NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

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3:15 p.m.

REGULAR SESSION

SENATOR JOSEPH A. GRIFFO, Acting President

FRANCIS W. PATIENCE, Secretary

P R O C E E D I N G S

ACTING PRESIDENT GRIFFO: The Senate will come to order.

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

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

ACTING PRESIDENT GRIFFO: Our invocation today will be given by the Reverend Peter G. Young, of the Mother Teresa Community here in Albany.

Father?

REVEREND YOUNG: Thank you, Senator.

We are very proud New Yorkers. We are proud because of our elected leaders, as Van Buren, Fillmore, Arthur, Cleveland, Theodore and Franklin Roosevelt, who became presidents. We are proud of our people who serve our country and our state.

May we continue in this greatness of their dedicated public service to all of our citizens. May we follow in the rich tradition of the Senators that first met in

Kingston five days after the Declaration of Independence.

You, O God, have provided our Senators with outstanding examples to inspire those in this Senate chamber for committed service to all of our citizens.

Amen.

ACTING PRESIDENT GRIFFO: Thank you, Father.

The reading of the Journal.

THE SECRETARY: In Senate, Sunday, May 15th, the Senate met pursuant to adjournment. The Journal of Saturday, May 14th, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

I'm going to ask if we can just bring some silence into the chamber, please.

(Gaveling.) The Senate will come to order. I ask all to please take their

conversations into the outer chamber. Thank you.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Breslin.

SENATOR BRESLIN: Thank you, Mr. President.

On behalf of Senator Diaz, I move that the following bill be discharged from its respective committee and be recommitted with instructions to strike the enacting clause: Senate Number 114.

ACTING PRESIDENT GRIFFO: So ordered.

SENATOR BRESLIN: Thank you, Mr. President.

ACTING PRESIDENT GRIFFO: Thank you, Senator Breslin.

Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President. I have several amendments to place here.

On behalf of Senator Bonacic, on

page 37 I offer the following amendments to Calendar Number 445, Senate Print 4587, and ask that said bill retain its place on the Third Reading Calendar.

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

SENATOR LIBOUS: Mr. President, on behalf of Senator Ball, on page 46 I offer the following amendments to Calendar Number 550, Senate Print 4582, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT GRIFFO: The amendments are received, and the bill will retain its place on third reading.

SENATOR LIBOUS: Mr. President, on behalf of Senator Seward, on page 23 I offer the following amendments to Calendar Number 241, Senate Print Number 4040, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT GRIFFO: The amendments are received, and the bill will retain its place on third reading.

SENATOR LIBOUS: On behalf of Senator Seward, on page 16 I offer the following

amendments to Calendar Number 88, Senate Print Number 2704, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT GRIFFO: The amendments are received, and the bill will retain its place on third reading.

SENATOR LIBOUS: On behalf of Senator Seward, on page 16 I offer the following amendments to Calendar Number 87, Senate Print Number 2683A, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT GRIFFO: The amendments are received, and the bill will retain its place on third reading.

SENATOR LIBOUS: On behalf of Senator Larkin, Mr. President, I move that the following bill be discharged from its respective committee and be recommitted with instructions to strike the enacting clause. And that is 2679.

ACTING PRESIDENT GRIFFO: So ordered.

SENATOR LIBOUS: On behalf of Senator Libous, Mr. President, I move the following bill be discharged from its respective committee and be recommitted with instructions to

strike the enacting clause: Senate Print 3058.

ACTING PRESIDENT GRIFFO: So ordered.

SENATOR LIBOUS: On behalf of Senator Little, Mr. President -- this is a little different. Mr. President, I move to amend Senate Bill Number 3996A by striking out the amendments made on May 10 and restoring it to its original print number, 3996. And that's on behalf of Senator Little.

ACTING PRESIDENT GRIFFO: So ordered.

SENATOR LIBOUS: And, Mr. President, finally, on behalf of Senator Saland, on page 19 I offer the following amendments to Calendar Number 172, Senate Print 1415, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT GRIFFO: The amendments are received, and the bill will retain its place on third reading.

SENATOR LIBOUS: Mr. President.

ACTING PRESIDENT GRIFFO: Senator Libous.

SENATOR LIBOUS: Thank you,

Mr. President. I believe that Senator Nozzolio has a privileged resolution at the desk. May we please have the title read and could you please call on Senator Nozzolio before it's adopted.

ACTING PRESIDENT GRIFFO: The Secretary will read.

THE SECRETARY: Legislative resolution by Senator Nozzolio, congratulating William Koll upon the occasion of capturing the 2011 New York State Division II Wrestling Championship in the 103-pound weight class.

Legislative resolution by Senator Nozzolio, congratulating Owen Scott upon the occasion of capturing the 2011 New York State Division II Wrestling Championship in the 160-pound division.

And legislative resolution by Senator Nozzolio, congratulating Craig Scott upon the occasion of capturing the 2011 New York State Division II Wrestling Championship in the 171-pound division.

ACTING PRESIDENT GRIFFO: Senator Nozzolio.

SENATOR NOZZOLIO: Thank you, Mr. President. On the resolutions.

Mr. President and my colleagues, as Father Young indicated today in his invocation, that we recognize the outstanding contributions of New Yorkers and, in so doing, chart a path for excellence that our state is accustomed to.

Today, with these resolutions, we are honoring three outstanding young New Yorkers -- one who couldn't be with us today, Bill Koll, who is a state champion wrestler, and two young men who could be with us today. And I'd like to ask this body to recognize the contributions of both Bill Koll, who's a state champion wrestler, along with Craig and Owen Scott. And those gentlemen are here today.

Craig and Owen have won the 2011 New York State Division II wrestling championships in their respective weight classes. They are outstanding young men by all accounts. This is not their first state title. Winning back-to-back state championships is an exemplary achievement, and both Craig and Owen were exhibiting that achievement and should be so recognized as two-time state champions.

The story of Craig and Owen Scott gets even better. They are outstanding athletes,

but more importantly they are outstanding students. And both of them have achieved admittance to Cornell University, a wonderful university. We're all very proud of Cornell. Cornell has a wonderful educational legacy, and it is growing in its recognition as a wrestling legacy as well. Many All-Americans, All-Ivys, and national NCAA champions are part of that legacy that Craig and Owen will be joining in just a few short months.

They are here today along with Tom Schmandt, who is director of physical education, athletics and community services for Palmyra-Macedon Central School District.

And I ask each of these fine young men, along with their athletic director, who's running an outstanding program at Pal-Mac, to be so recognized by this resolution and, Mr. President, by the recognition of this chamber. I'm honored to present these state champions to my colleagues and thank you for this recognition.

ACTING PRESIDENT GRIFFO: Thank you, Senator Nozzolio.

The question is on the

resolutions. All in favor signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT GRIFFO: Opposed, nay.

(No response.)

ACTING PRESIDENT GRIFFO: The resolutions are adopted.

We want to welcome Owen and Craig Scott, who are with us today, the state champions. Congratulations to all of you. Let's extend the courtesy of the house.

(Applause.)

ACTING PRESIDENT GRIFFO: I'd also like to acknowledge the athletic director, Mr. Tom Schmandt, who happens to come from my hometown. So it's great to have Mr. Schmandt with us too. Tom, thank you.

