NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

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11:17 a.m.

REGULAR SESSION

LIEUTENANT GOVERNOR ROBERT J. DUFFY, President

FRANCIS W. PATIENCE, Secretary

P R O C E E D I N G S

THE PRESIDENT: The Senate will now come to order.

Please stand for the Pledge of Allegiance.

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

THE PRESIDENT: We're proud to be joined again by the Reverend Peter G. Young, from the Mother Teresa Community of Albany.

Father Young.

FATHER YOUNG: Thank you, Governor. Let us pray.

Having survived the sleet, the snow, and the inclement weather, let us remember that all of our Senators are here today and they will guide our government for just and caring societies.

May God strengthen them, lead them, and give them wisdom and understanding as they work for our good and for the good of all of our New York State citizens.

Amen.

THE PRESIDENT: Thank you, Father.

Next, the reading of the Journal.

The Secretary will read.

THE SECRETARY: In Senate, Tuesday, January 18, the Senate met pursuant to adjournment. The Journal of Monday, January 17, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Any messages from the Assembly?

The Secretary will read.

THE SECRETARY: On page 1, Senator Golden moves to discharge, from the Committee on Finance, Assembly Bill Number 851 and substitute it for the identical Senate Bill Number 1198, Third Reading Calendar 1.

THE PRESIDENT: Substitution ordered.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

Mr. President, may we please adopt the Resolution Calendar, with the exception of the following resolutions: Number 98, 240, and 241.

THE PRESIDENT: All in favor of adopting the Resolution Calendar with the exceptions of Resolutions Number 98, 240, and 241, signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The Resolution Calendar is adopted.

Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

Mr. President, I believe there's a privileged resolution at the desk by Senator Larkin. May we please have the title read and move for its immediate adoption.

THE PRESIDENT: The Secretary

will read.

THE SECRETARY: By Senator Larkin, Legislative Resolution Number 261, commemorating the 30th anniversary of the ending of the Iranian hostage crisis on January 20, 2011.

THE PRESIDENT: Senator Larkin.

SENATOR LARKIN: Thank you, Mr. President.

It's hard to believe that Tom Libous was a young man with lots of hair on his head 30 years ago when this country suffered one of the most damaging blows to our history and our honor.

On that day, the 20th of January, 1981, we saw a complete turnaround of that incident. But we have to take a look at what happened. On November the 4th of 1979, thousands of Iranians took to the streets, not only with words but with weapons. They took into custody 90 members of the embassies and of the military assigned to the embassy and put them in captivity.

There was efforts to try to help them. Back in 1980, we lost 8 U.S. Army

personnel that were killed when helicopters crashed in the desert.

The period between '79 and when they were released was a hardship on many of them. Some family members had died. Some people just gave up hope. But if you recall, there was a drive in our country of yellow ribbons. The song is out there someplace, John; I know Skelos wrote it. But what we had here was a statement from the American people that this is our country, and we're not going to be thrown around.

Fifty-two hostages, 444 days. One person whose name is not mentioned anymore, and I apologize, a charge d'affaires of the Canadian Embassy, took Americans and hid them. These were Americans that the Iranians wanted because they were the shakers and movers of policy of the United States government in Iran at the time.

On January 20, 1981, a new president was sworn in and the hostages were released. You can't forget President Carter; he did everything he could. But the Iranian government were waiting for somebody to really

pitch in. The Iranian government said, We will return your Americans if you give us $34 million. President Reagan says, 8 million, take it or leave it, and our aircraft are ready.

Right after being sworn in, the Swiss Embassy informed the Secretary of State designee, 1981, that the hostages were released.

Now, you know, the biggest thing was first debriefing, healthcare. They were flown from Iran to Wiesbaden, Germany, to the U.S. Air Force Hospital. Two days later they were flown to Stewart Airport in Orange County. There's a spot on the ground that marks where the aircraft landed. One of the hostages, from Texas, got off the aircraft and kissed the ground. And then he looked up, and I was wondering what was going on when he was looking up. And he said, "Lord, you did not desert us." A very powerful statement and something that we ought to be sure that we do not forget.

On this Saturday there will be a reunion of these individuals in Highland

Falls, New York, and at West Point itself honoring those individuals. You start to think about it, for 444 days they didn't break, turn against their country, or those Canadians or others from Australia didn't turn against their countries and say "whatever you want, we'll do." The message from President Reagan was you're not going to get no 34 million, here's $8 million in frozen assets, no cost to the U.S. government.

But we need to take and think about it. Thirty years ago, just think about where you were when they were released. And also take a moment and think about the 444 days that these men and women were in captivity and were subject to restraints that we don't always know what happened.

So when we meet on Saturday, I'm very happy. I understand my good friend Senator Ball will join us there. Anybody in the area, come join us. We have one from Brooklyn, John, Mr. Rosen. He was a high school classmate of Stanley Fink's. And Stanley's got the whole book of pictures, by the way.

Mr. President, I thank you. I think it's a day that we should not forget. We should always remember, this is the greatest country, America is the greatest country in the world. And when we live up to the honors and respect that we should have, we will be a greater country.

Thank you very much.

THE PRESIDENT: Thank you, Senator Larkin.

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

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: Senator.

SENATOR LARKIN: I would like to ask that it be open for all members who would like to be on the resolution.

THE PRESIDENT: So ordered.

The resolution is adopted.

Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

I also believe that Senator Huntley

has a resolution at the desk. I would ask that you read the resolution in its entirety and then call on Senator Huntley, please.

THE PRESIDENT: The Secretary will read the resolution in its entirety.

THE SECRETARY: By Senator Huntley, Legislative Resolution Number 98, mourning the death of Chief Arthur B. Hill, distinguished citizen and devoted member of his community.

"WHEREAS, It is the custom of this Legislative Body to pay tribute to citizens of the State of New York whose lifework and civic endeavor serve to enhance the quality of life in their communities and the great State of New York; and

"WHEREAS, Chief of the New York Police Department Arthur (Artie) B. Hill, of St. Albans, New York, died on Thursday, July 22, 2010, at the age of 88; and

"WHEREAS, Arthur B. Hill was born in New York in 1922 and grew up in Harlem. He graduated from DeWitt Clinton High School, the Bronx, in 1940, and proudly served in the United States Army during World War II from

1942 to 1946; and

"WHEREAS, Upon an honorary discharge from military service, Arthur B. Hill took civil service exams and was called to join the New York City Police Department in 1946. He was assigned to the 28th Precinct and rose through the ranks; and

"WHEREAS, An exemplary leader, Arthur B. Hill was promoted to the rank of sergeant in 1959 while serving in the 42nd and 49th Precincts. He was then advanced to the esteemed position of lieutenant in 1961 and received a variety of assignments to work in the 20th Precinct, as well as the 5th Division, the 40th Precinct and in the Planning Bureau, where he worked as a system analyst. He had the honor of serving as commanding officer of the Malcolm X funeral detail in February, 1965; and

"WHEREAS, Arthur B. Hill was promoted to the rank of captain in 1965 and worked in the 5th and 6th Divisions of the NYPD before he was appointed the second African-American commanding officer of the 28th Precinct; and

"WHEREAS, While studying for promotions, Arthur B. Hill attended John Jay College of Criminal Justice/CUNY where he earned a bachelor's degree in political science and a master's degree in police administration; and

"WHEREAS, His extraordinary trailblazing career continued when Arthur B. Hill was appointed to the rank of deputy inspector in 1967 and was assigned to the 6th Division in Harlem. On September 16, 1969, Arthur B. Hill was promoted to the rank of deputy chief inspector and transferred to the 13th Division, Brooklyn; and

"WHEREAS, Chief Hill became the first African-American commander of the Support Service Unit, which was formerly known as the Special Operations Division. He oversaw NYPD Tactical Patrol Force, Aviation, Emergency Service and Harbor Patrol Units; and

"WHEREAS, Respected by his fellow officers, Arthur B. Hill was promoted to the rank of assistant chief in September 1971 and retired in January 1973. During his illustrious career, Chief Hill received two

Commendations, three Meritorious and three Excellent Police Duty Awards, along with numerous citations for outstanding community service; and

"WHEREAS, Arthur B. Hill distinguished himself in his profession and by his sincere dedication and substantial contribution to the welfare of his community; and

"WHEREAS, Arthur B. Hill's commitment to excellence, and his spirit of humanity, carried over into all fields of enterprise, including charitable and civic endeavors; and

"WHEREAS, In retirement, Chief Hill joined several civic organizations. He served on several boards of directors for charitable organizations, including the Apollo Theater. He was the long-time executive secretary of the Guy R. Brewer Club. Chief Hill also enjoyed a second career as an executive for the United Parcel Service; and

"WHEREAS, Arthur B. Hill is survived by his beloved wife, Patricia, and his children, Arthur, Jr., Ernest, Victoria

and Joanne; and

"WHEREAS, Armed with a humanistic spirit, imbued with a sense of compassion, and comforted by a loving family, Arthur B. Hill leaves behind a legacy which will long endure the passage of time and will remain as a comforting memory to all he served and befriended; now, therefore, be it

"RESOLVED, That this Legislative Body pause in its deliberations to mourn the death of Chief Arthur B. Hill, distinguished citizen and devoted member of his community; and be it further

"RESOLVED, That a copy of this resolution, suitably engrossed, be transmitted to the family of Arthur B. Hill."

THE PRESIDENT: Senator Huntley.

SENATOR HUNTLEY: Yes, Mr. President.

Arthur B. Hill, who we affectionately called "Artie," was a member of the St. Albans community. He was a member of one of the greatest political clubs in Southeast Queens, Guy R. Brewer. He was a man of many, many talents.

And I asked for the resolution to be read in its entirety because I really wanted people to listen, to hear about Artie and to hear how he worked very hard to achieve his goals. And I wanted you to hear what a great family he had.

And he was a person who cared about his community. He cared about his career, but his community was also very important to him. And at 88, he was still active before he passed away. He was still active the year before. I used to meet him in places, meet him at the club, meet him at the dances, and him and his wife were always there.

And when we lost Artie Hill in that community, it was a great loss. And I just want his family to know that I deeply appreciated Artie for all the things that he had done for people -- for young people, for old people, for everyone. Because that's the kind of person Artie was.

Thank you.

THE PRESIDENT: Thank you, Senator.

The question is on the resolution.

All in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

I believe there's a resolution, Number 240, at the desk by Senator Peralta. May we have the resolution's title read and move for its immediate adoption, please.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: By Senator Peralta, Legislative Resolution Number 240, mourning the death of legendary New York Yankees owner George Steinbrenner.

THE PRESIDENT: The question is on the resolution. All in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

I believe Senator Peralta would like the resolution open for all member. And in custom, if you don't want your name on the resolution, please let the desk know. Otherwise, it will go on.

THE PRESIDENT: The resolution is open for cosponsorship. If you don't wish to cosponsor, please notify the desk.

Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President.

There's another resolution at the desk, by Senator Perkins. May we please have the title read and move for its immediate adoption.

THE PRESIDENT: The Secretary will read the title of the resolution.

THE SECRETARY: By Senator Perkins, Legislative Resolution Number 241, mourning the death of legendary jazz pianist

Dr. William Taylor.

THE PRESIDENT: Senator Perkins.

SENATOR PERKINS: Thank you very much. I wanted to take an opportunity to read into the record a letter to the family.

