

1 NEW YORK STATE SENATE

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3
4 THE STENOGRAPHIC RECORD

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8
9 ALBANY, NEW YORK

10 June 1, 2011

11 3:17 p.m.

12
13
14 REGULAR SESSION

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18 SENATOR JOSEPH E. ROBACH, Acting President

19 FRANCIS W. PATIENCE, Secretary

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

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

4 I ask all present to please rise
5 and repeat the Pledge of Allegiance with me.

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

9 ACTING PRESIDENT ROBACH: Our
10 invocation today will be given by Pastor
11 Jonathan Shaw, Sr., of the Crown Ministries
12 International of Brooklyn, New York.

13 PASTOR SHAW: Eternal Father,
14 our Lord, we come before You this day
15 thanking You for the grace that You have
16 given us to behold another day which we have
17 never seen before.

18 It is now, O Lord, that we ask
19 upon You to grant us Thy favor, Thy grace,
20 Thy ambition, that we may lead and that we
21 may guide in truth and righteousness. As we
22 follow You, we know that we shall be led
23 properly. As You lead us, we shall be led.
24 As You keep us, we shall be kept.

25 We thank You for this. We thank

1 You for Your love and kindness. We thank You
2 for Your generosity. It is in Your precious
3 name we pray.

4 Amen.

5 ACTING PRESIDENT ROBACH: The
6 reading of the Journal.

7 THE SECRETARY: In Senate,
8 Tuesday, May 31st, the Senate met pursuant to
9 adjournment. The Journal of Monday,
10 May 30th, was read and approved. On motion,
11 Senate adjourned.

12 ACTING PRESIDENT ROBACH:
13 Without objection, the Journal stands
14 approved as read.

15 Presentation of petitions.

16 Messages from the Assembly.

17 The Secretary will read.

18 THE SECRETARY: On page 25,
19 Senator Oppenheimer moves to discharge, from
20 the Committee on Agriculture, Assembly Bill
21 Number 6373A and substitute it for the
22 identical Senate Bill Number 3911A, Third
23 Reading Calendar 349.

24 ACTING PRESIDENT ROBACH:
25 Substitution ordered.

1 THE SECRETARY: On page 42, Senator
2 Farley moves to discharge, from the Committee on
3 Health, Assembly Bill Number 3338 and substitute
4 it for the identical Senate Bill Number 4566,
5 Third Reading Calendar 596.

6 ACTING PRESIDENT ROBACH:
7 Substitution ordered.

8 THE SECRETARY: And on page 48,
9 Senator Savino moves to discharge, from the
10 Committee on Finance, Assembly Bill Number 6823
11 and substitute it for the identical Senate Bill
12 Number 4504, Third Reading Calendar 668.

13 ACTING PRESIDENT ROBACH:
14 Substitution ordered.

15 Messages from the Governor.

16 Reports of standing committees.

17 Reports of select committees.

18 Communications and reports from
19 state officers.

20 Motions and resolutions.

21 Senator Breslin.

22 SENATOR BRESLIN: Thank you,
23 Mr. President.

24 On behalf of Senator Perkins, I wish
25 to call up Senate Print Number 3252A, recalled

1 from the Assembly, which is now at the desk.

2 ACTING PRESIDENT ROBACH: The
3 Secretary will read.

4 THE SECRETARY: Calendar Number
5 192, by Senator Perkins, Senate Print 3252A, an
6 act to authorize certain healthcare
7 professionals.

8 SENATOR BRESLIN: Mr. President, I
9 now move to reconsider the vote by which this
10 bill was passed.

11 ACTING PRESIDENT ROBACH: The
12 Secretary will call the roll on reconsideration.

13 (The Secretary called the roll.)

14 THE SECRETARY: Ayes, 47.

15 SENATOR BRESLIN: Mr. President, I
16 now offer the following amendments.

17 ACTING PRESIDENT ROBACH: The
18 amendments are received.

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

21 ACTING PRESIDENT ROBACH: Thank
22 you.

23 Senator Valesky.

24 SENATOR VALESKY: Mr. President, on
25 behalf of Senator Klein, on page 23 I offer the

1 following amendments to Calendar Number 312,
2 Senate Print 3992, and ask that said bill retain
3 its place on the Third Reading Calendar.

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

7 Senator Libous.

8 SENATOR LIBOUS: Mr. President, I
9 have a number of motions that I need to do at
10 this time.

11 On behalf of Senator McDonald, I
12 wish to call up his bill, Print Number 2152,
13 recalled from the Assembly, which is now at the
14 desk.

15 ACTING PRESIDENT ROBACH: The
16 Secretary will read.

17 THE SECRETARY: Calendar Number
18 101, by Senator McDonald, Senate Print 2152, an
19 act to amend Chapter 542 of the Laws of 1997.

20 SENATOR LIBOUS: Mr. President, I
21 now move to reconsider the vote by which this
22 bill was passed.

23 ACTING PRESIDENT ROBACH: Call the
24 roll on reconsideration.

25 (The Secretary called the roll.)

1 THE SECRETARY: Ayes, 48.

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

4 ACTING PRESIDENT ROBACH: The
5 amendments are received.

6 SENATOR LIBOUS: Mr. President, on
7 behalf of Senator Young, I call up her bill,
8 Number 3499, recalled from the Assembly, which is
9 now at the desk.

10 ACTING PRESIDENT ROBACH: the
11 Secretary will read.

12 THE SECRETARY: Calendar Number
13 393, by Senator Young, Senate Print 3499, an act
14 to amend the Town Law.

15 SENATOR LIBOUS: I now move to
16 reconsider the vote by which this bill was
17 passed.

18 ACTING PRESIDENT ROBACH: Call the
19 roll on reconsideration.

20 (The Secretary called the roll.)

21 THE SECRETARY: Ayes, 48.

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

24 ACTING PRESIDENT ROBACH: The
25 amendments are received.

1 SENATOR LIBOUS: Mr. President, on
2 behalf of Senator Libous, I wish to call up my
3 bill, Print Number 2462, recalled from the
4 Assembly, which is now at the desk.

5 ACTING PRESIDENT ROBACH: The
6 Secretary will read.

7 THE SECRETARY: Calendar Number
8 106, by Senator Libous, Senate Print 2462, an act
9 to amend the Environmental Conservation Law.

10 SENATOR LIBOUS: Mr. President, I
11 now move to reconsider the vote by which this
12 bill was passed.

13 ACTING PRESIDENT ROBACH: Call the
14 roll on reconsideration.

15 (The Secretary called the roll.)

16 THE SECRETARY: Ayes, 51.

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

19 ACTING PRESIDENT ROBACH: The
20 amendments are received.

21 SENATOR LIBOUS: Mr. President, on
22 behalf of Senator Gallivan, I move the following
23 bill be discharged from its respective committee
24 and be recommitted with instructions to strike
25 the enacting clause. That would be Senate Print

1 3454.

2 ACTING PRESIDENT ROBACH: So
3 ordered.

4 SENATOR LIBOUS: And,
5 Mr. President, on behalf of Senator Maziarz, I
6 would move that his bill be discharged from its
7 respective committee and be recommitted with
8 instructions to strike the enacting clause.
9 That's Senate Print 202.

10 ACTING PRESIDENT ROBACH: So
11 ordered.

12 SENATOR LIBOUS: Mr. President, I
13 have a number of amendments that I'm going to
14 offer up to the following Third Reading Calendar
15 bills, if I may.

16 On behalf of Senator Saland, on
17 page 17, Calendar Number 172, Senate Print 1415A.

18 Senator Seward, page 18, Calendar
19 Number 199, Senate Print 2370.

20 Senator Ball, page 38, Calendar
21 Number 541, Senate Print 4554.

22 Senator DeFrancisco, page 41,
23 Calendar Number 581, Senate Print 2857A.

24 Senator Hannon, page 42, Calendar
25 Number 598, Senate Print 4991.

1 Senator McDonald, page 42, Calendar
2 Number 602, Senate Print 2153.

3 Senator Johnson, page 42, Calendar
4 Number 606, Senate Print 4740B.

5 Senator Ritchie, page 43, Calendar
6 Number 620, Senate Print 5168.

7 Senator Maziarz, page 48, Calendar
8 Number 672, Senate Print 4253.

9 Senator Saland, page 53, Calendar
10 Number 731, Senate Print 4873.

11 Senator Young, page 55, Calendar
12 Number 751, Senate Print Number 4621.

13 Mr. President, I now move that these
14 bills will retain their place on the Third
15 Reading Calendar.

16 ACTING PRESIDENT ROBACH: The
17 amendments are received and adopted, and the
18 bills will retain their place on the Third
19 Reading Calendar.

20 SENATOR LIBOUS: And,
21 Mr. President, I apologize, but I've been handed
22 some more amendments. If I may, these amendments
23 will be offered on the following Third Reading
24 Calendar bills.

25 Senator Young, page 56, Calendar

1 Number 764, Senate Print 4758.

2 Senator LaValle, page 57, Calendar

3 Number 777, Senate Print 4546.

4 Senator Martins, page 57, Calendar

5 Number 780, Senate Print 5055.

6 And Senator Hannon, page 58,

7 Calendar Number 794, Senate Print 4894.

8 I move that these bills retain their
9 place on the Third Reading Calendar.

10 ACTING PRESIDENT ROBACH: The
11 amendments are received and adopted, and the
12 bills will retain their place on the Third
13 Reading Calendar.

14 SENATOR LIBOUS: Mr. President, at
15 this time I believe there are three privileged
16 resolutions at the desk by Senator Skelos. May
17 we have the titles read and move for their
18 immediate adoption.

19 ACTING PRESIDENT ROBACH: The
20 Secretary will read.

21 THE SECRETARY: Legislative
22 resolution by Senator Skelos, commending Ann and
23 Elliot Taub upon the occasion of their
24 designation for special recognition by
25 Temple Avodah of Oceanside as Honorees of its

1 Twilight Journal Dinner Dance on June 5, 2011.

2 Legislative resolution by Senator
3 Skelos, commending Anita and Louis Hoine upon the
4 occasion of their designation for special
5 recognition by Temple Avodah of Oceanside as
6 Honorees of its Twilight Journal Dinner Dance on
7 June 5, 2011.

8 And legislative resolution by
9 Senator Skelos, commending Morris Lipton upon the
10 occasion of his designation for special
11 recognition by Temple Avodah of Oceanside as an
12 Honoree of its Twilight Journal Dinner Dance on
13 June 5, 2011.

14 ACTING PRESIDENT ROBACH: The
15 question is on the resolutions. All in favor
16 signify by saying aye.

17 (Response of "Aye.")

18 ACTING PRESIDENT ROBACH: Opposed,
19 nay.

20 (No response.)

21 ACTING PRESIDENT ROBACH: The
22 resolutions are adopted.

23 Senator Libous.

24 SENATOR LIBOUS: Mr. President, I
25 believe Senator Breslin has a privileged

1 resolution at the desk. Could we have the title
2 read and move for its immediate adoption.

3 ACTING PRESIDENT ROBACH: The
4 Secretary will read.

5 THE SECRETARY: Legislative
6 Resolution Number 2164, by Senator Breslin,
7 commending Albany County Executive Michael G.
8 Breslin upon the occasion of his designation for
9 special recognition for his dedication to the
10 County of Albany, New York.

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

14 (Response of "Aye.")

15 ACTING PRESIDENT ROBACH: Opposed,
16 nay.

17 (No response.)

18 ACTING PRESIDENT ROBACH: The
19 resolution is adopted.

20 Senator Libous.

21 SENATOR LIBOUS: Mr. President,
22 there's another privileged resolution at the desk
23 by Senator Skelos, Number 2121. Could we have
24 the title read and move for its immediate
25 adoption.

1 ACTING PRESIDENT ROBACH: The
2 Secretary will read.

3 THE SECRETARY: Legislative
4 Resolution Number 2121, by Senator Skelos,
5 commemorating the 75th Anniversary of the
6 National Council of Jewish Women, Peninsula
7 Section, and honoring Joan Riegel, recipient of
8 its prestigious Hannah G. Solomon Award.

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

12 (Response of "Aye.")

13 ACTING PRESIDENT ROBACH: Opposed,
14 nay.

15 (No response.)

16 ACTING PRESIDENT ROBACH: The
17 resolution is adopted.

18 Senator Libous.

19 SENATOR LIBOUS: Mr. President, at
20 this time could we take up the reading of the
21 noncontroversial calendar.

22 ACTING PRESIDENT ROBACH: The
23 Secretary will read.

24 THE SECRETARY: Calendar Number 25,
25 by Senator Marcellino, Senate Print 947, an act

1 to amend the Criminal Procedure Law.

2 SENATOR BRESLIN: Lay it aside.

3 ACTING PRESIDENT ROBACH: The bill
4 is laid aside.

5 THE SECRETARY: Calendar Number 46,
6 by Senator Maziarz, Senate Print 234, an act to
7 amend the Arts and Cultural Affairs Law.

8 ACTING PRESIDENT ROBACH: A
9 home-rule message is at the desk.

10 SENATOR BRESLIN: Lay it aside.

11 ACTING PRESIDENT ROBACH: The bill
12 is laid aside.

13 THE SECRETARY: Calendar Number
14 138, by Senator Fuschillo, Senate Print 3451A, an
15 act to amend the Penal Law.

16 SENATOR BRESLIN: Lay it aside.

17 ACTING PRESIDENT ROBACH: The bill
18 is laid aside.

19 THE SECRETARY: Calendar Number
20 243, by Senator Grisanti, Senate Print 3791, an
21 act to amend the Environmental Conservation Law.

22 SENATOR BRESLIN: Lay it aside.

23 ACTING PRESIDENT ROBACH: The bill
24 is laid aside.

25 THE SECRETARY: Calendar Number

1 255, by Senator Griffo, Senate Print 3641A, an
2 act to amend the Highway Law.

3 SENATOR BRESLIN: Lay it aside.

4 ACTING PRESIDENT ROBACH: The bill
5 is laid aside.

6 THE SECRETARY: Calendar Number
7 309, by Senator Grisanti, Senate Print 2877A, an
8 act to amend the Environmental Conservation Law.

9 SENATOR BRESLIN: Lay it aside.

10 ACTING PRESIDENT ROBACH: The bill
11 is laid aside.

12 THE SECRETARY: Calendar Number
13 320, by Senator Fuschillo, Senate Print 4070, an
14 act to amend the Vehicle and Traffic Law.

15 SENATOR BRESLIN: Lay it aside.

16 ACTING PRESIDENT ROBACH: The bill
17 is laid aside.

18 THE SECRETARY: Calendar Number
19 347, by Senator LaValle, Senate Print 3237, an
20 act to amend the Agriculture and Markets Law.

21 SENATOR BRESLIN: Lay it aside.

22 ACTING PRESIDENT ROBACH: The bill
23 is laid aside.

24 THE SECRETARY: Calendar Number
25 348, by Senator DeFrancisco, Senate Print 3317,

1 an act to amend the Agriculture and Markets Law.

2 SENATOR BRESLIN: Lay it aside.

3 ACTING PRESIDENT ROBACH: The bill
4 is laid aside.

5 THE SECRETARY: Calendar Number
6 349, substituted earlier today by Member of the
7 Assembly Cahill, Senate Print 6373A, an act to
8 amend the Agriculture and Markets Law.

9 SENATOR BRESLIN: Lay it aside.

10 ACTING PRESIDENT ROBACH: The bill
11 is laid aside.

12 THE SECRETARY: Calendar Number
13 383, by Senator Bonacic, Senate Print 3579, an
14 act to amend the Rural --

15 SENATOR BRESLIN: Lay it aside.

16 ACTING PRESIDENT ROBACH: The bill
17 is laid aside.

18 THE SECRETARY: Calendar Number
19 415, by Senator Klein, Senate Print 1677, an act
20 to amend the Executive Law.

21 SENATOR BRESLIN: Lay it aside.

22 ACTING PRESIDENT ROBACH: The bill
23 is laid aside.

24 THE SECRETARY: Calendar Number
25 427, by Senator Young, Senate Print 2835, an act

1 to amend the Criminal Procedure Law.

2 SENATOR BRESLIN: Lay it aside.

3 ACTING PRESIDENT ROBACH: The bill
4 is laid aside.

5 THE SECRETARY: Calendar Number
6 438, by Senator Savino, Senate Print 2138, an act
7 to amend the Workers' Compensation Law.

8 SENATOR BRESLIN: Lay it aside.

9 ACTING PRESIDENT ROBACH: Lay the
10 bill aside.

11 THE SECRETARY: Calendar Number
12 523, by Senator Griffo, Senate Print 4803, an act
13 to amend the Public Health Law.

14 SENATOR BRESLIN: Lay it aside.

15 ACTING PRESIDENT ROBACH: The bill
16 is laid aside.

17 THE SECRETARY: Calendar Number
18 547, by Senator Griffo, Senate Print 4521, an act
19 to amend the Public Authorities Law.

20 SENATOR BRESLIN: Lay it aside.

21 ACTING PRESIDENT ROBACH: The bill
22 is laid aside.

23 THE SECRETARY: Calendar Number
24 556, by Senator Nozzolio, Senate Print 464, an
25 act to amend the Penal Law.

1 SENATOR BRESLIN: Lay it aside.

2 ACTING PRESIDENT ROBACH: The bill
3 is laid aside.

4 THE SECRETARY: Calendar Number
5 557, by Senator Marcellino, Senate Print 946, an
6 act to amend the Penal Law.

7 SENATOR BRESLIN: Lay it aside.

8 ACTING PRESIDENT ROBACH: The bill
9 is laid aside.

10 THE SECRETARY: Calendar Number
11 558, by Senator Golden, Senate Print 1991, an act
12 to amend the Penal Law.

13 SENATOR BRESLIN: Lay it aside.

14 ACTING PRESIDENT ROBACH: The bill
15 is laid aside.

16 THE SECRETARY: Calendar Number
17 561, by Senator Saland, Senate Print 4092, an act
18 to amend the Criminal Procedure Law.

19 ACTING PRESIDENT ROBACH: Read the
20 last section.

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

23 ACTING PRESIDENT ROBACH: Call the
24 roll.

25 (The Secretary called the roll.)