Senator Libous.

SENATOR LIBOUS: Mr. President, gentlemen. I want to congratulate the gentlemen also. I know this is shocking to many of you, but I was a wrestler in my day also, and this is what happens over time. So, gentlemen, congratulations.

Mr. President, at this time there

will be an immediate meeting of the Rules Committee in Room 332, an immediate meeting of the Rules Committee in 332. The Senate will stand at ease.

ACTING PRESIDENT GRIFFO: There will be an immediate meeting of the Rules Committee in Room 332. The Senate stands at ease.

(Whereupon, the Senate stood at ease at 3:26 p.m.)

(Whereupon, the Senate reconvened at 3:46 p.m.)

ACTING PRESIDENT GRIFFO: The Senate will come to order.

Senator Libous.

SENATOR LIBOUS: Mr. President, I believe there's a report of the Rules Committee at the desk.

ACTING PRESIDENT GRIFFO: The Secretary will read.

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

By Senator Maziarz, Senate Print 5367, an act to amend the Real Property Tax Law.

ACTING PRESIDENT GRIFFO: Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President. Could we at this time have a reading of the noncontroversial calendar.

ACTING PRESIDENT GRIFFO: I'll entertain a motion to accept the Rules Committee report.

SENATOR LIBOUS: I'm sorry, Mr. President. At this point in time could we please accept the report of the Rules Committee.

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

(Response of "Aye.")

ACTING PRESIDENT GRIFFO: Opposed, nay.

(No response.)

ACTING PRESIDENT GRIFFO: The committee report is accepted.

Senator Libous.

SENATOR LIBOUS: Thank you, Mr. President. I apologize for that. It is Monday, and the day is moving quite quickly.

At this time could we proceed with

the reading of the noncontroversial calendar.

ACTING PRESIDENT GRIFFO: The Secretary will read.

THE SECRETARY: Calendar Number 26, by Senator Marcellino, Senate Print 957, an act to amend the Vehicle and Traffic Law.

ACTING PRESIDENT GRIFFO: Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the first of November.

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 58. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 102, by Senator Grisanti, Senate Print 2686A, an act to amend the Parks, Recreation and Historic Preservation Law.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 160, by Senator Nozzolio, Senate Print --

SENATOR BRESLIN: Lay it aside.

ACTING PRESIDENT GRIFFO: Lay it aside.

THE SECRETARY: Calendar Number 180, by Senator Marcellino, Senate Print 940, an act to amend the Vehicle and Traffic Law.

ACTING PRESIDENT GRIFFO: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 120th day.

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number

182, by Senator DeFrancisco, Senate Print 2903B, an act to amend the Navigation Law.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 185, by Senator Nozzolio, Senate Print 474, an act to amend the Correction Law.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 213, by Senator Ranzenhofer, Senate Print 3337, an act to amend the Elder Law.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 60.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 215, by Senator LaValle, Senate Print 815, an act to amend the Social Services Law.

ACTING PRESIDENT GRIFFO: Read the last section.

THE SECRETARY: Section 2. This act shall take effect on the 180th day.

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 260, by Senator Ritchie, Senate Print --

SENATOR BRESLIN: Lay it aside.

ACTING PRESIDENT GRIFFO: Lay it aside.

THE SECRETARY: Calendar Number 279, by Senator Larkin, Senate Print 3111, an act to amend the Public Health Law.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT GRIFFO: Senator Adams, to explain his vote.

SENATOR ADAMS: Yes, Mr. President, I just want to really commend my colleague Senator Larkin on this bill. This is an important bill around -- it directs the Department of Health to establish a certificate of birth resulting in stillbirth.

Many parents who go through the entire nine-month experience and their child is stillborn, there's an emotional attachment and there's no record of the child actually having a birth certificate. And this will do that.

And I thank Senator Larkin for it, and I encourage us to vote for this bill. I'm hoping that the bill will pass in the Assembly. The parents have been attempting to get this bill passed and made into law for several years now. And so hopefully this is the year that they can deal with this very emotional issue of having a child that's born and it's stillborn and they don't have any record for that child.

I will be voting aye.

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

Senator Kennedy to explain his vote.

SENATOR KENNEDY: Yes, thank you, Mr. President. I too want to recognize Senator Larkin for carrying this important bill.

This bill is important to so many individuals and families across New York State. This bill provides for the certificate of birth

resulting in stillbirths. So many families are looking forward to the birth of a child, only unexpectedly and without notice that child in utero dies. And the mother still has to deal with the trauma of and the pain physically of giving birth and then emotionally of the child she's just given birth to having been stillborn.

And unfortunately today in New York State there is no certificate of birth for this child, there is only a certificate of death. So what this bill will provide for -- and I hope that the Assembly heeds this bill and this call from thousands of individuals that have lost a child through stillbirth across New York State -- is to enact this legislation.

And I appreciate the support. Many individuals that haven't had the trauma of a stillborn child don't necessarily understand that this strikes to the heart of motherhood and of fatherhood. And there are many groups that are in support of this legislation.

I personally, in my life, have lost a child at birth. We had the fortunate circumstance of having four minutes with our daughter, Bridget Nicole Kennedy. We named our

daughter, baptized our daughter, and buried our daughter. And we received a certificate of birth because of that four minutes of a heartbeat.

There are many families that don't have that opportunity and that closure that a certificate of birth will give them. This will give that closure with that certificate of stillbirth to those families that have had that unfortunate circumstance and that unfortunate loss in their life. This is essentially the right thing to do on a piece of legislation that will affect, once again, thousands of mothers, fathers, children and families.

Thank you. And again, thank you to Senator Larkin who has proposed this and passed this in this Senate for several years. And hopefully, again, the Assembly will follow suit. Thank you.

ACTING PRESIDENT GRIFFO: Senator Kennedy to be recorded in the affirmative.

Announce the results.

THE SECRETARY: Ayes, 59. Nays, 2. Senators Duane and Hassell-Thompson recorded in the negative.

ACTING PRESIDENT GRIFFO: The bill

is passed.

THE SECRETARY: Calendar Number 282, by Senator Griffo, Senate Print 4193A, an act to amend the Banking Law.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 303, by Senator Maziarz, Senate Print 152, an act to amend the Penal Law.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 376, by Senator Fuschillo, Senate Print 4177, an act to amend the Vehicle and Traffic Law.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 380, by Senator LaValle, Senate Print 1809, an act to amend the Education Law.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 389, by Senator Hannon, Senate Print 4376A, an act to amend the Public Health Law.

SENATOR HANNON: Lay it aside.

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

THE SECRETARY: Calendar Number 536, by Senator Klein, Senate Print 3860A, an act to amend Chapter 465 of the Laws of 1994.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT GRIFFO: The bill is passed.

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

SENATOR LIBOUS: Thank you,

Mr. President.

Can we now have a reading of the controversial calendar, please.

ACTING PRESIDENT GRIFFO: The Secretary will ring the bell.

The Secretary will read.

THE SECRETARY: Calendar Number 160, by Senator Nozzolio, Senate Print 478, an act to amend the Executive Law.

SENATOR BRESLIN: Explanation, please.