"Dear Mrs. Taylor and Ms. Thompson-Taylor:

"On behalf of a broad and diverse constituency of music lovers, extending profound, heartfelt condolences for the loss of your husband and father, the great musician, composer and jazz ambassador Dr. Billy Taylor, I write to you as the Senator representing the 30th District of the New York State Senate. Widely associated with historic Harlem, my district also comprises significant portions of East Harlem's El Barrio, Washington Heights, Morningside Heights, and the Upper West Side.

"It's serving Harlem, with our incomparable connection to jazz history, that makes it particularly important to praise Dr. Billy Taylor, who through a career spanning decades liltingly played piano with other legends such as Charlie Parker, Ella

Fitzgerald, Dizzy Gillespie and Miles Davis. Whatever he undertook, he was an innovator, whether hosting jazz shows on WLIB and National Public Radio, doing spots on CBS's Sunday Morning, or playing his hit "C A G" and "Capricious" on Marian McPartland's first segment of Piano Jazz. Foremost, helping to found Jazzmobile, which gives mobile neighborhood concerts on a parade float, Dr. Taylor was the ultimate explainer of America's unique art form, jazz!

"All of this is exceptional, but more importantly and personally, I write to you as a friend of your talented son and brother Duane. Reflecting on the life and significance of Duane's father reminds me of what a deep impact Dr. Taylor had on my development and life and those of our classmates. Writing 'I wish I knew how it would feel to be free,' Dr. Taylor composed an anthem that expressed the anger, anxiety and aspirations of my community and generation.

"In an era when black excellence was excluded from most history books, Dr. Taylor came to Collegiate School each year

to teach about the artistic achievement of African-Americans in music. Positive black role models were not as visible then as today, so Dr. Taylor had as valuable an influence on the 50 white students he would address as he did on the five black students in attendance.

"Defying stereotypes, his gentility was disarming. Mild-mannered, he was always quietly but distinctively dressed, wearing definitive enormous dark-rimmed eyeglasses. Impeccably reasoned, Dr. Taylor's scholarship was an articulate activism, as affecting and radical as any expressed by Stokely Carmichael or Malcolm X.

"So if the riches of possibility, the potential to transform a formerly apathetic and passive pupil like me was the one great gift of a first-rate education, exposure to a brilliant and committed man like Dr. Taylor was equally imperative. Invaluably, his example of success underscored my potential to be productive as well.

Hearing him speak and play, one easily appreciated an art not merely for art's sake. Nor were the intellectual pursuits he

espoused only about academic concerns. Instead, Dr. Taylor employed our music as a synthesis of eclectic sounds and traditions to articulate and focus the meaning of a movement fighting for freedom and inclusion.

"I epitomize the effectiveness of Dr. Taylor's pioneering efforts to enlighten our youth. Appreciative of his influence, working to perpetuate his example, one hopes to similarly teach young people today about our extraordinary heritage and to suggest to them the limitless possibility of all they have to offer.

"Inevitably, whenever someone takes on a selfless mission, their family has to sacrifice for that cause too. The world, especially our world, is greatly indebted to the work and wisdom of Dr. Billy Taylor. Because you, his loved ones, drove, sustained, inspired and fulfilled him, we are indebted to you as well. For myself, my family and all New Yorkers, I say thank you. Dr. Taylor was an heroic figure. He and you are in our prayers.

"Sincerely, Senator Bill Perkins,

30th District."

THE PRESIDENT: Thank you, Senator.

SENATOR PERKINS: And I ask my colleagues to join me in signing onto the resolution. Thank you.

THE PRESIDENT: Senator Libous, Senator Perkins asked that the resolution be reopened for cosponsorship.

SENATOR LIBOUS: Again, if someone doesn't want to be on the resolution, they should let the desk know.

Senator Perkins, otherwise, that you have opened up the sponsorship to all members?

SENATOR PERKINS: Yes. Thank you.

SENATOR LIBOUS: Can we move the resolution, please.

THE PRESIDENT: The question is on the resolution. All in favor signify by saying aye.

(Response of "Aye.")

THE PRESIDENT: Opposed, nay.

(No response.)

THE PRESIDENT: The resolution is adopted.

Senator Libous.

SENATOR LIBOUS: Mr. President, before we go to the noncontroversial calendar, there was a resolution that was adopted already on the calendar today by Senator Larkin. It's Number 231. Senator Larkin would like to open that up to all members of the Senate.

And again, as our policy, if you wish not to be on Resolution 231, please let the desk know. But it had already passed.

Mr. President, may we please have the reading of the noncontroversial calendar.

THE PRESIDENT: The Secretary will read.

THE SECRETARY: Calendar Number 1, substituted earlier today by Member of the Assembly Weinstein, Assembly Print Number 851, an act to amend the Civil Practice Law and Rules.

THE PRESIDENT: Read the last section.

THE SECRETARY: Section 2. This

act shall take effect on the same date and in the same manner as Chapter 568 of the Laws of 2010.

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

THE PRESIDENT: The bill is passed.

THE SECRETARY: Calendar Number 2, by Senator Alesi, Senate Print 1891, an act to amend the Tax Law.

SENATOR BRESLIN: Lay it aside.

THE PRESIDENT: The bill is laid aside.

THE SECRETARY: Calendar Number 3, by Senator Ranzenhofer, Senate Print --

SENATOR BRESLIN: Lay it aside.

THE PRESIDENT: The resolution is laid aside.

THE SECRETARY: Calendar Number 4, by Senator Zeldin --

SENATOR BRESLIN: Lay it aside.

THE PRESIDENT: The resolution is laid aside.

That completes the reading of the

noncontroversial aspects of the calendar.

Senator Libous.

SENATOR LIBOUS: May we go to the controversial calendar, Mr. President.

THE PRESIDENT: The Secretary will ring the bell.

The Secretary will read Calendar Number 2.

THE SECRETARY: Calendar Number 2, by Senator Alesi, Senate Print 1891, an act to amend the Tax Law.

SENATOR LIZ KRUEGER: Explanation.

THE PRESIDENT: Senator Alesi, an explanation has been asked for by Senator Krueger.

SENATOR ALESI: Thank you, Mr. President and my colleagues. I'm very proud, for the second time in a year or so, to introduce this bill; happier still that the bill has made it to the floor. It is called the 2011 Job Creation and Retention Package.

The underpinnings of this bill have three major components: First of all, a job tax credit for new jobs that are created in

this state; secondly, what is called the Small Business Tax Freedom Plan; and finally, the Red Tape Moratorium Plan.

This is a comprehensive approach toward creating new jobs in New York State. And there isn't anybody in this chamber, I believe, that would argue that we don't need new jobs to improve our economy.

The first component, job creation tax credit, provides a payroll tax credit to any small business that creates a new job. So for example, if there is no employee working, there is no withholding tax against a nonexistent employee. If the new small business hires a new employee, they are given a tax credit against the withholding tax. There's no cost to the state because there was no employee paying that withholding tax in the first place. It's totally neutral.

But more significantly, it's a very large incentive for small businesses who many of them right now, in this economy, are on the threshold of emerging into a hiring mode but are holding back just because they need that little extra.

This is that little extra that will help those companies survive, that will help them move into the future. And equally important, it is that little extra at no cost to the state that will get people back to work.

The second component of this is the Small Business Tax Freedom Plan that eliminates the corporate franchise tax for small businesses, cutting it in half this year and reducing it entirely into the future.

And then finally, we all know and we've heard many times that red tape is one of the biggest killers of small businesses. It keeps them from thriving, it keeps them from growing, it keeps them from succeeding, it keeps them from staying in New York or even wanting to locate in New York.

Those are the three components of the 2011 Job Creation and Retention Plan, similar to a plan that was, I believe, fashioned after this plan that Senator Schumer introduced and had implemented in the United States Congress about three months after we proposed it.

Thank you, Mr. President.

THE PRESIDENT: Thank you, Senator.

Senator Krueger, why do you rise?

SENATOR LIZ KRUEGER: I rise to request that the sponsor yield to some questions, Mr. President.

THE PRESIDENT: Senator Alesi, do you yield to questions?

SENATOR ALESI: Mr. President, it would be my pleasure.

THE PRESIDENT: The Senator yields.

SENATOR LIZ KRUEGER: Thank you, Mr. President. Through you, if the sponsor could explain to me how this is a cost-neutral proposal to the state as opposed to a loss of tax revenue to the State of New York of hundreds of millions of dollars.

SENATOR ALESI: Mr. President and my colleagues, there's a simple answer to that, as I stated in my opening remarks. If there is a withholding tax against an existing employee and you take that withholding tax away, that would be a cost to the state

because that withholding tax is being taken in as revenue.

If an employee does not exist today but is hired this afternoon, a new employee against which -- whose payroll against which there was never any withholding, is hired and the employer has a tax credit -- in other words, doesn't have to pay that withholding tax up to the limit -- there's no lot of revenue because there was never any revenue in the first place.

The benefit to that is you have someone working and you have a business growing and starting to thrive because they have additional help and talent.

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

THE PRESIDENT: Senator, will you continue to yield?

SENATOR ALESI: Thank you for the opportunity, Mr. President.

THE PRESIDENT: The Senator yields.

SENATOR LIZ KRUEGER: Thank you.

Well, I suppose first a statement. On that logic, then, assuming that jobs continue to be created -- which we hope in the state -- and then people also move from job to job, and we were continuing to withhold the money from the employee, which is what this does, the employee has the tax taken out of their paycheck but never moved over to the state, you would actually have a transfer from employees to businesses without ever seeing new tax revenue for the state forever. But that's not actually my question.

The bill also allows the bifurcation for small business income between the taxpayer's personal income tax bill to the state and the business tax bill to the state, which as we know some small businesses currently choose to pay their taxes through their PIT.

Can you just explain a little more how this bifurcation would work? Let's say I was a fairly successful business owner but I had 10 small businesses. So now there's a bifurcation where I can have a different tax rate, I, the wealthy business owner, under

your model.

SENATOR ALESI: Mr. President, I think I heard two questions there. If not, the first part was at least a comment which deserves a comment in response.

I can't imagine in today's environment, when people are struggling to find jobs and businesses are struggling to find a way to employ people, that people would take a job, move on to another just to take advantage of what we're trying to do here. That's like finding a Coca-Cola machine that is working for free. There's only so much Coca-Cola you can drink.

And I don't think anybody would do that. There may be some, but I don't think enough to make any impact on this bill or the benefits this bill can provide to businesses, working people in this state.

Secondly, I'm not entirely sure that you can look at businesses that have subsidiaries -- wholly owned subsidiaries, LLCs, other corporations -- that are part of an overall enterprise and say that the single or collective owners of those businesses would

benefit unfairly because of this program. Because the simple answer is this program is designed to put people to work.

And if the program puts people to work because it incentivizes employers to offer jobs that they can't offer now because they can't afford it, then that's the end goal.

And if in fact a company owns or a business owner owns more than one company, it's the company that benefits and it's the people that are employed by that company or companies that benefit.

The net result of that is that New York State benefits, because we have people out of work and when people go to work, there isn't anybody in this room that would argue the fact that the more people that are working, the more robust our economy is; the more robust our economy is, the better off we are with tax revenues, et cetera.

