

1 NEW YORK STATE SENATE

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3
4 THE STENOGRAPHIC RECORD

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8
9 ALBANY, NEW YORK

10 May 8, 2012

11 3:23 p.m.

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13
14 REGULAR SESSION

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18 SENATOR CATHARINE M. YOUNG, Acting President

19 FRANCIS W. PATIENCE, Secretary

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

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

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

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

9 ACTING PRESIDENT YOUNG: We are
10 very pleased to have joining us today Reverend
11 Sean J. Gann, who is pastor of St. Joseph's
12 Church in Kings Park, which I would like to
13 mention is in Senator Flanagan's district. So
14 we welcome Father Gann.

15 Would you like to say the prayer,
16 please?

17 REVEREND GANN: I would. Thank
18 you very much.

19 ACTING PRESIDENT YOUNG: Thank
20 you.

21 REVEREND GANN: God of justice
22 and mercy, we thank You for the gift of life
23 and the opportunity to serve the people of the
24 great State of New York.

25 Help each of us to act with

1 character and conviction. Help us to listen
2 with understanding and goodwill. Help us to
3 speak with charity and restraint. Give to
4 each of us a spirit of service. Remind us
5 that we are but stewards of Your authority.
6 Guide us to be the leaders Your people need.

7 Help us to see the humanity and
8 dignity of those who disagree with us and to
9 treat all persons, no matter how weak or poor,
10 with the reverence Your creation deserves.

11 And finally, Heavenly Father,
12 renew us with the strength of Your presence
13 and the joy of helping to build a community, a
14 state worthy of the human person. We ask this
15 as Your sons and daughters, confident in Your
16 goodness and love.

17 Amen.

18 ACTING PRESIDENT YOUNG: Thank
19 you, Father, for that beautiful prayer and
20 those words of wisdom.

21 Again, enjoy your stay at the
22 Capitol.

23 REVEREND GANN: Thank you very
24 much.

25 ACTING PRESIDENT YOUNG: At this

1 time I'd like to call on Senator Libous.

2 SENATOR LIBOUS: Thank you, Madam
3 President.

4 Madam President, if I could ask you
5 to have some order in the chamber, because what
6 we're about to do is extremely important.

7 ACTING PRESIDENT YOUNG: Thank
8 you, Senator.

9 Could we please have some order in
10 the chamber.

11 Senator Libous.

12 SENATOR LIBOUS: Madam President,
13 the Senate previously adopted a resolution,
14 Number 4126, regarding Police Memorial Day.

15 I would now ask that the Secretary
16 read the list of the names of those officers who
17 lost their lives in the past year in the line of
18 duty.

19 ACTING PRESIDENT YOUNG: Thank
20 you, Senator.

21 The Secretary will read.

22 THE SECRETARY: State of New York
23 Police Officers Memorial, 2012 Ceremony
24 Inclusions.

25 City of Albany Police Department:

1 Sergeant John J. Walsh.

2 Chemung County Sheriff's Office:

3 Deputy Jeffrey T. Alexander.

4 Town of Colonie Police Department:

5 Police Officer Donald L. Wilkins.

6 Columbia County Sheriff's Office:

7 Sheriff Cornelius Hogeboom.

8 City of Kingston Police

9 Department: Police Officer John G. Boyd.

10 Nassau County Police Department:

11 Police Officer Michael J. Califano and Police

12 Officer Geoffrey Breitkopf.

13 New York City Police Department:

14 Police Officer Alain K. Schaberger;

15 Sergeant Harold J. Smith; Police Officer George

16 M. Wong; Police Officer Martin Tom; Captain Barry

17 Galfano; Detective Edwin Ortiz; Detective Peter

18 J. Fogiski; Detective Joseph Seabrook;

19 Lieutenant Jacqueline McCarthy; Police Officer

20 Robert M. Ehmer; Police Officer David Mahmoud;

21 Detective Kevin A. Czartoryski; Sergeant Charles

22 J. Clark; Detective John E. Goggin; and

23 Police Officer Edward M. Ferraro.

24 New York State Police: Trooper

25 Kevin P. Dobson.

1 Oneida County Sheriff's Office:

2 Deputy Kurt B. Wyman.

3 City of Poughkeepsie Police

4 Department: Detective John M. Falcone.

5 U.S. Bureau of Alcohol, Tobacco,

6 Firearms and Explosives: Senior Special Agent

7 John F. Capano.

8 Westchester County Department of

9 Public Safety: Sergeant Charles W. Rice, Jr.

10 ACTING PRESIDENT YOUNG: Senator

11 Libous.

12 SENATOR LIBOUS: Madam President,

13 these individuals put their lives on the line to

14 protect ours. And if I could ask everybody to

15 please stand in a moment of silence for what they

16 did.

17 (Whereupon, the assemblage rose and

18 respected a moment of silence.)

19 ACTING PRESIDENT YOUNG: Next

20 we'll have the reading of the Journal.

21 THE SECRETARY: In Senate, Monday,

22 May 7th, the Senate met pursuant to adjournment.

23 The Journal of Friday, May 4th, was read and

24 approved. On motion, Senate adjourned.

25 ACTING PRESIDENT YOUNG: Without

1 objection, the Journal stands approved as read.

2 Next we have presentation of
3 petitions.

4 Messages from the Assembly.

5 The Secretary will read.

6 THE SECRETARY: On page 22,
7 Senator DeFrancisco moves to discharge, from the
8 Committee on Energy and Telecommunications,
9 Assembly Bill Number 9737A and substitute it for
10 the identical Senate Bill Number 6794A, Third
11 Reading Calendar 552.

12 And on page 33, Senator Nozzolio
13 moves to discharge, from the Committee on Crime
14 Victims, Crime and Corrections, Assembly Bill
15 Number 9659 and substitute it for the identical
16 Senate Bill Number 6846, Third Reading Calendar
17 682.

18 ACTING PRESIDENT YOUNG:
19 Substitutions ordered.

20 Messages from the Governor.

21 Reports of standing committees.

22 Reports of select committees.

23 Communications and reports from
24 state officers.

25 Motions and resolutions.

1 Senator Libous.

2 SENATOR LIBOUS: Madam President,
3 at this time would you call on Senator Breslin.
4 I believe he has a motion to read.

5 ACTING PRESIDENT YOUNG: Thank
6 you.

7 Senator Breslin.

8 SENATOR BRESLIN: Thank you, Madam
9 President.

10 On behalf of Senator Stavisky, on
11 page number 30 I offer the following amendments
12 to Calendar Number 655, Senate Print Number 899,
13 and ask that the bill be retained on the Third
14 Reading Calendar.

15 ACTING PRESIDENT YOUNG: Thank
16 you, Senator Breslin. The amendments are
17 received, and the bill will retain its place on
18 the Third Reading Calendar.

19 SENATOR BRESLIN: Thank you,
20 Madam President.

21 ACTING PRESIDENT YOUNG: Senator
22 Libous.

23 SENATOR LIBOUS: Madam President,
24 at this time would you please call on
25 Senator Valesky for the purposes of a statement.

1 ACTING PRESIDENT YOUNG: Senator
2 Valesky.

3 SENATOR VALESKY: Thank you,
4 Madam President. Thank you, Senator Libous.

5 We have at this time of year, as my
6 colleagues know, the opportunity to welcome a
7 number of our schoolchildren from various
8 districts around the state. And they come to
9 Albany to watch our proceedings, to tour the
10 Capitol, and to learn a little bit more about
11 their government.

12 I'm pleased to draw to the
13 attention of the members of the Senate today and
14 to you, Madam President, a group of fourth-grade
15 students who are here from the Seneca Street
16 Elementary School in Oneida, New York. They are
17 joined by a number of their parents and others
18 who have made the trip.

19 And they are led today by their two
20 teachers, Mr. Arthur and someone who I happen to
21 think is the best teacher in the State of
22 New York -- I might be a little partial --
23 Mrs. Valesky.

24 (Laughter; applause.)

25 ACTING PRESIDENT YOUNG: Hello and

1 welcome to the State Capitol. I hope that you're
2 learning a lot about state government as you're
3 here. And these are lessons also that I think
4 you can take through the rest of your lives.

5 So some of your teachers are here
6 and some aren't. For the teachers who aren't
7 here, I think the students should go back and say
8 that the New York State Senate says all of you
9 deserve an A. Okay?

10 (Laughter.)

11 ACTING PRESIDENT YOUNG: Very
12 good. Thank you, Senator Valesky.

13 Senator Libous.

14 SENATOR LIBOUS: Thank you,
15 Madam President.

16 And Senator Valesky, today we
17 concur with your assumption as to who the best
18 teacher in the state is.

19 (Laughter.)

20 SENATOR LIBOUS: Madam President,
21 at this time could we please adopt the
22 Resolution Calendar, with the exception of
23 Resolutions Number 4473, 4485, and 4516.

24 ACTING PRESIDENT YOUNG: All in
25 favor of adopting the Resolution Calendar, with

1 the exception of Resolutions Number 4473, 4485,
2 and 4516, signify by saying aye.

3 (Response of "Aye.")

4 ACTING PRESIDENT YOUNG: Opposed,
5 nay.

6 (No response.)

7 ACTING PRESIDENT YOUNG: The
8 Resolution Calendar is adopted.

9 Senator Libous.

10 SENATOR LIBOUS: Madam President,
11 there's a resolution at the desk by Senator
12 Valesky, Number 4101. It was previously adopted
13 by the house on April 26th. May we have the
14 title read, and then I would ask you to please
15 call on Senator Valesky.

16 ACTING PRESIDENT YOUNG: Thank
17 you, Senator.

18 The Secretary will read.

19 THE SECRETARY: Legislative
20 Resolution Number 4101, by Senator Valesky,
21 memorializing Governor Andrew M. Cuomo to
22 proclaim May 8, 2012, as Senior Citizens
23 Awareness Day in the State of New York.

24 ACTING PRESIDENT YOUNG: Thank
25 you.

1 Senator Valesky.

2 SENATOR VALESKY: Thank you, Madam
3 President.

4 As Senator Libous indicated, the
5 Senate approved a couple of weeks ago a
6 resolution memorializing Governor Cuomo to
7 proclaim May 8th, today, as Senior Citizens
8 Awareness Day in the State of New York. We do
9 this in conjunction with National Older Americans
10 Month, which we have marked each year for the
11 past number of years -- since 1962, in fact, by a
12 Presidential Proclamation.

13 As part of Senior Citizens
14 Awareness Day here in the state, we have
15 developed a tradition where a number of seniors
16 from around the great State of New York who do so
17 many outstanding things and make very, very
18 important contributions in communities all across
19 our great state, we ask them to come to Albany so
20 that we can salute them for their efforts.

21 And we are joined today in the
22 gallery by a number of our awardees. We had a
23 ceremony in the Blue Room on the second floor of
24 the Capitol earlier today.

25 We singled out two individuals,

1 Madam President, for special recognition. This
2 year we are proud to award Mary Beechey as the
3 Senior Citizen of the Year. Mary is from Chemung
4 County. And also, Margaret Fettes is the winner
5 of the Outstanding Contribution by a Senior
6 Citizen. She lives in Dutchess County.

7 And, Madam President, I ask you to
8 call on Senator O'Mara, who will speak about his
9 constituent, and then Senator Saland, who will
10 speak about his. Thank you.

11 ACTING PRESIDENT YOUNG: Thank you
12 very much, Senator Valesky.

13 Senator O'Mara.

14 SENATOR O'MARA: Thank you,
15 Madam President.

16 It is my distinct privilege today
17 to welcome to this chamber the Senior Citizen of
18 the Year Award recipient, Mary Beechey, who is
19 with us in the gallery here.

20 Welcome to the Senate this
21 afternoon, Mary. Congratulations on your award.

22 Mary has given thousands of hours
23 of volunteer work in the community for Meals on
24 Wheels, transcribing books into Braille for the
25 blind, performing with the Over-the-Counter

1 Players and the Elmiran, volunteering at the
2 Southern Tier Tobacco Council, RSVP of Chemung
3 County, the Free Community Kitchen, the Near
4 Westside Neighborhood, and the Steel Memorial
5 Library, among many other activities.

6 She is an energetic, selfless
7 individual who understands the importance of
8 having fun. She strives to lighten the burdens
9 of others and bring joy to the lives of all.
10 Mary has enriched the lives of many through her
11 love and respect for others and through the
12 wisdom which comes from many years of living life
13 to the fullest.

14 Mary, congratulations. Thank you
15 for all the community work that you do. And to
16 rise above all the many other great senior
17 citizens in our community to win this award this
18 year, a hearty congratulations.

19 (Applause.)

20 ACTING PRESIDENT YOUNG: Senator
21 Saland.

22 SENATOR SALAND: Thank you,
23 Madam Chairman.

24 If Senator O'Mara was distinctly
25 privileged to recognize his constituent, I am at

1 the very least equally distinctly privileged.

2 It is an honor for me to share this
3 moment with Margaret Fettes, who I've known for a
4 number of years. Margaret is an exceptional
5 public servant, a publicly committed person.
6 Margaret really is a record holder in Dutchess
7 County -- I'm sure you hold more than one
8 record.

9 But she has been the
10 longest-serving member of the Dutchess County
11 Legislature. She's a lifelong resident of the
12 Town of Washington and I believe lives right
13 across the street from where she grew up. She's
14 active in her church. She has served on a host
15 of committees. And certainly I have, on more
16 than occasion, seen her here on a Lobby Day when
17 she was lobbying on behalf of the Dutchess County
18 Soil and Water Conservation Board. Her energy,
19 her commitment knows no bounds.

20 She has been a member of the
21 Farmland Protection Board as a member of the
22 Dutchess County Legislature. She served as the
23 president of the Church Alliance of Millbrook and
24 has sung in the choir of Millbrook's Grace
25 Church, where she is a member since she was

1 10 years old. Quite an extraordinarily
2 accomplished person.

3 And one of the things that I would
4 like to add is that she is not merely
5 accomplished, but she is a very fine and gracious
6 person who's never about to turn a cold cheek to
7 anybody who's in need. She is the kind of person
8 who will always wade in and offer her all.
9 Margaret distinguished herself, and obviously her
10 presence here says she continues to distinguish
11 herself.

12 And I should add she's been joined
13 by members of the Rosa family, from Millbrook,
14 including Maria -- who I've known since my days
15 in the law office; she's confidential law
16 secretary to one of our Supreme Court judges --
17 as well as Maria's mom and her children.

18 Margaret, congratulations. It's a
19 wonderful recognition for all that you've done
20 and all that you do. God bless you.

21 (Applause.)

22 ACTING PRESIDENT YOUNG: Next I'll
23 call on Senator Griffo.

24 SENATOR GRIFFO: Thank you,
25 Madam President.

1 I also want to add my
2 congratulations to the two recipients that were
3 just acknowledged, as well as all of those who
4 are in attendance today, because every one of you
5 have done so much to make our community such a
6 special place.

7 I am fortunate today to have with
8 me the Oneida County recipient, Shirin Rashid. I
9 want to commend her for all of her efforts.

10 She immigrated to this country over
11 20 years ago. And in the history and tradition
12 of our great nation, those who have come have
13 given so much. And she has been so exceptional
14 in volunteering her time and service to the
15 American Red Cross, to the Central Association
16 for the Blind, and for St. Elizabeth's Hospital
17 in our area, who does so much for those who are
18 truly in need.

19 So I commend her service and her
20 great character and contributions to our
21 community. Congratulations. Thanks for being
22 here.

23 (Applause.)

24 ACTING PRESIDENT YOUNG: Senator
25 Diaz.

1 SENATOR DIAZ: Thank you,
2 Madam President.

3 I also rise to join my colleagues
4 in the celebration to the Senior Citizens Month.
5 When I was in the New York City Council, I was
6 the chairman of the Aging Committee in the
7 New York City Council and we -- every May we
8 celebrated May, the Month of the Senior Citizen.

9 And when I came to this body,
10 Senator Golden was the chairman and I became the
11 ranker. And we have celebrated. Then I became
12 the chairman of the Aging Committee, and we have
13 been celebrating this kind of activity.

14 And every year, on behalf of my
15 Democratic side, I also present a proclamation or
16 certificate to the Senior of the Year. This year
17 I was not invited. And I hope that next year I
18 could be invited as the ranking member so I could
19 represent my Democratic colleagues in the
20 celebration.

21 But nonetheless, I join in the
22 celebration. They call me Mr. Senior Citizen. I
23 have been working with senior citizens for more
24 than 40 years of my life.

25 And I join and I congratulate the

1 Senior Citizen of the Year, and I congratulate
2 Senator Valesky, the chairman of the Aging
3 Committee, for conducting this magnificent and
4 great event.

5 Thank you.

6 ACTING PRESIDENT YOUNG: Thank
7 you, Senator.

8 Senator Grisanti.

9 SENATOR GRISANTI: Thank you,
10 Madam President.

11 Briefly I too want to acknowledge
12 Phillip Muck and his wife, Martha -- if you would
13 just stand for a moment -- who are here from Erie
14 County.

15 Phillip has been awarded today.
16 He's an Army veteran of the Korean War, dedicated
17 his time and talents to numerous organizations
18 and projects, served as principal -- too many
19 things to mention here; I'll be here for about an
20 hour. And his wife not only has been a secretary
21 but also involved in numerous matters with the
22 church.

23 I want to recognize them as
24 representing Erie County with regards to this
25 great award. I just want to give you a round of

1 applause. Thanks a lot.

2 (Applause.)

3 ACTING PRESIDENT YOUNG: Thank
4 you, Senator.

5 As all the visitors can tell, that
6 this chamber is very focused on senior issues,
7 senior advocacy and awareness. I want to thank
8 all of the speakers for their very appropriate
9 remarks.

10 But also I especially want to thank
11 all of the honorees on behalf of the Senate for
12 giving of your time and your talents, your
13 energy, to help others. It truly makes a
14 difference. So congratulations, and welcome to
15 the Senate chamber.