ACTING PRESIDENT GRIFFO: An explanation has been requested by Senator Breslin, Senator Nozzolio.

SENATOR NOZZOLIO: Mr. President, this measure allows the placement of fresh-cut evergreen trees in public buildings and governmental facilities.

It's hard to believe that a measure like this would be necessary, but under rules and regulations in the past, that particularly all evergreen and those even made in, produced in New York State are not allowed to be part of the decorative nature that is placed in governmental facilities. This bill simply allows that to

occur.

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

Senator Squadron.

SENATOR SQUADRON: Thank you. Would Senator Nozzolio yield for a question.

ACTING PRESIDENT GRIFFO: Senator Nozzolio, do you yield for a question from Senator Squadron?

The Senator yields.

SENATOR NOZZOLIO: Yes, Mr. President, I'm happy to yield to Senator Squadron.

SENATOR SQUADRON: Thank you very much. Through you, Mr. President, I had a little trouble hearing the sponsor. And it just talked about the exception for religious symbols at the end of the explanation. If he wouldn't mind just repeating and clarifying the end of that explanation, I'd appreciate it.

ACTING PRESIDENT GRIFFO: Could you repeat that, Senator Squadron?

SENATOR SQUADRON: I didn't hear the end of Senator Nozzolio's explanation and was hope for a repeating or a clarification of it.

SENATOR NOZZOLIO: Mr. President, a repeating or clarification of the end of my explanation?

SENATOR SQUADRON: It was a brief explanation, Mr. President. If he were to indulge, I would appreciate it.

ACTING PRESIDENT GRIFFO: You're speaking to one specific area?

SENATOR SQUADRON: I thought he used the phrase "religious symbols" in his explanation in a context that I didn't fully understand.

SENATOR NOZZOLIO: Mr. President, I'm not aware of any religious symbol that is part of this bill. That it's a -- it's my understanding that an evergreen is a secular symbol and that it does not have any connotation for a specific religious focus.

SENATOR SQUADRON: Thank you, Mr. President. And I want to thank the sponsor for his explanation and clarification. Thank you.

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

Senator Krueger.

SENATOR KRUEGER: Thank you. I guess I would like a clarification. This would propose to allow evergreens in public buildings -- without religious connotations, since I think we just clarified that. Could it have electric lights and other items attached to the evergreens?

ACTING PRESIDENT GRIFFO: Senator Nozzolio.

SENATOR NOZZOLIO: Now it is I who is asking for clarification of the question. Senator Krueger -- I deeply regret that I was not able to hear the last portion of Senator Krueger's question. Would she mind repeating it?

SENATOR KRUEGER: Mr. President, through you, I'd be happy to rephrase and repeat my question.

So these evergreens that would be allowed in public buildings wouldn't have religious connotation. I was asking whether these evergreens could have electric lights and other decorations on them.

SENATOR NOZZOLIO: Mr. President, through you, there are safety conditions set

forth in this bill. That under this legislation the trees -- the evergreen may be displayed in public buildings under the conditions that they're not directly exposed to any undue heat or unsafe electrical devices, that they do not block exits, that they are watered on a regular basis, and that they're checked for dryness from time to time.

ACTING PRESIDENT GRIFFO: Senator Krueger.

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

ACTING PRESIDENT GRIFFO: Senator Nozzolio, do you continue to yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT GRIFFO: The Senator yields.

SENATOR KRUEGER: Thank you. What would be a safe electrical device in an evergreen tree or other display?

SENATOR NOZZOLIO: Mr. President, we ought to check the volume of our sound system here in this great chamber, because I didn't say

a safe electrical device, I said an unsafe electrical device. That it was incumbent upon those who are displaying these to make sure there weren't any unsafe electrical devices that may impede or otherwise ignite those evergreens that would be allowed to be in public buildings.

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

ACTING PRESIDENT GRIFFO: Senator Nozzolio, do you yield?

SENATOR NOZZOLIO: Yes, Mr. President.

ACTING PRESIDENT GRIFFO: Senator Krueger.

SENATOR KRUEGER: Thank you.

Would strings of light bulbs attached through a long string of wires plugged into an outlet be defined as a safe or an unsafe electrical device in an evergreen tree that didn't have religious connotation?

SENATOR NOZZOLIO: Mr. President, it's hoped that those who are entrusted with our New York State government, those who work day to day in managing the buildings and operations of

this government, would have actually the common sense to understand what is a safe and not safe electrical device, the common sense to understand what live at-one-time plant may be in danger of lack of safety in its building.

Senator, this is not to define everything, this is just simply to say allow the evergreens to be in the building, make sure they're cared for, make sure they're not put next to something that is going to ignite. And what every homeowner has to understand, we hope the government employees and custodians understand as well.

SENATOR KRUEGER: Mr. President, on the bill.

ACTING PRESIDENT GRIFFO: Senator Krueger on the bill.

SENATOR KRUEGER: I want to thank the sponsor for his explanation.

Here's my dilemma. I actually don't know what the difference between a safe or an unsafe electrical device on an evergreen tree that doesn't have religious connotations is. And I suspect if during the course of debate on the floor of the Senate we can't figure that out, and

that we're hoping people who I guess are responsible for maintenance and upkeep in government offices, that they do know the answer to that and can correctly follow this law, I think there's a big leap and assumption that they would understand that.

And I certainly know from research that evergreen trees put in homes and other places for private use, very often for religious connotations in approximately December 25th each year, sometimes aren't correctly watered, sometimes do dry out, and they have electric light bulbs on strings and they create fire hazards.

ACTING PRESIDENT GRIFFO: Senator DeFrancisco, why do you rise?

SENATOR DeFRANCISCO: Would Senator Krueger yield to a question, please.

ACTING PRESIDENT GRIFFO: Senator Krueger, will you yield to a question from Senator DeFrancisco?

SENATOR KRUEGER: Absolutely. Yes, I will.

ACTING PRESIDENT GRIFFO: The Senator yields.

SENATOR DeFRANCISCO: Senator Krueger, this bill provides for the safe display of evergreens. Is your concern because sometime this may be used as a religious symbol around Christmastime? Is that what you don't like about the bill?

SENATOR KRUEGER: No, Mr. President, if I could answer. I actually think that through constitutional challenges it's clear that evergreens can't be used for that purpose in government offices.

And yet this bill talks about putting electric lights, nondangerous, on these trees or other evergreens. So I am concerned that they're a fire hazard and that I don't think we should support their being in government buildings because they're a fire hazard.

I think it's already clear that they're not supposed to be there if they're for religious purposes. So I was using a hypothetical that around December 25th is when many people do put trees with lights in various buildings, and that they can be fire risks.

SENATOR DEFRANCISCO: Would Senator Krueger yield to another question.

ACTING PRESIDENT GRIFFO: Senator Krueger?

SENATOR KRUEGER: Yes, Mr. President.

SENATOR DeFRANCISCO: So you're saying that picking the date December 25th was just a hypothetical date that you just came out as an example, and it has nothing --

SENATOR KRUEGER: Yes.

SENATOR DEFRANCISCO: And your concern isn't that someone may put up a Christmas tree around Christmastime in a government building.

