

Senators Hassell-Thompson, O. Johnson, Larkin, Libous, Little, Oppenheimer, Ranzenhofer, Seward, Skelos, Stewart-Cousins, Volker and Winner.

Absent from voting: Senators Golden, Lanza and Peralta. Ayes, 45 --

ACTING PRESIDENT VALESKY: Hold on. Senator Peralta, how do you vote?

SENATOR PERALTA: Aye.

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

The Secretary will announce the results.

THE SECRETARY: In relation to Calendar Number 208: Ayes, 46. Nays, 12.

Absent from voting: Senators Golden and Lanza.

ACTING PRESIDENT VALESKY: The bill is passed.

Senator Bonacic.

SENATOR BONACIC: Thank you, Mr. President.

I would ask unanimous consent to vote on a bill which I was not present in the

chambers. It was Senate Bill 7386A. It was a Senator Fuschillo bill. I'd like to be recorded in the negative.

ACTING PRESIDENT VALESKY: Senator Bonacic, unanimous consent has been granted. You will be recorded in the negative on Calendar Number 915.

SENATOR BONACIC: Thank you, Mr. President.

ACTING PRESIDENT VALESKY: The Secretary will read.

THE SECRETARY: Calendar Number 739, by Senator Foley, Senate Print 7703, an act to amend Chapter 397 of the Laws of 1996, relating to authorizing.

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

SENATOR LIBOUS: Mr. President, would you please withdraw the lay-aside on this bill?

ACTING PRESIDENT VALESKY: The lay-aside has been withdrawn on Calendar Number 739.

The Secretary will place the bill before the house on the noncontroversial

calendar and read the last section.

There is a home-rule message at the desk.

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

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58.

ACTING PRESIDENT VALESKY: The bill is passed.

Returning to the controversial calendar, the Secretary will continue to read.

THE SECRETARY: Calendar Number 929, by Senator Stewart-Cousins, Senate Print 7962B, an act to amend the General Municipal Law.

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

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

THE SECRETARY: Calendar Number 963, by Senator Stewart-Cousins, Senate Print 4057B, an act to amend the Public Health Law and the Social Services Law.

SENATOR FUSCHILLO: Explanation.

SENATOR SALAND: Explanation, please.

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

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

This bill is an attempt to capture the almost 270,000 children in New York State who are eligible, because of lack of income, for Child Health Plus.

Many of these children actually go to our schools, and many of these children receive free or reduced lunch. And so what we're trying to do is enhance the coordination so that there is an awareness of the eligibility for our insurance program, so that instead of having 270,000 uninsured children who somehow slip through the cracks, they are enrolled and are able to receive benefits. Again, it's about keeping kids insured who should be insured.

I will point out to my colleagues that the eligibility process remains the same.

It's one thing to be able to enroll; it is another thing to be able to be found eligible. And the eligibility criteria is not changed at all. This just, again, hopes to capture the over 200,000 children who are eligible in New York State but, you know, don't know it.

SENATOR SALAND: Mr. President, would Senator Stewart-Cousins --

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

SENATOR SALAND: Mr. President, excuse me for one moment. Apparently there's an amendment that's going to be offered.

ACTING PRESIDENT VALESKY: Certainly.

Senator Libous.

SENATOR LIBOUS: Thank you, Senator Saland.

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

ACTING PRESIDENT VALESKY: There is an amendment at the desk. The reading of

the amendment is waived and, Senator Hannon, you are recognized to speak on the amendment.

SENATOR HANNON: Thank you, Mr. President.

In keeping with the stated intentions of the sponsor that the eligibility is not changed but the notice of it is expanded, I am offering an amendment that says nothing herein shall be construed to expand the current eligibility guidelines of the medical assistance program.

I believe that we just need to be clear. There is language that was added to this bill after it was reported from committee. That's perfectly fine, but I believe that language gives rise to the reason I would like my amendment adopted. For that reason, I urge its adoption.

ACTING PRESIDENT VALESKY: Thank you, Senator Hannon.

All those supporting the nonsponsor amendment to Calendar Number 963 should raise their hands.

Results.

THE SECRETARY: Ayes, 26. Nays,

32.

ACTING PRESIDENT VALESKY: The amendment is not agreed to.

Returning to the bill. Senator Saland.

SENATOR SALAND: Thank you, Mr. President. Would Senator Stewart-Cousins yield, please.

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

SENATOR STEWART-COUSINS: Absolutely.

ACTING PRESIDENT VALESKY: The sponsor yields.

SENATOR HANNON: Senator Stewart-Cousins, perhaps in light of the amendment that Senator Hannon offered -- I did not realize he was offering the amendment -- you might be able to explain the difference between the A print and the B print.

The A print I saw as a member of the Education Committee, I supported it, and it pretty much sounded like the bill you described. The B print, however, is not quite, I don't believe, like the bill you

described.

SENATOR STEWART-COUSINS: Thank you, Senator Saland.

It is the same bill, but what's happened is that it's structurally changed so that it is in a more sequential way as opposed to the way it was before. So it's the same bill, it's just in a different -- in a more technically correct structure.

SENATOR SALAND: If the Senator will continue to yield.

ACTING PRESIDENT VALESKY: Senator Stewart-Cousins, do you continue to yield?

SENATOR STEWART-COUSINS: Absolutely.

ACTING PRESIDENT VALESKY: The sponsor yields.

SENATOR SALAND: In your A print -- and perhaps in your B print as well, I'm not sure -- you said, on the fiscal, "Amount to be determined." Does that remain the fiscal implication to the state, the amount is to be determined?

SENATOR STEWART-COUSINS: Yes,

Senator.

SENATOR SALAND: If the Senator will continue to yield.

ACTING PRESIDENT VALESKY: Senator Stewart-Cousins, do you continue to yield?

SENATOR STEWART-COUSINS: Yes.

ACTING PRESIDENT VALESKY: The sponsor continues.

SENATOR SALAND: And what are the elements that will go into the determination of what that amount will be? And to the extent -- if I may, and to the extent that you can, can you explain the difference in the impact on Medicaid payments between your A version and your B version?

SENATOR STEWART-COUSINS: Let me just answer the first question first.

As I began, there are approximately 270,000 children who are eligible for insurance but who for one reason or another are not being insured. So -- so --

ACTING PRESIDENT VALESKY: Excuse me, Senator Stewart-Cousins.

SENATOR SALAND: There are folks

around me speaking, and I'm finding it hard to hear Senator Stewart-Cousins.

ACTING PRESIDENT VALESKY: Keep the noise down, please.

SENATOR STEWART-COUSINS: The original premise is that there are almost 300,000 children in New York State who are eligible for these types of programs who for one reason or another are still not receiving the benefits.

So on the one hand, I think it's fair to say that we have these programs established to be able to make sure that kids who are eligible get insurance. So I think the fiscal implications have already been factored into the reality that we offer these programs for the benefit of eligible children.

So what this particular bill would do was, again, give another avenue to reach these eligible children. And that's why I say that the impact, although not determined, has already presumably been factored into the fact that we have offered these programs for insuring children and continue to offer the programs.

SENATOR SALAND: Would the Senator continue to yield.

ACTING PRESIDENT VALESKY: Senator Stewart-Cousins, do you continue to yield?

SENATOR STEWART-COUSINS: Yes.

ACTING PRESIDENT VALESKY: The sponsor continues.

SENATOR SALAND: Senator Stewart-Cousins, could you tell me what the difference is between the federal poverty level for purposes of a free lunch or breakfast or a reduced lunch or breakfast?

SENATOR STEWART-COUSINS: What are the qualifications?

SENATOR SALAND: Yes.

SENATOR STEWART-COUSINS: Yeah. A parent or the guardian can come in and, you know, say that they are eligible for free and reduced lunch.

And I'm glad you brought this point up, because the reality is is that you can say "I can't afford to feed my child" and get a free or reduced lunch. However, you cannot use that only as an eligibility criterion for

the insurance program that we're talking about.

So it is another avenue where we can identify and hopefully ensure that schoolchildren who are absolutely eligible for this program who arrive at our schools, their parents know that there's another way for them to be insured. However, again, the eligibility criteria for these programs remain the same.

SENATOR SALAND: If the Senator will continue to yield.

SENATOR STEWART-COUSINS: Yes.

ACTING PRESIDENT VALESKY: The sponsor continues.

SENATOR SALAND: When we talk about the federal poverty level, is it not true that in one instance it's 130 percent of the rate and in the other instance it's 185 percent of the rate? Is that correct?

SENATOR STEWART-COUSINS: Well, I can tell you that the Child Health Plus eligibility is 400 percent of the federal poverty level -- $58,200 for a family of two, $73,000 and change for a family of three,

et cetera. So the Child Health Plus eligibility, which is what we'd be looking at, is 400 percent of the federal poverty level.

SENATOR SALAND: Thank you, Senator Stewart-Cousins. But my question really is about the federal poverty level for purposes of eligibility not for Child Health Plus, but either for a free lunch or breakfast or a reduced lunch or breakfast.

And I think in the case of the former, the free, it's 130 percent of the poverty level and in the case of the latter, I believe it's 185 percent.

SENATOR STEWART-COUSINS: You're right. Actually, you're almost right, it's about 185 percent based on my records here.

But again, the larger picture is still the larger picture. And that is that there are almost 300,000 children, many of whom I'm sure are in our public schools, many of whom are indeed eligible for both free lunch as well as Child Health Plus.

So again, because the awareness is raised, because you choose to enroll in a program doesn't necessarily mean you're

eligible. And the eligibility criteria which is used to determine whether or not a child can benefit from Child Health Plus remains the same.

SENATOR SALAND: Would the Senator yield to one more question.

ACTING PRESIDENT VALESKY: Senator Stewart-Cousins, do you continue to yield?

SENATOR STEWART-COUSINS: Yes.

ACTING PRESIDENT VALESKY: The sponsor yields.

SENATOR SALAND: That was the rationale that was offered for your A print. And if that was the case, why is the B print necessary? Because that was the rationale that was offered in committee --

SENATOR STEWART-COUSINS: Right.

SENATOR SALAND: -- that was the rationale that was offered in your bill memo. And what is it that necessitated the B print that will result, by reason of the certification language that's contained on the last page of the bill, in an undetermined yet increased amount of Medicaid costs? This has

nothing to do with Child Health Plus.

SENATOR STEWART-COUSINS: Senator Saland, again, the technical change was because of the restructuring for recertification. The restructuring was in recertification; now it's in the application process.

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

On the bill, Mr. President.

ACTING PRESIDENT VALESKY: Senator Saland, on the bill.

SENATOR SALAND: I would merely suggest that the amendment that we're seeing in an A and B print is anything but technical. The amendment is going to result in what is, in the bill sponsor's memo, an undetermined impact on the state in terms of the fiscal note.

And this particular amendment, by way of the Medicaid impact, will increase the amount that would be expected to be paid by way of Medicaid over and above what was in the preceding bill -- a bill which I believe may have passed, notwithstanding the fiscal,

unanimously out of committee.

What we're doing here is inviting yet another increase in spending on the Medicaid side of the equation, notwithstanding the laudable purpose, which could have been equally well accomplished at a lower expense with the prior version of the bill. And it's one which I would hope that the sponsor would reconsider.

I have no idea if this is a crossover or if it's -- if there's a same-as. But this certainly is nothing that's in the Governor's fiscal plan. And God only knows if anybody knows what's in the fiscal plan, 12, 13 weeks into the budget date. But it's inconceivable to me that anybody in any fiscal plan has made any provision for this increased amount of money.

Thank you.

ACTING PRESIDENT VALESKY: Thank you, Senator Saland.

Are there any other Senators -- Senator Montgomery.

SENATOR MONTGOMERY: Yes, Mr. President, I rise to support this

legislation and thank Senator Stewart-Cousins for introducing it.

And certainly I represent one of those districts where so many of those 270,000 children who are not currently participating and who are eligible live.

And despite, you know, every summer at every event all across my district, there are people with vans and brochures and tables and they're passing out this Child Health Plus and join Child Health Plus and sign up and what have you, most of those young people are still missed.

And we have these separate systems to serve the exact same constituents. And this is clearly one of those areas where we have a separate system for enrolling children in their nutrition programs in their schools and a separate system for them to be enrolled in Child Health Plus. This just makes so much more sense.

If a young person is enrolled, is eligible, and the parents can prove their eligibility for the nutrition program, yes, they should automatically be assumed to be

eligible for Child Health Plus, for Medicaid. It's a very simple solution to a huge problem. And I really, really think that this becomes one of the pillars where we begin to address access to very important services for parents and their children in our state and remove some of those barriers that are just really basically bureaucratic fences to them being able to access services.

So I'm supporting this legislation. I really ask my colleagues to vote yes on this, because this really will make a huge difference in making sure that children who are eligible are actually going to be covered for their healthcare.

Thank you, Mr. President.

ACTING PRESIDENT VALESKY: Thank you, Senator Montgomery.

Senator Hannon.

SENATOR HANNON: Thank you, Mr. President.

If you're going to make a change, you ought to make it accurately. I voted for this bill in committee, and subsequent to the committee, the phrase was added

"notwithstanding the provisions of paragraph A, an applicant or recipient providing written documentation of income eligibility of a child for a free or reduced breakfast or lunch through the school programs certified by the child's school shall meet the evidentiary requirements." So in other words, if you get either the free or reduced-price breakfast or lunch, you're eligible for Medicaid.

Well, the free is exactly the same in terms of the percentage of the poverty level, so there is an even standard. But the hole in the argument of the sponsor is that it's the reduced price. That goes to 185 percent of poverty. If we make that many children eligible for Medicaid, we've expanded Medicaid. It's very clear.

Now, I would like to expand Medicaid for lots. I'd like to keep the expanded Child Health Plus. But at a time we're facing multiple billion-dollar deficits and told later today we'll be voting on tax hikes, later this week we'll be voting on tax hikes, this is not a wise measure.

Thank you, Mr. President.

ACTING PRESIDENT VALESKY: Thank you, Senator Hannon.

Are there any other Senators who wish to be heard?

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

Read the last section.

THE SECRETARY: Section 5. This act shall take effect June 1, 2011.

ACTING PRESIDENT VALESKY: Call the roll.

(The Secretary called the roll.)

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

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

I want to commend the sponsor for this bill. I know that she worked extremely hard on it, and it's a very good bill.

The bill doesn't do anything to change eligibility. Eligibility has been approved and is monitored by the federal government. What this does is, for children who are already eligible but who may not be accessing healthcare, it's another vehicle by

which they can access healthcare.

So covering children who are already eligible to be covered is a good thing, and everything we can do to get them healthcare is, short term and long term, good for our state.

Thank you, Mr. President.

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

Senator Saland, to explain his vote.

SENATOR SALAND: Thank you, Mr. President.

I'd like to read from a piece from yesterday's Poughkeepsie Journal which talked about Medicaid as an issue in New York:

"Driving New York's rate is the paradoxical incentive, under Medicaid, to spend money in order to make it, the promise of the Medicaid match. The feds give a dollar for every dollar." And then they go on to quote a researcher from the University of Minnesota: "'At one level it's fabulous the amount of federal money New York has brought

in.' 'But,' he added, 'half the money has to come from people in New York. That's the other side of it.'"

Then, under "Medicaid It," "One of the reasons New York reaps so much federal cash is New York's proclivity, legendary among the states, to jack up Medicaid reimbursements by aggressively and legally including every state cost even remotely related to disability services, from pencils to power plants. Clerks, commissioners, Albany overhead, regulatory oversight, sidewalk maintenance, it all goes into the mix. 'New York's strategy was' -- again, quoting somebody else -- 'if it moves, Medicaid it. It's called cost mining.'"

This is an example of cost mining. The increase between the current 130 percent of the federal poverty level for the free and 185 percent for the reduced is simply such an example. This is an increased Medicaid cost imposed upon state taxpayers and county taxpayers as well.

I vote in the negative.

ACTING PRESIDENT VALESKY:

Senator Saland to be recorded in the negative.

Senator Hannon, to explain his vote.

SENATOR HANNON: I rise to explain my vote and to say why two of the Senators on the other side of the aisle were wrong in their assumption that this is simply keeping people who are eligible for one program automatically enrolled in Medicaid.

The mistake comes because, and as the bill memo of the sponsor says, "to ensure that children who are eligible and enrolled for free and reduced-price school meals are also enrolled in Child Health Plus or Medicaid." The free school meals does have the same eligibility as Medicaid. So to that point, there is coordination.

However, there's a second program, reduced-price school meals. That has a different eligibility. And in fact it's much higher than the free eligibility -- it's 185 percent of poverty versus 130 percent of poverty. So we are adding in a whole new population to Medicaid by an indirect route, by a route that is not acknowledged.

And that is why I'm against it, because at this time in this year we cannot afford it. Thank you.

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

Senator Liz Krueger, to explain her vote.

SENATOR LIZ KRUEGER: Thank you, Mr. President. I too rise to praise this bill and to support it.

It is free or reduced, as my colleague Senator Hannon just pointed out, but it's Child Health Plus and Medicaid. So Child Health Plus eligibility goes above the reduced price level. So no, it is not increasing a universe of eligibility for benefits.

This is a fundamental question of when you have laws saying people are eligible and yet people aren't participating, you've failed the test. The most critical issue in healthcare, and we've talked about it so many times, is ensuring access to healthcare for children as they are developing so that they don't get the long-term chronic illnesses that will be with them for the rest of their lives,

drive up healthcare costs in the State of New York for them as adults and as older adults.

So this is a win/win. It does not increase the universe of eligibility, it ensures that people who are eligible for either Medicaid or Child Health Plus as children get the benefits they are eligible for.

We've talked about so many times needing universal access to health insurance for our most vulnerable children. This is another common-sense way to ensure that children who are already eligible are able to participate.

I vote yes, Mr. President.

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

Senator LaValle, to explain his vote.

SENATOR LaVALLE: Thank you, Mr. President.

This bill sets an example of why we may want to make a rules change or at least consider it when you make a major change in a

that was reported from committee. And those individuals in the committee -- such as Senator Hannon -- who supported it, then with this amendment, it just brings into play entirely different dynamics. So I think if we rely on a committee system, we really need to abide by the interaction and input of the committee members.

Lastly, once we go this route in terms of school services, we are going to see an expansion in many other areas at a time when we can ill-afford an expansion in cost of Medicaid. And I just remind everyone it's a billion dollars a week. So we're just going to increase those costs.

I vote in the negative.

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

Senator Montgomery, to explain her vote.

SENATOR MONTGOMERY: Yes. Mr. President, I rise to support this legislation. I'm very thankful that Senator Stewart-Cousins has brought this bill to us.

And as I said, I'm a great believer in the school as the access point for services to children, especially young children. And so that's why I believe so much in school-based health clinics. This bill utilizes the school site as the primary place where we can reach the maximum number of children and enroll them in either Child Health Plus or make sure they're covered by Medicaid. And, Mr. President, primary and early intervention for healthcare will reduce the cost in the long run, that is for sure.

The second thing is that children are not the costly part of Medicaid. The other end of the care that we provide -- for institutional care, for the elderly -- that's where the high cost is, not for children.

So I wholeheartedly support this legislation, and I think we are doing what is the right thing to do for the children in our state, and that is to make sure that those who are eligible are indeed covered and enrolled in the program.

Thank you, Mr. President. I vote aye.

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

Senator Stewart-Cousins, to explain her vote.

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

I think that everything to be said about this bill has been said, and I really do urge my colleagues to support the bill.

We have opportunities to change outcomes for people when they are young. That's why we do what we do. We try and get people into appropriate quality care early in their lifetime so that they are not chronically ill and underserved and create a tremendous fiscal burden on taxpayers.

I can't think of a better way to introduce eligible young people, almost 300,000 of them, to the fact that they can get quality primary care than by doing so in school buildings. This does not guarantee that they will indeed be eligible; there are steps that they have to take. It's just another ticket, it's another access point. It

is evidence that they could indeed be eligible.

I hope that we support the bill. I hope that we continue to support the health of our children in New York State.

ACTING PRESIDENT VALESKY: Senator Stewart-Cousins to be recorded in the affirmative.

Senator Oppenheimer, to explain her vote.

SENATOR OPPENHEIMER: Well, just very briefly, because most of the points have been made.