16 Senator Libous.

17 SENATOR LIBOUS: Thank you,
18 Madam President.

19 At this time could we pull up
20 Resolution Number 4473, by Senator Little. I
21 believe it is at the desk. And I would ask that
22 you read the title and we would call on
23 Senator Little before its immediate adoption.

24 ACTING PRESIDENT YOUNG: The
25 Secretary will read.

1 THE SECRETARY: Legislative
2 Resolution 4473, by Senator Little, memorializing
3 Governor Andrew M. Cuomo to proclaim May 7-13,
4 2012, as Fibromyalgia Awareness Week in the State
5 of New York.

6 ACTING PRESIDENT YOUNG: Senator
7 Little.

8 SENATOR LITTLE: Thank you,
9 Madam President.

10 It's important that we pause and
11 memorialize and look at fibromyalgia this week.
12 This is our week, May 7th to May 13th. And it's
13 important because there are 10 million people in
14 the United States and millions of people
15 worldwide who have fibromyalgia.

16 And this is a chronic-syndrome type
17 of disease that has no known cause and no known
18 cure. Fibromyalgia causes debilitating fatigue
19 and chronic pain in women, men, and children of
20 all ethnicities. And it's something that people
21 have to just learn to live with.

22 I know, because I have a close
23 friend who was diagnosed with fibromyalgia and
24 lives with it each and every day. She, like many
25 others, took several years in order to be even

1 diagnosed with fibromyalgia.

2 Which is why celebrating this week
3 and recognizing this disease will bring increased
4 awareness and education, expand the knowledge of
5 people throughout our country to know what the
6 realities of life with fibromyalgia can be.

7 There is a National Fibromyalgia
8 and Chronic Pain Association, but we're very
9 fortunate in this area that we have the
10 Neurosciences Department of Albany Medical
11 Center, in Albany, conducting medical
12 research and providing continuing medical
13 education for physicians and other healthcare
14 providers, patients and caregivers in
15 fibromyalgia.

16 We're also very fortunate to have a
17 30-year ongoing support group at St. Peter's
18 Hospital here in Albany, led by Dr. Jonathan
19 Cooper, Agnes Welch, and Betsy Shearer, who are
20 joining us today. Through their efforts -- thank
21 you. Through their efforts we have increased
22 awareness, knowledge, and support for people who
23 are suffering from fibromyalgia.

24 I thank you for joining me in this
25 legislative resolution, and I invite all of you

1 to be part of it and sponsor it as well.

2 Thank you very much, Madam
3 President.

4 ACTING PRESIDENT YOUNG: Thank
5 you, Senator Little.

6 And we also welcome these visitors
7 today and thank you for your advocacy.

8 (Applause.)

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

12 (Response of "Aye.")

13 ACTING PRESIDENT YOUNG: Opposed,
14 nay.

15 (No response.)

16 ACTING PRESIDENT YOUNG: The
17 resolution is adopted.

18 Senator Libous.

19 SENATOR LIBOUS: I believe Senator
20 Little would like to open the resolution to all
21 members of the chamber. So as our policy goes,
22 if you wish not -- that's wish not to be on the
23 resolution, let the desk know. Otherwise, your
24 name will be added.

25 ACTING PRESIDENT YOUNG: Thank

1 you, Senator. The resolution is open for
2 cosponsorship. If you do not wish to be a
3 cosponsor, please notify the desk.

4 Senator Libous.

5 SENATOR LIBOUS: Madam President,
6 before we go on, I believe that Senator Larkin,
7 since we still are on motions, has a couple of
8 seniors here that he would like to speak on that
9 are being honored. If you would call on
10 Senator Larkin.

11 ACTING PRESIDENT YOUNG: Without
12 objection, Senator Larkin.

13 SENATOR LARKIN: Thank you,
14 Madam President.

15 You know, there's a lady in the
16 balcony up here, her name is Pat Bodnar. And
17 anybody in Orange County or anybody considering
18 in this state with domestic violence, Mothers
19 Against Drunk Driving, or any other thing that
20 has to do with the family, knows Pat.

21 Pat, in the '90s, her husband was
22 killed in her home by a robber. Pat's husband
23 was a New York City police officer.

24 Pat didn't take this as somebody
25 else did, she got into the communities and she

1 got involved in many, many issues. Her main goal
2 was always to try to help somebody else, knowing
3 that something like this could happen to somebody
4 else.

5 You could never go to an event
6 where there was community interest, no matter
7 what it was, without seeing Pat there. Not
8 looking for sympathy, not looking for anything
9 special, just to make sure that people were aware
10 of the consequences of what happens to a family.
11 Just think about yourself in the middle of the
12 night, someone comes to your house to rob you,
13 winds up killing your loved one.

14 Pat has been an inspiration to many
15 in our communities because she's never failed
16 us. And I'm very proud of what she's
17 accomplished. And I'm very proud -- and I know
18 others who didn't know about this event today
19 would have been here in support of her, because
20 she is a lady of integrity, a lady of compassion,
21 and someone I'm proud to call my friend.

22 ACTING PRESIDENT YOUNG: Thank
23 you, Senator Larkin.

24 (Applause.)

25 ACTING PRESIDENT YOUNG: Senator

1 Libous.

2 SENATOR LIBOUS: Madam President,
3 I believe there's a resolution at the desk by
4 Senator Peralta, Number 4516. Can we have the
5 title read, and I believe he'd like to be called
6 on.

7 ACTING PRESIDENT YOUNG: The
8 Secretary will read.

9 THE SECRETARY: Legislative
10 Resolution Number 4516, by Senator Peralta,
11 congratulating Mr. Met, the New York Mets iconic
12 mascot, upon the occasion of being rated Number 1
13 in Major League Baseball.

14 ACTING PRESIDENT YOUNG: Thank
15 you.

16 Senator Peralta.

17 SENATOR PERALTA: Thank you,
18 Madam President.

19 Now, Mr. Met has excelled at
20 bringing cheer to baseball fans -- Democrats and
21 Republicans, young and old alike. Always smiling
22 and perpetually wide-eyed, he is nonetheless
23 fiercely competitive and a winner, as we are
24 proud to recognize here today.

25 In a recent survey, Mr. Met was

1 sport fans' favorite mascot, beating out the
2 Phillie Phanatic and Chicago's Benny the Bull, as
3 well as an assortment of sausages and U.S.
4 Presidents and members of a variety of food
5 groups, including fish and poultry.

6 Mr. Met is a Mascot Hall of Famer;
7 however, he is not a deli meat. You won't find
8 him wedged between slices of whole wheat or
9 leaping through hoops of fire or obnoxiously
10 calling attention to himself. That's because he
11 is a man of the people.

12 Mr. Met is, after all, a mender of
13 broken hearts. He brought at least some solace
14 to devastated Brooklyn Dodger and New York Giant
15 baseball fans when he began to appear on the
16 covers of game programs and scorecards in 1963
17 and first bounded about Shea Stadium the
18 following season.

19 He has been with Met fans in good
20 times and in bad times, always with a smile. His
21 spirit and determination are as New York as it
22 gets.

23 In recognition of his Hall of Fame
24 career, and in gratitude for his cheerful
25 faithfulness to fans, we are proud to recognize

1 here today the inimitable Mr. Met. Thank you,
2 Mr. Met, and congratulations to you and the
3 entire New York Mets organization.

4 And for those of you who haven't
5 seen -- no, he's not here, unfortunately. For
6 those of you who haven't seen the commercials,
7 you can actually catch Mr. Met on ESPN
8 commercials.

9 So thank you, Madam Chair, for
10 allowing me to say a few words on this
11 resolution.

12 ACTING PRESIDENT YOUNG: Thank
13 you, Senator Peralta.

14 Senator Libous would like to speak.

15 SENATOR LIBOUS: Madam President,
16 Senator Peralta, as I've said on this floor
17 before, as many of you are, I too am a very
18 dedicated, devout, loyal -- painfully loyal --
19 New York Mets fan. And I only wish you could
20 have brought Mr. Met to the chamber today.

21 But, Madam President, I would hope
22 that the team could follow the lead of Mr. Met
23 and be number one in Major League Baseball.

24 (Laughter.)

25 ACTING PRESIDENT YOUNG: Thank

1 you, Senator Libous, and both of you for
2 recognizing a New York icon and tradition.

3 Senator Squadron would like to
4 speak.

5 SENATOR SQUADRON: Just very
6 briefly.

7 A couple of weeks ago I suggested
8 Mr. Met was in fact the best mascot in the
9 league. I thank the people of the country and
10 Senator Peralta for supporting that statement.

11 I also, I believe, challenged the
12 Phillie Phanatic to a fight at that time. I
13 would like to withdraw that challenge. I think
14 that this survey is more appropriate.

15 (Laughter.)

16 SENATOR SQUADRON: But Mr. Met is
17 a great representation of a team that we all
18 suffer with and get superexcited about when they
19 do well.

20 As Senator Libous said -- Senator
21 Libous and I agree -- the team should only do as
22 well as Mr. Met did in this survey.

23 Thank you, Madam President.

24 ACTING PRESIDENT YOUNG: Thank
25 you, Senator.

1 Senator DeFrancisco.

2 SENATOR DeFRANCISCO: Yes. Now
3 that we're honoring fictional characters, I can't
4 wait for the resolution that's going to honor
5 SpongeBob SquarePants, because I think my
6 grandkids would be extremely happy about that.

7 (Laughter.)

8 SENATOR DeFRANCISCO: So this is a
9 new era for the State Senate, and I can't wait
10 for where it goes from here.

11 Thank you very much.

12 ACTING PRESIDENT YOUNG: Thank
13 you, Senator.

14 Senator Marcellino.

15 SENATOR MARCELLINO: Yes,
16 Madam President. I rise as a lifelong dedicated
17 Yankee fan to acknowledge Mr. Met, who is serving
18 many long years in purgatory by representing the
19 Mets in Major League Baseball.

20 However, go, Mr. Met.

21 (Laughter.)

22 ACTING PRESIDENT YOUNG: Thank
23 you, Senator. I know that Senators Peralta and
24 Libous would like to go back to 1969 and have a
25 repeat of that season. But thank you very much.

1 So the question is on the
2 resolution. All those in favor signify by saying
3 aye.

4 (Response of "Aye.")

5 ACTING PRESIDENT YOUNG: Opposed,
6 nay.

7 (No response.)

8 ACTING PRESIDENT YOUNG: The
9 resolution is adopted.
10 Senator Libous.

11 SENATOR LIBOUS: Madam President,
12 I believe Senator Peralta would like to open it
13 up for cosponsorship. And if there are any
14 Yankee fans who wish not to be on the resolution,
15 please let the desk know.

16 ACTING PRESIDENT YOUNG: Thank
17 you, Senator.

18 SENATOR LIBOUS: Madam President,
19 I believe there's a resolution at the desk by
20 Senator -- I'm sorry?

21 SENATOR PERALTA: We should
22 include both Yankee fans and SpongeBob fans.

23 (Laughter.)

24 ACTING PRESIDENT YOUNG: So the
25 resolution is open for cosponsorship. If you do

1 not wish to be on the resolution as a cosponsor,
2 please notify the desk.

3 SENATOR LIBOUS: Thank you,
4 Senator Peralta. And thank you, Madam President.

5 Okay, moving right along here, I
6 believe there's a resolution by Senator Rivera at
7 the desk, 4485. Could we have the title read,
8 and I believe that Senator Rivera would like to
9 be called on before its adoption.

10 ACTING PRESIDENT YOUNG: The
11 Secretary will read.

12 THE SECRETARY: Legislative
13 Resolution Number 4485, honoring Shawanda Weems
14 for her many years of dedicated service to the
15 students of the Bronx community.

16 ACTING PRESIDENT YOUNG: Senator
17 Rivera.

18 SENATOR RIVERA: Thank you,
19 Madam President.

20 There are times, yes, when we honor
21 fictitious characters, but I am very glad to know
22 that there are real people that we also honor on
23 the floor of the Senate.

24 And we are very honored to have one
25 of these folks with us today: Ms. Shawanda

1 Weems, who is a teacher and a coach in my
2 district. She is a teacher at PSMS 15 in the
3 33rd Senate District. She is also a coach of the
4 Jaguars Track Team and has spent the last eight
5 years helping students, helping boys and girls
6 from third grade to eighth grade to reach their
7 personal goals as well as their team goals.

8 I am very glad to have her here
9 today, because she is one of the folks in my
10 district that has made it easy to be a Senator in
11 the 33rd District.

12 Last year I launched something
13 called the Bronx CAN Health Initiative, which was
14 based on the idea that unfortunately the Bronx is
15 the unhealthiest county in the entire State of
16 New York. And we were asking ourselves what we
17 could do to not only point this out, but to do
18 something about it.

19 Well, what we found was that
20 Shawanda Weems, along with a lot of other
21 community activists, had already been doing work
22 for a very long time in making sure that they
23 take health, they take exercise and put it into
24 the everyday activities of children in the
25 33rd District.

1 I am very glad to be able to honor
2 her today, because on issues of physical fitness
3 she has been a leader for a long time, and she
4 provided an example to myself and to a lot of
5 other folks in the Northwest Bronx as we launched
6 the Bronx CAN Health Initiative last year.

7 This is not the first time she is
8 getting honored. She has been to the White House
9 and President Obama honored her. And the
10 First Lady, Michelle Obama, honored her as a
11 Champion of Change for the work that she's done
12 in the Bronx.

13 So I'm very happy to have her here
14 today, very happy to know that she is not a
15 fictitious character but that she is a real
16 person who does real work here in New York State
17 and certainly in the Bronx.

18 Thank you so much for doing the
19 work that you do. You change the lives of a lot
20 of kids over there, and I'm very glad to have you
21 as a partner in the community that I represent.

22 And I'd like to give her a hand.

23 (Applause.)

24 ACTING PRESIDENT YOUNG: Thank you
25 for your dedication and outstanding service to

1 the students. I know that Senator Rivera is very
2 proud and very grateful for all that you do, as
3 are all of we.

4 So thank you for visiting us, and
5 congratulations.

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

8 (Response of "Aye.")

9 ACTING PRESIDENT YOUNG: Opposed,
10 nay.

11 (No response.)

12 ACTING PRESIDENT YOUNG: The
13 resolution is adopted.

14 Senator Libous.

15 SENATOR LIBOUS: Thank you,
16 Madam President.

17 Before we go on to the reading of
18 the noncontroversial calendar, I believe that
19 Senator O'Mara would like to be called on for the
20 purposes of a statement.

21 ACTING PRESIDENT YOUNG: Senator
22 O'Mara.

23 SENATOR O'MARA: Yes, thank you,
24 Madam Speaker.

25 In addition to the Senior Citizen

1 of the Year that was here from my district
2 earlier, I have two gentlemen from Yates County
3 who are here as well, John Moeller and Bill
4 Wormuth, who have received county awards from
5 today's Office for the Aging ceremonies.

6 Both have been actively involved in
7 the Office for the Aging of Yates County for many
8 years, and I want to recognize them for their
9 service here today and being here with us this
10 afternoon in the Senate.

11 Thank you both very much for your
12 continued service to your community, to those of
13 us that are in need in our communities. You're
14 doing a fine job, and thank you for being with us
15 in Albany today.

16 (Applause.)

17 ACTING PRESIDENT YOUNG: Thank
18 you, gentlemen. We give you a warm Senate
19 welcome and thank you for all of your service and
20 great works.

21 Senator Libous.

22 SENATOR LIBOUS: Thank you. Madam
23 President -- and just for other members of the
24 chamber, "Madam President" -- would we please go
25 to the reading of the noncontroversial calendar.

1 ACTING PRESIDENT YOUNG: Thank
2 you, Senator.

3 The Secretary will read.

4 THE SECRETARY: Calendar Number
5 530, by Senator Martins, Senate Print --

6 SENATOR BRESLIN: Lay it aside.

7 ACTING PRESIDENT YOUNG: The bill
8 is laid aside.

9 THE SECRETARY: Calendar Number
10 551, by Senator Maziarz, Senate Print 5769, an
11 act to amend the Public --

12 SENATOR BRESLIN: Lay it aside.

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

15 The Secretary will continue to
16 read.

17 THE SECRETARY: Calendar Number
18 552, substituted earlier today by Member of the
19 Assembly Magnarelli, Assembly Print 9737A, an act
20 to amend Chapter 62 of the Laws of 2003.

21 ACTING PRESIDENT YOUNG: Read the
22 last section.

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

25 ACTING PRESIDENT YOUNG: Call the

1 roll.

2 (The Secretary called the roll.)

3 ACTING PRESIDENT YOUNG: Announce
4 the results.

5 THE SECRETARY: Ayes, 61.

6 ACTING PRESIDENT YOUNG: The bill
7 is passed.

8 THE SECRETARY: Calendar Number
9 568, by Senator Robach, Senate Print 6740, an act
10 to amend the Insurance Law.

11 ACTING PRESIDENT YOUNG: Read the
12 last section.

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

15 ACTING PRESIDENT YOUNG: Call the
16 roll.

17 (The Secretary called the roll.)

18 ACTING PRESIDENT YOUNG: Announce
19 the results.

20 THE SECRETARY: Ayes, 61.

21 ACTING PRESIDENT YOUNG: The bill
22 is passed.

23 THE SECRETARY: Calendar Number
24 581, by Senator Savino, Senate Print 3912A, an
25 act to amend the Penal Law.

1 ACTING PRESIDENT YOUNG: Read the
2 last section.

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

5 ACTING PRESIDENT YOUNG: Call the
6 roll.

7 (The Secretary called the roll.)

8 ACTING PRESIDENT YOUNG: Announce
9 the results.

10 THE SECRETARY: Ayes, 60. Nays,
11 1. Senator Lanza recorded in the negative.

12 ACTING PRESIDENT YOUNG: The bill
13 is passed.

14 THE SECRETARY: Calendar Number
15 617, by Senator Dilan, Senate Print 1345, an act
16 to amend the Social Services Law.