SENATOR KRUEGER: That's correct. I agree that it's clear they can't do that.

I'm concerned that if you're putting lights on an evergreen, that it can be a fire risk. And that is yet another reason not to have live or, let me rephrase it, not-yet-dead evergreens put in public buildings with lights on or near them.

SENATOR DEFRANCISCO: One last question if she would yield, please.

SENATOR KRUEGER: Yes, I'd be happy to yield.

ACTING PRESIDENT GRIFFO: Senator Krueger yields.

SENATOR DEFRANCISCO: So in effect you support this bill because it requires safe display of electrical lights or whatever it might be, and it requires that which is not required right now.

SENATOR KRUEGER: And yet I find myself voting no, although I appreciate so much my colleague's point. I don't think we should be allowing evergreen trees to be in government buildings with lights on or near them, because they are a fire hazard.

SENATOR DEFRANCISCO: I have one more question, I'm sorry. Would you yield again?

SENATOR KRUEGER: Yes, I'd be happy to yield.

ACTING PRESIDENT GRIFFO: The Senator yields.

SENATOR DEFRANCISCO: Are you also against any type of bushes or other types of -- not evergreen trees, other types of trees that might connotate a holiday other than December 25th?

SENATOR KRUEGER: So the question is not would they have lights on them and be at risk, the question is would I have a problem with any kind of shrubbery in a government building being used to connotate a religious event? I don't believe there should be religious symbols for any religion in government buildings.

SENATOR DeFRANCISCO: Okay, thank you. I appreciate the clarification.

ACTING PRESIDENT GRIFFO: Thank you.

Senator Krueger.

SENATOR KRUEGER: I'll be voting no. Thank you so much, Mr. President.

ACTING PRESIDENT GRIFFO: Senator Krueger to be recorded in the negative, but we haven't taken a vote yet.

Senator Squadron.

SENATOR SQUADRON: Thank you very much. Would Senator DeFrancisco yield for a question.

ACTING PRESIDENT GRIFFO: Senator DeFrancisco yields.

SENATOR SQUADRON: Thank you so much. I would ask -- I believe, from previous

debates, Senator DeFrancisco is an attorney. I would ask Senator DeFrancisco -- Senator Krueger asserted that a Christmas tree in a government building would not be constitutional or appropriate. I wanted to ask Senator DeFrancisco if his reading of the ruling of the Supreme Court is that a Christmas tree in government buildings would not be appropriate.

SENATOR DEFRANCISCO: Well, I don't think there's anything inappropriate at all about displaying a Christmas tree in any location, quite frankly. I don't see the problem with that.

There's certain religious observations, whether it's Hanukkah, whether it's Christmas, whether it's whatever it may be, for those who celebrate that particular holiday, if the people who are employed by the state government want to somehow experience that particular holiday in a festive way, I'm not quite so sure what's gained by preventing people that happen to have religious backgrounds or religious beliefs not to participate in something like that. I don't see it at all, and I -- I don't see the point.

SENATOR SQUADRON: Through you, Mr. President, if Senator DeFrancisco would continue to yield.

ACTING PRESIDENT GRIFFO: Senator DeFrancisco, do you yield?

SENATOR DeFRANCISCO: Yes.

ACTING PRESIDENT GRIFFO: Senator Squadron.

SENATOR SQUADRON: Is it Senator DeFrancisco's understanding of this legislation that this legislation in fact permits the display of Christmas trees in state buildings?

SENATOR DEFRANCISCO: This particular legislation says what it says: evergreens. And you can put lights on evergreens.

If you want to put lights on evergreens to celebrate Hanukkah, God bless you. I'll be more than happy to be there and light one of the lights. If it's going to be used to put lights on it to celebrate Christmas, I'll be there with my Santa Claus costume on.

The fact of the matter is there is nothing, in my judgment, unconstitutional or wrong with citizens of various religious faiths

that work for state government to celebrate those holidays. And if it offends somebody, well, I'm sorry it does, but I think it's nothing that should be prevented.

ACTING PRESIDENT GRIFFO: Senator Nozzolio, why do you rise?

SENATOR NOZZOLIO: I'm asking Senator Squadron to yield.

ACTING PRESIDENT GRIFFO: Senator Squadron, do you yield?

SENATOR SQUADRON: Mr. President, just as a point of order, I certainly will be happy to yield to the sponsor of this memo during this debate. I believe that I still have the floor and was asking Senator DeFrancisco to yield.

ACTING PRESIDENT GRIFFO: Senator Squadron, you have the floor. You've asked Senator DeFrancisco a question. Senator Nozzolio rose to ask whether or not you would yield for him to ask you a question, so it is appropriate.

SENATOR SQUADRON: Well, I would ask the sponsor's indulgence for just two more questions to Senator DeFrancisco, if he's willing to yield, and then I will of course yield to the

sponsor for as many questions as he would like.

ACTING PRESIDENT GRIFFO: At this time Senator Squadron does not yield, Senator Nozzolio.

Senator Squadron.

SENATOR SQUADRON: Thank you very much. Would Senator DeFrancisco continue to yield.

SENATOR DEFRANCISCO: Absolutely.

ACTING PRESIDENT GRIFFO: Senator DeFrancisco yields.

SENATOR SQUADRON: Thank you so much.

Based on what you just said, based on what Senator DeFrancisco just said that, you know, this allows evergreens, they can be any sort of tree -- if this bill were to only allow the display of Christmas trees and not touch on any other tradition or possibility, but specifically just Christmas trees, would Senator DeFrancisco continue to think that this legislation were constitutional?

SENATOR DEFRANCISCO: You know, that is the most asinine question I've heard since I've been on the Senate floor. This bill

doesn't say that. If the --

SENATOR SQUADRON: Point of personal privilege, Mr. President.

SENATOR BRESLIN: Point of order.

SENATOR DEFRANCISCO: Excuse me. May I answer the question?

ACTING PRESIDENT GRIFFO: Senator Squadron, Senator DeFrancisco is asking --

SENATOR SQUADRON: Point of personal privilege, Mr. President.

ACTING PRESIDENT GRIFFO: Senator Squadron, Senator Breslin has rose to a point of order. Senator DeFrancisco was finishing his answer.

Senator Breslin, what is your point of order?

SENATOR BRESLIN: My point of order is to remain civil on the floor. That there's a degree of respect that we all expect, and we shouldn't be characterizing people's conduct in a negative way.

ACTING PRESIDENT GRIFFO: Thank you, Senator Breslin. Your point is well-taken.

Senator DeFrancisco, you may continue to answer the question.

SENATOR DEFRANCISCO: Okay, it's not the most asinine question I've ever heard on the floor.

I'd be more than -- it doesn't say that. It doesn't say that. I could ask the hypothetical, if this bill called for gallons per mile rather than miles per gallon, would I support a poster along those lines, like a previous legislation. That's irrelevant, because the bill doesn't say that.

SENATOR SQUADRON: Through you, Mr. President. And I think I now have the honor of the first, second, and third most asinine things Senator DeFrancisco has ever heard on this floor. So that is a great honor to be sure.

I wonder if Senator DeFrancisco has access to the bill memo.

ACTING PRESIDENT GRIFFO: Are you asking the Senator to continue to yield?

