

1 NEW YORK STATE SENATE

2  
3  
4 THE STENOGRAPHIC RECORD

5  
6  
7  
8  
9 ALBANY, NEW YORK

10 March 21, 2012

11 11:19 a.m.

12  
13  
14 REGULAR SESSION

15  
16  
17  
18 SENATOR JOHN J. FLANAGAN, Acting President

19 FRANCIS W. PATIENCE, Secretary

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

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

4 I ask everyone present to please  
5 rise and recite the Pledge of Allegiance.

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

8 ACTING PRESIDENT FLANAGAN: In  
9 the absence of clergy, I would ask everyone to  
10 bow their heads in a moment of silence.

11 (Whereupon, the assemblage  
12 respected a moment of silence.)

13 ACTING PRESIDENT FLANAGAN: The  
14 reading of the Journal.

15 THE SECRETARY: In Senate,  
16 Tuesday, March 20th, the Senate met pursuant  
17 to adjournment. The Journal of Monday,  
18 March 19th, was read and approved. On motion,  
19 Senate adjourned.

20 ACTING PRESIDENT FLANAGAN:  
21 Without objection, the Journal stands approved  
22 as read.

23 Presentation of petitions.

24 Messages from the Assembly.

25 Messages from the Governor.

1 Reports of standing committees.  
2 Reports of select committees.  
3 Communications and reports from  
4 state officers.

5 Motions and resolutions.

6 Senator Libous.

7 SENATOR LIBOUS: Mr. President,  
8 I believe that Senator Breslin has a motion.

9 ACTING PRESIDENT FLANAGAN:  
10 Senator Breslin.

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

13 On behalf of Senator Peralta, I  
14 move that the following bill be discharged  
15 from its respective committee and be  
16 recommitted with instructions to strike the  
17 enacting clause: Senate Number 129A.

18 ACTING PRESIDENT FLANAGAN: So  
19 ordered.

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

22 ACTING PRESIDENT FLANAGAN:  
23 Senator Libous.

24 SENATOR LIBOUS: Mr. President,  
25 would you call on Senator Larkin for the

1 purposes of an announcement, please.

2 ACTING PRESIDENT FLANAGAN:

3 Senator Larkin.

4 SENATOR LARKIN: Thank you,  
5 Mr. President.

6 You know, today is a startling  
7 day in the State of New York. For a number of  
8 years many in this chamber on both sides of  
9 the aisle fought to get a death certificate  
10 for stillborn. And we fought it, we fought  
11 it, and finally last year in this house we  
12 passed it, the other house passed it, the  
13 Governor signed it.

14 Today is one year of the  
15 enactment, and we have friends in the gallery,  
16 friends of a lot of us here.

17 Paige, stand up, will you,  
18 please? This is the lady that communicated to  
19 me more than my wife did in the last six years  
20 about an issue that is very near and dear to  
21 us.

22 We have a young couple, married,  
23 stillborn child. Someone says, Oh, we'll  
24 issue you a certificate of death, but not  
25 birth. But yet there was a stillborn

1 certificate in the hospitals, but nothing issued  
2 by the State of New York.

3 Over 30 states have this bill. I'm  
4 proud to say that New York stood tall last year  
5 to enact this bill and give relief and respect to  
6 the families of those who were stillborn.

7 Paige, to you and your families  
8 across the state, thank you for all the comments  
9 that came yesterday. And we now look forward to  
10 seeing this carried out so that people can put a  
11 final rest to a very serious problem of every  
12 family. Thank you, and God bless you all.

13 Thank you, Mr. President.

14 ACTING PRESIDENT FLANAGAN: Thank  
15 you, Senator Larkin.

16 Senator Kennedy.

17 SENATOR KENNEDY: Thank you very  
18 much, Mr. President.

19 Like Senator Larkin, I want to  
20 recognize the folks that drove the issue, both  
21 here in New York State, in your respective  
22 communities, and quite frankly across the nation.

23 Senator Larkin, to you, a  
24 tremendous amount of credit goes to you and your  
25 leadership on this important issue.

1                   We all know families that have  
2 suffered the tragic loss of a child through  
3 stillbirth. And whether they talk about it or  
4 not, there are many families that suffer  
5 internally and intrinsically over the loss of  
6 their child at stillbirth.

7                   Just until last year New Yorkers  
8 unfortunately and unfairly didn't get to grieve  
9 appropriately through the recognition of the  
10 birth of their child. So mothers would have to  
11 go through the laboring and the carrying of that  
12 child, unfortunately, in losing that child. And  
13 New York State had not recognized the child with  
14 a certificate of death.

15                  Now, because of Senator Larkin's  
16 leadership, because of your leadership and  
17 community groups and families and mothers and  
18 fathers across this state, those families are  
19 getting appropriate recognition through the form  
20 of a certificate of birth resulting in  
21 stillbirth.

22                  So thank you for your advocacy. I  
23 look forward to continuing to work with you on  
24 this movement across the nation.

25                  Thank you. Thank you,

1 Mr. President.

2                   ACTING PRESIDENT FLANAGAN:    Thank  
3 you, Senator Kennedy.

4                   Paige, we welcome you and your  
5 colleagues to the Senate chamber. And you should  
6 take great comfort in knowing that as persistent  
7 as you are, Senator Larkin is even more  
8 persistent and more dogged when he deals with us  
9 as colleagues. So you have a very strong ally  
10 there.

11                   Welcome to the chamber.

12                   Senator Libous.

13                   SENATOR LIBOUS:    Mr. President,  
14 there will be an immediate meeting of the  
15 Rules Committee in Room 332, immediate meeting of  
16 the Rules Committee in Room 332.

17                   The Rules Committee meeting should  
18 be quick, and then we'll come right back here and  
19 get into session.

20                   ACTING PRESIDENT FLANAGAN:    Rules  
21 Committee meeting in Room 332.

22                   The Senate will stand at ease.

23                   (Whereupon, the Senate stood at ease  
24 at 11:25 a.m.)

25                   (Whereupon, the Senate reconvened at

1 11:42 a.m.)

2 ACTING PRESIDENT FLANAGAN:

3 Senator Libous.

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

7 ACTING PRESIDENT FLANAGAN: The  
8 Secretary will read.

9 THE SECRETARY: Senator Skelos,  
10 from the Committee on Rules, reports the  
11 following bills direct to third reading:

12 Senate Print 2004, by Senator  
13 Skelos, an act to amend the Penal Law; and  
14 6755, by Senator Nozzolio, an act  
15 to amend the State Law.

16 ACTING PRESIDENT FLANAGAN:  
17 Senator Libous.

18 SENATOR LIBOUS: Mr. President, I  
19 move to accept the report of the Rules Committee.

20 ACTING PRESIDENT FLANAGAN: All  
21 those in favor of accepting the report of the  
22 Rules Committee signify by saying aye.

23 (Response of "Aye.")

24 ACTING PRESIDENT FLANAGAN:  
25 Opposed, nay.



1 (No response.)

2 ACTING PRESIDENT FLANAGAN: The  
3 Rules report is adopted.

4 Senator Libous.

5 SENATOR LIBOUS: Mr. President,  
6 may we please now take up, on the supplemental  
7 calendar, Senate Bill Number 6755.

8 ACTING PRESIDENT FLANAGAN: The  
9 Secretary will read.

10 THE SECRETARY: Calendar Number  
11 441, by Senator Nozzolio, Senate Print 6755, an  
12 act to amend the State Law.

13 ACTING PRESIDENT FLANAGAN: Read  
14 the last section.

15 THE SECRETARY: Section 4. This  
16 act shall take effect immediately.

17 ACTING PRESIDENT FLANAGAN: Call  
18 the roll.

19 (The Secretary called the roll.)