17 ACTING PRESIDENT YOUNG: Read the
18 last section.

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

21 ACTING PRESIDENT YOUNG: Call the
22 roll.

23 (The Secretary called the roll.)

24 ACTING PRESIDENT YOUNG: Announce
25 the results.

1 THE SECRETARY: Ayes, 61.

2 ACTING PRESIDENT YOUNG: The bill
3 is passed.

4 THE SECRETARY: Calendar Number
5 618, by Senator Gallivan, Senate Print 5494A, an
6 act to amend the Social Services Law.

7 ACTING PRESIDENT YOUNG: Read the
8 last section.

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

11 ACTING PRESIDENT YOUNG: Call the
12 roll.

13 (The Secretary called the roll.)

14 ACTING PRESIDENT YOUNG: Announce
15 the results.

16 THE SECRETARY: Ayes, 59. Nays,
17 2. Senators Montgomery and Perkins recorded in
18 the negative.

19 ACTING PRESIDENT YOUNG: The bill
20 is passed.

21 THE SECRETARY: Calendar Number
22 619, by Senator Saland, Senate Print 6563, an act
23 to amend the Social Services Law.

24 ACTING PRESIDENT YOUNG: Read the
25 last section.

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

3 ACTING PRESIDENT YOUNG: Call the
4 roll.

5 (The Secretary called the roll.)

6 THE SECRETARY: Ayes, 61.

7 ACTING PRESIDENT YOUNG: The bill
8 is passed.

9 THE SECRETARY: Calendar Number
10 630, by Senator Young, Senate Print 847A, an act
11 to amend the Agriculture and Markets Law.

12 ACTING PRESIDENT YOUNG: Read the
13 last section.

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

16 ACTING PRESIDENT YOUNG: Call the
17 roll.

18 (The Secretary called the roll.)

19 ACTING PRESIDENT YOUNG: Announce
20 the results.

21 THE SECRETARY: Ayes, 61.

22 ACTING PRESIDENT YOUNG: The bill
23 is passed.

24 THE SECRETARY: Calendar Number
25 640, by Senator Sampson, Senate Print 1621, an

1 act to amend the Penal Law.

2 ACTING PRESIDENT YOUNG: Read the
3 last section.

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

6 ACTING PRESIDENT YOUNG: Call the
7 roll.

8 (The Secretary called the roll.)

9 ACTING PRESIDENT YOUNG: Senator
10 Marcellino to explain his vote.

11 SENATOR MARCELLINO: Yes, thank
12 you, Madam President. I rise to explain my vote.

13 I commend Senator Sampson for
14 bringing this bill to the floor. It is very
15 similar to a bill that I passed in this house a
16 few weeks back. Both bills tend to deal with
17 what would amount to petty crimes and petty
18 criminals.

19 Both bills would seek to raise the
20 penalties on those who commit crimes repeatedly
21 and never see much jail time because of the
22 nature of their crimes individually.
23 Individually these crimes may not seem like much,
24 but cumulatively they can destroy our way of life
25 and they can destroy communities.

1 These are petty criminals. These
2 are career criminals who go out with every
3 intention of beating the system and making life
4 miserable for honest, hardworking citizens,
5 forcing them to stay off the streets and in their
6 homes while this people run free, graffitiing
7 neighborhoods and breaking windows, destroying
8 property and stealing from other people.

9 This bill is a good one. I urge
10 everyone to support it as they did with the bill
11 that I passed a few weeks back.

12 The Assembly should pass this bill,
13 one of the two -- either one, I don't care, quite
14 frankly -- because it is important that we send a
15 message that this type of crime will not be
16 tolerated in our neighborhoods, these type of
17 people will not be tolerated in our neighborhoods
18 and will not be allowed to chase good, honest,
19 hardworking people off the street and ruin their
20 quality of life.

21 Madam President, I vote aye and
22 urge all of my colleagues to do likewise.

23 ACTING PRESIDENT YOUNG: Senator
24 Marcellino will be recorded in the affirmative.

25 Any other Senator wishing to

1 speak?

2 Seeing none, announce the results.

3 THE SECRETARY: In relation to
4 Calendar 640, those recorded in the negative are
5 Senators Duane, Hassell-Thompson, Parker, and
6 Rivera. Also Senators Montgomery and Perkins.

7 Ayes, 55. Nays, 6.

8 ACTING PRESIDENT YOUNG: The bill
9 is passed.

10 THE SECRETARY: Calendar Number
11 642, by Senator Lanza, Senate Print 4003, an act
12 to amend the Penal Law.

13 ACTING PRESIDENT YOUNG: Read the
14 last section.

15 THE SECRETARY: Section 7. This
16 act shall take effect on the first of November.

17 ACTING PRESIDENT YOUNG: Call the
18 roll.

19 (The Secretary called the roll.)

20 ACTING PRESIDENT YOUNG: Announce
21 the results.

22 THE SECRETARY: Ayes, 61.

23 ACTING PRESIDENT YOUNG: The bill
24 is passed.

25 THE SECRETARY: Calendar Number

1 644, by Senator Fuschillo, Senate Print 4610, an
2 act to amend the Penal Law.

3 ACTING PRESIDENT YOUNG: Read the
4 last section.

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

7 ACTING PRESIDENT YOUNG: Call the
8 roll.

9 (The Secretary called the roll.)

10 ACTING PRESIDENT YOUNG: Announce
11 the results.

12 THE SECRETARY: In relation to
13 Calendar 644, those recorded in the negative are
14 Senators Duane, Hassell-Thompson, Parker, and
15 Perkins.

16 Ayes, 57. Nays, 4.

17 ACTING PRESIDENT YOUNG: The bill
18 is passed.

19 THE SECRETARY: Calendar Number
20 647, by Senator Klein, Senate Print 6338, an act
21 to amend the Penal Law.

22 ACTING PRESIDENT YOUNG: Read the
23 last section.

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

1 ACTING PRESIDENT YOUNG: Call the
2 roll.

3 (The Secretary called the roll.)

4 ACTING PRESIDENT YOUNG: Senator
5 Klein to explain his vote.

6 SENATOR KLEIN: Thank you,
7 Madam President.

8 Unfortunately, over the last
9 several years we've seen a real increase in
10 crimes against religious houses of worship. This
11 legislation is very simple. It takes away the
12 monetary value or the dollar amount of the crime,
13 and it really focuses on the intent, the reason
14 being is it's hard to put a price tag on
15 something as important or sacred as a scroll or
16 some type of other religious artifact.

17 So I think this is going to go a
18 long way, I hope, as acting as a deterrent to
19 make sure these crimes decrease instead of
20 increase.

21 I vote yes, Madam President.

22 ACTING PRESIDENT YOUNG: Thank
23 you, Senator Klein. You will be recorded in the
24 affirmative.

25 Any other Senator wishing to be

1 heard?

2 Announce the results.

3 THE SECRETARY: Ayes, 60. Nays,

4 1. Senator Duane recorded in the negative.

5 ACTING PRESIDENT YOUNG: The bill
6 is passed.

7 THE SECRETARY: Calendar Number
8 649, by Senator Saland, Senate Print 6677, an act
9 to amend the Criminal Procedure Law.

10 ACTING PRESIDENT YOUNG: Read the
11 last section.

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

14 ACTING PRESIDENT YOUNG: Call the
15 roll.

16 (The Secretary called the roll.)

17 ACTING PRESIDENT YOUNG: Announce
18 the results.

19 THE SECRETARY: Ayes, 61.

20 ACTING PRESIDENT YOUNG: The bill
21 is passed.

22 THE SECRETARY: Calendar Number
23 682, substituted earlier today by Member of the
24 Assembly Maisel, Assembly Print 9659, an act to
25 amend Chapter 688 of the Laws of 2003.

1 ACTING PRESIDENT YOUNG: Read the
2 last section.

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

5 ACTING PRESIDENT YOUNG: Call the
6 roll.

7 (The Secretary called the roll.)

8 ACTING PRESIDENT YOUNG: Announce
9 the results.

10 THE SECRETARY: Ayes, 60. Nays,
11 1. Senator Parker recorded in the negative.

12 ACTING PRESIDENT YOUNG: The bill
13 is passed.

14 THE SECRETARY: Calendar Number
15 683, by Senator Nozzolio, Senate Print 6847, an
16 act to amend the Correction Law.

17 ACTING PRESIDENT YOUNG: Read the
18 last section.

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

21 ACTING PRESIDENT YOUNG: Call the
22 roll.

23 (The Secretary called the roll.)

24 ACTING PRESIDENT YOUNG: Announce
25 the results.

1 THE SECRETARY: Ayes, 61.

2 ACTING PRESIDENT YOUNG: The bill
3 is passed.

4 THE SECRETARY: Calendar Number
5 684, by Senator Nozzolio, Senate Print 6848, an
6 act to amend the Executive Law.

7 ACTING PRESIDENT YOUNG: Read the
8 last section.

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

11 ACTING PRESIDENT YOUNG: Call the
12 roll.

13 (The Secretary called the roll.)

14 ACTING PRESIDENT YOUNG: Announce
15 the results.

16 THE SECRETARY: Ayes, 61.

17 ACTING PRESIDENT YOUNG: The bill
18 is passed.

19 THE SECRETARY: Calendar Number
20 685, by Senator Breslin, Senate Print 6864A, an
21 act to amend the Correction Law.

22 ACTING PRESIDENT YOUNG: Read the
23 last section.

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

1 ACTING PRESIDENT YOUNG: Call the
2 roll.

3 (The Secretary called the roll.)

4 ACTING PRESIDENT YOUNG: Announce
5 the results.

6 THE SECRETARY: Ayes, 61.

7 ACTING PRESIDENT YOUNG: The bill
8 is passed.

9 THE SECRETARY: Calendar Number
10 686, by Senator Larkin, Senate Print --

11 SENATOR MARCELLINO: Lay it aside
12 for the day.

13 ACTING PRESIDENT YOUNG: The bill
14 is laid aside for the day.

15 Senator Marcellino, that completes
16 the noncontroversial reading of the calendar.

17 SENATOR MARCELLINO: Thank you,
18 Madam President.

19 May we ring the bells and have the
20 reading of the controversial calendar.

21 ACTING PRESIDENT YOUNG: Ring the
22 bells.

23 The Secretary will read.

24 THE SECRETARY: Calendar Number
25 530, by Senator Martins, Senate Print 6299B, an

1 act to amend the Labor Law.

2 SENATOR BRESLIN: Explanation.

3 ACTING PRESIDENT YOUNG: An
4 explanation has been requested.

5 Senator Martins.

6 SENATOR MARTINS: Thank you,
7 Madam President.

8 The bill clarifies the law by
9 adopting existing Department of Labor regulations
10 relating to the treatment of service charges. In
11 this case it requires employers to notify
12 customers in writing that the new service charge
13 is not a gratuity.

14 It also achieves what I believe is
15 fairness by eliminating any retroactive
16 application of the regulations or liability under
17 Section 196-d for imposing a mandatory service
18 charge prior to the effective date of the bill.

19 ACTING PRESIDENT YOUNG: Thank
20 you, Senator Martins.

21 Senator Smith.

22 SENATOR SMITH: Thank you very
23 much, Madam President.

24 And I'd like to thank the sponsor
25 for the explanation and the intent of the bill.

1 But, Madam President, with your
2 pleasure, I'd like to ask the sponsor a few
3 questions.

4 ACTING PRESIDENT YOUNG: Does the
5 sponsor yield?

6 SENATOR MARTINS: Of course.
7 Thank you, Madam President.

8 ACTING PRESIDENT YOUNG: Thank
9 you, Senator Martins.
10 Senator Smith, Senator Martins
11 yields.

12 SENATOR SMITH: Thank you,
13 Madam President. Through you, Madam President.

14 Senator Martins, I believe you have
15 great intentions on the bill. I do have just a
16 few questions I'd like to ask, if you would
17 indulge me for a moment.

18 Through you, Madam President, does
19 the sponsor understand the Labor Law 196-d -- if
20 he would agree the language of the bill states
21 that it forbids any employer from retaining any
22 part of a gratuity or any charge purported to be
23 a gratuity? Through you, Madam President, does
24 the sponsor agree that section of the Labor Law,
25 196-d, says that?

1 ACTING PRESIDENT YOUNG: Thank
2 you, Senator Smith.

3 Senator Martins?

4 SENATOR MARTINS: Madam President,
5 I apologize, but I only heard part of the
6 question. It had to do with a portion of 196-d.
7 If Senator Smith would please restate the
8 question. Again, my apologies.

9 ACTING PRESIDENT YOUNG: Senator
10 Smith, would you please restate the question?

11 SENATOR SMITH: Sure,
12 Madam President. Through you, would the sponsor
13 agree that Labor Law 196-d states the fact that
14 an employer is forbidden from retaining any part
15 of a gratuity or any charge purported to be a
16 gratuity?

17 ACTING PRESIDENT YOUNG: Thank
18 you, Senator Smith.

19 Senator Martins.

20 SENATOR MARTINS: Yes.

21 ACTING PRESIDENT YOUNG: Senator
22 Smith.

23 SENATOR SMITH: Thank you,
24 sponsor.

25 Madam President, through you, I

1 have another question of the sponsor if he would
2 be so kind as to yield.

3 SENATOR MARTINS: Yes, I would be
4 glad to.

5 ACTING PRESIDENT YOUNG: Senator
6 Martins, you yield.

7 Senator Smith, go ahead.

8 SENATOR SMITH: Thank you very
9 much.

10 Madam President, through you, the
11 case of Samiento v. World Yacht was a case in
12 which our current Governor, then the Attorney
13 General, along with the Department of Labor, who
14 we all know is responsible for enforcing the
15 Labor Law Section 196-d, all of which were
16 plaintiffs in the case -- in this particular bill
17 it stated that -- or I should say in this
18 particular suit it was agreed upon the court that
19 individuals had the right to get back pay.

20 Would the sponsor agree with that?

21 ACTING PRESIDENT YOUNG: Thank
22 you, Senator Smith.

23 Senator Martins.

24 SENATOR MARTINS: Madam President,
25 I think to properly contextualize this bill with

1 regard to the Samiento case and the decision by
2 the Court of Appeals in Samiento, we have to
3 actually go back a little bit further. And I
4 hope this clarifies the question.

5 The Labor Department, as Senator
6 Smith mentioned, is responsible for enforcing
7 labor laws in New York State, and their
8 interpretations and opinions are sought often by
9 various elements in labor when they seek to
10 regulate various industries or to adjust their
11 own conduct accordingly.

12 The Labor Department, on no less
13 than nine separate occasions dating back to 1995,
14 rendered opinions clarifying that service charges
15 and mandatory service charges in New York State
16 are not gratuities, having done so in an opinion
17 dated June 1, 1995; opinion, August 27, 1999;
18 March 24, 2000; March 12, 2001; September 25,
19 2001; November 8, 2004; February 22, 2006; May
20 19, 2006; and again on August 2, 2006.

21 In each and every one of these
22 opinions the Labor Department clearly,
23 unequivocally stated that mandatory service
24 charges by catering facilities -- which include
25 caterers, stand-alone caterers, synagogues that

1 provide catering facilities as well, hotels that
2 provide catering facilities -- in every occasion
3 where you have a mandatory service charge, the
4 Labor Department consistently held that they were
5 not gratuities.

6 And as per that interpretation,
7 since they were not gratuities, and consistent
8 with 196-d, they did not have to nor was there
9 ever any obligation to distribute the service
10 charge among the workers who worked on any
11 particular function.

12 Thank you, Madam President.

13 ACTING PRESIDENT YOUNG: Thank
14 you, Senator Martins.

15 Senator Smith.

16 SENATOR SMITH: Thank you,
17 Madam President. I appreciate the sponsor's
18 explanation. Would he continue to yield for
19 another question? Through you, Madam President.

20 ACTING PRESIDENT YOUNG: Senator
21 Martins, do you yield?

22 SENATOR MARTINS: Absolutely.
23 Thank you.

24 ACTING PRESIDENT YOUNG: Senator
25 Martins yields, Senator Smith.

1 SENATOR SMITH: Senator Martins --
2 through you, Madam President -- in Part A of your
3 bill basically you have justification based on
4 the 1995 interpretation of the Labor Department
5 with regards to 196-d.

6 My question, through you, Madam
7 President, is -- and I know you stated some of
8 these facts, but from at least 1995 -- we know
9 this is a 17-year-old opinion -- are you aware of
10 the fact that the Labor Department has reversed
11 their decision with regards to the classification
12 of gratuities at least 10 times?

13 ACTING PRESIDENT YOUNG: Thank
14 you, Senator Smith.

15 Senator Martins.

16 SENATOR MARTINS: Madam President,
17 the purpose of this bill is in part, as I
18 explained earlier, to codify the change in the
19 Labor Department's opinion.

20 The Labor Department has, since
21 Samiento, changed its regulations where now the
22 interpretation in New York State -- effective
23 January 1, 2011, the interpretation now by the
24 Labor Department is that service charges are in
25 fact gratuities unless the catering facility --

1 again, stand-alone caterers, synagogues that
2 provide catering facilities or catering
3 functions, as well as hotels -- if those
4 facilities wish to impose an administrative
5 charge or a service charge, they may do so, but
6 now they have to specifically state on the
7 contract that it is not a gratuity in order for
8 them not to have to distribute it to the workers
9 who worked any particular function.

10 So they have reversed themselves,
11 but only per regulations effective January 1,
12 2011.

13 ACTING PRESIDENT YOUNG: Thank
14 you, Senator Martins.

15 Senator Smith.

16 SENATOR SMITH: Thank you,
17 Madam President.

18 I appreciate the sponsor's response
19 and his clarifying it. Would he be so kind as to
20 yield for an additional question?