SENATOR SQUADRON: Yes, I am, thank you.

ACTING PRESIDENT GRIFFO: Senator DeFrancisco, do you continue to yield?

SENATOR DEFRANCISCO: Yes. I don't have access, I don't have with me the bill

memo. I do not.

ACTING PRESIDENT GRIFFO: Senator Squadron.

SENATOR LARKIN: Through you, Mr. President, since Senator DeFrancisco does not have access to the bill memo on the bill that we're debating --

ACTING PRESIDENT GRIFFO: Are you speaking on the bill now, Senator Squadron?

SENATOR SQUADRON: I am.

ACTING PRESIDENT GRIFFO: Senator Squadron on the bill.

SENATOR SQUADRON: -- I'll read the bill memo for Senator DeFrancisco's edification and anyone else who doesn't have access to the memo.

"This legislation would allow the seasonal display of fresh-cut Christmas trees and wreaths in government buildings." Summary of provisions -- I'm going to skip. I'll go on to justification. "When a fresh-cut Christmas tree is properly cared for, it has a high degree of natural flame resistance," et cetera, et cetera.

So it is possible that Senator DeFrancisco is discussing a different bill that

has nothing to do with Christmas trees and does not specifically, in the bill memo and bill intent, speak only of Christmas trees, not of menorahs or other religious traditions that frankly I'm not sure --

ACTING PRESIDENT GRIFFO: Senator Nozzolio, why do you rise?

SENATOR NOZZOLIO: On the bill, Mr. President.

ACTING PRESIDENT GRIFFO: Senator Squadron has the floor. Were you requesting that Senator Squadron yield for a question?

SENATOR NOZZOLIO: No, Mr. President.

ACTING PRESIDENT GRIFFO: Senator Squadron still has the floor, Senator Nozzolio.

Senator Squadron, would you conclude.

SENATOR SQUADRON: Thank you, Mr. President. I will continue to speak on the bill.

So unfortunately Senator DeFrancisco certainly doesn't have access to the bill memo, certainly hasn't read it. But hopefully with this sort of further understanding

of the very specific way that this bill is designed -- look, my view actually is that evergreens with the secular purpose to respect certain traditions and certain times of the year could be appropriate.

My concern is a bill that only does that with a single tradition at a single point without discussion or flexibility with other ones. And this bill does so explicitly.

ACTING PRESIDENT GRIFFO: Senator DeFrancisco, why do you rise?

SENATOR DEFRANCISCO: I'd like to ask Senator Squadron a question if he'd yield.

ACTING PRESIDENT GRIFFO: Senator Squadron, will you yield for a question from Senator DeFrancisco?

SENATOR SQUADRON: I'd be happy to.

ACTING PRESIDENT GRIFFO: Senator DeFrancisco.

SENATOR DEFRANCISCO: If this bill became law, is the language of the bill the law or the language of the memorandum the law?

SENATOR SQUADRON: Through you, Mr. President, the law on the books, as I'm sure

Senator DeFrancisco is highly familiar, is the language in the legislation.

As I'm sure he's also familiar, when the law is interpreted by agencies, by courts, by citizens, in this case by state agencies, the legislative intent is I'm sure a concept that Senator DeFrancisco has become familiar with in his career.

SENATOR DEFRANCISCO: Would Senator Squadron yield to another question.

ACTING PRESIDENT GRIFFO: Senator Squadron, do you continue to yield?

SENATOR SQUADRON: I'd be happy to.

ACTING PRESIDENT GRIFFO: Senator DeFrancisco.

SENATOR DEFRANCISCO: Is the word "Christmas" used at all in the legislation in any location? Of the legislation, not the bill memo.

SENATOR SQUADRON: Through you, Mr. President, it is not explicitly used in the legislation. It is clearly defined, though, in the bill memo.

ACTING PRESIDENT GRIFFO: Senator Squadron, you want to continue on the bill?

SENATOR SQUADRON: No, thank you very much, Mr. President.

And to the bill sponsor, of course I will yield if he's still interested.

ACTING PRESIDENT GRIFFO: Senator Nozzolio, are you on the bill?

SENATOR NOZZOLIO: On the bill, Mr. President.

ACTING PRESIDENT GRIFFO: On the bill.

SENATOR NOZZOLIO: I wish to clarify some of the misconceptions that my colleagues have put forward on discussing this legislation.

First and foremost, the display of evergreen as a secular holiday decoration within a government building is permitted by the United States Supreme Court's decision in Skoros v. City of New York and the County of Allegheny case in the early 1980s. This is well-stated law that evergreen, whether it's in Christmas or in July, is allowed to be placed in a government building. And that it is a secular display, not a religious display per se. Menorahs and the Star and Crescent are also allowed in government

buildings.

The second issue brought forth by Senator Liz Krueger was one of safety with certain electrical devices. Well, Underwriters Laboratory sells appropriate Christmas decorations, held appropriate because Underwriters Laboratory tests them. And before selling those products, they have to meet certain fire code and fire resistance standards.

That's what's meant by safe electrical devices, one that would be sold to the public through the normal means of commerce. And Underwriters Laboratory is often the test and the standard for which those types of products are gauged.

Mr. President, this measure, simple and direct. Let's allow something fresh, something green, something live, something that is produced in New York to be part of government building decoration at the appropriate time. Allowed by the Supreme Court of the United States, allowed by Underwriters Laboratory as deemed as safe. Simple bill, simple answers. Let's vote.

Thank you, Mr. President.

ACTING PRESIDENT GRIFFO: Seeing and hearing no other Senator wishing to be heard, debate is closed.

The Secretary will ring the bell.

Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT GRIFFO: Announce the results.

THE SECRETARY: Ayes, 56. Nays, 3. Senators L. Krueger, C. Kruger and Squadron recorded in the negative.

Absent from voting: Senators Espaillat and Huntley.

ACTING PRESIDENT GRIFFO: The bill is passed.

The Secretary will read.

THE SECRETARY: Calendar Number 260, by Senator Ritchie, Senate Print 4054A, an act to amend the Agriculture and Markets Law.

SENATOR BRESLIN: Explanation.

ACTING PRESIDENT GRIFFO: An

explanation has been requested by Senator Breslin.

Senator Ritchie.

SENATOR RITCHIE: This amends the Agriculture and Markets Law by adding other frozen desserts made with wine. This bill would limit the percentage of alcohol in frozen desserts to not more than 5 percent alcohol by volume, prohibits its sale to persons under the age of 21, and requires product labeling and warning statements similar to those established for confectionery that contains alcohol.

ACTING PRESIDENT GRIFFO: Thank you.

Is there any other Senator wishing to be heard? Seeing none, debate is closed.

The Secretary will ring the bell.

Read the last section.

THE SECRETARY: Section 4. This act shall take effect on the 30th day.

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 59.

Absent from voting are Senators

Huntley and Espaillat.

ACTING PRESIDENT GRIFFO: The bill is passed.

Senator Libous, that concludes the controversial reading of the original calendar.

SENATOR LIBOUS: Thank you, Mr. President. At this time can we go to the noncontroversial reading of Senate Supplemental Calendar Number 41A.

ACTING PRESIDENT GRIFFO: The Secretary will read.