20 ACTING PRESIDENT FLANAGAN:  
21 Announce the results.

22 THE SECRETARY: In relation to  
23 Calendar Number 441, those recorded in the  
24 negative are Senators Adams, Addabbo, Avella,  
25 Breslin, Diaz, Dilan, Duane, Espaillat, Gianaris,

1 Hassell-Thompson, Kennedy, Krueger, Montgomery,  
2 Peralta, Perkins, Rivera, Sampson, Serrano,  
3 Squadron, Stavisky and Stewart-Cousins.

4 Ayes, 37. Nays, 21.

5 ACTING PRESIDENT FLANAGAN: The  
6 bill is passed.

7 SENATOR LIBOUS: Mr. President,  
8 would you lay aside the remainder of the  
9 Supplemental Calendar 25A for the day.

10 ACTING PRESIDENT FLANAGAN: The  
11 remainder of Supplemental Calendar 25A is laid  
12 aside for the day.

13 Senator Libous.

14 SENATOR LIBOUS: Mr. President, at  
15 this time if we could have the noncontroversial  
16 reading of the regular calendar.

17 ACTING PRESIDENT FLANAGAN: The  
18 Secretary will read.

19 THE SECRETARY: Calendar Number  
20 265, by Senator Golden, Senate Print 1407B --

21 SENATOR BRESLIN: Lay it aside.

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

24 THE SECRETARY: Calendar Number  
25 266, by Senator Golden, Senate Print 2169A, an

1 act to amend the Penal Law.

2 ACTING PRESIDENT FLANAGAN: Read  
3 the last section.

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

6 ACTING PRESIDENT FLANAGAN: Call  
7 the roll.

8 (The Secretary called the roll.)

9 THE SECRETARY: Ayes, 58.

10 ACTING PRESIDENT FLANAGAN: The  
11 bill is passed.

12 THE SECRETARY: Calendar Number  
13 273, by Senator Young, Senate Print 6554, an act  
14 to amend the Private Housing Finance Law.

15 ACTING PRESIDENT FLANAGAN: Read  
16 the last section.

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

19 ACTING PRESIDENT FLANAGAN: Call  
20 the roll.

21 (The Secretary called the roll.)

22 THE SECRETARY: Ayes, 58.

23 ACTING PRESIDENT FLANAGAN: The  
24 bill is passed.

25 THE SECRETARY: Calendar Number

1 303, by Senator Libous, Senate Print 2467B, an  
2 act to amend the Tax Law.

3 ACTING PRESIDENT FLANAGAN: Read  
4 the last section.

5 SENATOR BRESLIN: Lay it aside.

6 ACTING PRESIDENT FLANAGAN: The  
7 bill is laid aside.

8 THE SECRETARY: Calendar Number  
9 306, by Senator Young, Senate Print 4758C, an act  
10 to amend the Tax Law.

11 ACTING PRESIDENT FLANAGAN: Read  
12 the last section.

13 THE SECRETARY: Section 5. This  
14 act shall take effect immediately.

15 ACTING PRESIDENT FLANAGAN: Call  
16 the roll.

17 (The Secretary called the roll.)

18 THE SECRETARY: Ayes, 58.

19 ACTING PRESIDENT FLANAGAN: The  
20 bill is passed.

21 THE SECRETARY: Calendar Number  
22 314, by Senator Krueger, Senate Print 886, an act  
23 to amend the Banking Law.

24 ACTING PRESIDENT FLANAGAN: Read  
25 the last section.

1                   THE SECRETARY:    Section 4.  This  
2 act shall take effect immediately.

3                   ACTING PRESIDENT FLANAGAN:   Call  
4 the roll.

5                   (The Secretary called the roll.)

6                   THE SECRETARY:    Ayes, 57.  Nays,  
7 1.  Senator O'Mara recorded in the negative.

8                   ACTING PRESIDENT FLANAGAN:   The  
9 bill is passed.

10                  THE SECRETARY:    Calendar Number  
11 336, by Senator Nozzolio, Senate Print --

12                  SENATOR BRESLIN:   Lay it aside.

13                  ACTING PRESIDENT FLANAGAN:   The  
14 bill is laid aside.

15                  THE SECRETARY:    Calendar Number  
16 341, by Senator Lanza, Senate Print 4373, an act  
17 to amend the Penal Law.

18                  ACTING PRESIDENT FLANAGAN:   Read  
19 the last section.

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

22                  ACTING PRESIDENT FLANAGAN:   Call  
23 the roll.

24                  (The Secretary called the roll.)

25                  THE SECRETARY:    Ayes, 58.

1                   ACTING PRESIDENT FLANAGAN:    The  
2 bill is passed.

3                   Senator Libous, that completes the  
4 noncontroversial reading of the supplemental  
5 calendar.

6                   SENATOR LIBOUS:    If everybody  
7 would be patient, Mr. President, in a couple of  
8 seconds here we'll get started with the  
9 controversial reading.

10                  But why don't we ring the bell so  
11 members will come into the chamber.

12                  ACTING PRESIDENT FLANAGAN:    The  
13 Secretary will ring the bell.

14                  SENATOR LIBOUS:    Mr. President.

15                  ACTING PRESIDENT FLANAGAN:  
16 Senator Libous.

17                  SENATOR LIBOUS:    Could we have the  
18 controversial reading of the calendar.

19                  ACTING PRESIDENT FLANAGAN:  
20 Controversial reading of the calendar.

21                  The Secretary will read.

22                  THE SECRETARY:    Calendar Number  
23 265, by Senator Golden, Senate Print 1407B, an  
24 act to amend the Penal Law.

25                  ACTING PRESIDENT FLANAGAN:

1 Senator Breslin, why do you rise?

2                   SENATOR BRESLIN:    Mr. President, I  
3 believe there's an amendment at the desk. I ask  
4 that the reading of the amendment be waived and  
5 that Senator Peralta may be allowed to speak on  
6 the amendment.

7                   ACTING PRESIDENT FLANAGAN:   Thank  
8 you, Senator Breslin.

9                   Senator Peralta, I have reviewed  
10 your amendment and ruled that it is not germane  
11 to the bill before the house and therefore is out  
12 of order. The amendment is nongermane.

13                   Senator Peralta.

14                   SENATOR BRESLIN:    Mr. President.

15                   ACTING PRESIDENT FLANAGAN:  
16 Senator Breslin.

17                   SENATOR BRESLIN:    I would appeal  
18 the ruling of the chair and ask that you allow  
19 Senator Peralta to speak on the appeal.

20                   ACTING PRESIDENT FLANAGAN:   Thank  
21 you, Senator Breslin.

22                   Senator Peralta on the appeal.

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

25                   Now, I don't know why it was ruled

1 nongermane. I would like to know why it was.

2 But being that it was, my amendment  
3 to Senator Golden's bill is germane for the  
4 following reasons.

5 The amendment deals with the same  
6 subject matter as the underlying bill in the  
7 following respect. Both Senator Golden's bill  
8 and the provisions of my amendment propose  
9 changes to Section 265 of the Penal Law.

10 Senator Golden's bill proposes to  
11 expand the scope of first-degree criminal use of  
12 a weapon to include the display of a firearm in  
13 the commission of any felony. The purpose of  
14 this measure is to deter the commission of  
15 violent crimes while respecting the rights of  
16 law-abiding gun owners.

17 The amendment I offer today,  
18 contained in a bill already introduced in the  
19 Senate, seeks to deter the use of guns in felony  
20 crimes by making the risk of apprehension  
21 unacceptable to criminals. Like Senator Golden's  
22 bill, it is designed so that only violent  
23 criminals will be adversely affected while the  
24 rights of law-abiding collectors, sportsmen and  
25 hobbyists will be unimpaired.