21 ACTING PRESIDENT YOUNG: Senator
22 Martins, do you yield?

23 SENATOR MARTINS: I'll be glad to,
24 thank you.

25 ACTING PRESIDENT YOUNG: Senator

1 Smith, please proceed.

2 SENATOR SMITH: Through you,
3 Madam President. Senator Martins, are we
4 saying -- are you clear that your particular
5 bill, which I believe the going-forward piece of
6 it is legitimate, essentially eliminates the
7 retroactivity for employees of the establishments
8 which are catering halls?

9 ACTING PRESIDENT YOUNG: Senator
10 Martins.

11 SENATOR MARTINS: What this bill
12 does, Madam President, is not only codify the new
13 Labor Department standard and policy and
14 regulation with respect to mandatory service
15 charges as applied to catering facilities, but
16 also understands or at least reflects that
17 retroactive liability for catering facilities --
18 stand-alone caterers, synagogues, hotels and the
19 like -- for activities and interpretations that
20 were consistent with Labor Department regulations
21 would be unfair.

22 And so if the catering facility was
23 complying with the law as it existed and
24 consistent with Labor Department opinions as they
25 were promulgated from '95 through 2006, yes, the

1 bill would provide for a shield of liability
2 under those circumstances, because during that
3 period these catering facilities were doing
4 nothing other than following the law as it
5 existed at the time.

6 Once the law changed, they've been
7 given an opportunity to comply with the new
8 regulations. So to impose a new standard
9 superimposed upon an old regulation and an old
10 standard would be inappropriate.

11 ACTING PRESIDENT YOUNG: Thank
12 you, Senator Martins.

13 Senator Smith.

14 SENATOR SMITH: Thank you,
15 Madam President. Thank you, Senator Martins, for
16 the extended explanation.

17 Would the sponsor be so kind as to
18 continue to yield for a question,
19 Madam President?

20 ACTING PRESIDENT YOUNG: Senator
21 Martins, do you yield?

22 SENATOR MARTINS: I would be happy
23 to. Thank you.

24 ACTING PRESIDENT YOUNG: Thank
25 you, Senator Martins.

1 Go ahead, Senator Smith.

2 SENATOR SMITH: Through you,
3 Madam President. Would the sponsor clarify the
4 amount of time that the retroactivity clause
5 would go back to?

6 ACTING PRESIDENT YOUNG: Thank
7 you, Senator Smith.

8 Senator Martins.

9 SENATOR MARTINS: My
10 understanding, Madam President, is that the
11 statute of limitations on these types of
12 actions are six years.

13 ACTING PRESIDENT YOUNG: Senator
14 Smith.

15 SENATOR SMITH: Thank you,
16 Madam President. Through you, if the sponsor
17 would be so kind as to continue to yield.

18 ACTING PRESIDENT YOUNG: Senator
19 Martins, do you continue to yield?

20 SENATOR MARTINS: I do, thank
21 you.

22 ACTING PRESIDENT YOUNG: Thank
23 you.

24 Senator Smith.

25 SENATOR SMITH: Thank you,

1 Madam President. Through you, Madam President.

2 Senator Martins, do you happen to
3 have an idea of the number of individuals who
4 would be impacted by the loss of retroactive
5 income?

6 ACTING PRESIDENT YOUNG: Senator
7 Martins.

8 SENATOR MARTINS: Madam President,
9 I don't have any numbers. I have heard that
10 there may be as many as 30,000 employees in this
11 industry, but I have no way of verifying it one
12 way or the other.

13 But I would like to clarify that we
14 are dealing with different classifications. You
15 know, oftentimes we talk about waiters and
16 waitresses, and I think we all understand that
17 waiters and waitresses, as part of their salary,
18 have a gratuity or a tip component.

19 There is an exception under the
20 minimum wage laws that allows for employers to
21 pay waiters and waitresses in service
22 organizations at restaurants and the like lower
23 than minimum wage, and it can be offset by the
24 amounts of their tips. That's just, I think, a
25 common understanding that we have.

1 ACTING PRESIDENT YOUNG: Thank
2 you, Senator Martins.

3 Senator Smith.

4 SENATOR MARTINS: Madam President,
5 just one point.

6 ACTING PRESIDENT YOUNG: Oh, I'm
7 sorry.

8 SENATOR MARTINS: When it comes to
9 these catering facilities, these employees are
10 not earning waiters' and waitresses' salaries.
11 For the most part, in the industry, people who
12 are working for these catering establishments are
13 earning well above \$11, \$12 an hour.

14 And from a brief survey that I have
15 done, and from speaking to catering facilities
16 and synagogues and the like, given their
17 employment history, their salaries for people who
18 work in that industry are significantly higher
19 than the salaries that are paid to waiters and
20 waitresses, because there is and was no
21 expectation that there would be a gratuity as
22 part of that salary.

23 Thank you.

24 ACTING PRESIDENT YOUNG: Thank
25 you, Senator Martins.

1 Senator Smith.

2 SENATOR SMITH: Thank you,
3 Madam President. I thank the sponsor for the
4 response.

5 Through you, Madam President, would
6 the sponsor yield for another question.

7 ACTING PRESIDENT YOUNG: Senator
8 Martins, do you yield?

9 SENATOR MARTINS: I'd be happy
10 to. Thank you.

11 ACTING PRESIDENT YOUNG: The
12 Senator yields.

13 SENATOR SMITH: Through you,
14 Madam President. Senator Martins, do you believe
15 that an individual working for an honest day's
16 pay is due the honest wage?

17 SENATOR MARTINS: Through you,
18 Madam President --

19 ACTING PRESIDENT YOUNG: Senator
20 Martins.

21 SENATOR MARTINS: -- that is the
22 easiest question that Senator Smith has asked me
23 yet. Absolutely. I think we would all agree.

24 ACTING PRESIDENT YOUNG: Senator
25 Smith.

1 SENATOR SMITH: Thank you,
2 Madam President. Through you, Madam President,
3 if the sponsor would continue to yield for
4 another question.

5 ACTING PRESIDENT YOUNG: Senator
6 Martins, do you continue to yield?

7 SENATOR MARTINS: Absolutely.
8 Thank you.

9 ACTING PRESIDENT YOUNG: Senator
10 Martins yields, Senator Smith.

11 SENATOR SMITH: Thank you,
12 Madam President.
13 Through you, Madam President, would
14 the sponsor be so kind as to share the amount of
15 money in which the retroactivity payment would
16 be, if it was so inclined for the particular
17 establishments to do so, in the collective?

18 ACTING PRESIDENT YOUNG: Thank
19 you, Senator Smith.

20 Senator Martins.

21 SENATOR MARTINS: Madam President,
22 I wish I could. I have no basis for even
23 guessing at any number. And certainly it would,
24 I'm sure, depend on each individual caterer,
25 synagogue, or hotel as to what their mandatory

1 service charge was.

2 ACTING PRESIDENT YOUNG: Thank
3 you, Senator Martins.

4 Senator Smith.

5 SENATOR SMITH: Thank you,
6 Madam President. If the sponsor would be so kind
7 as to yield for another question.

8 ACTING PRESIDENT YOUNG: Senator
9 Martins, do you continue to yield?

10 SENATOR MARTINS: Be glad to.
11 Thank you.

12 ACTING PRESIDENT YOUNG: The
13 Senator yields.

14 SENATOR SMITH: Through you,
15 Madam President, would it be fair to say, to the
16 sponsor, that the amount of retroactive pay would
17 be far north of a million dollars?

18 ACTING PRESIDENT YOUNG: Senator
19 Martins.

20 SENATOR MARTINS: Madam President,
21 I don't know. But I can tell you that I do
22 understand that the lawsuits that are pending out
23 there are certainly seeking awards of greater
24 than that million dollars. I can't speak to
25 whether or not that is appropriate or not.

1 ACTING PRESIDENT YOUNG: Thank
2 you, Senator.

3 Senator Smith.

4 SENATOR SMITH: Thank you,
5 Madam President. Would the sponsor yield for
6 another question, please.

7 ACTING PRESIDENT YOUNG: Senator
8 Martins, do you yield?

9 SENATOR MARTINS: Absolutely.
10 Thank you.

11 ACTING PRESIDENT YOUNG: Senator
12 Martins yields, Senator Smith.

13 SENATOR SMITH: Thank you,
14 Madam President. Through you. Would the sponsor
15 have any idea if in fact the establishments that
16 purported to offer these gratuities to the
17 workers paid any taxes on these gratuities?

18 ACTING PRESIDENT YOUNG: Thank
19 you, Senator Smith.

20 Senator Martins.

21 SENATOR MARTINS: Madam President,
22 through you, my understanding is, consistent with
23 the Labor Department's interpretation with regard
24 to mandatory service charges prior to their
25 change in regulations in January 1, 2011, that

1 these institutions, these various caterers and
2 the like did pay not only sales tax but income
3 tax on the revenues from these various mandatory
4 service charges.

5 ACTING PRESIDENT YOUNG: Thank
6 you, Senator Martins.

7 Senator Smith.

8 SENATOR SMITH: Madam President,
9 through you, if the sponsor would yield for just
10 one other question. He's been very patient, and
11 I do appreciate that.

12 SENATOR MARTINS: I certainly
13 will. Thank you.

14 ACTING PRESIDENT YOUNG: Thank
15 you, Senator Smith.

16 Senator Martins has been very
17 patient. Would you yield for one more question?

18 SENATOR MARTINS: Of course.
19 Thank you.

20 ACTING PRESIDENT YOUNG: The
21 Senator yields.

22 SENATOR SMITH: Thank you,
23 Madam President.

24 Senator Martins, just one final
25 question. I do understand the concern of some of

1 the establishments is the potential for going out
2 of business if in fact the claims are awarded to
3 them pursuant to some of the lawsuits.

4 My question is, of those who have
5 paid the claim -- and there has been a few -- are
6 you aware of any of them that have gone out of
7 business as a result of paying the claims?

8 ACTING PRESIDENT YOUNG: Senator
9 Martins.

10 SENATOR MARTINS: Madam President,
11 I am not.

12 ACTING PRESIDENT YOUNG: Senator
13 Smith.

14 SENATOR SMITH: I thank the
15 sponsor for the responses.

16 And, Madam President, I'd like to
17 be on the bill.

18 ACTING PRESIDENT YOUNG: Senator
19 Smith on the bill.

20 SENATOR SMITH: Thank you,
21 Madam President.

22 I thank the sponsor, Senator
23 Martins, for his responses.

24 However, colleagues, there comes a
25 point in time when we have to be the architect of

1 our own rescue. In this particular matter I am
2 quite sure that there is a collective conscious
3 of any neighborhood in this body that it would
4 agree, if you have individuals who are and who
5 have been waiters, waitresses, busboys -- and
6 we're talking about single moms working two jobs,
7 we're talking about students, we're talking about
8 individuals who are just trying to get by to make
9 ends meet.

10 I would daresay that every single
11 one of you in this room knows someone who was a
12 waiter or a waitress or a busboy in an
13 establishment. And you know, as I know, that the
14 fact that you look to get those gratuities -- in
15 some instances, it's more than the hourly rate at
16 which you are paid.

17 The sponsor indicated and agreed
18 that many of these establishments have paid their
19 taxes on this gratuity. Well, one would infer,
20 if in fact you paid the taxes on the gratuity, it
21 would only mean that you have advertised those
22 gratuities to be paid to the establishment
23 workers, but in fact you did not, which means
24 that you had to pay taxes.

25 Granted, Madam President, they are

1 following the law. And there are not all bad
2 actors in this. But in fact if you admit you
3 paid taxes, that means that you did not pay the
4 individual workers. That single mom working two
5 jobs, that immigrant person working that job,
6 that student, that individual who is just trying
7 to make ends meet did not receive the gratuity to
8 which they were entitled based on what was told
9 to them.

10 So as unfortunate as this is,
11 Madam President, I think --

12 ACTING PRESIDENT YOUNG: Senator
13 Martins, why do you rise?

14 SENATOR MARTINS: Madam President,
15 would Senator Smith yield to a question?

16 ACTING PRESIDENT YOUNG: Senator,
17 do you yield?

18 SENATOR SMITH: I will, Madam
19 President. If I could just finish my closing
20 statement, I will yield.

21 ACTING PRESIDENT YOUNG: Senator
22 Martins, Senator Smith would like to finish his
23 thought.

24 SENATOR SMITH: No disrespect to
25 you, Senator Martins, I just want to finish to

1 connect all my dots, and then I will clearly
2 yield to your question.

3 But again, Madam President, it's
4 pretty simple. I think the sponsor's
5 intentions are good. I think he has the right
6 idea, he's on the right path. However, the one
7 clause of retroactivity is the one that puts me
8 in a position where I can't support the bill.

9 I would hope that the sponsor, in
10 working with the Assembly, would take a look at
11 that, would take a look at the individuals who
12 are impacted by that. And I don't think his
13 intention is to harm anyone. I know Senator
14 Martins. But at the end of the day, sometimes we
15 might get caught up in a moment in the
16 establishment of a bill and its language and
17 there are certain things that we miss. I have
18 done that myself.

19 So, Madam President, because of
20 that, because of the fact that there is a point
21 in time when we do have to be the architects of
22 our own rescue, I think this is one of them. And
23 I would hope that my colleagues would support
24 these individuals, these workers who are working
25 very hard every single day just to make ends

1 meet, and vote this bill down.

2 And then at some point in the very
3 near future I would be more than happy, as I'm
4 sure my colleagues would be, to work with the
5 Senator Martins, with the Assembly, to make sure
6 that his bill is completely written in such a way
7 that all benefit, the businesses as well as the
8 employees.

9 Now, Madam President, I would yield
10 to a question.

11 ACTING PRESIDENT YOUNG: Thank
12 you, Senator Smith. Now would you yield to
13 Senator Martins?

14 SENATOR SMITH: Absolutely,
15 Madam President.

16 ACTING PRESIDENT YOUNG: Senator
17 Martins.

18 SENATOR MARTINS: Thank you,
19 Senator Smith.

20 Madam President, through you. We
21 spoke of taxes and payment of taxes on gross
22 receipts. Did Senator Smith imply that the taxes
23 that were paid were monies that should have been
24 paid as gratuities?

25 ACTING PRESIDENT YOUNG: Senator

1 Smith.

2 SENATOR SMITH: Yes, if the
3 sponsor could rephrase the question,
4 Madam President. I heard the question, but I
5 wasn't clear on the question.

6 ACTING PRESIDENT YOUNG:
7 Certainly. Senator Martins, could you please
8 rephrase the question?

9 SENATOR MARTINS: There was a
10 point that was made with respect to the payment
11 of taxes and these various institutions and
12 businesses paying taxes on monies that they
13 received as part of that mandatory surcharge.

14 Does Senator Smith realize that the
15 monies that were paid or the taxes that were paid
16 on those monies were paid as part of the
17 business's gross receipts?

18 ACTING PRESIDENT YOUNG: Senator
19 Smith.

20 SENATOR SMITH: Thank you,
21 Madam President.

22 I am not a catering hall manager.
23 However, I would say to the sponsor that the
24 genesis of my statement was birthed out of a
25 conversation with a number of establishments that

1 have been purporting to have a gratuity that was
2 passed on to the workers.

3 The fact that on their balance
4 sheet or in their tax returns indicated it was
5 based on a gross receipt is actually a matter of
6 accounting. And so whether you want to fung it
7 to your balance sheet or whether you want to fung it
8 it to your 1040 is something that accountants
9 have the smartness to do. I don't have that.

10 But I would only say that the
11 answer was derived from my conversations with
12 catering halls and was not a personal origin of a
13 statement.

14 ACTING PRESIDENT YOUNG: Thank
15 you, Senator Smith.

16 SENATOR MARTINS: Thank you,
17 Madam President. On the bill.

18 ACTING PRESIDENT YOUNG: Oh,
19 wait. I believe that Senator Smith still has the
20 floor.

21 SENATOR SMITH: No, Madam
22 President, I'm fine. I yield back to the
23 sponsor.

24 Thank you very much, Senator
25 Martins.

1 ACTING PRESIDENT YOUNG: Senator
2 Smith is done. So Senator Martins on the bill.

3 SENATOR MARTINS: Thank you,
4 Madam President.

5 You know, I don't want any
6 misunderstandings as to what this bill does or
7 doesn't do. One thing we need to be clear about
8 is the idea of disenfranchising people who had an
9 expectation that they would be receiving
10 something and did not. And certainly that is not
11 what this bill does.

12 What this bill does is recognize
13 that the state provided guidance to an entire
14 industry, and the entire industry followed the
15 state's lead when it came to this particular
16 issue.

17 We're not talking about someone at
18 a restaurant who decides to short the waiter or
19 waitress who happened to be serving them that
20 day. We're talking about an industry that had,
21 as a practice, the reality of a service charge.
22 Now, we can agree or disagree whether or not that
23 makes sense, whether or not it's appropriate.
24 But that is the reality of that industry. And
25 that was bolstered by opinion after opinion

1 after opinion from the New York State Department
2 of Labor.

3 That industry relied on the
4 Department of Labor in determining not only a
5 service charge, how they characterized the
6 service charge, whether they paid taxes on that
7 service charge, whether they paid sales tax on
8 that service charge -- the industry itself was
9 guided by the state.

10 Then the rules changed. And the
11 rules changed such that the industry also had to
12 change in their position, and they did. It makes
13 sense.

14 How do we as a state, from a public
15 policy standpoint, apply retroactive liability to
16 an entire industry that did nothing wrong other
17 than to follow the law as it existed at the
18 time? How do we go back to these employers and
19 tell them that they now have to come up with a
20 percentage of their gross receipts over the past
21 six years and make them liable for that all at
22 once?

23 At a time when we talk about
24 economic development, at a time that we talk
25 about creation of jobs, at a time that we talk

1 about the need to sustain small businesses in our
2 various districts, this bill provides structure,
3 it's fair, it codifies the Labor Department's
4 position as it exists today and provides
5 protection for an industry that did nothing wrong
6 but comply with the law as it existed at the time
7 that they filed their returns at the time that
8 they paid taxes.

