

1 NEW YORK STATE SENATE

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3
4 THE STENOGRAPHIC RECORD

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8
9 ALBANY, NEW YORK

10 April 12, 2011

11 3:13 p.m.

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13
14 REGULAR SESSION

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18 SENATOR JOSEPH A. GRIFFO, Acting President

19 FRANCIS W. PATIENCE, Secretary

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

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

4 I ask all present to please rise
5 and join with me as we recite the Pledge of
6 Allegiance to our Flag.

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

9 ACTING PRESIDENT GRIFFO: For
10 today's invocation we have the Reverend James
11 Johnson, youth pastor from Valley Bible
12 Baptist Church in Middleburgh.

13 Reverend?

14 REVEREND JOHNSON: Let us pray.

15 Father in heaven, we are thankful
16 for this time we are allowed to gather.
17 Father, we ask that You would just go before
18 us, Father, and just put Your hand in blessing
19 upon this time. Guide the hearts and minds of
20 the folks here. And, God, just keep us safe
21 in all we do.

22 We ask in Jesus' name. Amen.

23 ACTING PRESIDENT GRIFFO: Thank
24 you, Reverend.

25 The reading of the Journal.

1 THE SECRETARY: In Senate,
2 Monday, April 11, the Senate met pursuant to
3 adjournment. The Journal of Sunday, April 10,
4 was read and approved. On motion, Senate
5 adjourned.

6 ACTING PRESIDENT GRIFFO: Without
7 objection, the Journal stands approved as
8 read.

9 Presentation of petitions.

10 Messages from the Assembly.

11 Messages from the Governor.

12 I'd ask if we could have just some
13 order, please, in the chamber in order to
14 transact the business.

15 Messages from the Governor.

16 The Secretary will read.

17 THE SECRETARY: The Governor
18 returned without executive approval the Senate
19 Bill Number 2803E, Chapter Number 53, Line
20 Veto Number 1 through 22, entitled "An act
21 making appropriations for the support of
22 government: AID TO LOCALITIES BUDGET."

23 ACTING PRESIDENT GRIFFO: Senator
24 Libous.

25 SENATOR LIBOUS: Mr. President, I

1 move to lay the said line items as vetoed by
2 the Governor upon the table.

3 ACTING PRESIDENT GRIFFO: So
4 ordered.

5 Reports of standing committees.

6 Reports of select committees.

7 Communications and reports from
8 state officers.

9 Motions and resolutions.

10 Senator Libous.

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

13 On behalf of Senator Griffo,
14 Mr. President, on page 22 I offer the
15 following amendments to Calendar Number 282,
16 Senate Print 4193, and ask that said bill
17 retain its place on the Third Reading
18 Calendar.

19 ACTING PRESIDENT GRIFFO: The
20 amendments are received, and the bill will
21 retain its place on Third Reading Calendar.

22 Senator Libous.

23 SENATOR LIBOUS: And one more
24 time, Mr. President, on behalf of Senator
25 Griffo -- Mr. President, there's a lot of

1 noise in the chamber. I can't hear myself.

2 ACTING PRESIDENT GRIFFO: I would
3 ask all the chamber to please come to order so
4 that we can hear and transact the business of
5 our distinguished leader who has these
6 important bills.

7 SENATOR LIBOUS: Thank you,
8 Mr. President.

9 On behalf of Senator Griffo, I move
10 the following bill be discharged from its
11 respective committee and be recommitted with
12 instructions to strike the enacting clause:
13 Senate Print 1201A.

14 ACTING PRESIDENT GRIFFO: So
15 ordered.

16 Senator Libous.

17 SENATOR LIBOUS: Mr. President,
18 at this time could we move to adopt the
19 Resolution Calendar, with the exception of
20 Resolution Numbers 993, 1136, 1183, 1240 and
21 1259.

22 ACTING PRESIDENT GRIFFO: All in
23 favor of adopting the Resolution Calendar,
24 with the exception of Resolutions 993, 1136,
25 1183, 1240 and 1259, signify by saying aye.

1 (Response of "Aye.")

2 ACTING PRESIDENT GRIFFO:

3 Opposed?

4 (No response.)

5 ACTING PRESIDENT GRIFFO: The
6 Resolution Calendar is adopted.

7 Senator Libous.

8 SENATOR LIBOUS: Thank you,
9 Mr. President.

10 Mr. President, I believe we can
11 take up Resolution Number 1136, by Senator
12 Krueger. Could we please have its title read,
13 and I believe that Senator Krueger would like
14 to be called upon before it's adopted.

15 ACTING PRESIDENT GRIFFO: The
16 Secretary will read.

17 THE SECRETARY: Legislative
18 Resolution Number 1136, by Senator L. Krueger,
19 memorializing Governor Andrew M. Cuomo to
20 proclaim April 12, 2011, as Equal Pay Day in
21 the State of New York.

22 ACTING PRESIDENT GRIFFO: Senator
23 Krueger.

24 SENATOR KRUEGER: Thank you very
25 much.

1 Today is Equal Pay Day at the
2 national level. And it is only right that
3 New York State also honor and recognize the
4 importance of moving forward to guarantee
5 equal pay regardless of gender here in
6 New York State in all jobs.

7 It is shocking that in the year
8 2011 there is still such large wage disparity
9 between women and men working side by side
10 together in equivalent or exact jobs.
11 According to the U.S. Census Bureau,
12 year-round full-time working women in 2009
13 earned only 77 percent of the earnings of
14 year-round full-time working men, indicating
15 there has been little change or progress in
16 pay equity throughout the decades.

17 The Lilly Ledbetter Fair Pay Act
18 was signed into federal law amending Title VII
19 of the Civil Rights Act, and we believe that
20 New York must continue to strive to provide
21 leadership in this area. It is no excuse to
22 have a state where young women are told that
23 they can do everything men can do, that they
24 are equal under the law, that they have the
25 same opportunities and rights in our state,

1 yet only to learn when they move into the
2 workforce that they are likely to lose
3 \$713,000 over a 40-year period compared to
4 their male colleagues.

5 This is not acceptable. There are
6 any number of bills that we could and should
7 pass through both houses and work with the
8 Governor side by side to pass into law. And
9 today I hope that through this resolution --
10 that I'm encouraging everyone to be a
11 signatory on -- that we start to realize the
12 importance of this issue and the fact that
13 we're actually falling behind, that the State
14 of New York, the great State of New York,
15 often a leader in almost every issue for the
16 other 49 states, has fallen behind many of our
17 colleague states in guaranteeing that there is
18 pay equity for all.

19 And so this resolution memorializes
20 Governor Andrew Cuomo to proclaim April 12,
21 2011, as the Equal Pay Day of the State of
22 New York, recognizing the full value of
23 women's skills and significant contributions
24 to the labor force, and to further encourage
25 businesses to conduct internal pay evaluations

1 to ensure that they are treating women equally
2 and paying them equally with their male
3 colleagues.

4 Thank you, Mr. President.

5 ACTING PRESIDENT GRIFFO: Thank
6 you, Senator Krueger.

7 Senator Stewart-Cousins on the
8 resolution.

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

11 I just rise to commend my colleague
12 for bringing this to our attention again. We
13 would think that New York would be leaders in
14 women's equality.

15 And I stand, frankly, because I
16 have three students who are shadowing me from
17 the League of Women Voters, three women who --
18 three young women who are here. And this is
19 one of those places where women and men
20 actually do get paid equally. And so it's
21 good that you are here.

22 But it's also good that you're here
23 to understand that we still have things to do
24 and your involvement in government, your
25 vigilance about what we as New Yorkers can

1 project as the ideal, is extremely important.

2 So I welcome you and again commend
3 Senator Krueger for letting us know as a state
4 that we have work to do to make sure that
5 women do not make 77 percent of what men make.
6 We contribute all of us so much.

7 So again thank you, Senator
8 Krueger.

9 ACTING PRESIDENT GRIFFO: Thank
10 you, Senator Stewart-Cousins.

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

13 (Response of "Aye.")

14 ACTING PRESIDENT GRIFFO:
15 Opposed?

16 (No response.)

17 ACTING PRESIDENT GRIFFO: The
18 resolution is adopted.

19 Senator Libous, the sponsor has
20 requested that the resolution be open for
21 cosponsorship. Without objection?

22 SENATOR LIBOUS: Without
23 objection, Mr. President.

24 ACTING PRESIDENT GRIFFO: The
25 resolution will be offered to cosponsorship.

1 If you do not want to be a cosponsor, please
2 notify the desk.

3 Senator Libous.

4 SENATOR LIBOUS: Mr. President, I
5 believe Resolution Number 993, by Senator
6 Huntley, is at the desk. She would ask that
7 you read it in its entirety, and I believe you
8 should call on the Senator before it's
9 adopted.

10 ACTING PRESIDENT GRIFFO: The
11 previous resolution is adopted, and now we
12 call upon the Secretary to read.

13 THE SECRETARY: Legislative
14 Resolution Number 993, by Senator Huntley,
15 paying tribute to the life and accomplishments
16 of Thomas White, Jr., distinguished citizen
17 and devoted member of his community.

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

24 "WHEREAS, A resident of Rochdale
25 Village in Queens, New York City Councilman

1 Thomas White, Jr., died on August 27, 2010, at
2 the age of 71; and

3 "WHEREAS, A native son of Southeast
4 Queens, born on August 21, 1939, Thomas White,
5 Jr., fought hard for the residents of South
6 Jamaica throughout his lifetime. His
7 illustrious career and service exemplifies the
8 values of all who dream to make life better
9 for themselves and those around them; and

10 "WHEREAS, Councilman White was an
11 advocate for the Southeast Queens community
12 for over 30 years. He worked tirelessly to
13 develop community-based programs for senior
14 citizens and youth and for crime prevention
15 and drug and alcohol treatment. He also
16 worked with programs to prevent teen pregnancy
17 and to help create primary care programs for
18 those suffering from HIV/AIDS; and

19 "WHEREAS, As the cofounder and
20 executive director of Queens Village Committee
21 for Mental Health for Jamaica Community
22 Adolescent Program, Inc. (J-CAP), one of the
23 largest and most effective alcohol and
24 substance abuse residential treatment programs
25 in New York State, Thomas White, Jr., helped

1 to reclaim over 20,000 young men and women who
2 have suffered the effects of abuse, misuse and
3 addiction. His herculean efforts helped young
4 people find positive goals and role models to
5 become valuable and productive assets to the
6 community; and

7 "WHEREAS, In addition, as the
8 New York City Councilman from the 28th Council
9 District in Queens, Thomas White, Jr., served
10 as chair of the New York City Council's
11 Economic Development Committee. His efforts
12 were instrumental in creating programs that
13 ranged from providing loans to help small
14 businesses stay afloat and grow, to helping
15 New Yorkers avoid foreclosures; and

16 "WHEREAS, Thomas White, Jr.,
17 graduated from Stony Brook University with a
18 master's degree in social work in 1982; and

19 "WHEREAS, Thomas White, Jr., is
20 survived by his mother, Marie White, two
21 children, Bryan White and Lucile Precious
22 Middleton, and two grandchildren; and

23 "WHEREAS, Armed with a humanistic
24 spirit, imbued with a sense of compassion, and
25 comforted by a loving family, Thomas White,

1 Jr., leaves behind a legacy which will long
2 endure the passage of time and will remain as
3 a comforting memory to all he served and
4 befriended; now, therefore, be it

5 "RESOLVED, That this Legislative
6 Body pause in its deliberations to pay tribute
7 to the life and accomplishments of Thomas
8 White, Jr., distinguished citizen and devoted
9 member of his community; and be it further

10 "RESOLVED, That a copy of this
11 resolution, suitably engrossed, be transmitted
12 to the family of Thomas White, Jr."

13 ACTING PRESIDENT GRIFFO: Senator
14 Huntley.

15 SENATOR HUNTLEY: Thank you,
16 Mr. President.

17 I would like to first introduce
18 Ms. Diane Gonzalez, who is sitting up
19 (indicating), who is now the executive
20 director of one of the largest drug programs,
21 J-CAP in the County of Queens. She was
22 basically Tom White's protege.