1                   Both the proposed legislation and  
2 my amendment are about crime control, not gun  
3 control. Senator Golden's legislation targets  
4 criminals who use the threat of gun violence to  
5 commit felony crimes. My amendment complements  
6 this aim by helping bring to justice criminals  
7 whose threats escalate to tragic violence.

8                   My amendment is already included in  
9 the Assembly's one-house budget bill and is  
10 supported by more than 100 mayors and 80 police  
11 departments. I have spoken many times about  
12 this, but I speak now to correct some  
13 misinformation about the microstamping costs.

14                  Like Senator Golden's bill, this is  
15 a criminal justice tool that comes at negligible  
16 cost to the state. I also want to be clear that  
17 it will never go into effect if it costs more  
18 than \$12 per gun.

19                  Like Senator Golden's bill, my  
20 amendment should give law-abiding gun users no  
21 reason for concern. The worst-case scenario for  
22 your average gun owner is that he might have to  
23 pay a couple more dollars next time he buys an  
24 automatic pistol.

25                  A vote for microstamping means

1 standing up against criminals, not against guns.  
2 This is a rare opportunity to do a great deal of  
3 good for police and crime victims for very little  
4 cost. It is time to forget our political  
5 differences and think of those we can help. And  
6 it's time to make microstamping a reality in  
7 New York.

8                   There is nothing dissimilar about  
9 Senator Golden's interest in sponsoring this  
10 legislation and mine in offering this amendment  
11 to deter the use of firearms in the commission of  
12 felony crimes. This amendment neither  
13 unreasonably expands the object or subject of the  
14 underlying bill. Nor does it change the purpose  
15 and scope of the bill.

16                   If amended as I propose, this would  
17 amend the penal code so as to reduce the number  
18 of violent gun crimes by making the associated  
19 risks unacceptable to criminals while leaving the  
20 rights of law-abiding gun owners intact.

21                   Had this bill been originally  
22 introduced as I propose it now to be amended, it  
23 would still have required consideration by the  
24 same standing committee that reported the  
25 underlying bill. Either form of the bill, in its

1 original print or as I would have amended it,  
2 would have been considered by the Standing  
3 Committee on Codes.

4 For the foregoing reasons, the  
5 amendment I'm offering today I believe is germane  
6 to Senator Golden's bill currently under  
7 consideration.

8 ACTING PRESIDENT FLANAGAN: Thank  
9 you, Senator Peralta.

10 All those in favor -- Senator  
11 Breslin.

12 SENATOR BRESLIN: Yes, thank you,  
13 Mr. President. I request a show of hands on the  
14 vote.

15 ACTING PRESIDENT FLANAGAN:  
16 Senator Breslin has requested a show of hands on  
17 the vote on the appeal of the ruling of the  
18 chair.

19 Those in favor of overruling the  
20 ruling of the chair raise their hands.

21 (Senators raised their hands.)

22 ACTING PRESIDENT FLANAGAN: The  
23 Secretary will announce the results.

24 THE SECRETARY: Ayes, 22.

25 ACTING PRESIDENT FLANAGAN: The

1 ruling of the chair stands.

2 On the bill, the debate is closed.

3 The Secretary will ring the bell.

4 Read the last section.

5 THE SECRETARY: Section 6. This  
6 act shall take effect on the first of November.

7 ACTING PRESIDENT FLANAGAN: Call  
8 the roll.

9 (The Secretary called the roll.)

10 ACTING PRESIDENT FLANAGAN: The  
11 Secretary will announce the results.

12 THE SECRETARY: In relation to  
13 Calendar Number 265, those recorded in the  
14 negative are Senators Duane, Montgomery and  
15 Perkins.

16 Absent from voting: Senators Alesi  
17 and Parker.

18 Ayes, 55. Nays, 3.

19 ACTING PRESIDENT FLANAGAN: The  
20 bill is passed.

21 Senator Libous.

22 SENATOR LIBOUS: Mr. President, on  
23 the calendar, if we could jump to 336 next,  
24 please.

25 ACTING PRESIDENT FLANAGAN: The

1 Secretary will read.

2 THE SECRETARY: Calendar Number  
3 336, by Senator Nozzolio, Senate Print 464, an  
4 act to amend the Penal Law.

5 SENATOR BRESLIN: Explanation.

6 ACTING PRESIDENT FLANAGAN:  
7 Senator Breslin has requested an explanation,  
8 Senator Nozzolio.

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

11 Mr. President and my colleagues,  
12 there is no finer group of heroes in America than  
13 those who each and every day lay their lives on  
14 the line and protect person and property in  
15 dangerous circumstances -- those police officers,  
16 those emergency medical personnel, those  
17 firefighters and the brave correction officers  
18 that each and every day are entrusted with  
19 putting their lives in jeopardy because they are  
20 dedicated to keeping us safe.

21 The bill before us, Mr. President,  
22 establishes the crime of aggravated harassment of  
23 police officers, peace officers, emergency  
24 medical technicians, paramedics. And those who  
25 are guilty of such a crime will be those who use

1 their bodily fluids as weapons.

2           A few years ago this house, along  
3 with the Assembly and Governor Pataki, decided  
4 that those who walk one of the toughest  
5 law-enforcement beats in America, those brave men  
6 and women who are correction officers, were  
7 seeing a vile and not just humiliating attack on  
8 their person by those who are behind bars but a  
9 very dangerous one, one that could communicate  
10 many serious diseases, in many cases deathly  
11 diseases.

12           And that it was the wisdom of this  
13 house to establish that those who committed the  
14 crime against correction officers, those who  
15 committed those types of vile acts using their  
16 bodily fluids as weapons, would in fact be  
17 subject to felony criminal conduct.

18           This measure, Mr. President,  
19 expands the protection zone of those who are  
20 receiving this type of harassment, making it a  
21 felony for those who commit such vile conduct  
22 against paramedics, police officers, peace  
23 officers, court officers and other emergency  
24 medical personnel.

25           Thank you, Mr. President.

1           ACTING PRESIDENT FLANAGAN:

2   Senator Gianaris, why do you rise?

3           SENATOR GIANARIS:     Would the  
4   sponsor yield for a few questions, Mr. President.

5           ACTING PRESIDENT FLANAGAN:  
6   Senator Nozzolio, will you yield to a question?

7           SENATOR NOZZOLIO:     I'd be happy to  
8   yield, Mr. President.

9           ACTING PRESIDENT FLANAGAN:  
10   Senator Gianaris.

11          SENATOR GIANARIS:     Thank you.

12          I heard the sponsor discuss the  
13   need to protect people who put their lives in  
14   danger, and I certainly agree.

15          This bill also covers peace  
16   officers. And I wanted to ask the sponsor, isn't  
17   it true that peace officers include a wide  
18   variety of professions, including dog control  
19   officers?

20          SENATOR NOZZOLIO:     Is that a  
21   question, Mr. President?

22          ACTING PRESIDENT FLANAGAN:  
23   Senator Gianaris.

24          SENATOR GIANARIS:     Yes, it is a  
25   question.

1                   SENATOR NOZZOLIO:    I didn't hear  
2   it in the form of an interrogatory,  
3   Mr. President.   Would Senator Gianaris be so kind  
4   as to repeat the question.

5                   SENATOR GIANARIS:    I'll be happy  
6   to.

7                   The question is, isn't it the case  
8   that peace officers include a wide variety of  
9   professions, including dog control officers?

10                  SENATOR NOZZOLIO:    Mr. President,  
11   peace officer status extends to a number of  
12   law-enforcement-oriented officials.   Whether  
13   there be some dog control officers, not many  
14   through the state have that status.

15                  I should also add that parole  
16   officers are within the category of police  
17   officer status.   And I think by all measures  
18   parole officers are in harm's way each and every  
19   day.