9 So I would ask you all to keep that
10 in mind as you consider voting on this bill.
11 Think about the catering facilities in your own
12 districts, think about the synagogues and the
13 hotels and all the employees who rely on those
14 various institutions as economic engines in your
15 district. Think about the secondary and
16 ancillary businesses that support those
17 businesses.

18 And when you think about that and
19 you think about what this bill tries to do, I ask
20 you to support this bill so we can send a signal
21 to the industry that New York State is in fact
22 open for business and we're not going to attack
23 those businesses that provide jobs in our own
24 homes.

25 Thank you, Madam President.

1 ACTING PRESIDENT YOUNG: Thank
2 you, Senator Martins.

3 Senator Peralta, I meant to call on
4 you next, so you're up.

5 SENATOR PERALTA: Thank you,
6 Madam President. If the sponsor will yield for a
7 few questions.

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

10 Do you yield, Senator Martins?

11 SENATOR MARTINS: Yes. Thank you,
12 Madam President.

13 ACTING PRESIDENT YOUNG: The
14 Senator yields.

15 SENATOR PERALTA: Senator Martins,
16 I just want some clarification on a few things
17 before we take this vote.

18 Now, taking us back, this bill was
19 drafted in response to the Court of Appeals case
20 Samiento v. World Yacht in 2008; is that correct?

21 ACTING PRESIDENT YOUNG: Senator
22 Martins.

23 SENATOR MARTINS: This bill was
24 drafted as a response -- I don't believe to the
25 Samiento case in particular, Senator. Through

1 you, Madam President, it was drafted as a
2 response to the Ramirez case in 2010 that first
3 applied retroactivity to the concept of these
4 service charges being gratuities.

5 ACTING PRESIDENT YOUNG: Thank
6 you, Senator Martins.

7 Senator Peralta.

8 SENATOR PERALTA: If the sponsor
9 would yield for another question.

10 ACTING PRESIDENT YOUNG: Senator
11 Martins, do you yield?

12 SENATOR MARTINS: I'll be happy
13 to. Thank you.

14 ACTING PRESIDENT YOUNG: The
15 Senator yields, Senator Peralta.

16 SENATOR PERALTA: Thank you.

17 Now, looking at the World Yacht
18 case that started this snowball effect, the case
19 basically said that an employer can't withhold
20 money from its workers when a reasonable customer
21 would believe a charge in the bill was a tip or
22 gratuity. Is that the case?

23 ACTING PRESIDENT YOUNG: Senator
24 Martins.

25 SENATOR MARTINS: Madam President,

1 my understanding is that the Samiento case
2 changed the perception and the standard when it
3 came to determining whether there's a service
4 charge or a gratuity, by taking the customer's
5 opinion or I guess perspective into account.

6 Whereas before the Samiento case,
7 frankly, the industry was regulated by the
8 Department of Labor opinion. That's the
9 difference.

10 ACTING PRESIDENT YOUNG: Thank
11 you, Senator Martins.

12 Senator Peralta.

13 SENATOR PERALTA: If the sponsor
14 would yield for another question.

15 ACTING PRESIDENT YOUNG: Thank
16 you, Senator Peralta.

17 Do you yield, Senator Martins?

18 SENATOR MARTINS: I'd be happy to,
19 yes. Thank you.

20 ACTING PRESIDENT YOUNG: The
21 Senator yields.

22 SENATOR PERALTA: So let's go back
23 so that we can clarify some of these points.

24 So in your sponsor memo you justify
25 the immunity based on the Department of Labor's

1 memo from 1995. You must be aware that the
2 Labor Department also had a memo that superseded
3 the 1995 opinion in 1999.

4 SENATOR MARTINS: Madam President,
5 through you, perhaps the Senator didn't hear a
6 previous answer, but there were nine separate
7 times that the New York State Labor Department
8 confirmed their opinion in 1995. Starting in
9 1995 through 2006, the Labor Department
10 consistently confirmed the opinion as stated in
11 their '95 position that service charges are not
12 gratuities.

13 So to the extent that there may be
14 an opinion from 1999, I would go back and be
15 happy to review each and every one of those nine
16 opinions. And certainly if the Senator would
17 like, I can always make copies and have them
18 forwarded to his office so he can review them at
19 his own leisure.

20 ACTING PRESIDENT YOUNG: Thank
21 you, Senator Martins.

22 Senator Peralta.

23 SENATOR PERALTA: Yes. Would the
24 Senator yield for another question?

25 ACTING PRESIDENT YOUNG: Does the

1 Senator yield?

2 SENATOR MARTINS: I'll be happy
3 to. Thank you, Madam President.

4 ACTING PRESIDENT YOUNG: Senator
5 Peralta, Senator Martins yields.

6 SENATOR PERALTA: So there are
7 various opinions, six to seven opinions. But in
8 1999 there was a opinion that superseded the 1995
9 opinion, according to the Department of Labor.

10 And are you aware of the state's
11 statute of limitations on wage claims?

12 ACTING PRESIDENT YOUNG: Thank
13 you, Senator Peralta.

14 Senator Martins.

15 SENATOR MARTINS: Aware of which
16 claims, Madam President?

17 ACTING PRESIDENT YOUNG: Senator
18 Peralta, could you please repeat the last part of
19 your question?

20 SENATOR PERALTA: Well, let me
21 clarify. The statute of limitations on wage
22 claims is six years in this state. So wouldn't
23 time have run out on any claims against an
24 employer who reasonably relied on a 1995 memo?

25 ACTING PRESIDENT YOUNG: Senator

1 Martins.

2 SENATOR MARTINS: Madam President,
3 through you. Those employers that relied on the
4 '95 memo and all the subsequent memos that I
5 mentioned before, right through 2006, till the
6 point where the Labor Department changed their
7 regulations in 2010 to impose new regulations
8 effective January 1, 2011 -- if we go back from
9 today, May 8, 2012, all of those years would
10 still be within the time period we're talking
11 about.

12 We don't count back to 1995, we
13 count back from today. And those regulations
14 continued in effect until the Labor Department
15 changed the regulations January 1, 2011.

16 ACTING PRESIDENT YOUNG: Thank
17 you, Senator Martins.

18 Could I remind everyone to please
19 keep order in the chamber. Sometimes it's very
20 difficult to hear the speakers. So we'd like to
21 keep the door closed as much as possible also,
22 just to reduce noise,

23 Senator Peralta.

24 SENATOR PERALTA: Would the
25 sponsor yield for another question?

1 ACTING PRESIDENT YOUNG: Senator
2 Martins, do you yield?

3 SENATOR MARTINS: Be happy to.
4 Thank you.

5 ACTING PRESIDENT YOUNG: The
6 Senator yields.

7 SENATOR PERALTA: So I hear what
8 you're saying about the work order of 2011. But
9 yet in the bill, there is no mention of the work
10 order of 2011. There's a section at the end that
11 talks about the effective date of the chapter of
12 the Laws of 2012 that amended this section.

13 ACTING PRESIDENT YOUNG: Thank
14 you, Senator Peralta.

15 Senator Martins.

16 SENATOR MARTINS: Yes. Through
17 you, Madam President, yes.

18 ACTING PRESIDENT YOUNG: Senator
19 Peralta.

20 SENATOR PERALTA: So --

21 ACTING PRESIDENT YOUNG: Are you
22 asking Senator Martins to continue to yield?

23 SENATOR PERALTA: Yes. Would the
24 Senator continue to yield?

25 ACTING PRESIDENT YOUNG: Would the

1 Senator yield?

2 SENATOR MARTINS: Absolutely.

3 Thank you.

4 ACTING PRESIDENT YOUNG: Go ahead,
5 Senator Peralta.

6 SENATOR PERALTA: You talk about
7 the 1995, 1999, 2006 -- but are you aware of a
8 2008 opinion given by then-Commissioner of the
9 Department of Labor Patricia Smith that stated
10 that, by way of background, the opinion issued by
11 the department dated March 26, 1999, effectively
12 superseded the 1995 memo?

13 ACTING PRESIDENT YOUNG: Thank
14 you, Senator Peralta.

15 Senator Martins.

16 SENATOR MARTINS: Madam President,
17 through you. I am not familiar with that opinion
18 from 2008.

19 I only will restate my position
20 earlier. The regulations as they have been
21 adopted or as they have been enforced by the
22 Labor Department effective January 1, 2011, are
23 embodied in this bill. So to the extent that
24 there are any questions with regard to a previous
25 opinion, I think they are resolved not only by

1 the Department of Labor's having adopted
2 regulations, but the fact that the particular
3 bill is consistent with those regulations as they
4 were adopted by Labor Department effective
5 January 1, 2011.

6 ACTING PRESIDENT YOUNG: Thank
7 you, Senator Martins.

8 Senator Peralta.

9 SENATOR PERALTA: Would the
10 sponsor continue to yield?

11 ACTING PRESIDENT YOUNG: Do you
12 yield?

13 SENATOR MARTINS: Of course.
14 Thank you.

15 ACTING PRESIDENT YOUNG: The
16 Senator yields.

17 SENATOR PERALTA: So 1995, 1999,
18 2006, 2008, 2011, the Department of Labor has
19 issued various opinions consistently talking
20 about how it supersedes 1995.

21 And in fact in 2007, as was
22 mentioned by Senator Smith, there was an amicus
23 brief that was submitted by the then-Attorney
24 General to the Court of Appeals. And they held
25 in that World Yacht case that the then-Attorney

1 General was correct.

2 So even with all these times with
3 the Department of Labor saying that all of these
4 opinions supersede 1995, yet this bill is still
5 necessary? To clarify.

6 ACTING PRESIDENT YOUNG: Thank
7 you, Senator Peralta.

8 Senator Martins.

9 SENATOR MARTINS: Madam President,
10 through you, I'm not sure which opinions Senator
11 Peralta is reading.

12 Frankly, each and every one of the
13 ones that I mentioned between 1995 and 2006, on
14 nine separate occasions, including the one in
15 '95, the Labor Department, rather than
16 superseding, confirmed the opinion that they had
17 in 1995. So I don't understanding the concept of
18 superseding.

19 But I will tell you that I am
20 familiar with the Attorney General's amicus brief
21 with regard to the Samiento case. And certainly
22 on the facts of the Samiento case, for those who
23 may or may not be aware of the case, there were
24 reasons for the Attorney General to have
25 intervened and for the positions that they took

1 that are not relevant to the bill that we have
2 before us today.

3 Other than the fact and the
4 position I'm sure that Senator Peralta is trying
5 to make, that the Attorney General is now the
6 Governor, and certainly it behooves anyone to tie
7 the Governor to a piece of legislation. But his
8 opinion with regard to the amicus brief specific
9 to that Samiento case certainly has no relevance
10 with respect to the bill that we're discussing
11 today.

12 ACTING PRESIDENT YOUNG: Thank
13 you, Senator Martins.

14 Senator Peralta.

15 SENATOR PERALTA: Would the
16 Senator continue to yield?

17 SENATOR MARTINS: I'd be happy
18 to. Thank you, Madam President.

19 ACTING PRESIDENT YOUNG: The
20 Senator yields, Senator Peralta.

21 SENATOR PERALTA: So there is no
22 question that it's not about whether the
23 establishment can charge a gratuity, but the
24 issue here is whether it looks or it's made to
25 look like it's a gratuity.

1 And there's no question whether
2 there's a service charge that's being applied --
3 whether it's 20 percent, whatever percentage the
4 establishment is asking. But the issue here is
5 whether and one of the issues of the case was
6 whether it was made to look as if that service
7 fee was a gratuity. And that seems to be the
8 case in many of these establishments where this
9 service charge is made to look as a gratuity.

10 Is that the case?

11 ACTING PRESIDENT YOUNG: Thank
12 you, Senator Peralta.

13 Senator Martins.

14 SENATOR MARTINS: Madam President,
15 I think oftentimes we as legislators look at
16 certain decisions and it is easy for us to try
17 and extrapolate from a decision and a particular
18 set of facts and impose those set of facts on an
19 entire industry.

20 When you look at the Samiento case
21 and the facts that are discussed in that Samiento
22 case, it's rather difficult to take those facts
23 and impose them on the entire industry.

24 What I would say is when you have a
25 consistent set of rules that have been laid out

1 by the Department of Labor, consistently -- not
2 superseding, but confirming, each and every time
3 between 1995 right through 2006 -- not to mention
4 case law and the like, if you ask an industry to
5 regulate itself based on opinions from the
6 Department of Labor, which I think we would all
7 agree is in charge of regulating these types of
8 questions, and then you change the rules and ask
9 them to be liable retroactively, this bill seeks
10 to avoid that retroactive liability for those
11 catering halls, synagogues, hotels that did
12 nothing wrong other than to follow the dictates
13 as they were presented by the Department of Labor
14 over all of those years.

15 The rules changed, true. They
16 adopted new regulations. And now these
17 institutions are now enforcing or complying with
18 the new regulations. But they should not be held
19 responsible for not having complied with the new
20 regulation when it wasn't part of their
21 requirements back prior to January 1, 2011.

22 Thank you, Madam President.

23 ACTING PRESIDENT YOUNG: Thank
24 you, Senator Martins.

25 SENATOR PERALTA: So --

1 ACTING PRESIDENT YOUNG: Senator
2 Peralta, do you have a question?

3 SENATOR PERALTA: Yes, Madam
4 President. Yes, if the sponsor would yield for
5 another question.

6 ACTING PRESIDENT YOUNG: Senator
7 Martins, do you yield?

8 SENATOR MARTINS: Be happy to,
9 thank you.

10 ACTING PRESIDENT YOUNG: The
11 Senator yields, Senator Peralta. Please
12 proceed.

13 SENATOR PERALTA: So if this piece
14 of legislation were to pass today, pass the
15 Assembly, be signed by the Governor, what World
16 Yacht did in 2006-2007 and eventually it was
17 decided in 2008, they would be covered under this
18 piece of legislation that would be law; correct?
19 They would be protected?

20 SENATOR MARTINS: Madam President,
21 through you.

22 ACTING PRESIDENT YOUNG: Senator
23 Martins.

24 SENATOR MARTINS: I do not believe
25 that the issues that were decided in World Yacht

1 would be affected by this bill.

2 This bill actually confirms the
3 decision of the Court of Appeals in World Yacht,
4 as imposed by regulation by the Department of
5 Labor. It clarifies that it is incumbent upon
6 the industry to advise their customers, when they
7 impose an administrative charge or a service
8 charge, that the administrative subcharge and
9 service charge is not a gratuity. That is
10 consistent with the Court of Appeals decision in
11 World Yacht.

12 ACTING PRESIDENT YOUNG: Thank
13 you, Senator Martins.

14 SENATOR MARTINS: Thank you.

15 ACTING PRESIDENT YOUNG: Senator
16 Peralta.

17 SENATOR PERALTA: Yes, if the
18 sponsor would continue to yield.

19 ACTING PRESIDENT YOUNG: Do you
20 yield, Senator Martins?

21 SENATOR MARTINS: Be happy to.
22 Thank you.

23 ACTING PRESIDENT YOUNG: Senator
24 Martins yields, Senator Peralta.

25 SENATOR PERALTA: So under this

1 bill, the only employer who would actually be
2 held responsible for their actions are those who
3 would violate the law after this bill is passed
4 and those who explicitly and in writing
5 misrepresented the charges as gratuities;
6 correct?

7 ACTING PRESIDENT YOUNG: Thank
8 you, Senator Peralta.

9 Senator Martins.

10 SENATOR MARTINS: This bill would
11 not shield anyone from any unlawful act or any
12 improper acts. What this bill would do would
13 recognize that the rules changed and that the
14 industry should not be penalized and these
15 employers should not be penalized and held to a
16 standard that did not exist at the time that they
17 took whatever action they did.

18 ACTING PRESIDENT YOUNG: Thank
19 you, Senator Martins.

20 Senator Peralta.

21 SENATOR PERALTA: If the sponsor
22 will continue to yield.

23 ACTING PRESIDENT YOUNG: Do you
24 continue to yield, Senator Martins?

25 SENATOR MARTINS: Of course.

1 Thank you.

2 ACTING PRESIDENT YOUNG: The
3 Senator yields.

4 SENATOR PERALTA: Thank you.

5 So in fact isn't it true that this
6 bill would not only remove liability when these
7 service charges reasonably appeared to be
8 gratuities, but also when an employer actually
9 told customers the fee went directly to its
10 workers, so long as it's not in writing?

11 ACTING PRESIDENT YOUNG: Thank
12 you, Senator Peralta.

13 Senator Martins.

14 SENATOR MARTINS: Madam President,
15 again, the rules and the regulations and the law
16 as it existed prior to Samiento and prior to the
17 Department of Labor's regulations specifically
18 said that it was not a gratuity and the
19 perception of the customer was not part of that
20 discussion.

21 It wasn't until Samiento that the
22 perception of the customer became an issue, and
23 the regulations addressed that by requiring the
24 catering facilities to put in writing
25 specifically that they're not gratuities.

1 So to the extent that they do not
2 put in writing that those service charges are not
3 gratuities, they are now interpreted as being
4 gratuities and they have to be distributed.

5 So, again, very consistent with the
6 World Yacht case. And these regulations and this
7 bill, this bill specifically codifies the
8 regulations that the Department of Labor has in
9 effect today.

10 ACTING PRESIDENT YOUNG: Thank
11 you, Senator Martins.

12 Senator Peralta.

13 SENATOR PERALTA: Would the
14 sponsor continue to yield?

15 ACTING PRESIDENT YOUNG: Senator,
16 do you yield?

17 SENATOR MARTINS: I do.

18 ACTING PRESIDENT YOUNG: The
19 Senator yields.

20 SENATOR PERALTA: So if this bill
21 is consistent with the holding of the World Yacht
22 case, then why then do we need this bill if it's
23 consistent?

