NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

ALBANY, NEW YORK

May 8, 2012

3:23 p.m.

REGULAR SESSION

SENATOR CATHARINE M. YOUNG, Acting President

FRANCIS W. PATIENCE, Secretary

P R O C E E D I N G S

ACTING PRESIDENT YOUNG: The Senate will come to order.

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

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

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

Would you like to say the prayer, please?

REVEREND GANN: I would. Thank you very much.

ACTING PRESIDENT YOUNG: Thank you.

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

Help each of us to act with

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

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

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

Amen.

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

Again, enjoy your stay at the Capitol.

REVEREND GANN: Thank you very much.

ACTING PRESIDENT YOUNG: At this

time I'd like to call on Senator Libous.

SENATOR LIBOUS: Thank you, Madam President.

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

ACTING PRESIDENT YOUNG: Thank you, Senator.

Could we please have some order in the chamber.

Senator Libous.

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

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

ACTING PRESIDENT YOUNG: Thank you, Senator.

The Secretary will read.

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

City of Albany Police Department:

Sergeant John J. Walsh.

Chemung County Sheriff's Office: Deputy Jeffrey T. Alexander.

Town of Colonie Police Department: Police Officer Donald L. Wilkins.

Columbia County Sheriff's Office: Sheriff Cornelius Hogeboom.

City of Kingston Police Department: Police Officer John G. Boyd.

Nassau County Police Department: Police Officer Michael J. Califano and Police Officer Geoffrey Breitkopf.

New York City Police Department: Police Officer Alain K. Schaberger; Sergeant Harold J. Smith; Police Officer George M. Wong; Police Officer Martin Tom; Captain Barry Galfano; Detective Edwin Ortiz; Detective Peter J. Fogiski; Detective Joseph Seabrook; Lieutenant Jacqueline McCarthy; Police Officer Robert M. Ehmer; Police Officer David Mahmoud; Detective Kevin A. Czartoryski; Sergeant Charles J. Clark; Detective John E. Goggin; and Police Officer Edward M. Ferraro.

New York State Police: Trooper Kevin P. Dobson.

Oneida County Sheriff's Office: Deputy Kurt B. Wyman.

City of Poughkeepsie Police Department: Detective John M. Falcone.

U.S. Bureau of Alcohol, Tobacco, Firearms and Explosives: Senior Special Agent John F. Capano.

Westchester County Department of Public Safety: Sergeant Charles W. Rice, Jr.

ACTING PRESIDENT YOUNG: Senator Libous.

SENATOR LIBOUS: Madam President, these individuals put their lives on the line to protect ours. And if I could ask everybody to please stand in a moment of silence for what they did.

(Whereupon, the assemblage rose and respected a moment of silence.)

ACTING PRESIDENT YOUNG: Next we'll have the reading of the Journal.

THE SECRETARY: In Senate, Monday, May 7th, the Senate met pursuant to adjournment. The Journal of Friday, May 4th, was read and approved. On motion, Senate adjourned.

ACTING PRESIDENT YOUNG: Without

objection, the Journal stands approved as read.

Next we have presentation of petitions.

Messages from the Assembly.

The Secretary will read.

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

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

ACTING PRESIDENT YOUNG: Substitutions ordered.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator Libous.

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

ACTING PRESIDENT YOUNG: Thank you.

Senator Breslin.

SENATOR BRESLIN: Thank you, Madam President.

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

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

SENATOR BRESLIN: Thank you, Madam President.

ACTING PRESIDENT YOUNG: Senator Libous.

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

ACTING PRESIDENT YOUNG: Senator Valesky.

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

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

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

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

(Laughter; applause.)

ACTING PRESIDENT YOUNG: Hello and

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

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

(Laughter.)

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

Senator Libous.

SENATOR LIBOUS: Thank you, Madam President.

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

(Laughter.)

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

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

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

(Response of "Aye.")

ACTING PRESIDENT YOUNG: Opposed, nay.

(No response.)

ACTING PRESIDENT YOUNG: The Resolution Calendar is adopted.

Senator Libous.

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

ACTING PRESIDENT YOUNG: Thank you, Senator.

The Secretary will read.

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

ACTING PRESIDENT YOUNG: Thank you.

Senator Valesky.

SENATOR VALESKY: Thank you, Madam President.

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

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

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

We singled out two individuals,

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

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

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

Senator O'Mara.

SENATOR O'MARA: Thank you, Madam President.

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

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

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

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

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

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

(Applause.)