Mr. President and my colleagues, this is a good bill. It was, I believe, if not copied, at least it was imitated on the federal level with the federal HIRES Act,

which expired at the end of this year but is scheduled to be reinstated because it has proven to be so effective as a tool to hire new people, put people to work, not only in America but now here in New York State.

In fact, coupled with that, my colleagues, this bill leverages the federal bill because it provides even more tax incentives for those businesses that want to put people to work.

THE PRESIDENT: Senator Krueger.

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

THE PRESIDENT: Senator Krueger, on the bill.

SENATOR LIZ KRUEGER: Thank you.

Thank you, Senator Alesi, for your explanation of the bill.

I think I will get to my points better if I just articulate some of my concerns.

I am certainly not opposed to a tax credit model that puts more New Yorkers to work. Senator Alesi is right, there's no one in this chamber who doesn't want to see more

New Yorkers working. But as is often said, God is in the details, especially on tax expenditure and tax credit bills.

So the reason I raise the concern about it being a withholding bill from employees' paychecks is you have to ask the question what actions are you incentivizing. Are you incentivizing the creation of new jobs, or are you actually incentivizing the creation of rapid turnover in jobs?

Because we know, in a bad economy, there are endless numbers of people all competing for the same jobs. But if you set up a tax credit for business where they get additional money off of their taxes for every new person who comes in without any obligation to keep that person, they have a reason to keep moving people in and out, in and out, in and out, because you get more money the more people you put on payroll, not necessarily keep on payroll.

So you have to be very careful in business tax incentives not to be encouraging simply the rotation of people rapidly off of jobs that have been incentivized. And that

actually is the history of any number of programs, state and federal, that went wrong. And I don't want the state to go wrong again. And that is one of the big ways that this bill is very different than the bills being proposed by the Obama administration.

Second, the issue of bifurcating the business tax from the personal tax when a person is trying to pay both as a small business owner through their personal income tax, rather than filing as a corporate tax, is we can in fact, at no benefit to the State of New York, dramatically lower the tax rate of wealthier successful business owners.

I want business owners to be successful. I want them to hire more people into their companies. I want them to increase economic activity. But I don't want us to, under the rubric of saying we have a job creation program, actually shift to a more regressive personal income tax for higher-income New Yorkers. And I'm very concerned that that is a big piece of this bill and perhaps the most costly piece of the bill to the State of New York.

So that section of the bill wouldn't create jobs but would reduce tax revenue at a time where we have a $10 billion deficit and none of us know how the heck we're going to meet that responsibility in the next few months.

Third, this bill also provides for a reduction by 50 percent of the corporate franchise tax for small businesses in the first year and then a zeroing out of the corporate franchise tax afterwards. It's not clear from the language of the bill whether, if you got to be -- let's all hope that every small business becomes the next IBM, the next Google, the next fill-in-the-blank. It's not clear here where they would ever be obligated to pay business taxes again, even though they had been successful, incentivized and went on to become large corporations in New York.

So the concept that within a bill we might actually be zeroing out corporate franchise taxes for everybody over time, when you think about the cost impact for the State of New York and the tax policy ramifications, I have to urge people to think carefully.

In addition, particularly because there's another section of the bill that set a moratorium on any tax or fee increase on businesses until June 2015, meaning you might have your taxes zeroed out, being a small business, using the incentives to do the right things and hire people, and then shift your entire business model, but there would be no way for New York State to get taxes out of you at least till June 30, 2015. And if some of the other bills we're going to discuss soon -- about supermajority rules for taxes -- became law, we probably would never increase or revisit a zeroed-out tax again for anyone.

So I have to say, watch the details carefully. There have been successful tax credits to create and incentivize small businesses hiring people, and there have been some real doozies of failures right here in our state. And we don't want to replicate the mistakes of the past as we move forward.

Finally, it's an expense bill two weeks before the new Governor Cuomo is giving us his budget. I don't understand why we are making a one-house decision at this moment in

history to cost the State of New York a minimum of $500 million when we are awaiting the Governor's budget with a $10 billion deficit to fill.

I think there are any number of reasons today for members on both sides of the aisle to vote no on this bill. I'll be voting no.

Thank you, Mr. President.

THE PRESIDENT: Thank you, Senator Krueger.

Senator Alesi.

SENATOR ALESI: On the bill, Mr. President.

Thank you, my colleagues. Thank you, Senator Krueger.

I'll be brief. I think that it's easy to see that we disagree. So I'm urging my colleagues to supporter this bill because this bill is an intelligent way to give businesses who desperately need to grow and thrive in New York State the incentives to hire new employees.

And with regard to Senator Krueger's concerns about an employer hiring

someone and then firing them and then hiring them again and firing them to take advantage of multiple credits, I can't imagine that that would occur in any business atmosphere, because the credit is against the paycheck. So if you hire and fire somebody, you're not gaining anything. The tax credit goes against the paycheck, not multiple persons.

But we could get into the smaller details of someone's objections to this and do this all day long. The fact of the matter is this is an intelligent approach. The federal government has adopted it and shown that it has worked. It is successful enough that Senator Schumer himself is going to renew this bill, effective January 1 retroactively.

So I encourage my colleagues to understand that we need to help businesses grow and thrive. And equally important, we need to give them the opportunity to put people to work. Because at the end of the day, if we're not putting people to work in New York State, we've failed in our responsibility.

I urge a yes vote. Thank you,

Mr. President.

THE PRESIDENT: Thank you, Senator Alesi.

Is there any other Senator wishing to be heard on this bill?

(No response.)

THE PRESIDENT: The debate is closed. The Secretary will ring the bell.

(Pause.)

THE PRESIDENT: The Secretary will read the last section.

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

THE PRESIDENT: Call the roll.

(The Secretary called the roll.)

THE PRESIDENT: Senator Klein, to explain his vote.

SENATOR KLEIN: Mr. President, to explain my vote.

I want to praise the sponsor of this legislation. I think it's a commonsense approach to protecting and enhancing small businesses and creating jobs.

One of the things that we see as far as our national recovery is not enough

being done for small businesses. We bailed out the banks, we bailed out the automobile industry, but we still haven't done anything for small businesses who generate jobs.

If we're really serious about reducing unemployment, we're going to do tax credits, as is contained in this bill, we'll put a moratorium on red tape and other regulations.

So I think this is really a smart, commonsense approach to get our economy moving again and once again getting back to basics and helping small businesses.

I vote yes, Mr. President.

THE PRESIDENT: Senator Klein in the affirmative.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 2 are Senators Adams, Hassell-Thompson, Huntley, L. Krueger, Montgomery, Parker, Peralta, Perkins and Rivera.

Ayes, 51. Nays, 9.

THE PRESIDENT: The bill is passed.

Senator Libous.

SENATOR LIBOUS: Mr. President, before we go on to the next bill I'd like to suggest to all of my colleagues, in the cooperation and spirit of the new year, when we are on the noncontroversial calendar if members would please, on both sides of the aisle, stay close to the chamber. We have a responsibility to be in here and vote. It is not fair to the members who are in here if other members are out milling around. We have a lot of work to do.

And I know that, with the inclement weather. That people want to speak, they want to be on the road and get home at a reasonable hour.

So let's be fair to ourselves this year so that when we're on the noncontroversial calendar that we will stay close by so that we can get through business rapidly.

Thank you, Mr. President.

THE PRESIDENT: Thank you, Senator Libous.

The Secretary will read now read

Calendar Number 3.

THE SECRETARY: Calendar Number 3, by Senator Ranzenhofer, Senate Print 1892, concurrent resolution of the Senate and Assembly proposing an amendment to Article 7 of the Constitution.

SENATOR BRESLIN: Explanation.

THE PRESIDENT: Senator Ranzenhofer, an explanation has been requested.

SENATOR RANZENHOFER: Mr. President, who asked for the explanation?

THE PRESIDENT: Who asked for the clarification?

SENATOR BRESLIN: I did.

THE PRESIDENT: Senator Breslin asked for the explanation, Senator Ranzenhofer.

SENATOR RANZENHOFER: Mr. President, this is a constitutional state spending cap which will be put in place --

MULTIPLE MEMBERS: We can't hear you. We can't hear.

SENATOR RANZENHOFER: The microphone is not working. If you can't hear

me, I'll speak a little louder.

This is a constitutional state spending cap -- is this better? I won't break into song, I can tell you that.

This would have a 2 percent cap or 120 percent of the CPI, whichever is less. Right now that would be a little less than 2 percent. There's also a provision in the bill where, if there are excess revenues, 50 percent of those would go into a tax stabilization fund, the other 50 percent would be returned to the taxpayers.

There's also a provision that if there is an emergency declared by the Governor and certified by the Comptroller, that the tax cap could be exceeded. There's also no requirement that you have to go to a tax cap; you could also have less spending than the 2 percent that's provided in the bill.

As a constitutional amendment, it would require passage by this legislature, it would require passage by the next legislature, in 2013, and then the voters of the State of New York would have a right to decide on the constitutional amendment.

THE PRESIDENT: Thank you, Senator.

Senator Krueger, why do you rise?

SENATOR LIZ KRUEGER: We're seeing whether the microphones work. Can you hear me, Mr. President?

THE PRESIDENT: We can hear you, Senator. And we're getting you a microphone.

SENATOR LIZ KRUEGER: All right. I'll speak loudly.

Mr. President, through you, if the sponsor would yield to some questions.

THE PRESIDENT: Senator Ranzenhofer, would you yield?

SENATOR RANZENHOFER: Yes, Mr. President, I yield.

THE PRESIDENT: The Senator yields.

SENATOR LIZ KRUEGER: Thank you. If you can't hear me, I'll try to speak even louder.

SENATOR LIBOUS: No, no, Senator, we want to hear you.

SENATOR LIZ KRUEGER: Oh, we each have one. Thank you so much.

SENATOR LIBOUS: We want to hear you.

SENATOR LIZ KRUEGER: Thank you.

UNIDENTIFIED SENATOR: Just like Oprah.

SENATOR LIZ KRUEGER: Not exactly like Oprah.

Thank you very much for your explanation, Senator Ranzenhofer.

Senator Ranzenhofer, do you know how many times a bill like this or identical to this has passed here on the floor of the Senate?

SENATOR RANZENHOFER: I've been here a few years. It didn't pass during my tenure. But I believe on two other occasions prior to me coming to the Senate.

SENATOR LIZ KRUEGER: Thank you.

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

SENATOR RANZENHOFER: Yes, of course. Yes.

THE PRESIDENT: The Senator yields.

SENATOR LIZ KRUEGER: Thank you.

And it's true you haven't been here that long, but do you know how many times this chamber, say over the last 25 years, has called for a spending cap?

SENATOR RANZENHOFER: Same answer as I just gave you.

SENATOR LIZ KRUEGER: I think it's about 24 times that there have been bills -- excuse me. Mr. President, if through you the sponsor would continue to yield.

SENATOR RANZENHOFER: Yes.

THE PRESIDENT: The Senator will yield.

SENATOR LIZ KRUEGER: Thank you. I was advised actually it was many, many times where we then violated the intention or the outline of the bill and actually increased the budget by hundreds of millions, if not billions of dollars, in years where we all said no, we're not going to increase the level of spending. That's not my question, though. It's my editorial comment.