But from my vantage point, as chair of Education, I say if we do not have a healthy child entering school, we are not going to have good educational results. And the opportunity to reach these children young, so that we can change their outcome, so that they can enter kindergarten or pre-K in a position to be able to learn and to benefit from it, that can only be achieved through good healthcare.

And in this instance, with the healthcare available so close to where the

child is, particularly if they're in school, it just gives us a leg up on illnesses like asthma, like diabetes. I mean, if we get them young, we can tell them how to manage their illness. And that will prevent so many times their going to emergency units, to hospitals.

It's just -- this is a win/win. It's a win as far as cost. But more importantly, it saves, in many instances, the lives of these children.

Thank you. I'll be voting yes.

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

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 963 are Senators Alesi, Bonacic, DeFrancisco, Farley, Flanagan, Fuschillo, Golden, Griffo, Hannon, Larkin, LaValle, Leibell, Libous, Little, Marcellino, Maziarz, McDonald, Nozzolio, Ranzenhofer, Robach, Saland, Seward, Skelos, Volker, Winner and Young.

Absent from voting: Senator Lanza.

Ayes, 34. Nays, 26.

ACTING PRESIDENT VALESKY: The bill is passed.

THE SECRETARY: Calendar Number 1057, by Member of the Assembly Paulin, Assembly Print Number 7850, an act to amend the Election Law.

ACTING PRESIDENT CRAIG JOHNSON: Seeing no other Senator wishing to be heard, debate is closed.

The Secretary will please ring the bells.

Read the last section.

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

ACTING PRESIDENT CRAIG JOHNSON: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT CRAIG JOHNSON: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1057 are Senators Alesi, Bonacic, DeFrancisco, Farley, Flanagan, Fuschillo, Golden, Griffo, Hannon, O. Johnson, Lanza, Larkin, LaValle, Leibell, Libous, Little, Marcellino, Maziarz, McDonald,

Nozzolio, Padavan, Ranzenhofer, Robach, Saland, Seward, Skelos, Volker, Winner and Young.

Ayes, 32. Nays, 29.

ACTING PRESIDENT CRAIG JOHNSON: The bill is passed.

Senator Klein.

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

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

ACTING PRESIDENT CRAIG JOHNSON: Senator DeFrancisco.

SENATOR DeFRANCISCO: I was standing to explain my vote, but I'll do it on the next bill, explaining my vote on this last bill.

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

Pending the return of the Rules

Committee, may we please stand at ease.

Senator Libous.

SENATOR LIBOUS: After the Finance and Rules meetings, there will be a Republican conference.

ACTING PRESIDENT CRAIG JOHNSON: Following the Finance Committee and Rules Committee meetings, there will be an immediate meeting of the Republican Minority Conference in the Republican Minority Conference Room.

(Whereupon, the Senate stood at ease at 2:44 p.m.)

ACTING PRESIDENT CRAIG JOHNSON: Senator Klein.

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

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

ACTING PRESIDENT CRAIG JOHNSON: Immediate meeting of the Finance Committee, followed by a meeting of the Rules Committee in the Majority Conference Room.

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

(Whereupon, the Senate reconvened at 4:54 p.m.)

ACTING PRESIDENT CRAIG JOHNSON: Senator Klein.

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

ACTING PRESIDENT CRAIG JOHNSON: Senator Klein, 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 6600C, Senate Budget Bill, an act making appropriations for the support of government;

6605C, Senate Budget Bill, an act making appropriations for the support of government;

6606B, Senate Budget Bill, an act

to amend the Executive Law and others;

6609B, Senate Budget Bill, an act intentionally omitted (Part A); intentionally omitted (Part B);

8065, by Senator Aubertine, an act to amend the Economic Development Law and the Public Authorities Law;

8284, by the Senate Committee on Rules, an act making appropriations for the support of government;

8285, by the Senate Committee on Rules, an act to amend Chapter 405 of the Laws of 1999;

And Senate Print 8293, by the Senate Committee on Rules, an act to amend Part D of a chapter of the Laws of 2010.

All bills ordered direct to third reading.

ACTING PRESIDENT CRAIG JOHNSON: We wish to have some order in the chamber, please.

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

(Response of "Aye.")

ACTING PRESIDENT CRAIG JOHNSON: Opposed, nay.

(Response of "Nay.")

ACTING PRESIDENT CRAIG JOHNSON: The Rules Committee report is adopted.

Senator Klein.

SENATOR KLEIN: Mr. President, I would like to take up two bills from Supplemental Calendar 67A: Calendar Numbers 1066 and 1067.

ACTING PRESIDENT CRAIG JOHNSON: The Secretary will place Calendar Number 1066 before the house, noncontroversial.

The Secretary will read.

THE SECRETARY: In relation to Calendar Number 1066, Senator C. Kruger moves to discharge, from the Committee on Finance, Assembly Bill Number 11514 and substitute it for the identical Senate Bill Number 8284, Third Reading Calendar 1066.

ACTING PRESIDENT CRAIG JOHNSON: Substitution ordered.

THE SECRETARY: Calendar Number 1066, by the Assembly Committee on Rules, Assembly Print Number 11514, an act making

appropriations for the support of government.

ACTING PRESIDENT CRAIG JOHNSON: Senator Klein.

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

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

SENATOR KLEIN: Mr. President, I ask that we adopt the message at this time.

ACTING PRESIDENT CRAIG JOHNSON: 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 CRAIG JOHNSON: Opposed, nay.

(No response.)

ACTING PRESIDENT CRAIG JOHNSON: The message is accepted.

Read the last section.

THE SECRETARY: Section 20 --

SENATOR LIBOUS: Lay it aside.

ACTING PRESIDENT CRAIG JOHNSON:

The bill is laid aside.

The Secretary will now put before the house Calendar Number 1067. The Secretary will read.

THE SECRETARY: Calendar Number 1067, by the Senate Committee on Rules, Senate Print 8285, an act to amend Chapter 405 of the Laws of 1999 amending the Real Property Tax Law.

ACTING PRESIDENT CRAIG JOHNSON: Senator Klein.

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

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

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

ACTING PRESIDENT CRAIG JOHNSON: 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 CRAIG JOHNSON:

Opposed, nay.

(No response.)

ACTING PRESIDENT CRAIG JOHNSON: The message is accepted.

Read the last section.

THE SECRETARY: Section 3. This act --

SENATOR LIBOUS: Lay it aside.

ACTING PRESIDENT CRAIG JOHNSON: The bill is laid aside.

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

Senator Klein.

SENATOR KLEIN: Mr. President, at this time can we please move to the controversial reading of the two bills on the supplemental calendar, 67A.

ACTING PRESIDENT CRAIG JOHNSON: The Secretary will ring the bell.

Members are all asked to come to the chamber for the reading of the controversial calendar. I ask all members to please remain in the chamber as we debate these bills.

The Secretary will put before the

house Calendar Number 1066 on the controversial supplemental calendar.

THE SECRETARY: Calendar Number 1066, substituted earlier by the Assembly Committee on Rules, Assembly Print Number 11514, an act making appropriations for the support of government.

ACTING PRESIDENT CRAIG JOHNSON: Senator DeFrancisco, why do you rise?

SENATOR DeFRANCISCO: I'm requesting a very, very brief explanation.

ACTING PRESIDENT CRAIG JOHNSON: Senator Kruger, a very, very brief explanation has been requested by Senator DeFrancisco.

SENATOR CARL KRUGER: Thank you, Mr. President. It will be my pleasure to oblige.

This bill is the 12th appropriation extender, that runs for the period to end on June 27th. It provides $2.4 billion in an All Funds appropriation and $1.5 billion for a General Funds appropriation.

ACTING PRESIDENT CRAIG JOHNSON: Senator DeFrancisco.

SENATOR DeFRANCISCO: Would

Senator Kruger yield to a couple of questions?

ACTING PRESIDENT CRAIG JOHNSON: Senator Kruger, will you yield for a couple of questions?

SENATOR CARL KRUGER: Yes, I do.

ACTING PRESIDENT CRAIG JOHNSON: He does, Senator DeFrancisco.

SENATOR DeFRANCISCO: Senator Kruger, I'd just like to ask you the same questions that I asked last week. What cuts if any, are made by the series of bills that we're asked to pass on today? Total amount of dollars of cuts.

SENATOR CARL KRUGER: Through you, Mr. President, somewhere in the neighborhood of $100 million.

SENATOR DeFRANCISCO: All right.

So would Senator Kruger continue to yield?

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

SENATOR CARL KRUGER: Yes, I do.

SENATOR DeFRANCISCO: Adding that $100 million to the $1.1 billion of cuts, cumulative, from last week, after passing

these budget bills today we would have a total of $1.2 billion in cuts; is that correct?

SENATOR CARL KRUGER: No.

SENATOR DeFRANCISCO: No. Would Senator Kruger tell me how I'm wrong in adding the $1.1 billion, which was his number last week, to 100 million today, to come up with $1.2 billion?

ACTING PRESIDENT CRAIG JOHNSON: First of all, Senator Kruger, do you yield for another question?

SENATOR CARL KRUGER: Yes, I do.

And, Mr. President, for the purposes of clarity, let me go through a series of numbers and maybe that will put us better into focus.

Firstly, the initial budget cut was $9.1 billion. In the December DRP, we cleared up $692 million of that shortfall. Through the period of reductions, we have provided for the following: In healthcare, $774 million; in local government aid, $325 million; in human services, $211 million; in mental hygiene, $48 million; other cuts totalling $52 million; and state operations, including

workforce, $1.2 million. For a total cut of $2.620 billion.

By the way, and then just for further clarity, other actions that were taken were tax audit and recovery of $221 million, nonrecurring actions of $565 million, federal FMAP extension of $989 million, other actions of 1.775 million, tobacco revenues of 440 million. Total back-closing actions of 5.527 billion. Remaining gap to close, which would approximately be 40 percent of the outstanding, would be 3.651 billion.

ACTING PRESIDENT CRAIG JOHNSON: Senator DeFrancisco.

SENATOR DeFRANCISCO: Would Senator Kruger yield to another question.

ACTING PRESIDENT CRAIG JOHNSON: Senator Kruger, will you yield to another question?

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

SENATOR DeFRANCISCO: I'm not quite sure how raising taxes is a cut. Because you indicated in your summary there raising cigarette taxes by so many millions --

I'm not quite sure what the number was, because I lost track. All I remember is last week you told me cumulatively up to last week there was $1.1 billion in cuts, and today you're telling me there's another $100 million in cuts. To me, that sounds like $1.2 billion in cuts, leaving a balance from the $9.2 billion of $8 billion to go.

Now you're saying to me that I'm wrong. Is that correct?

SENATOR CARL KRUGER: Through you, Mr. President. Firstly, what we were talking about last week were the two bills that were on the floor, and those were the numbers that we used to reflect actions being taken on those two bills, not the cumulative effect of all actions being taken.

SENATOR DeFRANCISCO: Would Senator Kruger yield to a question.

ACTING PRESIDENT CRAIG JOHNSON: Senator Kruger, would you yield to a question?

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

SENATOR DeFRANCISCO: Excluding revenue enhancers -- or taxes and fees, as

others call them -- up till today, if we pass every one of these bills, how much in actual cuts would have been accomplished, according to your computation?

SENATOR CARL KRUGER: Through you, Mr. President, the actual cuts are 2.620.

SENATOR DeFRANCISCO: All right. So let's take that number, although I'm not quite sure how it changes week to week -- but let's take that number of 2.6 billion. Would Senator Kruger yield to another question?

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

SENATOR DeFRANCISCO: The gap that we've been told for several weeks has been $9.2 billion -- and it may be more, because FMAP money may not be coming from the federal government. So if I subtract 2.6, the cuts that you say will be in effect as of today, from the 9.2 gap, that leaves 6.6 billion of gap left to fill somehow, whether with revenue enhancers, as you call them, taxes and fees, as we call them, or borrowing or whatever. Is that correct?

SENATOR CARL KRUGER: Through

you, Mr. President. No.

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

ACTING PRESIDENT CRAIG JOHNSON: Senator Kruger, will you yield?

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

SENATOR DeFRANCISCO: Senator Kruger, would you tell me what you believe the gap is after passing all of the bills today, if these bills were passed?

SENATOR CARL KRUGER: Through you, Mr. President. As I had indicated previously, the remaining gap to close is 3.651.

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

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

SENATOR DeFRANCISCO: Now, if you take away the taxes that are being proposed in what's happening today -- well, strike that.

Can you tell me what taxes are being imposed today in order to reach the

$3.6 billion gap that remains?

SENATOR CARL KRUGER: Through you, Mr. President, the revenue enhancer that we're talking about today, or the so-called tobacco or cigarette tax, would be $290 million.

SENATOR DeFRANCISCO: All right. If we add the two -- well, let's make it three --

ACTING PRESIDENT CRAIG JOHNSON: Senator DeFrancisco, do you wish Senator Kruger to yield?

SENATOR DeFRANCISCO: Yes.

SENATOR CARL KRUGER: Yes, I do.

ACTING PRESIDENT CRAIG JOHNSON: He yields.

SENATOR DeFRANCISCO: So by your current numbers, cuts were 3.6 billion -- excuse me. Of the $3.6 billion gap that's left, $300 million to get to that number is from taxes of cigarettes. Correct?

SENATOR CARL KRUGER: Through you, Mr. President. Approximately, yes.

SENATOR DeFRANCISCO: All right. So without taxes today, Senator Kruger -- and

would you answer this question -- without the taxes that are being proposed, we would have, as of today, a $4.2 billion gap. Correct?

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

SENATOR DeFRANCISCO: Excuse me. Excuse me, $3.9 billion.

SENATOR CARL KRUGER: Right. Right.

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

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

And as the Senator pointed out, it would be approximately 3.9.

SENATOR DeFRANCISCO: Senator Kruger, one last question.

ACTING PRESIDENT CRAIG JOHNSON: Do you continue to yield, Senator Kruger?

SENATOR CARL KRUGER: Yes, I do.

SENATOR DeFRANCISCO: What is the percentage of the budget that will have been passed as of today, assuming that the budget is the amount that the Governor proposed when

he presented his budget?

SENATOR CARL KRUGER: Through you, Mr. President. After we're completed passing the bills today, in anticipation with total gap closing actions, 5.527, which would be 60 percent -- approximately, again -- of the budget.

SENATOR DeFRANCISCO: Now, I do have one last question.

ACTING PRESIDENT CRAIG JOHNSON: Senator Kruger, do you continue to yield for one last question?

SENATOR CARL KRUGER: Yes, I do.

SENATOR DeFRANCISCO: This $3.9 billion gap, can you tell me -- strike that. Has the Democrat conference been having conferences about what options that remain in order to fill that gap that you just referred to?

SENATOR CARL KRUGER: Through you, Mr. President, negotiations are ongoing.

SENATOR DeFRANCISCO: That wasn't my question. Would Senator Kruger yield to a question.

ACTING PRESIDENT CRAIG JOHNSON:

Senator Kruger, will you continue to yield for questions?

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

SENATOR DeFRANCISCO: What options are being considered by the Democrat conference -- that no doubt you've been briefed, because you want to be informed of what's going on, as chair of Finance. What options are being discussed or are out there to complete the closing of this $9.2 billion gap? Because we're running out of budget here.

SENATOR CARL KRUGER: Through you, Mr. President, we're running out of time, we're not running out of budget.

I guess all actions are on the table.

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

ACTING PRESIDENT CRAIG JOHNSON: Senator Kruger, will you continue to yield for another question?

SENATOR CARL KRUGER: Yeah, I guess this is all part of the last question.

Yes, I do, Mr. President.

SENATOR DeFRANCISCO: Senator Kruger, can you tell me what tax and fee options are being discussed now that we may be faced with within days, because of the Governor's June 28th deadline, which are being discussed so we can start thinking about them on this side of the aisle?

SENATOR CARL KRUGER: Well, through you, Mr. President. As I said, negotiations are ongoing. Cuts as well as revenues projections are on the table. And as the negotiations go forward, we'll have a clearer picture of exactly what that package means.

SENATOR DeFRANCISCO: Thank you, Senator Kruger.

SENATOR CARL KRUGER: Thank you.

SENATOR DeFRANCISCO: This is the 12th budget extender. And by the way, I don't know if this is correct or not --

ACTING PRESIDENT CRAIG JOHNSON: Senator DeFrancisco, this is on the bill, correct?

SENATOR DeFRANCISCO: On the

bill.

ACTING PRESIDENT CRAIG JOHNSON: Thank you.

SENATOR DeFRANCISCO: This is the 12th budget extender, and I don't know if this is correct or now, but the Comptroller, who should know what he's talking about, said that if this budget extender didn't pass by 5 o'clock, he would not be able to get certain payments made to bank accounts, direct deposit. And it's now after 5:00, and we didn't start this discussion until about 5 o'clock. So I don't know if that's true or not.

But unfortunately, we're at this point, the Assembly having done whatever they did last week. But be that as it may, by doing this piecemeal budget, we basically left -- according to what we're hearing today, there's 40 percent of the budget left. We've still got billions of dollars of gap. And if most people understand that if 40 percent is left, 30 percent of the amount that's left is education.

And if the Assembly and Senate

majorities are having difficulty cutting 1.4 billion, they're certainly not going to cut $4 billion or $5 billion to close that gap in that area, because that's all that really remains, the only major item that remains.

So what we're facing, no doubt, is either borrowing, despite the Governor's unequivocal statement that there be no borrowing, or more revenue enhancers, what the general public knows as higher taxes and higher fees. And that's why this piecemeal process is the wrong process.

I will guarantee you that someone will say, when we're in the final bill, that we really have no options. And if that's the case, we really had no options only because we did the budget piecemeal by this process, which is the bad process which will be discussed in some of the more specific bills.

For example -- I just want to mention one of them -- one of the big issues is whether there's going to be wine in grocery stores. But we don't have anything in any of these bills that says we're going to do it or we're not going to do it. But in 6600C that

we're going to be dealing with shortly, there is funding for 20 new staff members associated with the Governor's wine in grocery stores initiative.

Now, how can we be putting more people on with respect to that proposal and we haven't even made a decision yet whether or not there's going to be wine in grocery stores? So these things are interrelated, as are the cuts and taxes, when you've got to do the budget as a whole.

But be that as it may, despite the piecemeal process that we're going through right now, I am going to be voting no. I just don't see how this process is going to result in anything other than taxes and fees and borrowing. Those are the only real choices with the education part of the budget, the last one.

And I'm not going to buy the argument that we will have no alternative, because you can't just paint yourself in the corner and then claim that there's nothing you can about it.

So I would urge all of my

colleagues to vote no on this bill, because this is not a way to run a state government. And I once again will be voting no.

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

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

All Senators please reenter the chamber and sit in your seats for voting.

Read the last section.

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

ACTING PRESIDENT CRAIG JOHNSON: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT CRAIG JOHNSON: Senator Diaz, to explain his vote.

SENATOR DIAZ: Thank you, Mr. President.

Today, this is the 12th extender. And this 12th extender has no cuts on it. Meaning that I feel at ease because the people in my district, the people in my community are not getting cuts today.

And I am happy to vote yes on the extender with no cuts, and I ask everybody here on the other side -- Maziarz -- put your hands down and vote yes.

Thank you, Mr. President.

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

Senator Saland, to explain his vote.

SENATOR SALAND: Thank you, Mr. President.

Mr. President, I found the debate between Senator DeFrancisco and Senator Kruger interesting. Not necessarily illuminating, but interesting. Trying to come up with certitude when it comes to numbers is sort of like trying to capture fog.

I'm intrigued by the idea that we continue with this incremental approach. We keep spending money having absolutely no idea whatsoever as to what might constitute a fiscal plan or what might be the pot at the end of this long and arduous procedure, 12 weeks now of extenders. And the reality

simply is that there's no individual, as I've said before, who can control their personal finances this way, nor any business who can keep writing checks without knowing what's in the pot. I suspect before long we'll have the old, for those of us who remember, Flip Wilson defense of "The devil made me do it."

But I'd like to just conclude, Mr. President, with a quote from the Albany Business Review from the State Comptroller. It's as follows: "The state is limping along week to week without a budget, hoping there will be enough money to pay the bills. We're on a long trip with no map, no directions, and no GPS. This is no way to responsibly operate a state. We're already mired in a fiscal crisis."