23 And Tom White did some magnificent
24 things in Queens. He saved many lives of
25 young people of all ethnic groups. He worked

1 tirelessly to make sure that young people did
2 not turn to drugs. And when they did, he
3 worked tirelessly to get them off of drugs and
4 was very, very successful.

5 And it was shocking to all of us
6 when he passed away so quickly. It just
7 happened so fast that -- that's one of the
8 reasons I did this resolution, because it was
9 like a lot of us never had a chance basically
10 to say goodbye to him. And I thought he was
11 worthy of that, because he lived in a
12 community that he loved and in a community
13 that loved him.

14 He was city councilman, but I
15 always called him Tom White the advocate for
16 Southeast Queens. I think he was not -- as
17 political as he wanted to be, I think he was
18 more of an advocate for poor people, for sick
19 people, for people who needed his help.

20 And it does give me great pleasure
21 today just to say to you that Tom White is
22 missed in our community, Tom White left a
23 great, great legacy. If you're ever in Queens
24 and you go on Baisley Boulevard, you will see
25 this giant, giant rehab center. And if you go

1 on the other area of Sutphin Boulevard, you
2 will see another giant, giant rehab center.
3 And he worked hard at that.

4 And I just wanted Diane and also
5 Tom's -- the young man who I think was one of
6 Tom's -- he has lots of pictures with Tom --
7 who Tom looked after and loved, and he's here
8 today also. And I just want to tell you I am
9 so happy that you could come just to hear.
10 And you will get a copy of this resolution.

11 Thank you.

12 ACTING PRESIDENT GRIFFO: The
13 question is on the resolution. All in favor
14 signify by saying aye.

15 (Response of "Aye.")

16 ACTING PRESIDENT GRIFFO:
17 Opposed?

18 (No response.)

19 ACTING PRESIDENT GRIFFO: The
20 resolution is adopted.

21 Senator Libous.

22 SENATOR LIBOUS: Mr. President,
23 there's a resolution at the desk by Senator
24 Libous, Number 1183. Could we please have the
25 title read and move for its immediate

1 adoption.

2 ACTING PRESIDENT GRIFFO: The
3 Secretary will read.

4 THE SECRETARY: Legislative
5 Resolution Number 1183, by Senator Libous,
6 memorializing Governor Andrew M. Cuomo to
7 declare April 2011 as Child Abuse Prevention
8 Month in the State of New York.

9 ACTING PRESIDENT GRIFFO: The
10 question is on the resolution. All in favor
11 signify by saying aye.

12 (Response of "Aye.")

13 ACTING PRESIDENT GRIFFO:
14 Opposed?

15 (No response.)

16 ACTING PRESIDENT GRIFFO: The
17 resolution is adopted.

18 Senator Libous.

19 SENATOR LIBOUS: Mr. President,
20 I'd like to open this up for cosponsorship to
21 all of my colleagues. If anybody does not
22 want to be on this resolution, they would let
23 the desk know, please.

24 ACTING PRESIDENT GRIFFO: So
25 noted. The resolution is open for

1 cosponsorship. If you choose not to, please
2 indicate by letting the desk know.

3 Senator Libous.

4 SENATOR LIBOUS: There's a
5 resolution at the desk by Senator Kennedy,
6 Number 1240. May we have the title read,
7 Senator Kennedy would like to be called upon,
8 and then we'd move for its adoption.

9 ACTING PRESIDENT GRIFFO: The
10 Secretary will read.

11 THE SECRETARY: Legislative
12 Resolution Number 1240, by Senator Kennedy,
13 honoring Police Chief Christine Ziemba upon
14 the occasion of her retirement after 34 years
15 of distinguished service to the Cheektowaga
16 Police Department.

17 ACTING PRESIDENT GRIFFO: Senator
18 Kennedy.

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

21 What a tremendous honor it is to
22 stand here to honor Christine Ziemba. Police
23 Chief Christine Ziemba has led a long and
24 illustrious career fighting to improve public
25 safety in Western New York as a leader within

1 the Cheektowaga Police Force. When she was
2 hired in 1976, Chief Ziemba became the first
3 female police officer in the Town of
4 Cheektowaga. She recently retired after
5 34 years of service to the hardworking men and
6 women of Cheektowaga and Western New York.

7 After joining the force in 1976,
8 Chief Ziemba climbed the ranks. She was
9 promoted to lieutenant in 1985, and the town
10 board named her chief of the Cheektowaga
11 Police in March of 2002 because of her
12 distinguished service.

13 Chief Christine Ziemba was the
14 first woman to ever serve as a police chief in
15 Western New York, and she was one of only four
16 female police chiefs serving throughout
17 New York State at the time of her retirement.

18 Chief Christine Ziemba has been a
19 pioneer for women in law enforcement across
20 New York State. Her dream and unrelenting
21 ambition helped pave the way, inspiring more
22 women to join the ranks of law enforcement.

23 In her official acts, Chief
24 Christine Ziemba worked undercover with the
25 Narcotics Unit. She also served in the

1 Juvenile Aid Bureau. She reinforced
2 partnerships with other departments and
3 organizations throughout Western New York,
4 throughout Erie County, and throughout
5 New York State. She helped create the Sex
6 Offense Unit, which was at the time the first
7 in the country to have specific officers
8 handle cases throughout the entire
9 investigation process.

10 Also, in addition to leading the
11 Crime Resistance Unit, Chief Christine Ziemba
12 brought the D.A.R.E. program to all of the
13 towns' schools. She commenced the Citizens'
14 Police Academy. She oversaw the Police
15 Explorers program. She worked with
16 Neighborhood Watch groups. And she actively
17 recruited new officers interested in joining
18 the department.

19 Chief Ziemba was born in Buffalo,
20 and her family later moved to the Town of
21 Cheektowaga, the largest town in the 58th
22 State Senate district I now represent. She
23 graduated from Maryvale High School and went
24 on to earn her four-year degree in criminal
25 justice at Buffalo State College.

1 Chief Christine Ziemba has devoted
2 her life to public service. She has
3 demonstrated great courage and diligence in
4 protecting our families and improving the
5 safety of our neighborhoods. That alone makes
6 Chief Ziemba very deserving of this
7 recognition that we honor her with today.

8 But when you consider the path that
9 she has paved for women in law enforcement,
10 inspiring and encouraging other women to serve
11 and protect, it becomes clear that this
12 recognition is long overdue, and it's the very
13 least we can do to honor and thank Chief
14 Ziemba for her service to this community and
15 to this state.

16 Chief Christine Ziemba is a
17 courageous public servant, a fighter for
18 public safety, and a trailblazer for the
19 hardworking women of New York State. I am
20 proud and honored to bestow this honor upon
21 her today, and I would ask all of us to
22 recognize Chief Ziemba, who is with us today
23 on the floor with her brother Ron, who is also
24 a 21-year member of the Cheektowaga Police
25 Force, also retired.

1 Chief Ziemba, thank you very much.

2 ACTING PRESIDENT GRIFFO: Chief
3 Ziemba, it's an honor to welcome you to the
4 Senate chambers today, and we extend our best
5 wishes to you in your retirement.

6 (Applause.)

7 ACTING PRESIDENT GRIFFO: The
8 question is on the resolution. All in favor
9 signify by saying aye.

10 (Response of "Aye.")

11 ACTING PRESIDENT GRIFFO:
12 Opposed?

13 (No response.)

14 ACTING PRESIDENT GRIFFO: The
15 resolution is adopted.

16 Congratulations again, Chief.

17 Senator Libous.

18 SENATOR LIBOUS: Thank you,
19 Mr. President.

20 I believe there's a resolution at
21 the desk by Senator Maziarz, 1259. I would
22 ask that we just read its title and then move
23 for its immediate adoption.

24 ACTING PRESIDENT GRIFFO: The
25 Secretary will read.

1 THE SECRETARY: Legislative
2 Resolution Number 1259, by Senator Maziarz,
3 memorializing Governor Andrew M. Cuomo to
4 proclaim April 23, 2011, as a Day of
5 Remembrance for the Polish Martyrs of the
6 Katyn Forest.

7 ACTING PRESIDENT GRIFFO: The
8 question is on the resolution. All in favor
9 signify by saying aye.

10 (Response of "Aye.")

11 ACTING PRESIDENT GRIFFO:
12 Opposed?

13 (No response.)

14 ACTING PRESIDENT GRIFFO: The
15 resolution is adopted.

16 Senator Libous.

17 SENATOR LIBOUS: Mr. President,
18 earlier today when we adopted the Resolution
19 Calendar, Senator Larkin had Resolution 1303
20 on it. He would like to open that up for all
21 the members that would like to be on it.

22 Again, our normal procedure will
23 follow. If members do not want to be on it,
24 please let the desk know.

25 ACTING PRESIDENT GRIFFO: Thank

1 you, Senator Libous.

2 Resolution 1303, by Senator Larkin,
3 is opened up to cosponsorship. If you choose
4 not to be a cosponsor, please indicate at the
5 desk.

6 Senator Libous.

7 SENATOR LIBOUS: Mr. President,
8 at this time I will call an immediate meeting
9 of the Rules Committee in Room 332, an
10 immediate meeting of the Rules Committee in
11 Room 332.

12 The Senate will stand at ease.

13 ACTING PRESIDENT GRIFFO: There's
14 an immediate meeting of the Rules Committee in
15 Room 332.

16 The Senate stands at ease.

17 (Whereupon, the Senate stood at
18 ease at 3:35 p.m.)

19 (Whereupon, the Senate reconvened
20 at 3:56 p.m.)

21 ACTING PRESIDENT GRIFFO: The
22 Senate will come to order.

23 Senator Libous.

24 SENATOR LIBOUS: Mr. President,
25 let's go to the reading of the

1 noncontroversial calendar first.

2 ACTING PRESIDENT GRIFFO: The
3 Secretary will read.

4 THE SECRETARY: Calendar Number
5 130, by Senator Dilan, Senate Print 1347, an
6 act to amend the Vehicle and Traffic Law.

7 ACTING PRESIDENT GRIFFO: Read
8 the last section.

9 THE SECRETARY: Section 2. This
10 act shall take effect on the first of January.

11 ACTING PRESIDENT GRIFFO: Call
12 the roll.

13 (The Secretary called the roll.)

14 THE SECRETARY: Ayes, 56.

15 ACTING PRESIDENT GRIFFO: The
16 bill is passed.

17 THE SECRETARY: Calendar Number
18 153, by Senator L. Krueger, Senate Print 397,
19 an act to amend the Real Property Tax Law.

20 ACTING PRESIDENT GRIFFO: Read
21 the last section.

22 THE SECRETARY: Section 3. This
23 act shall take effect on the 30th day.

24 ACTING PRESIDENT GRIFFO: Call
25 the roll.

1 (The Secretary called the roll.)

2 THE SECRETARY: Ayes, 56.

3 ACTING PRESIDENT GRIFFO: The
4 bill is passed.

5 THE SECRETARY: Calendar Number
6 156, by Senator LaValle, Senate Print 1756, an
7 act in relation to permitting the County of
8 Suffolk.

9 ACTING PRESIDENT GRIFFO: Read
10 the last section.

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

13 ACTING PRESIDENT GRIFFO: Call
14 the roll.

15 (The Secretary called the roll.)

16 THE SECRETARY: Ayes, 56.

17 ACTING PRESIDENT GRIFFO: The
18 bill is passed.

19 THE SECRETARY: Calendar Number
20 157, by Senator Skelos, Senate Print 2131, an
21 act in relation to authorizing the Bay Park
22 Fire District.

23 ACTING PRESIDENT GRIFFO: Read
24 the last section.

25 THE SECRETARY: Section 4. This

1 act shall take effect immediately.

2 ACTING PRESIDENT GRIFFO: Call
3 the roll.

4 (The Secretary called the roll.)