20                  SENATOR GIANARIS:    Would the  
21   sponsor continue to yield, Mr. President.

22                  ACTING PRESIDENT FLANAGAN:  
23   Senator Nozzolio, will you continue to yield?

24                  SENATOR NOZZOLIO:    Yes,  
25   Mr. President.



1                   ACTING PRESIDENT FLANAGAN:

2   Senator Gianaris.

3                   SENATOR GIANARIS:    Thank you.

4                   I don't dispute that there are many  
5   worthy professions that would be covered by  
6   this.  My concern is its breadth.

7                   And in raising the question of dog  
8   control officers specifically, I wonder if it is  
9   actually the sponsor's -- let me make sure I ask  
10  this in the form of a question.  Is it the  
11  sponsor's intent to have someone be subject to a  
12  felony conviction for allowing saliva or urine to  
13  come into contact with a dog control officer?

14                  SENATOR NOZZOLIO:    That,  
15  Mr. President, I understand certainly the nature  
16  of the question but must describe the behavior  
17  that each and every one of those who have police  
18  officer status engage in.  Each and every segment  
19  of the police officer status are there to protect  
20  the public.

21                  That I'm sure there are legions of  
22  dangerous circumstances where even as -- and I  
23  don't want to characterize it as even dog control  
24  officers, but every police officer status who are  
25  given that status for the pure reason of

1 protecting the public put themselves in harm's  
2 way of some sort.

3 And that yes, this legislation does  
4 try to protect and shield from heinous behavior  
5 every enterprise that has a police officer  
6 status.

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

9 ACTING PRESIDENT FLANAGAN:  
10 Senator Nozzolio, will you continue to yield?

11 SENATOR NOZZOLIO: Yes,  
12 Mr. President.

13 ACTING PRESIDENT FLANAGAN:  
14 Senator Gianaris.

15 SENATOR GIANARIS: I certainly  
16 don't disagree with the intent to protect every  
17 category of individual referenced in this  
18 legislation, including dog control officers,  
19 because they do perform an important function.  
20 But my concern, again, is that we are potentially  
21 making felonies actions that do not justify being  
22 called felonies.

23 So I would like to ask the sponsor  
24 a hypothetical question as to whether the facts  
25 I'm about to outline would potentially subject

1 someone to a felony conviction under this  
2 statute.

3                   And that is in a circumstance where  
4 a dog owner is dealing with a dog control  
5 officer and the dog itself urinates on the dog  
6 control officer, does that constitute allowing  
7 that peace officer to come into contact with  
8 urine which would then subject the owner to a  
9 felony?

10                   SENATOR NOZZOLIO:    No,  
11 Mr. President.

12                   SENATOR GIANARIS:    Mr. President,  
13 if the sponsor could continue to yield.

14                   ACTING PRESIDENT FLANAGAN:  
15 Senator Nozzolio, will you continue to yield?

16                   SENATOR NOZZOLIO:    Yes,  
17 Mr. President.

18                   ACTING PRESIDENT FLANAGAN:  
19 Senator Gianaris.

20                   SENATOR GIANARIS:    I would ask the  
21 sponsor if he could elaborate on that last  
22 answer.  Because as I read the plain text of this  
23 bill, it says that a person is guilty of this  
24 crime if they cause a peace officer to come into  
25 contact with urine.  And it seems to me the

1 hypothetical I indicated would be covered by  
2 that.

3               SENATOR NOZZOLIO:    Mr. President,  
4 the very first section of legislation lists a  
5 number of items, including blood, saliva, urine  
6 or feces, as elements of potential weapons that  
7 could be used. But a predicate or condition of  
8 that felony is that the perpetrator throw, toss,  
9 or take steps to engage in a course of conduct  
10 expelling such fluid.

11              That I think the example is --  
12 certainly the hypothetical Senator Gianaris  
13 raises has nothing to do with the perpetrator of  
14 the crime, which is the individual human being  
15 who is being held accountable for that human  
16 being's conduct. And that I think it's very  
17 clear that the human being engaging in that  
18 conduct does not deserve such characterization.  
19 Frankly, they fall into the category of those who  
20 are committing extremely vile acts and should be  
21 sanctioned for such behavior. And that's exactly  
22 what this legislation does.

23              SENATOR GIANARIS:    Would the  
24 sponsor continue to yield, Mr. President.

25              ACTING PRESIDENT FLANAGAN:

1 Senator Nozzolio, will you continue to yield?

2 SENATOR NOZZOLIO: Yes,  
3 Mr. President.

4 ACTING PRESIDENT FLANAGAN:  
5 Senator Gianaris.

6 SENATOR GIANARIS: Following up on  
7 my previous question, does the sponsor not agree  
8 that it is possible for the intent of the dog  
9 owner in that hypothetical to have -- to be  
10 transferred if he gives a command to the dog, if  
11 he sics the dog on the dog control officer or in  
12 some way displays an intent for the dog to expel,  
13 throw or toss those fluids onto the dog control  
14 officer? Is it not possible that the owner would  
15 be subject to felony conviction in this case?

16 SENATOR NOZZOLIO: Mr. President,  
17 I don't know what hypothetical Senator Gianaris  
18 has in his mind. Frankly, it would have to be, I  
19 think, a pretty trained animal under this  
20 hypothetical -- I'm not going to engage in that  
21 type of hypothetical analysis.

22 The fact of the matter is we have  
23 very dangerous conduct that we're trying to  
24 prevent and we have very important people who are  
25 the true heroes of America each and every day

1 laying their lives on the line, each and every  
2 day taking steps to keep us safe. That's the  
3 intention of this legislation, and I refuse to  
4 continue to be sidetracked on its intent.

5           The fact of the matter is this is  
6 terrible behavior, it's terrible behavior against  
7 police officers, paramedics, emergency medical  
8 personnel. That's the focus.

9           Every county does not have granted  
10 peace officer status to dog control officers. I  
11 think this hypothetical is a track that is on the  
12 sidecar of this legislation. I'm refusing to  
13 continue to engage in such types of hypothetical  
14 discussion.

15           SENATOR GIANARIS: Mr. President.

16           ACTING PRESIDENT FLANAGAN:  
17 Senator Gianaris.

18           SENATOR GIANARIS: On the bill,  
19 please.

20           ACTING PRESIDENT FLANAGAN: On the  
21 bill.

22           SENATOR GIANARIS: I'm saddened  
23 that the sponsor refuses to engage in further  
24 debate on this bill.

25           The fact is, what he calls a

1 sidecar I think is actually very relevant.  
2 Because if we don't draft our bills properly, if  
3 we don't take great care to make sure they're  
4 limited to exactly the scope that we're trying to  
5 effect, these bills when they become laws can  
6 have a very detrimental impact due to the law of  
7 unintended consequences.

8                   And I think the hypothetical I  
9 raised is not inapt to the situation. In fact,  
10 if an owner of a dog currently commands the dog  
11 to bite an officer, that owner is held liable for  
12 assaulting that officer because of the injury.  
13 So I think applying that same legal principle to  
14 what this bill is trying to do would in fact make  
15 that hypothetical very apropos.

16                   My concern is that, you know, we  
17 have protections like this for correction  
18 officers. They certainly deserve it, I support  
19 that law, and I'm very glad we have it. But in  
20 the rush to try and expand that to -- bless  
21 you -- in the rush to try and expand that to  
22 entire categories of people without thinking  
23 through when and how people might be liable for  
24 them, I think we're rushing into something  
25 without thinking it through, and that is a big

1 mistake.

2           Again, I'm saddened that the  
3 sponsor is unwilling to continue engaging in  
4 debate on this issue -- frankly, part of a  
5 pattern that's been disturbing in this chamber  
6 over the last several weeks. But I will be  
7 voting no until this bill is amended to more  
8 accurately reflect the limited scope that we're  
9 trying to effect, and I encourage my colleagues  
10 to do the same.