THE SECRETARY: Calendar Number 673, by Senator Maziarz, Senate Print 5367, an act to amend the Real Property Tax Law.

SENATOR BRESLIN: Lay it aside.

ACTING PRESIDENT GRIFFO: The bill is laid aside.

Senator Libous.

SENATOR LIBOUS: Mr. President, at this time may we go to the controversial reading of Supplemental Calendar Number 41A.

ACTING PRESIDENT GRIFFO: The Secretary will ring the bell for the controversial reading. And the Secretary will read.

THE SECRETARY: Calendar Number 673, by Senator Maziarz, Senate Print 5367, an act to amend the Real Property Tax Law.

SENATOR BRESLIN: Explanation.

ACTING PRESIDENT GRIFFO: An explanation has been requested by Senator Breslin.

Senator Maziarz.

SENATOR MAZIARZ: Thank you, Mr. President.

Just very briefly, this bill makes all new or improved electric generating facilities eligible for property tax abatements in the City of New York. All new or improved electric generating facilities in the City of New York.

There is another bill, sponsored I believe by Senator Lanza, that is somewhat limited in scope. This bill opens up the opportunity for these tax abatements to more facilities.

And as I'm sure everyone knows, particularly those who represent the city know that there is a need, and clearly the ISO just came out with a report that shows there's going

to be even greater need for more generation, more power in the downstate area. The long-term problem is transmission. There is a problem in the Utica/Rome region with transmission and then a problem south of Albany, down in the Hudson Valley, in transmitting of power.

So this is going to provide for incentives for more generation in the City of New York. Solar generation, wind, whatever is appropriate.

Thank you, Mr. President.

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

Senator Krueger.

SENATOR KRUEGER: Thank you. If the sponsor would please yield.

SENATOR MAZIARZ: Certainly.

ACTING PRESIDENT GRIFFO: Senator Maziarz yields, Senator Krueger.

SENATOR KRUEGER: I would like to let him have a drink of water and get the cough out of his throat first, if that's okay.

ACTING PRESIDENT GRIFFO: You can begin asking your question.

SENATOR KRUEGER: Certainly.

Senator Maziarz pointed out in his explanation of the bill that there are two bills and that this bill is being put forward because it would allow more potential energy plants to be included in the Industrial and Commercial Incentive Program exempted from city property tax. Can he tell me what the cost to the City of New York would be from his bill versus the cost to the City of New York from Senator Lanza's bill that he referenced as an alternative?

SENATOR MAZIARZ: Well, we can only come up with an approximate cost, Senator, because we have no idea how many generating facilities would take advantage of this program. But the approximate cost that we had was about $250 million.

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

ACTING PRESIDENT GRIFFO: The sponsor yields.

SENATOR KRUEGER: Thank you. It's a $250 million difference between Senator Lanza's bill's cost to the City of New York and Senator Maziarz's bill's cost to the City of New York?

SENATOR MAZIARZ: Mr. President, the answer is no. It's a total of $250 million, not in addition to the other bill.

The other bill has an Assembly sponsor. This bill does not.

ACTING PRESIDENT GRIFFO: Senator Krueger.

SENATOR KRUEGER: Thank you, Mr. President. If the sponsor then could clarify for me.

The other bill, which has a sponsor and actually has passed the Assembly, what would that cost the City of New York?

SENATOR MAZIARZ: I'm sorry, Mr. President, there was another conversation going on.

ACTING PRESIDENT GRIFFO: Senator Krueger, could you please repeat the question?

SENATOR KRUEGER: Certainly. Would Senator Maziarz tell me what the cost to the City of New York for the bill that passed the Assembly and is sponsored by Senator Lanza in this house would cost the City of New York?

SENATOR MAZIARZ: Again, Mr. President, through you. It would all depend

on how many -- it's a very difficult question to answer because you don't know how many companies are going to take advantage of the program. It's like a lot of the programs that we pass.

But again, we did make what I would say is more of a guesstimate than an estimate, and the other bill was about $200 million, Senator.

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

ACTING PRESIDENT GRIFFO: The sponsor yields, Senator Krueger.

SENATOR MAZIARZ: Yes, Mr. President.

SENATOR KRUEGER: Thank you.

And in Senator Lanza's bill, as I read it and the memo supporting it, there would be a savings to ratepayers of approximately a billion dollars over the next three years. And that is explicit within Senator Lanza's bill, S -- excuse me, I have to find Senator Lanza's bill number.

But my reading of Senator Maziarz's

bill is that there's no obligation to save the ratepayers the billion dollars. Is that correct?

SENATOR MAZIARZ: No, Mr. President, that's not correct.

I think that clearly, with Senator Lanza's bill, there is a savings to ratepayers. But again, Senator, it all depends on the number of companies, how many customers they serve, as to how much the savings would be to the ratepayers.

We would hope that this bill, because it's a little wider in scope than Senator Lanza's, that perhaps -- even though Senator Lanza's bill, which we're not debating today, is an excellent bill, an excellent bill -- you know, I think it would all depend on the number that took advantage of the program. But there would be savings to the ratepayers in both bills.

SENATOR KRUEGER: Well, when I read --

SENATOR MAZIARZ: If under Senator Lanza's bill more companies took advantage of the program, then there would be more savings to ratepayers than there would be under this

particular bill. I presume that there's probably only going to be one bill that passes both houses.

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

SENATOR MAZIARZ: Yes, Mr. President.

ACTING PRESIDENT GRIFFO: The sponsor yields.

SENATOR KRUEGER: I'm just going to read a paragraph from the memo of opposition to his bill from the City of New York and then follow up through with the question.

"It is worth noting that the beneficiaries of this legislation" -- we're referring to Senator Maziarz's bill, 5367 -- "have argued to FERC that, even if the state grants them an as-of-right tax exemption, the increased rates approved in January should remain in place. They would like both a taxpayer-funded, 100 percent property tax exemption for 15 years and substantial electric rate increases borne by New York City ratepayers."

Given that this is the analysis and position of the City of New York and this bill would only impact the City of New York, would only cost the City of New York in lost property tax collection, and would only impact the ratepayers of New York City -- who may face an additional billion dollars in utility costs over the next three years -- why should we move a bill not supported by the City of New York, formally opposed by the City of New York, that has all of these ramifications only for the City of New York?

SENATOR MAZIARZ: Mr. President, through you. The answer to Senator Krueger's question is the mayor is not always right.

(Laughter.)

SENATOR KRUEGER: I'm so sorry, my staff were saying something to me at the punch line. Could you repeat the punch line?

SENATOR MAZIARZ: Let me repeat it. Let me repeat this.

ACTING PRESIDENT GRIFFO: It was very succinct.

SENATOR MAZIARZ: Let me repeat this. The answer to Senator Krueger's question

is the mayor is not always right.

ACTING PRESIDENT GRIFFO: Senator Krueger.

SENATOR KRUEGER: Mr. President, through you.

SENATOR MAZIARZ: The record should show there are several of my colleagues shaking their heads in agreement over there. I don't know -- the mayor better not be watching.

ACTING PRESIDENT GRIFFO: Senator Krueger.

SENATOR KRUEGER: Mr. President, for the record, I agree. The mayor is absolutely not always right.