5 THE SECRETARY: Ayes, 56.

6 ACTING PRESIDENT GRIFFO: The
7 bill is passed.

8 THE SECRETARY: Calendar Number
9 179, by Senator Marcellino, Senate Print --

10 SENATOR BRESLIN: Lay it aside.

11 ACTING PRESIDENT GRIFFO: Lay it
12 aside.

13 THE SECRETARY: Calendar Number
14 203, by Senator Maziarz, Senate Print 219, an
15 act to amend the Banking Law.

16 ACTING PRESIDENT GRIFFO: Read
17 the last section.

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

20 ACTING PRESIDENT GRIFFO: Call
21 the roll.

22 (The Secretary called the roll.)

23 THE SECRETARY: Ayes, 56.

24 ACTING PRESIDENT GRIFFO: The
25 bill is passed.

1 THE SECRETARY: Calendar Number
2 245, by Senator Grisanti, Senate Print 3919,
3 an act to amend the Environmental Conservation
4 Law.

5 ACTING PRESIDENT GRIFFO: Read
6 the last section.

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

9 ACTING PRESIDENT GRIFFO: Call
10 the roll.

11 (The Secretary called the roll.)

12 THE SECRETARY: Ayes, 56.

13 ACTING PRESIDENT GRIFFO: The
14 bill is passed.

15 THE SECRETARY: Calendar Number
16 248, by Senator Libous, Senate Print 1071 --

17 SENATOR BRESLIN: Lay it aside.

18 ACTING PRESIDENT GRIFFO: Lay it
19 aside.

20 THE SECRETARY: Calendar Number
21 288, by Senator Ritchie, Senate Print 4144, an
22 act to amend the Agriculture and Markets Law.

23 ACTING PRESIDENT GRIFFO: Read
24 the last section.

25 THE SECRETARY: Section 2. This

1 act shall take effect on the 30th day.

2 ACTING PRESIDENT GRIFFO: Call
3 the roll.

4 (The Secretary called the roll.)

5 THE SECRETARY: Ayes, 56.

6 ACTING PRESIDENT GRIFFO: The
7 bill is passed.

8 THE SECRETARY: Calendar Number
9 302, by Senator Grisanti, Senate Print 3918,
10 an act to amend Chapter 307 of the Laws of
11 2005.

12 ACTING PRESIDENT GRIFFO: Read
13 the last section.

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

16 ACTING PRESIDENT GRIFFO: Call
17 the roll.

18 (The Secretary called the roll.)

19 THE SECRETARY: Ayes, 56.

20 ACTING PRESIDENT GRIFFO: The
21 bill is passed.

22 Senator Libous, that completes the
23 noncontroversial reading of the calendar.

24 SENATOR LIBOUS: May we have the
25 reading of the controversial calendar, please.

1 ACTING PRESIDENT GRIFFO: The
2 Secretary will ring the bell.

3 The Secretary will read.

4 THE SECRETARY: Calendar Number
5 179, by Senator Marcellino, Senate Print 921,
6 an act to amend the Education Law.

7 ACTING PRESIDENT GRIFFO: Senator
8 Krueger.

9 SENATOR KRUEGER: Thank you,
10 Mr. President. If the sponsor could please
11 yield.

12 ACTING PRESIDENT GRIFFO: Senator
13 Marcellino, do you yield?

14 SENATOR MARCELLINO: Yes, I do.

15 ACTING PRESIDENT GRIFFO: The
16 Senator yields, Senator Krueger.

17 SENATOR KRUEGER: Thank you so
18 much.

19 Senator Marcellino, I believe that
20 this bill came up a few years ago. Is this
21 the same bill that you sponsored at that time?

22 SENATOR MARCELLINO: Yes, it is.

23 SENATOR KRUEGER: Thank you.

24 And, Senator, my reading of the bill is that
25 if a --

1 ACTING PRESIDENT GRIFFO: Senator
2 Krueger, are you asking Senator Marcellino to
3 continue to yield?

4 SENATOR KRUEGER: Excuse me,
5 Mr. President. I am asking him to yield.

6 ACTING PRESIDENT GRIFFO: Senator
7 Marcellino, do you yield?

8 SENATOR MARCELLINO: I will. And
9 if it will expedite the process, I will yield
10 to a series of questions from the Senator.

11 SENATOR KRUEGER: Thank you so
12 much. Again, once we get the rhythm going,
13 Mr. President, I love to go back and forth
14 this way.

15 SENATOR MARCELLINO: I believe in
16 rhythm.

17 SENATOR KRUEGER: So my
18 understanding of the bill is if a student is
19 suspended in one school district and then
20 transfers, the suspension would have to be
21 upheld in the new school.

22 So what would happen when a pupil,
23 a student who has been suspended moves to a
24 new district during the course of the
25 suspension? How long are they supposed to

1 stay suspended? What kind of process could be
2 used to resolve the issue in the new school
3 district?

4 SENATOR MARCELLINO: Well, let me
5 correct a misconception on your part. The
6 bill is not a mandate. The bill does not
7 require that the school district continue the
8 suspension from a previous district. It
9 simply gives them the authorization to
10 continue the suspension so that they might get
11 a handle on the situation.

12 We're not talking about suspensions
13 of three or four days, a typical suspension of
14 a kid who gets into a fight with another kid
15 in a hallway and, you know, they get suspended
16 to calm things down. We're talking about very
17 egregious incidences.

18 The incident that was brought to my
19 attention by the superintendent was one where
20 guns were brought into the school by a student
21 and used to threaten others. The
22 superintendent suspended him, the family took
23 the kid and moved to a different district in
24 order to game the system and avoid the
25 suspension.

1 We just don't think that that
2 should be done. I think the new district
3 should have the option on a kid-by-kid basis,
4 a child-by-child basis, to analyze the
5 situation, to take appropriate steps to meet
6 with the family, meet with the kid and resolve
7 the issues and set up a program within the
8 school, either through counseling or a program
9 of classes that the child can be suited for
10 because they're moving in in the middle of a
11 semester, what's missing and so on.

12 In other words, it gives the
13 district a chance to evaluate the system and
14 evaluate the situation on a child-by-child
15 basis and not to be rushed into a situation
16 which might not be effective for the system,
17 might put people at risk, and it might also
18 negatively impact the child's education.

19 SENATOR KRUEGER: Thank you,
20 Mr. President. If, through you, the sponsor
21 will continue to yield.

22 ACTING PRESIDENT GRIFFO: The
23 sponsor yields.

24 SENATOR KRUEGER: Thank you.

25 So in a hypothetical, there's a

1 child who lives in New York City and is
2 suspended from their school. They move to
3 your district and they file paperwork to start
4 at that school. How do the two school
5 districts communicate? Does the City of
6 New York have any obligation, under your law,
7 to let the Glen Cove school district know that
8 this child has been suspended? Where does the
9 information flow start and stop?

10 SENATOR MARCELLINO: Well, I
11 don't live in Glen Cove, I live in Syosset.

12 SENATOR KRUEGER: Oh, I'm sorry.

13 SENATOR MARCELLINO: But Glen
14 Cove is a very good school district and works
15 very well.

16 But the district could communicate.
17 I don't think there's a mandate that requires
18 them to.

19 SENATOR KRUEGER: Mr. President,
20 if the sponsor would continue to yield.

21 SENATOR MARCELLINO: Sure.

22 ACTING PRESIDENT GRIFFO: The
23 sponsor yields.

24 SENATOR KRUEGER: Is it your
25 understanding that school districts are

1 entitled to respond to questions and answers
2 from each other about the status of students
3 or the suspension? Is there any other law
4 that would need to change that would mandate
5 New York City to provide said documentation to
6 another school district who asked for it?

7 SENATOR MARCELLINO: I don't
8 think I'd be in favor of mandating anything on
9 that level.

10 But I would think that it would be
11 in the best interests of the child if
12 information was passed on and if there was a
13 situation of safety, safety of staff and
14 safety of other children in the district in
15 which child is moving into that, that
16 information should be passed along so proper
17 precautions can be taken into consideration.

18 All we're looking at is trying to,
19 one, do what's in the best interests of the
20 district that is the receiving district, and,
21 two, do what's in the best interests of the
22 child. So that the child coming in is given
23 the appropriate attention and direction that
24 it needs to move forward in its educational
25 career.

1 SENATOR KRUEGER: Mr. President,
2 if the sponsor would continue to yield.

3 ACTING PRESIDENT GRIFFO: The
4 sponsor yields.

5 SENATOR KRUEGER: I'm going to
6 lay out the hypothetical again, because I know
7 you were answering but I didn't quite
8 understand, so I apologize.

9 So student Chris is subpoenaed from
10 a New York City school. The family moves to
11 Syosset. Chris goes to start school at
12 Syosset. How does Syosset know that in a
13 previous school district Chris was suspended,
14 for what reason, for how long a period?

15 SENATOR MARCELLINO: It would be
16 my understanding that it wouldn't unless they
17 were told. Or unless this became such a
18 high-profile situation that they heard it
19 coming.

20 SENATOR KRUEGER: Through you,
21 Mr. President, if the sponsor would continue
22 to yield.

23 SENATOR MARCELLINO: Sure.

24 ACTING PRESIDENT GRIFFO: The
25 sponsor continues to yield.

1 SENATOR KRUEGER: Thank you.

2 So I agree with you, if a student
3 has severe problems, a new district wants to
4 know about them, wants to have a conversation
5 with the family, wants to potentially do an
6 individual educational evaluation of the
7 student, figure out what special services they
8 might need, what special issues the school
9 might face.

10 But it's not at all clear to me why
11 there would ever be a circumstance where a
12 family, knowing their child had problems in a
13 previous school district -- i.e., a
14 suspension -- would come to the new school
15 district and say, "Ah, yes, he's under
16 suspension."

17 So even in the example you
18 originally raised, I just don't understand
19 where this would ever come up.

20 SENATOR MARCELLINO: Number one,
21 this is not retroactive. The suspension would
22 still have to be in effect. In other words,
23 the child could not have been suspended in the
24 City of New York, served the suspension, and
25 then moved to another district two months

1 later and the district would have the option
2 to reimpose the suspension. We're not talking
3 about that.

4 What we're talking about is where
5 the suspension is still in the case and still
6 in vogue and still in fact, that the child
7 moves over.

8 And it would be, frankly, in the
9 best interests of the parents, I would think.
10 The parent would want that new district to
11 understand something and to deal with their
12 child appropriately and provide the
13 appropriate situation where the child is given
14 the proper classwork, the proper classes, the
15 proper counseling, so that this incident
16 doesn't get repeated and frankly doesn't get
17 blown out of proportion.

18 Because in some cases, things do.
19 Rumors start and things get carried away. The
20 old telephone game, where you tell somebody at
21 one end and by the time it gets to the other
22 end it's totally different, you don't even
23 recognize the story that you started with.

24 One would think the parents would
25 want that kind of attention applied to the

1 child so that the child can get, as I said
2 several times -- and I don't mean to be
3 repetitious, but I will because it's
4 important -- that the child will get the best
5 attention and the best services that it should
6 and not be just tossed into another situation
7 and have the thing repeat itself.

8 SENATOR KRUEGER: Mr. President,
9 on the bill.

10 ACTING PRESIDENT GRIFFO: Senator
11 Krueger on the bill.

12 SENATOR KRUEGER: I want to thank
13 the sponsor for taking the time to try to
14 explain to me his argument for the bill.

15 And I'd like to explain briefly why
16 I cannot vote for this bill.

17 We have a very high rate of
18 suspensions in some parts of the state. For
19 different age groups, suspensions can be
20 higher or not. And my concern is if there has
21 been a suspension from school and if in fact a
22 family has moved to a new location -- and I
23 doubt very much they are moving to a new
24 location because their child is suspended, but
25 for many other possible reasons -- I would

1 hate to think that I voted for a bill that
2 might set up the child to not be able to
3 attend school for some period of time in the
4 new location where in fact -- and in fact
5 might be -- the parents might be discouraged
6 from coming to the school and saying "My child
7 Chris is a wonderful child who has A, B, C
8 issues, and I really want us to work on them
9 together."