1 THE SECRETARY: Ayes, 59.

2 ACTING PRESIDENT ROBACH: The bill
3 is passed.

4 THE SECRETARY: Calendar Number
5 568, by Senator Farley, Senate Print 4564, an act
6 to legalize, validate and ratify.

7 SENATOR BRESLIN: Lay it aside.

8 ACTING PRESIDENT ROBACH: The bill
9 is laid aside.

10 THE SECRETARY: Calendar Number
11 596, substituted earlier today by Member of the
12 Assembly Gottfried, Assembly Print 3338, an act
13 to amend the Public Health Law.

14 SENATOR BRESLIN: Lay it aside.

15 ACTING PRESIDENT ROBACH: The bill
16 is laid aside.

17 THE SECRETARY: Calendar Number
18 616, by Senator Ball, Senate Print 5270, an act
19 to amend the Penal Law.

20 SENATOR BRESLIN: Lay it aside.

21 ACTING PRESIDENT ROBACH: The bill
22 is laid aside.

23 THE SECRETARY: Calendar Number
24 630, by Senator Maziarz, Senate Print 3793, an
25 act authorizing the Town of Carlton.

1 ACTING PRESIDENT ROBACH: There is
2 a home-rule message at the desk.

3 SENATOR BRESLIN: Lay it aside.

4 ACTING PRESIDENT ROBACH: The bill
5 is laid aside.

6 THE SECRETARY: Calendar Number
7 636, by Senator Marcellino, Senate Print 4229 --

8 SENATOR BRESLIN: Lay it aside.

9 ACTING PRESIDENT ROBACH: The bill
10 is laid aside.

11 THE SECRETARY: Calendar Number
12 668, substituted earlier today by Member of the
13 Assembly Paulin, Assembly Print 6823 --

14 SENATOR BRESLIN: Lay it aside.

15 ACTING PRESIDENT ROBACH: The bill
16 is laid aside.

17 THE SECRETARY: Calendar Number
18 684, by Senator Grisanti, Senate Print 2650, an
19 act to amend the Environmental Conservation Law.

20 SENATOR BRESLIN: Lay it aside.

21 ACTING PRESIDENT ROBACH: The bill
22 is laid aside.

23 THE SECRETARY: Calendar Number
24 732, by Senator Saland, Senate Print 4921, an act
25 to amend the Education Law.

1 SENATOR BRESLIN: Lay it aside.

2 ACTING PRESIDENT ROBACH: The bill
3 is laid aside.

4 THE SECRETARY: Calendar Number
5 753, by Senator Young, Senate Print 5210, an act
6 to amend the Public Health Law.

7 ACTING PRESIDENT ROBACH: Read the
8 last section.

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

11 ACTING PRESIDENT ROBACH: Call the
12 roll.

13 (The Secretary called the roll.)

14 ACTING PRESIDENT ROBACH: Call the
15 roll.

16 (The Secretary called the roll.)

17 THE SECRETARY: Ayes, 60.

18 ACTING PRESIDENT ROBACH: The bill
19 is passed.

20 Senator Libous, that concludes the
21 noncontroversial reading of the calendar.

22 SENATOR LIBOUS: Thank you,
23 Mr. President.

24 It appears to have something in the
25 drinking water here in Albany, or maybe the fact

1 that the sunshine has come out today. But for
2 whatever reason, we will now approach the
3 controversial calendar, which we have many bills
4 on. So we will start with the beginning of the
5 controversial calendar.

6 And I would ask that maybe you ring
7 the bell, because all members should come to the
8 chamber. And I will make a note that if members
9 are not in the chamber, we will wait a reasonable
10 amount of time for roll call; otherwise, I am
11 moving forward.

12 ACTING PRESIDENT ROBACH: I urge
13 members to please come into the chamber. We're
14 on the controversial reading of the calendar, and
15 we will begin immediately.

16 The Secretary will read.

17 THE SECRETARY: Calendar Number 25,
18 by Senator Marcellino, Senate Print 947, an act
19 to amend the Criminal Procedure Law.

20 SENATOR BRESLIN: Explanation.

21 ACTING PRESIDENT ROBACH: Senator
22 Marcellino, an explanation has been requested.

23 SENATOR MARCELLINO: Thank you,
24 Mr. President.

25 This bill would permit the court to

1 issue an order precluding disclosure of jurors'
2 names and addresses upon a showing by the People
3 that such an order is necessary in order to
4 prevent bribery, jury tampering, or physical
5 injury to or harassment of jurors.

6 ACTING PRESIDENT ROBACH: Thank
7 you, Senator Marcellino.

8 Is there any Senator wishing to be
9 heard?

10 Senator Breslin.

11 SENATOR BRESLIN: Yes, would the
12 sponsor yield to a few questions.

13 ACTING PRESIDENT ROBACH: Senator
14 Marcellino, will you yield for a question?

15 SENATOR MARCELLINO: Yes.

16 ACTING PRESIDENT ROBACH: Senator
17 Breslin.

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

20 Through you, Mr. President, was
21 there any particular reason to include a business
22 address as well as a home address in this
23 legislation?

24 ACTING PRESIDENT ROBACH: Excuse me
25 for one second.

1 We're having some conversations;
2 let's take them out. We're on debate here, and
3 the members want to hear each other as well as
4 everyone else.

5 Continue, please.

6 SENATOR MARCELLINO: Yes,
7 Mr. President. Through you, the reason is very
8 simple. The idea is to hide the identity of the
9 juror. And since revealing where you work
10 obviously reveals who you are, we decided that
11 that's a good idea.

12 SENATOR BRESLIN: Again through
13 you, Mr. President, will the sponsor continue to
14 yield.

15 ACTING PRESIDENT ROBACH: Senator
16 Marcellino, will you continue to yield?

17 SENATOR MARCELLINO: Absolutely.

18 SENATOR BRESLIN: The legislation
19 has a three-day window before which the
20 prosecutor can move to block the names. Does
21 this three-day notice present the possibility of
22 interfering in any way with a speedy trial?

23 SENATOR MARCELLINO: No, Senator.

24 SENATOR BRESLIN: Can you tell us
25 why not?

1 SENATOR MARCELLINO: Because we
2 think 72 hours is not going to impede anybody's
3 speedy trial in any way, shape or form.

4 SENATOR BRESLIN: But wouldn't it
5 be true that after that --

6 SENATOR MARCELLINO: Is the Senator
7 asking me to yield, Mr. President?

8 SENATOR BRESLIN: I asked for
9 several questions.

10 ACTING PRESIDENT ROBACH: Yes, will
11 you continue to yield, Senator Marcellino?

12 SENATOR MARCELLINO: Yes, I will
13 continue to yield.

14 SENATOR BRESLIN: Through you,
15 Mr. President, would the fact that there's the
16 possibility of a motion after that by the
17 defense, and significant possibilities of delays,
18 would that in any way interfere with a speedy
19 trial?

20 SENATOR MARCELLINO: We don't
21 believe so.

22 SENATOR BRESLIN: Through you,
23 Mr. President. Can you tell us why that wouldn't
24 be a factor?

25 SENATOR MARCELLINO: Because if

1 these are motions relative to the defendant's
2 concerns or the victim's concerns, whatever the
3 legitimate court process is, we don't consider
4 those delays in the system. That's just the
5 normal court process and the normal order of
6 doing business.

7 SENATOR BRESLIN: And again through
8 you, Mr. President, will the sponsor continue to
9 yield.

10 ACTING PRESIDENT ROBACH: Will you
11 continue to yield, Senator Marcellino?

12 SENATOR MARCELLINO: Yes, I do.

13 SENATOR BRESLIN: Could you tell us
14 what the defendant would need to argue to
15 overcome the prosecutor's demand to have these
16 names excluded?

17 SENATOR MARCELLINO: Frankly, no.

18 SENATOR BRESLIN: Through you
19 again, Mr. President. Would the imposition --
20 would the imposition of this rule, would it
21 interfere constitutionally or statutorily within
22 the voir dire process for the lawyers, the
23 defense lawyer's inability to obtain enough
24 information to determine whether he should keep
25 that juror on the jury or not?

1 SENATOR MARCELLINO: We don't
2 believe so, Senator. We believe that it is more
3 important to keep the safety of the jurors and
4 the sanctity of the impaneling process so that no
5 one can tamper or harass a juror or in fact, in
6 some cases, threaten the jurors for participating
7 in a particular kind of trial.

8 SENATOR BRESLIN: And again through
9 you, Mr. President, would the sponsor continue to
10 yield.

11 SENATOR MARCELLINO: I continue to
12 yield.

13 SENATOR BRESLIN: When the
14 prosecutor exercises his three-day notice, could
15 you list for us the factors that the judge should
16 consider before making a decision?

17 SENATOR MARCELLINO: That would
18 relate to the specific judge. And I would think
19 that the judge would make that determination
20 upon -- each individual judge would determine
21 that as they require. Different judges might
22 require different levels of proof or different
23 levels of substantiation, and I think that would
24 leave that up to the judge.

25 SENATOR BRESLIN: Again through

1 you, Mr. President, would the sponsor continue to
2 yield.

3 ACTING PRESIDENT ROBACH: Senator
4 Marcellino, do you continue to yield?

5 SENATOR MARCELLINO: Yes, I
6 continue to yield.

7 SENATOR BRESLIN: Are you
8 suggesting, then, that the criteria to be used by
9 a particular judge can change from one judge to
10 another, and whatever a particular judge thinks
11 is important, he has the right to use that
12 information to preclude the address of a
13 particular defendant? Or witness.

14 SENATOR MARCELLINO: While the law
15 in most cases has the same language, everyone
16 would understand that it becomes somewhat open to
17 interpretation by different judges. Hence, you
18 get different decisions.

19 One would think that each judge
20 would make a determination based on the same
21 facts. You might get different determinations
22 from different judges based on the same set of
23 facts. So yeah, that's just human nature. We
24 think it could happen.

25 SENATOR BRESLIN: But again through

1 you, Mr. President, would the sponsor continue to
2 yield.

3 ACTING PRESIDENT ROBACH: Senator
4 Marcellino, do you continue to yield?

5 SENATOR MARCELLINO: Yes, I do.

6 SENATOR BRESLIN: Should there not
7 be standards to be followed by a particular judge
8 in making that determination?

9 SENATOR MARCELLINO: You can supply
10 all the standards in the world you want. Still,
11 human nature is human nature.

12 SENATOR BRESLIN: Through you,
13 Mr. President, if there was an appeal taken,
14 should the argument be that it was against the
15 human nature?

16 (Laughter.)

17 SENATOR BRESLIN: Or should there
18 be more definitive reasons to ascertain that
19 decision?

20 SENATOR MARCELLINO: Mr. President,
21 I'm not going to engage in what I would consider
22 silly questions. If you want to ask me a
23 question, I'll be happy to answer it --

24 ACTING PRESIDENT ROBACH: Senator
25 Marcellino, do you want --

1 SENATOR MARCELLINO: Let me just
2 answer the question.

3 The Senator is well aware that I am
4 not an attorney and I'm not attempting to argue
5 as an attorney. But I suspect that the judges
6 will take this in all seriousness and would not
7 make frivolous decisions in any case.

8 SENATOR BRESLIN: I am not being --
9 through you, Mr. President, I'm not at all being
10 disrespectful for the fact that you're not an
11 attorney. I'm only trying to ascertain the
12 particular protections that we would have to make
13 sure there's some degree of objectivity.

14 Again through you, Mr. President,
15 will the sponsor continue to yield.

16 ACTING PRESIDENT ROBACH: Senator
17 Marcellino, do you continue to yield?

18 SENATOR MARCELLINO: Yes.

19 SENATOR BRESLIN: Given the fact,
20 as you said, you're not an attorney, did you seek
21 out the Office of Court Administration? And if
22 so, what did they provide you in determining this
23 legislation?

24 SENATOR MARCELLINO: I do yield.

25 And as the Senator is well aware,

1 this bill has been brought up on several
2 different occasions.

3 The judge would have to take into
4 consideration the following situations: One,
5 whether or not the defendant or the person acting
6 on the defendant's behalf has bribed, tampered
7 with, or caused or attempted to cause physical
8 injury to or harassment of a juror, a prospective
9 juror, or a witness or prospective witnesses in
10 another criminal action or proceeding or in the
11 instant proceeding, or, two, whether the
12 defendant is a member of a group that has
13 manifested an intention to harm or intimidate
14 witnesses or jurors. Three, the seriousness of
15 the charges against the defendant. And four, the
16 extent of pretrial publicity about the criminal
17 action or proceeding.

18 SENATOR BRESLIN: Again, would the
19 sponsor continue to yield? That was I think the
20 answer to a prior question.

21 Has the advice of the Office of
22 Court Administration been solicited and
23 received?

24 SENATOR MARCELLINO: Yes. We had
25 done that at the beginning of this process, and

1 it came up with some of our guidelines as to what
2 we are dealing with today.

3 SENATOR BRESLIN: Again through
4 you, Mr. President.

5 SENATOR MARCELLINO: By the way,
6 this was a program bill that came out -- and I'm
7 clearing my head a little bit, because it goes
8 back some time. This was a program bill that was
9 put out some time ago, and this bill is supported
10 the State of New York Unified Court System.

11 SENATOR BRESLIN: Again through
12 you, Mr. President, will the sponsor continue to
13 yield.

14 SENATOR MARCELLINO: Yes, I
15 continue to yield.

16 SENATOR BRESLIN: Given the
17 10 percent cut in the Office of Court
18 Administration's budget this year, was advice
19 sought this year on this particular bill?

20 SENATOR MARCELLINO: No.

21 SENATOR BRESLIN: And again through
22 you, Mr. President.

23 ACTING PRESIDENT ROBACH: Do you
24 continue to yield, Senator Marcellino?

25 SENATOR MARCELLINO: Yes, I do.

1 SENATOR BRESLIN: Given the timing
2 involved in this bill and the potential for long
3 delays, has there been any sort of cost
4 assessment placed on this legislation?

5 SENATOR MARCELLINO: No, there has
6 not. Or has not been to my knowledge.

7 SENATOR BRESLIN: And again,
8 just -- through you, Mr. President, one or two
9 more questions.

10 There is an area of concern that a
11 defense lawyer tries to know as much as he can
12 about a prospective juror. And it's critically
13 important to ascertain backgrounds, whether
14 they've been involved in this type of situation
15 before, and a lot of information -- their
16 occupations -- which might lend itself toward the
17 disclosure of the name.

18 Does the sponsor believe that this
19 restriction will have any kind of negative
20 influence on the ultimate disposition of the
21 defendant?

22 SENATOR MARCELLINO: Mr. President,
23 this bill does not preclude the defendant's
24 attorney from getting this information, it
25 precludes the defendant from getting the

1 information. The attorney would be permitted to
2 get the information that they need to do the
3 proper interrogation, the proper questioning of
4 the potential jurors, but would be under
5 restriction from revealing that same information
6 to the defendant.

7 SENATOR BRESLIN: Thank you,
8 Mr. President. Thank you to the sponsor.

9 ACTING PRESIDENT ROBACH: Is there
10 any other Senator wishing to be heard?

11 Hearing none, the debate is closed.
12 The Secretary will ring the bell.

13 I ask all members to please come to
14 the chamber for the vote.

15 Read the last section.

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

18 ACTING PRESIDENT ROBACH: Call the
19 roll.

20 (The Secretary called the roll.)

21 ACTING PRESIDENT ROBACH: Senator
22 Breslin to explain his vote.

23 SENATOR BRESLIN: Thank you,
24 Mr. President.

25 I first of all would thank the

1 sponsor for being so indulgent of me on the
2 various questions, which I think are important to
3 the judicial process.

4 I have voted for this bill before.
5 The answers that were given will make me continue
6 to vote for this bill. I'd prefer I'd be voting
7 for an ethics bill or a rent-control bill, but I
8 vote aye on this particular bill.

9 Thank you, Mr. President.

10 ACTING PRESIDENT ROBACH: Thank
11 you, Senator Breslin. You will be recorded in
12 the affirmative.

13 Senator Krueger.

14 SENATOR KRUEGER: Thank you very
15 much, Mr. President.

16 I also wish that we were dealing
17 with bigger-picture bills for the State of
18 New York. I too am particularly concerned about
19 our failure to address rent regulation
20 strengthening now, on June 1st, with the bill
21 coming up for sunset or June 15th.

22 I don't know that I was completely
23 satisfied with the answers of the sponsor, but I
24 will be voting yes.

25 Thank you, Mr. President.

1 ACTING PRESIDENT ROBACH: Thank
2 you, Senator Krueger. You will be recorded in
3 the affirmative.

4 Announce the results.

5 THE SECRETARY: In relation to
6 Calendar Number 25: Ayes, 58. Nays, 0.

7 Absent from voting are Senators
8 Huntley, C. Kruger and Smith.

9 ACTING PRESIDENT ROBACH: The bill
10 is passed.

11 And I would encourage members to
12 stay in the chamber or close by as we continue on
13 the controversial calendar.

14 The Secretary will read.

15 THE SECRETARY: Calendar Number 46,
16 by Senator Maziarz, Senate Print 234, an act to
17 amend the Arts and Cultural Affairs Law.

18 SENATOR SERRANO: Explanation.

19 ACTING PRESIDENT ROBACH: Senator
20 Maziarz, an explanation has been asked for.

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

23 This legislation, which was a
24 home-rule message, was at the request of the
25 Niagara County Legislature and the various local

1 governments entities in Niagara County, would
2 allow for the chief executive officer of each
3 municipality to appoint the local historian.

4 ACTING PRESIDENT ROBACH: Senator
5 Serrano.

6 SENATOR SERRANO: Mr. President,
7 will the sponsor please yield.

8 ACTING PRESIDENT ROBACH: Senator
9 Maziarz, will you yield?

10 SENATOR MAZIARZ: Absolutely,
11 Mr. President. Senator?

12 SENATOR SERRANO: Thank you.
13 Through you, Mr. President, I have a question
14 regarding this bill.

15 I do think it's important that
16 counties, for tourism purposes, have a very
17 robust county historian, someone who can serve as
18 a person to help give a good historical
19 perspective, educational perspective for the
20 counties.

21 My question is, what is the process
22 involved with selecting this historian? I know
23 in the bill it calls upon the CEO to make the
24 selection. But what sort of process would be in
25 place?