In your bill it's my understanding that it would be a constitutional amendment that there could be no increase above the

2 percent, or 120 percent or more of the Consumer Price Index per year, and it would cover general funds, special revenue funds, capital project funds, and debt relief. Is there any portion of the budget that would not be included in this cap?

SENATOR RANZENHOFER: You correctly identified the four funds that are outlined in the bill.

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

THE PRESIDENT: Senator Ranzenhofer, will you yield?

SENATOR RANZENHOFER: Of course.

THE PRESIDENT: The Senator yields.

SENATOR LIZ KRUEGER: How would this constitutional amendment apply to authorities spending or raising fees and the equivalent of taxes, quote, unquote, off budget?

SENATOR RANZENHOFER: This applies to the four funds that are outlined in the bill.

SENATOR LIZ KRUEGER: Mr. President, through you, may I ask another question, please, of the sponsor.

THE PRESIDENT: Senator Ranzenhofer, do you yield?

SENATOR RANZENHOFER: Yes.

THE PRESIDENT: The Senator yields.

SENATOR LIZ KRUEGER: So I want to make sure I understand your bill correctly. You could continue to raise funds through outside authorities even if this bill became the law?

SENATOR RANZENHOFER: Same answer as I just gave you, yes.

SENATOR LIZ KRUEGER: I'm not sure -- thank you, Senator Ranzenhofer.

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

THE PRESIDENT: Senator Ranzenhofer, do you continue to yield?

SENATOR RANZENHOFER: Yes, Mr. President.

THE PRESIDENT: The Senator yields.

SENATOR LIZ KRUEGER: Senator, how did you determine what the growth benchmark should be for determining the cap? There is no other state in the nation that uses an inflation-only rate to calculate the cap. So I'm curious why you went down that road with your proposal.

SENATOR RANZENHOFER: The reason I went down that road is because over the last 10 years spending has increased 5.54 percent; over the last 20 years, 4.54 percent; over the last 27 years, 5.75 percent.

I thought it was important to have a number which was less than that. I thought 2 percent was the appropriate number. I know the Governor has talked very specifically that we must immediately impose a state spending cap. So I thought 2 percent was the proper number and was also -- right now it just so happens to be that that number is very closely tied to what the 120 percent of the CPI would be right now. Right now the 120 percent of the CPI would be just under 2 percent. So the 2 percent right now matches very closely what the CPI is.

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

THE PRESIDENT: Senator, do you continue to yield?

SENATOR RANZENHOFER: Yes.

THE PRESIDENT: The Senator continues to yield.

SENATOR LIZ KRUEGER: Thank you.

We are going through a period of relatively low inflation, although we historically have had periods of high inflation. But there are also facts that we know from the history of our budget and other states' budgets that costs of some services, like education and healthcare, historically growth at rates that exceed inflation.

And then you have a complicating factor -- let's say you had a population burst. Now, we know that in the new Census data we're going to lose Congressional seats because we haven't been growing as fast as other states. I believe we all agree New York State wants to grow our population and not be continually losing a national range war to

other states.

In your bill, where it's a constitutional amendment -- and again, that means there's almost no way to undo it once we've done it. If we have your model of an inflation-only rate cap but we had a huge population burst or we had a major capital expenditure requirement suddenly one year, a major bridge and highway collapse, we might find ourselves not able at all to just keep up with a minimal continuing level of other services because of the cap.

So did you think about what happens if the inflation rate changes, what happens if the population changes, or what happens if something else happens such as a major capital cost that might drain any other part of the budget, actually forcing a major reduction rather than any increase at all?

SENATOR RANZENHOFER: Yes, I have. I'm sure there's a question, many questions in there, so let me try to address that as best as I can remember your questions.

First of all, one of the things that you point out, very correctly, is that

New York is losing or should be losing this year two Congressional representatives. That's a trend that has continued over the last 50 years. In my judgment, and I think it's pretty well documented, that one of the problems that this state is having is that we are continuing to lose population to other states that have better controls over their taxes and spending.

So as a result, what's happened in this state is that the spending has gone up, the number of people that are left behind to pay for that spending decreases -- to, as I said, other states which have lower taxes because their spending levels are not quite as high.

One of the things -- you had mentioned two examples. One is a population burst. And again, based on the last 50 or even 100 years, I don't anticipate a population burst at this point in time. As a matter of fact, exactly the exact opposite is happening.

With respect to your example of a bridge collapse, that's covered in the bill.

It does talk about an emergency. And I had mentioned earlier if there is an emergency such as the one that you've just described, the Governor can declare an emergency, that can be certified by the Comptroller, and that can certainly be considered.

So the bill provides for that particular hypothetical example which you just gave. It does not address, for good reason, the possible population burst that this state might at some point have, in light of the last 100-year history, certainly 50-year history, where this state continually, based upon comparison with other states, continues to lose population year after year, decade after decade.

So in order to address -- that was one of the primary motivating factors behind this bill, is to get spending under control so we can therefore control taxes so we still have people here before everybody that is able to decides to leave for states that are less expensive than New York State.

SENATOR LIZ KRUEGER: Mr. President, if through you the sponsor would

continue to yield.

THE PRESIDENT: Senator?

SENATOR RANZENHOFER: Yes, I will.

THE PRESIDENT: The Senator yields.

SENATOR LIZ KRUEGER: Thank you.

And there is a question, but I want to provide some data before getting to the question.

I've looked at what happened in some other states that have passed this kind of spending cap or variations on spending cap. Although really no one goes as far as your proposal as far as covering all different types of revenue sources, a 2 percent or the -- or less than 120 percent of the Consumer Price Index. But the state that seems to have gone closest to the model you're proposing is the State of Colorado. And they passed their TABOR bill, Taxpayer Bill of Rights, which effectively capped state spending, and then had to at a later date be completely overhauled in a referendum bill by the people when many Republican legislators,

Republican governor and their business leaders, highlighted all the negative impacts that were found on the State of Colorado.

At the time they made the decision to pull back on TABOR -- and again, they have I&R in their state, so they had the ability to. We don't have initiative and referendum, so we wouldn't have the ability to go back the way they did.

Between 1992 and 2001, Colorado declined from 35th to 49th in the nation for spending on education. As of 2006, the state maintained its low rank among the states to 48th in education. Colorado's average per-pupil funding fell by $600 relative to the national average. Their funding for public health programs plummeted from 23rd to 48th in national stating rankings.

Their services for children plummeted in the rankings. The share of low-income children lacking health insurance doubled in Colorado and is now ranked 47th among the 50 states on child health measures. It also affected low-income adults. Colorado fell from 20th to 48th for the percentage of

low-income non-elderly adults without health insurance.

The business community responded that Colorado was no longer a place where they could grow their businesses. And so in fact Colorado realized that perhaps -- not perhaps, that they had gone too far. They had unintended consequences of the TABOR Act. And no state since then has gone as far as Colorado originally did and reversed itself upon in 2005.

Why now here in 2011 should New York assume there are no lessons to be learned from what some of the other states did and then reversed themselves on? Why should we want to put ourselves in a position where these things can happen here but we won't have a go-backwards option or a do-over?

SENATOR RANZENHOFER: The simple answer is that I believe that New York State's fiscal condition is so bad that if we do nothing, that it will continue to worsen. And notwithstanding the speech or, you know, information that you just provided, people are leaving the state in droves. And something

has to be done in order to keep them here. And I think limiting spending and limiting taxes and trying to create private-sector jobs is the correct method to go. And that's why I introduced the bill.

SENATOR KRUEGER: Mr. President, on the bill.

THE PRESIDENT: Senator.

SENATOR LIZ KRUEGER: Thank you. Thank you very much, Senator Ranzenhofer, for giving me the time and explanation for your legislation.

Again, I stand here saying no disagreement, New York State has a spending in relationship to revenue issue. No disagreement we're facing a $10 billion deficit and we must do the right things for the people of the State of New York. And there are right ways to handle this and I believe wrong ways to handle this.

I think a constitutional amendment mandating a specific unchangeable formula for revenue and spending -- this bill is specifically spending -- for spending in the State of New York is a terrible, terrible road

to go down. We have seen, from other states who tried it, it wasn't the right answer.

And specifically the way this amendment is targeted I believe is not the right answer. It doesn't address the concerns about a population spurt. It doesn't address the possibilities of the need to ratchet down the effect when you're moving out of bad economies into better economies. It doesn't let you smooth over economic changes when looking at a year-by-year basis.

There are huge unintended consequences for local government. When you look at the findings specifically from Colorado and other states, what they found when they stopped themselves from being able to increase their spending at the state level was that they created endless numbers of new government, new governments at the local level. Counties, towns, cities were creating new districts, new categories that could in fact increase their revenue because they knew they weren't going to get any more from the state as population grew, as the economy changed, as there was standard inflation. So

that what Colorado found was that they created a monster of endless small local government units.

Well, the irony is that we know in New York State, we're already the poster child of states who are having that problem. We have too many IDAs, we have too many public authorities, we have too many subdistricts and subsubdistricts within counties and townships. Colorado found that it walked into this problem after they passed their spending cap; we already have to solve that problem without dealing with the spending cap.

So I could go on. There's an enormous body of research. This is a fundamental, tough, complicated issue of government. We got this bill yesterday in the Finance Committee. Many of us said no notice, need more time. Even if some of my colleagues might end up saying, after they did the homework, maybe there's a right way to do this, maybe they can completely agree with Senator Ranzenhofer, you should not be rushing this kind of bill to the floor for a vote without a very broad public discussion, I

would argue public hearings, I would argue bringing in the experts from throughout the nation. A lot has been written, a lot has been tried, and much has failed.

So for so many reasons -- not one of which is I don't believe we need to get spending under control. I do. But for many, many reasons, I have to urge my colleagues to vote no on this bill. We should not take an amendment to the Constitution of the State of New York so lightly.

Thank you very much, Mr. President.

THE PRESIDENT: Thank you, Senator.

Senator Robach, on the resolution.

SENATOR ROBACH: Yes, Mr. President. Through you, on the bill.

I rise to support this measure. And, you know, we're leaving some things out of this dialogue. This is really in direct response to what people want. They're asking for it all across this state. And if anything, we're going to have to actually do this without this legislation in this upcoming budget year.

We've all heard the Governor loud and clear. We know what the dollar amounts are. We know what the challenge is of the fiscal situation. And certainly we're coming off an election where many people talked about I'm going to do my part when I get to Albany to control spending. This is clearly just a measure in addition to the short-term measures we're going to have to do to be responsive to people and the public in a long-term way.

I listened very intently to Senator Krueger. We tried the other way. We taxed seven times the rate of inflation over the last two years, and the public was outraged at each and every one of us, and it didn't help the economy one bit.

I think clearly the history and the outcomes would dictate that we have to move in a different direction. These series of bills are exactly that, following up on promises made during campaigns of knowing, even though it's challenging and no one necessarily enjoys it, that we're going to do the tough things to get our fiscal house in order and move in a different direction, keeping an eye on

overburdened taxpayers, working men and women and people on a fixed income.

But the beauty about this bill is there will be ample time to discuss it. And at the end of the day, the most important people get to make the decision, the voters of New York State, through this. The frustrating part is it does take a couple of years. But the wonderful part is everybody in your district and my district will get to vote on this bill if this is the direction we want to go to and think that this is the vehicle to get our fiscal house in order.