10 Because I don't want parents to be
11 afraid to talk to the school or the school
12 system about their child and any special needs
13 they might have. And I think it's important
14 for parents to be able to be up-front about
15 their concerns about their own child. And I
16 know that the schools want to know as much as
17 possible.

18 And I just see this situation
19 potentially being a setup where, because
20 something happened at X time in X location,
21 that a child might face increased penalties
22 and almost the beginning of a stigma against
23 them in a new location and a new school where
24 the parents can't do what they believe is in
25 the best interests of the child, and in fact

1 the school might likely never find out the
2 information they need to have to make the
3 right decisions.

4 So I do believe that the sponsor is
5 well-intentioned with the piece of
6 legislation. I heard him just talk about the
7 importance of wanting to make sure that
8 schools have the information they need to make
9 good decisions on behalf of the children who
10 attend their schools.

11 I'm just afraid that this would
12 likely translate either into a bill that has
13 no impact because nobody's going to volunteer
14 this information one way or the other, you
15 can't mandate it between school systems, and
16 it may force parents to hide information that
17 is not in the best interests of their child or
18 the new school system.

19 So I will be voting no. Thank you,
20 Mr. President.

21 ACTING PRESIDENT GRIFFO: Senator
22 Marcellino.

23 SENATOR MARCELLINO: Mr.
24 President, just a point that I did not make
25 before.

1 The child, if moved to a different
2 district, would still get an appeal in that
3 second district, get a second bite at the
4 apple as far as an appeal to the original
5 suspension. So they would have the appeal in
6 the first district and then, if they moved to
7 the other one and they chose -- again, it's an
8 option -- if they chose to keep the suspension
9 in place -- not add to it, but keep the
10 suspension in place for its original
11 duration -- there would be a second appeal
12 available to the parent and the child on that
13 case as well.

14 So we're buying time here for the
15 kid, we're buying time for safety of both
16 staff and other children and the child
17 involved themselves. We don't want to have
18 the child come into a situation where they're
19 just tossed into the arena without any
20 services, without the appropriate help.

21 ACTING PRESIDENT GRIFFO: Is
22 there any other Senator wishing to be heard?

23 Seeing none, debate is closed and
24 the Secretary will ring the bell.

25 I'm sorry, Senator

1 Hassell-Thompson. Senator Hassell-Thompson.

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

4 ACTING PRESIDENT GRIFFO: On the
5 bill?

6 SENATOR HASSELL-THOMPSON: On the
7 bill.

8 ACTING PRESIDENT GRIFFO: Senator
9 Hassell-Thompson on the bill.

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

12 I did not -- I chose not to ask
13 questions because I remember having asked
14 several of these questions of Senator
15 Marcellino before when he passed the bill.

16 But I just needed to reemphasize
17 some of the points that I heard Senator
18 Krueger make. And that is with the high
19 number of students who are being suspended,
20 many times when children move to a different
21 school district it is really because of
22 neighborhood and a lot of other environmental
23 things that parents want to take their
24 children out of a particular environment.

25 And suspensions -- I've had a lot

1 of experience, particularly with my home
2 school district in terms of the numbers of the
3 students that were suspended. When we began
4 to look at the numbers and talked about the
5 numbers of young people who were being
6 suspended and what was the correlation between
7 that number and the number that ultimately
8 dropped out of school, we were finding that
9 children who dropped out were those who had
10 had a series of suspensions.

11 And so one of the things I'm always
12 afraid that if we give authority -- because
13 you used the word it now gives the authority.
14 Sometimes giving authority is almost like
15 saying you're off the hook and whatever you
16 choose to do with this youngster is absolutely
17 okay.

18 We don't need more of our children
19 to be suspended. What we need to be doing is
20 looking at, as we have done -- we put money
21 into the Rochester School District, we put
22 money into a couple of Westchester school
23 districts to look at and to devise programs to
24 look at why youngsters are being suspended and
25 create support systems that allow them to not

1 only not continually be out of school but
2 actually like being in school.

3 Which is not something that most
4 young people who get into trouble do. You'll
5 find that the base of their issues has
6 everything to do with not wanting to be there
7 because they're not being successful, and so
8 they drop way behind other students. And you
9 may think that three or four days doesn't make
10 a difference, but it does. Particularly for a
11 lot of the students who are marginal, any days
12 that they lose from school is more than they
13 should lose.

14 So I have to continue to say to
15 you, Senator Marcellino, I hear the concern
16 that you have, but I will continue to vote no
17 on this bill. Thank you.

18 Thank you, Mr. President.

19 ACTING PRESIDENT GRIFFO: Is
20 there any other Senator wishing to be heard?

21 Debate is closed. Debate is
22 closed. The bell has rung. And it will
23 continue to ring.

24 Read the last section.

25 THE SECRETARY: Section 2. This

1 act shall take effect immediately.

2 ACTING PRESIDENT GRIFFO: Call
3 the roll.

4 (The Secretary called the roll.)

5 ACTING PRESIDENT GRIFFO: Senator
6 Montgomery to explain her vote.

7 SENATOR MONTGOMERY: Yes,
8 Mr. President. I'm very sensitive to what
9 Senator Marcellino intends for this bill to
10 do, but very often one person's medicine is
11 another person's poison. And we have to be
12 very, very careful about how we so liberally
13 and easily suspend young people and maintain
14 these suspensions and punish them and figure
15 out as many ways as we can to eliminate them
16 from being part of a school system.

17 And so I'm going to continue to
18 oppose this legislation, and hopefully we can
19 come up with a better way of trying to figure
20 out what to do with young people who are in
21 trouble in our schools.

22 Thank you, Mr. President. I vote
23 no.

24 ACTING PRESIDENT GRIFFO: Senator
25 Montgomery to be recorded in the negative.

1 Senator Adams to explain his vote.

2 SENATOR ADAMS: Thank you,
3 Mr. President.

4 I'm going to vote yes on this bill.
5 I'm concerned about uncontrolled suspension of
6 young people, but there's a greater concern
7 that I have, and that's disruption in the
8 classroom.

9 And there are children who are --
10 haven't reached a point that they are able to
11 be in an environment where a group of young
12 people are attempting to learn. And so if a
13 child reached a level that they should be
14 suspended, we need to be careful to make sure
15 that's fair, but at the same time my concern
16 is for the larger number of students in the
17 classroom who are attempting to receive a
18 quality education.

19 And too often one or two children
20 disrupt an entire classroom. And I don't
21 think we can continue to just turn our back
22 and pretend as though some children need to
23 learn how to be in a proper classroom
24 environment.

25 So I'm going to vote yes on this

1 bill, and I hope we continue to make sure that
2 we educate all our children. But at the same
3 time we've got to look for the greater good
4 for the overwhelming number of children that
5 sit in the classroom every day and hope to
6 receive some form of education, and my son is
7 one of them. And I believe that he should
8 receive a fair education without having to be
9 disrupted, and so I'm going to vote aye on
10 this bill.

11 ACTING PRESIDENT GRIFFO: Senator
12 Adams will be recorded in the affirmative on
13 this bill.

14 Senator Savino to explain her vote.

15 SENATOR SAVINO: Thank you,
16 Mr. President.

17 I also rise in support of this
18 legislation. However, I do understand and I
19 recognize the concerns that have been raised
20 by Senator Krueger, Senator Montgomery, and
21 Senator Hassell-Thompson. They're absolutely
22 correct in the concerns that they have.

23 But at the same time, I, like
24 Senator Adams and Senator Marcellino, also
25 take the position that discipline of children

1 in our schools should be two things. One, it
2 should be constructive and it should also --
3 it should be progressive first and
4 constructive and instructive.

5 And what we want to prevent here is
6 we want to prevent the possibility of a parent
7 not understanding that their child needs more
8 intervention. And when that child is issued a
9 suspension, which is a very high penalty in
10 school, that they not then take that child and
11 move them to another school district to avoid
12 that penalty.

13 We need parents to be engaged in
14 their child's school life. We need parents to
15 help deal with whatever that crisis was in
16 that child's life or that problem behavior
17 that led to that suspension.

18 That's why I supported this
19 legislation the previous times it came before
20 the Senate. And when I met with the School
21 Administrators Association, that's their
22 concern. They want to make sure that these
23 kids are not moved from school to school to
24 avoid the consequences of their behavior.
25 Because that is what a suspension should be.

1 It should be the worst type of penalty that's
2 issued to a child, but in an effort to get
3 them to understand that there are consequences
4 to their behavior.

5 Moving them to another school
6 district without having the ability of that
7 new school district to impose those
8 consequences isn't going to be instructive to
9 that child. So in the end, we still want
10 discipline to be instructive and progressive.

11 Thank you, Mr. President.

12 ACTING PRESIDENT GRIFFO: Senator
13 Savino to be recorded in the affirmative.

14 Senator Stewart-Cousins to explain
15 her vote.

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

18 I had voted, frankly, for this
19 before. And just recently however, I heard
20 statistics that have really left an impression
21 on me. Since No Child Left Behind, it seems
22 that there is an extraordinary growth in the
23 amount of suspensions, especially among black
24 and Latino children. And so it really has
25 grown to, I think, almost an epidemic

1 proportion in some places.

2 Should a child have an opportunity
3 to start anew, I think that's a good thing. I
4 think that a child who is disruptive and has
5 real issues, they will, yes, go into a new
6 school district, but I'm sure that there is a
7 process, just as there was in the old school
8 district, to deal with that child.

9 So I'm all for giving the child an
10 opportunity to get a fresh start, especially,
11 again, in light of the statistics of the
12 growth in suspensions since No Child Left
13 Behind. So I'll be voting in the negative.

14 ACTING PRESIDENT GRIFFO: Senator
15 Stewart-Cousins to be recorded in the
16 negative.

17 Is there any other Senator wishing
18 to explain their vote?

19 Announce the results.

20 THE SECRETARY: In relation to
21 Calendar Number 179, those recorded in the
22 negative are Senators Espaillat,
23 Hassell-Thompson, Huntley, L. Krueger,
24 Montgomery, Parker, Perkins, Rivera, Serrano
25 and Stewart-Cousins.

1 Ayes, 46. Nays, 10.

2 ACTING PRESIDENT GRIFFO: The
3 bill is passed.

4 The Secretary will continue to
5 read.

6 THE SECRETARY: Calendar Number
7 248, by Senator Libous, Senate Print 1071 --

8 SENATOR DILAN: Explanation.

9 ACTING PRESIDENT GRIFFO: Senator
10 Dilan has requested an explanation, Senator
11 Libous.

12 SENATOR LIBOUS: Mr. President,
13 this is the bill that I've had before this
14 house on a couple of occasions. It's the
15 Dedicated Highway Bridge and Trust Fund bill.
16 As I like to say and as I have said on this
17 floor, it puts the trust back in the fund.

18 As many of you know, right now the
19 Dedicated Highway Trust Fund gets raided every
20 year. It gets raided for snow and ice
21 removal, it gets raided for the operation of
22 the Department of Motor Vehicles.

23 When the fund was set up in the
24 '90s, its intent was to be a dedicated highway
25 and bridge trust fund. And unfortunately,

1 over time, the trust had come out of the fund.
2 And what I'm trying to do -- and as my
3 colleagues have joined me in the past, I
4 believe this bill has passed almost
5 unanimously in the past -- is to put the trust
6 back in the fund.

7 Right now the money that comes out
8 of the fund goes to the areas that I
9 mentioned. What this bill would do is take
10 over a period of five years so that the money
11 in the fund would go to what it's supposed to
12 be used for -- not snow and ice removal, but
13 to repair bridges and roads in all of the
14 State of New York.

15 So, Mr. President, this bill comes
16 before the body as it has in the past. It's
17 passed this house on a number of occasions.
18 For whatever reason, it doesn't seem to pick
19 up any momento -- momentum. Maybe the bill is
20 a momento -- but it doesn't pick up any
21 momentum in the Assembly.