1 SENATOR MAZIARZ: Thank you,
2 Senator, for that question.

3 First let me say that in Niagara
4 County -- and this bill specifically is for
5 Niagara County only -- I think other than the
6 county historian, the historian's positions are
7 all on a voluntary basis, or they get paid a very
8 nominal fee. There are no like full-time
9 historians involved here.

10 And of the 12 towns, Senator, many
11 of them are very small rural communities. Right
12 now -- and that's the problem. I think that's
13 why the county and the local municipalities asked
14 for this bill, is because in some towns there
15 really are no rules set forth. The historians
16 maybe tend to be the historian for as long as
17 they want to be the historian.

18 This would actually establish a
19 criterion that the chief executive officer -- be
20 it, in the cities, the mayor, in the towns, the
21 town supervisor -- would appoint the historian
22 for a term coterminous with their own term so
23 that the new supervisor or new mayor could make
24 that appointment.

25 SENATOR SERRANO: Through you,

1 Mr. President, would the sponsor yield?

2 SENATOR MAZIARZ: Certainly.

3 Certainly, Mr. President.

4 ACTING PRESIDENT ROBACH: Continue.

5 SENATOR SERRANO: Thank you.

6 Through you, will the process include a public
7 process? Meaning there are many folks in the
8 community -- I know in my community, for
9 example -- who would be very interested in
10 knowing who the candidate would be for such a
11 position, a prestigious position. Is there a
12 public process beyond the executives that you
13 mentioned?

14 SENATOR MAZIARZ: Well, you know,
15 generally it's like anything. When the chief
16 executive officer gets elected, I mean they have
17 varying processes of how they select their team.
18 I would presume that this would follow right
19 along with that.

20 Of course, Senator, I know that you,
21 being the ranking member of the Tourism
22 Committee, know that the richest history in the
23 entire State of New York is in Niagara County,
24 with Niagara Falls, Old Fort Niagara. I know,
25 Mr. President, that you are well aware that the

1 Allan Herschell Company manufactured just about
2 every carousel, every carousel in the world, on
3 the corner of Thompson and Vandervoort Streets in
4 the City of North Tonawanda -- one block, one
5 block from my home.

6 SENATOR SERRANO: Thank you.

7 Through you, Mr. President, will the
8 sponsor continue to yield?

9 SENATOR MAZIARZ: Absolutely. And
10 I am full of historical facts about Niagara
11 County. I will yield all day.

12 (Laughter.)

13 ACTING PRESIDENT ROBACH: He will
14 yield all day, Senator Serrano.

15 (Laughter.)

16 SENATOR SERRANO: Thank you,
17 Senator. And I appreciate your comments about
18 the carousels. And I think that those are all
19 very important issues, not just in Niagara but
20 throughout the entire state, for ways that we
21 could increase tourism. So I do think that this
22 is a good effort and a very important effort.

23 An additional question I have is I
24 believe that we've taken this bill up before. Am
25 I correct?

1 SENATOR MAZIARZ: I believe it has
2 passed the Senate before, yes.

3 SENATOR SERRANO: Now, is there
4 any -- through you, Mr. President, is there a
5 reason why it didn't go all the way?

6 SENATOR MAZIARZ: I think,
7 Mr. President, in the past the bill was
8 statewide. And that created some problems in
9 other counties, because apparently there are some
10 counties that have a civil service position and
11 some municipalities that have a civil service
12 position as a paid historian.

13 So we went back to the people in
14 Niagara County, the governmental leaders in
15 Niagara County and said that, you know, if we
16 could do this for just Niagara County the way
17 that they wanted it done, it would gain wider
18 acceptance in the Assembly.

19 SENATOR SERRANO: And through you,
20 Mr. President, will the sponsor yield?

21 ACTING PRESIDENT ROBACH: Do you
22 continue to yield, Senator Maziarz?

23 SENATOR MAZIARZ: Yes.

24 SENATOR SERRANO: One final
25 question, Senator Maziarz. You mentioned that

1 this legislation is specific to Niagara County.

2 SENATOR MAZIARZ: Yes.

3 SENATOR SERRANO: Do you know of
4 any major differences between the process that
5 would be theoretically set up here and processes
6 that we would have -- other than the fact that
7 they would be on a volunteer basis, besides that,
8 are there any other differences?

9 SENATOR MAZIARZ: I'm sorry, I
10 don't quite understand the question. Are there
11 any differences between what Niagara County does
12 and what other counties would do?

13 SENATOR SERRANO: Between -- and
14 what other counties would do, correct.

15 SENATOR MAZIARZ: Senator Serrano,
16 I can assure you that the way Niagara County does
17 it is better than any other county in the State
18 of New York.

19 SENATOR SERRANO: Can you be --

20 ACTING PRESIDENT ROBACH: Senator
21 Serrano, just one moment.

22 If we can just get a little bit of
23 order in the chamber. If you have an important
24 conversation, please just take it outside.

25 And then we just need you guys to go

1 one at a time for the stenographer.

2 SENATOR MAZIARZ: Thank you,
3 Mr. President. I was -- I haven't finished my
4 answer yet.

5 The way Niagara County does it is
6 much better than the way they do it in Brooklyn
7 or Staten Island or some of those other places.
8 Not the Bronx, though.

9 SENATOR DIAZ: Not the Bronx.

10 SENATOR MAZIARZ: Not the Bronx.

11 SENATOR SERRANO: Through you,
12 Mr. President. Just to expand a little bit on
13 that, Senator Maziarz, are there some specific
14 differences? I know that you say it's better,
15 and I won't argue with you on that. But are
16 there any specific differences?

17 SENATOR MAZIARZ: Yes. Well, I
18 think I pointed out before about the carousels.
19 You know, the fact that we have Niagara Falls.
20 We just have more historical sites.

21 And I think that our people have
22 more of an appreciation for history maybe than
23 some other areas of the state. I don't want to
24 disparage any other areas, Senator, but I just
25 think that we do better, with almost all

1 volunteers. I think other than the county
2 historian, the only other one that may get
3 paid -- I'm sorry, the only one that may get a
4 salary, actually, is the county historian. The
5 others are almost all volunteers or get a very
6 nominal fee to cover their expenses.

7 SENATOR SERRANO: Got it.

8 No further questions. Thank you.

9 SENATOR MAZIARZ: Thank you very
10 much, Senator. Thank you, Mr. President.

11 ACTING PRESIDENT ROBACH: Are there
12 any other Senators wishing to be heard?

13 Senator Diaz.

14 SENATOR DIAZ: Thank you,
15 Mr. President.

16 Ladies and gentlemen, there are over
17 25 pieces of legislation that have been put on
18 hold today. The way things appear, it looks like
19 we're going to be here today till about 1 o'clock
20 in the morning or more.

21 So this is a good opportunity for
22 people from the City of New York, taxi drivers up
23 there -- because, you know, I love taxi drivers,
24 I love senior citizens, and I love --

25 ACTING PRESIDENT ROBACH: Senator

1 Diaz, are you on the bill?

2 SENATOR DIAZ: I'm on the bill.

3 I'm sorry, I'm on the bill. I'm sorry,

4 Mr. President, on the bill.

5 ACTING PRESIDENT ROBACH: Okay.

6 Let's make your comments germane to the bill.

7 SENATOR DIAZ: Okay. So I love
8 taxi drivers, I love senior citizens, and I love
9 bodegueros. And those people that are there from
10 the City of New York, taxi drivers, under the
11 leadership of Cira Angeles and -- and --

12 ACTING PRESIDENT ROBACH: Senator
13 Diaz, I'm trying to be very cordial --

14 SENATOR DIAZ: I am on the bill. I
15 am on the bill.

16 SENATOR LIBOUS: Mr. President.

17 SENATOR DIAZ: Mr. President --

18 ACTING PRESIDENT ROBACH: Senator
19 Libous.

20 SENATOR DIAZ: Mr. President, I'm
21 on the bill. We're going to be here all day
22 today.

23 SENATOR LIBOUS: Mr. President.

24 Mr. President.

25 ACTING PRESIDENT ROBACH: Senator

1 Diaz, one moment, please.

2 Senator Libous.

3 SENATOR LIBOUS: Point of order,
4 Mr. President.

5 I believe we're on the bill. I know
6 Senator Diaz would like to at some point probably
7 ask for unanimous consent so he could get up and
8 address some of his constituents that are here.
9 But I think if we could do the vote on the bill,
10 I would then ask Senator Diaz for you to have --

11 ACTING PRESIDENT ROBACH: Thank
12 you. Senator Libous, your point is well-taken.

13 Senator Diaz, if we could finish the
14 bill. And if you would like to then address the
15 other topic --

16 SENATOR DIAZ: I'm almost finished.

17 ACTING PRESIDENT ROBACH: Okay.

18 Well --

19 SENATOR DIAZ: Almost finished.

20 ACTING PRESIDENT ROBACH: -- finish
21 on the bill.

22 SENATOR DIAZ: Almost finished on
23 the bill.

24 ACTING PRESIDENT ROBACH: Okay.

25 SENATOR DIAZ: The bill gives the

1 opportunity to people to see how is it that we
2 deal here. This bill shows how the people from
3 Niagara Falls, how they deal. And this bill
4 shows how we debate here. Sometimes useless,
5 sometimes nonsense, sometimes nonsense, sometimes
6 we call bills on hold for nothing, just to waste
7 time. And this is a good opportunity for the
8 people of the City of New York, taxi drivers, to
9 see how business are done.

10 And sooner or later, Mr. President,
11 as we deal with this bill from Ontario, Canada,
12 from Niagara Falls, as we deal with this bill,
13 sooner or later, Mr. President, we're going to be
14 dealing with a bill that affects the lives of
15 more than 30,000 city drivers. And the bill is
16 going to come here, and we're going to debate it,
17 as we are debating this --

18 ACTING PRESIDENT ROBACH: Thank
19 you. Thank you, Senator Diaz --

20 SENATOR DIAZ: I am on the bill. I
21 am on the bill.

22 ACTING PRESIDENT ROBACH: You're
23 really not.

24 SENATOR DIAZ: Yes, I am, sir. I
25 am on the bill. I'm talking about the bill from

1 Niagara Falls. And this bill from -- hey.

2 ACTING PRESIDENT ROBACH: Senator
3 Diaz, your comments are not germane. You're out
4 of order. I'm trying to be very accommodating
5 here.

6 SENATOR DIAZ: And I'm trying to
7 be --

8 ACTING PRESIDENT ROBACH: Senator
9 Liz Krueger on the bill.

10 SENATOR DIAZ: Oh, you -- that --
11 that is not the right thing to do.

12 ACTING PRESIDENT ROBACH: Well, are
13 you going to speak on the bill or not,
14 Senator Diaz?

15 SENATOR DIAZ: I'm going to talk on
16 the bill. I'm going to talk on the bill. I'm
17 going to talk on the bill all afternoon.

18 ACTING PRESIDENT ROBACH: Senator
19 Diaz.

20 SENATOR DIAZ: I have the floor. I
21 have the floor. And if you want to be -- if you
22 want to play that game, I could play that game
23 too.

24 ACTING PRESIDENT ROBACH: We're on
25 the roll call, Senator Diaz. It's not a game.

1 SENATOR DIAZ: Mr. President --

2 ACTING PRESIDENT ROBACH: Do you
3 have some comments on the bill?

4 SENATOR DIAZ: Yes. And the bill,
5 the bill, the bill reads that we -- that we --
6 yes, we have the bill. Yeah, the bill says that
7 in Niagara -- is Niagara the only county that has
8 the CEO -- do other counties have local
9 historians. The local law says that the county
10 can have local historians. Does it specify how
11 come -- this is --

12 What I'm trying to tell you,
13 Mr. President, what I'm trying to tell you,
14 Mr. President, is that we're going to have -- we
15 have 25 bills today that my colleagues have put
16 on hold. We are going to go through this thing
17 all day long. There are people that come from
18 the City of New York that could look at this
19 thing better and see things better. And what
20 we're doing is wasting time.

21 I'm supporting the bill, I am
22 supporting the bill and I'm voting for this
23 bill. But please, let's stop this game.

24 Thank you very much.

25 ACTING PRESIDENT ROBACH: Senator

1 Krueger.

2 SENATOR KRUEGER: Thank you,
3 Mr. President. I would like to defer my time to
4 Senator Diaz if he still has more things he
5 wanted to say.

6 Senator Diaz, did you have anything
7 else you wanted to say?

8 SENATOR DIAZ: What was that?

9 SENATOR KRUEGER: I was going to
10 defer to you if you had more things you wanted to
11 say.

12 SENATOR LIBOUS: Point of order,
13 Mr. President.

14 ACTING PRESIDENT ROBACH: Senator
15 Krueger, Senator Diaz has yielded the floor. Did
16 you want to speak on the bill or ask a question?

17 SENATOR KRUEGER: Yes, I wanted to
18 ask the sponsor a question, Mr. President.

19 SENATOR MAZIARZ: Certainly,
20 Mr. President.

21 ACTING PRESIDENT ROBACH: Senator
22 Maziarz will yield.

23 SENATOR MAZIARZ: Certainly.

24 SENATOR KRUEGER: Thank you.

25 In your description and answers to

1 my colleague Senator Serrano's questions, you
2 referenced the carousel maker in your district.

3 SENATOR MAZIARZ: Yes. Allan
4 Herschell.

5 SENATOR KRUEGER: Allan Herschell.
6 So I have two carousels in my district, in
7 Central Park and in Bryant Park. Do you know if
8 either of those --

9 SENATOR MAZIARZ: Yes. They are
10 both Allan Herschell carousels, Senator.

11 SENATOR KRUEGER: They're both
12 Allan --

13 SENATOR MAZIARZ: Yes.

14 SENATOR KRUEGER: Thank you very
15 much.

16 SENATOR MAZIARZ: It's just another
17 thing, it's one more thing, Senator, that upstate
18 New York gave to the City of New York.

19 (Laughter.)

20 SENATOR KRUEGER: We love the
21 carousels, Mr. President. Thank you.

22 ACTING PRESIDENT ROBACH: Senator
23 Rivera.

24 SENATOR RIVERA: Thank you,
25 Mr. President. I wonder if the sponsor would

1 yield for a few questions.

2 ACTING PRESIDENT ROBACH: Senator
3 Maziarz, will you yield?

4 SENATOR MAZIARZ: Certainly,
5 Mr. President.

6 SENATOR RIVERA: Thank you,
7 Senator Maziarz. Thank you, Mr. President.

8 We're certainly not going to
9 debate -- at least you accepted Niagara versus
10 Bronx, so I'm not going to debate you on that one
11 because you already agree with that one.

12 SENATOR MAZIARZ: Well, actually I
13 said positive things about the Bronx. It's
14 Brooklyn and Staten Island that I --

15 SENATOR RIVERA: We could
16 definitely have some conversations about Brooklyn
17 and Staten Island.

18 (Laughter.)

19 SENATOR RIVERA: But on the bill, I
20 actually wanted to ask you a few questions about
21 the historian.

22 First of all, through you,
23 Mr. President, what are the qualifications for
24 the historian? Are there any qualifications for
25 that person?

1 SENATOR MAZIARZ: There are,
2 Senator Rivera. Each municipality actually sets
3 its own. And generally they defer to the chief
4 executive officer.

5 Again, usually when a town
6 supervisor is elected -- and I can tell you that
7 most of the town supervisors in this county serve
8 for a long time. When a new one comes in, they
9 generally select the people that they want.
10 Again, these are volunteer positions. They have
11 many committees and organizations.

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

15 SENATOR MAZIARZ: Certainly,
16 Mr. President.

17 SENATOR RIVERA: Thank you,
18 Mr. President.

19 SENATOR MAZIARZ: Thank you.

20 SENATOR RIVERA: But so there's no
21 qualifications like a master's or a Ph.D. in
22 history or anything of that nature?

23 SENATOR MAZIARZ: I believe for the
24 county historian that there are -- I don't
25 believe, I know that for the county historian,

1 which I think may be a part-time position -- I
2 may be wrong on that particular fact. But the
3 county historian, the only one that is paid a
4 salary, there are qualifications for that.

5 And the county legislature does make
6 that particular appointment. We don't have a
7 county executive, we have a county legislature.
8 So they make that particular appointment.

9 SENATOR RIVERA: Through you,
10 Mr. President, if the sponsor would continue to
11 yield.

12 ACTING PRESIDENT ROBACH: Will you
13 continue to yield, Senator Maziarz?

14 SENATOR MAZIARZ: Yes, I will,
15 Mr. President.

16 ACTING PRESIDENT ROBACH: Continue.

17 SENATOR RIVERA: So the County of
18 Niagara is different than Niagara County?

19 SENATOR MAZIARZ: No. The county
20 historian is appointed by the county legislature.

21 SENATOR RIVERA: Which is the one
22 that we're speaking about.

23 SENATOR MAZIARZ: This bill
24 encompasses not just the county but the 12 towns
25 and three cities located within the county.

1 SENATOR RIVERA: Gotcha.

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

4 ACTING PRESIDENT ROBACH: Do you
5 continue to yield, Senator Maziarz?

6 SENATOR MAZIARZ: Yes, I will,
7 Mr. President.

8 ACTING PRESIDENT ROBACH: Continue,
9 Senator Rivera.

10 SENATOR RIVERA: Thank you.

11 How long would the -- so there's no
12 real requirement as far as books written, area of
13 specialization? For the historian, as far as the
14 requirements.

15 SENATOR MAZIARZ: No. No. No.

16 SENATOR RIVERA: All right.
17 Through you, Mr. President, if the sponsor will
18 continue to yield.

19 SENATOR MAZIARZ: Yes, Senator.

20 But just to get back to your other
21 question, this is almost always a retired
22 individual who wants to volunteer to do this.

23 SENATOR RIVERA: How long would the
24 historian actually serve for? Through you,
25 Mr. President, how long would the historian serve

1 for?

2 SENATOR MAZIARZ: Well, if they're
3 appointed by the chief executive officer, I would
4 assume that they would serve at their pleasure.