We are at a time when people are challenging decisions everywhere. Amplifying the voice of the people and letting them in can only be good. And I strongly encourage a yes vote on this important bill, Mr. President.

THE PRESIDENT: Thank you, Senator.

Are any other Senators wishing to be heard on this resolution?

Senator Kruger.

SENATOR CARL KRUGER: Thank you,

Mr. President. Would Senator Ranzenhofer yield for a few questions?

THE PRESIDENT: Senator Ranzenhofer, do you yield?

SENATOR RANZENHOFER: Yes.

SENATOR CARL KRUGER: I guess, you know, confusion reigns here in the chamber today. You pointed out that our population in this state continues to decrease and we keep on losing Congressional seats. How come we increase Senate seats? That's a question.

SENATOR RANZENHOFER: Are you talking about New York Senate?

SENATOR CARL KRUGER: New York State Senate seats continue to increase while you're saying our population decreases and we're losing Congressional seats. How is the Republican majority able to increase Senate seats?

SENATOR RANZENHOFER: I'm not really sure what you're talking about. When I came in in 2009 --

SENATOR CARL KRUGER: I'm sure you don't. That's part of the confusion.

SENATOR RANZENHOFER: -- there

were 61 seats, and there are still 61 seats. Sixty-two.

SENATOR CARL KRUGER: Well, okay. That was just a rhetorical point.

On your bill.

SENATOR RANZENHOFER: Is this a real question or a rhetorical question?

SENATOR CARL KRUGER: Yes, this is an on-the-bill question.

THE PRESIDENT: Senator, you want to ask the Senator to yield?

SENATOR CARL KRUGER: When we want to engage some dialogue --

THE PRESIDENT: Senator -- Senator Kruger, you want to ask Senator Ranzenhofer to yield?

SENATOR CARL KRUGER: Yes, I do.

Do you yield for a question?

THE PRESIDENT: Senator, do you yield?

SENATOR RANZENHOFER: Yes.

THE PRESIDENT: The Senator yields.

SENATOR CARL KRUGER: Thank you, Senator. When we want to talk about dialogue

in terms of spending, and we were to look at, you know, benchmark years -- let's start from 1982 to the year '09. And we could pick out years: 12 percent increase in spending, 7 percent increase in spending, 10.9 percent increase in spending, and the list goes on and on.

How come during those years, in your judgment, we increased spending?

SENATOR RANZENHOFER: First of all, I wasn't here serving with you during that time, Senator Kruger. But the point I was making is, and the numbers that I gave before, is that whether you look at the last 10-year period, whether you look at the last 20-year period, whether you look at the last 27-year period, whether there was a Republican governor or a Democratic governor, whether there was a Republican Senate or a Democratic Senate, spending has gone up too much.

And as a result of that, as you pointed out in your verbal comments earlier, we continue to lose population. I think that needs to change. I'm not looking here to place blame on the majority from last year.

I'm not looking to place blame on anywhere else. What I'm saying is that the citizens of this state want something done about excessive spending. This bill addresses that concern. Plain and simple.

SENATOR CARL KRUGER: Thank you, Senator.

Firstly, we should not be able to address last year's spending, because the spending cap last year we spent 0.5 percent.

THE PRESIDENT: Senator Kruger, is this on the bill?

SENATOR CARL KRUGER: Does Senator Ranzenhofer continue to yield?

THE PRESIDENT: Senator Kruger, is this on the resolution?

SENATOR CARL KRUGER: On the resolution.

THE PRESIDENT: You asked if the Senator would yield?

SENATOR RANZENHOFER: I'd be happy to yield.

SENATOR CARL KRUGER: Thank you very much.

Senator Ranzenhofer, when you talk

about a 2 percent cap, are you talking about a 2 percent aggregate cap on all state spending?

SENATOR RANZENHOFER: As I answered the question in response to Senator Krueger, in the bill in Section 2 -- I'm sorry, 3 -- total state spending, which means all state funds, which will include general funds, special revenue funds, capital project funds, and debt service funds.

So all state spending is all state spending.

SENATOR CARL KRUGER: Two percent cap?

SENATOR RANZENHOFER: Yes.

SENATOR CARL KRUGER: Now, this bill would not -- again, through you, Mr. President.

THE PRESIDENT: Are you asking --

SENATOR CARL KRUGER: If the Senator will continue to yield.

THE PRESIDENT: Senator, will you yield?

SENATOR RANZENHOFER: I'd be happy to continue to yield.

THE PRESIDENT: The Senator

continues to yield to Senator Kruger.

SENATOR CARL KRUGER: Thank you again. Thank you again, Senator Ranzenhofer.

So if we're to look at this 2 percent cap and we're to say that's the aggregate spending cap on all state categories, let's now try to put a face on that spending cap, with your permission. Two percent spending cap, Senator Ranzenhofer, would that apply to the aggregate amount for health?

THE PRESIDENT: Senator?

SENATOR RANZENHOFER: Yes. As I said, Senator Kruger, it's all state spending.

SENATOR CARL KRUGER: Again, through you, Mr. President, if the Senator will continue to yield.

SENATOR RANZENHOFER: Yes.

THE PRESIDENT: The Senator yields.

SENATOR CARL KRUGER: So when we talk about education, you are advocating that we put a cap of 2 percent based upon a budget that we are already going to decimate -- let's pretend it's this year of taking $10 billion

out of the current budget. You're suggesting that in future years, as we continue this road to austerity, that we continue to limit our ability to cap expenditures at 2 percent. Am I correct?

SENATOR RANZENHOFER: As I said, first of all, when you're talking about what's going to happen this year, I think -- and as Governor Cuomo has already said -- without a spending cap, there is going to be significant reductions in spending this year.

What I'm looking to do is to make those spending reductions which need to be made, and the public is asking us to make, permanent by way of a constitutional amendment. After it passes this Legislature, after it passes the Legislature in 2013, and then the voters will have an opportunity.

If the voters agree with you, Senator Kruger, that there should not be reductions in spending and there should not be a spending cap, then I imagine that they would vote in favor of the position that you're espousing. If the voters feel that there should be a spending cap and that the state

needs to get its spending under control and that 2 percent or 120 percent of the CPI is a better direction, I believe that they would choose that path.

But I think it's an important step that this Legislature passes to give the voters of this state the opportunity to amend the Constitution so they have some control and they have some say over the type of spending that they want. Because they haven't had any control over the last number of years. And their way of expressing themselves has been to leave the state to go to other states that don't spend as much and don't tax as much.

That's the reality of the situation, and that's the problem which we now face and the problem that I think needs to be fixed. And we'll see, if it passes the legislature and it passes a successive legislature and the voters have an opportunity to make that decision, what they feel on the subject.

SENATOR CARL KRUGER: Thank you.

Once again, through you, Mr. President, would the Senator continue to

yield?

THE PRESIDENT: Senator, will you yield?

SENATOR RANZENHOFER: I'd be happy to.

THE PRESIDENT: The Senator yields.

SENATOR CARL KRUGER: Thank you again, Senator.

So for a moment, if we're to use the model that Senator Krueger spoke about, and that's California --

SENATOR RANZENHOFER: I believe she spoke about Colorado.

SENATOR CARL KRUGER: Colorado as well as California.

In both cases, can you in your judgment, and based upon your own personal knowledge, do you feel that the economies have flourished under the spending cap both in Colorado and California?

SENATOR RANZENHOFER: Through you, Mr. President, let me just read you a little bit of literature about what happened in Colorado after they passed their spending

cap.

It says "Colorado's early experience with TABOR included very rapid demographic and economic growth because of substantial migration, a 30 percent population growth from 1990 to 2000, and the rapid expansion of the electronics and telecommunications industries in the state. Taxpayers saw substantial TABOR refund checks as revenues above the limit were returned to them. The general assembly subsequently reduced personal income and sales tax rates to reduce surplus returnable revenues."

So at least the experience in Colorado when it was passed, and for the decade following that, actually produced some pretty significant change which I imagine the legislature was trying to accomplish. They were trying to revive a dormant business industry, which they did. They were trying to limit their spending, which they did. They were trying to lessen their tax burden, which they did.

I don't have -- I don't think that Senator Krueger talked about California, so

I'm not going to comment on that. But on the specific example that you reference, and what she referenced, at least for the first 10 years after it passed, it was a pretty successful program.

And more importantly, Senator, I believe it did what the -- you know, what the residents of that state wanted, through their legislature. It reduced spending and reduced taxes. And at least the sense that I have, and I know the Governor has spoken very forcefully about that, the Governor also wants to reduce spending and reduce taxes. I think in his State of the State message he indicated that over the last decade we've lost 2 million people.

And that's a real problem. When the spending goes up and there are fewer people left behind to pay it, it just creates a continuing problem which I think this Legislature needs to address. It hasn't been addressed properly. And this is the first step to do that.

SENATOR CARL KRUGER: Thank you, Senator.

Again, through you, Mr. President, does the Senator continue to yield?

THE PRESIDENT: Senator, will you continue to yield?

SENATOR RANZENHOFER: Yes, I'd be happy to.

THE PRESIDENT: The Senator yields.

SENATOR CARL KRUGER: Firstly, I guess, this is a two-part question.

Number one, since we're awaiting the Governor's budget and what his spending program would lay out, is this legislation ill-timed?

And secondly, if we want to look at Colorado again, notwithstanding the fact that there may have been one particular bump in terms of telecommunications, can you explain why Colorado, because the spending cap virtually destroyed state government, that they had to repeal it?

SENATOR RANZENHOFER: What was your first question again?

SENATOR CARL KRUGER: My first question was the Governor, how come we're not

waiting for him.

SENATOR RANZENHOFER: Well, first of all, this -- as I said, we are going to, as you well know, as ranker on Finance and as chairman of Finance last year, that there are going to be some great challenges that we're facing right now. And the Governor is going to propose a budget and this Legislature is going to have to deal with some very, very difficult choices. And that's with whether you have a spending cap or not, that's just the reality that we are going to have to deal with over the next couple of months.

My feeling is that we really can't afford to wait any longer. In the statistics that I'd given you earlier, over the last 27 years -- again, regardless of who's in charge -- spending has increased well above the rate of inflation, with the results, as I also indicated, that people are just leaving the state.

So I think this is long overdue, not too early. And I think it's important to send a very important message to this state that we as a body are serious about getting

our fiscal house in order. That's what residents in your district and my district are doing in their own homes. That's what businesses in your district and my district are doing in their businesses. They have to control their spending to survive. And I think the state also needs to take that approach as well.

SENATOR CARL KRUGER: Okay. And since you raise the issue of Colorado, how come they rescinded their cap?

SENATOR RANZENHOFER: As I said, you know, I'm not -- I've only been in the Senate for two years. I don't know why the legislators in Colorado decided to do what they did.

We are at a point in our history in the State of New York that we need a cap. We can't continue to push the spending problem that we have down the road and hope that people will not continue to leave, hope that businesses won't continue to leave. We need to take some action today. And that's why the bill was introduced.

SENATOR CARL KRUGER: Thank you,

Senator.

SENATOR RANZENHOFER: You're welcome.

SENATOR CARL KRUGER: Mr. President, on the bill.

THE PRESIDENT: Senator Kruger, on the resolution.

SENATOR CARL KRUGER: On the resolution.