22 ACTING PRESIDENT GRIFFO: Senator
23 Dilan.

24 SENATOR DILAN: Yes. First I'd
25 first like to thank Senator Libous for

1 sponsoring this bill and bringing it forward
2 and recognizing that there is a problem with
3 the Dedicated Highway Trust Fund and really
4 bringing it to light.

5 The Dedicated Highway and Bridge
6 Trust Fund was created in 1991, like Senator
7 Libous indicated. It was meant to be a
8 pay-as-you-go funding stream for construction
9 and rehabilitation of state roads and bridges.

10 At the time, then Governor Mario
11 Cuomo, in his approval message, stated that
12 "This is a reliable, predictable stream of
13 revenues which will allow us to provide for an
14 orderly development and management of
15 transportation programs and projects without
16 reliance upon periodic bond issues."

17 So I would like to know if Senator
18 Libous would respond to several questions.

19 ACTING PRESIDENT GRIFFO: Senator
20 Libous, would you yield for a series of
21 questions?

22 SENATOR LIBOUS: Mr. President, I
23 would be pleased to yield to my friend Senator
24 Dilan.

25 ACTING PRESIDENT GRIFFO: Senator

1 Dilan.

2 SENATOR DILAN: And also I would
3 like to say that we all have voted for this
4 bill at one time or another in the past.
5 However, I was enlightened a little bit in the
6 past two years, as chair of the Transportation
7 Committee, and found out a little more about
8 this fund and the problems that it does have
9 now.

10 So how does this legislation before
11 us today help bring us back to the clearly
12 stated intended goal of the fund, of "pay as
13 you go"? Does it do that?

14 SENATOR LIBOUS: Thank you,
15 Mr. President. Senator Dilan asked a very
16 good question.

17 Senator, what it allows us to do is
18 over a phaseout period of five years to
19 replace the fund at an amount of I believe
20 it's \$137 million a year, to be paid out of
21 the General Fund. And then over a five-year
22 period the fund becomes flush, if you will,
23 and that the taxes and fees that go into the
24 fund will continue to pay for a number of
25 programs, as the Senator mentioned and he's

1 quite aware of, like the CHIPS program,
2 bonding for roads and bridges and some of the
3 other issues.

4 But it would be a five-year
5 phaseout. You know, right now,
6 Mr. President -- and I don't have the exact
7 number, I think it might be about
8 \$520 million -- but the General Fund actually
9 puts money back into the Dedicated Highway
10 Trust Fund. And what we're trying to do is
11 clean up the fund so that it just goes for
12 roads and bridges.

13 SENATOR DILAN: Now, as I
14 indicated, in Mario Cuomo's approval message
15 he indicated that it was a pay-as-you-go
16 program and it was to avoid bonding. But as
17 early as 1993, this legislative body provided
18 the authority to bond state highway and bridge
19 projects. And actually the first bond issue
20 was 1974 [sic], and almost every year
21 thereafter for these projects, in order to
22 leverage against the dedicated fund.

23 This was an 18-year practice that
24 has left the fund unable to pay for critical
25 road and bridge work, as it is now crippled by

1 the growing debt service. And according to
2 the Division of Budget, 49.2 percent of the
3 revenue of the dedicated fund went towards
4 paying down the debt in fiscal years '08 and
5 '09, and that percentage is estimated to
6 increase to 72.4 percent in as little as two
7 years.

8 So does this legislation help to
9 alleviate the debt burden faced by the fund?

10 SENATOR LIBOUS: Mr. President,
11 Senator Dilan is right on the money, sir. He
12 knows his figures. Because he is right,
13 42 percent of the fund does go to, right now,
14 state operations, and 30 percent of the fund
15 goes to debt service and 29 percent of the
16 fund actually goes to road and bridges.

17 Now, think about that, my
18 colleagues -- and, Senator, I know because of
19 your background in transportation, you're very
20 much aware of this -- that you have a
21 Dedicated Highway Trust Fund in which
22 29 percent of the fund goes to roads and
23 bridges. Thirty percent of the fund goes to
24 pick up debt. Because that debt, as Senator
25 Dilan says -- and he's absolutely right -- is

1 some of the bonding debt, because you cannot
2 fix all of the roads and bridges in New York
3 State without bonding.

4 And we've had, over the years,
5 several bond issues. And, Mr. President, the
6 Senator is accurate. I think the last bond
7 act, Senator, may be four years ago.

8 And what happened during that bond
9 act is that they took pieces of projects from
10 every member in this chamber throughout all of
11 this state, and they took it from -- my good
12 friend Senator Rivera had a project, for
13 instance, in his district. And let's say the
14 project was a \$10 million project. It would
15 take \$2 million of that \$10 million from the
16 bond act. But if the DOT fund or the
17 dedicated bridge fund could not supplement the
18 \$8 million, then Senator Rivera's bridge would
19 not get fixed. And that's what's happened to
20 the DOT budget probably over the past six to
21 eight years.

22 So the Senator is right, a portion
23 of this fund does go to bonding. As a matter
24 of fact, to those of us in this chamber, the
25 CHIPS money -- the CHIPS money is bonded

1 money. Without bonding for CHIPS money, none
2 of our local governments could pave those
3 potholes. That's not cash we take out of the
4 budget, that's actually bonded money that we
5 get from the Dedicated Highway Trust Fund.

6 So what we're trying to do here --
7 and the Senator is right, that it's very
8 imbalanced. I'm trying to balance the fund.
9 Recognizing it's going to take five years, I
10 want to take the \$655 million that goes for
11 snow and ice removal pre I think it's 2000,
12 Senator, when they used to take it out of the
13 General Fund and put it right in the DOT
14 budget and use snow and ice removal out of the
15 DOT budget and take the I think \$200 million
16 for the operation, \$200 million for the
17 operation of the Department of Motor Vehicles.

18 Now, we just passed a budget here.
19 And every Senator -- every other state agency,
20 with the exception of the authorities, of
21 course, the money to run those state agencies
22 comes out of the General Fund. The money to
23 run the Department of Transportation comes out
24 of the Dedicated Highway Trust Fund.

25 So, Mr. President, I think my

1 colleague and I are in pretty much agreement
2 here that there is bonding that comes out of
3 here. I'm just trying to balance the fund so
4 at the end of the day, at the end of five
5 years, this fund is used for road and bridge
6 repair.

7 SENATOR DILAN: You know, I just
8 want to say that I'm not clear if this piece
9 of legislation actually accomplishes any type
10 of fix with respect to the problem that the
11 dedicated fund is having with its debt
12 problem.

13 Just to be clear, in 2001 this
14 house voted 55 to zero, including 17 members
15 of the current majority and Senator Libous,
16 yourself, on two dedicated fund measures that
17 year. One began the funding of DMV operations
18 and the DOT snow and ice removal out of the
19 dedicated fund. That was the first measure.
20 And the second was the deposit of annual DMV
21 fees, roughly about \$169 million, that come
22 from DMV to the fund.

23 So why were these department
24 operations and revenues transferred to the
25 fund when DMV has always operated as a

1 revenue-generating agency and a
2 self-sustaining agency? Why was this money
3 moved into the dedicated funds?

4 SENATOR LIBOUS: Mr. President,
5 is that a question?

6 SENATOR DILAN: Yes.

7 SENATOR LIBOUS: Mr. President,
8 Senator Dilan, you're right. Okay?

9 Now I'll speak for myself. At that
10 time we did that. I'm trying to correct it
11 because it hasn't balanced out, it's been
12 imbalanced. And you're right, I voted for
13 that, because at the time we thought it was
14 the right thing to do to get our roads and
15 bridges fixed. We were given a presentation
16 by the administration at that time, and we
17 believed, like we often do, that at least at
18 that moment it was the right thing to do. And
19 I think it was.

20 However, I think here we are now in
21 2011, and I think it's time -- as I have been.
22 And Senator Dilan has worked with me on this
23 over the years, and I know we've had a
24 vigorous debate on this bill. I think this is
25 the fourth time I've brought this bill to the

1 floor. So I've been trying to correct
2 whatever -- and I'm not going to call it an
3 error, because at the time I think this body
4 felt it was the right thing to do.

5 But I think right now it is also
6 the right thing to move forward. And since
7 the bridge accident that took place in Senator
8 Little's district -- was it two years ago,
9 Senator? -- and some of the other problems in
10 all of our districts, you go to the dedicated
11 fund and it's broke. And we all know that
12 there is no money. Right now the DOT budget
13 is \$8 billion. Half of that goes to the MTA,
14 half of that goes to operating and capital
15 costs. And all I'm trying to do here,
16 Senator, is clean it up.

17 So I don't disagree with you, you
18 know, on what was done in 2001, I think you
19 said it was. I voted whatever I voted for.
20 But I just think that this is 2011, and I
21 think we always have to be progressive. I
22 think we have to look at the times. And we
23 always have to maybe do better -- I didn't say
24 I was a progressive, Senator, I said we have
25 to be progressive and look at the times and do

1 better than we did in 2001. And I think that
2 this bill would do that.

3 SENATOR DILAN: I would just like
4 to comment and then one more question.

5 ACTING PRESIDENT GRIFFO: Senator
6 Dilan, are you on the bill now or are you
7 still going to continue to question?

8 SENATOR DILAN: Well, I'll ask a
9 question.

10 With this legislation you're
11 proposing to stop DMV operations and DOT snow
12 and ice removal, the funds that come out of
13 the -- to stop that practice. So how -- and
14 also, at the same time, have the \$169 million
15 coming out of DMV still going to the trust
16 fund.

17 So how would we then fund DMV and
18 also fund the ice and snow removal?

19 SENATOR LIBOUS: Mr. President,
20 the Senator raises a good question. That's my
21 five-year phaseout. Because as you do a
22 five-year phaseout, the funding would then
23 come from the General Fund, just like every
24 other state agency, just like snow and ice
25 used to come from that.

1 And certainly I would be open,
2 Senator, to be flexible on the DMV fees.
3 Because one could argue, as I think you are,
4 that the DMV fees should pay for the operation
5 of the DMV. Mr. President, I'm a flexible
6 guy. I would be open to doing that as long as
7 we could clean up the Dedicated Highway Trust
8 Fund. I would be more than happy to work with
9 Senator Dilan on cleaning that up. But I
10 would like to move the bill forward today so
11 that maybe we could get some attention in the
12 Assembly.

13 SENATOR DILAN: On the bill.

14 ACTING PRESIDENT GRIFFO: Senator
15 Dilan on the bill.

16 SENATOR DILAN: I look forward to
17 working with Senator Libous and anyone else in
18 this house to recognize the problem that this
19 fund is definitely having. It's going to get
20 to a point where we're not going to have the
21 ability to fund any capital project with
22 respect to DOT or highways and bridges in the
23 State of New York if this practice continues.

24 So I look forward to working with
25 Senator Libous to ensure that the Assembly

1 recognizes the problem that we have here and
2 definitely fixing this fund. So with that
3 said, I will be voting for the bill.

4 Thank you.

5 ACTING PRESIDENT GRIFFO: Senator
6 Little.

7 SENATOR LITTLE: Thank you,
8 Mr. President. On the bill.

9 ACTING PRESIDENT GRIFFO: Senator
10 Little on the bill.

11 SENATOR LITTLE: Thank you.

12 I'd like to thank Senator Libous
13 for putting forward this bill and thank all of
14 you that will sponsor and support this bill.

15 In my district, October 16th of
16 2009, I got a call that a major bridge between
17 Vermont and New York, the Crown Point Bridge,
18 was being closed. We all knew the Crown Point
19 Bridge needed repair and had been subject to
20 several inspections. But an inspection the
21 day before they closed it showed that the
22 bridge was really in need of repair and about
23 to fail.

24 Fortunately, no one was injured and
25 we didn't have a total failure of the bridge,

1 but -- or it didn't fall down with cars on it.
2 But just imagine the disruption to the lives
3 of the people in that district. The detour,
4 mind you, was over 100 miles for people who
5 lived in Crown Point and worked in Vermont,
6 attended a hospital for healthcare in Vermont,
7 or went over to Vermont for education and
8 vice versa. So there was a tremendous
9 disruption.