I vote in the negative, Mr. President.

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

Senator DeFrancisco, to explain his vote.

SENATOR DeFRANCISCO: Yes, very briefly.

I just -- the 12th extender -- you know, I don't know what to say, actually. You know, to me it's personally embarrassing to come here each week and ask legitimate questions and get a sliding-scale answer that has no relationship to the answers the previous week.

But what what's even more troubling today to me is there's no question that the Democrat conference, the majority, has discussed the progress of negotiations that have gone on. And there's no doubt that there's information that's being provided to the Democrat majority Senators who represent virtually, say, about half of the state, a little more than half of the state. And they know what the options are, and they know what's being discussed, and they know what direction this process is going and what taxes and additional spending that's being proposed.

And it's just an embarrassment that we don't have this out in public and that the other half of the community of the State of New York is left totally in the dark, just waiting for the next nonsensical explanation

and the next nonanswers and ultimately a final take-it-or-leave-it plan. Because there are options, and those options should be discussed publicly.

So I'm going to vote no again this week and see what the next few days bring to us and whether it will be more so-called revenue enhancers. In my community, they're determined to be taxes and borrowing and fees.

Thank you. I vote no.

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

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1066 are Senators Alesi, Bonacic, DeFrancisco, Farley, Flanagan, Fuschillo, Golden, Griffo, Hannon, O. Johnson, Lanza, Larkin, LaValle, Leibell, Libous, Little, Marcellino, Maziarz, Nozzolio, Padavan, Ranzenhofer, Robach, Saland, Seward, Skelos, Volker, Winner and Young.

Ayes, 33. Nays, 28.

ACTING PRESIDENT CRAIG JOHNSON: The bill is passed.

The Secretary will now put before the house Calendar Number 1067.

THE SECRETARY: Calendar Number 1067, by the Senate Committee on Rules, Senate Print 8285, an act to amend Chapter 405 of the Laws of 1999 amending the Real Property Tax Law.

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

SENATOR KLEIN: Thank you, Mr. President.

I rise in support of I believe this very important piece of legislation. Since I've come to the Legislature, one of the issues that I've consistently worked on was the enforcement of our Tax Laws -- more specifically, the untaxed cigarettes which were making their way around the State of New York. I'm very proud of the fact that I was able to accomplish most of my goals with bipartisan support. Earlier in my career, along with Senator Libous, we were able to curtail a lot of the bootlegging or untaxed cigarettes that came to this state from low-tax states around the nation.

More recently, when I was in the Assembly, together with Senator Fuschillo we wrote landmark legislation which banned the sale of cigarettes over the Internet and through mail order. Unfortunately, this law was written some time ago. It still hasn't been enforced. While UPS and Federal Express agreed through various agreements not to deliver these cigarettes, the United States Postal Service unfortunately was still delivering these cigarettes because we couldn't regulate them.

Earlier in the year -- actually, several months ago -- the federal government, the President signed what's known as the PACT Act, which now prohibits the delivery of cigarettes through the United States Postal Service. So now, in essence, the trade of Internet cigarettes is I think going to be curtailed in New York, which is very important for several reasons.

First are health reasons. We found time and time again, through various sting operations, that young people were able to buy cigarettes through the Internet, no questions

asked, and that's a problem. Because one of the things that we need to do to make sure that young people don't smoke is first of all have verification of their age and also make sure that they don't have a source of cheap cigarettes, which of course are untaxed cigarettes.

Luckily, that has been accomplished. And I think what we're doing here today is sort of the second leg. What we're doing here finally -- and I think Governor Paterson and the Governor's counsel Peter Kiernan deserve a tremendous amount of credit. I think what Governor Paterson is doing here today through this bill could very well be one of his legacies, because prior Governors were not able to get something as simple as enforce our tax laws, also making sure that young people don't have access to cheap smokes, making sure that no one has access to tax-free cigarettes in the State of New York. So I think this is very important.

It's important because clearly when you look at the numbers and you look at the statistics, the way we're going to reduce

smoking in this state is by raising taxes. There's a correlation that every time we raise the tax on cigarettes, anywhere from 5 to 10 percent of the smoking public quits. The problem is we haven't been seeing those large numbers of people quitting smoking because they had access to tax-free cigarettes over the Internet and by visiting their local Native American reservation.

Today we will finally end that, and I think we're going to do it in rather simple ways. The legislation does two things. First of all, come September 1st we're giving the opportunity to Native American reservations around the state to opt into a coupon program. Which means when a Native American has these coupons, they can buy cigarettes tax-free.

This I think holds true with the United States Supreme Court decision, which is the seminal case, United States vs. Attea, which specifically states -- and it is still the law of the land -- when Native Americans sell cigarettes to non-Native Americans, they must collect the tax. So we're giving them the opportunity to purchase cigarettes

tax-free if indeed they're Native Americans.

The other portion, if the Native Americans choose not to buy into this coupon program, they can move into something that's called prior approval, which will also take effect on September 1st. The regulations have already been written. There's already counts which state how many Native Americans in each tribe are smokers. And they will be able to get, again, stamped cigarettes -- because now the law in the land is there's no cigarettes that can be sold in the State of New York without a New York State tax stamp -- that they will get these tax stamps and they will actually be reimbursed through the wholesaler.

In other words, they actually don't have to pay the tax, we're now putting the burden on the wholesaler, which is the tax collector, to be able to make sure that they don't sell above and beyond the number of Native Americans who qualify to get tax-free cigarettes on the reservation.

Again, I think this has certainly been a long haul, but I think an important one. During tough fiscal times I think it's

incumbent upon each and every one of us to do every possible that we put more money back in people's pockets. And certainly this is something we should have dealt with a long time ago.

I know it affects so many upstate communities where anyone who's in close proximity to a Native American reservation -- more specifically, a convenience store or a gas station -- just can't compete. They can't compete with someone who is not obeying the tax laws. They can't compete with someone who is not charging the very high tax that we have on cigarettes in the State of New York.

And by the way, when you go into a local convenience store, when you go to a bodega or a grocery store downstate, the three things that keep these establishments going are cigarettes, beer and lottery. So if you're going to get your cigarettes, you're certainly not going to go to another place to get your lottery or another place to get your beer or your groceries.

So I think this will actually, I think, level the playing field for upstate

communities whose convenience stores just couldn't compete with this unfair source of contributions which weren't taking place.

So again, I want to thank the Governor. I want to thank my colleagues. This is something that's been worked on for a long time. I do not consider this balancing the budget on the backs of Native Americans or anyone else. What we're merely doing today is enforcing our laws. We're a land of laws. And today I think we're taking a very important step to make sure those laws are being enforced and in the process get some very needed revenue.

I vote yes, Mr. President.

ACTING PRESIDENT CRAIG JOHNSON: Thank you very much, Senator Klein.

Senator Winner.

SENATOR WINNER: Thank you, Mr. President. Will Senator Klein yield to a few questions?

SENATOR KLEIN: Yes, Mr. President.

ACTING PRESIDENT CRAIG JOHNSON: Senator Klein will yield, Senator Winner.

SENATOR WINNER: Senator Klein, in this legislation as it relates to the tax agreements with Indian nations or tribes -- I believe it's on page 10 -- there is language in there with regard to stipulations in court of agreements that would be entered into with litigating parties where there is not a necessity of having an agreement of the Legislature with respect to the terms of those stipulations.

My question to you, Senator Klein, is that within your legislative intent is there any intent here to allow a stipulation, a part of which may be dealing with an agreement with respect to the collection of taxes on sales on Indian reservations that may contain other provisions of that agreement, whether it be the settlement of real property tax claims, land claims, the approval of gaming compacts, sales tax on gasoline sales or the like, that may be a part of an overall stipulation in court between parties that may be affecting other areas of the state but may be not directly related to the collection of taxes on Indian reservations but it may be a

part of that stipulation.

Under those circumstances, Senator Klein, is there any intent that that stipulation would be entered into without the approval of the Legislature that may approve those unrelated items?

SENATOR KLEIN: Through you, Mr. President, I assume, Senator Winner, you're referring to the section of the bill which states if an Indian nation or tribe enters into an agreement with the state and the Legislature approves such agreement or if an Indian nation enters into an agreement with the state, and then it goes on, that is part of a stipulation or order approved by a federal court of competent jurisdiction regarding the sale and distribution of cigarettes.

I think it specifically states here there's one or two ways that the bill we're passing today would I guess effectively be null and void. First, if between now and September 1st the Governor, along with the Native American tribes, enters into an agreement or compact which has to be ratified

by the Legislature, that would forgo the need for this legislation.

Two, if there was a lawsuit brought after we pass this legislation and a judge stipulated which would change the terms of this legislation, again, this would be null and void.

But again, to your question on land claims, the legislation specifically states that that would only be the case when dealing with cigarettes, not land claims or anything else.

SENATOR WINNER: Including gaming compacts.

SENATOR KLEIN: Correct.

SENATOR WINNER: May I ask the Senator to yield to another question.

ACTING PRESIDENT CRAIG JOHNSON: Senator, will you continue to yield for a question from Senator Winner?

SENATOR KLEIN: Yes.

SENATOR WINNER: Senator, if I could give you a hypothetical question or a set of facts, let's say Tribe X were to bring some litigation as relates to the collection

of taxes as to the sale of the cigarettes on their reservation properties or elsewhere, and within a stipulation entered into between the parties between the state and Tribe X there was a settlement or an agreement to settle with regard to the collection of taxes but also part of that settlement were to say that in addition you're going to have a compact to be allowed to have gaming on your reservation property or elsewhere, would that stipulation part dealing with gaming still be subject to legislative approval?

SENATOR KLEIN: Yes, it would.

SENATOR WINNER: Thank you.

On the bill, Mr. President.

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

SENATOR WINNER: Thank you, Mr. President.

I'm pleased with the answers to those questions setting forth legislative intent by Senator Klein.

But I do take significant exception to his characterization that this will somehow level the playing field as it relates to

making a more even competitive field to our convenience store businesses as it relates to the sale of cigarettes in the State of New York.

Notwithstanding the Indian issue, the fact of the matter is that along the border where I happen to represent, on the Pennsylvania border, increasing the tax on cigarettes at the significant level that it does may provide for some deterrent in sales to New York residents who might want to shop in those New York convenience stores, but I assure you it will provide no deterrent whatsoever and provide an incentive to drive them across the border into Pennsylvania, which is only a couple of miles away, in order to buy cigarettes with reckless abandon, as well as lottery tickets, gasoline, beer and all the other items, and therefore making those convenience stores even less of a reasonable venture to enter into than they are right now.

So you don't have to be next to an Indian reservation to have that issue of disparity in prices to be a reality, you have

to be anywheres along the border of the state of Pennsylvania, the state of Vermont, the state of Connecticut, or the state of Massachusetts in order to know you can get your cigarettes cheaper right across the border.

So this will hurt my community, my small businesses that are on the border by driving those customers across the border to shop cheaper for not only cigarettes but for gasoline, for lottery, for everything, because the taxes are just lower in those other states.

And this is another hit to regions in upstate who are struggling economically to compete. And when you add it all on top of all of the other things we're doing to them, like eliminating the Empire Zone and charging more for sulfur home heating oil and on and on and on and the like, you'll know that we're not doing a great deal of favor to those of us in the upstate regions who have to compete with these noncompetitive types of atmosphere that we have in New York.

So for those reasons,

Mr. President, I am going to be voting no.

ACTING PRESIDENT CRAIG JOHNSON: Senator Winner will be recorded in the negative.

Senator Diaz.

SENATOR DIAZ: Thank you, Mr. President.

ACTING PRESIDENT CRAIG JOHNSON: On the bill, Senator Diaz?

SENATOR DIAZ: On the bill.

ACTING PRESIDENT CRAIG JOHNSON: On the bill, Senator Diaz.

SENATOR DIAZ: As you remember, Mr. President and ladies and gentlemen, last week I was the only Democratic Senator that voted no on the extender. And I expressed myself last week stating the reason why I was voting no, because there was too much cuts, hurting the people that I was supposed to be protecting.

And I said last week that I would no longer vote as long as there is cuts. And I also said last week that I was not a crazy person saying don't cut without -- without giving some solution. And I gave three last

week, three solutions about -- on how to get money. One of them -- and I also said that it don't take anyone to go to Harvard or to Yale University to see my solutions.

And I said that this black guy from Puerto Rico, with kinky hair and broken English, was giving you guys the solution. And I said that one was to purchase prescription drugs from Canada, the other one was to force the credit card companies to send the taxes that are owed to the state directly to the state and not to the merchants.

And the third one, I said that to impose taxes on the Indian reservation cigarettes. Today I am proud when I see that we're moving on it. We are moving on taxes on Indian reservations, and we started to work on that behalf.

I still would like to see what's going to be done with the credit card companies and taxes and with the purchasing of prescription drugs from Canada.

So today, today I'm voting yes. Next week we don't even know what's going to happen. Next week we shall wait to see next

week. Because what tomorrow might bring, nobody knows. Today is a good day. Today there is no cuts. Today we are voting on taxes and cigarettes, and today also we are voting on later, maybe, on putting back the MetroCard for the students. So it's a good day, a good day for my community, a good day for my constituents, a good day.

So I'm voting yes today. And again, I will repeat myself again, don't take this vote yes that tomorrow, that next week will be yes. Next week we shall wait to see what next week will bring. But meanwhile, Mr. President and ladies and gentlemen, today is a good day to vote yes.

Thank you.

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

Senator Padavan.

SENATOR PADAVAN: I'd like to address the other two parts of this bill.

One of them deals with Quick Draw and its extension. But if you read the wording, very clearly what it does is reaffirm

all the eliminations of the restrictions that existed on Quick Draw -- that the place had to have a certain percentage of food, that it had to be of certain size. And the goal there when the Quick Draw law was initially enacted was to restrict it from bodegas and small little establishments on every corner in our residential communities. All those restrictions are now gone and reaffirmed in this bill.

That's a big mistake. It brings what I call or labeled at that time "video crack" into every neighborhood, on every street corner and any venue you could possibly think of. That, in my view, is not only unwise but immoral.

The other part of this bill deals with the Loft Law. And we discussed this the other day, and I'm not quite sure why it's now in this bill. But I described the Loft Law, for those who are not familiar with it, as a worthwhile effort many years ago to accommodate artists, craftsmen who had occupied the second level of certain buildings in certain limited areas in the City of

New York, primarily in Manhattan and in Brooklyn, and turned them, in addition to their workshop, into their residence. It was a way to accommodate them, and it was reasonable and it was appropriate.

What this bill, the bill we discussed the other day, does is it opens it up throughout the five boroughs broadly, and in the process totally ignores in many instances local zoning and the building code, which is fundamentally a fire safety code, presenting some very hazardous potential situations throughout the City of New York, an issue that many of us from the city have talked about and tried to address in a variety of ways.

Secondly, what it does is undermine the city's effort to promote small manufacturing and industrial companies and initiatives, to attract the small businesses with perhaps 10, 20, 30 employees in different parts of the city to provide employment, to provide economic development, and therefore to provide income. And so by eliminating those facilities, those potential locations, we

undermine that effort as well.

So those two other portions of this bill, I think alone, aside from what's already been discussed, should be reason enough to vote no, and I do so.

Thank you.

ACTING PRESIDENT CRAIG JOHNSON: Senator Padavan, thank you very much.

Are there any other Senators who wish to be heard on the bill? Seeing none, the debate is closed.

I apologize. Senator Bonacic, on the bill.

SENATOR BONACIC: Thank you, Mr. President.

You know, when we keep raising the taxes, I'm one of those Senators that lives near -- right by the Delaware River. We have Pennsylvania, we have Jersey. And all the small businesses are taking a beating now by our tax policies. On gasoline alone, if they across the bridge to Pennsylvania they'll get about a 12-cent break. If they go to New Jersey they get an 18-cent break.

Now when we raise the taxes on

cigarettes to the highest in the nation and we can beat our chests that we think it's going to stop smoking, be a deterrent to smoking and have health benefits, what has happened is they go on the black market and buy the cigarettes, they go over to New Jersey and buy the cigarettes, and they go to Pennsylvania and buy the cigarettes. So there's a lot of negatives that are attached when we raise the products on gasoline, on cigarettes, on our small businesses, for all those Senate districts that border the other states.

For those reasons, I'm voting no. Thank you, Mr. President.

ACTING PRESIDENT CRAIG JOHNSON: Thank you, Senator Bonacic.

Senator Bonacic will be recorded in the negative.

Seeing no other Senators wishing to be heard, the debate is closed.

The Secretary will please ring the bells. I ask all Senators to please join us in the chamber.

Before we read the last section, the Secretary will read the bill for

substitution purposes.

THE SECRETARY: In relation to Calendar Number 1067, Senator C. Kruger moves to discharge, from the Committee on Finance, Assembly Bill Number 11515 and substitute it for the identical Senate Bill Number 8285, Third Reading Calendar 1067.

ACTING PRESIDENT CRAIG JOHNSON: Substitution ordered.

Read the last section.

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

ACTING PRESIDENT CRAIG JOHNSON: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT CRAIG JOHNSON: Senator Adams, to explain his vote.

SENATOR ADAMS: Thank you, Mr. President.

I just wanted to indicate that I think that Senator Klein has done a lot around this bill, and I commend him for his level for of passion to looking to this issue. He and I just are on the opposite side of this issue.

And I think that when you walk

through the Capitol and you see a celebratory photo over the first indigent person killed in New York State, that is the indicator of how far we don't understand this issue. I don't believe we should be taxing Native Americans. This is their land, we are on their land, and I think it's wrong for us to tax Native Americans.

I am going vote for this bill because I don't want to shut down government. I think it's imperative that we move ahead with this issue. But it is time for us to come to clear terms on how we treat Native Americans in the State of New York, if not in this country. But I will be voting aye.

ACTING PRESIDENT CRAIG JOHNSON: Senator Adams to be recorded in the affirmative.

Senator Savino.

SENATOR SAVINO: Thank you, Mr. President. I'll be brief because I know we have a lot ahead of us.

First, I want to congratulate Senator Klein and the Governor for finally developing a solution to a problem that this

state has been grappling with for a long time.

And secondly, I want to state, as a representative of a border community, like Senator Bonacic and Senator Winner, you know, I'm particularly sensitive to the fact that there are states right around us that sell things cheaper, whether it be gas or liquor or cigarettes, or they don't have sales tax on clothing and shoes. And I'm generally very critical of decisions that put us at a competitive disadvantage with other states.

But with respect to cigarettes, it's really hard to defend cheap cigarettes. You know, I started smoking when I was 12, when cigarettes were 50 cents a pack. I quit on August 30, 1993. They were $2.15. The cost never really mattered. And during the period of time I was a nonsmoker, I was the most obnoxious ex-smoker you ever met. You couldn't come near me, you couldn't smoke near me, you couldn't smoke in my house, near my car.

And unfortunately, like most ex-smokers, I always knew that the day could come when I might fall victim to that

temptation. And on August 17, 2007, in a fit of temporary insanity, I put a cigarette in my mouth, I lit it, and I said, "Oh, my God, this is like heroin."

That's a fact. Cigarette smoking is more addictive than any other substance. And that $1.60 a pack extra may not make as many people quit as we would like, but I will tell you what it will do. It will prevent that next 12-year-old from buying cigarettes. And for that reason, I support this increased tax which makes us slightly less competitive with New Jersey. I vote aye.

ACTING PRESIDENT CRAIG JOHNSON: Senator Savino will be recorded in the affirmative.

Senator Hassell-Thompson, to explain her vote.

SENATOR HASSELL-THOMPSON: Thank you, Mr. President. I rise to support the contention of Senator Adams, in that I too would not have ever voted for this bill if it were freestanding.

And this bill has absolutely nothing to do with health and smoking, but it

has everything to do with revenue-generating activities on the -- to the extent that it is going have a deleterious effect not on those who smoke in the Native American communities, but on their ability to continue to care for their nation.

If anyone has been paying attention, they have gone from having serious issues of substance abuse, of alcoholism and homelessness, to being self-sufficient. And they've been successful in doing that with the revenues that they have been able to collect based upon the treaties that have allowed them to continue to do so.