5 SENATOR RIVERA: Through you,
6 Mr. President, if the sponsor would continue to
7 yield.

8 ACTING PRESIDENT ROBACH: Senator
9 Maziarz?

10 SENATOR MAZIARZ: Yes, I do.

11 SENATOR RIVERA: Do they have -- is
12 there -- and I hope the answer is yes. Do they
13 have a residency requirement for --

14 SENATOR MAZIARZ: Oh, yes. Oh,
15 absolutely, yes.

16 SENATOR RIVERA: There is a
17 residency requirement.

18 SENATOR MAZIARZ: Yes. Yes, they
19 do have a residency requirement.

20 And in fact, to continue that
21 answer, I can tell you that in -- I believe it
22 was early November of last year, our colleague
23 Senator Gianaris visited Niagara County, visited
24 the county courthouse, and I introduced him -- he
25 probably doesn't remember -- to the county

1 historian at that time.

2 Now, most of our tourists don't come
3 around the first week of November, they tend to
4 come after Memorial Day and before Labor Day.

5 But Senator Gianaris was the exception. He
6 wanted to be there in -- right after the first
7 Tuesday after the first Monday in November.

8 SENATOR RIVERA: Thank you,
9 Mr. President. On the bill.

10 ACTING PRESIDENT ROBACH: On the
11 bill, Senator Rivera.

12 SENATOR RIVERA: Thank you so much.

13 SENATOR MAZIARZ: Thank you,
14 Senator.

15 SENATOR RIVERA: Thank you, Senator
16 Maziarz.

17 I will be supporting this
18 legislation, as I am -- in the district that I
19 represent, in the Bronx, the Bronx Historical
20 Society actually resides in my district. Among
21 many other historical landmarks in my district, I
22 actually have the Poe House. Edgar Allan Poe
23 lived in the Bronx, his wife actually died in the
24 Bronx. And the house that his wife actually died
25 in is physically in my district.

1 SENATOR MAZIARZ: I'm sorry, who?

2 SENATOR RIVERA: Edgar Allan Poe.

3 So that is only one of the many
4 historical landmarks that are in the Bronx and
5 certainly in my district. So I will be
6 supportive of this bill.

7 I would only suggest that not only
8 does a person reside in Niagara but, Senator
9 Maziarz, I would think that that person, if that
10 person is either a Ph.D., has a master's, maybe
11 they've written some books on Niagara, probably
12 that would be the best person to be able to
13 fulfill that role. That's the only thing that I
14 would suggest.

15 Besides that, good luck to whomever
16 that person is. Maybe, maybe we can get you to
17 do it, Senator. Thank you.

18 ACTING PRESIDENT ROBACH: Thank
19 you, Senator Rivera, for supporting that landmark
20 legislation.

21 Senator Gianaris.

22 SENATOR GIANARIS: Thank you,
23 Mr. President. On the bill.

24 ACTING PRESIDENT ROBACH: On the
25 bill.

1 SENATOR GIANARIS: I appreciated
2 Senator Maziarz's comments. In fact, I do rise
3 in support of this bill. But I couldn't let his
4 comments go without stating how much I actually
5 enjoyed my trip to Western New York, as I do
6 frequently. I like to go at all times of the
7 year, and November was a pleasure. And it was a
8 pleasure to see him and meet the historian at
9 that time.

10 I have since been back several
11 times, and I expect I'll be back next year
12 again. And hopefully it will be an even more
13 enjoyable experience than it was last year.

14 (Laughter.)

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

17 ACTING PRESIDENT ROBACH: Thank
18 you.

19 Is there any other Senator wishing
20 to be heard?

21 Hearing none, the debate is closed.
22 Ring the bell.

23 Can the members please come to the
24 chamber for the vote.

25 A home-rule message is at the desk.

1 Read the last section.

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

4 ACTING PRESIDENT ROBACH: Call the
5 roll.

6 (The Secretary called the roll.)

7 THE SECRETARY: Ayes, 58. Nays,
8 0. Absent from voting are Senators C. Kruger,
9 Oppenheimer, and Smith.

10 ACTING PRESIDENT ROBACH: The bill
11 is passed.

12 THE SECRETARY: Calendar Number
13 138, by Senator Fuschillo, Senate Print 3451A, an
14 act to amend the Penal Law.

15 SENATOR SQUADRON: Explanation.

16 ACTING PRESIDENT ROBACH: An
17 explanation has been requested.

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

20 Senator Squadron, this bill amends
21 the Penal Law in relation to criminal trespassing
22 on railroad property.

23 The bill is supported by the
24 Railroads of New York State. According to them
25 in their memo of support, trespassing is the most

1 significant cause of death attributed to railroad
2 operations in New York State. More than
3 500 deaths nationwide are preventable each year.
4 New York State laws are antiquated.

5 This bill passed unanimously in the
6 Senate last year.

7 ACTING PRESIDENT ROBACH: Senator
8 Squadron.

9 SENATOR SQUADRON: Thank you,
10 Mr. President. Will the sponsor yield?

11 SENATOR FUSCHILLO: Yes, I'd be
12 happy to.

13 SENATOR SQUADRON: Thank you very
14 much.

15 I notice that the new definition of
16 the Penal Law references railroad property. What
17 types of railroads would that include?

18 SENATOR FUSCHILLO: What type of
19 railroads? The ones with trains on them.

20 (Laughter.)

21 SENATOR SQUADRON: Through you,
22 Mr. President, would the sponsor continue to
23 yield.

24 ACTING PRESIDENT ROBACH: Do you
25 yield, Senator Fuschillo?

1 SENATOR FUSCHILLO: I'd be happy
2 to.

3 ACTING PRESIDENT ROBACH: Go ahead,
4 Senator Squadron.

5 SENATOR SQUADRON: So would that
6 include, for example, New York City Transit
7 subway tracks and subway property?

8 SENATOR FUSCHILLO: Yes. They have
9 trains, yes. Yes, Senator.

10 SENATOR SQUADRON: And would the
11 sponsor continue to yield.

12 ACTING PRESIDENT ROBACH: Do you
13 continue to yield, Senator Fuschillo?

14 SENATOR FUSCHILLO: Yes,
15 Mr. President.

16 SENATOR SQUADRON: So presumably
17 that would also include the PATH train operated
18 by the Port Authority of New York and New Jersey,
19 though it's a bi-state agency?

20 SENATOR FUSCHILLO: Mr. President,
21 through you. Senator Squadron, the answer is
22 yes.

23 SENATOR SQUADRON: The PATH
24 railroad does in fact have trains as well, so I
25 expected that answer.

1 Through you, Mr. President, if the
2 sponsor --

3 SENATOR FUSCHILLO: Just to add,
4 this bill did pass unanimously last year in the
5 Senate by my good friend Senator Dilan, who was
6 the chair of Transportation, now the ranking
7 member.

8 SENATOR SQUADRON: Through you,
9 Mr. President. And I am interested -- and let me
10 ask, if the sponsor will continue to yield, if
11 this is identical to the bill that passed last
12 year.

13 SENATOR FUSCHILLO: I'd be happy to
14 yield. Yes, Mr. President.

15 This year we're working with Joe
16 Lentol, who's chairman of Codes in the Assembly.
17 We referenced the Railroad Law provisions now in
18 the Penal Law, to give it an additional
19 strength. But in the hope, Senator, that it
20 passes in the Assembly this year.

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

24 ACTING PRESIDENT ROBACH: Senator
25 Fuschillo.

1 SENATOR FUSCHILLO: I'd be happy to
2 yield, Mr. President.

3 SENATOR SQUADRON: Last year, in
4 addition to RONY, Senator Dilan's bill -- which
5 did pass unanimously -- had the support of
6 Amtrak. Does this version?

7 SENATOR FUSCHILLO: Yes.

8 SENATOR SQUADRON: And if the
9 sponsor will continue to yield.

10 ACTING PRESIDENT ROBACH: Senator
11 Fuschillo?

12 SENATOR FUSCHILLO: Mr. President,
13 I'd be happy to yield for Senator Squadron.

14 SENATOR SQUADRON: And it also had
15 the support of the State Trial Lawyers
16 Association, as I understand it. Does this
17 version have the support of that organization as
18 well?

19 SENATOR FUSCHILLO: I'm sorry, I
20 didn't hear the question.

21 ACTING PRESIDENT ROBACH: Could you
22 repeat the question, Senator Squadron?

23 SENATOR DUANE: Could we have some
24 order in the chamber? It's very difficult to
25 hear.

1 ACTING PRESIDENT ROBACH: Thank
2 you, Senator Duane.

3 Once again, if we could have some
4 order in here. If you need to discuss, please
5 just step outside so the members and everyone
6 else can hear the debate. Thank you.

7 Senator Squadron, could you repeat
8 the question?

9 SENATOR SQUADRON: Just in the
10 interests of efficiency, do any other
11 organizations have support memos for the current
12 draft of the bill?

13 SENATOR FUSCHILLO: Mr. President,
14 through you. Senator, the only memo of support
15 we have is from the Railroad Association, called
16 RONY, the Railroads of New York State.

17 SENATOR SQUADRON: Thank you.

18 And if the sponsor would continue to
19 yield.

20 ACTING PRESIDENT ROBACH: Senator
21 Fuschillo, do you continue to yield?

22 SENATOR FUSCHILLO: I do.

23 SENATOR SQUADRON: The sponsor made
24 a brief reference to how this bill differs from
25 the bill that garnered bipartisan support last

1 year. Would the sponsor mind going into a little
2 more detail about how this bill differs from the
3 earlier version?

4 SENATOR FUSCHILLO: I think the
5 only changes that were added were snowmobiles as
6 well. But let me get into a little bit more
7 detail for you, Senator.

8 I believe since the mid-19th century
9 the laws have only been changed maybe once or
10 twice. And since the event of 9/11, the federal
11 government has been working and the Federal
12 Railroad Administration has been working with
13 states throughout the entire United States and
14 have found that railroad trespassing laws are
15 inadequate and outdated.

16 One of the reasons I'm confident
17 that Senator Dilan had introduced the bill last
18 year and had it passed in the Senate, we've taken
19 it a step further by looking at other laws
20 throughout New York State and adding snowmobiles
21 and other minor provisions, with the hope that
22 our laws -- again, which have only been updated
23 maybe twice, as they state, since the mid-19th
24 century -- are brought up to speed right now so
25 that, in the heightened awareness of homeland

1 security issues, New York State is the forefront
2 of the nation in dealing with trespassing.

3 SENATOR SQUADRON: Thank you very
4 much for that explanation.

5 I just wondered, since I think a
6 great deal of the mileage of rail that this
7 affects would be in New York City and the
8 New York Transit System, has New York City
9 Transit or the Metropolitan Transportation
10 Authority weighed in on this bill?

11 If the sponsor would continue to
12 yield. Forgive me, Mr. President.

13 ACTING PRESIDENT ROBACH: I'm
14 sorry, are you on the bill or --

15 SENATOR SQUADRON: I don't think I
16 asked the sponsor to yield. Forgive me.

17 ACTING PRESIDENT ROBACH: Senator
18 Fuschillo, do you continue to yield?

19 SENATOR FUSCHILLO: Was that a
20 question or just asking --

21 ACTING PRESIDENT ROBACH: I'm not
22 sure.

23 SENATOR FUSCHILLO: I'm sorry,
24 Senator, I didn't hear you. The answer is yes to
25 yield. I didn't hear you, but okay.

1 SENATOR SQUADRON: Forgive me, I
2 went out of order there.

3 A great deal of the mileage that
4 would be affected by this bill, of track, is in
5 New York City managed by New York Transit and the
6 Metropolitan Transportation Authority --
7 Long Island Railroad, Metro-North, the other
8 affiliates. Have any of the affiliates or the
9 MTA weighed in on this bill?

10 SENATOR FUSCHILLO: No, they have
11 not.

12 But I've been talking to the Long
13 Island Railroad, MTA, Port Authority. They share
14 the same concerns with security issues. They
15 don't want people trespassing on their rails,
16 they don't want people defacing or damaging their
17 property as well. And it is a major concern,
18 especially in the City of New York, where you
19 represent, in light of the tragic events that
20 happened there in 9/11.

21 And as I stated to you, the Federal
22 Railroad Administration works very closely with
23 the MTA, Port Authority, Metro-North and other
24 railroads around New York State, out of their
25 great concern that New York State laws are

1 severely inadequate dealing with trespassing
2 issues.

3 So there's a hope this year,
4 Senator Squadron, since Chairman Lentol carries
5 the bill in the Assembly, that it does become law
6 and strengthens the law and prevents these acts
7 of criminal activity.

8 SENATOR SQUADRON: Through you,
9 Mr. President, just to ask. I know that in
10 Western New York the NFTA runs a railroad as well
11 that goes right down the heart of the City of
12 Buffalo. If the sponsor would continue to yield,
13 just a brief question on that. Thank you.

14 I assume they haven't been spoken
15 to. Has there been consideration given to
16 road-surface tracks and rails and how this bill
17 would affect those?

18 SENATOR FUSCHILLO: Through you,
19 Mr. President, I don't believe it would have any
20 negative effect. What it really does is give law
21 enforcement and prosecutors the necessary tools
22 to go after those who trespass on railroad
23 property.

24 SENATOR SQUADRON: Thank you very
25 much. I appreciate that.

1 And the sponsor has -- just a final
2 couple of questions here, if the sponsor would
3 continue to yield.

4 SENATOR FUSCHILLO: I'd be happy
5 to, Mr. President.

6 SENATOR SQUADRON: The sponsor has
7 somewhat gone back to the 19th century and sort
8 of the history of legislation to protect the
9 rails from vandalism, from acts of terrorism,
10 other dangerous acts, has talked about the fact
11 that New York needs updating. Are there other
12 states that this legislation is modeled on? Are
13 there other states that today do this better than
14 New York does?

15 SENATOR FUSCHILLO: The answer is
16 we have not -- we've looked at what other states
17 do. We've mostly looked at what my esteemed
18 colleague Senator Dilan had done last year. We
19 trust his judgment. We think last year's bill
20 was a great bill. We want to make sure it gets
21 passed in the Assembly. We do have sponsors on
22 both sides of the aisle.

23 But let me read to you the language
24 from the memo of support from the Railroads of
25 New York State that lists member railroads on two

1 pages. And I'll be happy to provide this to you,
2 of railroads throughout New York State.

3 "Trespassing is the most significant
4 cause of death attributed to railroad operations
5 in New York State. Nationally, more than
6 500 such deaths which are preventable occur each
7 year. In addition, since September 11, 2001, the
8 extreme threat to our national transportation
9 infrastructure has added a whole new dimension to
10 railroad safety. In light of these additional
11 threats, railroads have teamed up with the
12 federal and state homeland security agencies to
13 take a 21st-century approach to trespassing and
14 security breaches. But when it comes to
15 enforcement of trespassing offenses in New York,
16 the railroads are forced to do so with laws that
17 have only seen few changes enacted since the
18 mid-19th century."

19 And I'm confident that my colleague
20 Senator Dilan last year felt the same way that I
21 do. Let's get out of the 19th century -- and I'm
22 sure you feel the same way, Senator Squadron --
23 let's get into the 21st century. Let's give law
24 enforcement the authority to properly charge and
25 prosecute those that are trespassing, in light of

1 the heightened homeland security issues.

2 And this organization represents
3 almost two pages of railroads throughout New York
4 State that all feel the same way, that it's about
5 time New York State comes up to speed, and let's
6 stop living in the past and come into the
7 future -- come into the present.

8 SENATOR SQUADRON: Thank you very
9 much. If the sponsor would yield for a final
10 question.

11 SENATOR FUSCHILLO: Mr. President,
12 yes.

13 SENATOR SQUADRON: Thank you.

14 I actually don't have the list of
15 the membership. Have the railroad entities, the
16 public authorities that I've mentioned, are they
17 listed as member organizations of RONY?

18 SENATOR FUSCHILLO: You have the
19 Buffalo and Pittsburgh -- you want me to read all
20 of them to you?

21 SENATOR SQUADRON: No. Just the
22 ones that I brought up previously, the MTA and
23 its affiliate railroads, the NFTA, any other
24 commuter rail lines in the state.

25 SENATOR FUSCHILLO: They're not

1 listed here. The MTA is not listed here. But
2 everybody else seems to be listed here.

3 And I'll be happy to go through all
4 of them if you want me to.

5 SENATOR SQUADRON: No, that's
6 okay. I think that might not be a good use of
7 our time this afternoon.

8 SENATOR FUSCHILLO: Well, I think,
9 you know, what's important, Senator, is that this
10 organization deal with all these private and
11 public railroad transportation providers
12 throughout the state and communicate with all of
13 them.

14 If there was opposition to this, as
15 the chairman of Transportation, I would have
16 heard it already. I haven't heard it. This has
17 always been a priority of the railroads
18 throughout New York State. And I hope we can
19 count on your support today.

20 SENATOR SQUADRON: Thank you very
21 much to the sponsor.

22 On the bill, Mr. President.

23 ACTING PRESIDENT ROBACH: On the
24 bill, Senator Squadron.

25 SENATOR SQUADRON: I thank Senator

1 Fuschillo for a really very patient recitation of
2 the reasons for this bill and references to other
3 states back to the 19th century.

4 And, you know, I think that the
5 point the sponsor makes is critical and
6 undeniable. You know, we just recently, with all
7 the trove of information that was gathered where
8 Osama bin Laden was brought to justice, saw that
9 in fact there were specific plans related to
10 coming after the rail system in New York City.
11 As the sponsor talks about, New York City has
12 been and continues to be one of the prime targets
13 in the world. We've seen around the world,
14 whether Madrid, in London, that terrorists target
15 rail systems.

16 In New York City, we move more
17 commuters by rail every single day than in the
18 rest of the country combined. As I referenced,
19 the MTA has three affiliate railroads: The
20 New York City Transit Authority, Metro-North,
21 Long Island Railroad. In addition, the Port
22 Authority runs the PATH train just in New York
23 City. We have the AirTrain as well. Up in
24 Buffalo, all the way up from Senator Maziarz's
25 district down to Senator Kennedy's, the NFTA runs

1 a rail system.

2 And so to make sure that New York is
3 no longer in the 19th century is critically
4 important. And I share the sponsor's interest in
5 that.

6 I also commend the sponsor for
7 working in a bipartisan fashion with Senator
8 Dilan, who I know carried this bill in the past,
9 continues to cosponsor it, passed it last year.