24 ACTING PRESIDENT YOUNG: Thank
25 you, Senator Peralta.

1 Senator Martins.

2 SENATOR MARTINS: Well, the
3 decision in World Yacht, Madam President, was a
4 Court of Appeals decision. And the laws in this
5 state are made by this body and the body on the
6 other side of this building. They're not made by
7 the court.

8 And it is incumbent upon us, when
9 the laws change, when the rules change, also to
10 take it upon ourselves to clarify for purposes of
11 public policy, for purposes of providing
12 direction to industries out there, what they need
13 to do not to run afoul of breaking the law.

14 Again, laws change. It is
15 incumbent upon us to clarify that and to set
16 rules and parameters for those changes in laws,
17 not the courts.

18 Thank you, Madam President.

19 ACTING PRESIDENT YOUNG: Thank
20 you, Senator Martins.

21 Senator Peralta.

22 SENATOR PERALTA: If the sponsor
23 would continue to yield.

24 ACTING PRESIDENT YOUNG: Do you
25 yield, Senator?

1 SENATOR MARTINS: I do. Thank
2 you.

3 ACTING PRESIDENT YOUNG: The
4 Senator yields.

5 SENATOR PERALTA: So if, again,
6 this is consistent with the World Yacht decision,
7 in your bill, then, why go retroactive? Why
8 protect establishments retroactively?

9 ACTING PRESIDENT YOUNG: Senator
10 Martins.

11 SENATOR MARTINS: Well, again,
12 Madam President, World Yacht simply said that you
13 had to put it in writing and you had to give
14 them, the customer, a clarification as to whether
15 or not that service charge was in fact a
16 gratuity. The default under these circumstances
17 being that the service charge is a gratuity now
18 unless they put something in writing.

19 This doesn't change that. This
20 bill does not change World Yacht at all. If
21 anything, it codifies it and makes sure that
22 everybody understands that the rules currently
23 are exactly what they are, consistent with
24 World Yacht. I think what the Senator is
25 confusing is the Ramirez decision that applied

1 the retroactivity.

2 And certainly not to beat a horse
3 here, because we have discussed this a couple of
4 times so far during our discussions here, it is
5 that retroactive application of a rule that did
6 not exist retroactively that is troubling. On an
7 industry, again, that followed the rules as they
8 existed.

9 You know, we can change the rules
10 going forward. But when you change the rules and
11 apply a different standard and then tell people
12 that they have to be held to that standard going
13 back six years, that's just plain wrong.

14 And, you know, we can sit here and
15 discuss, you know, the differences in this bill
16 as it goes forward. But I would hope that we
17 would all have consensus on one thing. And that
18 consensus would be that when you apply a rule to
19 an entire industry, an entire group of people
20 retroactively that they did not have that before
21 them at that time, it's wrong.

22 This bill allows for an industry
23 not to be penalized as a result of doing nothing
24 else other than following the law as it existed
25 at that time.

1 ACTING PRESIDENT YOUNG: Thank
2 you, Senator Martins.

3 Senator Peralta.

4 SENATOR PERALTA: Yes. If the
5 Senator would yield for another question.

6 ACTING PRESIDENT YOUNG: Senator,
7 would you yield for another question?

8 SENATOR MARTINS: Absolutely.
9 Thank you.

10 ACTING PRESIDENT YOUNG: Senator
11 Peralta.

12 SENATOR PERALTA: I just want to
13 clarify. So your bill does not go retroactive to
14 the World Yacht decision? It does not go back --
15 it does not protect these establishments
16 retroactively to the decision of World Yacht?
17 That's what your -- your bill does not do this?

18 ACTING PRESIDENT YOUNG: Senator
19 Martins.

20 SENATOR MARTINS: Madam President,
21 through you. This bill would apply retroactively
22 obviously for the six years -- if there's six
23 years of liability and it's applied
24 retroactively, it would go back six years.

25 The World Yacht decision was -- the

1 Court of Appeals decision was in 2008. The
2 particular acts that were the predicate for that
3 case and the eventual decision in World Yacht by
4 the Court of Appeals, I don't know when they took
5 place. But certainly the effect of this bill
6 would be retroactive for six years.

7 How it applies to those particular
8 plaintiffs, how it applies -- well, I can tell
9 you how it applies to those plaintiffs. It would
10 have no effect at all, because that decision has
11 been already made. But how it applies to people
12 similarly situated, certainly if they fall within
13 six years, Madam President, they would fall
14 within the parameters of this bill.

15 ACTING PRESIDENT YOUNG: Thank
16 you, Senator Martins.

17 Senator Peralta.

18 SENATOR PERALTA: Yes, if the
19 Senator will yield for another question.

20 ACTING PRESIDENT YOUNG: Senator
21 Martins, do you yield?

22 SENATOR MARTINS: Absolutely.

23 ACTING PRESIDENT YOUNG: The
24 Senator yields.

25 SENATOR PERALTA: So in essence

1 you're saying that this bill goes back six years,
2 and within those six years -- it goes back to
3 2006. Right? Because we're in 2012. It goes
4 back to 2006. And within those six years, after
5 the 2008 World Yacht decision, anyone or any
6 establishment that violated or committed the same
7 acts as World Yacht after the decision would be
8 protected with this piece of legislation?

9 ACTING PRESIDENT YOUNG: Senator
10 Martins.

11 SENATOR MARTINS: No, Madam
12 President, I didn't say that. And I certainly
13 would hope that the Senator didn't come away with
14 that impression.

15 What I did say is that anyone who
16 complied with the law as it existed through
17 January 1, 2011, shouldn't be penalized for
18 following the law as it existed at that time.

19 And certainly this bill does
20 nothing either to impose liability or to grant
21 immunity from any misdeeds by any of these actors
22 during that period. It doesn't provide immunity
23 to anybody who did not comply with the law as it
24 existed during those years, going back six years.

25 ACTING PRESIDENT YOUNG: Thank

1 you, Senator Martins.

2 Senator Peralta.

3 SENATOR PERALTA: Yes, will the
4 sponsor yield for another question?

5 ACTING PRESIDENT YOUNG: Will the
6 Senator yield?

7 SENATOR MARTINS: Sure.
8 Absolutely.

9 ACTING PRESIDENT YOUNG: The
10 Senator yields, Senator Peralta. Please go
11 ahead.

12 SENATOR PERALTA: So in your bill
13 I just don't see the section that says after 2011
14 these establishments are not protected, because
15 it just talks about six years. So can you point
16 out specifically "after 2011"?

17 ACTING PRESIDENT YOUNG: Thank
18 you, Senator Peralta.

19 Senator Martins.

20 SENATOR MARTINS: Thank you,
21 Madam President. Through you. I think that,
22 again, to clarify, this bill is applied six years
23 retroactively from whenever, if ever, it is
24 enacted.

25 So the extent that there is no

1 reference to that 2011 date, there is a
2 regulation in place as imposed by the Department
3 of Labor that requires certain things that are
4 embodied in this bill. So they would overlap,
5 Madam President. So I believe that the Senator's
6 concerns are more than adequately addressed.

7 ACTING PRESIDENT YOUNG: Thank
8 you, Senator Martins.

9 Senator Peralta.

10 SENATOR PERALTA: Yes, if the
11 sponsor would continue to yield.

12 ACTING PRESIDENT YOUNG: Does the
13 sponsor yield?

14 SENATOR MARTINS: Of course. Be
15 happy to. Thank you.

16 ACTING PRESIDENT YOUNG: Senator
17 Martins yields.

18 SENATOR PERALTA: So although it's
19 not mentioned in the bill, the 2011, what you're
20 saying is that in the future when it's enacted,
21 whenever it's enacted, it's six years
22 retroactive. So if it's enacted in 2018, then
23 anything from 2012 up.

24 But let's just say that it's
25 enacted this year. And if it's enacted this

1 year, then that means that would include 2006,
2 from 2006 and beyond.

3 So if that's the case, then your
4 bill will essentially protect anyone who's
5 violated the World Yacht decision.

6 ACTING PRESIDENT YOUNG: Thank
7 you, Senator Peralta.

8 Senator Martins.

9 SENATOR MARTINS: Madam President,
10 again, this bill does not protect any
11 wrongdoers. What it does do -- and I appreciate
12 the opportunity to clarify it, Senator Peralta,
13 because I'm concerned that there may be other
14 members of our body here who may have the same
15 misperception that you have.

16 What it does is it understands that
17 the rules have changed and that those actors in
18 the industry who did not comply with the change
19 in regulations effective January 1, 2011, and did
20 not put in writing that these service charges are
21 not gratuities, in fact are admitting that they
22 are gratuities and have an obligation to
23 distribute them to their employees.

24 But prior to January 1, 2011, when
25 there were different rules in place, this bill

1 acknowledges that those rules were in place and
2 we shouldn't superimpose another standard that
3 didn't exist at that time.

4 Thank you, Madam President.

5 ACTING PRESIDENT YOUNG: Thank
6 you, Senator Martins.

7 Senator Peralta.

8 SENATOR PERALTA: If the sponsor
9 would yield for another question.

10 ACTING PRESIDENT YOUNG: Do you
11 yield?

12 SENATOR MARTINS: I do. Thank
13 you.

14 ACTING PRESIDENT YOUNG: The
15 Senator yields.

16 SENATOR PERALTA: But the issue
17 here is if it's put in writing. So if it -- and
18 I don't think any of the establishments would put
19 that in writing and purge themselves or find
20 themselves guilty of violating this bill if it
21 eventually becomes law. So the issue here is if
22 they put it in writing.

23 So if they don't put it in writing
24 or they didn't put it in writing, would they be
25 protected?

1 ACTING PRESIDENT YOUNG: Thank
2 you, Senator Peralta.

3 Senator Martins.

4 SENATOR MARTINS: Madam President,
5 again, the regulations as they existed, as they
6 were interpreted by the Department of Labor
7 through countless state and federal case law
8 decisions over time until the Samiento case,
9 clearly, clearly and consistently stated that
10 service charges were not gratuities.

11 When the rules changed, they
12 applied new regulations. They have now enforced
13 those regulations. They're clear, the industry
14 now has a new standard that they have to meet.

15 The issue at hand is not whether or
16 not they should meet that new standard. Of
17 course they should. And if they don't, they have
18 an obligation to share that service charge or to
19 distribute that service charge as a gratuity to
20 their workers.

21 The question here is should the
22 state allow for the retroactive application of
23 liability when an entire industry relied on the
24 state itself, through its Department of Labor,
25 through their opinion letters, to provide

1 guidance in how they should address this issue
2 during the years that they're now seeking
3 liability for.

4 So far from being a shield, it just
5 recognizes that the rules changed. And certainly
6 the industry should not be penalized from
7 following the rules as they existed at that time.

8 ACTING PRESIDENT YOUNG: Thank
9 you, Senator Martins.

10 Senator Peralta.

11 SENATOR PERALTA: If the sponsor
12 could yield for another question.

13 ACTING PRESIDENT YOUNG: Senator,
14 do you yield?

15 SENATOR MARTINS: Sure.

16 ACTING PRESIDENT YOUNG: The
17 Senator yields.

18 SENATOR PERALTA: So in 2008, when
19 the Court of Appeals found that there was a
20 violation made, the department or the
21 establishments should not -- I mean, I just want
22 to clarify. What you're saying is that they
23 should not have paid attention to the decision?

24 ACTING PRESIDENT YOUNG: Thank
25 you, Senator Peralta.

1 Senator Martins.

2 SENATOR MARTINS: Madam President,
3 through you. I certainly can't speak for what
4 the industry does. I can't even speak for what
5 the Department of Labor did.

6 You know, frankly, if we consider
7 the question, the Labor Department, the New York
8 State Department of Labor that is entrusted with
9 regulating labor and this industry didn't come
10 out with an opinion until 2010 and didn't impose
11 a new regulation until January 1, 2011. It is
12 incumbent upon the industry to follow the lead of
13 the Department of Labor.

14 And I'm not here as an apologist
15 for an industry. I'm not here as an apologist,
16 frankly, for anyone. I'm here to explain a bill
17 which I think on its merits warrants passage by
18 this house because, again, you should not expect
19 someone to follow rules that weren't in effect at
20 the time that they were taking the acts they
21 did.

22 ACTING PRESIDENT YOUNG: Thank
23 you, Senator Martins.

24 Senator Peralta.

25 SENATOR PERALTA: Yes, if the

1 sponsor will yield for another question.

2 ACTING PRESIDENT YOUNG: Senator
3 Martins, do you yield?

4 SENATOR MARTINS: I would be happy
5 to, Madam President. Thank you.

6 ACTING PRESIDENT YOUNG: Senator
7 Martins yields, Senator Peralta.

8 SENATOR PERALTA: So even when --
9 so your argument is that the Department of Labor
10 submitted their regulation at the end of 2010,
11 codified in 2011, January 1st, but even when
12 there was an amicus brief submitted with the
13 Attorney General in 2007 saying that they felt
14 that the acts of World Yacht were wrong?

15 ACTING PRESIDENT YOUNG: Senator
16 Peralta, thank you.

17 Senator Martins.

18 SENATOR MARTINS: Madam President,
19 I'm not sure -- I'm not sure of the question.
20 But I would daresay that the Attorney General's
21 office presents dozens if not hundreds of amicus
22 briefs annually.

23 And I don't know what relevance the
24 amicus brief in this case would have with respect
25 to the Department of Labor's position, with

1 regard to the industry's position, with regard
2 to, you know, the government and our own body's
3 position with respect to this particular issue.

4 What I would tell you is the
5 reality is the Department of Labor consistently
6 had a rule. It changed that rule effective
7 January 1, 2011. This bill codifies that. Very
8 simply.

9 ACTING PRESIDENT YOUNG: Thank
10 you, Senator Martins.

11 Senator Peralta.

12 SENATOR PERALTA: On the bill.

13 ACTING PRESIDENT YOUNG: Thank
14 you, Senator Martins.

15 Senator Peralta on the bill.

16 SENATOR PERALTA: You know, here
17 we are again, another day in Albany, another bill
18 protecting powerful interests at the expense of
19 New York's working men and women. I don't know
20 if whether I should be more angry or disappointed
21 at this point, but I should know that I shouldn't
22 be surprised.

23 The worst part of this is that this
24 is almost a good bill. The written notice
25 requirement is a good policy. But it's good

1 policy that comes with a poison pill. If
2 enacted, this bill would shield employers who
3 kept money from their workers through deception
4 and outright lies.

5 World Yacht, the poster child for
6 this bill, not only presented service charges
7 that a reasonable customer would think were
8 gratuities, they actually told inquiring
9 customers that the fees were tips for their
10 workers. And they certainly weren't the only
11 ones. But no need to worry. As long as these
12 employers didn't put their deceptions in writing,
13 they cannot be held responsible under this bill.

14 These companies aren't naive. If
15 they knew about the 1995 memo apparently
16 permitting these practices, wouldn't they have
17 known about the 1999 opinion that superseded it?
18 Wouldn't they have known about the World Yacht
19 decision in 2008? Wouldn't they have known of
20 the amicus brief submitted by the then-Attorney
21 General?

22 Well, guess what? Employers who
23 reasonably relied on the 1995 memo aren't even
24 liable under existing law because of the statute
25 of limitations.

1 The employers aren't the victims of
2 some unreasonable legal responsibility of which
3 they had no notice. The only victims here are
4 those workers who relied on tips that would never
5 come. And here we are again protecting the
6 powerful at their expense.

7 Thank you, Madam President.

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

10 Is there any other Senator wishing
11 to be heard?

12 Senator Krueger.

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

15 ACTING PRESIDENT YOUNG: Thank
16 you, Senator Krueger. Senator Martins, would you
17 yield, please?

18 SENATOR MARTINS: Absolutely.
19 Thank you.

20 ACTING PRESIDENT YOUNG: The
21 Senator yields, Senator Krueger.

22 SENATOR KRUEGER: Thank you.

23 So I have been listening to the
24 back and forth, and I have been reading all of
25 these memos that the Department of Labor put out

1 pre and post 1995, 1999, up to as late as 2006.
2 And I'm very confused. And I assume that, as
3 Senator Smith said, there are bad-guy players and
4 then there's everybody else.

5 I don't know why most people who
6 provide banquet services or catering services
7 would have known any of this. But if they asked
8 the Department of Labor and they were handed
9 many, many memos, they would actually believe
10 they were following federal law and, at least at
11 that time, following state instructions about how
12 to handle the payments under banquet
13 circumstances.

14 But I also now am a little confused
15 by my colleague. Just to clarify, your
16 understanding of how this bill would impact
17 catering contracts. Is this people who work for
18 the under-minimum-wage rules that applies to
19 restaurant workers under restaurant laws or even
20 people who were working for minimum wage? Who
21 were the workers at these banquet halls, and how
22 were they being paid?

23 ACTING PRESIDENT YOUNG: Thank
24 you, Senator Krueger.

25 Senator Martins.

1 SENATOR MARTINS: Thank you,
2 Madam President. Through you.

3 I appreciate the question, because
4 it bears noting -- I mentioned it earlier --
5 these are not the waiters and waitresses that
6 work at our restaurants who are making subminimum
7 wage and rely on those tips to make ends meet.

8 This industry typically --
9 actually, exclusively -- and aside from the bad
10 actors, and certainly I can't speak to them --
11 but these catering facilities hire people at
12 typically well above minimum wage. I've heard as
13 high as 12, 13, 14 dollars an hour.

14 The tip and gratuity as it was
15 explained to me, Madam President, is not a
16 function of their salary, it is a tip and
17 gratuity if the person chooses to provide that.
18 And certainly it's at the option of the customer
19 to choose to do that at the end.

20 The clarification that is now
21 required under these new regulations I think is
22 helpful, because it clearly spells out, in the
23 event that there was any doubt, that the service
24 charge under this case would not be a gratuity,
25 so that there would be no expectation. But I

1 daresay that given the salary structure and given
2 those components, there was no expectation even
3 prior to these new regulations.