10 Fortunately, the bridge was blown
11 up and is now being replaced by a really
12 beautiful bridge that will have bike lanes and
13 sidewalks, something that all of New York
14 State will be proud of.

15 But the point to be made is that we
16 are an older state and many of our roads and
17 bridges have been in existence for a long
18 time. We have found that many of the bridges
19 in New York State are in need of repair and,
20 on the scale that they measure them on, are in
21 a scale which shows that they need attention.

22 So any way that we can get more of
23 this dedicated highway fund to go for what it
24 is needed for -- for improving infrastructure,
25 for repairing bridges, and for seeing that we

1 don't have a disaster with one of our bridges
2 and a loss of life -- is very, very important.

3 I also commend Senator Libous for
4 the way he's approaching this, as it is a
5 phaseout. It would be really nice to just cut
6 off the money and do it all at once and keep
7 the money in the dedicated highway fund, but
8 we know that that would cause problems
9 elsewhere.

10 So I appreciate the interest and
11 what he has done for this bill, and I look
12 forward to voting for it and hope that all
13 will support the bill.

14 Thank you.

15 ACTING PRESIDENT GRIFFO: Is
16 there any other Senator wishing to be heard?

17 Seeing none, debate is closed, and
18 the Secretary will ring the bell.

19 Read the last section.

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

22 ACTING PRESIDENT GRIFFO: Call
23 the roll.

24 (The Secretary called the roll.)

25 THE SECRETARY: Ayes, 56.

1 ACTING PRESIDENT GRIFFO: The
2 bill is passed.

3 Senator Libous, that completes the
4 controversial reading of the calendar.

5 SENATOR LIBOUS: Mr. President,
6 can we return to reports of standing
7 committees. I believe there's a report of the
8 Rules Committee at the desk.

9 ACTING PRESIDENT GRIFFO: Reports
10 of standing committees.

11 The Secretary will read.

12 THE SECRETARY: Senator Skelos,
13 from the Committee on Rules, reports the
14 following bills:

15 Senate Print 2631, by Senator
16 Marcellino, an act to amend the Tax Law;

17 Senate Print 4248, by Senator
18 Hassell-Thompson, an act in relation to term
19 of service of trustee-elects.

20 Both bills ordered direct to third
21 reading.

22 ACTING PRESIDENT GRIFFO: May we
23 have just some quiet in the chamber, please.

24 Senator Libous.

25 SENATOR LIBOUS: Could I move we

1 accept the report of the Rules Committee,
2 Mr. President.

3 ACTING PRESIDENT GRIFFO: All in
4 favor of accepting the Rules Committee report
5 signify by saying aye.

6 (Response of "Aye.")

7 ACTING PRESIDENT GRIFFO:
8 Opposed?

9 (No response.)

10 ACTING PRESIDENT GRIFFO: The
11 report is accepted.

12 Senator Libous.

13 SENATOR LIBOUS: Mr. President,
14 could we now have the noncontroversial reading
15 of Supplemental Calendar 33A, please.

16 ACTING PRESIDENT GRIFFO: The
17 Secretary will read the noncontroversial
18 supplemental calendar.

19 THE SECRETARY: Calendar Number
20 391, by Senator Marcellino, Senate Print
21 2631 --

22 SENATOR BRESLIN: Lay it aside.

23 ACTING PRESIDENT GRIFFO: Lay it
24 aside.

25 THE SECRETARY: Calendar Number

1 392, by Senator Hassell-Thompson, Senate Print
2 4248, an act in relation to term of service of
3 trustee-elects.

4 ACTING PRESIDENT GRIFFO: Read
5 the last section.

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

8 ACTING PRESIDENT GRIFFO: Call
9 the roll.

10 (The Secretary called the roll.)

11 THE SECRETARY: Ayes, 56.

12 ACTING PRESIDENT GRIFFO: The
13 bill is passed.

14 That completes the noncontroversial
15 reading of the supplemental calendar, Senator
16 Libous.

17 SENATOR LIBOUS: Thank you,
18 Mr. President. Could we have the reading of
19 the controversial supplemental calendar.

20 ACTING PRESIDENT GRIFFO: The
21 Secretary will ring the bell, and the
22 Secretary will read.

23 THE SECRETARY: Calendar Number
24 391, by Senator Marcellino, Senate Print
25 2631 --

1 SENATOR KRUEGER: Explanation.

2 SENATOR BRESLIN: Explanation.

3 ACTING PRESIDENT GRIFFO: Senator
4 Breslin and Senator Krueger have requested an
5 explanation, Senator Marcellino.

6 SENATOR MARCELLINO: Mr.
7 President, it will be my pleasure to provide
8 one to my two distinguished colleagues.

9 This legislation would require the
10 Department of Taxation and Finance to pay tax
11 refunds within 30 days of receipt of a tax
12 return.

13 ACTING PRESIDENT GRIFFO: Senator
14 Krueger.

15 SENATOR KRUEGER: Thank you,
16 Mr. President. Would the sponsor please
17 yield?

18 ACTING PRESIDENT GRIFFO: Will
19 the sponsor yield?

20 SENATOR MARCELLINO: Yes.

21 ACTING PRESIDENT GRIFFO: The
22 sponsor does yield.

23 SENATOR KRUEGER: Thank you.

24 Have you gotten an opinion from the
25 Department of Tax and Finance regarding this

1 legislation and their position?

2 SENATOR MARCELLINO: No, we have
3 not, Senator.

4 SENATOR KRUEGER: If the sponsor
5 would continue to yield.

6 SENATOR MARCELLINO: Yes.

7 ACTING PRESIDENT GRIFFO: The
8 sponsor yields.

9 SENATOR KRUEGER: Thank you.

10 Do you know the current average
11 turnaround by the Department of Tax and
12 Finance for refunds on personal income taxes?

13 SENATOR MARCELLINO: Senator, I
14 couldn't give it to you to the day. I know
15 what the current law requires, 45 days.

16 But it is my understanding, in
17 conversation with a number of my constituents
18 and even some of our fellow members, that that
19 date is not necessarily adhered to. There are
20 some members who filed returns in January and
21 still haven't gotten their refunds back.
22 There are others who got them back quickly and
23 others who just never get them back for a
24 reasonable period of time, without written
25 explanation as to why.

1 SENATOR KRUEGER: Mr. President,
2 if the sponsor would continue to yield.

3 ACTING PRESIDENT GRIFFO: The
4 Senator yields.

5 SENATOR KRUEGER: Thank you.
6 Would this bill to apply to all refunds owed
7 by the Department of Tax and Finance or
8 selected taxes?

9 SENATOR MARCELLINO: If you're
10 owed money, you should get it back. It's your
11 money.

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

15 SENATOR MARCELLINO: Yes.

16 ACTING PRESIDENT GRIFFO: The
17 sponsor yields.

18 SENATOR KRUEGER: My reading of
19 the bill is that it would just apply to
20 personal income taxes. So the sponsor
21 answered he thinks it applies to all money
22 owed.

23 I just want to rephrase the
24 question. Am I incorrect in my reading of the
25 bill, that it's just on personal income taxes?

1 SENATOR MARCELLINO: I believe
2 the bill as written would require the
3 payment -- let me just double-check, but I
4 believe you're right. Hold on.

5 I was right, Senator, it applies to
6 all refunds owed.

7 SENATOR KRUEGER: Thank you.

8 Mr. President, I correct myself and
9 thank the sponsor. My question was actually
10 really addressed to -- was intended to clarify
11 that there may be different issues for
12 corporate franchise taxes or personal income
13 tax or sales and use taxes. Which is a
14 statement and correction, not a question.

15 Now, will the sponsor continue to
16 yield, please?

17 SENATOR MARCELLINO: Yes, I do.

18 ACTING PRESIDENT GRIFFO: The
19 sponsor yields.

20 SENATOR KRUEGER: Thank you.

21 Do we have any estimated cost of
22 what would be involved for the State of
23 New York to change its system? It would
24 overlap, I think, both the Department of Tax
25 and Finance, its processing vendors, and

1 potentially the Office of the State
2 Comptroller. Because currently we have a
3 30-day -- it would change from 45 days to
4 30 days. So have we estimated what it would
5 cost the State of New York?

6 SENATOR MARCELLINO: No, we have
7 not estimated that, Senator.

8 But I would suspect that, as has
9 been my experience when you talk to various
10 departments and you're dealing with them to
11 make changes, the departments always tell you
12 it's going to cost you huge amounts of money
13 to make what I consider to be changes on
14 computers these days. These taxes do not have
15 to be entered by abacus, and they're not
16 entered by hand. Everything is done on
17 computers. Everything is calculated on
18 computers. And it requires the change of some
19 computer programming, which should not, in my
20 mind, require great expense.

21 However, we have not sought and we
22 do not have an estimate.

23 SENATOR KRUEGER: Mr. President,
24 if the sponsor would continue to yield,
25 please.

1 SENATOR MARCELLINO: I yield.

2 SENATOR KRUEGER: Thank you.

3 So we don't know what the fiscal
4 impact is, but conceivably there's a fiscal
5 impact. So why didn't we move this bill
6 through the Finance Committee?

7 SENATOR MARCELLINO: I think
8 you're going to have to ask the Finance
9 Committee chairman that, because you are the
10 ranking member of that. The bill was not
11 flagged by Finance, it was referred to Rules
12 as per procedure.

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

16 SENATOR MARCELLINO: I continue
17 to yield.

18 ACTING PRESIDENT GRIFFO: The
19 sponsor yields.

20 SENATOR KRUEGER: Thank you.

21 And so in fact for the record, I am
22 the ranker, so I can't flag bills to Finance.
23 But I would have flagged this to Finance had I
24 been the chair, because I'm quite sure this
25 will be a cost to the state.

1 And a follow-up question --

2 SENATOR MARCELLINO: If I may --

3 SENATOR KRUEGER: Yes.

4 SENATOR MARCELLINO: It's a cost
5 to the state because they have to pay a refund
6 no matter what. So the state has to pay a
7 refund, and they do expect to do that.

8 SENATOR KRUEGER: Mr. President,
9 through you. There would be, I believe, an
10 additional cost to the change for changing its
11 systems over with the changes required in this
12 bill.

13 But this bill also requires Tax and
14 Finance to pay interest if they do not make
15 payments or refunds to taxpayers within
16 30 days. And I believe it explicitly states
17 an interest rate to be paid.

18 Could the sponsor clarify that
19 section of the law for me?

20 SENATOR MARCELLINO: It requires
21 a 6 percent interest rate if the refund isn't
22 provided in a timely fashion or if the
23 department doesn't provide written notice as
24 to the reason why the tax return -- I'll wait
25 till you can hear me.

1 SENATOR KRUEGER: Thank you. If
2 the sponsor would continue to yield.

3 SENATOR MARCELLINO: I hadn't
4 finished my answer. I was simply waiting till
5 you could hear my answer so we could have a
6 colloquy here.

7 SENATOR KRUEGER: Excuse me.
8 Thank you.

9 SENATOR MARCELLINO: A tax
10 refund, if a written notice is applied to or
11 sent to a constituent or a tax person, the
12 person who pays their taxes and is owed a
13 refund should receive a written notice from
14 the department if they're not going to get
15 their refund in a timely fashion because they
16 either made a mistake on their refund or there
17 is other such discrepancy found by the
18 Taxation and Finance Department.

19 If that person -- if you, Senator,
20 do not pay your taxes in a timely fashion, you
21 get a fine applied to you immediately.
22 Without argument, without payment, without
23 discussion and without appeal, you will be
24 fined for late payment of taxes and the
25 government will expect to get their money

1 ASAP. There will be no leeway as to whether
2 or not you can pay them within 10 days,
3 30 days, or 50 days. You must pay. If you
4 don't pay, you are threatened with jail or
5 loss of licenses, liens placed against your
6 pay, and all other such penalties.

7 So the state, the federal
8 government, the tax collector insists on
9 prompt payment from the taxpayers of money
10 owed to the government. And I don't think
11 it's unreasonable to ask the government to pay
12 promptly to the taxpayer. It's their money.
13 They're owed it. And they should get it.