10 And, you know, we're not getting
11 into that game of just passing a one-house. We
12 are working closely with the Assembly to try to
13 make this bill into law, which is so
14 significant. I want to commend the sponsor for
15 all of that. I think it's significant.

16 I do think that it's important to
17 have explicit conversations with the MTA and its
18 affiliated railroads. As I said, they move more
19 human beings that every other railroad in this
20 nation every single day. I am certain, as
21 Senator Fuschillo referenced, that they are
22 comfortable with this. I'm also certain that
23 them weighing in, directly being involved, is an
24 important piece of this. Rail freight is a big
25 thing in New York State. It's very important.

1 We have a number of rail freight corridors; we'd
2 like to have more. But moving humans around,
3 moving people around every single day is a big
4 part of the terrorism risk, and it's critical.

5 Mr. President, I will be supporting
6 this bill. I think, as I said, Senator Fuschillo
7 clearly -- I've learned a lot asking him some
8 questions here. I think he clearly has a real
9 understanding and sense in a global way of why
10 this is so critically important.

11 I would urge discussion with the
12 commuter rails before this becomes chaptered. If
13 we need a chapter amendment or a slight
14 modification in this house, I'm sure we would be
15 able to do that as well. If not, then I would
16 just again commend the sponsor for working in a
17 serious way on a significant piece of
18 legislation. I thank him again for the
19 commentary, and I will be supporting this bill.

20 Thank you, Mr. President.

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

23 Hearing none, the debate is closed.
24 The Secretary will ring the bell.

25 I ask members to please come to the

1 chamber for the vote.

2 Read the last section.

3 THE SECRETARY: Section 5. This
4 act shall take effect on the 180th day.

5 ACTING PRESIDENT ROBACH: Call the
6 roll.

7 (The Secretary called the roll.)

8 ACTING PRESIDENT ROBACH: Senator
9 Krueger to explain her vote.

10 And I ask members, due to the
11 lengthy calendar, to stick to the two-minute
12 explanation, please.

13 SENATOR KRUEGER: Thank you,
14 Mr. President. I'll happily stay within two
15 minutes.

16 I thought this was a fascinating
17 debate, discussion. Obviously rail
18 infrastructure is critical for our state and, as
19 Senator Squadron pointed out, for my city, the
20 City of New York. We couldn't possibly move
21 8 million people around if we didn't have a safe
22 and diverse rail system.

23 And of course if we can't continue
24 to assure that we have an affordable housing
25 stock for the 8 million people in our city, we

1 will have bigger problems than just moving people
2 around on rail; we will need to move them out
3 farther and farther from the city in order for
4 them to live.

5 So I hope that as we are moving
6 into the infrastructure issues and concerns such
7 as the future of modern and safe rail and
8 protecting people who travel the rails that we
9 will also be taking up another critical issue for
10 so many of our communities, the preservation and
11 standards of quality for our affordable housing
12 stock.

13 Thank you, Mr. President. I vote
14 yes.

15 ACTING PRESIDENT ROBACH: Thank
16 you, Senator Krueger. You will be recorded in
17 the affirmative.

18 Announce the results.

19 THE SECRETARY: In relation to
20 Calendar 138, absent from voting are Senators
21 Smith and C. Kruger.

22 Ayes, 59. Nays, 0.

23 ACTING PRESIDENT ROBACH: The bill
24 is passed.

25 THE SECRETARY: Calendar Number

1 243, by Senator Grisanti, Senate Print 3791, an
2 act to amend the Environmental Conservation Law.

3 SENATOR SQUADRON: Explanation.

4 ACTING PRESIDENT ROBACH: An
5 explanation, Senator Grisanti, has been
6 requested.

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

9 Basically the purpose of this bill
10 is to promote safety in and around stormwater
11 retention ponds by amending the conservation law
12 to require modification of the Stormwater
13 Management Design Manual.

14 This bill is specifically in place
15 and I asked for it because a good friend of
16 mine's son drowned in one of these ponds. It's a
17 safety issue for my area, a safety issue across
18 New York State.

19 I'll be happy to answer any further
20 questions anybody may have.

21 ACTING PRESIDENT ROBACH: Senator
22 Stewart-Cousins.

23 SENATOR STEWART-COUSINS: Thank
24 you. Would the sponsor yield for a question?

25 ACTING PRESIDENT ROBACH: Senator

1 Grisanti, will you yield?

2 SENATOR GRISANTI: Absolutely.

3 SENATOR STEWART-COUSINS: Yes,
4 Senator, I know that we discussed this in
5 committee. And in committee I voted without rec
6 because there were some questions that I had, and
7 I'm hoping that I will get some answers.

8 And certainly let this be on the
9 record that I understood, when you talked about
10 it initially, that this was the result of a very
11 tragic incident. And so this has absolutely
12 nothing to do with that.

13 But I was wondering, in terms of the
14 way the new regulations will be promulgated, how
15 does it impact the existing retention ponds?

16 SENATOR GRISANTI: Mr. President,
17 through you. What's going to happen, Senator, is
18 that some of the retention ponds have some of the
19 criteria already, and I'll tell you what these
20 are.

21 It's going to require posting of
22 warning signs. Some retention ponds have them;
23 some don't. It's going to define a reasonable
24 slope past the aquatic bench. Some of them have
25 it, and some don't. It's going to have basically

1 any other provisions that DEC deems essential to
2 further safety. It's going to ensure examination
3 of the status of safety features.

4 So when those are all taken in
5 conjunction and have an aquatic vegetation -- as
6 I said, some of them have them and some don't --
7 DEC is going to come up with a new manual. This
8 particular legislation is going to speed up that
9 process. Every four years they come out with a
10 manual. The manual they have now is outdated.
11 This is going to speed that up, and to promote
12 safety.

13 And basically, if it doesn't have,
14 this particular retention pond, any of those
15 items, they'll have to be installed or taken care
16 of. Whether it's owned by the state or a private
17 individual, which is highly unlikely.

18 SENATOR STEWART-COUSINS: Okay. So
19 then it sounds like it will be an updated manual
20 and the DEC will put these new requirements in.
21 And so the existing stormwater retention ponds
22 will have to -- they won't be grandfathered, they
23 will have to comply with the new regulations?

24 SENATOR GRISANTI: To my
25 understanding, they will not be grandfathered.

1 You have to comply with the new regulation.

2 The DEC was going to update their
3 manual anyways. This gives a little more
4 criteria and a new section to say if you're going
5 to update it, we would like these things in
6 here.

7 Now, DEC actually made some of the
8 recommendations that are in this bill.

9 SENATOR STEWART-COUSINS: I
10 understand that they do. But I guess I'm just
11 trying to figure out how in existing -- I mean,
12 some of these retention -- oh, I'm sorry.

13 ACTING PRESIDENT ROBACH: Would you
14 like Senator Grisanti to continue to yield?

15 SENATOR STEWART-COUSINS: Yes.
16 Would you continue to yield, Senator?

17 SENATOR GRISANTI: Yeah. We're old
18 friends. We don't need to be that formal.
19 That's fine. I continue to yield.

20 SENATOR STEWART-COUSINS: Thank
21 you. I appreciate that.

22 So some retention ponds have been
23 sort of abandoned for a very, very long time.

24 SENATOR GRISANTI: Correct.

25 SENATOR STEWART-COUSINS: I'm still

1 trying to -- so those kinds of ponds, whose
2 responsibility would it become? Would it be the
3 residents in the area, would it be the
4 municipalities? Whose responsibility would these
5 become?

6 SENATOR GRISANTI: Whoever owns the
7 retention pond at that point when the regs are
8 updated every four years will have the
9 responsibility of making sure these particular
10 items and items in the past are implemented.

11 SENATOR STEWART-COUSINS: Okay. So
12 whoever was responsible, if they had not been,
13 they will now have to become responsible,
14 including maybe homeowners that surround a
15 particular --

16 SENATOR GRISANTI: That's correct.

17 SENATOR STEWART-COUSINS: So will
18 there be now new liability, then, for -- because
19 sometimes, you know, commercial developers, they
20 have the facility and the capacity to do this.
21 But would this be something that the residents
22 then would have to decide who's going to be
23 responsible? Would they have a new bill, would
24 they have a new liability, will they have to now
25 get insurance? How does that impact, you know,

1 the residents around a retention pond now, and
2 how will they move forward?

3 SENATOR GRISANTI: My
4 understanding, Senator, is that with this
5 particular piece of legislation, it doesn't have
6 any effect on liability. Because if it was a
7 homeowner's association that owned the retention
8 pond anyways, that's taken into consideration
9 when they actually purchase insurance. By
10 actually having these added safety measures for
11 the retention pond, what it's going to do is
12 actually reduce their cost of insurance.

13 With regard to the state side of it,
14 the state has to have notice of any sort of
15 dangerous condition. If the state doesn't have
16 notice, they have an argument then as far as the
17 liability issue for arguing against being liable
18 for something tragic that happens.

19 But by installing these measures,
20 God forbid a young boy and girl should happen to
21 fall into these ponds. By having the slopes,
22 having the aquatic vegetation, it gives them a
23 better chance of survival rather than being a
24 straight drop of 8, 9 feet.

25 SENATOR STEWART-COUSINS: But one

1 of the things in this -- he's going to continue.

2 One of the phrases was the
3 maintaining authority. That would be -- from
4 your standpoint, who would that be? Would that
5 be the local municipality, the building
6 department? Who is coming out and inspecting
7 these ponds? Would it be the building authority
8 now that will come and inspect everyone?

9 SENATOR GRISANTI: Under the
10 regulation, the regulation as it's set forth,
11 they always have to go out and inspect. The DEC
12 owns it, they're going to inspect their own. If
13 there's a property owner that owns it, the DEC is
14 having the regulation, they would inspect.

15 Now, hopefully that's done and that
16 inspection takes place so they're in compliance.

17 SENATOR STEWART-COUSINS: So DEC
18 will begin to -- will inspect. And if there's
19 any -- if there's -- if there's some problem and
20 they're not adhering to the regulations, what is
21 the penalty?

22 SENATOR GRISANTI: We don't have a
23 penalty phase at this point. The DEC, it says
24 any other provisions the department deems
25 essential to further promote the safety in and

1 around the stormwater retention ponds will be up
2 to them.

3 I didn't put a penalty phase in
4 there. They already go ahead of as of now and
5 regulate it. This is just adding a clause
6 modifying it, 17-0810, adding those other
7 criteria to provide safety for the retention
8 ponds. It's not going to change any other
9 requirements.

10 SENATOR STEWART-COUSINS: So
11 there's not going to be a penalty if they don't
12 do it. But this is a guide to tell people what
13 should be done and --

14 SENATOR GRISANTI: What should be
15 done.

16 SENATOR STEWART-COUSINS: And
17 hopefully, if they are not currently meeting the
18 standards, they will become on par with what the
19 standards should be, by signage and so forth.
20 Thank you.

21 SENATOR GRISANTI: I would say
22 that's a fair assessment, absolutely.

23 SENATOR STEWART-COUSINS: Thank
24 you, Senator.

25 On the bill.

1 ACTING PRESIDENT ROBACH: Senator
2 Stewart-Cousins on the bill.

3 SENATOR STEWART-COUSINS: Yeah,
4 there were a number of questions that we were
5 hoping to get answered in light of certainly the
6 tragedy that Senator Grisanti brought to our
7 attention.

8 And there are no penalties. It
9 sounds like it's an additional thing for DEC to
10 put into their manual so that people will be
11 aware that there are standards, there is a
12 process, there are certain procedures that would
13 make these retention ponds certainly safer, and
14 I'm sure that's what we want to do.

15 I hope that the municipalities and I
16 hope that those involved in creating these
17 retention ponds, in addition to those who
18 currently have retention ponds, will adhere to
19 the fact that we can make them safer and save
20 lives. So certainly I will be supporting the
21 bill and hopefully, again, this, will be one way
22 to pay honor to the child who drowned.

23 ACTING PRESIDENT ROBACH: Thank
24 you, Senator Stewart-Cousins.

25 Are there any other Senators wishing

1 to be heard?

2 Hearing none, the debate is closed.

3 The Secretary will ring the bell.

4 Again, we ask members to please come
5 to the chamber for the vote.

6 Read the last section.

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

9 ACTING PRESIDENT ROBACH: Call the
10 roll.

11 (The Secretary called the roll.)

12 ACTING PRESIDENT ROBACH: Announce
13 the results.

14 THE SECRETARY: Those recorded in
15 the negative on Calendar Number 243 are Senators
16 Gallivan, Griffio, Larkin, Little, Ranzenhofer,
17 and Ritchie.

18 Absent from voting: Senators C.
19 Kruger and Smith.

20 Ayes, 53. Nays, 6.

21 ACTING PRESIDENT ROBACH: The bill
22 is passed.

23 Senator Libous.

24 SENATOR LIBOUS: Thank you,
25 Mr. President.

1 Before we can continue the
2 noncontroversial calendar, I'm somewhat
3 disappointed that some of my colleagues will not
4 stay in the chamber to listen to the interesting
5 debate that is taking place. Because when we get
6 to the roll call, we are going to move along.
7 And we will wait a reasonable period, and then we
8 will move along. And if you're not here, you
9 will be marked absent.

10 So I would encourage my colleagues
11 to listen to the debate. I am finding it quite
12 interesting, quite stimulating. And I wouldn't
13 want you to lose out on what I'm gaining this
14 afternoon.

15 Thank you, Mr. President.

16 ACTING PRESIDENT ROBACH: At your
17 wise suggestion, Senator Libous, we will be
18 moving along in the roll call. So we ask members
19 to stay very close by, if not in their seats, for
20 the debate and the vote.

21 The Secretary will read.

22 THE SECRETARY: Calendar Number
23 255, by Senator Griffo, Senate Print 3641A, an
24 act to amend the Highway Law.

25 SENATOR BRESLIN: Explanation.

1 ACTING PRESIDENT ROBACH: An
2 explanation has been requested, Senator Griffo.

3 SENATOR GRIFFO: Thank you,
4 Mr. President.

5 This bill will allow towns to
6 designate town roads as low-volume and certain
7 low-volume roads to be minimum maintenance.

8 ACTING PRESIDENT ROBACH: Senator
9 Espaillat.

10 SENATOR ESPAILLAT: Yes,
11 Mr. President, through you, will the sponsor
12 yield to some questions?

13 ACTING PRESIDENT ROBACH: Senator
14 Griffo, will you yield?

15 SENATOR GRIFFO: By all means,
16 Senator Espaillat.

17 SENATOR ESPAILLAT: Thank you,
18 Senator Griffo.

19 I am not a country boy, I'm a city
20 boy, although I was born in a small town. And I
21 wanted to know, perhaps you could enlighten us a
22 little bit more about this particular issue,
23 which is of great interest to all of us, and give
24 me, if you can, an explanation. What is the
25 difference between what is considered currently a

1 town road as opposed to a low-volume road?

2 SENATOR GRIFFO: Mr. President,
3 through you. Senator Espaillat, the bill lays
4 out the process for town boards to designate
5 low-volume and minimum-maintenance roads. It's a
6 process that would include a comprehensive study
7 of the roadway, it would include a public
8 hearing, and it would allow for these roads -- we
9 have all embraced the concept of mandate relief.
10 And this is where this goes to, allowing
11 flexibility within those townships for those
12 roads that are not highly traveled to just deal
13 with minimum maintenance on those roads.

14 And I think the studies that are
15 conducted show that about a 50-car use for a road
16 is basically what this is.

17 SENATOR ESPAILLAT: If I may,
18 Mr. President.

19 ACTING PRESIDENT ROBACH: Do you
20 continue to yield, Senator Griffo?

21 SENATOR GRIFFO: I don't know, I
22 don't think he's asked a question yet.

23 SENATOR ESPAILLAT: Yes. Are these
24 dirt roads? How many lanes do they have? I
25 mean, what is considered --

1 SENATOR GRIFFO: I will yield,
2 Senator.

3 SENATOR ESPAILLAT: -- a low-volume
4 road? Is it six lanes, is it eight lanes, is it
5 a Thruway, is it a dirt road? Is there a
6 particular guideline that you look at to
7 establish which is which? Or do you actually
8 have a vehicle count and establish that because
9 of the volume of vehicles in the road, it
10 establishes in a certain criteria?

11 SENATOR GRIFFO: Mr. President,
12 through you. Senator Espaillat, as I indicated
13 earlier, one of the counts used is 50 cars,
14 vehicles traveling a road. So that shows if
15 there's only -- studies are being done if 50 cars
16 or less used a road in the course of a day, that
17 indicates the level of usage.

18 It also deals with a study that was
19 done in 1992 by the Local Roads Research and
20 Coordination Council, which defined and set
21 standards for low volume and classification. And
22 that was done to allow flexibility and to reduce
23 costs to some of these towns where these roads --
24 which are small roads.

25 And I invite you to come upstate so

1 we can show you many of these roads. We can
2 always use -- bring your money, too, because it's
3 very good to invigorate the economy.

4 SENATOR ESPAILLAT: Mr. President,
5 through you, if I may. I would love to visit
6 those towns. I know that New York State is a
7 beautiful state. And I'm sure that many of the
8 neighborhoods in your region are beautiful and
9 many of us will enjoy being there.

10 I know that similar bills were
11 introduced through the Rural Resources Commission
12 in the past, both in these chambers and in the
13 lower house. Why not send this bill through the
14 RRC?

15 SENATOR GRIFFO: Mr. President,
16 through you. Senator Espaillat, this is a bill
17 that was passed in this house. We now have an
18 Assembly sponsor, Assemblywoman Gunther. And we
19 think that this is the most appropriate course
20 and the best course in order to provide the
21 mandate relief that we all agree that is
22 necessary and needed can be accomplished.

23 SENATOR ESPAILLAT: Mr. President,
24 through you. Senator Griffo, has the commission,
25 the RRC, vetted this bill? Have they reviewed it

1 appropriately and vetted this bill?

2 SENATOR GRIFFO: Mr. President,
3 through you. Senator Espaillat, I believe that
4 there's been no one that has expressed any
5 opposition to this bill, to my knowledge. In
6 fact, if anything, there are people that have
7 supported the bill such as the -- we actually
8 have people on both sides. Not only the
9 Association of Towns, but the Adirondack Council,
10 too, which I know many of you on your side are
11 very familiar with.