ACTING PRESIDENT YOUNG: Senator Saland.

SENATOR SALAND: Thank you, Madam Chairman.

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

the very least equally distinctly privileged.

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

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

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

10 years old. Quite an extraordinarily accomplished person.

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

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

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

(Applause.)

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

SENATOR GRIFFO: Thank you, Madam President.

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

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

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

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

(Applause.)

ACTING PRESIDENT YOUNG: Senator Diaz.

SENATOR DIAZ: Thank you, Madam President.

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

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

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

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

And I join and I congratulate the

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

Thank you.

ACTING PRESIDENT YOUNG: Thank you, Senator.

Senator Grisanti.

SENATOR GRISANTI: Thank you, Madam President.

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

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

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

applause. Thanks a lot.

(Applause.)

ACTING PRESIDENT YOUNG: Thank you, Senator.

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

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

Senator Libous.

SENATOR LIBOUS: Thank you, Madam President.

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

ACTING PRESIDENT YOUNG: The Secretary will read.

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

ACTING PRESIDENT YOUNG: Senator Little.

SENATOR LITTLE: Thank you, Madam President.

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

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

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

diagnosed with fibromyalgia.

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

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

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

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

to be part of it and sponsor it as well.

Thank you very much, Madam President.

ACTING PRESIDENT YOUNG: Thank you, Senator Little.

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

(Applause.)

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

(Response of "Aye.")

ACTING PRESIDENT YOUNG: Opposed, nay.

(No response.)

ACTING PRESIDENT YOUNG: The resolution is adopted.

Senator Libous.

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

ACTING PRESIDENT YOUNG: Thank

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

Senator Libous.

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

ACTING PRESIDENT YOUNG: Without objection, Senator Larkin.

SENATOR LARKIN: Thank you, Madam President.

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

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

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

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

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

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

ACTING PRESIDENT YOUNG: Thank you, Senator Larkin.

(Applause.)

ACTING PRESIDENT YOUNG: Senator

Libous.

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

ACTING PRESIDENT YOUNG: The Secretary will read.

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

ACTING PRESIDENT YOUNG: Thank you.

Senator Peralta.

SENATOR PERALTA: Thank you, Madam President.

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

In a recent survey, Mr. Met was

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

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

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

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

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

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

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

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

ACTING PRESIDENT YOUNG: Thank you, Senator Peralta.

Senator Libous would like to speak.

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

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

(Laughter.)

ACTING PRESIDENT YOUNG: Thank

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

Senator Squadron would like to speak.

SENATOR SQUADRON: Just very briefly.

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

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

(Laughter.)

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

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

Thank you, Madam President.

ACTING PRESIDENT YOUNG: Thank you, Senator.

Senator DeFrancisco.

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

(Laughter.)

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

Thank you very much.

ACTING PRESIDENT YOUNG: Thank you, Senator.

Senator Marcellino.

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

However, go, Mr. Met.

(Laughter.)

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

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

(Response of "Aye.")

ACTING PRESIDENT YOUNG: Opposed, nay.

(No response.)

ACTING PRESIDENT YOUNG: The resolution is adopted.

Senator Libous.

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

ACTING PRESIDENT YOUNG: Thank you, Senator.

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

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

(Laughter.)

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

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

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

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

ACTING PRESIDENT YOUNG: The Secretary will read.

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

ACTING PRESIDENT YOUNG: Senator Rivera.

SENATOR RIVERA: Thank you, Madam President.

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

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

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

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

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

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

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

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

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

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

And I'd like to give her a hand.

(Applause.)

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

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

So thank you for visiting us, and congratulations.

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

(Response of "Aye.")

ACTING PRESIDENT YOUNG: Opposed, nay.

(No response.)

ACTING PRESIDENT YOUNG: The resolution is adopted.

Senator Libous.

SENATOR LIBOUS: Thank you, Madam President.

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

ACTING PRESIDENT YOUNG: Senator O'Mara.

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

In addition to the Senior Citizen

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

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

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

(Applause.)

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

Senator Libous.

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

ACTING PRESIDENT YOUNG: Thank you, Senator.

The Secretary will read.

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

SENATOR BRESLIN: Lay it aside.

ACTING PRESIDENT YOUNG: The bill is laid aside.

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

SENATOR BRESLIN: Lay it aside.

ACTING PRESIDENT YOUNG: The bill is laid aside.

The Secretary will continue to read.

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

ACTING PRESIDENT YOUNG: Read the last section.