Therefore, I am in total disagreement with this bill. But because it is a part of a budget bill that I am forced to sign, I want to go on record as saying that I am totally opposed to the taxing of Native Americans.

Thank you, Mr. President.

ACTING PRESIDENT CRAIG JOHNSON: Senator Hassell-Thompson, how do you vote?

SENATOR HASSELL-THOMPSON: I already told you.

ACTING PRESIDENT CRAIG JOHNSON: Senator Hassell-Thompson, you asked to explain your vote.

SENATOR HASSELL-THOMPSON: I am voting in support of the bill, under duress.

ACTING PRESIDENT CRAIG JOHNSON: Senator Hassell-Thompson to be recorded in the affirmative.

Senator Stachowski.

SENATOR STACHOWSKI: Yes, Mr. President. As Senator Adams and Senator Hassell-Thompson both mentioned, I too believe that this should have been -- the Indian tax collection should have been negotiated. I feel that they have treaties that we should respect.

I think that there's still a question whether this particular collection is part of the treaty. I know that there's one court decision that says we should be collecting the money, but I think there's a probability that this is going to end up in court again and this amount of money is not going to be collected.

Unfortunately, it's going to cause

ill feelings. I don't know if we'll be able to get negotiations done. And there's a series of other issues that are outstanding that we should be settling all of these issues with the various Indian nations, in particular, in my area, the Seneca nation.

But because this is part of a budget extender, I'm going to have to support it. But I have to say that I'm very disappointed that we didn't take this through negotiations and work this out in a manner that would be satisfactory not only to us but to the sovereign nation of the Seneca Indians also.

Thank you. I vote aye.

ACTING PRESIDENT CRAIG JOHNSON: Senator Stachowski will be recorded in the affirmative.

Senator Diaz, to explain his vote.

SENATOR DIAZ: Thank you, Mr. President.

I really sympathize with Senator Bonacic and those of you that are talking about that you don't like taxes for the Indians and upstate. But I would invite all

of you to come to the City of New York and smell the coffee. And you'll see how oppressed the people that I serve are.

In the City of New York we have taxes on milk, taxes on chewing gum, taxes on parking meters, double parking, rent increases, taxes on rice and beans when you buy it, taxes on student loans, taxes on student lunch, taxes on subway fare increase, taxes on taxes. Taxes in restaurants, taxes in theaters. And you're telling me that I'm not going to vote for taxes in the Indian reservation? Come to the city and see how my people are oppressed with taxes.

So today we have been fair, today we are being treated with decency when there are no cuts. But it's about time that we put taxes in the Indian reservations. With all due respect, they use the same streets that we use, they use the same services that we use, they use the same hospitals that we use, they use everything equally, such as the social services departments. So in the City of New York, you want to talk about oppressing and taxes and increases? Come to my district

and you will see how it is.

That's how I'm voting yes, proudly, and congratulate Governor Paterson and my Bronx colleague Senator Klein.

ACTING PRESIDENT CRAIG JOHNSON: Senator Diaz, how do you vote?

SENATOR DIAZ: I'm voting yes -- no, I'm voting si.

Thank you.

ACTING PRESIDENT CRAIG JOHNSON: Senator Diaz to be recorded in the affirmative.

Senator DeFrancisco, to explain his vote.

SENATOR DeFRANCISCO: Yes, I'm going to vote in the negative.

Just so there's no confusion by those who are protesting that this is somehow linked to the extender, therefore they have no choice but to vote for this, it's not the case. We've already passed the extender, or I should say you already passed the extender. This is just a piece of the rest of the piecemeal budget process. And if it's rejected, government is still going to

operate, just as it did under the rest of the extender bill.

So this bill has good aspects to it, and I think taxing the cigarettes on Indian sales is a good part. But it's a very bad bill in increasing taxes and making our businesses much more noncompetitive, which is the least thing we need right now.

So those who really want to reconsider their vote on this tax bill here, for whatever reason, could do so and rest assured that it has nothing to do with stopping government. It just means that this little piecemeal piece of this little piecemeal process ain't going to happen today. And maybe there's other alternatives, as we've been saying all along.

I vote no.

ACTING PRESIDENT CRAIG JOHNSON: Senator DeFrancisco to be recorded in the affirmative.

Senator Perkins, to explain his vote.

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

I just want to share the concerns of those who are expressing problems with the way in which we associate with the Indians and how this particular matter to some extent is being addressed on their backs. Nevertheless, I do recognize that it's important that we raise this revenue, as well as it's important in our communities where we have the possibility, through this, to curb the use of smoking.

I believe that it does have some potential in that regard. The more it costs, the less likely people may be inclined to use it. And as Senator Savino pointed out, the next 12-year-old or teenager might hesitate in terms of buying a pack of cigarettes. And from that point of view, this is very, very important to me, especially with the high rates of cancer that are affecting especially communities of color. Cigarette smoking contributes significantly to that.

But I just want to underscore Senator Adams' point about our relationship with the Indian nations and about the need for us to be working better with them and not use

them in the ways that we've abused them.

In this particular moment, nevertheless I'm supporting the bill. I vote aye.

ACTING PRESIDENT CRAIG JOHNSON: Senator Perkins to be recorded in the affirmative.

Senator Maziarz, to explain his vote.

SENATOR MAZIARZ: Thank you very much, Mr. President. Just very briefly to explain my vote.

I don't understand, people say they're against taxing the Native Americans and they vote to tax the Native Americans.

Just a few weeks ago there was a delegation up here, and I thought they did an excellent job, from the Seneca Nation. They met with several of my colleagues on that side of the aisle, and I think there was general agreement that there was some understanding. Well, I can tell you, I can't speak for the Seneca Nation, but after they see this vote, they're going to feel like they were once again, once again lied to by representatives

of the State of New York.

Make no mistake about it, if the Governor -- and I'm not sure that he will this time really, really, really carry out the collection efforts. But if he does, in September there will be a clash of cultures here in this state, probably in the Southern Tier. And I suspect, and I hope that I'm wrong, that there may be violence and that there will be people who will get hurt. And the reason that that will happen, that clash of cultures, is because of the vote that took place here today.

I vote in the negative, Mr. President. Thank you.

ACTING PRESIDENT CRAIG JOHNSON: Thank you, Senator Maziarz.

Senator Maziarz will be recorded in the negative.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1067 are Senators Alesi, Bonacic, DeFrancisco, Farley, Flanagan, Fuschillo, Golden, Griffo, Hannon, O. Johnson, Lanza, Larkin, LaValle, Leibell,

Libous, Little, Marcellino, Maziarz, McDonald, Nozzolio, Padavan, Ranzenhofer, Robach, Saland, Seward, Skelos, Volker, Winner and Young.

Ayes, 32. Nays, 29.

ACTING PRESIDENT CRAIG JOHNSON: The bill is passed.

Senator Klein, that completes the reading of the controversial Supplemental Calendar Number 67A.

Senator Klein.

SENATOR KLEIN: Mr. President, I would like to take up Supplemental Calendar 67B.

ACTING PRESIDENT CRAIG JOHNSON: The Secretary will read.

THE SECRETARY: Calendar Number 1068, by the Senate Committee on Rules, Senate Print 8293, an act to amend Part D of a chapter of the Laws of 2010.

ACTING PRESIDENT CRAIG JOHNSON: Senator Klein.

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

ACTING PRESIDENT CRAIG JOHNSON:

Senator Klein, there is a message of necessity at the desk.

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

ACTING PRESIDENT CRAIG JOHNSON: 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 CRAIG JOHNSON: Opposed, nay.

(No response.)

ACTING PRESIDENT CRAIG JOHNSON: The message is accepted.

The Secretary will read the last section.

THE SECRETARY: Section 2. This act shall take effect on the same date as Part D of a chapter of the Laws of 2010.

ACTING PRESIDENT CRAIG JOHNSON: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT CRAIG JOHNSON: Announce the results.

THE SECRETARY: Those recorded in

the negative on Calendar Number 1068 are Senators Alesi, Bonacic, DeFrancisco, Farley, Flanagan, Fuschillo, Golden, Griffo, Hannon, O. Johnson, Lanza, Larkin, LaValle, Leibell, Libous, Little, Marcellino, Maziarz, McDonald, Nozzolio, Padavan, Ranzenhofer, Robach, Saland, Seward, Skelos, Volker, Winner and Young.

Ayes, 32. Nays, 29.

ACTING PRESIDENT CRAIG JOHNSON: The bill is passed.

Senator Klein, that completes the reading of noncontroversial Supplemental Calendar 67B.

SENATOR KLEIN: Mr. President, can we return to Supplemental Calendar 67A.

ACTING PRESIDENT CRAIG JOHNSON: Returning to Supplemental Calendar 67A, Senator Klein.

The Secretary will read beginning with Calendar Number 1041.

THE SECRETARY: In relation to Calendar Number 1041, Senator C. Kruger moves to discharge, from the Committee on Finance, Assembly Bill Number 9700D and substitute it

for the identical Senate Bill Number 6600C, Third Reading Calendar 1041.

ACTING PRESIDENT CRAIG JOHNSON: Read the last section.

SENATOR LIBOUS: Lay it aside.

ACTING PRESIDENT CRAIG JOHNSON: The bill is laid aside.

THE SECRETARY: In relation to Calendar Number 1062, Senator C. Kruger moves to discharge, from the Committee on Finance, Assembly Bill Number 9705D and substitute it for the identical Senate Bill Number 6605C, Third Reading Calendar 1062.

ACTING PRESIDENT CRAIG JOHNSON: Substitution ordered.

Read the last section.

SENATOR LIBOUS: Lay it aside.

ACTING PRESIDENT CRAIG JOHNSON: The bill is laid aside.

THE SECRETARY: In relation to Calendar Number 1063, Senator C. Kruger moves to discharge, from the Committee on Finance, Assembly Bill Number 9706C and substitute it for the identical Senate Bill Number 6606B, Third Reading Calendar 1063.

ACTING PRESIDENT CRAIG JOHNSON: Substitution ordered.

The Secretary will read.

THE SECRETARY: Calendar Number 1063, Assembly Budget Bill, Assembly Print Number 9706C, an act to amend the Executive Law and others.

ACTING PRESIDENT CRAIG JOHNSON: Read the last section.

SENATOR LIBOUS: Lay it aside.

ACTING PRESIDENT CRAIG JOHNSON: The bill is laid aside.

THE SECRETARY: In relation to Calendar Number 1064, Senator C. Kruger moves to discharge, from the Committee on Finance, Assembly Bill Number 9709C and substitute it for the identical Senate Bill Number 6609B, Third Reading Calendar 1064.

ACTING PRESIDENT CRAIG JOHNSON: Substitution ordered.

THE SECRETARY: Calendar Number 1064, Assembly Budget Bill, Assembly Print Number 9709C, an act intentionally omitted (Part A).

ACTING PRESIDENT CRAIG JOHNSON:

Read the last section.

SENATOR LIBOUS: Lay it aside.

ACTING PRESIDENT CRAIG JOHNSON: The bill is laid aside.

THE SECRETARY: Calendar Number 1065, by Senator Aubertine, Senate Print 8065, an act to amend the Economic Development Law and the Public Authorities Law.

ACTING PRESIDENT CRAIG JOHNSON: Read the last section.

THE SECRETARY: Section --

SENATOR LIBOUS: Lay it aside.

ACTING PRESIDENT CRAIG JOHNSON: The bill is laid aside.

Senator Klein, that completes the reading of noncontroversial Supplemental Calendar 67A.

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

ACTING PRESIDENT CRAIG JOHNSON: The Secretary will ring the bell. Members are all to come to the chamber for the reading of the controversial Supplemental Calendar 67A.

Again, I ask all Senators to please

stay in the chamber or immediately outside so when we call and ring the bells for a vote we can immediately have you come in for voting.

The Secretary will place before the house Calendar Number 1041.

The Secretary will read.

THE SECRETARY: Calendar Number 1041, substituted earlier, Assembly Budget Bill, Assembly Print Number 9700D, an act making appropriations for the support of government: Public Protection and General Government Budget.

ACTING PRESIDENT CRAIG JOHNSON: Are there any Senators who wish to be heard on the bill?

Senator Nozzolio.

SENATOR NOZZOLIO: Thank you, Mr. President. Mr. President, will the sponsor of this measure yield?

ACTING PRESIDENT CRAIG JOHNSON: Senator Kruger, will you yield for questions from Senator Nozzolio?

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

ACTING PRESIDENT CRAIG JOHNSON:

Senator Nozzolio, Senator Kruger will yield.

SENATOR NOZZOLIO: Thank you, Senator Kruger. Mr. President, through you.

Mr. President, are there, in this public protection legislation, correctional facilities that will be closed as a result of this vote?

SENATOR CARL KRUGER: Through you, Mr. President, Lyon Mountain and Butler in Wayne County. That's it. That's it, yes.

ACTING PRESIDENT CRAIG JOHNSON: Senator Nozzolio.

SENATOR NOZZOLIO: Thank you, Senator Kruger. Mr. President, will Senator Kruger continue to yield?

ACTING PRESIDENT CRAIG JOHNSON: Senator Kruger, will you continue to yield?

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

ACTING PRESIDENT CRAIG JOHNSON: Yes, he will, Senator Nozzolio.

SENATOR NOZZOLIO: Senator Kruger, could you explain to this body what will the dollar savings be of the closure of those facilities?

SENATOR CARL KRUGER: Just one moment, Mr. President.

ACTING PRESIDENT CRAIG JOHNSON: One moment, Senator Nozzolio.

SENATOR CARL KRUGER: Through you, Mr. President, the Butler facility, 1.776, and Lyon for 1.270.

ACTING PRESIDENT CRAIG JOHNSON: Senator Nozzolio.

SENATOR NOZZOLIO: Thank you. Mr. President, will Senator Kruger continue to yield?

ACTING PRESIDENT CRAIG JOHNSON: Senator Kruger, will you continue to yield?

SENATOR CARL KRUGER: Yes, I do.

ACTING PRESIDENT CRAIG JOHNSON: Senator Nozzolio.

SENATOR NOZZOLIO: Thank you, Senator Kruger.

Senator Kruger, for those closures earmarked in this legislation, Senator Hassell-Thompson debated and helped enact last week a measure that provided economic development assistance for those communities that face prison closures. Will any of those

facilities closed by this legislation have the benefit of those economic development activities and support in the legislation enacted last week?

SENATOR CARL KRUGER: One moment, Mr. President.

ACTING PRESIDENT CRAIG JOHNSON: One moment, Senator Nozzolio.

SENATOR CARL KRUGER: Through you, Mr. President, as part of the closure program, there is automatically a study done for economic impact and remediation.

SENATOR NOZZOLIO: Senator Kruger, I'm sorry, I had trouble hearing you. Did you indicate --

SENATOR CARL KRUGER: I'm sorry. As part of the closure plan, there is a provision made for a study of the economic impact of that closure and what remediation to mitigate that economic impact would be.

SENATOR NOZZOLIO: So in other words, Senator, that those facilities --

ACTING PRESIDENT CRAIG JOHNSON: Do you wish Senator Kruger to yield for another question?

SENATOR NOZZOLIO: Yes, Mr. President.

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

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

SENATOR NOZZOLIO: Senator Kruger, thank you. Would those facilities then be subject to that assistance?

SENATOR CARL KRUGER: Yes, they would be.

SENATOR NOZZOLIO: Mr. President, would Senator Kruger continue to yield.

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

SENATOR CARL KRUGER: Yes, I do.

SENATOR NOZZOLIO: Senator Kruger, in Governor Paterson's budget it was proposed a few months ago that in his proposal there was an amount of funds to support what's called the Family Reunion Program at correctional facilities. Is that money in the budget bill before us today?

SENATOR CARL KRUGER: Through you, Mr. President, there is nothing that

takes that out of this budget.

SENATOR NOZZOLIO: Thank you, Senator Kruger.

Mr. President, on the bill.

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

SENATOR NOZZOLIO: I appreciate Senator Kruger's candor on this particular item. But I'd like to highlight exactly what this item is. Governor Paterson put in his budget $800,000 or thereabouts to establish conjugal visits at the Five Points Correctional Facility.

Now, it might make some sense, you could argue at least that the closure of correctional facilities would in fact save the taxpayers some money. That would certainly be the intention. But it's clear here that none of the dollars going to the closure of these correctional facilities are going to be returned to the taxpayers. On the contrary, an additional appropriation is in this budget to establish $800,000 for a double-wide trailer so that murderers, rapists, robbers, those who have committed the most violent

crimes that society has ever seen will be able to be treated to a conjugal visit with someone ostensibly from their family.

In an effort to understand this, I guess my citizens who sent me to represent them believe it's an upside down situation where you're allowing taxpayers' dollars of that magnitude to be for a double-wide trailer to be located at Five Points Correctional Facility or at any of the other correctional facilities across this state that provide the conjugal visit program.

Mr. President and my colleagues, this is a waste of money. It's not only a waste of money, it's an insult to the citizens of this state who are seeing their parks closed, who are seeing their school districts at stress, who are seeing their taxes increase. Why? So that the most violent of criminals in this state can be coddled by establishing a program that the State of Ohio says very clearly is not just a waste of money, it's dangerous. There's potential for violence within these reunions. It's placing the most violent who are going to be in prison

for the longest period of time in a situation where they're in effect with their families when in fact they're going to be in prison for many, many years --

ACTING PRESIDENT CRAIG JOHNSON: Senator Hassell-Thompson, why do you rise?

SENATOR HASSELL-THOMPSON: I wanted to -- through you, Mr. President, I wanted to answer Senator Nozzolio's question specifically about this particular allocation.

ACTING PRESIDENT CRAIG JOHNSON: Senator Hassell-Thompson, do you ask Senator Nozzolio to yield for a question?

SENATOR HASSELL-THOMPSON: I didn't have a question. I had an answer to the concern that he raised.

ACTING PRESIDENT CRAIG JOHNSON: Senator Hassell-Thompson, Senator Nozzolio does have the floor. If you're asking him to yield for a question, that's up to him. But if you wish to speak on the bill, Senator Nozzolio still has the floor. You'd have to ask him to yield.

SENATOR HASSELL-THOMPSON: Senator Nozzolio, would you yield to a

question?

ACTING PRESIDENT CRAIG JOHNSON: Will you yield for a question, Senator?

SENATOR NOZZOLIO: Mr. President, I appreciate the graciousness of Senator Hassell-Thompson in trying to answer my questions before I ask them to her, but I believe frankly I would like to conclude my remarks, and then certainly I'd be willing to yield.

ACTING PRESIDENT CRAIG JOHNSON: You may continue, Senator Nozzolio.

SENATOR NOZZOLIO: Thank you, Mr. President.

Mr. President, I was saying that to place the most violent of criminals in a situation where the taxpayers are funding, in terms of millions of dollars across the correctional system, a place where prisoners who have committed the most violent of crimes can now -- as an Ohio Department of Rehabilitation and Correction study indicated, that this does not promote healthy bonding of families. In effect, it's an ethical paradox where you're placing some violent criminal in

a situation where frankly what happens if the family and the -- in effect, as a result of the conjugal visit becomes pregnant and has another child while the inmate is incarcerated that certainly is not, as this study indicated, a visitation program that is -- this may be extremely detrimental to the family and society, as well as establishing issues to convey contraband, establish potential for sexually transmitted diseases and other things that make no sense.

Mr. President, I rise to oppose this legislation particularly because of this type of inappropriate appropriation where we're placing taxpayers' dollars in a priority that makes no sense in these difficult economic times. That's why I'll be voting against it. I urge my colleagues to do the same.

Thank you, Mr. President.

ACTING PRESIDENT CRAIG JOHNSON: Thank you, Senator Nozzolio.

Senator Hassell-Thompson.

SENATOR HASSELL-THOMPSON: I withdraw my question. He wasn't interested in

the information.

Thank you, Mr. President.

ACTING PRESIDENT CRAIG JOHNSON: Thank you, Senator Hassell-Thompson.

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

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

The Secretary will read the last section.

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

ACTING PRESIDENT CRAIG JOHNSON: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT CRAIG JOHNSON: Senator Hassell-Thompson, to explain her vote.