11           ACTING PRESIDENT FLANAGAN: Thank  
12 you, Senator Gianaris.

13           Any other Senator wishing to be  
14 heard? Hearing none, debate is closed.

15           The Secretary will ring the bell.

16           Read the last section.

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

19           ACTING PRESIDENT FLANAGAN: Call  
20 the roll.

21           (The Secretary called the roll.)

22           ACTING PRESIDENT FLANAGAN:  
23 Senator Nozzolio to explain his vote.

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



1                   Mr. President and my colleagues, I  
2 hope that every member of this body supports this  
3 legislation and sends a clear signal that they  
4 will not tolerate the heinous behavior directed  
5 at those who are dedicating their lives to keep  
6 us safe.

7                   I also wish to say that the  
8 legislation is clear. It does not extend to  
9 having pets as accomplices, it extends only to  
10 those who are focused and provide that criminal  
11 behavior directly in attack of those who are  
12 meant to keep us safe.

13                   As such, Mr. President, I hope this  
14 house takes the positive step in making sure that  
15 we do all we can to protect those who are helping  
16 to protect us.

17                   I vote aye, Mr. President. Thank  
18 you very much.

19                   ACTING PRESIDENT FLANAGAN: Thank  
20 you, Senator Nozzolio.

21                   Before we go to other explanations,  
22 we should give each other the courtesy of  
23 listening to what people have to say.

24                   Senator Adams to explain his vote.

25                   SENATOR ADAMS: Thank you,

1 Mr. President.

2 I want to thank Senator Gianaris  
3 because he raised an important point on the  
4 bill.

5 I recall when I was a police  
6 officer, we had a barricaded person who made a  
7 concoction of bodily fluids and threw it on the  
8 officers who were responding. And I think  
9 Senator Nozzolio, the spirit of his bill is to go  
10 after those who intentionally attempt to do this  
11 form of action.

12 We do need to clean up the bill so  
13 we don't catch in a wide net those who are  
14 charged with a felony for something that's  
15 accidentally done. But I'm going to vote aye on  
16 the bill because it's a serious issue of those  
17 who use bodily fluids on police officers.

18 So I'm going to vote aye, but I  
19 think that Senator Gianaris raised a very  
20 important point that you don't want to use the  
21 strongest arm of our criminal justice system,  
22 which is a felony, on someone with an accidental  
23 action. But I'm going to vote aye.

24 ACTING PRESIDENT FLANAGAN:  
25 Senator Adams to be recorded in the affirmative.

1                   Senator Krueger to explain her  
2 vote.

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

5                   I rise to explain my vote that I  
6 think that Senator Gianaris opened up an  
7 important set of issues. I wish there had been  
8 an opportunity for more debate on it.

9                   As I read the bill, it's pretty  
10 much one paragraph. And the concern I have is  
11 that to simply broadly state someone has the  
12 intent to harass, the intent to annoy, the intent  
13 to threaten, the intent to harm, the intent to  
14 alarm a person is not an adequate detailed  
15 justification for finding someone guilty in court  
16 at a later date.

17                   I believe that this house should  
18 ensure that when we pass legislation we are clear  
19 and we are sending messages to the courts and law  
20 to the courts that they can actually in good  
21 faith implement.

22                   I don't believe, if this were to  
23 become the law of New York State, a court would  
24 know how to use this law because it is too broad  
25 and not detailed enough in the specifics of whom

1 would be guilty of what, and so I'm voting no.

2 Thank you.

3 ACTING PRESIDENT FLANAGAN:

4 Senator Krueger to be recorded in the negative.

5 Senator Stavisky to explain her  
6 vote.

7 SENATOR STAVISKY: Yes, thank you,  
8 Mr. President.

9 And thank you, Senator Gianaris,  
10 for making the point, I think, that this is a  
11 serious issue and nobody is trivializing the  
12 problem.

13 But we have to be especially  
14 careful as we craft legislation, because a few  
15 words can make a great difference in the intent,  
16 in the enactment of the legislation. We  
17 obviously care about our correction officers and  
18 the law enforcement personnel. And at the same  
19 time, I will vote no because I think the  
20 legislation is far too broad.

21 While Senator Gianaris was  
22 speaking, it's chilly in the chamber and I  
23 sneezed. And my intent was not to violate the  
24 law.

25 But if you think about it, there

1 are ramifications to the bills that we enact, and  
2 the language is important. And for that reason I  
3 vote no.

4                   ACTING PRESIDENT FLANAGAN: Thank  
5 you, Senator Stavisky. You will be recorded in  
6 the negative.

7                   Senator Robach to explain his vote.

8                   SENATOR ROBACH: Yes,  
9 Mr. President. I rise to support this measure.

10                   And I always enjoy the dialogue,  
11 but a little bit surprised, quite frankly. I  
12 think judges, I think people in the system know  
13 exactly what we're talking about here. And what  
14 this is is to try and stem the very unfortunate  
15 tide of people who have already broken the law in  
16 many cases, of really violating the men and women  
17 who work and are that thin line between us and  
18 safety.

19                   And while I hear the things about  
20 specificity, I really think this bill does it. I  
21 think this will go a long way for trying to deter  
22 people from doing bad things and putting people  
23 in harm's way, exposed to diseases, germs and  
24 other things that no one would want anybody in  
25 their own family having to endure as part of

1 their working conditions.

2                   It makes a lot of sense. I applaud  
3 Senator Nozzolio for putting this forward and  
4 just ask, before people make up their mind, if  
5 they haven't, what would you want to do to deter  
6 those conditions if you or a loved one had to  
7 work in those conditions? It seems to me clearly  
8 the balance should go to the people who are  
9 trying to uphold the law, not those who are  
10 trying to break it.

11                   So I very strongly vote in the  
12 affirmative, Mr. President.

13                   ACTING PRESIDENT FLANAGAN:  
14 Senator Robach to be recorded in the affirmative.

15                   Senator DeFrancisco to explain his  
16 vote.

17                   SENATOR DeFRANCISCO: I heard some  
18 of the vote explanations about how the law was  
19 vague because of the word "intent" and what you  
20 mean by the word "intent."

21                   In fact, "intent" is a limiting  
22 word for this particular bill. If you happen to  
23 sneeze and you just sneeze but you don't have the  
24 criminal intent or the intention to actually  
25 cause this particular problem, then it's not a

1 crime.

2           The law always distinguishes  
3 between a criminal intent and a noncriminal  
4 intent. The whole criminal law is based upon  
5 that. There is criminal negligence where you are  
6 not aware of a risk but you cause a harm, like  
7 criminally negligent homicide. There's  
8 recklessness, when you're aware of a risk and you  
9 ignore it and cause injury. That's a much higher  
10 standard.

11           But the highest standard is  
12 intent. And the intent is if you have an intent  
13 to do something wrong, then it could be  
14 criminal. And it's the most serious type of  
15 criminal charge.

16           So to suggest this is vague  
17 basically says, if you argue that, that the  
18 entire penal law of the State of New York is  
19 based on a false premise and false language,  
20 because this is exactly how it's built.

21           So the bill is not vague, it's very  
22 clear, and it specifically prescribes certain  
23 types of conduct. And I vote aye.

24           ACTING PRESIDENT FLANAGAN:  
25 Senator DeFrancisco to be recorded in the

1 affirmative.

2                   Senator Squadron to explain his  
3 vote.

4                   SENATOR SQUADRON:   Thank you very  
5 much, Mr. President.

6                   And listening to the debate and the  
7 vote explanations, I think it's such a shame.  
8 Because when we talk about the folks who the  
9 sponsor and others voting in favor of this bill  
10 say this bill is meant to protect, you know, the  
11 reality is this is a one-house bill. It's a  
12 one-house bill written in a way to create a  
13 partisan divide and to make a point and say  
14 things about respect for certain folks without  
15 actually delivering respect for those folks.