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

ACTING PRESIDENT YOUNG: Call the

roll.

(The Secretary called the roll.)

ACTING PRESIDENT YOUNG: Announce the results.

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT YOUNG: The bill is passed.

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

ACTING PRESIDENT YOUNG: Read the last section.

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

ACTING PRESIDENT YOUNG: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT YOUNG: Announce the results.

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT YOUNG: The bill is passed.

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

ACTING PRESIDENT YOUNG: Read the last section.

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

ACTING PRESIDENT YOUNG: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT YOUNG: Announce the results.

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

ACTING PRESIDENT YOUNG: The bill is passed.

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

ACTING PRESIDENT YOUNG: Read the last section.

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

ACTING PRESIDENT YOUNG: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT YOUNG: Announce the results.

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT YOUNG: The bill is passed.

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

ACTING PRESIDENT YOUNG: Read the last section.

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

ACTING PRESIDENT YOUNG: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT YOUNG: Announce the results.

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

ACTING PRESIDENT YOUNG: The bill is passed.

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

ACTING PRESIDENT YOUNG: Read the last section.

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

ACTING PRESIDENT YOUNG: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT YOUNG: The bill is passed.

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

ACTING PRESIDENT YOUNG: Read the last section.

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

ACTING PRESIDENT YOUNG: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT YOUNG: Announce the results.

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT YOUNG: The bill is passed.

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

act to amend the Penal Law.

ACTING PRESIDENT YOUNG: Read the last section.

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

ACTING PRESIDENT YOUNG: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT YOUNG: Senator Marcellino to explain his vote.

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

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

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

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

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

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

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

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

Any other Senator wishing to

speak?

Seeing none, announce the results.

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

Ayes, 55. Nays, 6.

ACTING PRESIDENT YOUNG: The bill is passed.

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

ACTING PRESIDENT YOUNG: Read the last section.

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

ACTING PRESIDENT YOUNG: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT YOUNG: Announce the results.

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT YOUNG: The bill is passed.

THE SECRETARY: Calendar Number

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

ACTING PRESIDENT YOUNG: Read the last section.

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

ACTING PRESIDENT YOUNG: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT YOUNG: Announce the results.

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

Ayes, 57. Nays, 4.

ACTING PRESIDENT YOUNG: The bill is passed.

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

ACTING PRESIDENT YOUNG: Read the last section.

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

ACTING PRESIDENT YOUNG: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT YOUNG: Senator Klein to explain his vote.

SENATOR KLEIN: Thank you, Madam President.

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

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

I vote yes, Madam President.

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

Any other Senator wishing to be

heard?

Announce the results.

THE SECRETARY: Ayes, 60. Nays, 1. Senator Duane recorded in the negative.

ACTING PRESIDENT YOUNG: The bill is passed.

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

ACTING PRESIDENT YOUNG: Read the last section.

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

ACTING PRESIDENT YOUNG: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT YOUNG: Announce the results.

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT YOUNG: The bill is passed.

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

ACTING PRESIDENT YOUNG: Read the last section.

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

ACTING PRESIDENT YOUNG: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT YOUNG: Announce the results.

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

ACTING PRESIDENT YOUNG: The bill is passed.

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

ACTING PRESIDENT YOUNG: Read the last section.

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

ACTING PRESIDENT YOUNG: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT YOUNG: Announce the results.

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT YOUNG: The bill is passed.

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

ACTING PRESIDENT YOUNG: Read the last section.

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

ACTING PRESIDENT YOUNG: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT YOUNG: Announce the results.

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT YOUNG: The bill is passed.

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

ACTING PRESIDENT YOUNG: Read the last section.

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

ACTING PRESIDENT YOUNG: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT YOUNG: Announce the results.

THE SECRETARY: Ayes, 61.

ACTING PRESIDENT YOUNG: The bill is passed.

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

SENATOR MARCELLINO: Lay it aside for the day.

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

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

SENATOR MARCELLINO: Thank you, Madam President.

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

ACTING PRESIDENT YOUNG: Ring the bells.

The Secretary will read.

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

act to amend the Labor Law.

SENATOR BRESLIN: Explanation.

ACTING PRESIDENT YOUNG: An explanation has been requested.

Senator Martins.

SENATOR MARTINS: Thank you, Madam President.

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

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

ACTING PRESIDENT YOUNG: Thank you, Senator Martins.

Senator Smith.

SENATOR SMITH: Thank you very much, Madam President.