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

I am in support of this legislation, and I would just like to state for the record that the $800,000 that was referred to for conjugal visits is not in this budget. It was never put in the budget this year, and it was discouraged from being in the

budget for the very reasons that Senator Nozzolio stated. So I just would like the record to reflect that that's not correct information.

Thank you, Mr. President. I vote yes.

ACTING PRESIDENT CRAIG JOHNSON: Senator Hassell-Thompson will be voting in the affirmative.

Senator DeFrancisco, to explain his vote.

SENATOR DeFRANCISCO: Yes, with respect to the conjugal visits, the Governor prepared these in his original budget, and this bill did not eliminate that portion of the budget. It's the same number. And we've been informed, the Minority has been informed by the Office of the Budget, the Governor's budget office, that that is still in.

But the other two points I wanted to make, what's also in here, for those who are deciding how to vote, is funding 20 new staff members associated with the Governor's wine in grocery stores. I don't know where people stand on that, but it's kind of curious

that we're voting on new positions and we haven't even made the decision -- or maybe you have, maybe you have -- that there will be wine in grocery stores.

In addition, there is new spending, $8 million for legal services funded through more fees. Let me give you an idea what those fees are. Ninety-five dollars paid by the plaintiff in every consumer credit transaction where you're suing on a consumer credit transaction; $190 extra for every real estate foreclosure; an additional fee, from $55 to $65 for criminal background checks -- unfunded mandate going back to the school districts and other people; and increasing registration fees for lawyers and the like.

All of these, the total of all of these are about $35 million. So it's another hidden fee in a bill. We haven't got to that part yet, but this is how it's going to be funded what we're voting on by this piecemeal budget process.

I vote no.

ACTING PRESIDENT CRAIG JOHNSON: Senator DeFrancisco to be recorded in the

negative.

Senator Ranzenhofer to explain his vote.

SENATOR RANZENHOFER: Thank you, Mr. President.

Three hundred and twenty-nine pages, an hour to read it, 329 pages. You know, I thought after last year when spending was increased by those on the other side of the aisle $12 billion, $2,400 a family, that we'd had enough, we couldn't get any higher, we couldn't take any more money out of the system, out of people's pockets. But here we go again. In 329 pages, spending more money, raising more fees.

When is it going to end? When is it going to end? You know, I think that's one of the problems when you put together a budget in secret and you don't have any discussions after 12 weeks. I keep on listening to the dialogue between Senator DeFrancisco and Senator Kruger. When are you going to get the information? Well, it's coming, it's coming, when we reach a critical mass.

Well, here we are voting on the

first budget bill, and what do we see? We see more fees, we see more hires -- we can't even fund the programs that we have right now. But what are you doing in this budget? You're creating new programs, new state employees, more money from the taxpayer.

Simply not affordable. Not sustainable. You're continuing to drive more and more people from this state -- my kids, your kids, some of our grandkids. It's just not affordable. I cannot in good conscience vote for this. I'll be voting no.

ACTING PRESIDENT CRAIG JOHNSON: Senator Ranzenhofer to be recorded in the negative.

Senator Carl Kruger, to explain his vote.

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

I guess by virtue of a reality check, let's look at some of the facts that were put on the floor today. Firstly, the bills that we're voting on now were printed and available on Friday, and they were voted on by the Assembly on Friday as well. So it's

not that someone had a few hours, they had several days.

Secondly, the issue that's made about the staffing at the SLA for wine in the supermarkets, that's a contingent appropriation and it is not supported by actual cash.

Thirdly, the issue of trailers. The conjugal program is an outgrowth of the programs that were under the stewardship of the former chairman of the Crime and Corrections Committee in the Senate, Senator Nozzolio.

Thank you, Mr. President. I vote yes.

ACTING PRESIDENT CRAIG JOHNSON: Senator Kruger to be recorded in the affirmative.

Senator Volker, to explain his vote.

Mr. President, I'll try to move quickly. First of all, there is money in the budget, I'm told, for conjugal visits, and it's in a lump sum appropriation, just as it was in there last year. Well, that's what

we're told, that it's in there and it's in the same place as it was last year. And people have already been notified that it's going to continue.

Interestingly enough, the Assembly obviously made a deal on lawyers, because they charged individuals who are from outside the state who take the bar exam $500 more, to raise it to $750, but only raised the biannual fee for practicing lawyers from $350 to $375. It's interesting, because I think that was to satisfy some of the lawyers in the Assembly.

But I've got to tell you something else. There's a new bureau set up for overseeing indigent services. The problem with it is what I was always concerned about. If you read the people who make the appointments, the vast majority are from New York City. There's no question that's why we always had problems. We wanted a statewide group to be able to do it. If you read it, you will see what I'm talking about.

And by the way, there's nobody from the Senate Minority or the Assembly Minority, no Republicans at all, particularly that are

listed here.

The problem we always had with the suggestion for this new bureaucracy for legal services, indigent legal services, is that the upstate people and the Long Island people were concerned that this would turn into a New York City program. And if you read who is involved in the appointments, you'll realize that's exactly what happened.

And that's a shame. Because I thought this was a good idea. I still think it's a good idea. But I really think that we ought to have people from all across the state making these decisions and not just people who are primarily concerned with New York City.

I vote no.

ACTING PRESIDENT CRAIG JOHNSON: Senator Volker to be recorded in the negative.

Senator Nozzolio, to explain his vote.

SENATOR NOZZOLIO: Thank you, Mr. President.

Mr. President and my colleagues, in these horrendously difficult economic times when this Legislature is facing very difficult

decisions, the Senate Democrats and Governor Paterson and the Assembly Democrats are putting before us bills that raise taxes, that cut vital services, that are driving people out of this state. At the same time putting an $800,000 expenditure for a new conjugal visit program at one of the correctional programs in this state, where the most violent criminals, those who have committed serious violent felonies -- rape, robbery, murderer -- are going to be allowed to have conjugal visits at taxpayers' expense.

The citizens of this state can no longer nor should no longer tolerate this type of expenditure. In these times, this expenditure should be a priority to cut. It should be one of the first things to be cut. And because this Senate proposal put forward by the Democrats does not cut, I think it's unconscionable and unforgivable to those who are supporting it.

And for that I say we oppose it we believe, it's inappropriate in this time, and that's why we Senate Republicans are voting against it.

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

Senator Schneiderman, to explain his vote.

SENATOR SCHNEIDERMAN: Thank you, Mr. President.

I just want to rise and thank Senator Hassell-Thompson and Senator Adams, Senator Sampson, the others who have worked on this. This is actually the best piece of a bad budget that I have seen. This imposes fees, ladies and gentlemen, on those who can best afford to pay lawyers, the plaintiffs in foreclosure proceedings, which are basically banks and creditors. It uses the money not for some centralized bureaucracy, this money is going to local governments to fund indigent defense services.

The 2006 report by Chief Judge Kaye determined that our indigent defense services in this state are broken. It's county by county, it's piecemeal. Some places you get good services, some places the defenders are completely overloaded. This would correct

that inequity without generalized taxes. It takes money out of the system and puts it back into the system.

And the creation of the indigent defense office I believe is a great step forward towards our ideal of equal justice under law. This is not principally, Senator Volker, a New York City problem. This is principally a problem in poorer counties upstate, and this is what it's designed to correct.

This is a good step forward. Mr. President, I think everyone should support this piece of legislation. It's tough to impose fees, but this is as fair as we could do and it does improve legal services for thousands and thousands of New Yorkers.

ACTING PRESIDENT CRAIG JOHNSON: Senator Schneiderman, how do you vote?

SENATOR SCHNEIDERMAN: I vote in the affirmative, Mr. President.

ACTING PRESIDENT CRAIG JOHNSON: Senator Schneiderman to be recorded in the affirmative.

Senator Maziarz, to explain his

vote.

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

I didn't want to get into this, but I'm going to be voting in the negative. But just so that everyone's clear, look, there have been conjugal visit programs in state prisons for a long time. The Governor proposed this year $778,000 to expand that program and to purchase new trailers. Okay? The Division of Budget has acknowledged that $778,000 is in this bill that we are about to vote on today. The new trailers and expansion of the program is in this bill.

I vote no, Mr. President. Thank you.

ACTING PRESIDENT CRAIG JOHNSON: Senator Maziarz to be recorded in the negative.

Senator Marcellino, to explain his vote.

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

I will be voting no on this bill. Senator Schneiderman talked about fees and

it's difficult to do it. Well, the fee that's mentioned was just slightly mentioned but I think is a pass-through and pass-down to people who cannot afford it very much is the criminal background check fee.

I was the town clerk in the town of Oyster Bay for many years, and we did criminal background checks and required them routinely for people who came in for hack licenses and a whole bunch of other types of licenses. All the civil service tests require criminal background checks. And those fees generally were passed on to the applicants. These were not people who could afford it, these were people who were, you know, looking for a job at pretty low levels. This is a pass-down to local governments that's going to cost a lot of people a lot of money that they don't have.

We were told before that 60 percent of this budget will be finished by the time we're through today, leaving about $3.9 billion of a $9.2 billion gap to fill. The only thing of significance, as was pointed out correctly by Senator DeFrancisco, is the education part of the budget. Are we going to

cut approximately $4 billion out of education? I don't think so. If that's your proposal, let's bring it on the floor right now. I don't think you're going to do that. I think you're going to raise taxes to fill that gap. I think you're going to do some borrowing to fill that gap.

And I think, as I said in a prior statement, the Big Ugly is coming. And the Big Ugly is going to hit us on Monday. That's when we're going to see the borrowing and taxes and the fees that are going to come out and the cuts to education which a lot of people are waiting for and are not too happy about.

So I'm going to vote no on this -- I'm going to continue to vote no -- because this tax-and-spend mentality has got to stop. We've got to change what we're doing and we've got to change how we're doing it.

ACTING PRESIDENT CRAIG JOHNSON: Senator Marcellino to be recorded in the negative.

Announce the results.

THE SECRETARY: Those recorded in

the negative on Calendar Number 1041 are Senators Alesi, Bonacic, DeFrancisco, Farley, Flanagan, Fuschillo, Golden, Griffo, Hannon, O. Johnson, Lanza, Larkin, Flanagan, Leibell, Libous, Little, Marcellino, Maziarz, McDonald, Nozzolio, Padavan, Ranzenhofer, Robach, Saland, Seward, Skelos, Volker, Winner and Young.

Ayes, 32. Nays, 29.

ACTING PRESIDENT CRAIG JOHNSON: The bill is passed.

The Secretary will put before the house Calendar Number 1062.

THE SECRETARY: Calendar Number 1062, substituted earlier today, Assembly Budget Bill, Assembly Print Number 9705D, an act making appropriations for the support of government: Transportation, Economic Development and Environmental Conservation Budget.

ACTING PRESIDENT CRAIG JOHNSON: Senator Libous.

SENATOR LIBOUS: Mr. President, would Senator Dilan answer some questions in the transportation portion of this bill,

please.

ACTING PRESIDENT CRAIG JOHNSON: Senator Dilan, Senator Libous has requested that you would yield for questions.

SENATOR DILAN: If it's okay with the chair of Finance, yes.

ACTING PRESIDENT CRAIG JOHNSON: Senator Kruger, would you permit Senator Dilan to answer questions pertaining to --

SENATOR CARL KRUGER: I always yield to my learned colleagues.

SENATOR LIBOUS: Mr. President, whomever feels more comfortable, I'd be happy to --

SENATOR CARL KRUGER: There is nobody better equipped to answer the questions than Senator Dilan.

ACTING PRESIDENT CRAIG JOHNSON: Senator Kruger has agreed to let Senator Dilan -- Senator Libous, Senator Dilan has agreed to yield for some questions.

SENATOR LIBOUS: Thank you, Senator Dilan, if you would yield.

My first question is, can you tell me what the size of the DOT capital plan would

be under this bill and over how many years will that money be spent? So I need to know the amount of money and over how many years will it be spent, for the DOT capital plan.

SENATOR DILAN: Mr. President, through you. Under this appropriation bill, this legislation authorizes a two-year $6.9 billion capital spending plan.

SENATOR LIBOUS: Thank you, Senator.

And, Mr. President, through you, would the Senator continue to yield.

ACTING PRESIDENT CRAIG JOHNSON: Senator Dilan, do you continue to yield?

SENATOR DILAN: Yes, sir.

SENATOR LIBOUS: Senator Dilan, in October of 2009 DOT Commissioner Stan Gee requested a five-year capital plan of $25.8 billion, and DOT spent about $8.43 billion in the first two years. Even at this higher funding level, he stated that the state's road and bridge conditions were going to continue to deteriorate.

By cutting $1.5 billion from this budget or from his budget proposal, what will

happen to the condition of the roads and bridges in the State of New York?

SENATOR DILAN: Mr. President, Senator Libous is correct. On October 4, 2009, DOT released its capital plan, which at that time was for five years, at about $5 billion per year. And about 45 minutes after that plan was released, by the way, I believe everyone knows that the Governor of the State of New York actually said "We can't even fund what they're requesting."

Since that time, I've held about six, seven hearings throughout the State of New York, had many of the stakeholders speak on this. I have held out during this entire process to try to get the DOT budget to be funded at close to $5 billion. And I actually met with the Governor several months ago. Because what we're talking about here to get it funded at that level would mean that we would have to put in $88 million from the General Fund into the Bridge and Highway Trust Fund in order to leverage close to $5 billion a year.

The $88 million did not materialize

because the Executive decided this funding level, even against his own DOT agency -- and I have actually till about last Friday held out on closing down the transportation budget.

However, I did have members of the industry from upstate New York, from all over the State of New York, indicate to me that if we did not close down this transportation budget they were going to lose the construction season and this year's appropriation would not even be spent. For example, they indicated to me that upstate New York, especially in the Northern Country, the construction season ends about October of this year, and we would be hurting thousands of jobs throughout this state.

For that reason, I agreed with the chairman of Finance and others to close the transportation part of the budget down.

ACTING PRESIDENT CRAIG JOHNSON: Senator Libous.

SENATOR LIBOUS: Will the Senator continue to yield.

SENATOR DILAN: Yes, sir.

ACTING PRESIDENT CRAIG JOHNSON:

Senator Dilan will continue to yield.

SENATOR LIBOUS: Thank you. So, Senator, thank you for agreeing that an additional $1.5 billion has been cut and that according to DOT that the fair and poor pavement report went up from 40 percent to 55 percent over the next two years and, according to them, that 600 more bridges will become deficient. So I appreciate that you recognize that.

My question to you, sir, would be in 2008 my colleagues on this side of the aisle, we increased the DOT five-year capital plan to about $19.2 billion to address the needs of drivers throughout the State of New York and to keep parity -- and I'll get back to that word -- with the MTA.

Last year I believe, Mr. Chairman, you voted to cut the DOT'S capital plan. Can you tell me by how much?

ACTING PRESIDENT CRAIG JOHNSON: Senator Dilan.

SENATOR DILAN: Well, I don't recall -- your question is that we voted to cut the MTA capital plan?

SENATOR LIBOUS: No, the DOT capital plan, Mr. President. The road/bridge plan, sir.

SENATOR DILAN: I don't recall the exact number at this moment. I don't recall the number at this moment.

SENATOR LIBOUS: Thank you, Mr. President.

I will respond, and then I would ask if he would yield for another question.

SENATOR DILAN: Sure.

ACTING PRESIDENT CRAIG JOHNSON: Senator Dilan will continue to yield.

SENATOR LIBOUS: Senator Dilan, the amount was $1 billion, down to 18.2.

But in just over one year, you will have voted to cut the DOT's capital plan by $2.5 billion. During this same period, you voted to increase revenues going to the MTA by $2.2 billion a year and provided the MTA with an additional $6.5 billion in capital funding.

Can you tell me the size of the two-year MTA capital program that your conference approved on June 1st? And is this the largest discrepancy in the two-year

program that we've ever seen in the agency's history?

Now I'll go back to that parity question. In the past, Mr. President and Senator Dilan, this chamber for about 20 years has always done the MTA capital plan and the road and bridge plan together. Parity. Whatever money went into one went into the other.

That was broken. And I'm asking Senator Dilan if he could tell me the size of the MTA two-year plan and then the size of the bridge and highway plan and ask if he could also state the discrepancy between the two plans.

ACTING PRESIDENT CRAIG JOHNSON: Senator Libous, before -- how many questions are you asking?

SENATOR LIBOUS: That was one with multiple parts, Mr. President. Let me be more specific.

ACTING PRESIDENT CRAIG JOHNSON: That was more than one --

SENATOR LIBOUS: Senator Dilan, I would be happy to lay them out a little better

for you. I apologize. Question one --

SENATOR DILAN: I could have answered them, but --

SENATOR LIBOUS: Question number one, on June 1st your conference approved an MTA capital plan. How much was that capital plan, sir?

ACTING PRESIDENT CRAIG JOHNSON: Senator Dilan.

SENATOR DILAN: It's $24 billion over five years.

SENATOR LIBOUS: I'm sorry?

SENATOR DILAN: $24 billion over five years.

SENATOR LIBOUS: So I believe it's about $9.1 billion, or 31 percent larger than the DOT plan during the same period. Is that correct?

ACTING PRESIDENT CRAIG JOHNSON: Are you asking Senator Dilan to continue to yield?

SENATOR LIBOUS: I'm sorry, Mr. President, I'm asking him to continue to yield.

So my question to you is that

according to my math, it's about $9.1 billion or 31 percent large than the DOT plan over the same period of time.

SENATOR DILAN: It is about $8 billion over two years, which means it's about $4 billion per year.

SENATOR LIBOUS: Mr. President, I respectfully disagree. But I won't argue that now, because I believe it is $9.1 billion.

Would Senator Dilan continue to yield?

ACTING PRESIDENT CRAIG JOHNSON: Senator Dilan, do you continue to yield?

SENATOR DILAN: Yes, sir.

ACTING PRESIDENT CRAIG JOHNSON: Senator Libous.

SENATOR LIBOUS: Because of the late state budget, Senator, DOT has awarded over $1 billion in work. Your bill does not include the traditional shares or splits between Long Island, New York City, the Hudson Valley, or upstate. Since there are no regional allocations in your bill that is on the floor today, are you leaving this up to the Executive to decide which road and bridge

projects are going to be accomplished?

SENATOR DILAN: The DOT did come out with a schedule, I believe it was in March of this year, which outlined all the projects throughout the State of New York for a two-year program.

SENATOR LIBOUS: Would he continue to yield, Mr. President?

ACTING PRESIDENT CRAIG JOHNSON: Senator Dilan?

SENATOR DILAN: Yes.

ACTING PRESIDENT CRAIG JOHNSON: He will continue to yield, Senator Libous.

SENATOR LIBOUS: Senator Dilan, are you familiar with the program as it pertained to the shares program that we've had for transportation in this state for the last probably 20, 25 years?

SENATOR DILAN: I believe I understand what you're saying in terms of how you've done it in the past. And I know that we have been trying to accommodate that, Senator.

However, in view of the economic times and the MTA being an authority and

having a capital review board which deals with their budget, and I through our leadership, trying to negotiate equity between DOT, MTA, and trying do this at the same time, we're at very difficult times.

And under the circumstances -- and also, as I indicated earlier, I tried to hold out to the very last second. But at the urging of the industry and all the contractors throughout the State of New York, if we continue to hold out on this budget, there would be no contracts let after April 1st. Up to this point and this is our, what, 12th extender, since April 1 not one single contract has been let by DOT.

By virtue of passing this current budget appropriation, and at the urging of the industry, we would not even be able to spend the money that was allocated for this year. So for the sake of getting some contracts let and saving thousands of jobs for New York State, this is the appropriation we have at this time.

ACTING PRESIDENT CRAIG JOHNSON: Senator Libous.

SENATOR LIBOUS: Mr. President, would he continue to yield, please.

ACTING PRESIDENT CRAIG JOHNSON: Senator Dilan, will you continue to yield?

SENATOR DILAN: Yes, sir.

SENATOR LIBOUS: Senator Dilan, are you aware that you have veto power over that MTA plan and that you, as Chairman of the committee, and your conference being in the majority, could actually have vetoed that plan and then implemented a plan that would be fair to all New York State that would have the appropriate splits for the road and bridge plan? Are you aware of that, sir?