Firstly, when we want to talk about a spending cap and we want to talk about spending and we want to talk about cuts, it's important for us as a Legislature to not look at this as just amorphous numbers, but rather to treat this as cuts and caps that affect people's lives -- affect children and their education, affect poor people and social service needs, that affect senior citizens and people that are sick, that are in hospitals across this state.

And if we want to take and put faces on those cuts and those caps, we have to look at them both in good years and in bad years as well. And if we're going to put our fiscal house in order, we can never ignore the

human side of the equation.

The human side of the equation says that we have a responsibility not to try to hide behind constitutional amendments that in this state are virtually impossible to undo. If we're going to talk about a critical crisis that faces us today, we can't talk about a plan of action that can only be implemented five years from now.

If we're going to talk about cuts and what cuts mean, if we're going to take direction from our newly elected Governor, then we have to stop kicking the can down the road and stop the dramatics of looking for quick 30-second sound bites. What we have to look for is a bill, we have to look for a budget, we have to look for a plan of action, and we have to look for a sense of commitment, a commitment that we are here as legislators, on both sides of the aisle, dedicated to speak for the people that necessarily can't speak for themselves: the poor, the sick, the elderly, the infant child.

If we put that into the equation, then we can't put a numerical number of

2 percent for virtually the rest of their life on how government is going to treat them -- 2 percent of the aggregate number, 2 percent of the number that will affect education, healthcare, social services and every other aspect of human life in this state.

So today I say that in the period of 24 hours this resolution has been put before our house. It's been put before our house to digest, to evaluate and to vote on. I think that that's a little bit putting the cart in front of the horse. It's giving us not enough time to have honest and clear debate on the issue. But more importantly, it prevents us from dealing with our immediate concerns and our needs as legislators.

Caps and spending cuts and a budget in balance is our obligation. And we meet that obligation not by taking constitutional amendments and hoping to hide behind them, but rather taking the real facts of the day, putting a face on those facts, and moving forward with a budget, with the support of the Assembly and the Governor, that makes sense for all New Yorkers.

Thank you.

THE PRESIDENT: Thank you, Senator Kruger.

Are there any other Senators wishing to speak or be heard on this resolution?

Senator Saland.

SENATOR SALAND: Thank you, Mr. President. I'll be brief. I probably won't need the microphone.

I think the reference to Colorado and TABOR is totally inapt. I recall at the time I was actively involved in the National Conference of State Legislatures, which was headquartered in Colorado. I was an officer of that organization. TABOR was the product of I believe a referendum adopted by the people of Colorado, among other things. Not only does it differ in terms of manner in which it presents itself, but in the case of TABOR, it made no provision for a rainy day fund.

This particular measure does require that anything that exceeds the amount of the cap be divided both by way of returning

one-half to the taxpayers and one-half to a sustained rainy day fund.

There was something that to appearances might have appeared to be a rainy day fund, but in effect it was a cash flow mechanism. It was not sustainable. And it did not produce the accumulation of funds to be used in times of need.

So I would just rise clearly to clear the record and to say that the use of TABOR in some way, shape or form to discredit Senator Ranzenhofer's resolution simply does not apply.

Thank you, Mr. President.

THE PRESIDENT: Thank you, Senator Saland.

Any other Senators wishing to be heard?

(No response.)

THE PRESIDENT: Hearing none, the debate is closed.

The Secretary will ring the bell.

(Pause.)

THE PRESIDENT: The Secretary will call the roll on the resolution.

(The Secretary called the roll.)

THE PRESIDENT: The Secretary will record the negatives and announce the results.

Announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 3 are Senators Adams, Diaz, Espaillat, Gianaris, Hassell-Thompson, Huntley, L. Krueger, C. Kruger, Montgomery, Oppenheimer, Parker, Peralta, Perkins, Rivera, Savino, Serrano, Squadron, Stavisky and Stewart-Cousins.

Ayes, 41. Nays, 19.

THE PRESIDENT: The resolution is adopted.

The Secretary will now read Calendar Number 4.

THE SECRETARY: Calendar Number 4, by Senator Zeldin, Senate Print 1919, Concurrent Resolution of the Senate and Assembly proposing an amendment to Section 14 of Article 3 of the Constitution.

SENATOR BRESLIN: Explanation.

THE PRESIDENT: Senator Zeldin, an explanation has been requested.

SENATOR ZELDIN: Thank you, Mr. President.

My colleagues, today we are taking the first steps in a desperately needed process to put the citizens back in control of our state's economic future. No matter what your party, no matter what part of the state you come from, the message we have all heard from the voters are the same: Taxes are too high. Spending is too high. Not all taxpayers have a voice in their government.

New York has lost its way. The voters sent us here to represent them with the hope that we will work together to create a better direction for our state. It's time to reestablish their confidence in us.

This concurrent resolution would amend the Constitution to institute a requirement of a two-thirds vote of the members elected to each branch of the State Legislature in order to pass any bill which increases, extends, imposes or revives any tax, fee, assessment, surcharge or any other such levy or collection. Passage of this resolution will constitute first passage of

this amendment. Whereafter, it will require passage by both houses in the next legislative session, and thereafter would be submitted to the voters. If such amendment is approved and enacted, the result will be that any attempt to impose, increase, extend or revive a tax, fee, assessment, surcharge, or any other such tax levy or tax collection change will require a two-thirds vote in each house of the Legislature to pass.

The purpose of this amendment is clear. In a state with some of the highest taxes in the country and the worst business climate in the country, this will reduce the growth in government spending.

Limiting the amount of revenue that government can collect will reduce the amount of money that government can spend. It will compel us to do the difficult but necessary work of focusing on the most essential programs and services our citizens need and developing a tax system that generates adequate revenues for these needs without harming our economy.

I'm proud that this is a bipartisan

effort. The amendment is sponsored in the other house by Democratic Assemblywoman RoAnn Destito, and I pledge to work with her to see that this two-thirds requirement is enacted.

Thomas Jefferson once said that a government that's big enough to give you everything you want is big enough to take away everything you have. I believe our action in this Legislature today demonstrates to the public that we are serious about reducing the burdens on our taxpayers and are serious about both challenging and changing the way New York State operates. I urge all my colleagues to join me in support of this measure.

Thank you, Mr. President.

THE PRESIDENT: Senator Krueger.

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

THE PRESIDENT: Will the Senator yield?

SENATOR ZELDIN: I'd be happy to.

THE PRESIDENT: The Senator yields.

SENATOR LIZ KRUEGER: Thank you

so much, Mr. President.

Good morning, Senator Zeldin. We haven't had a chance to meet yet, so welcome to the New York State Senate. I suspect we're going to have many fun debates on the floor in the next session.

I'll start with a couple of questions about this bill. Is it your understanding that this constitutional amendment would require that all budget bills, which almost always have increases, extensions, changes or revisions in revenue-raising provisions, that this constitutional amendment would apply to budget bills?

SENATOR ZELDIN: Mr. President, yes.

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

THE PRESIDENT: Senator, will you yield?

SENATOR ZELDIN: Be happy to.

THE PRESIDENT: The Senator yields.

SENATOR LIZ KRUEGER: Thank you.

And again, it's a different constitutional amendment than the last debate we just had on the floor. But again, I've done some checking out how it worked in other states when they went down this road. Again, through constitutional amendment, just to emphasize, once we make this decision and we put it in our Constitution, we don't really get to reverse it. Or not unless through an extraordinarily complex multiyear process.

So under this situation, if your constitutional amendment became the law of the land, and there would continue to be, I believe, good economic times and bad economic times, cycles where there were upticks and downturns, how would we adjust for that in the context of a supermajority, 41 out of 62 Senators voting for some specific tax increase, potentially being mathematically impossible to accomplish in this chamber? How would we adjust for the bad times?

SENATOR ZELDIN: Mr. President, I believe that if there is a tax increase or fee that is that important, that we -- the

requirement of two-thirds of this body would be obtainable. This isn't a requirement imposing a four-thirds requirement, it's a two-thirds requirement. That leaves the power in this body to increase taxes if it wants to. It just makes it more difficult to just tax and spend freely, at will, in the ways that hurt the state.

SENATOR LIZ KRUEGER: Thank you.

Through you, Mr. President, if the Senator would continue to yield.

THE PRESIDENT: Senator, will you continue to yield?

SENATOR ZELDIN: Yes, Mr. President.

THE PRESIDENT: The Senator yields.

SENATOR LIZ KRUEGER: Now, this question is a bit of an assumption that your constitutional amendment passed, as well as Senator Ranzenhofer's constitutional amendment on spending cap.

So to follow up with the question I asked about good economic times, bad economic times, and the need for government to be more

responsive in bad economic times, have greater ability to raise revenue in good economic times and be a smoother for the people of economic cycle realities. So in the Ranzenhofer constitutional amendment, there's a limit of how much the state could actually keep for a rainy day fund. We would have a constitutional obligation to return at least 50 percent, in any given year, of unspent monies to the taxpayer, limiting our ability to save for the rainy day of bad economic times.

Now we layer that with, you're right, a supermajority, two-thirds. So that would, under the current size of the Senate, require 41, I believe, of 62 Senators to vote for any specific bill.

Do you not see that there potentially is a conflict in planning in government of these two constitutional amendments becoming law together?

SENATOR ZELDIN: No.

SENATOR LIZ KRUEGER: Thank you. For the record, I disagree with you.

Mr. President, if through you the

sponsor would continue to yield.

THE PRESIDENT: Senator, will you yield?

SENATOR ZELDIN: Be happy to.

SENATOR LIZ KRUEGER: Thank you.

Going back to my point about if budget bills are supermajority bills -- and you answered yes, they would be -- and we look at some of the states that do have supermajority rules on tax and revenue -- although, again, your amendment would go further than most other states, I believe, with the exception of California, for covering all possible new revenue sources. Do you see us having a problem with timely budgets, getting it all done by April 1st?

SENATOR ZELDIN: No.

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

THE PRESIDENT: Senator, will you continue to yield?

SENATOR ZELDIN: I'd be happy to.

SENATOR LIZ KRUEGER: I recently looked very carefully at the California model,

where they have had a supermajority law in effect. And again, they realized after an extended period of time that their state had enormous problems, far, far worse than anything we see here in New York. Never being able to get their budget done -- I wouldn't even say on time, never being able to get their budget done. Finding themselves in a much, much more drastic deficit situation than here in our state, actually having cities and counties potentially on the verge of bankruptcy, talking about having to pay their state workers with IOUs.

I think most people would agree California is to some degree the example everyone in state government throughout the country wakes up and says, Please, never let me wake up and be a California elected official.

California had this model. The people actually rose up this year -- again, through an initiative and referendum vote, which we don't have the option of. So if we became a state that had a supermajority rule for revenue in our Constitution, we again,

like my issue with the last constitutional amendment, we couldn't go back. California went back. Their voters said no, we're not going to continue this model, it has brought California to ruin.

Given what just happened with California, given the amount of research that has been produced over literally the last year, when this was such a hot debate in California, why do you think it's the right answer for New York given what we have learned about California?

SENATOR ZELDIN: Mr. President, I would blame, first and foremost, a dysfunctional legislature in California for the taxing and spending problems. As we've seen here in our own state, we shouldn't be following the models of what's going wrong around the country but maybe what is going on right.

I don't think that California's problems is that they're not taxing their residents enough. The tax-and-spend ways of California in many ways are contributing to the problems of that state.