14 SENATOR KRUEGER: Thank you. If
15 the sponsor would continue to yield.

16 ACTING PRESIDENT GRIFFO: The
17 sponsor yields.

18 SENATOR MARCELLINO: I'll be
19 happy to.

20 SENATOR KRUEGER: Thank you. So
21 I'm interested in the discussion of
22 discrepancy that you just raised.

23 So if the department sees a
24 discrepancy between what you have filed and
25 what they understand to be the taxes owed, are

1 they supposed to still make the refund or pay
2 the interest?

3 SENATOR MARCELLINO: No. Just
4 simply notify the taxpayer that there is a
5 problem with the tax form and that there has
6 to be a discussion and we'll set up a date for
7 meeting, and you meet with the Department of
8 Taxation and Finance and you settle your
9 accounts, as to whether or not the mistake is
10 real, whether you have a reasonable
11 explanation and they agree with you, or
12 whatever. In some cases there's even court
13 cases; you may want to take them to court and
14 file on that basis.

15 So it doesn't require in that
16 sense, in my understanding. It would simply
17 mean the procedure has to be followed. In
18 other words, we just don't want the taxpayer
19 left out there in limbo with no response, no
20 answer, and money that they're owed but no
21 explanation as to why they're not getting it.

22 ACTING PRESIDENT GRIFFO: It's
23 getting a little noisy in the chamber. I'd
24 ask if you could take conversations outside
25 the chamber so the members can hear each other

1 in conversation.

2 Senator Krueger.

3 SENATOR KRUEGER: Thank you.

4 So just to clarify so that the
5 sponsor and I are both on the same page, if
6 the department concludes there is some kind of
7 discrepancy, they do not have to pay interest
8 after 30 days, they have to provide notice and
9 clarification to the taxpayer within 30 days?

10 SENATOR MARCELLINO: Yes,
11 Senator, that would be my understanding of the
12 bill, that the department is required to
13 notice the taxpayer that there is a problem
14 with the tax return and that an explanation is
15 required, set up some type of a meeting date
16 with the taxpayer that is mutually acceptable
17 so they can get together and deal with it.

18 That's normal procedure right now.
19 That's the way it operates right now. You
20 don't get your refund until everything is
21 clarified.

22 SENATOR KRUEGER: Thank you.

23 If through you, Mr. President, the
24 sponsor would continue to yield.

25 SENATOR MARCELLINO: Sure.

1 ACTING PRESIDENT GRIFFO: The
2 sponsor yields.

3 SENATOR KRUEGER: Is it your
4 understanding, in your language of
5 discrepancy, that the agency, Tax and Finance
6 agency, could define discrepancy in a very
7 broad purview, anything they wish it to be,
8 and simply send a notice for clarification,
9 that there doesn't need to be more specific
10 definitions of what the discrepancy is? It
11 may be that in fact the tax return was
12 incorrect, there was more exemptions taken
13 than legally allowed, for example.

14 SENATOR MARCELLINO: No, I --
15 Senator, I have a little more faith in the
16 government and the people involved. I do not
17 believe the government is just going to send a
18 blanket notice out to taxpayers that "there's
19 a problem with your return so therefore we're
20 going to hold your refund until we clarify the
21 issue."

22 All tax returns, as you well know,
23 now are reviewed by computer. It's all
24 computerized. There are parameters set. If
25 the numbers go above a certain point or below

1 a certain point, the computer clicks them off,
2 sets these filings apart, and procedures
3 follow in that basis.

4 The entire system is computerized.
5 The federal government has gone to total
6 computerization. You must, if you want -- and
7 they'll tell you this, if you want your refund
8 promptly delivered, file by electronic means
9 and you will get it back. If you do not, if
10 you file by hand and they have to read it by
11 hand and enter it by hand, that might delay
12 the process. However, if you file
13 electronically, which is the current mode,
14 everything gets taken care of by machine and
15 you can get an appropriate response in a
16 reasonable period of time.

17 SENATOR KRUEGER: Thank you,
18 Mr. President. If the sponsor would continue
19 to yield.

20 SENATOR MARCELLINO: Sure.

21 ACTING PRESIDENT GRIFFO: The
22 sponsor yields.

23 SENATOR KRUEGER: Thank you.

24 And I agree with the sponsor that
25 the vast majority of tax returns that are

1 being filed electronically are getting a
2 relatively fast response from New York State.
3 And I believe their average rate of responding
4 on tax refunds is about 30 days currently.

5 Although the sponsor raises an
6 interesting question, because I believe this
7 year there was a specific problem with a
8 software program, TurboTax, and New York State
9 filings. So if the software program was
10 responsible for the problem leading to a delay
11 in the refund beyond 30 days, who would have
12 be responsible for paying interest to the
13 taxpayer under this bill?

14 SENATOR MARCELLINO: If it was
15 the government's program, the government would
16 be responsible. If it's your personal program
17 and you created the problem because you used a
18 program that didn't mesh, then it's your
19 problem and you have to deal with it. But if
20 the government set the program up and the
21 government created the program or purchased
22 the program and then used the program and it
23 screwed up, it's their fault and you're owed.

24 SENATOR KRUEGER: Thank you. So,
25 Mr. President, permit me just to repeat to

1 confirm from the sponsor.

2 If you're using, say, TurboTax,
3 which is a private software company, or some
4 other private software to do your electronic
5 filing of state taxes, and the mistake is due
6 to the software program, then the State of
7 New York would not be liable for the interest
8 or the delay in refund, under this law?

9 SENATOR MARCELLINO: If I as a
10 taxpayer cause a problem that creates a delay,
11 it's my problem. Not the government's
12 problem. If it's the government's program
13 that causes the delay, then it's the
14 government's problem.

15 SENATOR KRUEGER: Mr. President,
16 if the sponsor would continue to yield.

17 SENATOR MARCELLINO: I'd be happy
18 to.

19 ACTING PRESIDENT GRIFFO: The
20 sponsor yields.

21 SENATOR KRUEGER: Thank you.

22 This bill requires a 6 percent
23 interest rate. That's, in today's world, an
24 exceptionally high rate of return. How did
25 the 6 percent number get determined? I would

1 love to make 6 percent on anything and
2 everything, to be quite honest.

3 SENATOR MARCELLINO: Yeah, so
4 would I, Senator. These days, if you make a
5 half a percent, you're lucky, on your bank
6 account.

7 But it would be my understanding
8 that the taxpayers should get what I consider
9 a fair return on their money, and 6 percent
10 would provide an incentive to do it correctly.

11 SENATOR KRUEGER: Mr. President,
12 if the sponsor would continue to yield.

13 SENATOR MARCELLINO: I will
14 continue to yield.

15 SENATOR KRUEGER: Thank you.

16 Because we both agree that this is
17 a significant interest rate, do we have any
18 estimate of how much this could cost the State
19 of New York in a one-year period and where we
20 would get the money to pay this cost?

21 SENATOR MARCELLINO: Senator,
22 that would be frankly an impossibility to
23 predict, because you don't know from year to
24 year what the tax is going to be. You don't
25 know who's going to be paying, how much

1 they're going to be paying.

2 I assume you could get a -- if you
3 went back a few years, you could probably get
4 past taxes paid and, you know, apply an
5 estimate to that, but that would have
6 absolutely no impact as to what next year's
7 tax payment would be, because it would be
8 subsequently less.

9 As you well know, this state budget
10 is dependent on tax returns. And from year to
11 year those tax returns go up, they go down.
12 Times are good, they're up. Times are bad,
13 they go down. So everybody's impacted. So I
14 think it would be almost impossible to give
15 you an accurate explanation on that.

16 SENATOR KRUEGER: Mr. President,
17 if the sponsor would continue to yield.

18 SENATOR MARCELLINO: Happy to.

19 SENATOR KRUEGER: Thank you.

20 As I recall, when we last visited
21 this bill a year or two ago when Governor
22 Paterson indicated that because of lack of
23 funds the state would need to elongate the
24 refund process by three weeks, he declared he
25 had unilateral authority to do this as

1 Governor.

2 Under this legislation, would the
3 Governor still have unilateral authority to
4 lengthen the process beyond the 30-day period?

5 SENATOR MARCELLINO: I disagreed
6 with my good friend David Paterson when he did
7 that. He took advantage of his executive
8 position in being able to direct the agencies
9 of the state and direct the commissioners of
10 the state to not pay out money that was duly
11 owed to the residents. His claim at the time,
12 I believe, he was fearful that the state would
13 run out of money and he wouldn't have cash on
14 hand to pay his bills.

15 Well, the taxpayers are a bill due
16 and owed, and they had a right to get their
17 money collected. And I don't think any
18 individual has a right to just take it on
19 their own and say "I'm not going to pay this
20 bill today because I don't think we have the
21 money." Or "I don't want to pay this refund
22 out or I don't want to pay these people
23 because I, the Governor of the state, decide
24 that I think we should have this money in our
25 bank account collecting interest so that we

1 can apply it going forward to other needs."

2 You're borrowing the money from the
3 taxpayer when you do that. That taxpayer is
4 due and owed interest on that money. It's a
5 loan to the government and, as a matter of
6 fact, an involuntary loan to the government
7 that should never have occurred.

8 SENATOR KRUEGER: If through
9 you --

10 SENATOR MARCELLINO: I yield.

11 SENATOR KRUEGER: Thank you.

12 Again, I don't find language in
13 this bill that explicitly prevents a Governor
14 from unilaterally determining that because of
15 state cash-flow issues he may need to elongate
16 the time period beyond 30 days, as under the
17 45-day statute there is no explicit language
18 and so we learned that he could.

19 So I just want to clarify. This
20 legislation would not prevent a Governor from
21 unilaterally determining that because of a
22 cash flow or other situation in the State of
23 New York he could order the Department of Tax
24 and Finance to go beyond the 30 days?

25 SENATOR MARCELLINO: You're

1 right. And the response to that is if the
2 Governor unilaterally elongates the time
3 period under this legislation that is
4 proposed, he pays 6 percent interest to the
5 taxpayer for borrowing their money. It's as
6 simple as that.

7 I don't believe David Paterson,
8 Governor Paterson had a right to do what he
9 did, but he did it. Those taxpayers, in my
10 mind, are owed money. They loaned their money
11 involuntarily to the State of New York for a
12 period of time. They should have been
13 recompensed for providing that service and
14 that money that they couldn't use and they
15 couldn't apply for their own personal needs.
16 It was their money.

17 This bill would provide a
18 disincentive for a Governor to do that because
19 it provides that if you don't pay the money
20 out in a timely fashion as indicated by the
21 bill, you owe 6 percent interest rate, which
22 my lawyer friends tell me is below the rate of
23 a judgment, which is approximately 9 percent
24 these days. So, you know, we're working a
25 happy medium here.

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

4 SENATOR MARCELLINO: My pleasure.

5 SENATOR KRUEGER: Thank you.

6 SENATOR MARCELLINO: [Inaudible.]

7 SENATOR KRUEGER: We're having
8 fun today, two bills.

9 So under current reality, only
10 approximately 33 percent of the money paid out
11 in personal income tax refunds each year is
12 actually a refund for an overpayment of taxes
13 either through withholding or estimated
14 payments or carry-forwards. Therefore, the
15 revenue implications of this bill as written
16 can be quite large. Because I read this bill
17 as requiring the 6 percent interest to apply
18 to, again, all taxes. And that would
19 include -- just double-checking -- if there
20 was a delay in getting someone's earned income
21 tax credit to them, a noncustodial parent tax
22 credit, the Empire State child credit, the
23 child and dependent care credit, college
24 tuition credits, real property tax credits.

25 Is that your understanding of this

1 bill, that there would be the 6 percent
2 interest applied on all of the above?

3 SENATOR MARCELLINO: On all of
4 the above only if they don't pay the refund in
5 a timely fashion. If you pay the refund in a
6 timely fashion which is duly owed to the
7 taxpayer, regardless of who or what the
8 taxpayer is or the reason for the tax payment,
9 then you don't have to pay any interest
10 penalty, you simply pay the refund, which is
11 the appropriate thing to do.