SENATOR DILAN: If I were chair of the committee, I'd be very well aware of it. But I'm not chair or the representative from the Senate on the capital review board.

ACTING PRESIDENT CRAIG JOHNSON: Senator Libous.

SENATOR LIBOUS: Mr. President, would he yield to another question?

ACTING PRESIDENT CRAIG JOHNSON: Senator Dilan, will you continue to yield?

SENATOR DILAN: Yes, sir.

SENATOR LIBOUS: Senator Dilan, do you have a member of your conference on that board?

SENATOR DILAN: Yes.

SENATOR LIBOUS: Would he continue to yield.

ACTING PRESIDENT CRAIG JOHNSON: Senator Dilan, do you continue to yield?

SENATOR DILAN: Yes, sir.

SENATOR LIBOUS: Senator Dilan, would possibly a member of your conference that sat on that board, would he be willing to maybe stand up for the rest of New York State and could he have vetoed that plan and then done a fair plan that would be an accurate plan for both road and bridges and the MTA that would have the same amount of money and have parity and have the splits between upstate, downstate, Long Island, Hudson Valley, and for that matter New York City?

SENATOR DILAN: Well, the member -- the representative from the State Senate could have approved no plan for the MTA, and then we would have had no capital plan for anyone.

SENATOR LIBOUS: I'm sorry, what was that answer, Mr. President?

SENATOR DILAN: I'll repeat it. I said the representative from the Senate could have vetoed that MTA plan. Then we would have had no plan for the MTA and perhaps no plan for DOT either.

SENATOR LIBOUS: Mr. President, through you, would he continue to yield?

ACTING PRESIDENT CRAIG JOHNSON: Senator Dilan, will you continue to yield?

SENATOR DILAN: Yes, sir.

SENATOR LIBOUS: Senator Dilan, do you realize that if he did veto it and there was no plan that it could be renegotiated by the majority of this house?

ACTING PRESIDENT CRAIG JOHNSON: Senator Dilan.

SENATOR DILAN: Perhaps. I don't know.

ACTING PRESIDENT CRAIG JOHNSON: He said perhaps, he didn't know.

SENATOR LIBOUS: Would Senator Dilan continue to yield?

ACTING PRESIDENT CRAIG JOHNSON:

Senator Dilan, do you continue to yield?

SENATOR DILAN: Yes.

SENATOR LIBOUS: Thank you, Senator.

Senator, do you think it was fair to do a plan for the MTA region but yet leave the rest of New York State hanging?

SENATOR DILAN: You know, Mr. President, I think that we in the majority conference or I know especially myself tried very hard to ensure that the Department of Transportation capital plan was funded. Unfortunately, we did not get the cooperation that we expected from the Governor.

And as I indicated, if we don't have any plan at all, there would be no spending whatsoever this fiscal year on the plan. And again, I'll repeat, at the urging of the industry, we closed it down so we can get some contracts let and employment for many construction jobs throughout the State of New York this year.

SENATOR LIBOUS: Would Senator Dilan continue to yield?

ACTING PRESIDENT CRAIG JOHNSON:

Senator Dilan, will you continue to yield for Senator Libous?

SENATOR DILAN: Yes, sir.

ACTING PRESIDENT CRAIG JOHNSON: Senator Libous.

SENATOR LIBOUS: Thank you, Senator Dilan.

Senator, do you realize that this year the MTA five-year plan was approved but yet there was only funding for two years?

SENATOR DILAN: As I indicated, I'm not the representative on the Capital Review Board, although I may have seen the plan. But I didn't have anything to do with that part.

It's two years also, I believe. Two years. It's funded for two years.

SENATOR LIBOUS: That's right. But it was a five-year capital plan, Mr. President, funded for two years. But the road and bridge plan is the pay-as-you-go in this item.

ACTING PRESIDENT CRAIG JOHNSON: Let me first say both parties can't talk over each over.

SENATOR LIBOUS: Could I ask for a favor before I -- there's a lot of noise in the back of the chamber here.

ACTING PRESIDENT CRAIG JOHNSON: I'll ask, at Senator Libous's request, for both sides of the aisle to keep it down.

I will also ask to allow each Senator to speak and try not to speak over each other because the stenographer, for one, may have a difficult time.

Senator Libous.

SENATOR LIBOUS: Senator Dilan, one or two more questions, please. Would you yield?

SENATOR DILAN: Yes, sir, Mr. President.

ACTING PRESIDENT CRAIG JOHNSON: Senator Libous.

SENATOR LIBOUS: Do you realize that upstate drivers pay over half the gas taxes and fees going into the dedicated Highway and Bridge Trust Fund? Without the regional splits we talked about, how will the drivers in upstate New York or the ones that many of us represent -- and actually some of

your colleagues represent -- how will they get their fair share of the taxes if there are no regional splits in this budget, if it's going to be left to the discretion of the Executive?

SENATOR DILAN: Well, you know, the only thing I can indicate about the dedicated Bridge and Highway Trust Fund is that it's in trouble. And I think it's been in trouble for many years before we took over the majority. The bridge and highway fund needs to be revamped, it needs to be really looked at in terms of how we can leverage capital funding for it.

And for many years prior to us being in the majority -- I'm trying to use the right word here -- this fund, there was tons of borrowing to pay for other programs and not used the way it was supposed to be.

ACTING PRESIDENT CRAIG JOHNSON: Senator Libous.

SENATOR LIBOUS: Senator Dilan, are you aware, sir, that I had a bill on the floor five years ago to level the funding in the dedicated highway --

ACTING PRESIDENT CRAIG JOHNSON:

Senator Libous, are you asking Senator Dilan to yield for a question?

SENATOR LIBOUS: I'm asking, yes, if he will yield.

ACTING PRESIDENT CRAIG JOHNSON: Senator Dilan, will you continue to yield?

SENATOR DILAN: Yes. Yes.

SENATOR LIBOUS: Are you aware that I had a bill on the floor five years ago that actually would have corrected the deficit in the dedicated highway trust fund?

SENATOR DILAN: Well, I believe that I was aware. And if Senator Libous would like, we can work on it together to correct the highway and bridge fund.

SENATOR LIBOUS: Mr. President, on the bill.

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

Thank you very much, Senator Dilan.

Senator Libous.

SENATOR LIBOUS: Mr. President and my colleagues, I'm -- and, Senator Dilan, thank you for being so gracious to answer some of the questions.

But I have to tell you that, once again, there are regions of this state getting the short end of the stick, if you will. There are roads and bridges throughout this state, and there is more to this state than the MTA region. And although I have great respect and have been supportive when I chaired the committee of the MTA region, we always had parity. And parity meant that whatever went to the MTA went to the road and bridge plan.

Senator Dilan, last year, in April when the budget was passed, I asked you on the floor if there would be a road and bridge plan, if there would be parity. And you said to me: "Yes, Senator, in October." October of 2009 has come and gone. We are now in June of 2010. There is no parity for upstate roads and bridges.

I turn to some of my colleagues from upstate New York, and I would defer to Senator Aubertine and Senator Valesky, who in 2009 -- and I plead, I plead, gentlemen, for your help here -- in 2009 you had a release that went out. And because of my age, I need

glasses to read it. I can't find my glasses, so I'll borrow Senator Skelos's. Oh, these are pretty good.

In 2009 my colleagues Senator Valesky and Senator Aubertine put a release out, and in that release they talked about "The plan announced today will keep the MTA solvent and provide accountability which has been sorely lacking in this authority for decades." I concur with you, gentlemen. You're absolutely right there. Certainly a plan without rate hikes or cuts in services is a good move for the state's economy.

Then you went on to say: "But what we've got alone here with this legislation is a renewed commitment to upstate which will ensure road and bridge projects throughout the state will be a priority as we put a five-year plan together."

Well, gentlemen, I guess you kind of feel the same way I do today. Because there is no upstate five-year road and bridge plan. The plan isn't there. And both Senator Aubertine, Senator Valesky, I know that you have the same issues that I have in my

district and that many of us have as upstaters. And it's not fair that there's a five-year MTA plan but yet the road and bridge gets ignored and that the difference in funding in the MTA plan versus the road and bridge plan is 31 percent more for the MTA. In 20 years in this house, in 20 years there was always parity, there was always shares.

If you live in upstate New York or in the Hudson Valley or in Long Island, you're getting the short end of the stick here again. And I think we had this discussion last week, but it seems to keep coming up.

Mr. President, this is not a good way to do business. And then not only do we eliminate the shares, but we give the Governor, no matter who it is, the opportunity to make those decisions on whether roads in Senator Bonacic's district get fixed or Senator Aubertine's district get fixed. Senator Fuschillo's district. Instead of equally dividing the money up by shares throughout the state so that each district gets its fair share and representation. The way we have done it.

But oh, no, we'll give more to the MTA because the mass transit in New York City is much more important that the roads and bridges on Long Island, in the Hudson Valley and upstate New York.

Mr. President, I would call upon my fellow upstate colleagues on the Democratic side of the aisle, even Senator Stachowski -- buffalo is upstate the last I knew -- Senator Breslin: Help us here. Don't let upstate get short-changed. Senator Valesky is not here; I wish he was. Senator Aubertine, as you said in your release, there would be a plan, but unfortunately there is no plan.

We need a plan for upstate roads and bridges. This bill does not provide that plan, Mr. President. Upstate gets the short end again.

ACTING PRESIDENT CRAIG JOHNSON: Thank you, Senator Libous.

Senator Saland.

SENATOR SALAND: Thank you, Mr. President. Would Senator Kruger yield, please?

ACTING PRESIDENT CRAIG JOHNSON:

Senator Kruger, Senator Saland has requested that you yield.

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

ACTING PRESIDENT CRAIG JOHNSON: Senator Saland.

SENATOR SALAND: Senator Kruger, thank you for yielding. Through you, Mr. President.

ACTING PRESIDENT CRAIG JOHNSON: Senator Saland.

SENATOR SALAND: Senator Kruger, I know we've probably had the opportunity to engage on this topic in general terms. It's really the job creation economic development realm. And what I'd like to do is just start off by asking you a general question to see if --

ACTING PRESIDENT CRAIG JOHNSON: Can I please have some order in the chamber.

I apologize, Senator Saland. Please continue.

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

-- just to see if we're starting

off anywhere near the same place. I believe that in order for New York to be viable, our state, in order for our state to be able to stimulate its economy, there has to be a great emphasis on not impairing private-sector job growth but incentivizing private-sector job growth. Could we agree that that in fact would be, as an overarching statement, that could be a common agreement between you and I?

SENATOR CARL KRUGER: Through you, Mr. President, yes, I know so. And that has been the very basis that we've been approaching the entire economic development package.

SENATOR SALAND: Thank you, Senator.

Would the Senator continue to yield?

ACTING PRESIDENT CRAIG JOHNSON: Senator Kruger, will you continue to yield?

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

SENATOR SALAND: Senator Kruger, as I looked at this particular budget bill, there are several things that caught my

attention. I can recall within -- it was either this past week or the week before, we were visited by a delegation from the People's Republic of China. Senator Smith, the Senate President, spoke eloquently of them and how important they were and the importance of international trade.

And having been witness to that and sort of, in all candor, sharing that view, why would this particular bill reject the Governor's proposed increase of $1.5 million for international trade efforts? It would certainly seem to fly in the face of Senator Smith's comments.

SENATOR CARL KRUGER: Through you, Mr. President. Consistent with our goal of encouraging international trade, yet recognizing the tough budget times that we're in, we did fund an Office of International Trade with a $200,00 increase in its appropriation. Which to my understanding is about 20 percent above last year's appropriation.

SENATOR SALAND: So if I'm not mistaken --

ACTING PRESIDENT CRAIG JOHNSON: Senator Saland, do you wish Senator Kruger to continue to yield?

SENATOR SALAND: Thank you, Mr. President.

SENATOR CARL KRUGER: Yes, I do.

SENATOR SALAND: Thank you. If I'm not mistaken, the funding level for this year is $1.2 million. And could you share with me what the funding level for our international --

SENATOR CARL KRUGER: Through you, Mr. President, that is correct, sir.

SENATOR SALAND: And under the Governor's proposal, what would that have been?

SENATOR CARL KRUGER: Through you, Mr. President, under the Governor's proposal it would have been approximately $2.7 million. But for all the reasons that we've already defined, we've reappropriated funds to the level that we've discussed.

SENATOR SALAND: Thank you, Senator.

Would the Senator continue to

yield?

ACTING PRESIDENT CRAIG JOHNSON: Senator Kruger, will you continue to yield?

SENATOR CARL KRUGER: Yes, I do.

ACTING PRESIDENT CRAIG JOHNSON: He does, Senator Saland.

SENATOR SALAND: Senator Kruger, there are probably very few people that you or I know who have not been exposed to or heard of the "I Love New York" tourism program. I know in my area it is a source of revenue. It generates considerable interest, brings people to our area, particularly in these hard-pressed times. My, again, review indicates a cut of some $6.1 million from tourism and marketing, which is 3.5, I believe, from the Governor, compounded by an additional 2.6 million by this majority, Democrat majority, and the Assembly Democrat majority.

First, can you verify whether in fact that's an accurate number?

SENATOR CARL KRUGER: Through you, Mr. President, yes, the numbers reflect an accurate representation.

SENATOR SALAND: If the Senator will continue to yield.

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

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

SENATOR SALAND: Many of our communities -- and certainly there are probably fewer tourist meccas in our nation than the City of New York which, to a considerable extent, may not require them to resort to these types of tourism proposals and marketing proposals.

But for areas outside of the City of New York, and the further north and the further west you go, they become far more critically important. The elimination of these dollars basically cuts at the very heart of economic development. Going back to our initial area of agreement, would you not view that as in fact not incentivizing economic development once we're beyond the immediate metropolitan area, but in fact impeding economic development -- the inability for "I Love New York" matching grants, the inability

to engage in tourism programs, which for many communities can be vital to their very sustenance?

SENATOR CARL KRUGER: Through you, Mr. President, in the very broadest terms, yes. Yes. Certainly wherever we can market and wherever we can show all the attributes of what make this great state an interesting and exciting place to visit and to vacation, it certainly spurs economic development.

At the same time, as part of gap closing, we had to recognize our obligation to cut. And cut we did. But at the same time we also recognize that our obligation to fund a level of tourism activity in this state is an integral part of an economic development package. And we did provide, in this appropriation, approximately $8 million for tourism.

SENATOR SALAND: Thank you, Senator Kruger.

If the Senator will continue to yield.

ACTING PRESIDENT CRAIG JOHNSON:

Senator Kruger, will you continue to yield?

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

SENATOR SALAND: Thank you.

Senator Kruger, as I said in my earlier remarks, the City of New York has its own cachet. And certainly there are the wonders of the City of New York that bring people from all over this nation and all over the world. But if you are from the Adirondacks, if you're from the upper Hudson Valley, if you're out in Central and Western New York, these tourism dollars can be really, in part, part of the essence of economic vitality.

So I would respectfully submit to you that while I agree wholeheartedly with the importance of cuts, if we start off with the same basic premise that we want to not impede but incentivize, why would we want to strip areas that are desperately in need of economic development from one of their most viable tools?

SENATOR CARL KRUGER: Through you, Mr. President. Firstly, Senator,

notwithstanding the fact that we know the cachet -- I like the choice of the word -- that New York City has to offer, New York City has a very a vigorous and robust tourism program of its own. And its marketing techniques have been duplicated and copied in states around the country.

What we're looking at, what we try to do with our tourism dollars is that, as you pointed out, they become a matching -- we incentivize localities by matching the monies that they put into their tourism programs. And in this particular case, this legislation calls for approximately $3.8 million in matching money to accomplish those goals.

Which, you know, again, just to point out, when we're looking at the overall budget and the cuts that we've been taking, this is about 10 percent below the amount of monies that we allocated last year. Which is very consistent and perhaps slightly above cuts that we've suffered throughout this whole tortured budget process.

SENATOR SALAND: Well, Senator Kruger, inasmuch as you brought up last

year -- if he'll continue to yield, Mr. President.

ACTING PRESIDENT CRAIG JOHNSON: Senator Kruger, will you continue to yield?

SENATOR CARL KRUGER: Yes, I do.

SENATOR SALAND: So this is a cut from last year. And if my memory serves me correctly, last year was a cut from the preceding year, was it not?

SENATOR CARL KRUGER: Through you, Mr. President, I can't answer with any certainty, but I'll take -- I'm sure your facts bear that out.

SENATOR SALAND: Thank you. I appreciate that vote of confidence.

Senator Kruger, the --

ACTING PRESIDENT CRAIG JOHNSON: Senator Kruger, will you continue to yield?

SENATOR CARL KRUGER: Yes, I do.

SENATOR SALAND: This bill provides for the Governor's small business revolving loan fund?

SENATOR CARL KRUGER: Yes, it does.

SENATOR SALAND: And how much is

that revolving loan fund?

SENATOR CARL KRUGER: Through you, Mr. President, we've created a $25 million small business revolving fund, loan fund.

SENATOR SALAND: And if my memory serves me correctly, the Governor also had another fund, which I believe was also a loan fund, it was some type of technology fund. Is that in this budget?

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

SENATOR CARL KRUGER: Through you, Mr. President, that loan fund was withdrawn by the Governor as part of his 90-day amendments after he submitted his original budget.

SENATOR SALAND: For some reason or another, Senator Kruger, I was under the impression that that had been rejected. But I will take you at your word.

SENATOR CARL KRUGER: We're even.

SENATOR SALAND: Okay, thank you. Senator Kruger --

ACTING PRESIDENT CRAIG JOHNSON:

Senator Kruger, do you continue to yield?

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

SENATOR SALAND: -- the monies that are dedicated to economic development currently are, in principle, the major dollars through the Empire Zone programs. And it's my understanding that that will be discontinued, although those in the program will continue to be funded for the duration of whatever their commitment was.

If you know, Senator Kruger, how much money is backing that Empire Zone program?

SENATOR CARL KRUGER: Through you, Mr. President. Senator Saland, could you please repeat that?

SENATOR SALAND: How much money is appropriated for -- in the past, how much money per year has been appropriated for the Empire Zone program?

SENATOR CARL KRUGER: In the past? Actually, zero, because it's a tax expenditure.

SENATOR SALAND: Let me rephrase

my question, if he'll continue to yield.

ACTING PRESIDENT CRAIG JOHNSON: Do you continue to yield, Senator Kruger?

SENATOR CARL KRUGER: Yes, I do.

SENATOR SALAND: How much money has been spent on the Empire Zone program?

SENATOR CARL KRUGER: Through the years? Through you, Mr. President, in the recent years, for however we want to define those, probably in the range of $500 to $550 million.

SENATOR SALAND: Thank you, Senator Kruger. And that item, as a $550 million tax expenditure, certainly has been the subject of, at least in some quarters, controversy, has it not?

SENATOR CARL KRUGER: Through you, Mr. President. With your permission, Senator Saland, Senator Stachowski may be in a better position to give some specific facts. So let's play tag-team wrestling. Thank you.

ACTING PRESIDENT CRAIG JOHNSON: Senator Stachowski.

SENATOR SALAND: Mr. President, as long as I am asking the questions and it's

Senator Kruger or Senator Stachowski's time, that's fine.

ACTING PRESIDENT CRAIG JOHNSON: Senator Saland, you still have the floor. So yes.

SENATOR SALAND: Thank you.

SENATOR STACHOWSKI: The $500 million to $600 million is the carry-over of existing companies, from whether they're in for 15 years or 10 years, depending on when they entered.

Currently I can tell you in 2007, for new companies, we spent $29 million. In 2008, we spent $21 million on new companies. In 2009, we had minus $47 million. And in 2010 so far we've --

SENATOR SALAND: Excuse me. I'm sorry, could you repeat --

SENATOR STACHOWSKI: Minus $47 million. Decertification of a lot of companies. Which some of them might get back. Because a court case is involved, there's companies being recertified, a very complex situation caused by changes.

But this year so far we've spent

$13 million.

So the $600 million is mostly the carry-over. So when you talk about what's available to new companies, right now it would be, if we left it running, we had a one-year extension, it would be about $25 million. Last year it was -- we spent like 29, 21, and next year it will be 25. Currently we spent 13.