12 SENATOR ESPAILLAT: Through you,
13 Mr. President. So do you feel that the Rural
14 Resources Commission approves of this bill? Do
15 they approve of it and they're supportive of it?

16 SENATOR GRIFFO: Could you repeat
17 the question, Senator Espaillat?

18 SENATOR ESPAILLAT: Yes. Do you
19 feel that the Rural Resources Commission approves
20 of this particular bill?

21 SENATOR GRIFFO: That would be my
22 understanding, because there has been no
23 opposition expressed. And the chair sits near me
24 and has given me an unequivocal yes, Senator
25 Espaillat.

1 SENATOR ESPAILLAT: Okay. Very
2 happy to hear that.

3 Mr. President, if I may. We are
4 concerned, however, that there is a five-day
5 notice of public hearings regarding these
6 changes, rather than perhaps a 10-day
7 requirement, which has been included in previous
8 similar bills. Is there a reason for the
9 reduction in the public notice for this proposed
10 road designation?

11 SENATOR GRIFFO: Mr. President, to
12 the best of my knowledge, the town boards that
13 would be making the designation would do it by
14 local law, and there would be 30 days prior to a
15 public hearing on that local law. If you look at
16 Town Law, they specify how you do something like
17 this.

18 So there's proper notice given. And
19 I believe it's consistent with local law, General
20 Municipal Law, that would regulate something like
21 this, to allow for an input and notification.

22 SENATOR ESPAILLAT: Mr. President,
23 if I may.

24 ACTING PRESIDENT ROBACH: Will you
25 continue to yield, Senator Griffo?

1 SENATOR GRIFFO: Sure.

2 SENATOR ESPAILLAT: Do you feel
3 that the five days is a sufficient amount of time
4 for the public and affected property owners to
5 prepare and argue their case to the governing
6 body?

7 SENATOR GRIFFO: Again,
8 Mr. President, through you. Senator Espaillat,
9 as I said, if you look at this, there are a
10 number of criteria for proper notice. And as far
11 as I look at this, if you follow the public
12 hearing requirements, there would be ample notice
13 given -- not only how long it takes to mail to
14 somebody, but there's plenty of opportunity in
15 existing law, as well as in this, to allow for an
16 open public awareness, public input into the
17 process.

18 SENATOR ESPAILLAT: Mr. President,
19 just one final question, if I may, to the
20 sponsor.

21 ACTING PRESIDENT ROBACH: Senator
22 Griffo?

23 SENATOR GRIFFO: Sure.

24 SENATOR ESPAILLAT: Yes. Previous
25 efforts to expand the universe of low-volume and

1 minimum-maintenance roads have been based on
2 their potential to reduce the costs for
3 localities. Are there any considerations or
4 potential savings for this particular
5 legislation? And what are the fiscal
6 implications or impact for the localities and
7 regions?

8 SENATOR GRIFFO: Senator
9 Espaillat -- through you, Mr. President -- as I
10 said, the Town Highway Superintendents, the
11 Association of Towns support this because they
12 all indicate that there will be savings as a
13 result of that opportunity to look at these
14 low-volume roads and have minimal maintenance.
15 In no way does it abandon maintenance, I want to
16 make that perfectly clear.

17 In fact -- well, maybe we can talk
18 about the Beatles, "The Long and Winding Road,"
19 Senator Espaillat, if I can quote from "The long
20 and winding road that leads to your door will
21 never disappear," to give you assurances.

22 SENATOR ESPAILLAT: Thank you,
23 Mr. President. I prefer "Strawberry Fields
24 Forever." But thank you, Mr. President.

25 ACTING PRESIDENT ROBACH: Thank

1 you.

2 Is there any other Senator wishing
3 to be heard?

4 The debate is closed. The Secretary
5 will ring the bell.

6 We ask members to please come to the
7 chamber for the vote.

8 Read the last section.

9 THE SECRETARY: Section 4. This
10 act shall take effect on the 120th day.

11 ACTING PRESIDENT ROBACH: Call the
12 roll.

13 (The Secretary called the roll.)

14 THE SECRETARY: In relation to
15 Calendar Number 255, absent from voting are
16 Senators Huntley, C. Kruger and Smith.

17 Ayes, 58. Nays, 0.

18 ACTING PRESIDENT ROBACH: The bill
19 is passed.

20 THE SECRETARY: Calendar Number
21 309, by Senator Grisanti, Senate Print 2877A, an
22 act to amend the Environmental Conservation Law.

23 SENATOR PARKER: Explanation.

24 ACTING PRESIDENT ROBACH: An
25 explanation has been requested, Senator Grisanti.

1 SENATOR GRISANTI: Thank you,
2 Mr. President.

3 The purpose of this bill would be to
4 revise the number of reverse vending machines
5 that are required in certain businesses to redeem
6 empty beverage containers, based on the square
7 footage of the store.

8 ACTING PRESIDENT ROBACH: Senator
9 Peralta.

10 SENATOR PERALTA: Thank you,
11 Mr. President. Will the sponsor yield?

12 ACTING PRESIDENT ROBACH: Senator
13 Grisanti, will you yield?

14 SENATOR GRISANTI: I will,
15 Mr. President.

16 SENATOR PERALTA: Looking at this
17 bill, I wanted to get a clear definition of what
18 "reverse vending machines" is defined as under
19 this bill.

20 SENATOR GRISANTI: Reverse vending
21 machine, as it stands from a law that passed a
22 couple of years ago, required stores to have
23 eight of these machines in their facility, based
24 on square footage.

25 What this is doing is saying that if

1 you're between 40,000 and 60,000 square feet, you
2 need two machines instead of three; between
3 60,000 and 85,000 square feet, you need three
4 instead of four; over 85,000 square feet, you can
5 have four machines instead of eight.

6 Now, what does that do? Basically,
7 some of these stores having eight machines, all
8 across the state you had hundreds of stores,
9 hundreds of machines not being used, drawing
10 serious power off the grid of New York State. On
11 top of that, these stores are losing all this
12 space. So it freed up valuable store space that
13 is lost.

14 It also included stores probably in
15 your area, like Macy's, that had little
16 refrigerators of \$10 spirit water, they would
17 call it. They'd have to have three machines in
18 their stores. Not feasible.

19 Stores like Home Depot and Lowe's,
20 they'd only sell bottled water to their
21 contractors. The contractors that come in, I
22 don't think the contractors are returning the
23 bottled waters back to Home Depot, who has to
24 have eight to 12 of these machines in their
25 stores.

1 So it eliminates that burden. The
2 recyclable rate is still not going to go down.
3 But it also gives another exemption that allows
4 that if you have another process by which to
5 recycle, you don't need the machines altogether.
6 Also known as the alternative technology where
7 you crush the containers, use it in a different
8 way. Certain stores in Maine actually use bags,
9 they do it that way.

10 SENATOR PERALTA: Mr. President,
11 will the sponsor yield for another question.

12 ACTING PRESIDENT ROBACH: Will you
13 continue to yield, Senator Grisanti?

14 SENATOR GRISANTI: Yes, I will.

15 SENATOR PERALTA: Now, with these
16 reductions, these proposed reductions of the RVM
17 machines, would you say that if you reduce it
18 from, let's say, eight to four in the
19 85,000-square-foot store, that there may be a
20 bigger nuisance created by the longer lines of
21 individuals waiting on the small amount of RVM
22 machines that exist?

23 SENATOR GRISANTI: That's always a
24 possibility. But you've got to remember, if a
25 store is that large and it wants to have customer

1 satisfaction -- I'm not saying that they have to
2 take the eight machines and reduce it down. If
3 they want to have the additional machines, they
4 can. This just gives them the option. If those
5 eight machines are not being used, you can go
6 down to four machines instead of eight.

7 SENATOR PERALTA: Would the sponsor
8 yield for another question.

9 SENATOR GRISANTI: Yes,
10 Mr. President.

11 SENATOR PERALTA: This seems to me
12 like this piece of legislation will favor big box
13 stores. I just find it unbelievable that a store
14 that has 85,000 square feet will not have space
15 for eight RVM machines. I've noticed in my
16 district the size of RVM machines, and they're
17 about -- much smaller than the width of the clock
18 in this Senate chamber and definitely much
19 smaller in terms of height.

20 So 85,000 feet, and the argument is
21 being used that it is too small to have eight RVM
22 machines, I find that unlikely. Why is there a
23 need to reduce it from eight to four?

24 SENATOR GRISANTI: The machines in
25 recent years have basically been upgraded to

1 handle more of a capacity for recycled products.
2 So even though the machines are smaller, the
3 technology is better.

4 So the four machines could possibly
5 do the same work as eight. But having eight of
6 the older machines is causing a heavy drain, and
7 they're larger. Maybe where your stores are,
8 they're the newer machines. Some of the stores
9 have the older machines that are much larger.

10 SENATOR PERALTA: Mr. President,
11 will the sponsor yield for another question.

12 ACTING PRESIDENT ROBACH: Senator
13 Grisanti?

14 SENATOR GRISANTI: Yes, I will.

15 SENATOR PERALTA: So currently, by
16 law, how can you be sure that this legislation
17 will not lead to a decrease in returns of
18 recyclable bottles?

19 SENATOR GRISANTI: Because as I
20 said before, the stores still have the ability --
21 they're going to have the machines. And these
22 smaller machines produce double the capacity of
23 what the other machines had. They're still going
24 to have the recyclable areas in their store.

25 Now, basically you've got the Food

1 Industry Alliance, Hannaford, Retail Council of
2 New York, Business Council, they're for this
3 particular legislation because of what it does in
4 terms of upgraded technology, maintains
5 recyclable products, eliminates some of the space
6 that is being taken up in the store.

7 And on top of that, the DEC does not
8 oppose the bill either.

9 SENATOR PERALTA: Mr. President,
10 would the sponsor yield for another question.

11 ACTING PRESIDENT ROBACH: Senator
12 Grisanti, do you continue to yield?

13 SENATOR GRISANTI: Yes.

14 SENATOR PERALTA: Now currently,
15 what ends up happening is, by law, if you
16 purchase the container let's say at a big box
17 store, you should be able to redeem the container
18 at a big box store. But at least in the city,
19 what ends up happening is you get a big box
20 store -- you can purchase a container at a big
21 box store and when you go back to redeem, what
22 ends up happening is that they send you to the
23 supermarket so that you can redeem the empty
24 containers.

25 So wouldn't this be disproportionate

1 or a burden on the supermarkets whom the big box
2 stores keep on sending back to the supermarkets
3 so that they can redeem these empty containers?

4 SENATOR GRISANTI: If the big box
5 stores you're talking about that are not exempt
6 from this legislation -- they're supposed to have
7 those machines. They're not supposed to be able
8 to tell somebody you cannot return the recycled
9 products here, to go to a supermarket. So if
10 that's the case, then you probably need to make a
11 complaint.

12 But I saw the letter from Local 338,
13 and I think it's a contradiction. They oppose
14 the passage of this legislation by saying "As
15 more and more beverages are sold outside of the
16 traditional supermarkets, consumers must have the
17 option to return beverage containers to the place
18 which they purchased them. If this does not
19 occur, then supermarkets bear a disproportionate
20 share." This is exactly where you're getting
21 this from.

22 Today's supermarkets must use
23 available retail space for RVMs. No
24 consideration is given. So in your one argument
25 you're saying that, well, it doesn't take up a

1 lot of space but yet, you know, they don't have
2 to come to the store. It's a contradiction.

3 If they're purchasing a product from
4 a store that is required to have those machines,
5 then all they simply need to do is make a
6 complaint that I want to return it here rather
7 than to a supermarket.

8 SENATOR PERALTA: Mr. President,
9 would the sponsor yield for another question.

10 SENATOR GRISANTI: Yes.

11 ACTING PRESIDENT ROBACH: Yes.

12 SENATOR PERALTA: Now, does this
13 piece of legislation address any of the
14 enforcement issues? Because as you stated
15 earlier, that if there is a problem you can file
16 a claim. But time and time again, I know that at
17 least in the city and some areas, some counties
18 outside of the city, what tends on happening is
19 that when you purchase a container or a product
20 at a big box store, many of them do not redeem
21 them. And what they end up doing is they send
22 them right back to the supermarkets.

23 So does your piece of legislation
24 talk about an enforcement provision to help
25 reduce this big problem?

1 SENATOR GRISANTI: This legislation
2 only talks about the amount of reverse vending
3 machines in the store. It doesn't talk about the
4 regulations on penalties. I'm sure that's
5 somewhere else in the regulations where if you
6 refuse to take recyclable products in your store.

7 So you need to file a complaint.
8 With whom, I don't know. But that's not
9 addressed in this bill. This bill only addresses
10 the amount of machines.

11 SENATOR PERALTA: Mr. President,
12 would the sponsor yield for another question.

13 SENATOR GRISANTI: Yes.

14 SENATOR PERALTA: So from time to
15 time I get many of these complaints in my
16 district, and I'm pretty sure many of my other
17 colleagues get similar complaints.

18 So if we receive these complaints
19 and it's only on an upward trend and it's
20 growing, now this piece of legislation will ask
21 for the reduction of RVM machines, not taking
22 into account, especially during this heavy summer
23 season -- where people will wait long hours to
24 redeem their empty containers and sometimes --
25 actually, many times -- you will have many of

1 these machines broken.

2 So if these machines are broken, now
3 instead of having four lines, let's say for
4 example, in the 85,000-square-foot store, you
5 will have two lines or one line waiting to be
6 redeemed.

7 So if this is the case and these
8 redemptions are just increasing, these complaints
9 are being increased, especially during the
10 summer, why are we reducing the amount of RVM
11 machines when you should be increasing, if not
12 keeping it level? So that way customers can be
13 satisfied, they don't create a nuisance to the
14 other customers that are actually shopping in the
15 area. Why are we reducing?

16 SENATOR GRISANTI: As I said prior
17 on two occasions, the machines have upgraded
18 technology where they can handle twice the amount
19 of output as the older machines. The older
20 machines are being replaced because they use up
21 too much energy. So it's a cost factor.

22 And as far as people that are
23 waiting the entire summer to return some of their
24 products, I can't address that issue on why
25 somebody else is hanging onto their recyclable

1 products.

2 You can also return these products
3 over the counter if the machine is broken.

4 SENATOR PERALTA: On the bill,
5 Mr. President.

6 ACTING PRESIDENT ROBACH: On the
7 bill, Senator Peralta.

8 SENATOR PERALTA: I understand that
9 Senator Grisanti has good intentions with this
10 bill. But this bill actually shortchanges
11 supermarkets by placing an unfair burden on
12 them. And disproportionately the share of the
13 costs will end up at supermarkets.

14 This is not an equitable bill, since
15 it favors big box stores. Many of the
16 enforcement policies that are in place do not
17 really work, and we need to work on that. This
18 bill doesn't address the obligation of accepting
19 empty containers even when RVMs aren't working,
20 which in turn increases the lines and creates a
21 nuisance for other customers.

22 This bill doesn't address the real
23 issue of enforcement, as I said previously, where
24 the real problem with these RVM machines is that
25 big box stores end up sending many of the

1 customers or people that want to redeem their
2 empty containers back to the supermarkets.

3 I hoped that today we would be
4 talking about more substantive issues like the
5 extension or the strengthening of rent
6 regulations, but I see that today is not that
7 day. So I am going to be voting in the negative
8 on this one, and I urge all my colleagues to do
9 the same. Thank you.

10 ACTING PRESIDENT ROBACH: Are there
11 any other Senators wishing to be heard?

12 Senator Krueger.

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

15 ACTING PRESIDENT ROBACH: On the
16 bill.

17 SENATOR KRUEGER: Thank you.

18 I appreciated very much the
19 back-and-forth, and I respectfully agreed with
20 all the questions that Senator Peralta asked
21 Senator Grisanti, but I find myself coming to the
22 opposite conclusion. I don't think this bill
23 covers all the issues we need to. I think that
24 the points that Senator Peralta was making about
25 the importance of enforcement require additional

1 exploration in this house.

2 I am not opposed to this bill, but I
3 would like to reemphasize for the record, as
4 Senator Peralta was highlighting, that in the
5 City of New York we are finding that certain
6 kinds of stores, disproportionately pharmacies --
7 which I won't name the names, but a number of
8 chain pharmacies -- they sell a significant
9 quantity of cold drinks and bottled beverages
10 that fall under the Bottle Bill in New York
11 State.

12 Probably they don't meet the
13 5 percent standard of their floor space, but the
14 irony is they do incredibly rapid turnover. So
15 it's probably more than 5 percent of the product
16 they sell, if not 5 percent of the floor space at
17 any given time. And they are not, I believe,
18 following the correct laws of New York State as
19 far as agreeing to take the bottles back.

20 So we do find ourselves, in the City
21 of New York, with a situation where relatively
22 small supermarkets -- because in my borough,
23 Manhattan, we don't have space for anything, so
24 our supermarkets aren't really "super" the way
25 you would define them as such in the rest of the

1 state -- where relatively small food stores with
2 limited space to sell their product end up having
3 to take responsibility for taking back far more
4 containers than they've actually sold, which is a
5 problem for them in trying to master being able
6 to operate their stores correctly.

7 So the bill itself I believe is a
8 good bill. I think this Legislature needs to go
9 further in exploring both enforcement and
10 expanded options, such as the rightsizing of
11 reverse vending machines and other options that
12 might be available.

13 So I look forward to working with
14 Senator Grisanti in the future to exploring
15 further where we can go to expand and improve the
16 Bottle Bill system in New York State, making sure
17 that we encourage recycling, we encourage the
18 users to return the bottles, but we also come up
19 with a system that is fair and equitable for all
20 retailers so that some don't end up taking on a
21 greater share of responsibility for returns than
22 others.

23 So I'll be voting yes,
24 Mr. President. Thank you.

25 ACTING PRESIDENT ROBACH: Senator

1 Espaillat.

2 SENATOR ESPAILLAT: Yes,
3 Mr. President. On this bill, remember that when
4 we had the debate for the Bigger Bottle Bill, one
5 of the issues that continuously came up was the
6 fact that many stores, particularly those in the
7 City of New York -- our smaller supermarkets, if
8 you may, bodegas -- felt that by increasing the
9 Bottle Bill, by approving the Bigger Bottle Bill,
10 that they would see an increase, a 25 percent
11 increase in the handling of bottles. And that as
12 a result, they would have to cut into their
13 storage space.