4 ACTING PRESIDENT YOUNG: Thank
5 you, Senator Martins.

6 Senator Krueger.

7 SENATOR KRUEGER: Through you, if
8 the Senator would continue to yield.

9 ACTING PRESIDENT YOUNG: Senator
10 Martins, do you yield to Senator Krueger?

11 SENATOR MARTINS: Be happy to,
12 thank you.

13 ACTING PRESIDENT YOUNG: Senator
14 Martins yields.

15 SENATOR KRUEGER: Thank you.

16 And in reading through quite a few
17 of these memos that went back and forth
18 between -- I guess requests for clarification
19 with the Department of Labor and the various
20 entities who asked for the clarifications, they
21 seem to cite a number of different cases. We
22 keep talking about one specific one.

23 But do you believe that your law
24 would in fact exempt anyone from liability if
25 they had told the workers "You're working for the

1 X amount you've contracted for, plus gratuities"?

2 SENATOR MARTINS: Madam President,
3 through you. This bill would not -- that was
4 frankly part of the concern that was raised.

5 If you notice, this is a B version
6 of this bill. It has been amended as a result of
7 some concerns that were raised by people
8 representing workers who thought that we should
9 address certain of those concerns, and they're
10 addressed in the bill.

11 So thank you.

12 SENATOR KRUEGER: Through you,
13 Madam President. On the bill.

14 ACTING PRESIDENT YOUNG: Thank
15 you. Senator Krueger on the bill.

16 SENATOR KRUEGER: I certainly
17 think people should be paid what they are due and
18 should be paid what the agreement was when they
19 made the arrangement to become an employee to a
20 specific employer.

21 And I do understand that there have
22 been a series of different kinds of lawsuits
23 about violations of state law involving waiters
24 and waitresses being forced to pool tips, being
25 forced to transfer their tips to their employer,

1 not getting what they believed was rightly the
2 arrangement they were entitled to when they
3 signed up for the work.

4 And I actually think that in most
5 circumstances the salary range for waiters and
6 waitresses still in our society is exceptionally
7 low and actually think they are served well by
8 being able to join labor unions who will organize
9 for them and protect their labor rights in the
10 restaurant industry.

11 And I'm very proud to have a huge
12 number of restaurants in my district, many of
13 whom in fact have been caught up in doing the
14 wrong thing and having to make amends to the
15 people who work for them because they didn't do
16 what was explicitly the deal that they made with
17 the workforce and also weren't following state
18 regulations.

19 But as I have talked to people and
20 explored this situation, I actually believe that
21 if I was running a catering business, even if I
22 hired some lawyer to tell me how you're supposed
23 to write up the contracts and how is it supposed
24 to be defined under law, that I would have gotten
25 bad advice.

1 Because I think most of the lawyers
2 who were hired by synagogue banquet managers and
3 catering companies and even catering halls, as we
4 refer to them here -- they probably said to some
5 lawyer, "Help me make sure I do my paperwork
6 right and I pay my taxes and I don't get in
7 trouble." And I think they were probably
8 disproportionately given bad advice, looking
9 retroactively at the story.

10 But if in fact they made an
11 agreement to pay their banquet workers X amount
12 and it was not an agreement that included "and
13 there will be gratuities on top of that," and as
14 was explained through the memos about what the
15 federal law said and what the State Department of
16 Labor's interpretation was all these years, that
17 as long as you were making a deal with your
18 employees about how much you were getting paid
19 for that event or per hour of that event and you
20 were not telling customers "and this amount will
21 be additional gratuities to the workers," then I
22 think you actually operated in good faith and
23 shouldn't face retroactive penalties for within
24 the time frame where nobody knew any different,
25 they were following what they believed was both

1 the federal law and the interpretation of state
2 law through Department of Labor memos.

3 And again, I'm not a lawyer, but
4 I've read an awful lot of legal documents coming
5 out of state agencies over the last 10 years.
6 And one can say they're complicated and
7 confusing, but I don't find anything in here, in
8 this package of I think 12 memos, that would lead
9 me to believe that somebody running a catering
10 business who believed they were doing the right
11 thing was intentionally trying to violate any of
12 the law or to underpay people what they believe
13 was the agreement for the function.

14 And so I'm going to vote for this
15 bill, Madam President. Thank you very much.

16 ACTING PRESIDENT YOUNG: Thank
17 you, Senator Krueger.

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

20 Hearing none, the debate is
21 closed. The Secretary will ring the bell.

22 Read the last section.

23 THE SECRETARY: Section 2. This
24 act shall take effect on the 30th day.

25 ACTING PRESIDENT YOUNG: Call the

1 roll.

2 (The Secretary called the roll.)

3 ACTING PRESIDENT YOUNG: Senator
4 Smith to explain his vote.

5 SENATOR SMITH: Yes, just to
6 explain my vote, Madam President.

7 Just to clarify something for
8 myself, even. I know there was much discussion
9 on this memo of 1995 where the Labor Department
10 basically affirmed what the caterers are doing,
11 but I want to be real clear to everyone that is
12 in this chamber.

13 After 1995, the Labor Department
14 issued a statement in August 1999; March 2000;
15 March 27, 2000; December 1, 2008; February 27,
16 2009; March 11, 2010 -- all of them reversing the
17 1995. There is no excuse for them saying they
18 did not know.

19 I'm voting no, Madam President.

20 ACTING PRESIDENT YOUNG: Senator
21 Smith, how do you vote?

22 Senator Smith will be recorded in
23 the negative.

24 Senator Golden.

25 SENATOR GOLDEN: Madam President,

1 I have a direct personal interest on the issue
2 before the Senate and request that I be excused.

3 ACTING PRESIDENT YOUNG: So moved.

4 SENATOR GOLDEN: Abstained.

5 SENATOR PARKER: Objection.

6 ACTING PRESIDENT YOUNG: Senator
7 Golden will be marked as abstaining.

8 Senator Parker.

9 SENATOR PARKER: I object to the
10 abstention.

11 ACTING PRESIDENT YOUNG: Senator
12 Golden, since Senator Parker is objecting, could
13 you please again state your reasons for
14 abstaining?

15 SENATOR GOLDEN: My brother owns a
16 catering facility, of which I owned previously,
17 in Bay Ridge, Brooklyn.

18 Neither of the issues of service
19 charge or administrative charge were done by the
20 Bay Ridge Manor, is my understanding, but it does
21 present a conflict of interest and I am asking
22 that I abstain from this vote.

23 ACTING PRESIDENT YOUNG: Thank
24 you, Senator Golden.

25 As you just explained, you do have

1 a direct personal interest. And because of that
2 fact, you will be marked as abstaining from the
3 vote. Thank you very much.

4 Announce the results.

5 THE SECRETARY: In relation to
6 Calendar Number 530, those recorded in the
7 negative are Senators Adams, Avella, Ball,
8 Breslin, Carlucci, Duane, Gianaris,
9 Hassell-Thompson, Kennedy, Klein, Montgomery,
10 Oppenheimer, Parker, Peralta, Perkins, Rivera,
11 Sampson, Savino, Smith, Squadron, and Valesky.

12 Senator Golden abstaining.

13 Senator Espaillat absent.

14 Ayes, 38. Nays, 21.

15 ACTING PRESIDENT YOUNG: The bill
16 is passed.

17 The Secretary will read.

18 THE SECRETARY: Calendar Number
19 551, by Senator Maziarz, Senate Print 5769, an
20 act to amend the Public Service Law.

21 SENATOR BRESLIN: Explanation,
22 please.

23 ACTING PRESIDENT YOUNG: Senator
24 Maziarz, there has been an explanation requested.

25 SENATOR MAZIARZ: Thank you very

1 much, Madam President.

2 Yes, this legislation is nowhere
3 near as complicated as the last bill we just
4 did. Voice over Internet protocol, or VoIP, is a
5 technology that allows you to make voice calls
6 using a broadband Internet or data connection
7 instead of or in addition to a regular phone
8 line.

9 Last year, with significant and
10 meaningful bipartisan support, the Senate passed
11 this legislation which promotes competition,
12 drives costs down, and creates much-needed jobs
13 across New York State. Currently --

14 ACTING PRESIDENT YOUNG: Thank
15 you, Senator Maziarz. Just one second.

16 Could I again please ask for some
17 decorum in the chambers, just so we can hear what
18 you have to say, which is very important. Go
19 ahead.

20 SENATOR MAZIARZ: Thank you, Madam
21 President. I appreciate the courtesy.

22 Currently, VoIP, Voice over
23 Internet Protocol, is not -- not -- regulated by
24 the Public Service Commission. That's really the
25 crux of this bill. This legislation maintains

1 the status quo, the nonregulation, with regard to
2 this Voice over Internet Protocol.

3 Now, it does not necessarily mean
4 that VoIP is totally unregulated. The Federal
5 Communications Commission maintains substantial
6 regulation over VoIP services with respect to 911
7 fees, relay services, and the Universal Service
8 Fund. It also means that New York's consumer
9 protection laws and unfair or deceptive trade
10 practices rules still apply.

11 Thank you, Madam President.

12 ACTING PRESIDENT YOUNG: Thank
13 you, Senator Maziarz.

14 Senator Krueger.

15 SENATOR KRUEGER: Thank you,
16 Madam President. If the sponsor would please
17 yield.

18 SENATOR MAZIARZ: Gladly, Madam
19 President.

20 ACTING PRESIDENT YOUNG: Senator
21 Krueger, Senator Maziarz is willing to yield.

22 SENATOR KRUEGER: Thank you.

23 So the Senator explained the bill
24 and explained that the state does not currently
25 regulate Voice over Internet Protocol. But if

1 this bill were to pass, we would not be able to
2 regulate Voice over Internet Protocol technology
3 in the future, is that correct?

4 SENATOR MAZIARZ: That is correct.

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

7 Senator Maziarz.

8 SENATOR MAZIARZ: Through you,
9 Madam President, that is correct.

10 The Governor had this legislation
11 contained in his budget. The Senate had it
12 contained in their one-house budget. The
13 Assembly rejected it, and we thought we'd pass it
14 as a stand-alone piece of legislation. That is
15 correct, Senator.

16 ACTING PRESIDENT YOUNG: Thank
17 you, Senator Maziarz, for that answer.

18 Senator Krueger.

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

22 ACTING PRESIDENT YOUNG: Senator
23 Maziarz, do you yield?

24 SENATOR MAZIARZ: Certainly.
25 Certainly, Madam President.

1 ACTING PRESIDENT YOUNG: Go ahead,
2 Senator Krueger.

3 SENATOR KRUEGER: Thank you,
4 Madam President.

5 So if this bill passed, we could
6 not regulate Voice over Internet phone service in
7 the future. So in fact if we discovered there
8 were hidden fees put into contracts, could we do
9 anything about it?

10 ACTING PRESIDENT YOUNG: Thank
11 you, Senator Krueger.

12 Senator Maziarz.

13 SENATOR MAZIARZ: Thank you very
14 much, Madam President.

15 Actually, yes, we could. It does
16 not -- the FCC would still regulate Voice over
17 Internet Protocol, Senator.

18 ACTING PRESIDENT YOUNG: Thank
19 you, Senator Maziarz.

20 Senator Krueger.

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

24 ACTING PRESIDENT YOUNG: Senator
25 Maziarz, would you yield?

1 SENATOR MAZIARZ: Yes, I do,
2 Madam President. Thank you.

3 ACTING PRESIDENT YOUNG: The
4 Senator yields.

5 SENATOR KRUEGER: My understanding
6 is that the FCC is examining how to handle
7 regulation of Voice over Internet but also has
8 yet to take a position. So how could they
9 regulate and protect us from hidden fees?

10 ACTING PRESIDENT YOUNG: Thank
11 you, Senator Krueger.

12 Senator Maziarz.

13 SENATOR MAZIARZ: Thank you,
14 Madam President. Through you.

15 The Senator is correct, they are
16 examining this regulatory basis. Because this
17 technology is changing so rapidly, and really the
18 regulatory atmosphere is really in the
19 competition, the competitive nature of broadband,
20 that I think there's enough regulation out there
21 already, Senator.

22 ACTING PRESIDENT YOUNG: Thank
23 you, Senator Maziarz, for that answer.

24 Senator Krueger.

25 SENATOR KRUEGER: Thank you.

1 Through you, Madam President, if the sponsor
2 would continue to yield.

3 ACTING PRESIDENT YOUNG: Senator,
4 would you yield?

5 SENATOR MAZIARZ: I do. I do.

6 And this legislation does not stop
7 the FCC from regulating this.

8 ACTING PRESIDENT YOUNG: Okay.
9 So, Senator Krueger, do you have another
10 question?

11 SENATOR KRUEGER: I do,
12 Madam President. Could the sponsor let me know
13 who is supporting this bill and who he has memos
14 of support from?

15 ACTING PRESIDENT YOUNG: Thank you
16 for that question, Senator Krueger.

17 Senator Maziarz.

18 SENATOR MAZIARZ: I would gladly
19 enumerate the multitude of sponsors of this
20 particular piece of legislation which would
21 allow, I think, the expansion of Voice over
22 Internet Protocol, particularly, Senator, in the
23 rural, remote areas of the State of New York.

24 It is supported by, first and
25 foremost, my good friend and colleague and

1 ranking member of the Senate Energy and
2 Telecommunications Committee, Senator Kevin
3 Parker.

4 ACTING PRESIDENT YOUNG: Thank
5 you, Senator Maziarz.

6 SENATOR MAZIARZ: Well, wait, I
7 wasn't finished, Madam President. I'm sorry.

8 ACTING PRESIDENT YOUNG: Please
9 continue, Senator Maziarz.

10 SENATOR MAZIARZ: I'm sorry.

11 It is also supported, Senator
12 Krueger, by the NAACP, the Long Island
13 Association, the Corporation for Economic
14 Opportunity, the Hispanic Federation, the Bronx
15 Chamber of Commerce, the -- I'm losing votes on
16 this side of the aisle, Madam President.

17 (Laughter.)

18 SENATOR MAZIARZ: The Brooklyn
19 Chamber of Commerce. Tech America. The
20 Buffalo-Niagara Partnership. Time-Warner Cable.
21 The Business Council. AT&T. And Unshackle
22 Upstate.

23 Do you want me to go on, Senator?
24 I've got a whole list of them here.

25 SENATOR KRUEGER: No, that's all

1 right, Senator. I appreciate it.

2 ACTING PRESIDENT YOUNG: Thank
3 you, Senator Maziarz.

4 Senator Krueger.

5 SENATOR KRUEGER: I think,
6 Madam President, that I'm going to speak on the
7 bill.

8 ACTING PRESIDENT YOUNG: Thank
9 you. Thank you, Senator Maziarz.

10 Senator Krueger on the bill.

11 SENATOR KRUEGER: Thank you.

12 So we agree on certain things. We
13 agree that Voice over Internet Protocol is a new
14 and growing and changing technology. We agree
15 that the FCC has yet to figure out how it's going
16 deal with regulation of Internet phone or Voice
17 over Internet Protocol, as we call it. We all
18 reasonably assume that the world of telephones
19 are going to continue to rapidly change and more
20 and more of the ways that we communicate are
21 going to be via Internet, via computer, via
22 cellphones, and without wires underground or
23 crossing telephone poles.

24 What we don't know is what it's all
25 going to look like. Except I know that having

1 the power to regulate --

2 ACTING PRESIDENT YOUNG: Excuse
3 me.

4 Senators, please give Senator
5 Krueger some respect here. She has the floor.
6 So I appreciate it. Thank you so much.

7 Please continue.

8 SENATOR KRUEGER: Thank you.
9 Thank you, Madam President.

10 But we know that regulation of
11 utilities that all New Yorkers are dependent on
12 has served us well. And to imagine passing a
13 bill that says we don't know what anything is
14 going to really look like and who's going to be
15 the players in it and whether there are going to
16 be competitive players or monopoly control, we
17 don't know, but we want to give up our right to
18 regulate and put controls on utilities that all
19 19 and a half million New Yorkers are dependent
20 on -- because I doubt any of us could find any
21 New Yorker who doesn't have some access to phone
22 service and their own perhaps list of
23 frustrations with it.

24 So I have to say, for people who
25 are listed as the supporters of this bill, they

1 haven't been thinking through what the risks can
2 be. Because if we have no regulation over Voice
3 over Internet technology, there can be hidden
4 fees, there can be excessive costs, there can be
5 bad service and vacuums of where service covers
6 and doesn't cover in the State of New York,
7 unpredictable phone quality, limited access for
8 rural, low-income, and elderly New Yorkers.

9 And in fact, there's a number of
10 reports talking about already certain companies
11 refusing to build FIOS in the cities of Buffalo,
12 Syracuse, Rome, Utica, Binghamton, Elmira, Albany
13 and other, rural areas of the state.

14 So if we have a universe of
15 providers who don't feel like providing service
16 anywhere that they might not have large enough
17 volume to justify a high enough profit, we might
18 find ourselves in the future with areas of the
19 State of New York -- more likely, I have to say,
20 rural areas of the State of New York -- where
21 people will have no phone access.

22 And because we have a Public
23 Service Commission who regulates our other
24 utilities, and, if we don't pass this bill into
25 law, could be in a position to regulate Voice

1 over Internet Protocol, we will have an ability
2 to ask those hard questions and to put
3 regulations in place, if necessary, to ensure
4 that there is quality Voice over Internet
5 Protocol; i.e., the future of phone conversations
6 in our state.

7 We need to make sure there's
8 protection from too high a rate. We need to make
9 sure that there's a protection to do something
10 when there's poor service. We need to make sure
11 we continue New York State's proud history of
12 having a lifeline program which provides low-cost
13 access for seniors, disabled, and lower-income
14 consumers.

15 And if the state isn't regulating
16 Voice over Internet, there's no way we can
17 obligate new providers with new models to assure
18 that we continue this important lifeline
19 program. There will be no guarantee of service
20 quality that we can do anything about.

21 It seems to clear to me that the
22 State of New York does not want to give up its
23 options to play a role in ensuring the future of
24 quality phone service, whether it's called Voice
25 over Internet or whether it's called something

1 else I don't even know about that might pop up in
2 2013 or 2014.