There are 16 other states that have this constitutional amendment, California being just one. And it's important that as we look at California -- well, I would have to say in my opinion it's not that California needs to drastically raise their own taxes and more borrowing and more spending to fix that state's economy.

I am focused on helping fix the New York State economy, and I would look at the responsibility, first and foremost, amongst the people that are in this Legislature and giving the right to the people that are in our state. If our voters in New York State believe that we shouldn't have this constitutional amendment, it is in their power to vote no. I want to give them that opportunity, and that's why I proposed this bill.

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

THE PRESIDENT: Senator, will you yield?

SENATOR ZELDIN: Yes.

THE PRESIDENT: The Senator yields.

SENATOR LIZ KRUEGER: Senator Zeldin, I think you and I share a mutual goal for the State of New York, I think we're just disagreeing on how we get there.

In your constitutional amendment -- and you answered the question about having to have a supermajority for budget bills because a supermajority for all state revenue bills. Does your constitutional amendment also apply to the Legislature requiring supermajority votes on any local tax proposals that come to us?

As we know, other than the property tax, counties and municipalities have to come to us for a vote on every single revenue item for themselves. Would the supermajority rule apply to these bills as well?

SENATOR ZELDIN: Mr. President, we're only giving the locals the option. And in that case, it's up to them.

SENATOR LIZ KRUEGER: I'm sorry, I couldn't hear, Mr. President. If the sponsor could repeat himself.

THE PRESIDENT: Would you repeat your answer, please.

SENATOR ZELDIN: We are giving the local governments the option. So as far as giving them the option, it's up to the local voters to decide whether or not to increase taxes.

SENATOR LIZ KRUEGER: Mr. President, may I ask another question of the sponsor, please.

THE PRESIDENT: Senator, will you yield?

SENATOR ZELDIN: I'd be happy to.

THE PRESIDENT: The Senator yields.

SENATOR LIZ KRUEGER: Thank you.

Having heard the answer, I'm afraid I don't understand it. We're giving them the option to say we're sending you a local tax bill, and we're saying do it by supermajority versus not supermajority? Was that the answer?

SENATOR ZELDIN: It will not apply to local governments. We are only giving them the option, and it's the local

governments that are able to vote.

But if I understand your question correctly, you're asking whether or not it's a supermajority vote or a majority vote. And it's a majority vote. It's up to the voters of the local governments to decide whether or not to impose it.

SENATOR LIZ KRUEGER: Mr. President, if through you I could continue to question the sponsor.

THE PRESIDENT: Senator, will you yield again?

SENATOR ZELDIN: Be happy to.

THE PRESIDENT: The Senator yields.

SENATOR LIZ KRUEGER: Thank you.

I'm sorry if I'm having trouble understanding. Let's say a sales tax. We have, almost yearly, a process where counties send us requests for a sales tax increase. They can't do it without coming to us. They can't pass almost any kind of revenue-raiser for themselves without coming to us. And I don't believe there was anything in this constitutional amendment that changed that.

So the locality can decide they don't want to ask us to raise their sales tax or ask us not to raise something else they traditionally have come to us. I understand that. But if they want to raise their taxes -- let me rephrase. Nobody ever wants to raise their taxes. If they need to balance their budgets through a revenue increase, they do have to currently come to us. I don't see anything in your constitutional amendment that would change that reality.

So where would the option come as to whether we treated their tax and revenue proposals as an option, a supermajority or not?

SENATOR ZELDIN: This bill does not affect your hypothetical. So I'm trying to answer your hypothetical. And because it does not affect your hypothetical, it's still a majority vote. We're giving the option to the local voters to vote on it.

SENATOR LIZ KRUEGER: Mr. President, if through you I could continue to ask a question of the Senator.

THE PRESIDENT: Senator, will you

yield?

SENATOR ZELDIN: Yes, I will.

THE PRESIDENT: The Senator yields.

SENATOR LIZ KRUEGER: But just to continue my train of thought, let me just -- not a question, first -- make a statement.

I actually don't think that is what the constitutional amendment's impact would be. I believe, as I read it, it would require us to do local tax bills as supermajority.

So in light of our disagreement on that, which is okay, have you gotten an opinion from the Attorney General about what will this constitutional amendment would do, what the impact would be, and how broad its interpretation would be constitutionally? Because that is a role of the Attorney General on constitutional amendments.

SENATOR ZELDIN: Mr. President, the Attorney General is aware of the bill. As I'm sure you know, he has 20 days to offer an opinion. He has not offered an opinion. Due to the 1951 advisory opinion of the Attorney General at that time, this body is authorized

to act. Our Attorney General has not provided an opinion, but our body is going forward with the proposal today.

SENATOR LIZ KRUEGER: Mr. President, if through you the sponsor would continue to yield to one more question.

THE PRESIDENT: Senator, would you yield to one more question?

SENATOR ZELDIN: I'd be happy to.

SENATOR LIZ KRUEGER: Thank you very much. See, I told you this was fun.

I do politely argue that we should really wait for the Attorney General to give us his response before this august body decides to vote on something, again, so dramatic in its impact on the State of New York. We have no rush to have to do this. Obviously, we know it requires votes in both houses in two different sessions of the Senate and Assembly. We are only in our first couple of weeks of the beginning of this, the first of two sessions. And of course starting in a week and a half, we delve into budget and need to deal with all these issues absent an actual passage or not passage of a constitutional

amendment.

So I would urge everyone, think about why we maybe want to wait to find out the Attorney General's opinion. But that's not my question.

Would your constitutional amendment impact the passage of tax expenditure or credit bills which reduced revenue through the tax system to the State of New York, a la Senator Alesi's earlier bill that we debated on this floor? Or does it apply to all revenue for the State of New York, including tax credits and expenditures, having to be passed through supermajority?

SENATOR ZELDIN: First, to answer your question, the answer is no.

But to clarify one thing with regard to your statement involving the Attorney General, we have provided him with the bill. He has declined to give us an opinion. And I can only speak for myself. I was elected to represent the people of the Third Senate District. I work for them and not the New York State Attorney General. And I'm not going to wait for him to come up with

an opinion at some hypothetical time in the future.

He was given the opportunity, he's declined to give us an opinion and we should go forward on our own independently, representing the voters of your districts as I want to do with mine.

SENATOR LIZ KRUEGER: Mr. President, on the bill.

THE PRESIDENT: Senator Krueger, on the resolution.

SENATOR LIZ KRUEGER: Thank you very much. I appreciate the sponsor's patience and back-and-forth dialogue.

I think he's right, none of us work for the Attorney General. We are elected by our constituents to represent the interests of them and, I would argue, all 19 million New Yorkers. We are also obligated to follow the Constitution of the State of New York and I hope take it very, very seriously when and if we make a decision to amend the Constitution of the great State of New York.

The Constitution actually gives the Attorney General the structure by which to

help us evaluate the constitutionality of any actions we take in the Legislature, and in fact is there to help guide us to understand what the intended and perhaps unintended consequences are of making dramatic changes in our Constitution.

So I'm not suggesting any of us work for the Attorney General. But speaking only for myself, I'd very much like to make sure that if we're going to change our great Constitution for the great New York State, that we know we are in fact meeting constitutional responsibilities and not having bill language that may not in fact reflect the impact that it would actually have on our Constitution.

Because again, once you change the Constitution, you don't get a fix-it opportunity, as we do on the floor of the Legislature when we can amend bills over and over again.

I'm particularly concerned about the last answer to my last question. This would apply to raising revenue and creating new streams of revenue, but this wouldn't

apply to tax expenditures and credits when we would be reducing revenue to the State of New York. It particularly concerns me that we wouldn't have to meet the same obligation to not look at cutting revenue to the State of New York.

Because in light of the constitutional amendment on a spending cap, where the options for increasing revenue by definition would be now limited by a supermajority and by a maximum cap per year, the concept that we could continue to reduce revenue to the State of New York willy-nilly, so to speak, by creating additional tax expenditures and credits -- which historically have been the fodder of special-interest lobbyists to make sure they get their deals in through the Legislature, usually without a lot of attention paid, usually not within the context of a broader budget discussion.

And now, through these two constitutional amendments, if they became law, we would be tying our hands for revenue and spending but not for giving deals to special interests. I think fundamentally, on that

issue alone, I would have a problem voting for this constitutional amendment.

But I don't need to stop there. Because again, it's nice to believe we're not as dysfunctional as California, we're not as likely to shift into gridlock, we're not as likely to fall into chaos with greater and greater deficits. But our history here in New York isn't that good either. We just haven't gone down the road that California went, because we don't have a two-thirds supermajority requirement on revenue.

And I would argue, especially given our history, the current realities, our bipartisan commitment to work with a new Governor to fix the problems and get things done the right way, this is absolutely, absolutely the wrong time in history for New York State to choose to voluntarily make the mistakes of other states.

I emphatically urge my colleagues for a no vote on this bill today.

Thank you, Mr. President.

THE PRESIDENT: Thank you, Senator Krueger.

Senator Bonacic.

SENATOR BONACIC: Thank you, Mr. President.

I would just like to thank Senator Alesi and Senator Ranzenhofer and Senator Zeldin for delivering the message of the Republican Majority this year.

The past two years have been brutal in terms of excess spending and excess taxes when middle-class families were struggling with high unemployment and people were losing their houses. The attitude towards small businesses was actually hostile, a hostile environment.

And our message today, by three Senators and my colleagues for the resolutions that they're putting forward, are very simple. Taxpayers need protection from what has happened these past two years.

Now, I don't fear a constitutional amendment because I respect the wisdom of the people. They're going to vote. If they think it's in their best interests, they'll vote for it. If they made a mistake, there will be another constitutional amendment and they'll

change it.

But remember, we represent the people. They are our bosses. We're not smarter than them. And we should always respect the wisdom of the people. So all this fear about constitutional amendments and we're smarter than the people to do the right thing -- they're paying our salary. They're paying for all these programs. So believe me, we should trust them. Because we're all still here, they trust you to keep being their voice for the next two years.

As to job creation, there is a philosophy that is going on in this country that is a clash. Where are we going with America? Are we going to be an entitlement culture? Are we going tax and spend more and let government control our lives? Or are we going empower individuals, empower people and small businesses to create wealth, make them our partners, be friendly with them and let them lead the way?

And I believe that's the way to go. That's the way our conference believes. So we want to be more friendly to business. We want

more tax credits. We want to help our partners, unlike the attitude and the policies we've seen in the last two years.

Now, on Senator Alesi's resolution, there were many of my colleagues on the other side of the aisle that voted yes. And I thank you for that, for learning from your mistakes and trying a different way.

I saw on Senator Ranzenhofer's resolution there were more nos, because of fear of the Constitution. And I would hope, on Senator Zeldin's resolution, we all get behind him to support the taxpayers because we all trust the wisdom of the people.

We have tough challenges ahead of us, whether you're in the majority or whether we're in the majority. We have challenges. We have to work together and take the best minds that we have here to get us out of this fiscal crisis. I think our Governor is right on with this drastic talk, because we are at the cliff and there will be no tomorrow if we don't get our house in order.

Thank you very much, Mr. President. I support Senator Zeldin's resolution, and I

thank him.

THE PRESIDENT: Thank you, Senator.

Any other Senators wishing to be heard on this resolution? Senator Kruger.