However, we have a Governor's program bill, which is Senator Lanza's bill, that I was hoping we would take up on the floor sometime soon, which has the blessing of the City of New York and the Governor of New York.

But even skipping the part where Senator Maziarz might say "but even the Governor is not always right," to continue my questioning. In almost every if not every property tax bill, abatement bill that we have done in this legislative house as long as I have

been here -- and there were a whole group of them that went through the Finance Committee today, allowing exemptions from property taxes -- it was at local option. Is Senator Maziarz's bill at local option?

ACTING PRESIDENT GRIFFO: Is the bill at local option, she asked, Senator Maziarz.

SENATOR MAZIARZ: I'm sorry. I'm sorry, Mr. President.

Senator Krueger, as you know, in the Finance Committee you asked that same question, and counsel there indicated that it was not. So I could only tell you what counsel instructed me, that it was not.

ACTING PRESIDENT GRIFFO: Senator Krueger.

SENATOR KRUEGER: Thank you, Mr. President.

That's right, I asked it in Finance and I expected to get the same answer here, but I wanted everyone to hear the answer. Because more of us listen during the chamber debates than in committee.

SENATOR MAZIARZ: I wasn't critical of you for asking it twice, I just

wanted to point out that the answer was the same.

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

ACTING PRESIDENT GRIFFO: Senator Krueger on the bill.

SENATOR KRUEGER: Not only am I in strong opposition to this bill and urge all of my colleagues to vote no, but I would hazard to guess that if I were to submit a bill to the floor of the Senate that was going to force property tax abatements in Senator Maziarz's district, not do anything to decrease the utility bills of the consumers of electricity in Senator Maziarz's district, and that I didn't care whether his county exec or his mayors were strongly opposed, that I would hear quite a bit of opposition on the floor of the Senate, both in committee and here in the chambers, that I had absolutely no right to force decisions on a locality, that my vote would only impact his district, his property taxes, and his utility bill payers with no impact to the State of New York. I am quite sure that I would hear very strong objection from my colleagues.

And so I strongly object. The City

Council has not asked for this bill, whether or not a home rule message is required. The mayor of New York City -- even though I am saying you're right, he's not always right -- he is saying this is going to cost the City of New York too much money for no value to the ratepayers of the City of New York.

He has worked with the Governor on a program bill supported by the City of New York, by the Governor, passed already by the Assembly, and I appreciate supported by Senator Lanza. And I sincerely do not understand why we're not passing the correct bill that is asked for and needed by the City of New York but instead are asked to support a bill that will do harm to the City of New York with no value to the ratepayers.

So not only do I strongly urge a no vote, I hope that every member of this house, regardless of what side of the aisle they sit on, thinks about whether they want to vote yes despite the fact that almost all of them have spoken either on the floor or in public discussion about the importance of home rule and the importance of not sending unfunded mandates to our localities -- and again, if this was being

done to their district against their district's wishes, would be voraciously fighting against the bill.

So I hope everybody will be honest and consistent in their philosophy of how we move legislation that has local impact, negative local impact, without the support of anyone in the locality. I'm hoping to see many hands raised no on this bill.

Thank you, Mr. President.

ACTING PRESIDENT GRIFFO: Senator Gianaris.

SENATOR GIANARIS: Thank you, Mr. President. Would the sponsor yield for a few questions.

ACTING PRESIDENT GRIFFO: Senator Maziarz, do you yield?

SENATOR MAZIARZ: Sure, Mr. President.

ACTING PRESIDENT GRIFFO: The Senator yields.

SENATOR GIANARIS: Would the sponsor agree that the primary purpose of this legislation is to avoid a rate increase approved by the Federal Energy Regulatory Commission in

the last few months that would result in a 12 percent increase in ratepayers' bills?

SENATOR MAZIARZ: Well, it's to ensure that there's more generation in the city, which needs more generation; that there's more investment in the city, more job creation in the city, and that the ratepayers do benefit from this, yes.

SENATOR GIANARIS: Mr. President, if the sponsor would continue to yield.

SENATOR MAZIARZ: Certainly, Mr. President.

ACTING PRESIDENT GRIFFO: The sponsor yields.

SENATOR GIANARIS: Is the sponsor aware of the FERC decision in January that would result in an increase in ratepayers' bills of as much as 12 percent?

SENATOR MAZIARZ: Yes, I am.

SENATOR GIANARIS: And is this bill designed to specifically address that decision, or is it more generally about encouraging generation?

SENATOR MAZIARZ: I would say both, Senator.

SENATOR GIANARIS: Okay. And, Mr. President, if the sponsor would continue to yield.

SENATOR MAZIARZ: Yes.

ACTING PRESIDENT GRIFFO: The sponsor yields.

SENATOR GIANARIS: As it relates to the FERC decision -- let's deal with those two issues separately, if we can -- is it the sponsor's understanding that the FERC decision in January was related only to so-called peaker plants, or plants that are designed to fill in the gaps in generation at peak demand times?

SENATOR MAZIARZ: I think -- and I don't have the decision in front of me, but I have read it. But I think they were dealing not just with the peaker plants, but I think that they were dealing with the problem of lack of generation going on into the future.

I think that they're in contact with the ISO here in the state and that they're very concerned, again, about something we're not here to discuss, more of the transmission problems. But that I think that FERC actually sees the potential for problems in the downstate

region as much more urgent even than the ISO does.

So I'm -- I mean, I think that they might have been focused on the peaker plants, but I think they see that there's a big problem coming, Senator.

SENATOR GIANARIS: Well, Mr. President, whether FERC saw the bigger problem or not, it's my understanding that the January decision was very specifically designed to address the fact that new peaking power plants would not be receiving the guaranteed property tax abatements.

And therefore, if my understanding is correct, I would ask the sponsor why Senator Lanza's bill, which deals specifically and only with providing this incentive for the peaking plants, is not a better approach and a more limited approach which would not provide a windfall to the energy companies that your bill would provide.

SENATOR MAZIARZ: Well, as I think I've said -- through you, Mr. President, I said to our colleague Senator Krueger I think Senator Lanza's bill is an excellent bill. And, you

know, if it were before the house I would be in support of it. But I think this identifies and will take care of a larger, more looming problem than that particular piece of legislation.

But I mean, again, if that were to be before the house -- and it does have a sponsor in the other house, which this bill does not.

SENATOR GIANARIS: And, Mr. President, if the sponsor would continue to yield.

SENATOR MAZIARZ: Yes, Mr. President. Yes.

SENATOR GIANARIS: We're now on to the second part of this, which is just more generally, in the longer term, encouraging generation. Is the sponsor aware of what the estimates are as to when generation would no longer be sufficient in New York?

SENATOR MAZIARZ: Well, through you, Mr. President, the ISO just came out with a report that said that the problems are going to become more apparent in 2015. Senator Carlucci and Senator Ball and myself and Senator Parker just held a hearing, and the ISO testified -- and this was just last week, last Thursday, actually,

in Rockland County. And the ISO was there, and they were testifying.

And I believe -- again, we were there on a wholly different topic, but they reference this report a lot, the ISO does. Because I think they see the problem is this looming disaster coming and, quite frankly, nobody doing anything about it.