SENATOR SALAND: If Senator Stachowski would continue to yield.

ACTING PRESIDENT CRAIG JOHNSON: Senator Stachowski will continue to yield.

SENATOR SALAND: So the 13 that you're talking about is new money cumulatively added to whatever was being spent to those in the program, which was somewhere in the area of what, based on whatever numbers you have there?

SENATOR STACHOWSKI: 550 million.

SENATOR SALAND: So if the Senator will continue to yield.

SENATOR STACHOWSKI: Yes.

SENATOR SALAND: Was that 550 million plus another 13 million?

SENATOR STACHOWSKI: 538 plus 13 comes out to 551.

SENATOR SALAND: Senator Stachowski, so in fact -- if the Senator will continue to yield.

SENATOR STACHOWSKI: Yes.

SENATOR SALAND: In fact, what has been spent through the program, with whatever its warts and bruises may be, in the most completely year was in excess of $550 million.

SENATOR STACHOWSKI: And next year it will be -- the Empire Zone program will still continue for all those that have benefits for however long they have benefits. So no matter what the new program is or whatever the current program is, those benefits carry out till they expire for whatever companies are in it.

SENATOR SALAND: And as the --

ACTING PRESIDENT CRAIG JOHNSON: Senator Saland, do you wish Senator Stachowski to continue to yield?

SENATOR SALAND: If Senator Stachowski will continue to yield.

SENATOR STACHOWSKI: Yes.

ACTING PRESIDENT CRAIG JOHNSON: He does.

SENATOR SALAND: And as those businesses that are in the program exhaust the period of their certification, that pot will shrink, will it not? Or that expenditure will shrink.

SENATOR STACHOWSKI: Well, I can't answer that, because we don't know if -- in future years, we don't know -- usually when there's a cap on a program, oftentimes if the cap is pushed up, you know, get upon and they spend the whole amount, sometimes there's -- oftentimes, I should say, almost all the time is more like reality -- there's discussion in the following budget to increase the cap. However, right now we're working under a program that is capped at $50 million and will be capped every year at $50 million for the next five years.

SENATOR SALAND: Will Senator Stachowski continue to yield?

SENATOR STACHOWSKI: Yes.

ACTING PRESIDENT CRAIG JOHNSON:

Senator Stachowski will continue to yield.

SENATOR SALAND: Senator Stachowski, am I to conclude or should anybody reasonably conclude from your preceding remarks that in fact the Empire Zone program will continue --

SENATOR STACHOWSKI: No, the Empire Zone -- is that the end of your question?

SENATOR SALAND: Well, what you had said was, if I remember correctly, is that it's capped, but one will not know what the next year will bring.

SENATOR STACHOWSKI: The new program has a cap of $50 million. If this bill passes and the new program goes in.

But the fact is that the Empire Zone expires June 30th. So the Empire Zone for new entrants will no longer exist unless there's some kind of extension done, which isn't in this bill, isn't in the budget bill that the Assembly passed, isn't in anything that the Governor is willing to sign. So the fact is that the Empire Zone will continue for those people in it, getting benefits, until

their benefits run the full course, whether it was 15 or 10 years of, however the -- whenever they entered and what the program was doing at that point.

SENATOR SALAND: Will Senator Stachowski continue to yield?

SENATOR STACHOWSKI: Yes.

ACTING PRESIDENT CRAIG JOHNSON: Senator Stachowski will continue to yield.

SENATOR SALAND: So then it's safe to say that with the program expiring on June 30th and businesses that have fixed duration of benefits, as those periods or durations expire, they will cease to be able to take advantage of those benefits and the replacement for that program will be the Governor's Excelsior program?

SENATOR STACHOWSKI: Excuse me, Senator. The only problem I have with the way you worded your question was whether the Empire Zone continued or not, when their term of 10 years is over, they cease to get those benefits.

Because it was X amount of years long that you're in the Empire Zone. It

doesn't mean that if you're in the Empire Zone, you're in for 10 years, that you're now in Year 11, you continue to get those benefits. I don't believe that that was the case in the past program, and I don't know that that's the case in the next program.

SENATOR SALAND: Will the Senator continue to yield?

ACTING PRESIDENT CRAIG JOHNSON: Senator Stachowski, will you continue to yield.

SENATOR STACHOWSKI: Yes.

SENATOR SALAND: Senator Stachowski, I hope I didn't leave you with the impression that I thought otherwise. There will be a point in time, will there not, when, due to the termination of the program or expiration of the program, that Empire Zone benefits -- currently, the most recent year, some $550 million -- will be thoroughly depleted as the businesses that have been certified and enter the program, no new businesses coming in, the benefits going to dissipate, and the replacement then is the Governor's Excelsior program?

SENATOR STACHOWSKI: And that's the case that Year 1 it's $50 million, Year 2 the ceiling is at $100 million. It's 50 and 50. And it's an additional 50 the third year, an additional 50 the fourth year, and an additional 50 the fifth year.

SENATOR SALAND: Senator Stachowski, let me just pose this rhetorically because I would not want to say something that might be offensive. Five times 550, in terms of economic development, is a heck of a lot more than five times 50.

So I look at this and what I see is in a period of time in which we are struggling mightily, in which jobs are fleeing New York, in which areas of the state such as the areas of the state that you represent are desperately crying out for some kind of help, we in my opinion are sort of throwing out the baby with the bathwater by tossing out this Empire Zone program -- which, as I said a bit earlier, does have warts and bruises -- and going to a model that is a severely reduced model in terms of the ability to provide economic incentives to businesses either to

stay in New York or to come to New York.

SENATOR STACHOWSKI: That's the question? Through you, Mr. President --

ACTING PRESIDENT CRAIG JOHNSON: Thank you.

SENATOR STACHOWSKI: -- I don't want to argue with your mathematical background, but the fact is for at least the next five years the $500 million will be still being spent by the Empire Zone because most of these companies will still be getting those full benefits, plus the new program will be in, and they'll be getting $50 million a year offered to new companies coming in under the new criteria.

And so that I don't see where this big drop-off in economic development money is coming from.

SENATOR SALAND: Senator Stachowski --

ACTING PRESIDENT CRAIG JOHNSON: So you wish Senator Stachowski to --

SENATOR STACHOWSKI: And just to finish that answer, it is not $500 million to new companies every single year. So to try

frame it that way is fuzzy mathematics, as many people refer to things like that.

And the fact is that in new companies, for the last three years we have been spending nowhere near $50 million on new companies. The carry-over benefits are still carrying over for a distant future, I might add, including the small amounts that have been added.

So there's nobody that's going to drop it off immediately. When the program ends, that $500 million does not disappear. Those people will still be getting those benefits. And I'm pretty sure that a lot of people that had received letters that said you may be decertified are going to end up being recertified, a large number of them. Because they've been being recertified. In the last meaning of the Empire Zone decertification board, for lack of a better -- I think that's what it's called -- was going to recertify some more, but it was put on hold by DOB. They asked for the meeting to be canceled until after the budget passed.

So I believe more of those

companies will be coming back. So the fact is that the program will not be going down in its impact in this state. As a matter of fact, now there will be more money available with this new program, and more areas available to get them. No longer will be you the guy across the street from the Empire Zone and the guy across the street's getting benefits and you're not allowed because you're on the wrong side of the street. In the new program, it's statewide to get to enter the program.

Now, to get certain pieces of the program, you get an extra benefit for being in a distressed area. Or you could be a regionally significant project and get that extra credit. But the fact is that companies all over the state now, businesses all over the state, can apply for the new program, where currently there's 85 Empire Zones and only if you're in one can you get it.

And I might add in Buffalo they had the experience where they moved one, and all the people that were in it no longer would be eligible for Empire Zone credits. Only the people that were now in it were eligible for

Empire Zone credits. And that was always a risk if the locality decided to move the Empire Zone and change its boundaries. If you're no longer in the new boundaries, you were out of the program. And that's nothing that we did, that was something that localities could do.

SENATOR SALAND: If the Senator will continue to yield.

SENATOR STACHOWSKI: Absolutely.

ACTING PRESIDENT CRAIG JOHNSON: Senator Stachowski will continue to yield.

SENATOR SALAND: So, Senator Stachowski, let me see if I understand this correctly. Are you telling me that there are businesses currently not in the Empire Zone program that are going to be able to get into the Empire Zone program?

SENATOR STACHOWSKI: No, I'm telling you that there's businesses that are currently not able to get in any kind of program, because the Empire Zone is our program, that now were across the street from an Empire Zone in the same town that will be able to enter the new program, because there

won't be a geographical boundary unless we count the border of the State of New York as the geographical boundary.

So any company is eligible to apply to get entrance into the new program, where that definitely was not the case in the Empire Zone.

SENATOR SALAND: If the Senator will continue to yield.

SENATOR STACHOWSKI: Absolutely.

ACTING PRESIDENT CRAIG JOHNSON: Senator Stachowski will yield.

SENATOR SALAND: Are there any parameters on the types of companies that would be eligible for this pool of money?

SENATOR STACHOWSKI: Yes, there are.

SENATOR SALAND: So when you say any company would be eligible, it's not the universe of all companies and all businesses. Why don't you share with us, or me, who those companies might be, what types of companies.

SENATOR STACHOWSKI: Well, you could be in manufacturing, financial services, other back office or distribution centers.

You could be in high-tech industries, biotech industries, development of software and new media industries. You can be in agriculture. You can be industries with significant growth potential. And you can be a business that the commissioner would deem as a regionally significant project. Which is also the case with the Empire Zone, for that last piece.

SENATOR SALAND: And if the Senator will --

ACTING PRESIDENT CRAIG JOHNSON: Senator Stachowski, do you continue to yield?

SENATOR STACHOWSKI: Yes. Yes.

SENATOR SALAND: If we're talking about, and correct me if I'm wrong, phasing out the Empire Zone program -- and please tell me if I'm misunderstanding that, because I think that's what you're telling me, we're phasing it out. And then I have a question.

SENATOR STACHOWSKI: Actually, the Empire Zone program was officially phased out last year. It goes out of existence June 30th.

SENATOR SALAND: We're going to provide benefits to that panoply of businesses

to the tune of some $50 million statewide, replacing a vehicle that was providing benefits to the tune of some $500-plus million statewide. And notwithstanding the fact that there may have been geographical determination made by localities, if my math is right, that's about one-tenth of the economic benefit.

SENATOR STACHOWSKI: Well, actually, Senator, when you take -- and you're talking about benefits that have accrued over a number of years to get it to that larger number. If you took the new program and pushed it out ten years, you'd be talking about $1.25 billion in the program. As opposed to the $500 million in this program. Because every year it grows $50 million.

Unless, somewhere down the line, because of a great deal of demand and a better economic condition in New York State, we decide to lift the cap and make it higher. Which is always a possibility in a better economic condition for the state and in a situation where we're getting a larger demand to enter the program.

SENATOR SALAND: If the Senator will continue to yield.

ACTING PRESIDENT CRAIG JOHNSON: Senator Stachowski?

SENATOR STACHOWSKI: Absolutely.

SENATOR SALAND: Senator Stachowski, the Governor's $50 million Excelsior program, the annual appropriation is, according to the Governor's plan, for how many years?

SENATOR STACHOWSKI: Actually, there's no appropriation to this. It's after you've proved that you created the jobs or any of the tax benefits and you document it, then you get the tax credits, et cetera, to your company.

SENATOR SALAND: And if the Senator will continue to yield.

ACTING PRESIDENT CRAIG JOHNSON: Senator Stachowski, do you continue to yield?

SENATOR STACHOWSKI: Yes.

SENATOR SALAND: Has the Governor, in his proposal -- I recall sitting through his budget presentation. I thought he had specified that his proposal, if I remember

correctly, was for a period of five years.

SENATOR STACHOWSKI: The Governor's proposal -- first of all, what the Governor said in his budget presentation was a much different-looking program than the program that is currently in this package. His program at budget presentation was 50 jobs in five years, period. And that's not exactly what we have here today.

There's been some change in what the Governor originally put out. You can be in for five years. When you join, you're in for five years. That's the new program. And you can get credits for five years. If you join in Year 5, you still have four more years after that left, because it's a five-year program.

So what the Governor described at his budget presentation is a lot different than what is in this program now. There are more ways of entering the program. There is a retention, quote, unquote, smart growth piece, which is the property tax piece that you get on distressed areas or regionally significant projects. That was in no way included in his

original presentation of 50 jobs in five years. And the job growth, even the job creation level differs between industries. So that some industries are expected to create more jobs to qualify and some are expected to create less jobs to qualify.

So this program is a completely different-looking program than the simple job creation program that he presented at his presentation at budget.

SENATOR SALAND: If the Senator will continue to yield.

SENATOR STACHOWSKI: Yes.

SENATOR SALAND: I also recall, during the course of his budget presentation, him making reference to some type of technology seed fund, which I believe was going to be a revolving loan fund. Is that part of this budget.

SENATOR STACHOWSKI: No, unfortunately that's a piece that the Governor withdrew. Isn't it the seed fund? The seed fund is a piece that he put in. We thought it was a great idea, because we included in our one-house budget. And he also withdrew it,

the Governor withdrew the seed fund somewhere along the way -- in the 90-day amendments, to be specific. Yes, sorry, I forgot.

SENATOR SALAND: And one or two other questions, if you'll continue to yield.

The subsidy that was provided for small businesses to comply with the requirements of Timothy's Law, I believe that has been eliminated from this budget?

SENATOR STACHOWSKI: I believe so, yes.

SENATOR SALAND: And would you know how much that means in terms of dollars?

SENATOR STACHOWSKI: $70 million. Seventy-nine million, excuse me. DeFrancisco could have passed you a note on that. Seventy million, he says. Sorry, John. Another discrepancy.

ACTING PRESIDENT CRAIG JOHNSON: Senator Saland.

SENATOR SALAND: Just one last topic, if I might.

ACTING PRESIDENT CRAIG JOHNSON: Okay. But if I can, I just wanted to let you know that you have been debating this bill for

more than 30 minutes. If you wouldn't mind, we have a couple of other speakers. If you could just wrap it up, it would be really appreciate.

SENATOR SALAND: Thank you. I appreciate -- thank you. I'll merely ask the -- well, if I've dominated that much time, I will take your lead and I will explain my vote later.

ACTING PRESIDENT CRAIG JOHNSON: You'll speak on the bill? Thank you, Senator Saland.

Senator Fuschillo, on the bill.

SENATOR FUSCHILLO: Thank you, Mr. President. I'd like to ask Senator Dilan a few questions.

ACTING PRESIDENT CRAIG JOHNSON: Can you wait a moment, Senator Fuschillo?

SENATOR FUSCHILLO: Or Senator Kruger, whatever is easiest.

ACTING PRESIDENT CRAIG JOHNSON: Senator Kruger, would you mind yielding to a few questions from Senator Fuschillo?

SENATOR CARL KRUGER: Yes, I will.

SENATOR FUSCHILLO: Thank you, Senator. It's been a while since Senator Libous had asked Senator Dilan some questions, so if I'm repetitive, please bear with me.

The $7 billion for the two-year capital program for the DOT, how is that funded?

SENATOR CARL KRUGER: Rather than having some conflicting verbiage, let's get Senator Dilan back so that he can pick up exactly with the same message.

SENATOR FUSCHILLO: Okay, thank you.

ACTING PRESIDENT CRAIG JOHNSON: Senator Fuschillo, I assume you would like to ask Senator Dilan to yield for a couple of questions, then.

SENATOR CARL KRUGER: Through you, Mr. President. Senator Dilan, there's some questions on the capital program Senator Fuschillo would like answered. I thought you'd be in the best position.

SENATOR DILAN: I'll answer to the best of my ability.

ACTING PRESIDENT CRAIG JOHNSON:

Senator Fuschillo, Senator Dilan will yield for some questions.

SENATOR FUSCHILLO: Thank you, Senator. Just bear with me; it's been a while since Senator Libous had asked you some questions. So if I'm repetitive, my apologies.

The $7 billion for the two-year capital program for the DOT, how is that funded?

SENATOR DILAN: It's $6.9 billion, funded from a portion of federal funds and state-bonded money.

SENATOR FUSCHILLO: I'm sorry, Mr. President, I didn't --

ACTING PRESIDENT CRAIG JOHNSON: He said it was funded -- correct me if I'm wrong -- from federal funds and state-bonded money, a portion of each.

SENATOR FUSCHILLO: Will the Senator yield for another question?

ACTING PRESIDENT CRAIG JOHNSON: Senator, will you continue to yield?

SENATOR DILAN: Yes, sir.

ACTING PRESIDENT CRAIG JOHNSON:

He will yield.

SENATOR FUSCHILLO: Thank you, Senator Dilan. How much of it is bonded out, state bonded out?

SENATOR DILAN: Twenty percent.

SENATOR FUSCHILLO: Twenty percent of $6.9 billion would be additional bonding by -- I'm sorry, Mr. President, will he answer another question?

ACTING PRESIDENT CRAIG JOHNSON: Senator Dilan, will you continue to yield?

SENATOR DILAN: Yes, sir.

SENATOR FUSCHILLO: So 20 percent of the $6.9 billion will be additional state bonding; correct?

SENATOR DILAN: That's correct.

SENATOR FUSCHILLO: Okay. With respect to the MTA capital --

ACTING PRESIDENT CRAIG JOHNSON: Senator Fuschillo, do you wish him to yield for another question?

SENATOR FUSCHILLO: I would.

ACTING PRESIDENT CRAIG JOHNSON: Senator Dilan, will you yield for another question?

SENATOR DILAN: Yes, sir.

SENATOR FUSCHILLO: With respect to the MTA Capital Review Board program, over $23 billion was approved, as you know. How is that going to be funded under this budget?

SENATOR DILAN: Well, the authority puts out bonds themselves. My understanding also is that $10 billion of it is unfunded. And I believe there is a federal portion. And $6 billion is, I believe, federal. I'm sorry, bonded by MTA, $6 billion.

SENATOR FUSCHILLO: Will Senator Dilan yield for another question?

ACTING PRESIDENT CRAIG JOHNSON: Senator Dilan, will you yield for another question from Senator Fuschillo?

SENATOR DILAN: Yes, sir.

SENATOR FUSCHILLO: Thank you, Mr. President. Does this budget that's being proposed to be voted on increase the bonding capability for the MTA by that $6 billion?

SENATOR DILAN: The bonding for the MTA will be an additional $6 billion, yes. Yes.

SENATOR FUSCHILLO: Will the Senator yield?

ACTING PRESIDENT CRAIG JOHNSON: Senator Dilan, will you continue to yield?

SENATOR DILAN: Yes. Yes.

SENATOR FUSCHILLO: So the answer to my question is yes?

SENATOR DILAN: I said yes three times.

SENATOR FUSCHILLO: Okay. I only heard you once.

Will the Senator continue to yield?

ACTING PRESIDENT CRAIG JOHNSON: Senator Dilan, will you continue to yield?

SENATOR DILAN: Yes, sir.

SENATOR FUSCHILLO: Is there any language in here to reduce the MTA payroll tax?

SENATOR DILAN: No.

SENATOR FUSCHILLO: Would the Senator continue to yield?

ACTING PRESIDENT CRAIG JOHNSON: Senator Dilan, will you continue to yield.

SENATOR DILAN: Yes.

SENATOR FUSCHILLO: Is the MTA

payroll tax funding the foundation for the bonding?

SENATOR DILAN: Yes.

SENATOR FUSCHILLO: Thank you, Senator.

On the bill.

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

SENATOR FUSCHILLO: The MTA payroll tax that was adopted last year by the Democratic majority is a job-killing tax in the metropolitan area. Just on Long Island alone, businesses are closing, hospitals are hurting, nonprofits are hurting, small businesses are being decimated throughout the island and throughout the metropolitan area.

There are bills floating in this house by the Democratic majority that would reduce the payroll tax. We should eliminate it. It was wrong then, it's wrong now. But you're stuck with it now. Because as Senator Dilan responded to me, it's the foundation for the $6 billion of the MTA funding of $23.8 billion, of which $10 billion is a gap. There's a structural imbalance with the MTA

capital program here, and you're locked into the MTA payroll tax to 2014.

A suggestion to the majority: Sunset the tax. Get rid of the tax. It's killing businesses in the metropolitan area.