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

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

ACTING PRESIDENT YOUNG: Does the sponsor yield?

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

ACTING PRESIDENT YOUNG: Thank you, Senator Martins.

Senator Smith, Senator Martins yields.

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

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

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

ACTING PRESIDENT YOUNG: Thank you, Senator Smith.

Senator Martins?

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

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

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

ACTING PRESIDENT YOUNG: Thank you, Senator Smith.

Senator Martins.

SENATOR MARTINS: Yes.

ACTING PRESIDENT YOUNG: Senator Smith.

SENATOR SMITH: Thank you, sponsor.

Madam President, through you, I

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

SENATOR MARTINS: Yes, I would be glad to.

ACTING PRESIDENT YOUNG: Senator Martins, you yield.

Senator Smith, go ahead.

SENATOR SMITH: Thank you very much.

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

Would the sponsor agree with that?

ACTING PRESIDENT YOUNG: Thank you, Senator Smith.

Senator Martins.

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

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

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

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

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

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

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

Thank you, Madam President.

ACTING PRESIDENT YOUNG: Thank you, Senator Martins.

Senator Smith.

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

ACTING PRESIDENT YOUNG: Senator Martins, do you yield?

SENATOR MARTINS: Absolutely. Thank you.

ACTING PRESIDENT YOUNG: Senator Martins yields, Senator Smith.

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

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

ACTING PRESIDENT YOUNG: Thank you, Senator Smith.

Senator Martins.

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

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

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

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

ACTING PRESIDENT YOUNG: Thank you, Senator Martins.

Senator Smith.

SENATOR SMITH: Thank you, Madam President.

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

ACTING PRESIDENT YOUNG: Senator Martins, do you yield?

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

ACTING PRESIDENT YOUNG: Senator

Smith, please proceed.

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

ACTING PRESIDENT YOUNG: Senator Martins.

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

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

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

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

ACTING PRESIDENT YOUNG: Thank you, Senator Martins.

Senator Smith.

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

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

ACTING PRESIDENT YOUNG: Senator Martins, do you yield?

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

ACTING PRESIDENT YOUNG: Thank you, Senator Martins.

Go ahead, Senator Smith.

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

ACTING PRESIDENT YOUNG: Thank you, Senator Smith.

Senator Martins.

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

ACTING PRESIDENT YOUNG: Senator Smith.

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

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

SENATOR MARTINS: I do, thank you.

ACTING PRESIDENT YOUNG: Thank you.

Senator Smith.

SENATOR SMITH: Thank you,

Madam President. Through you, Madam President.

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

ACTING PRESIDENT YOUNG: Senator Martins.

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

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

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

ACTING PRESIDENT YOUNG: Thank you, Senator Martins.

Senator Smith.

SENATOR MARTINS: Madam President, just one point.

ACTING PRESIDENT YOUNG: Oh, I'm sorry.

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

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

Thank you.

ACTING PRESIDENT YOUNG: Thank you, Senator Martins.

Senator Smith.

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

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

ACTING PRESIDENT YOUNG: Senator Martins, do you yield?

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

ACTING PRESIDENT YOUNG: The Senator yields.

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

SENATOR MARTINS: Through you, Madam President --

ACTING PRESIDENT YOUNG: Senator Martins.

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

ACTING PRESIDENT YOUNG: Senator Smith.

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

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

SENATOR MARTINS: Absolutely. Thank you.

ACTING PRESIDENT YOUNG: Senator Martins yields, Senator Smith.

SENATOR SMITH: Thank you, Madam President.

Through you, Madam President, would the sponsor be so kind as to share the amount of money in which the retroactivity payment would be, if it was so inclined for the particular establishments to do so, in the collective?

ACTING PRESIDENT YOUNG: Thank you, Senator Smith.

Senator Martins.

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

service charge was.

ACTING PRESIDENT YOUNG: Thank you, Senator Martins.

Senator Smith.

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

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

SENATOR MARTINS: Be glad to. Thank you.

ACTING PRESIDENT YOUNG: The Senator yields.

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

ACTING PRESIDENT YOUNG: Senator Martins.

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

ACTING PRESIDENT YOUNG: Thank you, Senator.

Senator Smith.

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

ACTING PRESIDENT YOUNG: Senator Martins, do you yield?

SENATOR MARTINS: Absolutely. Thank you.

ACTING PRESIDENT YOUNG: Senator Martins yields, Senator Smith.

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

ACTING PRESIDENT YOUNG: Thank you, Senator Smith.