SENATOR CARL KRUGER: Thank you, Mr. President.

Through you, Mr. President, would Senator Zeldin yield for a question?

THE PRESIDENT: Senator, would you yield?

SENATOR ZELDIN: Yes, Mr. President.

SENATOR CARL KRUGER: Thank you so much.

The issue of the Attorney General having this resolution for study, review and comment, how long has he had it?

SENATOR ZELDIN: Mr. President, I believe it was Friday.

SENATOR CARL KRUGER: Friday. And today being Wednesday. So he's had two working days to review it and to issue an opinion. Is that -- through you, Mr. President.

THE PRESIDENT: Senator, do you yield for a question?

SENATOR ZELDIN: I would yield.

SENATOR CARL KRUGER: Thank you.

So then he's had two working days to review it and issue an opinion? That's my question. Is that correct?

SENATOR ZELDIN: He's had it since Friday. However you want to break it down with holidays and weekends, he's had it since Friday, Mr. President.

SENATOR CARL KRUGER: So that's two working days, not including today, in order to have formed an opinion.

Now, through you, Mr. President, one other question.

THE PRESIDENT: Senator, one more question, do you yield?

SENATOR ZELDIN: I'm happy to yield.

THE PRESIDENT: The Senator yields.

SENATOR CARL KRUGER: Thank you again, Senator.

The Judiciary budget, does your

resolution include the Judiciary budget?

SENATOR ZELDIN: Mr. President, I'm not aware of the Judiciary budget increasing taxes. If the Judiciary budget was going to increase taxes, it would be my intent that it would be included. But I'm not aware of the Judiciary budget increasing taxes.

SENATOR CARL KRUGER: Thank you, Senator.

Through you again, Mr. President, Senator Zeldin, do you continue to yield?

THE PRESIDENT: Senator?

SENATOR ZELDIN: I'd be happy to.

THE PRESIDENT: The Senator yields.

SENATOR CARL KRUGER: Thank you.

The Judiciary budget includes a substantial list of fees. Are fees included in your resolution?

SENATOR ZELDIN: Yes.

SENATOR CARL KRUGER: So consequently we would say that we would need a supermajority -- or, in the alternative, that the issue of fees to the court system could be virtually hijacked by twenty Senators in this

room. Is that correct?

SENATOR ZELDIN: Mr. President, it would apply to new fees.

SENATOR CARL KRUGER: It would apply to new fees.

Again, through you, Mr. President. So what about increases in fees?

THE PRESIDENT: Senator, do you yield?

SENATOR ZELDIN: I'd be happy to yield.

SENATOR CARL KRUGER: Thank you.

What about increases in fees?

SENATOR ZELDIN: That would be included.

SENATOR CARL KRUGER: Again, so that I can understand this, we can all understand it, through you, Mr. President, if the Senator would continue to yield.

THE PRESIDENT: Senator, do you yield?

SENATOR ZELDIN: I'm happy to yield.

THE PRESIDENT: The Senator yields.

SENATOR CARL KRUGER: Thank you. So that I can understand this, in simple terms, your resolution applies to all branches of government, including the Judiciary?

SENATOR ZELDIN: Mr. President, if -- as far as the budget goes -- and the language of the bill is very simple. And regardless of how that new tax or that fee is packaged, where it's coming from, just to be very clear, the two-thirds requirement is going to apply to any tax, fee, assessment, surcharge or any other such levy or collection with regards to increasing, extending or reviving, as I said in the language.

So I could be asked dozens and dozens of more questions about hypothetical sources of new taxes and fees, and my answer to every question is going to be yes, if it fits inside this language, whether it comes from the Judiciary budget or some state agency, to answer all the other hypotheticals that may be out there, the answer very simply is yes.

SENATOR CARL KRUGER: Thank you, Senator.

Again, for the final question. Through you, Mr. President.

THE PRESIDENT: Senator, do you yield for one more question?

SENATOR ZELDIN: I'd be happy to.

SENATOR CARL KRUGER: A big issue facing this state is the issue of hydrofracking. Are you aware of that?

SENATOR ZELDIN: Yes.

SENATOR CARL KRUGER: And one of the issues in terms of that is the regulation and control by DEC of that process. Are you aware of that?

SENATOR ZELDIN: Yes.

SENATOR CARL KRUGER: And again through you, Mr. President, if the Senator would continue to yield.

THE PRESIDENT: Senator, will you yield again?

SENATOR ZELDIN: I'd be happy to yield.

SENATOR CARL KRUGER: So, Senator, one of the proposals -- in fact, the legislation calls for that those that would be doing the drilling would have to pay

substantial fees in order to fund a DEC special fund to control and to monitor hydrofracking. Would this be included in your resolution?

SENATOR ZELDIN: If it's going to be a statute that's going through this body, then the answer would be yes. If it's a regulatory fee, the answer would be no.

SENATOR CARL KRUGER: As a corollary to that question, again, through you, Mr. President, if the Senator would continue to yield.

THE PRESIDENT: Senator?

SENATOR ZELDIN: I'd be happy to yield.

THE PRESIDENT: Senator Libous, why do you rise?

SENATOR LIBOUS: Since I happen to know about a lot about hydrofracking because it's in my district, and I would like to be very fair, if Senator C. Kruger would like to address any of those any of those questions to me, I'd be happy to help out. Because hydrofracking is a very important issue that's facing the state, and I do know a

little bit about it.

SENATOR CARL KRUGER: I appreciate that. And I will offer the question up to you in a moment if I could just ask Senator Zeldin to respond.

SENATOR LIBOUS: Thank you, Mr. President.

SENATOR CARL KRUGER: The legislation that would in fact empower hydrofracking includes that provision. Would your resolution interfere with that process?

SENATOR ZELDIN: Respectfully, I'd like to yield to Senator Libous. Two minutes.

SENATOR CARL KRUGER: Okay, thank you.

THE PRESIDENT: Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President. Thank you, Senator Zeldin.

Senator Kruger, it wouldn't. It all depends on what the Legislature decides to do when it comes to that issue. The department, the department could impose, through regulation, fees that would address the companies that are going to do the

drilling or the fracking.

None of those issues have been established at this point in time because obviously we do not permit for hydrofracking because of a moratorium that was passed in this house and in the other house.

This resolution, this resolution would only affect those tax increases that the Senator had talked about. It would not have a negative effect on any departmental fees or anything that the governor decides to put in the budget as a fee, just like they do now.

No, it wouldn't have an effect.

SENATOR CARL KRUGER: Again, Mr. President, if the Senator would yield for a question.

THE PRESIDENT: Senator Libous, would you yield.

SENATOR LIBOUS: Mr. President, I would be honored to.

THE PRESIDENT: The Senator yields.

SENATOR CARL KRUGER: Without being the expert that you are on the issue, I'm just trying to understand --

SENATOR LIBOUS: I didn't say I was an expert, Senator. I said I knew a little bit about it.

SENATOR CARL KRUGER: Well, okay. That makes you an expert as far as I'm concerned.

Firstly, that bill was vetoed, am I correct?

SENATOR LIBOUS: Yes, it was. But then there was an executive order by Governor Paterson, Mr. President, that put a moratorium on any fracking. And I believe -- and I don't want to speak for Governor Cuomo -- I believe he also carried out that order until he could take a look at the issue.

SENATOR CARL KRUGER: Okay. Thank you very much, Senator. Thank you.

THE PRESIDENT: Thank you, Senator.

Any other Senators wishing to be heard on this resolution?

(No response.)

THE PRESIDENT: The debate is closed, and the Secretary will now ring the bell that is not functioning today.

(Pause.)

THE PRESIDENT: If the Senators will take their seats, we'll get ready to vote.

The Secretary will now call the roll on the resolution.

(The Secretary called the roll.)

THE PRESIDENT: Senator Young, to explain her vote.

SENATOR YOUNG: Thank you, Mr. President.

Historically, New York State has prided itself on being a leader, a leader in innovation, a leader in technology, a leader in opportunity and prosperity. We were number one. We were the Empire State.

Unfortunately, right now, we are the leader for all the wrong reasons. We are the leader in the country for having the heaviest tax burden. We are the leader in spending. We spend more on Medicaid, we spend more on education, and we get poor results despite all of that spending. We are number one in people fleeing this state because of the heavy tax burden. We are number one in

having the worst business climate in the country. Right now we are number 50 out of 50 states.

That has to change. And now we do have that opportunity to change that. So I want to thank my colleagues, Senator Zeldin, Senator Ranzenhofer, Senator Alesi, for having the foresight and the tenacity to put in this legislation, because we can lead the way as a state once again.

These are all things that our new Governor has spoken about. These are things that he has prioritized. And so now is the time to seize this moment. Now is the time to change our business climate, to get people back to work, to have career opportunities so that our young people will not have to leave after they graduate just to find a job.

And by putting in place these types of measures -- a job growth program, putting in place a two-thirds majority in order to raise taxes, putting in place a constitutional spending cap -- then we can restore hope, opportunity and prosperity to the state again, to the people of this state. That's our

responsibility. We should be accountable to the people. And I will be voting yes.

Thank you, Mr. President.

THE PRESIDENT: Senator Young in the affirmative.

The Secretary will now announce the results.

THE SECRETARY: Those recorded in the negative on Calendar Number 4 are Senators Adams, Diaz, Espaillat, Gianaris, Hassell-Thompson, Huntley, L. Krueger, C. Kruger, Montgomery, Oppenheimer, Parker, Peralta, Perkins, Rivera, Sampson, Serrano, Squadron, Stavisky and Stewart-Cousins.

Ayes, 41. Nays, 19.

THE PRESIDENT: The resolution is adopted.

(Applause.)

THE PRESIDENT: Senator Libous, that completes the controversial reading of the calendar.

SENATOR LIBOUS: Mr. President, thank you.

And Senator Zeldin, congratulations -- could we have some order?

Could we have some order in the chamber?

THE PRESIDENT: (Gaveling.)

SENATOR LIBOUS: Senator Zeldin, congratulations for passing your first bill. I'm sure there will be many more.

(Applause.)

SENATOR LIBOUS: Is there any other business at the desk?

THE PRESIDENT: There is none.

SENATOR LIBOUS: Mr. President, I now hand up the following committee assignments and ask that such assignments be filed in the Journal.

THE PRESIDENT: So ordered.

Senator Libous.

SENATOR LIBOUS: Mr. President, I would also like to hand up the following committee assignments. Senator Skelos, in consultation with Senator Sampson, has some additional assignments to hand up, and I ask that they be filed.

THE PRESIDENT: So ordered.

Senator Libous.

SENATOR LIBOUS: Mr. President, I believe Senator Hassell-Thompson would like to

be recognized.

THE PRESIDENT: Senator Hassell-Thompson.

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

I would just like to announce that immediately following session there will be a Democratic conference meeting, immediately.

Thank you.

THE PRESIDENT: Immediately after session, there will be a Democratic conference.

Senator Libous.

SENATOR LIBOUS: Mr. President, there being no further business, I move we adjourn until Monday, January 24th, at 3:00 p.m., intervening days being legislative days.

THE PRESIDENT: On motion, the Senate stands adjourned until Monday, January 24th, at 3:00 p.m., intervening days being legislative days.

(Whereupon, at 1:40 p.m., the Senate adjourned.)