Mr. President, thank you very much.

ACTING PRESIDENT CRAIG JOHNSON: Thank you, Senator Fuschillo.

Senator Dilan, on the bill.

SENATOR DILAN: Thank you very much, Mr. President. I just rise -- first, I want to indicate that I will be voting on this bill.

And the Republican minority indicated that it has been tradition that we fund the five-year DOT plan and a five-year MTA plan. Yes, that is true. But in almost all cases, or at least the last five years that I've been here, the funding or the amount of the allocation was always done after the bills were passed and after the budget was passed.

And I believe that in almost all cases, even though they called it a five-year capital plan, they only funded two years of

the plan. Because if you look at it, you'll see that they fund -- only two years of the jobs or construction work in there gets done, and then about three years of the work gets rolled over into next five-year plan.

So perhaps a two-year plan funding it at $3.6 billion or $3.3 billion will hopefully let out all contracts within that two-year period and then come back and fund another two-year period. Whereas we do not have to wait an additional three years to fund the plan.

Senator Libous also talked about providing $100 million for the highway dedicated fund, bridge and highway fund. But he never provided the source of the hundred million dollars to pay for that. Was he proposing new taxes then? Where was he going to get the money?

Also, today we will be voting on expanding the powers of the existing Legislative Commission on Critical Transportation Choices, which authorizes the commission to examine, study, and make recommendations regarding the financing of

transportation infrastructure projects as we move along.

So I urge everyone to vote yes on this piece of legislation.

ACTING PRESIDENT CRAIG JOHNSON: Thank you, Senator Dilan.

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

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

Read the last section.

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

ACTING PRESIDENT CRAIG JOHNSON: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT CRAIG JOHNSON: Senator Saland, to explain his vote.

SENATOR SALAND: Thank you, Mr. President.

At the expense of somehow or other offending the gentleman who's in the back of the chamber right now, our Governor and former colleague, I'd like to come back to the issue

of fuzzy math that was mentioned during my exchange with Senator Stachowski. I guess it's a --

ACTING PRESIDENT CRAIG JOHNSON: I apologize, Senator Saland.

Please, a Senator is explaining his vote. Can we have order in the chamber. Thank you.

Senator Saland.

SENATOR SALAND: I guess it's a matter of it being in the eye of the beholder. Five times 50 million on five consecutive five-year programs cumulatively through 10 years would be $1.25 billion. Five times $550 million, which is what was being paid in terms of benefits for the Empire Zone plan, over that same period of time would be $5.5 billion.

The program is terminated. People will ultimately, in effect, age out of the system. But it's a difference of $4.25 billion, $5.5 billion versus $1.25 billion. And at the same time we are cutting back on commitments to international trade, tourism, commitments to businesses under Timothy's Law.

While this is in part the economic development portion of the budget, I submit that, as I mentioned in my earlier remarks, we can either as a government impair or impede, on the one hand, or incentivize on the other.

This does more to impair and certainly not enough to incentivize, and I cast my vote in the negative. Thank you.

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

Senator DeFrancisco, to explain his vote.

SENATOR DeFRANCISCO: Yes, I vote no.

And the point that I want to make is about the transportation budget. When the deficit reduction plan came out, we were told in the fall of last year that the road and bridge parity would actually take place that funds that normally go to roads and bridges upstate would offset what goes to the MTA. Well, that obviously never happened.

There's also some facility closures in this bill -- all of which, by the way, are upstate, and none in New York City. Which is

not too much of a surprise.

In addition, there's a provision in this bill that eliminates the $665,000 proposed to begin oversight of permitting for the Marcellus Shale hydrofracking. Now, I don't know what that means, whether we don't need it because it's not an environmental issue or that there's already been a decision made for not allowing this by way of some type of moratorium. We just don't know, because this is being done piecemeal.

And lastly, as I mentioned before, each business -- people are saying we should work in a bipartisan manner. How can you exempt small businesses from the increased costs of Timothy's Law because they can't afford it and then today eliminate $70 million-plus to reimburse those small businesses, which will kill many of them, and want bipartisan support for another antibusiness provision?

So for those reasons, and for many other too numerous to mention in two minutes, I vote no.

ACTING PRESIDENT CRAIG JOHNSON:

Senator DeFrancisco to be recorded in the negative.

Senator Ranzenhofer, to explain his vote.

SENATOR RANZENHOFER: Thank you, Mr. President.

Again, you know, this is just complete insanity. I was complaining last time about the last budget bill, which was 329 pages. This one is 735 pages. Okay? A total of almost 1100 pages. Hundreds of more pages when you add the other bills that we're dealing with. And I know that, you know, we did have the whole weekend to read it. But nevertheless, to read 1500 pages over the weekend I think is a little bit much, especially with such a terrible budget that we're voting on today.

And again, it just draws out the discrepancy and the unfairness to upstate New York and Western New York. You know, whether we're talking about heating fuel, where we have one set of rules for New York City and another set of rules for the rest of the state; whether we're talking about the

utility tax, which again was 1 percent for downstate and 2 percent for upstate; whether we're talking about the STAR program, which hurt upstate New York and Western New York much more than the downstate area; or whether we're talking about the disparity between roads and bridges, where you have an MTA plan but you don't have any plan for upstate New York for roads and bridges, where we have to depend on those in order to get to work, take our kids to school, whatever we're doing -- it's just completely unfair.

And then to cap it off with a new program, or what I would call the lack of a program for economic development, where you go to a five-year plan from a 10-year plan where you don't have a cap, where you now have a cap, it just completely is unfair for Western New York and upstate New York.

For those reasons, for putting in more spending, more taxes, I'll be voting no.

Thank you, Mr. President.

ACTING PRESIDENT CRAIG JOHNSON: Senator Ranzenhofer to be recorded in the negative.

Senator Bonacic, to explain his vote.

SENATOR BONACIC: Thank you, Mr. President.

This legislation today, this budget bill, continues the pattern of geographical discrimination. You've heard colleagues on this side of the aisle talk about more of the burdens are passed to the people outside New York City, and more of the benefits are accruing to New York City.

But other than the parity issue that Senator Libous talked about at length, with the roads and bridges and the MTA capital plan, what you did today is you locked in the MTA payroll tax on all of the counties, because those monies are the basis for increasing the $6 billion MTA new bonding program.

So all those Senators on your side of the aisle that have all those bills in about eliminating the payroll tax for the MTA or changing the formulas, it's all a pandering game. Because when you vote today, you have cemented the payroll tax to 2014 in order to

enable the MTA to continue borrowing.

So for that reason, I'm voting no. Thank you, Mr. President.

ACTING PRESIDENT CRAIG JOHNSON: Thank you, Senator Bonacic. To be recorded in the negative.

Senator Dilan, to explain his vote.

SENATOR DILAN: Mr. President, I hear from the other side that we do not have an upstate plan. We indeed do have a two-year upstate plan for roads and bridges, which is funded at about $3.4 billion for one year. And we also do have an MTA plan, which is also two years.

The problem that we have here, when we became the majority in this house -- and the pillage that has gone on of the highway and dedicated fund is where we have this problem that we have difficulty raising the necessary money to pay for the adequate maintenance of our roads.

I'm going to vote yes and urge everyone to vote yes.

ACTING PRESIDENT CRAIG JOHNSON: Senator Dilan to be recorded in the

affirmative.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1062 are Senators Alesi, Bonacic, DeFrancisco, Farley, Flanagan, Fuschillo, Golden, Griffo, Hannon, O. Johnson, Lanza, Larkin, LaValle, Leibell, Libous, Little, Marcellino, Maziarz, McDonald, Nozzolio, Padavan, Ranzenhofer, Robach, Saland, Seward, Skelos, Volker, Winner and Young.

Ayes, 32. Nays, 29.

ACTING PRESIDENT CRAIG JOHNSON: The bill is passed.

To clarify the record, the Secretary will reannounce the results on Calendar Number 1041.

THE SECRETARY: In relation to Calendar Number 1041: Ayes, 32. Nays, 28.

Absent from voting: Senator Little. Excused from voting for the day: Senator Morahan.

ACTING PRESIDENT CRAIG JOHNSON: The bill is passed.

The Secretary will now call up

Calendar Number 1063 and put it before the Senate on the controversial calendar.

THE SECRETARY: Calendar Number 1063, substituted earlier today, Assembly Budget Bill, Assembly Print Number 9706C, an act to amend the Executive Law and others.

ACTING PRESIDENT CRAIG JOHNSON: Are there any Senators wishing to be heard on the bill?

Senator DeFrancisco.

SENATOR DeFRANCISCO: I just want to mention a couple of things that are in this bill --

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

SENATOR DeFRANCISCO: -- on the bill, in case people missed them.

This budget bill eliminates the language for a four-year moratorium on new unfunded legislative mandates on local governments and school districts. So that provision that the Governor proposed, eliminating unfunded mandates, is being eliminated by this particular bill.

In addition, this is the bill that

raises millions of dollars of fees, from a $95 fee, additional fee paid for every judgment on every consumer credit transaction in the State of New York, an additional $190 per real property foreclosure transaction -- and between the two of them, that's about $30 million -- an additional fee of $500 to sit on the New York State Bar if you're from out of state; increasing the criminal history search fee from $55 to $65, which is going to affect everyone who's required by law to get a criminal history check, such as school districts and the like; increases biennial registration fees for the practice of law.

In addition, one other thing, and that is that this fund is going to provide funding for a new organization a new office -- when we're supposed to be consolidating government -- an Office of Indigent Legal Services. And I'll just ask all of you to please stay tuned for another budget bill so we can discuss that.

Thank you.

ACTING PRESIDENT CRAIG JOHNSON: Thank you, Senator DeFrancisco.

Seeing no other Senators wishing to be heard on the bill, debate is closed. The Secretary will please ring the bells.

Read the last section.

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

ACTING PRESIDENT CRAIG JOHNSON: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT CRAIG JOHNSON: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1063 are Senators Alesi, Bonacic, DeFrancisco, Farley, Flanagan, Fuschillo, Golden, Griffo, Hannon, O. Johnson, Lanza, Larkin, LaValle, Leibell, Libous, Little, Marcellino, Maziarz, McDonald, Nozzolio, Padavan, Ranzenhofer, Robach, Saland, Seward, Skelos, Volker, Winner and Young.

Ayes, 32. Nays, 29.

ACTING PRESIDENT CRAIG JOHNSON: The bill is passed.

Secretary will now put before the Senate Calendar Number 1064 on the

controversial supplemental calendar.

THE SECRETARY: Calendar Number 1064, substituted earlier today, Assembly Budget Bill, Assembly Print Number 9709C, an act intentionally omitted (Part A); intentionally omitted (Part B).

ACTING PRESIDENT CRAIG JOHNSON: Senator DeFrancisco.

SENATOR DeFRANCISCO: On this bill, I just want to mention, for those who didn't have a chance to read the entire large bill here, that it provides for a new Article 30 in the Executive Law to create a new Office of Indigent Legal Services. New office, when we're cutting jobs, when the Governor is talking about furloughing people, cutting positions.

And it's a new bureaucracy that will consist of a nine-member board and 29 new staff members, and its appointed director would oversee the administration of 18(B) services by New York City and the counties.

What's very interesting about this bill when we're talking about this upstate/New York City difference, or New York

City/rest of the state difference, is that there's funding of $40 million a year in statute in this bill for indigent legal services for New York City, but upstate will move away from a formula program to a grant program decided by the board. Forty million locked in for New York City for indigent legal services, and a grant program where people from upstate have to go hat in hand to this board to get some money for their indigent legal defense. It never ends.

And as a result, upstate and everybody other than New York has to bring their hat in hand to Albany to go before this newly created board in order to try to get some money when $40 million is in the bill for New York City.

No doubt it's pretty obvious, if it's not obvious to the casual observer, that there's 23 out of 32 majority members that are from New York City. And these things that we're pointing out in this budget package are no coincidence.

I'm going to vote no.

ACTING PRESIDENT CRAIG JOHNSON:

Senator DeFrancisco to be recorded in the negative.

I do ask people in the chamber to please keep your conversation to a minimum as Senators are speaking.

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

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

Read the last section.

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

ACTING PRESIDENT CRAIG JOHNSON: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT CRAIG JOHNSON: Senator Winner, to explain his vote.

SENATOR WINNER: Thank you, Mr. President. Very briefly to explain my vote.

You can try to put a good spin on the elimination of the Empire Zone program and the creation of this new Excelsior program, but as most editorial writers, particularly in upstate New York and Western New York have

pointed out, this is a bad deal for us. It's a bad swap. It's something that is going to not do anything against the mitigation of the uncompetitive business climate that we have in this state. It doesn't do anything about our high cost of energy. It doesn't do anything about our high income taxes. It doesn't mitigate, except on a minimal basis, against our high real property taxes, our health insurance, our unemployment insurance, or our workers' compensation rates.

In short, it is a bad, bad substitute for the Empire Zone program that's created thousands of jobs in my particular area and would have been a far better program to have continued.

And at the same time, ironically, as we've talked about the lack of parity in this upstate/New York City, we expand significantly the film credit tax that benefits 93 percent to the New York region, and we expand it in an amount that is ironically in excess of that which is expended to benefit the Empire Zone program as it currently exists.

So on behalf of upstate New York, I am voting no on this bill, as it is an unfair, upstate discriminatory measure in the creation of this economic development program that, according to most Empire Zone people as well as economic development people, just plain won't work for us.

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

Senator Stachowski, to explain his vote.

SENATOR STACHOWSKI: Yes, to explain my vote.

I think that most editorial boards only hear from the people that represent areas that currently are doing a pretty good job with the Empire Zones.

The biggest difference in this program is, one, that you can be anywhere in the state and qualify for the program. Two, that if you are in a distressed area, which Empire Zones was originally created for, you still get a property tax credit. Three, you get an investment tax credit fully refundable in this program, which you didn't get in the

other program.

You have many more ways of entering it. The program shouldn't have the possibility of changing partway through, which unfortunately happened to the Empire Zones. And the fact is that you will prove your existence as you get the benefits. So once you're in, you're in. You won't be decertified. Another benefit that the Empire Zones didn't offer.

And the fact is that the Empire Zone benefits will continue for those companies that are in them. We believe that this program will grow. We think that this program as it currently is, although it could have been a little bit better, we believe in certain areas will turn out to be a much better program than everybody's giving it credit for on initial blush.

And the reality is that this program I think will prove to be successful in attracting companies that might not otherwise qualify for Empire Zone credits but will qualify under some of the terms available in this program.

So for those reasons, and although it is not getting an early rousing welcome, I believe this program will turn out to be good, and I therefore will support the bill. And I would wish my colleagues to support it also. Thank you.

ACTING PRESIDENT CRAIG JOHNSON: Senator Stachowski to be recorded in the affirmative.

Senator Saland, to explain his vote.

SENATOR SALAND: Mr. President, we heard Senator Bonacic a bit earlier talk about the impact that this would have on the MTA tax, the payroll tax. In fact, the very provisions that provide for the increase in bonds and obligations of the MTA are contained in this particular provision, in this particular budget bill, as a result of which the payroll tax effectively locks in and supports the bonds I believe through the year 2014 at the very least.

This, ladies and gentlemen, for those of us who are among certainly the Quarter-Pounders -- and for that matter, I

would think any of the suburban counties -- pretty much puts a ball and chain around our collective ankles and holds us as prisoners to the MTA for the duration of these bonds, because they will now be backed by revenues of the payroll tax.

So notwithstanding any and all efforts on the part of some to look as if somehow or other we are making progress towards getting rid of this odious tax, this measure ensures that it's not going to go anywhere. And if for no other reason than that, that alone, I would vote no.

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

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1064 are Senators Alesi, Bonacic, DeFrancisco, Farley, Flanagan, Fuschillo, Golden, Griffo, Hannon, O. Johnson, Lanza, Larkin, LaValle, Leibell, Libous, Little, Marcellino, Maziarz, McDonald, Nozzolio, Padavan, Ranzenhofer, Robach, Saland, Seward, Skelos, Volker, Winner and Young.

Ayes, 32. Nays, 29.

ACTING PRESIDENT CRAIG JOHNSON: The bill is passed.

The Secretary will now place before the Senate Calendar Number 1065 on the controversial supplemental calendar.

THE SECRETARY: Calendar Number 1065, by Senator Aubertine, Senate Print 8065, an act to amend the Economic Development Law and the Public Authorities Law.

ACTING PRESIDENT CRAIG JOHNSON: Are there any other Senators that wish to be heard on this bill?

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

Read the last section.

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

ACTING PRESIDENT CRAIG JOHNSON: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT CRAIG JOHNSON: Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 1065 are

Senators Stachowski and Volker.

Ayes, 59. Nays, 2.

ACTING PRESIDENT CRAIG JOHNSON: The bill is passed.

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

SENATOR KLEIN: Mr. President, can we briefly return to motions and resolutions.

ACTING PRESIDENT CRAIG JOHNSON: We can briefly return to motions and resolutions.

SENATOR KLEIN: On behalf of Senator Adams, on page number 12 I offer the following amendments to --

ACTING PRESIDENT CRAIG JOHNSON: Can we please have some order in the chamber.

Senator Klein.

SENATOR KLEIN: Mr. President, on behalf of Senator Adams, on page 12 I offer the following amendments to Calendar Number 271, Senate Print Number 3022, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT CRAIG JOHNSON: So ordered.

SENATOR KLEIN: On behalf of Senator L. Krueger on page 42 I offer the following amendments to Calendar Number 1001, Senate Print Number 4526, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT CRAIG JOHNSON: So ordered.

Again, I ask if Senators and staff are leaving, to please do so quietly. We still have business before the Senate chamber.

Senator Klein.

SENATOR KLEIN: Thank you, Mr. President.

On behalf of Senator Thompson, I move the following bill be discharged from its respective committee and be recommitted with instructions to strike the enacting clause: Senate Number 8185.

ACTING PRESIDENT CRAIG JOHNSON: So ordered.

SENATOR KLEIN: On behalf of Senator Oppenheimer, on page number 37 I offer

the following amendments to Calendar Number 898, Senate Print Number 4134A, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT CRAIG JOHNSON: So ordered.

SENATOR KLEIN: On behalf of Senator Stewart-Cousins, on page 40 I offer the following amendments to Calendar Number 929, Senate Print Number 7962B, and ask that said bill retain its place on Third Reading Calendar.

ACTING PRESIDENT CRAIG JOHNSON: So ordered.

Senator Klein.

SENATOR KLEIN: Would you please recognize Senator Libous for some motions.

ACTING PRESIDENT CRAIG JOHNSON: Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

On behalf of Senator Saland, on page 33 I offer the following amendments to Calendar Number 844, Senate Print 7001A, and ask that said bill retain its place on the

Third Reading Calendar.

ACTING PRESIDENT CRAIG JOHNSON: So ordered.

SENATOR LIBOUS: I have one more, on behalf of Senator LaValle. I wish to call up his print number, 3292 --

ACTING PRESIDENT CRAIG JOHNSON: Again, please.

SENATOR LIBOUS: -- recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT CRAIG JOHNSON: The Secretary will read the title.

THE SECRETARY: Calendar Number 68, by Senator LaValle, Senate Print 3292, an act to amend the Education Law.

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

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

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

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

ACTING PRESIDENT CRAIG JOHNSON: Amendments received.

Senator Klein.

SENATOR KLEIN: Mr. President, is there any further business at the desk?

ACTING PRESIDENT CRAIG JOHNSON: There is a substitution at the desk.

The Secretary will read.

THE SECRETARY: On page 20, Senator Squadron moves to discharge, from the Committee on Rules, Assembly Bill Number 1730D and substitute it for the identical Senate Bill Number 4313D, Third Reading Calendar 532.

ACTING PRESIDENT CRAIG JOHNSON: So ordered.

Senator Klein.

SENATOR KLEIN: Mr. President, there being no further business, I move we adjourn until Tuesday, June 22nd, at 12:00 p.m.

ACTING PRESIDENT CRAIG JOHNSON: Senator Klein, since the desk is clear and there is no further business to come before the Senate, on motion, the Senate stands adjourned until Tuesday, June 22nd, at

12:00 p.m.

(Whereupon, at 8:25 p.m., the Senate adjourned.)