16                   We should be protecting the  
17 officials who are talked about in this bill. We  
18 should be doing whatever we can to deal with the  
19 sort of situation Senator Adams talked about.

20                   But to just come here and just have  
21 a political conversation, get worked up, refuse  
22 to finish the debate is such a shame. Because  
23 what would be so much better would be a really  
24 thoughtful process to get a reality, to get a new  
25 law that actually protects these folks we want to



1 protect so much, rather than just a political  
2 conversation about it.

3                   So I am absolutely eager to do  
4 whatever I can to work to protect these folks and  
5 to pass an actual law to do so. But in the  
6 meantime I'm going to vote no on this bill.

7                   Thank you, Mr. President.

8                   ACTING PRESIDENT FLANAGAN:

9 Senator Squadron to be recorded in the negative.

10                   The Secretary will announce the  
11 results.

12                   THE SECRETARY: In relation to  
13 Calendar 336, those recorded in the negative are  
14 Senators Breslin, Dilan, Duane, Gianaris,  
15 Hassell-Thompson, Huntley, Krueger, Montgomery,  
16 Perkins, Rivera, Sampson, Serrano, Squadron and  
17 Stavisky.

18                   Absent from voting: Senator  
19 Parker.

20                   Ayes, 45. Nays, 14.

21                   ACTING PRESIDENT FLANAGAN: The  
22 bill is passed.

23                   Senator Libous.

24                   SENATOR LIBOUS: Mr. President,  
25 can we now go back to Calendar 303.

1           ACTING PRESIDENT FLANAGAN:    The  
2 Secretary will read.

3           THE SECRETARY:    Calendar Number  
4 303, by Senator Libous, Senate Print 2467B, an  
5 act to amend the Tax Law.

6           SENATOR BRESLIN:   Explanation.

7           ACTING PRESIDENT FLANAGAN:  
8 Senator Libous, an explanation has been  
9 requested.

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

12                 Mr. President and my colleagues,  
13 this house knows over the number of years my  
14 concern about the Dedicated Highway Trust Fund  
15 and how the fund continues to get raided and our  
16 roads and bridges continually deteriorate.

17                 What this would do is it designates  
18 one cent per gallon of gasoline to go to the  
19 Dedicated Highway and Bridge Trust Fund from the  
20 sales tax, which would then be used for roads and  
21 bridges.

22                 We are in a position right now  
23 where we're negotiating a budget and we have no  
24 five-year plan, as we've always had, for roads  
25 and bridges throughout this state. One of the

1 reasons is because, since the inception of the  
2 Dedicated Highway Trust Fund, a higher percentage  
3 of spending has gone to state operations and debt  
4 service and then more than they spend on capital  
5 projects.

6                   And capital spending from the  
7 Dedicated Highway Trust Fund has dropped from  
8 50 percent to 25 percent, resulting in what  
9 reports have said is the worst infrastructure in  
10 the nation.

11                   So what this would do is help to  
12 build up the fund. It takes a penny a gallon,  
13 puts it in for road and bridge construction.

14                   ACTING PRESIDENT FLANAGAN:  
15 Senator Squadron.

16                   SENATOR SQUADRON: Thank you,  
17 Mr. President. If the sponsor would yield.

18                   ACTING PRESIDENT FLANAGAN:  
19 Senator Libous.

20                   SENATOR LIBOUS: Mr. President, I  
21 would be pleased to yield to Senator Squadron.

22                   ACTING PRESIDENT FLANAGAN:  
23 Senator Squadron.

24                   SENATOR SQUADRON: About how much  
25 in each of the next couple of years would this

1 mean for the Highway and Bridge Trust Fund?

2 Through you, Mr. President.

3           SENATOR LIBOUS:   Mr. President,  
4 through you, in response to Senator Squadron's  
5 question, the first year would be \$64 million,  
6 the second year \$128 million, the third year  
7 \$193 million, the fourth year \$257 million, and  
8 in the fifth year \$321 million.

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

12           ACTING PRESIDENT FLANAGAN:  
13 Senator Libous, do you continue to yield?

14           SENATOR LIBOUS:   I will, sir.

15           ACTING PRESIDENT FLANAGAN:  
16 Senator Squadron.

17           SENATOR SQUADRON:   Thank you.

18                   And in that period of time, those  
19 amounts, if this bill wouldn't pass, where would  
20 those dollars go to?  If this bill does not  
21 become law.

22           SENATOR LIBOUS:   If the bill does  
23 not become law?  It would go to the General Fund.

24           SENATOR SQUADRON:   Mr. President,  
25 if the sponsor would continue to yield.

1                   ACTING PRESIDENT FLANAGAN:

2   Senator Libous, will you continue to yield?

3                   SENATOR LIBOUS:    Mr. President, I  
4   will.

5                   ACTING PRESIDENT FLANAGAN:

6   Senator Squadron.

7                   SENATOR SQUADRON:   Thank you.

8                   And based on the change in the MTA  
9   payroll tax and the funding from this Legislature  
10   to the MTA in recent years, where has funding for  
11   the capital program for the Metropolitan  
12   Transportation Authority -- where is it scheduled  
13   to be coming from?

14                  SENATOR LIBOUS:    Well,  
15   Mr. President, through you. I can tell you that  
16   a couple of years ago when, Senator Squadron, you  
17   were in power, you did have a capital fund for  
18   the MTA, but there was no parity or capital fund  
19   for roads and bridges.

20                  And we have always in this house,  
21   working together bipartisanly, come up with, in  
22   the 23 years I've been here, come up with a  
23   five-year plan for both the MTA and the road and  
24   bridge program. However, in the last several  
25   years the dedicated fund continues to be

1 shortchanged as it pertains to roads and  
2 bridges.

3                   So at this time, to be specific to  
4 Senator Squadron, I don't believe as we roll  
5 forward in this budget there's a capital plan  
6 moving forward for either the MTA or the road and  
7 bridge program. That's why I think it's very  
8 important, moving forward, to have this penny  
9 continue to go into the dedicated fund so we have  
10 something for roads and bridges.

11                   SENATOR SQUADRON:    If the sponsor  
12 would continue to yield.

13                   ACTING PRESIDENT FLANAGAN:  
14 Senator Libous, will you continue to yield?

15                   SENATOR LIBOUS:    I would be  
16 pleased to yield to Senator Squadron.

17                   ACTING PRESIDENT FLANAGAN:  
18 Senator Squadron.

19                   SENATOR SQUADRON:    Thank you.

20                   And just as a -- for just basic  
21 clarification, neither five-year capital plan is  
22 funded currently and the modification of the MTA  
23 payroll tax is made up for currently out of the  
24 General Fund?

25                   SENATOR LIBOUS:    (Nodding.)

1                   SENATOR SQUADRON:    Thank you.

2                   On the bill, Mr. President.

3                   ACTING PRESIDENT FLANAGAN:

4   Senator Squadron on the bill.

5                   SENATOR SQUADRON:    Senator  
6   Libous's point about funding the Highway and  
7   Bridge Trust Fund is an important one.  It's  
8   something that I am supportive of.  Capital  
9   programs with parity and with sufficient  
10   investment both in roads and bridges and also in  
11   transit is something I've been a long supporter  
12   of since before I held office.  And it's an  
13   important method of ensuring that our  
14   infrastructure is maintained over time.

15                   Unfortunately, to simply solve one  
16   of those things or start to deal with one of  
17   those issues without the other leaves a huge  
18   portion of the state -- the entire MTA region --  
19   at risk of having enormous economic costs,  
20   enormous costs to their transit infrastructure  
21   all the way from the eastern end of Long Island  
22   up into the northern counties around New York  
23   City.