Now, last week during a debate on another energy-related bill, the Article X bill, someone on your side of the aisle -- and I don't recall who it was -- said that, you know, it -- they referenced the ISO report and said it's not going to be a problem till 2020. And those people who testified at our hearing said, you know, that it's coming even sooner than that.

And, you know, the problem is, Senator, if we don't start building soon or doing something soon, you know, you can't in -- let's say the problem is not going to be until 2020. You can't start building a power plant in 2019 to take care of that problem. You have to start soon.

And I'm sorry for the long answer, but I think it's a much more global issue.

SENATOR GIANARIS: I do appreciate the answer. And if the sponsor would continue to yield, I would --

SENATOR MAZIARZ: Certainly, Mr. President.

SENATOR GIANARIS: I heard his answer earlier that the mayor of New York City is not right. And we can certainly agree that he's not always correct. But would the sponsor agree that the New York ISO is also not always correct, and there are other estimates that bring the year of the needed additional generation farther out into the future than 2015 or 2020, for that matter?

Would you like me to repeat the question?

SENATOR MAZIARZ: Would you, please?

SENATOR GIANARIS: The question is whether you would agree not only is the mayor not always correct, but also ISO is not always correct, and that there are other estimates that would take the year at which we would need additional generation much farther out into the future than either 2015 and 2020.

SENATOR MAZIARZ: I would agree with Senator Gianaris's characterization that the ISO, like the mayor, is not always correct.

But I would also like to point out for Senator Gianaris that, you know, some of these peaker plants are what some people term -- some people, not necessarily myself -- dirty plants. Oil plants. Usually they're a combination of gas and oil and -- you know, depending on pricing and so forth.

And what this bill will do is encourage and incentivize the construction of plants that are fueled, you know, through solar energy or wind or cogeneration. Something to get rid of the -- what some people term the dirty plants. And just to be fair, Senator Gianaris, I think that's a goal of both this legislation and Senator Lanza's legislation.

SENATOR GIANARIS: Thank you, Senator.

Mr. President, on the bill.

ACTING PRESIDENT GRIFFO: Senator Gianaris on the bill.

SENATOR GIANARIS: This bill attempts to do two things, and I think it's

misguided in both.

Number one, it attempts to deal with a federal decision that would increase rates that was issued in January. Which, as I understand it, was intended to deal only with the problem faced by peaking power plants. Yet this bill would apply the tax abatement to all power plants, thus providing a windfall in terms of tax benefits to an industry that certainly doesn't need it at a time of severe budgetary problems. Not only do we experience them here at the state, but New York City has its own budget problems.

And guaranteeing tax abatements for an energy industry that is experiencing record profits is something that I think is beyond the pale as we sit here, day in and day out, listening to the significant budget problems that we have throughout this state and throughout our localities.

If we are to do this to save the taxpayers this additional rate hike, which I certainly support, we should do it in as limited a fashion as possible, as typified in Senator Lanza's bill, which already passed the Assembly and has the support of the Governor. If we were

to pass that bill today, it would become law in a number of days and would save the ratepayers this rate hike without providing additional benefits to the energy industry which this bill would provide.

Let's talk about the second thing it also does, which is attempt to incentivize generation that is not needed for, in all likelihood, more than a decade.

I remember when I was first elected to the Assembly 10 years ago and California was having brownouts and all sorts of problems that were caused in that state, and the industry took every opportunity to ring the alarm and sound the panic button and say we'd better build more in New York because we're going to run out, we're going to be like California, we're going to have blackouts and we don't want that.

And I know a thing or two about blackouts. We had a blackout in western Queens in 2006 that lasted 10 days.

But that had nothing to do with generation. All those warnings from 2001 turned out to be false. Now the industry itself is telling us we have several years before we need

additional generation. We had 11 so-called temporary plants jammed down our throats at 79.9 megawatts each, which we talked about when we voted on the Article X bill last week, in the name of avoiding the problems of California because we were running out of electricity in New York. It turned out not to be true.

We have time to do this intelligently. We have time to do it without wasting valuable taxpayer resources at a critical time of budget shortages to an industry that's got billions of dollars in profits in its pockets.

We should save the ratepayers money from the misguided FERC decision. We should do it by passing Senator Lanza's bill as quickly as possible. And that's why I encourage all my colleagues to vote no on this bill today.

Thank you, Mr. President.

ACTING PRESIDENT GRIFFO: Thank you, Senator Gianaris.

Is there any other Senator wishing to be heard? Seeing none, debate is closed.

The Secretary will ring the bell.

Read the last section.

THE SECRETARY: Section 10. This act shall take effect immediately.

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT GRIFFO: Senator Krueger to explain her vote.

SENATOR KRUEGER: Thank you.

I think I did a pretty good job of explaining my vote earlier, and yet I did not seem to convince people. So one more small fact. According to the City of New York, the Senator Lanza bill we are not voting on today is estimated to cost the city $10 million in lost property taxes. And Senator Maziarz said that his bill would lose the City of New York $250 million.

So again, this is a big whopper of an unfunded mandate to the City of New York without their having any support whatsoever for it. So again, maybe someone else wants to raise their hand no.

Thank you, Mr. President.

ACTING PRESIDENT GRIFFO: Senator Krueger to be recorded in the negative.

Announce the results.

THE SECRETARY: Ayes, 41. Nays, 18. Voting in the negative are Senators Avella, Breslin, Dilan, Duane, Gianaris, Hassell-Thompson, Kennedy, L. Krueger, C. Kruger, Oppenheimer, Parker, Perkins, Rivera, Savino, Serrano, Smith, Squadron and Stewart-Cousins.

Absent from voting are Senators Adams and Espaillat.

Ayes, 41. Nays, 18.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Also Senator Sampson recorded in the negative.

ACTING PRESIDENT GRIFFO: Announce the results.

THE SECRETARY: Ayes, 40. Nays, 19.

ACTING PRESIDENT GRIFFO: The bill is passed.

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

SENATOR LIBOUS: Mr. President, could we go back to motions and resolutions.

ACTING PRESIDENT GRIFFO: We will

return to motions and resolutions.

Senator Libous.

SENATOR LIBOUS: On behalf of Senator Maziarz, Mr. President, on page 44 I offer the following amendments to Calendar Number 526, Senate Print 508, and ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT GRIFFO: The amendments are received, and the bill will retain its place on third reading.

SENATOR LIBOUS: And, Mr. President, on behalf of Senator Hannon, on page 32 I offer the following amendments to Calendar Number 389, Senate Print 4376A, and I ask that said bill retain its place on the Third Reading Calendar.

ACTING PRESIDENT GRIFFO: The amendments are received, and the bill will retain its place on third reading.

Senator Libous.

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

ACTING PRESIDENT GRIFFO: There is no further business.

SENATOR LIBOUS: Thank you,

Mr. President.

There being no further business before the Senate today, I move that we adjourn until Tuesday, May 17th, at 3:00 p.m.

ACTING PRESIDENT GRIFFO: On motion, the Senate stands adjourned until Tuesday, May 17th, at 3:00 p.m. Senate adjourned.

(Whereupon, at 4:58 p.m., the Senate adjourned.)