3 The groups who are urging us not to
4 pass this legislation are the consumer groups who
5 watch out for cost and quality of service
6 delivery: AARP, Center for Working Families,
7 Citizen Action of New York, Coalition for
8 Economic Justice, Common Cause, Consumers Union.

9 The memo from Consumers Union is
10 extremely articulate and strong in arguing why we
11 should not be giving up our rights to
12 appropriately both work with and regulate a new,
13 evolving version of what is a critical utility
14 for all 19 and a half million of us.

15 I urge my colleagues to vote no on
16 this bill. Thank you, Madam President.

17 ACTING PRESIDENT YOUNG: Thank
18 you, Senator Krueger.

19 Senator Squadron.

20 SENATOR SQUADRON: Thank you,
21 Madam President. If the sponsor would yield
22 again.

23 ACTING PRESIDENT YOUNG: Senator
24 Maziarz, will you yield to Senator Squadron?

25 SENATOR MAZIARZ: Certainly.

1 ACTING PRESIDENT YOUNG: The
2 Senator yields.

3 SENATOR SQUADRON: Thank you very
4 much.

5 And listening to the discussion
6 with Senator Krueger, I noted that the sponsor
7 believes that Voice over IP, Voice over Internet
8 Protocol, is growing and an important part of the
9 future of telecommunications and telephone
10 service in the state.

11 Does the sponsor believe that the
12 Public Service Commission should maintain its
13 current regulatory authority over traditional
14 wire-line service and cable service?

15 ACTING PRESIDENT YOUNG: Thank
16 you, Senator Squadron, for that question.

17 Senator Maziarz.

18 SENATOR MAZIARZ: The answer is
19 yes, I do, Senator.

20 ACTING PRESIDENT YOUNG: Thank
21 you, Senator Maziarz.

22 Senator Squadron.

23 SENATOR SQUADRON: Thank you. If
24 the sponsor would continue to yield,
25 Madam President.

1 ACTING PRESIDENT YOUNG: Senator
2 Maziarz, do you yield?

3 SENATOR MAZIARZ: Yes.

4 ACTING PRESIDENT YOUNG: Senator
5 Maziarz yields.

6 SENATOR SQUADRON: Through you,
7 Madam President. As Voice over IP grows, the
8 sponsor would agree that if this bill passed, a
9 smaller and smaller percentage of consumers
10 looking to have phone service without worrying
11 about the technicalities, worrying just about
12 having phone service, a smaller and smaller
13 percentage would be protected by the Public
14 Service Commission as Voice over Internet
15 Protocol grew; is that correct?

16 ACTING PRESIDENT YOUNG: Senator
17 Squadron, thank you.

18 Senator Maziarz.

19 SENATOR MAZIARZ: Thank you very
20 much, Madam President. Through you.

21 I'm not sure I quite understood the
22 question, Senator. But I believe with the VoIP
23 service that -- you know, with Internet, with the
24 VoIP service growing so rapidly, that it's going
25 to be basically the competition, the open

1 competitive market, you know, is going to control
2 the cost.

3 You know, certainly consumers,
4 through their ability to compare -- I mean, you
5 see it now; every time you turn on a television
6 set, you're bombarded with commercials for
7 Internet service, one cheaper than the next one.
8 You know, my bill has gone down considerably, you
9 know, not because of anything the PSC is doing,
10 but because of the competitive market.

11 I believe, and I think that this
12 bill -- and I think the reason that the Governor
13 put it in the budget was because this actually
14 has -- or I think the PSC, I don't mean to be
15 critical of them, but, you know, a lot of times
16 with their regulatory powers they actually slow
17 down the progress of business growth in the State
18 of New York through their efforts to regulate,
19 taking way too much time to get an answer to an
20 investor in the State of New York.

21 I think it would slow down,
22 particularly, Senator, in the rural areas, the
23 areas that I represent, the expansion of
24 broadband, the expansion of VoIP service and
25 other Internet services.

1 ACTING PRESIDENT YOUNG: Thank
2 you, Senator Maziarz.

3 Senator Squadron, would you like to
4 continue?

5 SENATOR SQUADRON: If the sponsor
6 would continue to yield, Madam President.

7 ACTING PRESIDENT YOUNG: Senator
8 Maziarz, do you yield?

9 SENATOR MAZIARZ: Yes.

10 ACTING PRESIDENT YOUNG: The
11 Senator yields.

12 SENATOR SQUADRON: Through you.

13 But under any circumstance the
14 protections currently afforded to a very large
15 percentage of people who have phone service of
16 one kind or the other in the state, the
17 percentage of people who have phone service in
18 the state protected by the PSC would go down as
19 Voice over Internet Protocol expanded if this
20 bill passed, correct, just as a matter of math?

21 ACTING PRESIDENT YOUNG: Thank
22 you, Senator Squadron.

23 Senator Maziarz.

24 SENATOR MAZIARZ: I believe that
25 they would be protected by the FCC.

1 ACTING PRESIDENT YOUNG: Thank
2 you, Senator Maziarz.

3 Senator Squadron.

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

6 ACTING PRESIDENT YOUNG: Do you
7 yield, Senator Maziarz?

8 SENATOR MAZIARZ: Certainly.

9 ACTING PRESIDENT YOUNG: The
10 Senator yields.

11 SENATOR SQUADRON: Thank you,
12 Madam President.

13 If this bill were to pass, what
14 power would the state have to ensure the
15 expansion of service and service quality into the
16 rural areas that the sponsor expressed particular
17 concern about that have historically had
18 particular concern when you talk about expanding
19 different infrastructure?

20 ACTING PRESIDENT YOUNG: Thank
21 you, Senator Squadron.

22 Senator Maziarz.

23 SENATOR MAZIARZ: I think,
24 Madam President, through the new Consumer
25 Protection Agency. Certainly the PSC still has

1 regulatory control over service quality issues
2 involving phone service in the State of
3 New York. And again, the FCC has regulatory
4 control.

5 And I think that this would be an
6 incentive, an incentive for companies to invest
7 in VoIP services, in Internet services in rural
8 and remote areas of New York State.

9 ACTING PRESIDENT YOUNG: Thank
10 you, Senator Maziarz.

11 Senator Squadron.

12 SENATOR SQUADRON: If the sponsor
13 would continue to yield, Madam President.

14 SENATOR MAZIARZ: Yes,
15 Madam President.

16 ACTING PRESIDENT YOUNG: Senator
17 Maziarz yields, Senator Squadron.

18 SENATOR SQUADRON: Thank you. And
19 so just to understand -- through you,
20 Madam President -- if it's the sponsor's view
21 that the possibility that at some point in the
22 future the Public Service Commission may weigh in
23 on Voice over Internet Protocol services is today
24 in New York State preventing the expansion of
25 those services?

1 ACTING PRESIDENT YOUNG: Thank
2 you, Senator Squadron.

3 Senator Maziarz.

4 SENATOR MAZIARZ: No, because they
5 don't regulate it now. But I think that if they
6 did, I think that would certainly slow down the
7 investment process, particularly in rural areas
8 of New York State.

9 ACTING PRESIDENT YOUNG: Thank
10 you, Senator Maziarz.

11 Senator Squadron.

12 SENATOR SQUADRON: If the sponsor
13 would continue to yield, Madam President.

14 SENATOR MAZIARZ: I do,
15 Madam President.

16 ACTING PRESIDENT YOUNG: Senator
17 Maziarz yields, Senator Squadron.

18 SENATOR SQUADRON: Thank you.

19 Just to change tracks slightly, is
20 the sponsor aware of a piece of model legislation
21 very, very similar to this piece of legislation
22 produced by the American Legislative Exchange
23 Council titled "Advanced Voice Services
24 Availability Act"?

25 ACTING PRESIDENT YOUNG: Thank

1 you, Senator Squadron.

2 Senator Maziarz.

3 SENATOR MAZIARZ: I am not,
4 Madam President, no.

5 SENATOR SQUADRON: Through you --

6 ACTING PRESIDENT YOUNG: Thank
7 you, Senator Maziarz.

8 Senator Squadron, are you asking
9 Senator Maziarz to yield once again?

10 SENATOR SQUADRON: Please.

11 ACTING PRESIDENT YOUNG: Senator
12 Maziarz?

13 SENATOR MAZIARZ: Yes, Madam
14 President.

15 ACTING PRESIDENT YOUNG: Proceed.

16 SENATOR SQUADRON: Thank you,
17 Madam President. Through you.

18 So I suppose the sponsor therefore
19 is not aware of the fact that not just the
20 definitions in the legislation before us but also
21 significant other portions having to do with the
22 authority of the state regulatory agency are
23 closely mirrored or identical in this legislation
24 to that piece of ALEC, American Legislative
25 Exchange Council, model legislation?

1 ACTING PRESIDENT YOUNG: Thank
2 you, Senator Squadron.

3 Senator Maziarz.

4 SENATOR MAZIARZ: I am not aware
5 of that. I have never been contacted by that
6 organization, either pro or con, on this
7 particular piece of legislation, Senator.

8 ACTING PRESIDENT YOUNG: Thank
9 you, Senator Maziarz.

10 Senator Squadron.

11 SENATOR SQUADRON: Thank you very
12 much. Thank you to the sponsor.

13 On the bill, Madam President.

14 ACTING PRESIDENT YOUNG: Thank
15 you. Thank you, Senator Maziarz.

16 Senator Squadron on the bill.

17 SENATOR SQUADRON: Thank you very
18 much.

19 I appreciate the sponsor's goals as
20 stated here today and the goals of ensuring rural
21 service, ensuring service sometimes into the
22 poorest urban areas where service is
23 frequently -- new services are frequently brought
24 last or never brought at all.

25 However, the fact is this bill

1 would have the opposite effect. What this bill
2 would do is it would create a special carve-out
3 of a certain kind, a subset of telephone service
4 that wouldn't have the same protections that
5 consumers across New York State have become used
6 to; in fact, the same kind of protections that
7 the sponsor himself says should exist for
8 wire-line and for other telephone services.

9 The idea of having just sort of a
10 specific carve-out that is frankly not
11 transparent to consumers, that is outside of the
12 decision-making process of consumers, is bad for
13 them.

14 Additionally, as we talk about the
15 expansion into rural areas and into the poorest
16 urban areas, for the state to unilaterally say we
17 are going to have no authority on that, as this
18 relatively new telephone service expands and
19 becomes industry standard, becomes potentially
20 more affordable, even potentially more
21 dependable, is an enormous mistake.

22 And again, as the sponsor says,
23 nothing about what's happening today in the
24 regulatory structure in New York State is hurting
25 the expansion of Voice over Internet Protocol.

1 In fact, the only reason it would be would be if
2 any of the telecom companies chose to do
3 something not so much on a business basis but on
4 the base of wanting this legislation to happen.

5 The truth is the FCC has not yet
6 weighed in on this. If the FCC does say that
7 states can regulate, in their wisdom they will do
8 that because they know that VoIP is expanding, is
9 important, and that consumers across the country
10 need the protections that they have become
11 accustomed to with telephone service for decades
12 and decades.

13 If the FCC weighs in and says,
14 "Look, we're going to deal with this on a federal
15 level," then the state will be taken care of and
16 the state will have no competitive disadvantage
17 or any concern.

18 It's simply not the time to weigh
19 in on this issue.

20 Look, when we talk about the Public
21 Service Commission and their calendar, their time
22 frame, their own transparency, their
23 responsiveness both to business and to consumers,
24 there's an enormous amount to be done. And I
25 couldn't agree with the sponsor more on that.

1 But to cut out the legs of the Public Service
2 Commission -- and not just the Public Service
3 Commission, but all of the state oversight bodies
4 that would deal with this outside of the Consumer
5 Protection Law -- is bad for consumers, it's bad
6 for the state, it's bad for rural areas, it's bad
7 for urban areas.

8 And, you know, I think it's no
9 surprise -- and certainly, as the sponsor says,
10 this is not where he became aware of this bill.
11 But I think it's no surprise that the American
12 Legislative Exchange Council, which serves as a
13 conduit for a very narrow set of interests, not
14 for a broader set of interests, is the place
15 where many of the features of this bill and many
16 of the provisions came from. Because this is not
17 a bill that has the broad interests, sadly, in
18 mind, it's one essentially to undermine state
19 regulation before it ever takes hold.

20 That's why I will vote no. I urge
21 others to vote no.

22 As the FCC weighs in, as this state
23 needs to be smart about reforming the PSC and
24 even reforming the PSC's role in VoIP and,
25 frankly, some of the services it's been

1 regulating for a very long time, I look forward
2 to working with the sponsor and other
3 colleagues. But in the interim, we should not
4 prevent the state from protecting consumers and
5 rural consumers.

6 I will vote no, Madam President.

7 ACTING PRESIDENT YOUNG: Thank
8 you, Senator Squadron.

9 Senator Parker.

10 SENATOR PARKER: Yes,
11 Madam President. On the bill.

12 ACTING PRESIDENT YOUNG: Senator
13 Parker on the bill.

14 SENATOR PARKER: Thank you,
15 Madam President.

16 Let me thank my chairman of the
17 Energy and Telecommunications Committee,
18 Senator Maziarz, on this important legislation.
19 And I will be supporting this legislation on
20 Voice over Internet Protocols and asking my
21 colleagues to join me in supporting this
22 legislation.

23 I certainly stand with my other
24 colleagues who have asked questions and raised
25 issues and their concerns. And I certainly stand

1 shoulder to shoulder with them in their support
2 and wanting to protect consumers.

3 And I certainly would not be a
4 sponsor of this legislation, a cosponsor of this
5 legislation, nor a supporter and asking my
6 colleagues for that support if this was something
7 that was going to be hurting consumers,
8 particularly those in rural areas or those in
9 urban areas who oftentimes have not gotten
10 served.

11 Let's be honest about where the
12 industry is going. The telecommunications
13 industry is going global, it's going to the
14 Internet, and it's going for more access as
15 opposed to less access. This is not the same
16 technology as dial-up, and we cannot continue to
17 treat it as dial-up. And so what we're looking
18 to do is advance the environment in which these
19 telecommunication companies are operating and
20 making sure that we level the playing field.

21 What the folks who are opposed to
22 this legislation have not told you is that over
23 20 states have already passed similar
24 legislation. And you heard the list from the
25 chairman on how many organizations are in fact

1 supporting this legislation exactly because we
2 have to be looking at telecommunications not
3 simply as something to regulate or tax, as we
4 often do in this body, but as a place of jobs and
5 economic development.

6 And when we look at where jobs and
7 economic development are going in the future,
8 this is the technology that's going to take us
9 there. And to the degree that we can in fact
10 encourage the industry by making a friendly
11 regulatory environment, the better off we're
12 going to be in terms of the kinds of investment
13 that we're going to open New York for and the
14 kind of jobs that are going to be created from
15 the expansion of this.

16 So we're not really talking about a
17 contraction but really an expansion to the access
18 that people all over the state, and particularly
19 in places that are rural and urban, are going to
20 receive because we in fact have encouraged
21 investment in Voice over Internet Protocols.

22 And so I'm asking my colleagues to
23 join me in voting for this legislation. I think
24 it's going to be something that's important. I
25 want people to understand that the kind of

1 oversight that people are concerned about is
2 always there. And, frankly, that's us. At the
3 end of the day, if we come up with problems that
4 need to be addressed, we can always come back to
5 this body and, just like we're passing this bill,
6 pass another bill to address those issues. As we
7 do every single day during the legislative
8 session.

9 And so I look forward to our
10 continuing work in terms of producing jobs in
11 this, the Empire State.

12 ACTING PRESIDENT YOUNG: Thank
13 you, Senator Parker.

14 Any other Senator wishing to be
15 heard?

16 The debate is closed. The
17 Secretary will ring the bell.

18 Read the last section.

19 THE SECRETARY: Section 4. This
20 act shall take effect immediately.

21 ACTING PRESIDENT YOUNG: Call the
22 roll.

23 (The Secretary called the roll.)

24 ACTING PRESIDENT YOUNG: Senator
25 Squadron to explain his vote.

1 SENATOR SQUADRON: Thank you very
2 much, Madam President. And I thank my colleagues
3 for -- thank you, Madam President. I thank my
4 colleagues for an interesting and respectful
5 debate.

6 Just to my good colleague and the
7 ranking member of Energy and Telecommunications,
8 who I work with very closely, of those 20 states
9 that deregulated, according to the National
10 Association of State Utility Consumer Advocates,
11 17 saw increases in rates subsequent to
12 deregulation. So another reason that I vote no,
13 Madam President.

14 ACTING PRESIDENT YOUNG: Thank
15 you, Senator Squadron. You will be recorded as a
16 no.

17 Announce the results.

18 THE SECRETARY: In relation to
19 Calendar 551, those recorded in the negative are
20 Senators Addabbo, Avella, Breslin, Duane,
21 Gianaris, Hassell-Thompson, Huntley, Krueger,
22 Montgomery, Peralta, Perkins, Rivera, Serrano,
23 Squadron, Stavisky, and Stewart-Cousins. Also
24 Senator Oppenheimer. Also Senator Diaz.

25 Absent from voting: Senator

1 Espaillat.

2 Ayes, 42. Nays, 18.

3 ACTING PRESIDENT YOUNG: The bill
4 is passed.

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

7 SENATOR LIBOUS: Is there any
8 further business at the desk, Madam President?

9 ACTING PRESIDENT YOUNG: No, there
10 is not, Senator Libous.

11 SENATOR LIBOUS: Madam President,
12 there being no further business at the desk, I
13 move that the Senate will adjourn until
14 Wednesday, May 9th, at 11:00 a.m.

15 ACTING PRESIDENT YOUNG: On
16 motion, the Senate stands adjourned until
17 Wednesday, May 9th, at 11:00 o'clock a.m.

18 (Whereupon, at 5:50 p.m., the Senate
19 adjourned.)

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