24                   And the idea that additional  
25   dollars would be taken from the General Fund only

1 for this purpose without also thinking about  
2 buses and subways -- in my district in Brooklyn  
3 and Lower Manhattan, we've had bus service cut  
4 like crazy. And we've had express bus service  
5 cut from the different boroughs of New York  
6 City. And we've had subway cuts that are just  
7 devastating.

8                   There used to be a bus -- I used to  
9 be able to take the bus across from Brooklyn to  
10 Manhattan. You no longer can. You can't across  
11 the Manhattan Bridge, you can't across the  
12 Williamsburg Bridge. And that's because this  
13 Legislature has not stood up sufficiently and  
14 funded transit in the way we should.

15                   This is not about whether we should  
16 fund roads and bridges -- we should. It is about  
17 whether we have an obligation to do something to  
18 keep buses and subways running as well, and  
19 commuter transit in addition to that, both  
20 Long Island Bus, Long Island Railroad, and  
21 Metro North. Those are arteries to the  
22 community.

23                   And, you know, the truth is the  
24 revision of the MTA payroll tax, which does  
25 continue but in a revised form, is the right



1 thing to do. But we need to have a funding  
2 stream at the time that we do that.

3           The idea of gasoline taxes, which  
4 is what the sponsor suggests here, is certainly  
5 one way to fund transit and roads and bridges,  
6 and I appreciate very much the sponsor using  
7 gasoline taxes as a way to fund one piece of  
8 that. But we just can't continue to move  
9 forward, turning our back on buses, subways, and  
10 commuter rail, the way that this Legislature has  
11 now for the last few months.

12           So I support the instinct  
13 strongly. I think it's an important one. To do  
14 it without parity, to do it without the kind of  
15 funding I've talked about doesn't make sense. So  
16 I urge the sponsor to work on a bill that reaches  
17 the conclusion that this one does and also  
18 reaches the conclusion that allows our transit  
19 infrastructure to move forward.

20           Simply taking money away again and  
21 again and again and not having a responsible  
22 funding stream isn't good policy. It may be good  
23 politics, but that's not a reason to do it.

24           Thank you, Mr. President.

25           ACTING PRESIDENT FLANAGAN:

1 Senator Libous.

2                   SENATOR LIBOUS: Mr. President, in  
3 all due respect to my colleague Senator Squadron,  
4 I think maybe he's a bit confused.

5                   The MTA has taxes that go to  
6 supporting subways. It goes to supporting the  
7 MTA region. There's sales taxes, there's  
8 business taxes, there's surcharges on licenses  
9 that already go to the MTA.

10                  This is not about the MTA, this is  
11 about the Dedicated Highway Trust Fund that deals  
12 with roads and bridges in the entire State of  
13 New York. It's not just one region, it's the  
14 entire State of New York that the Dedicated  
15 Highway Trust Fund deals with.

16                  So we're not shortchanging the MTA  
17 at all here. They still have their fees that  
18 transit and mass transit has. And obviously  
19 upstate we don't have subways, but we have roads  
20 and bridges. And those roads and bridges are not  
21 being taken care of by any kind of flow right  
22 now. They're deteriorating and falling apart.

23                  So in all due respect to my  
24 colleague, I'm not here to create a debate  
25 between the MTA and roads and bridges. As a

1 matter of fact, we have been very supportive over  
2 the years. When I chaired the Transportation  
3 Committee we had legislation that -- I think it  
4 was \$17.5 billion to the MTA, \$17.5 billion over  
5 five years to the roads and bridges in New York  
6 State. And it was parity, and it worked  
7 together.

8                   All I'm trying to do here,  
9 Mr. President, is not take a thing away from the  
10 MTA. They have their fees. What I'm trying to  
11 do is build up the Dedicated Highway Trust Fund.  
12 Which as I said, only 25 percent is resulting in  
13 infrastructure today, because most of it is  
14 capital, most of it is going to running state  
15 agencies. And I just think roads and bridges  
16 need their fair share.

17                   And it's not just the upstate  
18 region, Mr. President and Senator Squadron, but  
19 it's throughout the State of New York. The  
20 Dedicated Highway Trust Fund was supposed to, was  
21 supposed to fund infrastructure throughout the  
22 entire State of New York. And I know in the MTA  
23 region they have roads and bridges.

24                   ACTING PRESIDENT FLANAGAN:   Thank  
25 you, Senator Libous.

1 Senator Krueger, why do you rise?

2 SENATOR KRUEGER: Thank you.

3 Would the sponsor please yield, Mr. President.

4 ACTING PRESIDENT FLANAGAN:

5 Senator Libous, will you yield?

6 SENATOR LIBOUS: Of course,

7 Mr. President, thank you.

8 ACTING PRESIDENT FLANAGAN:

9 Senator Krueger.

10 SENATOR KRUEGER: Thank you.

11 I think Senator Libous, Senator  
12 Squadron and I all agree that the roads and  
13 bridges need funding throughout the State of  
14 New York. And Senator Libous referenced that  
15 that was the intent of the Dedicated Highway and  
16 Bridge Trust Fund.

17 Could Senator Libous let me know  
18 what year it was that we started not committing  
19 direct funds to the Dedicated Highway and Bridge  
20 Trust Fund? What year was that?

21 SENATOR LIBOUS: Mr. President, I  
22 don't know what year it is, but it came up in  
23 debate on the floor last time. And it was -- it  
24 could have been late '90s, it could have been  
25 early 2000s.

1                   But to my point, I want to change  
2 the past, and that's what I've been trying to do  
3 for the last five years. So in all due respect  
4 to Senator Krueger, I'm sure she has the year,  
5 and I'm anxious to learn when it was. But I'm  
6 trying to move forward. I'm trying to change any  
7 mistakes that may have been made in a positive  
8 direction for roads and bridges.

9                   But, Mr. President, I am quite  
10 anxious to learn what that year was. And if  
11 Senator Krueger could be helpful in informing me.

12                   SENATOR KRUEGER: Through you,  
13 Mr. President, I sincerely didn't know the year.  
14 I was quite sure it was a year Senator Libous and  
15 that side of the aisle was in leadership, because  
16 that's pretty much all the years, but I actually  
17 don't know the year. It wasn't a trick question.

18                   SENATOR LIBOUS: Mr. President,  
19 I'm disappointed.

20                   (Laughter.)

21                   SENATOR KRUEGER: But I made my  
22 point there.

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

25                   ACTING PRESIDENT FLANAGAN:

1 Senator Libous, will you continue to yield?

2 SENATOR LIBOUS: I will,  
3 Mr. President.

4 ACTING PRESIDENT FLANAGAN:  
5 Senator Krueger.

6 SENATOR KRUEGER: Thank you so  
7 much.

8 So in answering Senator Squadron's  
9 question, you explained that if this became law  
10 it would add 64-point -- I think you said  
11 64-point-something million and then it would grow  
12 from there because it's 8 percent growth. And  
13 this would then be sales tax that would go  
14 directly to the Highway and Bridge Trust Fund and  
15 not to the General Fund, as I understand it.  
16 That's not the question, I just want to make sure  
17 we're in agreement on that.

18 Does the Senator know how much  
19 money now and planned for future years the  
20 General Fund already puts into the Dedicated  
21 Highway and Bridge Trust Fund?

22 SENATOR LIBOUS: I'm sorry,  
23 Mr. President, could she just repeat the question  
24 one more time?

25 SENATOR KRUEGER: Does the sponsor

1 know in current and proposed future years how  
2 much General Fund money is going into the Highway  
3 and Bridge Trust Fund?

4               SENATOR LIBOUS:   Actually,  
5 Mr. President, I can give Senator Krueger the  
6 projections on the gasoline sales tax.

7               But I can also state that we raid  
8 the fund right now. I believe almost a billion  
9 dollars comes out of that fund for snow and ice  
10 removal and for running the Department of Motor  
11 Vehicles.