14 So if you had now water bottles
15 coming in, Snapple bottles coming in, you would
16 have to maybe go into your basement and take up
17 25 percent of your storage space in a bodega, and
18 this will have an adverse impact on the
19 business.

20 As a result, when we discussed the
21 Bigger Bottle Bill, we made some adjustments to
22 address this particular issue, the fact that
23 smaller supermarkets will now have to take an
24 increase of 25 percent in the handling of
25 bottles.

1 Now, by allowing big box stores not
2 to have the required number of vending machines,
3 what we're saying is that these big box stores
4 will now send their beverage bottles to the
5 smaller operations, to the local supermarkets and
6 the local bodegas, and they will now have to
7 handle an increased amount of bottles in their
8 daily activities, which would again have an
9 impact on their operation, often bringing rodents
10 to their basement, having a series of problems
11 accommodating their small stores that are
12 strapped for space to handle this workload.

13 So I will be voting in the negative,
14 Mr. President. I think that this is a bill that
15 disproportionately hurts smaller businesses,
16 precisely the ones that provide jobs for the
17 State of New York. We must remember that small
18 businesses are the ones that are the engine to
19 the economy of New York State, and this will
20 further hurt them. I will be voting in the
21 negative.

22 ACTING PRESIDENT ROBACH: Senator
23 Squadron.

24 SENATOR SQUADRON: Will the sponsor
25 yield for a question, Mr. President.

1 ACTING PRESIDENT ROBACH: Senator
2 Grisanti, will you yield?

3 SENATOR GRISANTI: Yes.

4 And to get to another Senator's
5 question beforehand, those stores do not have to
6 have the RVM machines or accept containers.

7 Go on, Senator Squadron.

8 SENATOR SQUADRON: Thank you.
9 Thank you to the sponsor.

10 This reduces the number of RVMs for
11 stores of a number of different sizes. The
12 largest reduction on a number basis, on a
13 fractional basis is in stores over 85,000 square
14 feet. Would the sponsor just describe -- and I
15 know you got close to this issue, but would the
16 sponsor mind just describing what -- that's a lot
17 of square feet if you're from New York City.
18 That's, you know, 90 homes in New York City or
19 110 homes. What supermarkets or food stores
20 would fall into that greater-than-85,000-square-
21 foot category?

22 SENATOR GRISANTI: The original
23 language that talks about the 40 to 60, 60 to 85,
24 is the original language from the prior bill from
25 a couple of years ago. We're not changing that.

1 And it passed 61 to nothing, something that was
2 voted on. So we're not changing any of that.

3 SENATOR SQUADRON: If the sponsor
4 would continue to yield.

5 SENATOR GRISANTI: Yes.

6 SENATOR SQUADRON: I understand
7 that. Just, again, the largest reduction here
8 that we're talking about is in this category of
9 really very, very, very large -- very, very,
10 very, very large stores.

11 And I'm just wondering, 85,000
12 square feet is hard for me to envision. It seems
13 to me that you might have a couple of sort of
14 super supermarkets, maybe the largest Wegmans in
15 the state, maybe, you know, one of the super -- I
16 can't imagine even a Price Chopper. But, you
17 know, that you're also talking largely about
18 Wal-Marts and Targets. Would that be sort of a
19 fair guess?

20 SENATOR GRISANTI: I haven't been
21 measuring Tops or Wegmans stores, but I would
22 assume that the Wegmans would probably be --
23 Super Wegmans in my area would probably be about
24 that size, 85,000.

25 SENATOR SQUADRON: And a Wal-Mart

1 or a Target?

2 SENATOR GRISANTI: Correct.

3 SENATOR SQUADRON: So thank you
4 very much to the sponsor.

5 You know, the concern that I would
6 have with this bill would be not so much that
7 Wegmans, which, you know, does a lot of business
8 and is clearly in the category here. I'm
9 actually mostly worried about a Wal-Mart or
10 Target of a great deal of size that has less than
11 5 percent devoted to groceries that today has an
12 RVM, it's a large business, it does a great deal
13 of volume, that no longer would.

14 And to me that's the greatest
15 concern in this bill. It's the reason I'm not
16 going to be able to support it, though I think
17 there are some admirable parts of it. I thank
18 the sponsor for helping me clarify it.

19 ACTING PRESIDENT ROBACH: Debate is
20 closed. The Secretary will ring the bell.

21 We ask the members to as
22 expeditiously as possible please come to the
23 chamber for a vote.

24 Read the last section.

25 THE SECRETARY: Section 2. This

1 act shall take effect immediately.

2 ACTING PRESIDENT ROBACH: Call the
3 roll.

4 (The Secretary called the roll.)

5 ACTING PRESIDENT ROBACH: Announce
6 the results.

7 THE SECRETARY: In relation to
8 Calendar Number 309, those recorded in the
9 negative are Senators Diaz, Dilan, Espaillat,
10 Gianaris, Parker, Peralta, Rivera, Squadron, and
11 Stavisky.

12 Absent from voting are Senators
13 Duane, C. Kruger, Montgomery and Smith.

14 Ayes, 48. Nays, 9.

15 ACTING PRESIDENT ROBACH: The bill
16 is passed.

17 Senator Libous.

18 SENATOR LIBOUS: Mr. President, the
19 Senate will stand at ease for five minutes. And
20 I would ask members not to go far, because we
21 will then come back and address what's left on
22 the calendar.

23 But just we're at ease for five
24 minutes. Please, I would ask members to stay in
25 the chamber or right outside.

1 ACTING PRESIDENT ROBACH: The
2 Senate will stand at ease. We ask members to
3 stand close by.

4 Senator Breslin.

5 SENATOR BRESLIN: Thank you,
6 Mr. President.

7 During that five-minute period,
8 there will be a quick Democratic conference in
9 Room 314.

10 ACTING PRESIDENT ROBACH: There
11 will be a Democratic conference in Room 314.

12 The Senate stands at ease.

13 (Whereupon, the Senate stood at ease
14 at 5:23 p.m.)

15 (Whereupon, the Senate reconvened at
16 5:53 p.m.)

17 SENATOR LIBOUS: Mr. President.

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

20 Senator Libous.

21 SENATOR LIBOUS: Mr. President,
22 could we now take up, on the controversial
23 calendar, Calendar Number 427 by Senator Young.

24 ACTING PRESIDENT GRIFFO: The
25 Secretary will read.

1 THE SECRETARY: Calendar Number
2 427, by Senator Young, Senate Print 2835, an act
3 to amend the Criminal Procedure Law.

4 SENATOR KRUEGER: Explanation.

5 ACTING PRESIDENT GRIFFO: An
6 explanation has been requested by Senator
7 Krueger, Senator Young.

8 SENATOR LIBOUS: Senator Young will
9 be happy to give an explanation momentarily.

10 ACTING PRESIDENT GRIFFO: Senator
11 Young.

12 SENATOR YOUNG: Thank you,
13 Mr. President.

14 The common council in the City of
15 Salamanca in Cattaraugus County requested this
16 legislation. Peace officers may only be
17 designated by an express act of the New York
18 State Legislature, and this legislation would
19 permit the city's dog control officer to issue
20 court appearance tickets for the purpose of
21 enforcing Article 26 of the New York State Ag and
22 Markets Law.

23 ACTING PRESIDENT GRIFFO: Senator
24 Krueger.

25 SENATOR KRUEGER: Thank you,

1 Mr. President. If the sponsor would please
2 yield.

3 ACTING PRESIDENT GRIFFO: May I
4 have some order in the chamber, please.

5 Senator Young, do you yield?

6 SENATOR YOUNG: Certainly.

7 SENATOR KRUEGER: Thank you.

8 So this is a peace officer bill for
9 animal control officers in the City of Salamunca.

10 SENATOR YOUNG: Salamanca.

11 SENATOR KRUEGER: Salamanca, excuse
12 me. How big is the City of Salamanca?

13 SENATOR YOUNG: The City of
14 Salamanca is roughly around 7,000 to 8,000
15 people.

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

19 SENATOR YOUNG: Yes.

20 ACTING PRESIDENT GRIFFO: The
21 Senator yields.

22 SENATOR KRUEGER: Thank you.

23 How many animal control officers are
24 there in the city?

25 SENATOR YOUNG: Through you,

1 Mr. President, actually I believe that these
2 duties have been supported by the police
3 department.

4 It's important to note that the City
5 of Salamanca is going through a severe crisis
6 right now. The Seneca Nation has not paid the
7 casino revenues for three years, and part of
8 their budget is based on that. So this would
9 help alleviate some of the pressure, because
10 about half the city workforce has had to have
11 been laid off.

12 So this would provide the animal
13 control duties, and it would be by somebody who
14 is specially trained, but it also would be at a
15 lower cost so that those duties could be handled.

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

18 ACTING PRESIDENT GRIFFO: Senator
19 Young, do you yield?

20 SENATOR YOUNG: Certainly.

21 ACTING PRESIDENT GRIFFO: The
22 Senator yields.

23 SENATOR KRUEGER: Thank you.

24 And I apologize, I don't think I
25 quite understood the answer. I understood that

1 the city is in a financial crisis, as so many of
2 our towns and cities are. But I believe I heard
3 the sponsor say that currently the animal control
4 officers are police in the city.

5 So could I just clarify. Again, are
6 there animal control officers? How many of them
7 are there? Or in fact do other staff from the
8 city serve that function today?

9 SENATOR YOUNG: I believe that --
10 through you, Mr. President, I believe that there
11 may be one animal control officer right now. But
12 they want it designated as a peace officer.

13 And as I stated previously, this
14 would provide support to the Salamanca Police
15 Department that is experiencing a significant
16 shortage of officers right now due to a fiscal
17 crisis that they're experiencing.

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

21 ACTING PRESIDENT GRIFFO: The
22 sponsor yields.

23 SENATOR YOUNG: Certainly.

24 SENATOR KRUEGER: Thank you. So I
25 appreciate the answer, because I didn't

1 understand the direction you were explaining.

2 So because the City of Salamanca has
3 a shortage of funds, it doesn't actually have
4 potentially enough police officers so that the
5 animal control officer or officers would be
6 functioning as peace officers to supplement the
7 police force, not the police force supplementing
8 the animal control force; is that correct?

9 SENATOR YOUNG: Correct. That's
10 correct.

11 SENATOR KRUEGER: Thank you.

12 If through you, Mr. President, the
13 sponsor would continue to yield.

14 SENATOR YOUNG: Yes.

15 ACTING PRESIDENT GRIFFO: Senator
16 Young yields.

17 SENATOR KRUEGER: Thank you.

18 Are animal control officers elected
19 or appointed?

20 SENATOR YOUNG: Through you,
21 Mr. President, I believe that they are
22 appointed. And that's why the common council in
23 the City of Salamanca requested this legislation.

24 SENATOR KRUEGER: Through you,
25 Mr. President, if the sponsor would continue to

1 yield.

2 SENATOR YOUNG: Yes.

3 ACTING PRESIDENT GRIFFO: The
4 Senator yields.

5 SENATOR KRUEGER: Thank you.

6 What are the current qualifications
7 for somebody to be an animal control officer in
8 the City of Salamanca?

9 SENATOR YOUNG: Through you,
10 Mr. President, I'm not really sure to be an
11 animal control officer.

12 But I will point out that this
13 legislation deals with having somebody designated
14 as a peace officer. I will remind the Senator
15 that last year there was legislation that was
16 voted on by this house and passed through the
17 legislative process that gave further training
18 and different standards than previously held for
19 peace officers. So if the Senator's concern is
20 that there would not be enough training or the
21 high enough standards that would be necessary,
22 that was addressed last year.

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

1 SENATOR YOUNG: Certainly.

2 ACTING PRESIDENT GRIFFO: The
3 Senator yields.

4 SENATOR KRUEGER: Thank you.

5 I didn't forget that there was a
6 change in the status for what a peace officer
7 training needs to be. I appreciate the Senator's
8 pointing that out.

9 So this would give, as I understand
10 it under her bill, the power to make warrantless
11 arrests that would be given to the animal control
12 officers; is that correct?

13 SENATOR YOUNG: Yes, it is.

14 SENATOR KRUEGER: And would this
15 bill actually allow animal control officers who
16 then became peace officers to apply for gun
17 permits to carry guns for their work?

18 SENATOR YOUNG: No, it would not.

19 SENATOR KRUEGER: Mr. President, on
20 the bill.

21 ACTING PRESIDENT GRIFFO: Senator
22 Krueger on the bill.

23 SENATOR KRUEGER: Thank you. I
24 appreciate the sponsor's responses.

25 This bill was vetoed previously, and

1 I suspect it may face a veto again.

2 For me, it's not this one bill. I
3 am consistent in voting against most peace
4 officer bills for the same reasons I will be
5 voting against this.

6 I am greatly disturbed to hear that
7 there is a town that doesn't believe they have an
8 adequate police force and wants to give their
9 animal control officer or officers police powers,
10 or peace officer powers, including the power to
11 do warrantless arrests, to follow through on
12 criminal activities and investigations.

13 I am disturbed that there are not
14 enough police to provide those services, but I
15 don't believe the solution is to give those
16 powers to people who are not police officers or
17 law enforcement officers. I don't think that it
18 is in the best interests of the State of New York
19 to continue the expansion of what I have seen now
20 for the 8½ years that I have been here in the
21 Senate, a continuing push to categorize various
22 people with various job descriptions and job
23 functions having really nothing to do with law
24 enforcement, to give them the powers of law
25 enforcement, to give them the power to arrest, to

1 investigate, to follow through on criminal
2 charges without their actually being police
3 officers or trained as law enforcement officers.

4 I think it's a serious mistake for
5 the State of New York. And I don't know, to be
6 fair, whether this bill, in giving an animal
7 control officer the authority or much of the
8 authority of a police officer, is more disturbing
9 to me than times where we have categorized other
10 workers in private or local governments those
11 powers.

12 But again, I think that for New York
13 State to continue to have a subuniverse of people
14 who seem to have many of the authorities and
15 powers of police within our towns, our courts,
16 our hospitals, our schools, and now our animal
17 control units, I think it's a serious error in
18 public policy and that we should be seriously
19 reevaluating this broader and broader spectrum of
20 who we give police authority to.

21 I'll be voting no, Mr. President.
22 Thank you.

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

25 Senator Young.

1 SENATOR YOUNG: Yes, Mr. President,
2 on the bill.

3 ACTING PRESIDENT GRIFFO: Senator
4 Young on the bill.

5 SENATOR YOUNG: I just want to
6 clarify something that my colleague said.

7 Basically this bill would follow the
8 Ag and Markets Law in New York State, and it
9 would allow someone to serve as an animal control
10 officer, not as a police officer. That
11 definitely is not the purpose of this bill, and
12 it's not what this bill does.

13 But what it would allow is the
14 police officers to be police officers and to stop
15 crime and provide safe streets and help people
16 and save their lives, quite frankly. So that's
17 the intent of this bill, that's what this bill
18 does, and I would urge all of my colleagues to
19 vote yes.

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

22 Seeing none, hearing none, the
23 debate is closed. The Secretary will ring the
24 bell.

25 Read the last section.

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

3 ACTING PRESIDENT GRIFFO: Call the
4 roll.

5 (The Secretary called the roll.)

6 ACTING PRESIDENT GRIFFO: Announce
7 the results.

8 THE SECRETARY: In relation to
9 Calendar Number 427, those recorded in the
10 negative are Senators Espaillat,
11 Hassell-Thompson, L. Krueger, Montgomery, Parker,
12 Perkins, Rivera, Serrano, and Squadron.

13 Absent from voting are Senators
14 Duane, Huntley, C. Kruger and Smith.

15 Ayes, 48. Nays, 9.

16 ACTING PRESIDENT GRIFFO: The bill
17 is passed.

18 Senator Libous.

19 SENATOR LIBOUS: Mr. President,
20 after consultation with my colleague, the Deputy
21 Minority Leader, Senator Breslin, could we at
22 this time have the remaining bills that are on
23 the controversial calendar restored to the
24 noncontroversial calendar and then read in order
25 of what's left on that noncontroversial calendar.

1 ACTING PRESIDENT GRIFFO: Without
2 objection, the chair so orders.

3 And the Secretary will read.

4 THE SECRETARY: Calendar Number
5 320, by Senator Fuschillo, Senate Print 4070, an
6 act to amend the Vehicle and Traffic Law.

7 ACTING PRESIDENT GRIFFO: Read the
8 last section.

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

11 ACTING PRESIDENT GRIFFO: Call the
12 roll.

13 (The Secretary called the roll.)

14 THE SECRETARY: Ayes, 60. Nays,
15 1. Senator L. Krueger recorded in the negative.

16 ACTING PRESIDENT GRIFFO: The bill
17 is passed.

18 THE SECRETARY: Calendar Number
19 347, by Senator LaValle, Senate Print 3237, an
20 act to amend the Agriculture and Markets Law.

21 ACTING PRESIDENT GRIFFO: Read the
22 last section.

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

25 ACTING PRESIDENT GRIFFO: Call the

1 roll.

2 (The Secretary called the roll.)

3 ACTING PRESIDENT GRIFFO: Senator
4 Stavisky to explain her vote.

5 SENATOR STAVISKY: To explain my
6 vote.

7 I simply want to thank Senator
8 LaValle. This was such a good bill that I passed
9 it last year in my name.

10 (Laughter.)

11 ACTING PRESIDENT GRIFFO: Senator
12 Stavisky to be recorded in the affirmative.

13 Announce the results.

14 THE SECRETARY: Ayes, 60. Nays,
15 1. Senator Squadron recorded in the negative.

16 ACTING PRESIDENT GRIFFO: The bill
17 is passed.

18 The Secretary will read.

19 THE SECRETARY: Calendar Number
20 348, by Senator DeFrancisco, Senate Print 3317,
21 an act to amend the Agriculture and Markets Law.