12 They're owed the money. It's like
13 the commercial says, it's my money and I want
14 it now. The taxpayers are screaming they want
15 their money now, and in a timely fashion. I
16 think we, as representatives of the people of
17 this state, owe them that much that they get
18 their money in a timely fashion and if we make
19 a mistake, if government screws up, government
20 should pay a penalty like everybody else.

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

23 ACTING PRESIDENT GRIFFO: Senator
24 Krueger on the bill.

25 SENATOR KRUEGER: I'm torn. I

1 want to thank the sponsor for his explanation.

2 I know that this is a bill that has been
3 floating around for quite a few years in the
4 Senate. And I'm torn because I think the
5 sponsor is right; if people are owed refunds,
6 then the State of New York should be
7 appropriately timely and professional in
8 getting them their money.

9 My dilemma is I don't think we
10 spent enough time fine-tuning this bill. The
11 fact that we haven't asked Tax and Finance
12 what any of the technical effects that this
13 bill would have on them, we don't know how
14 much change would be required in systems,
15 whether there would be additional staff
16 required.

17 The effective date is to go into
18 effect immediately. We're right in the
19 middle, technically, of tax season. People's
20 taxes have to be submitted by April 15th. And
21 so if we were to pass this bill and it came
22 into law, by May 15th everything would have to
23 change and be put into effect. Or that's how
24 I read "to go into effect immediately."

25 So I don't think we're really ready

1 to roll this out immediately. I have to say
2 that the budget did not factor in additional
3 costs for the Department of Tax and Finance
4 for implementation, start-up, and in fact
5 speeding up the process by which they get
6 refunds back to taxpayers.

7 Although I am not sure that there
8 is a major outcry from the public calling for
9 this legislation in its current form
10 immediately, because it turns out 80 percent
11 of people are receiving their refunds within
12 30 days already. So you could argue, well, so
13 this isn't that big a deal because it's only
14 the other 20 percent of the people. Or you
15 could say this is a really big deal, we're
16 requiring changes in lots of different systems
17 for 100 percent of tax returns when
18 technically there might be a problem only for
19 20 percent or there might not be a problem at
20 all because those 20 percent could in fact
21 fall into the discrepancy category that the
22 sponsor very correctly explained was possible.

23 I also am very concerned that we
24 have a 6 percent interest rate attached to
25 this. And I have no idea, nor does the

1 sponsor, how large a cost this would be for
2 the State of New York.

3 A 6 percent rate of return, I have
4 to say you almost want the Department of
5 Taxation not to get that refund back to you.
6 You will probably find tax experts going into
7 the business of figuring out just exactly how
8 to put in a tax return so that the state can't
9 get you the refund and you can earn 6 percent
10 for a whole number of months. In fact, that
11 might be a new career opportunity for job
12 creation, figuring out how we can get
13 6 percent from the state.

14 And yet I also don't really want to
15 vote against the bill because, again, I do
16 think it's important for us to be sending the
17 message we want an efficient, accountable
18 government and when we ask people for their
19 taxes and we hold them to paying them and
20 following the laws, we should also follow the
21 law.

22 So what I'm going to do is split
23 the baby. I'm going to support the bill under
24 the belief that it won't become law until and
25 unless the Governor and the Assembly come back

1 to negotiate with us on how to deal with the
2 technicalities of this bill.

3 So I want to thank the sponsor for
4 his answers. I will be voting for the bill.
5 But again, for the record, only supporting it
6 as law if we can fix quite a number of the
7 concerns I have raised here today.

8 Thank you very much, Mr. President.

9 ACTING PRESIDENT GRIFFO: Thank
10 you, Senator Krueger.

11 I believe you have until the 18th
12 this year.

13 SENATOR KRUEGER: Excuse me.

14 ACTING PRESIDENT GRIFFO: Senator
15 Robach.

16 SENATOR ROBACH: Yes, just very
17 quickly.

18 I rise to applaud Senator
19 Marcellino for putting this bill in. Those of
20 you that really do hands-on constituent
21 service, you'll know there's nothing more
22 irate than somebody who's waiting for their
23 income tax return to come in.

24 And, you know, I have seen many
25 times -- the current law says they're supposed

1 to pay 3 percent interest, the state. I
2 haven't even seen that applied, let alone
3 changing it to the 6 percent. I don't know
4 who arbitrates that or who enforces it, but I
5 can tell you I've had many constituents who
6 have gone well past the 45-day time before
7 they got their tax refunds and not seen that
8 3 percent. And so I think this will just be a
9 another tool to speed this along.

10 And one thing, I can't remember who
11 brought it up, Senator Krueger or Senator
12 Marcellino, but what I've found in advocating
13 for constituents are clearly, for a lot of my
14 elderly constituents and low-income
15 constituents who don't file electronically,
16 they seem to disproportionately have a longer
17 return.

18 And I had one individual that was
19 literally waiting to do a home improvement,
20 predicating getting that money. And even with
21 all of our work, it still took a great length
22 of time to get that for the individual. And
23 their quote was: "You know, we have to put it
24 in on time. Shouldn't the state have to give
25 it back in a timely fashion?"

1 And I think that's the sentiment of
2 Senator Marcellino's bill. My guess is by
3 moving from 45 to 30 days you'll really just
4 more be enforcing the 45-day limit we
5 currently have.

6 And so I'm very happy to vote for
7 this bill. And I hope, rather than change, we
8 can all work together to maybe get some action
9 in the other house to make this a reality for
10 all of our mutual constituents.

11 Thank you, Mr. President.

12 ACTING PRESIDENT GRIFFO: Thank
13 you, Senator Robach.

14 Is there any other Senator wishing
15 to be heard?

16 Seeing none, debate is closed and
17 the Secretary will ring the bell.

18 Read the last section.

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

21 ACTING PRESIDENT GRIFFO: Call
22 the roll.

23 (The Secretary called the roll.)

24 THE SECRETARY: Ayes, 54. Nays,
25 2. Senators Duane and Parker recorded in the

1 negative.

2 ACTING PRESIDENT GRIFFO: The
3 bill is passed.

4 Senator Libous, that concludes the
5 reading of the controversial calendar.

6 SENATOR LIBOUS: Mr. President,
7 there will be an immediate meeting of the
8 Rules Committee in 332.

9 The Senate will stand at ease
10 pending the report of the Rules Committee.

11 ACTING PRESIDENT GRIFFO: There
12 is an immediate meeting of the Rules Committee
13 in Room 332.

14 The Senate stands at ease.

15 (Whereupon, the Senate stood at
16 ease at 5:18 p.m.)

17 (Whereupon, the Senate reconvened
18 at 5:29 p.m.)

19 ACTING PRESIDENT GRIFFO: The
20 Senate will come to order. The Senate will
21 come to order.

22 Senator Maziarz.

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

25 Can we return to the reports of

1 standing committees. I believe there's a
2 report of the Rules Committee at the desk.

3 ACTING PRESIDENT GRIFFO: The
4 Secretary will read.

5 THE SECRETARY: Senator Skelos,
6 from the Committee on Rules, reports the
7 following bill direct to third reading.

8 By Senator Flanagan, Senate Print
9 4211, an act to amend the Education Law.

10 ACTING PRESIDENT GRIFFO: Senator
11 Maziarz.

12 SENATOR MAZIARZ: I move to
13 accept the report of the Rules Committee,
14 Mr. President.

15 ACTING PRESIDENT GRIFFO: All in
16 favor of accepting the report of the Rules
17 Committee signify by saying aye.

18 (Response of "Aye.")

19 ACTING PRESIDENT GRIFFO:
20 Opposed?

21 (No response.)

22 ACTING PRESIDENT GRIFFO: The
23 Rules report is accepted.

24 Senator Maziarz.

25 SENATOR MAZIARZ: Can we have the

1 noncontroversial reading of the calendar,
2 please.

3 ACTING PRESIDENT GRIFFO: The
4 Secretary will read.

5 THE SECRETARY: Calendar Number
6 368, by Senator Flanagan, Senate Print 4211,
7 an act to amend the Education Law.

8 ACTING PRESIDENT GRIFFO: Read
9 the last section.

10 SENATOR DUANE: Lay it aside,
11 please.

12 ACTING PRESIDENT GRIFFO: Lay it
13 aside.

14 Senator Maziarz, that completes the
15 noncontroversial reading of the supplemental
16 calendar.

17 SENATOR MAZIARZ: Just hold on
18 for one second, Mr. President.

19 ACTING PRESIDENT GRIFFO: Thank
20 you, Senator Maziarz.

21 (Pause.)

22 SENATOR MAZIARZ: Mr. President.

23 ACTING PRESIDENT GRIFFO: Senator
24 Maziarz.

25 SENATOR MAZIARZ: The Senate will

1 stand at ease for a moment.

2 ACTING PRESIDENT GRIFFO: The
3 Senate will stand at ease.

4 (Whereupon, the Senate stood at
5 ease at 5:40 p.m.)

6 (Whereupon, the Senate reconvened
7 at 5:52 p.m.)

8 ACTING PRESIDENT GRIFFO: The
9 Senate will come to order. The Senate will
10 come to order.

11 Senator Breslin.

12 SENATOR BRESLIN: Mr. President,
13 I request that the lay-aside be removed and we
14 proceed on the noncontroversial calendar.

15 ACTING PRESIDENT GRIFFO: The
16 lay-aside requested is so ordered, and the
17 Secretary will read the substitution.

18 THE SECRETARY: Senator Flanagan
19 moves to discharge, from the Committee on
20 Rules, Assembly Bill Number 6611 and
21 substitute it for the identical Senate Bill
22 Number 4211, Third Reading Calendar Number
23 368.

24 ACTING PRESIDENT GRIFFO: The
25 substitution is so ordered.

1 Senator Maziarz, we will return now
2 to the noncontroversial reading. Without
3 objection?

4 SENATOR MAZIARZ: Without
5 objection, Mr. President.

6 ACTING PRESIDENT GRIFFO: The
7 Secretary will read.

8 THE SECRETARY: Calendar Number
9 368, by Member of the Assembly Nolan, Assembly
10 Print Number 6611, an act to amend the
11 Education Law.

12 ACTING PRESIDENT GRIFFO: Read
13 the last section.

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

16 ACTING PRESIDENT GRIFFO: Call
17 the roll.

18 (The Secretary called the roll.)

19 THE SECRETARY: Ayes, 55. Nays,
20 1. Senator Duane recorded in the negative.

21 ACTING PRESIDENT GRIFFO: The
22 bill is passed.

23 Senator Maziarz.

24 SENATOR MAZIARZ: Yes,
25 Mr. President. Can we at this time return to

1 motions and resolutions.

2 ACTING PRESIDENT GRIFFO: Motions
3 and resolutions.

4 SENATOR MAZIARZ: Mr. President,
5 on page number 11, on behalf of Senator
6 Marcellino I offer the following amendments to
7 Calendar Number 129, Senate Print Number 998A,
8 and ask that said bill retain its place on
9 Third Reading Calendar.

10 ACTING PRESIDENT GRIFFO: The
11 amendments are received and adopted, and the
12 bill will retain its place on the Third
13 Reading Calendar.

14 Senator Maziarz.

15 SENATOR MAZIARZ: Thank you,
16 Mr. President.

17 Is there any further business at
18 the desk?

19 ACTING PRESIDENT GRIFFO: There
20 is no further business before the desk.

21 SENATOR MAZIARZ: Thank you,
22 Mr. President. There being no further
23 business, I move that we adjourn until
24 Wednesday, April 13th at 11:00 a.m.,
25 11:00 a.m. tomorrow.

1 ACTING PRESIDENT GRIFFO: On
2 motion, the Senate stands adjourned until
3 Wednesday, April 13th, at 11:00 a.m.

4 Senate adjourned.

5 (Whereupon, at 5:54 p.m., the
6 Senate adjourned.)