12              So I don't believe there's a ton of  
13 revenue going in there. And if anything, the  
14 fund continues to diminish because of the bonding  
15 limit and we're running out of money. And that's  
16 the whole point of trying to replenish it by  
17 putting a penny from the sales tax on motor fuel  
18 again. And let me stress that, it's motor fuel.

19              So, Mr. President, through you and  
20 to Senator Krueger, I believe the fund continues  
21 to be depleted each year.

22              SENATOR KRUEGER:   Through you,  
23 Mr. President.

24              ACTING PRESIDENT FLANAGAN:  
25 Senator Libous, will you continue to yield?

1                   SENATOR LIBOUS:   Absolutely.

2                   ACTING PRESIDENT FLANAGAN:

3   Senator Krueger.

4                   SENATOR KRUEGER:   I guess I'm  
5   answering a question as opposed to asking a  
6   question, so I want to make sure I get the  
7   context right.  Is it both of our understanding  
8   I'm going to answer Senator Libous's question?  
9   Is that all right through you, Mr. President?

10                  ACTING PRESIDENT FLANAGAN:   I  
11   don't recall Senator Libous asking a question.  
12   But are you -- would you rather speak on the  
13   bill?

14                  SENATOR KRUEGER:   Okay.  I think I  
15   will speak on the bill, thank you, because I  
16   don't want to misspeak.

17                  I understood Senator Libous asked  
18   me if I knew that the --

19                  ACTING PRESIDENT FLANAGAN:  
20   Senator Krueger on the bill.

21                  SENATOR KRUEGER:   Thank you so  
22   much, Mr. President.

23                  As I heard Senator Libous, he was  
24   asking me if I knew that the trust fund was  
25   continuing to move into the red.  And the answer



1 is yes, I do, because I have the data from the  
2 Department of Budget.

3           And I'm not disagreeing with  
4 Senator Libous. At one point in history this  
5 Legislature, both houses and the Governor reneged  
6 on the commitment it had to have an ongoing  
7 funding stream for the Dedicated Highway and  
8 Bridge Trust Fund.

9           And I'm not disagreeing with  
10 Senator Libous that this is important money for  
11 important roads and bridges, capital work  
12 throughout the State of New York, upstate,  
13 downstate, his district, my district -- not so  
14 much my district, but even my district. The FDR  
15 is actually a state road along the east side of  
16 Manhattan, certainly throughout Long Island.

17           And I'm not disagreeing with the  
18 Senator that we need to come to a solution. I  
19 would argue that the solution needs to be within  
20 the context of the budget, not as individual  
21 one-house bills that simply say we'll take money  
22 from this funding stream and put it over there  
23 and not explain what happens without that money  
24 going to the General Fund.

25           But I think it's particularly

1 interesting for all of us to realize that because  
2 of the situation where the Dedicated Highway and  
3 Bridge Trust Fund has been shorted money for many  
4 years, each year the State of New York actually  
5 transfers General Fund money into the Highway and  
6 Bridge Trust Fund -- and a much greater amount  
7 than Senator Libous is proposing they could  
8 receive through the gas tax even at the highest  
9 year outyear of his five-year plan.

10                   And in 2010-2011 the General Fund  
11 transferred \$587 million into the Highway and  
12 Bridge Trust Fund. In 2011-2012, an estimated  
13 \$453 million. And projections going up through  
14 2016-2017 are as high as \$710 million per year.

15                   So I simply stand to point out that  
16 looking at this piece of legislation in a vacuum,  
17 as opposed to in a holistic way with MTA capital  
18 fund concerns and within the context of the  
19 budget, probably doesn't get Senator Libous what  
20 he's hoping for, more money for the bridge and  
21 transit fund or a security that more money would  
22 be there each year because it would be some  
23 formula of the sales tax.

24                   Because I would hypothesize --  
25 that's all I can do, because we're not having a

1 discussion on the budget -- that the General Fund  
2 would simply reduce the amount it was  
3 transferring to the Highway and Bridge Trust Fund  
4 each year as there was growth in the sales tax  
5 revenue moved in.

6               So that from the perspective of  
7 fungibility of dollars -- I love the word  
8 "fungibility," it's an important lesson from  
9 economics -- the fungibility of dollars,  
10 unfortunately I don't think Senator Libous's bill  
11 will get him the outcome that he's hoping for.  
12 Which I actually think is all of our hoped-for  
13 outcome, that we can actually come up with a  
14 long-term solution to adequate capital funding  
15 for roads, bridges, highways and mass transit.

16               And so I think my point today is  
17 saying that I could vote yes on this bill or no  
18 on this bill; it will pass. I just don't think  
19 it's getting us any closer to where we want to  
20 go.

21               Thank you, Mr. President.

22               ACTING PRESIDENT FLANAGAN: Thank  
23 you, Senator Krueger.

24               The debate is closed.

25               The Secretary will ring the bell.

1 Read the last section.

2 THE SECRETARY: Section 8. This  
3 act shall take effect April 1, 2013.

4 ACTING PRESIDENT FLANAGAN: Call  
5 the roll.

6 (The Secretary called the roll.)

7 ACTING PRESIDENT FLANAGAN:  
8 Senator Squadron to explain his vote.

9 SENATOR SQUADRON: To explain my  
10 vote, Mr. President, thank you.

11 Just to respond to the sponsor's  
12 response to my questioning, you know, I think  
13 it's critically important that we're all very  
14 clear. Roads and bridges exist in all  
15 62 counties. Investing in them is important in  
16 all 62 counties. That's true in the deepest  
17 urban counties, the most rural counties, and it  
18 is something that we have not done sufficiently  
19 as a state for a number of years, and it's  
20 something that we need to solve. And relying on  
21 gasoline taxes as a way to do it is certainly  
22 part of the solution.

23 But to do it at the same time that  
24 the MTA is being disinvested from, at the same  
25 time that commuter rail and buses and subways are

1 struggling -- and frankly, that solution has not  
2 been found, and so the General Fund depends on  
3 it. And to just leave buses, subways and  
4 commuter rail hanging out there yet again doesn't  
5 make sense.

6                   So I would love to see this  
7 provision mixed with another one. I think until  
8 we do that, I can't support it. Roads and  
9 bridges, funding them with gasoline taxes the way  
10 Senator Libous talks about is very important.  
11 I'm going to vote no today, and I hope to see  
12 this again at a time we can also invest in the  
13 MTA.

14                   Thank you, Mr. President.

15                   ACTING PRESIDENT FLANAGAN:  
16 Senator Squadron to be recorded in the negative.

17                   The Secretary will announce the  
18 results.

19                   THE SECRETARY: In relation to  
20 Calendar 303, those recorded in the negative are  
21 Senators Adams, Addabbo, Duane, Espaillat,  
22 Huntley, Krueger, Montgomery, Perkins, Rivera,  
23 Serrano, Squadron and Stavisky.

24                   Absent from voting: Senator  
25 Parker.

1                   Ayes, 47. Nays, 12.

2                   ACTING PRESIDENT FLANAGAN:     The  
3 bill is passed.

4                   Senator Libous.

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

7                   ACTING PRESIDENT FLANAGAN:  
8 Senator Libous, there is none.

9                   SENATOR LIBOUS:     Before we  
10 adjourn, I have an announcement. There will be a  
11 Republican conference, Republican majority  
12 conference at 2:00 p.m. in Room 332.

13                   There being no further business  
14 before the Senate today, I move that we adjourn  
15 until Thursday, March 22nd, at 11:00 a.m.

16                   ACTING PRESIDENT FLANAGAN:     On  
17 motion, the Senate stands adjourned until  
18 Thursday, March 22nd, at 11:00 a.m.

19                   (Whereupon, at 12:44 p.m., the  
20 Senate adjourned.)

21

22

23

24

25