22 ACTING PRESIDENT GRIFFO: Read the
23 last section.

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

1 ACTING PRESIDENT GRIFFO: Call the
2 roll.

3 (The Secretary called the roll.)

4 THE SECRETARY: Ayes, 61.

5 ACTING PRESIDENT GRIFFO: The bill
6 is passed.

7 THE SECRETARY: Calendar Number
8 349, by Member of the Assembly Cahill, Assembly
9 Print 6373A, an act to amend the Agriculture and
10 Markets Law.

11 ACTING PRESIDENT GRIFFO: Read the
12 last section.

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

15 ACTING PRESIDENT GRIFFO: Call the
16 roll.

17 (The Secretary called the roll.)

18 THE SECRETARY: Ayes, 61.

19 ACTING PRESIDENT GRIFFO: The bill
20 is passed.

21 THE SECRETARY: Calendar Number
22 383, by Senator Bonacic, Senate Print 3579, an
23 act to amend the Rural Electric Cooperative Law.

24 ACTING PRESIDENT GRIFFO: Read the
25 last section.

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

3 ACTING PRESIDENT GRIFFO: Call the
4 roll.

5 (The Secretary called the roll.)

6 THE SECRETARY: Ayes, 61.

7 ACTING PRESIDENT GRIFFO: The bill
8 is passed.

9 THE SECRETARY: Calendar Number
10 415, by Senator Klein, Senate Print 1677, an act
11 to amend the Executive Law.

12 ACTING PRESIDENT GRIFFO: Read the
13 last section.

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

16 ACTING PRESIDENT GRIFFO: Call the
17 roll.

18 (The Secretary called the roll.)

19 THE SECRETARY: Ayes, 61.

20 ACTING PRESIDENT GRIFFO: The bill
21 is passed.

22 THE SECRETARY: Calendar Number
23 438, by Senator Savino, Senate Print 2138, an act
24 to amend the Workers' Compensation Law.

25 ACTING PRESIDENT GRIFFO: Read the

1 last section.

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

4 ACTING PRESIDENT GRIFFO: Call the
5 roll.

6 (The Secretary called the roll.)

7 THE SECRETARY: Ayes, 61.

8 ACTING PRESIDENT GRIFFO: The bill
9 is passed.

10 THE SECRETARY: Calendar Number
11 523, by Senator Griffo, Senate Print 4803, an act
12 to amend the Public Health Law.

13 ACTING PRESIDENT GRIFFO: Read the
14 last section.

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

17 ACTING PRESIDENT GRIFFO: Call the
18 roll.

19 (The Secretary called the roll.)

20 SENATOR KRUEGER: What bill are we
21 on?

22 ACTING PRESIDENT GRIFFO: We're on
23 Bill Number 4803, Calendar 523.

24 SENATOR KRUEGER: Thank you.

25 THE SECRETARY: In relation to

1 Calendar Number 523, those recorded in the
2 negative are Senators L. Krueger and Squadron.

3 Ayes, 59. Nays, 2.

4 ACTING PRESIDENT GRIFFO: The bill
5 is passed.

6 THE SECRETARY: Calendar Number
7 547, by Senator Griffo, Senate Print 4521, an act
8 to amend the Public Authorities Law.

9 ACTING PRESIDENT GRIFFO: Read the
10 last section.

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

13 ACTING PRESIDENT GRIFFO: Call the
14 roll.

15 (The Secretary called the roll.)

16 THE SECRETARY: Those recorded in
17 the negative on Calendar Number 547 are Senators
18 L. Krueger and Perkins.

19 Ayes, 59. Nays, 2.

20 ACTING PRESIDENT GRIFFO: The bill
21 is passed.

22 THE SECRETARY: Calendar Number
23 556, by Senator Nozzolio, Senate Print 464, an
24 act to amend the Penal Law.

25 ACTING PRESIDENT GRIFFO: Read the

1 last section.

2 THE SECRETARY: Section 2. This
3 act shall take effect on the first of November.

4 ACTING PRESIDENT GRIFFO: Call the
5 roll.

6 (The Secretary called the roll.)

7 ACTING PRESIDENT GRIFFO: Senator
8 Gianaris to explain his vote.

9 SENATOR GIANARIS: Thank you,
10 Mr. President.

11 This bill takes a proposal that
12 we've passed as it applies to correction
13 officers, who deal very often with the problem in
14 prisons of prisoners throwing excrement or saliva
15 on the officers. And we properly passed a bill
16 providing protection for those types of people.

17 This bill expands that very
18 drastically. It even includes peace officers.
19 We just voted for a bill that would give peace
20 officer status to dog control officers in
21 Salamanca. And now we're suggesting that if
22 someone should spit either on such a peace
23 officer in the context of a protest, perhaps,
24 spitting and hitting the shoe of a police
25 officer, this would make that a felony and

1 subject that person to prison time.

2 I think it is very overbroad. In
3 fact, it also includes EMTs and paramedics, where
4 you may have situations where someone who is
5 having an epileptic fit in an ambulance may
6 inadvertently be charged with a felony if some
7 kind of bodily fluid were to be secreted onto
8 those officials.

9 So I will be voting in the
10 negative. I believe this bill goes way too far
11 and is overbroad.

12 ACTING PRESIDENT GRIFFO: Senator
13 Gianaris to be recorded in the negative.

14 Senator Nozzolio to explain his
15 vote.

16 SENATOR NOZZOLIO: Thank you,
17 Mr. President and my colleagues.

18 This measure should be supported.
19 That unfortunately in today's society and today's
20 world, spitting, using excrement as a weapon can
21 be a very dangerous situation, particularly if
22 that individual has a serious disease, whether it
23 be hepatitis, HIV. That becomes a deadly
24 weapon.

25 And that my colleagues who try to

1 trivialize it are in fact, I believe, insensitive
2 to the needs of those emergency medical personnel
3 and those other law enforcement officers that are
4 literally laying their lives on the line. Those
5 who do not support this measure do not support
6 their efforts.

7 And that's why this measure is
8 important to get passed and to see stronger
9 penalties for those who are in effect using their
10 bodily fluids as weapons.

11 Thank you, Mr. President.

12 ACTING PRESIDENT GRIFFO: Senator
13 Rivera to explain his vote.

14 SENATOR RIVERA: Thank you,
15 Mr. President.

16 I will join my colleague Senator
17 Gianaris and vote in the negative on this bill.
18 Senator Nozzolio and I had a debate on this bill
19 in the Crime Victims, Crime and Correction
20 Committee. I also believe that it is a bill that
21 is too broad and goes too far.

22 It creates a situation where -- we
23 already have laws that protect peace officers and
24 police officers. If they are attacked, if they
25 are -- if somebody wants to -- if somebody pushes

1 them or attacks them, we already have laws that
2 protect them. And they certainly can arrest the
3 person that is trying to do this, charge them
4 with either resisting arrest or attempted
5 assault. There are many other charges that can
6 be brought upon these people.

7 This seems to me to be way broad.
8 And really, since it's open to interpretation,
9 many of the situations that Senator Gianaris
10 described in which someone might inadvertently
11 have bodily fluid land on a police officer or a
12 peace officer and all of a sudden finds themselves
13 potentially liable for a felony. I think it is
14 too serious an expansion, and I will be voting in
15 the negative on this bill.

16 Thank you very much, Mr. President.

17 ACTING PRESIDENT GRIFFO: Senator
18 Rivera to be recorded in the negative.

19 Senator Ruth Hassell-Thompson.

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

22 Just for the record, I'd like to
23 make a correction in a statement that was made.
24 Senator Nozzolio, it is not possible to transmit
25 HIV and AIDS through saliva.

1 And I think that the act of spitting
2 and whatever is considered to be disgusting and
3 all the other things that you said, but I think
4 it's very appropriate that we be very careful,
5 when we talk about transmitting something as
6 serious as HIV, that we get our information
7 correct.

8 Thank you, Mr. President.

9 ACTING PRESIDENT GRIFFO: How do
10 you vote, Senator Hassell-Thompson?

11 SENATOR HASSELL-THOMPSON: I'm
12 voting in the negative.

13 ACTING PRESIDENT GRIFFO: Senator
14 Hassell-Thompson to be recorded in the negative.

15 Announce the results.

16 THE SECRETARY: In relation to
17 Calendar Number 556, those recorded in the
18 negative are Senators Breslin, Dilan, Espaillat,
19 Gianaris, Hassell-Thompson, L. Krueger,
20 Montgomery, Parker, Perkins, Rivera, Sampson,
21 Serrano, Squadron, and Stavisky.

22 Ayes, 47. Nays, 14.

23 ACTING PRESIDENT GRIFFO: The bill
24 is passed.

25 THE SECRETARY: Calendar Number

1 557, by Senator Marcellino, Senate Print 946, an
2 act to amend the Penal Law.

3 ACTING PRESIDENT GRIFFO: Read the
4 last section.

5 THE SECRETARY: Section 3. This
6 act shall take effect on the first of November.

7 ACTING PRESIDENT GRIFFO: Call the
8 roll.

9 (The Secretary called the roll.)

10 ACTING PRESIDENT GRIFFO: Senator
11 Squadron to explain his vote.

12 SENATOR SQUADRON: Just briefly.

13 I commend Senator Marcellino on this
14 bill. There is a definition in current law of
15 comfort animals that is more expansive even than
16 dogs and cats. I would love to see this bill
17 expanded to all of those, whether the snake, the
18 fish, or the pot-bellied pig.

19 I vote in the affirmative,
20 Mr. President.

21 ACTING PRESIDENT GRIFFO: Senator
22 Squadron to be recorded in the affirmative.

23 Announce the results.

24 THE SECRETARY: In relation to
25 Calendar Number 557, those recorded in the

1 negative are Senators Montgomery, Parker, and
2 Perkins.

3 Ayes, 58. Nays, 3.

4 ACTING PRESIDENT GRIFFO: The bill
5 is passed.

6 THE SECRETARY: Calendar Number
7 558, by Senator Golden, Senate Print 1991, an act
8 to amend the Penal Law.

9 ACTING PRESIDENT GRIFFO: Read the
10 last section.

11 THE SECRETARY: Section 2. This
12 act shall take effect on the first of November.

13 ACTING PRESIDENT GRIFFO: Call the
14 roll.

15 (The Secretary called the roll.)

16 THE SECRETARY: Ayes, 61.

17 ACTING PRESIDENT GRIFFO: The bill
18 is passed.

19 THE SECRETARY: Calendar Number
20 568, by Senator Farley, Senate Print 4564, an act
21 to legalize, validate and ratify.

22 ACTING PRESIDENT GRIFFO: Read the
23 last section.

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

1 ACTING PRESIDENT GRIFFO: Call the
2 roll.

3 (The Secretary called the roll.)

4 THE SECRETARY: Ayes, 61.

5 ACTING PRESIDENT GRIFFO: The bill
6 is passed.

7 THE SECRETARY: Calendar Number
8 596, by Member of the Assembly Gottfried,
9 Assembly Print 3338, an act to amend the Public
10 Health Law.

11 ACTING PRESIDENT GRIFFO: Read the
12 last section.

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

15 ACTING PRESIDENT GRIFFO: Call the
16 roll.

17 (The Secretary called the roll.)

18 THE SECRETARY: Ayes, 61.

19 ACTING PRESIDENT GRIFFO: The bill
20 is passed.

21 THE SECRETARY: Calendar Number
22 616, by Senator Ball, Senate Print 5270, an act
23 to amend the Penal Law.

24 ACTING PRESIDENT GRIFFO: Read the
25 last section.

1 THE SECRETARY: Section 2. This
2 act shall take effect on the first of November.

3 ACTING PRESIDENT GRIFFO: Call the
4 roll.

5 (The Secretary called the roll.)

6 THE SECRETARY: Ayes, 61.

7 ACTING PRESIDENT GRIFFO: The bill
8 is passed.

9 THE SECRETARY: Calendar Number
10 630, by Senator Maziarz, Senate Print 3793, an
11 act authorizing the Town of Carlton.

12 ACTING PRESIDENT GRIFFO: There is
13 a home-rule message at the desk.

14 Read the last section.

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

17 ACTING PRESIDENT GRIFFO: Call the
18 roll.

19 (The Secretary called the roll.)

20 THE SECRETARY: Ayes, 60. Nays,
21 1. Senator L. Krueger recorded in the negative.

22 ACTING PRESIDENT GRIFFO: The bill
23 is passed.

24 THE SECRETARY: Calendar Number
25 636, by Senator Marcellino, Senate Print 4229, an

1 act to amend the Suffolk County Tax Act.

2 ACTING PRESIDENT GRIFFO: There is
3 a home-rule message at the desk.

4 Read the last section.

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

7 ACTING PRESIDENT GRIFFO: Call the
8 roll.

9 (The Secretary called the roll.)

10 THE SECRETARY: Ayes, 61.

11 ACTING PRESIDENT GRIFFO: The bill
12 is passed.

13 THE SECRETARY: Calendar Number
14 668, by Member of the Assembly Paulin, Assembly
15 Print 6823, an act to amend the Social Services
16 Law.

17 ACTING PRESIDENT GRIFFO: Read the
18 last section.

19 THE SECRETARY: Section 3. This
20 act shall take effect on June 1, 2011.

21 ACTING PRESIDENT GRIFFO: Call the
22 roll.

23 (The Secretary called the roll.)

24 THE SECRETARY: Ayes, 61.

25 ACTING PRESIDENT GRIFFO: The bill

1 is passed.

2 THE SECRETARY: Calendar Number
3 684, by Senator Grisanti, Senate Print 2650, an
4 act to amend the Environmental Conservation Law.

5 ACTING PRESIDENT GRIFFO: Read the
6 last section.

7 THE SECRETARY: Section 6. This
8 act shall take effect on the first of January.

9 ACTING PRESIDENT GRIFFO: Call the
10 roll.

11 (The Secretary called the roll.)

12 THE SECRETARY: In relation to
13 Calendar Number 684, those recorded in the
14 negative are Senators Perkins and Serrano.

15 Ayes, 59. Nays, 2.

16 ACTING PRESIDENT GRIFFO: The bill
17 is passed.

18 THE SECRETARY: Calendar Number
19 732, by Senator Saland, Senate Print 4921, an act
20 to amend the Education Law.

21 ACTING PRESIDENT GRIFFO: Read the
22 last section.

23 THE SECRETARY: Section 9. This
24 act shall take effect on the same date and in the
25 same manner as Chapter 42 of the Laws of 2010.

1 ACTING PRESIDENT GRIFFO: Senator
2 Saland to explain his vote.

3 SENATOR SALAND: Thank you,
4 Mr. President.

5 Mr. President, I know everybody in
6 this chamber is well aware of the fact that
7 bullying in many respects has reached almost
8 epidemic proportions and is no longer the kind of
9 thing we once referred to as childhood antics.

10 In an effort to try and deal with
11 some of these things, this house, both houses
12 have passed the SAVE legislation some 10 years
13 ago, passed as recently as last year the Dignity
14 for All Students Act, a critically important
15 piece of legislation to which Senator Duane and
16 others are certainly dedicated and did a
17 marvelous job of attaining its enactment.

18 There were, however, gaps that had
19 been left in the protection afforded those who we
20 would seek to protect from bullying. And what
21 this bill does is tries to deal with the entire
22 universe.

23 It's far more expansive. It tries
24 to deal with bullying and cyberbullying, which
25 currently are not covered under New York's law,

1 in a fashion in which the creation of a hostile
2 environment or substantially impairing a
3 student's ability to perform in school or
4 substantially impairing his or her ability to
5 obtain an education becomes relevant to the
6 actual occurrence of the bullying.

7 So that somebody who is being
8 tormented, for example, because of the clothes
9 they wear, because of some alleged misdeed,
10 because of the fact that their hair is different,
11 the fact that they may walk funny, the fact that
12 they may talk funny, the fact that they may have
13 a poor complexion -- and I can go on and on and
14 on -- would now have protection afforded under
15 the school's codes of conduct that would be
16 afforded anybody currently under the existing
17 law.

18 This legislation hopefully will pass
19 in both houses before the session is over. It is
20 long overdue. And I would hope that we will have
21 a bipartisan effort, a bipartisan bill that will
22 do the one thing we all claim we want to do,
23 which is to protect children. No more egregious
24 acts, no more fatalities, no more suicides, no
25 more demonizing, no more torturing. Let's

1 provide better tools.

2 Thank you, Mr. President. Obviously
3 I vote in the affirmative.

4 ACTING PRESIDENT GRIFFO: Senator
5 Saland to be recorded in the affirmative.

6 Call the roll.

7 (The Secretary called the roll.)

8 THE SECRETARY: Ayes, 61.

9 ACTING PRESIDENT GRIFFO: The bill
10 is passed.

11 Senator Libous, that completes the
12 reading of the calendar.

13 SENATOR LIBOUS: Mr. President, can
14 we go back to motions and resolutions.

15 ACTING PRESIDENT GRIFFO: Returning
16 to motions and resolutions.

17 Senator Libous.

18 SENATOR LIBOUS: On behalf of
19 Senator Fuschillo, on page 19 I offer the
20 following amendments to Calendar Number 219,
21 Senate Print 628, and ask that said bill retain
22 its place on the Third Reading Calendar.

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

1 SENATOR LIBOUS: On behalf of
2 Senator Skelos, on page 45 I offer the following
3 amendments to Calendar Number 637, Senate Print
4 4264, and ask that said bill retain its place on
5 the Third Reading Calendar.

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

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

11 ACTING PRESIDENT GRIFFO: There is
12 no further business, Senator Libous.

13 SENATOR LIBOUS: Mr. President, I
14 hear a lot of noise. And I'd like to make an
15 announcement, because members will want to hear
16 this. There will be a Republican conference
17 tomorrow morning at 10:00 a.m.

18 ACTING PRESIDENT GRIFFO: There
19 will be a Republican conference at 10:00 a.m.
20 tomorrow morning, June 2nd.

21 SENATOR LIBOUS: The Senate will
22 adjourn at this time until Thursday, June 2nd, at
23 11:00 a.m.

24 ACTING PRESIDENT GRIFFO: On
25 motion, the Senate stands adjourned until

1 Thursday, June 2nd, at 11:00 a.m.

2 Senate adjourned.

3 (Whereupon, at 6:25 p.m., the Senate
4 adjourned.)

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