Senator Martins.

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

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

ACTING PRESIDENT YOUNG: Thank you, Senator Martins.

Senator Smith.

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

SENATOR MARTINS: I certainly will. Thank you.

ACTING PRESIDENT YOUNG: Thank you, Senator Smith.

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

SENATOR MARTINS: Of course. Thank you.

ACTING PRESIDENT YOUNG: The Senator yields.

SENATOR SMITH: Thank you, Madam President.

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

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

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

ACTING PRESIDENT YOUNG: Senator Martins.

SENATOR MARTINS: Madam President, I am not.

ACTING PRESIDENT YOUNG: Senator Smith.

SENATOR SMITH: I thank the sponsor for the responses.

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

ACTING PRESIDENT YOUNG: Senator Smith on the bill.

SENATOR SMITH: Thank you, Madam President.

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

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

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

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

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

Granted, Madam President, they are

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

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

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

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

ACTING PRESIDENT YOUNG: Senator, do you yield?

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

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

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

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

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

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

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

meet, and vote this bill down.

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

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

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

SENATOR SMITH: Absolutely, Madam President.

ACTING PRESIDENT YOUNG: Senator Martins.

SENATOR MARTINS: Thank you, Senator Smith.

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

ACTING PRESIDENT YOUNG: Senator

Smith.

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

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

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

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

ACTING PRESIDENT YOUNG: Senator Smith.

SENATOR SMITH: Thank you, Madam President.

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

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

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

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

ACTING PRESIDENT YOUNG: Thank you, Senator Smith.

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

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

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

Thank you very much, Senator Martins.

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

SENATOR MARTINS: Thank you, Madam President.

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

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

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

after opinion from the New York State Department of Labor.

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

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

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

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

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

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

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

Thank you, Madam President.

ACTING PRESIDENT YOUNG: Thank you, Senator Martins.

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

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

ACTING PRESIDENT YOUNG: Thank you, Senator Peralta.

Do you yield, Senator Martins?

SENATOR MARTINS: Yes. Thank you, Madam President.

ACTING PRESIDENT YOUNG: The Senator yields.

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

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

ACTING PRESIDENT YOUNG: Senator Martins.

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

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

ACTING PRESIDENT YOUNG: Thank you, Senator Martins.

Senator Peralta.

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

ACTING PRESIDENT YOUNG: Senator Martins, do you yield?

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

ACTING PRESIDENT YOUNG: The Senator yields, Senator Peralta.

SENATOR PERALTA: Thank you.

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

ACTING PRESIDENT YOUNG: Senator Martins.

SENATOR MARTINS: Madam President,

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

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

ACTING PRESIDENT YOUNG: Thank you, Senator Martins.

Senator Peralta.

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

ACTING PRESIDENT YOUNG: Thank you, Senator Peralta.

Do you yield, Senator Martins?

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

ACTING PRESIDENT YOUNG: The Senator yields.

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

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

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

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

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

ACTING PRESIDENT YOUNG: Thank you, Senator Martins.

Senator Peralta.

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

ACTING PRESIDENT YOUNG: Does the

Senator yield?

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

ACTING PRESIDENT YOUNG: Senator Peralta, Senator Martins yields.

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

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

ACTING PRESIDENT YOUNG: Thank you, Senator Peralta.

Senator Martins.

SENATOR MARTINS: Aware of which claims, Madam President?

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

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

ACTING PRESIDENT YOUNG: Senator

Martins.

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

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

ACTING PRESIDENT YOUNG: Thank you, Senator Martins.

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

Senator Peralta.

SENATOR PERALTA: Would the sponsor yield for another question?

ACTING PRESIDENT YOUNG: Senator Martins, do you yield?

SENATOR MARTINS: Be happy to. Thank you.

ACTING PRESIDENT YOUNG: The Senator yields.

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

ACTING PRESIDENT YOUNG: Thank you, Senator Peralta.

Senator Martins.

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

ACTING PRESIDENT YOUNG: Senator Peralta.

SENATOR PERALTA: So --

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

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

ACTING PRESIDENT YOUNG: Would the

Senator yield?

SENATOR MARTINS: Absolutely. Thank you.

ACTING PRESIDENT YOUNG: Go ahead, Senator Peralta.

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

ACTING PRESIDENT YOUNG: Thank you, Senator Peralta.

Senator Martins.

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

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

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

ACTING PRESIDENT YOUNG: Thank you, Senator Martins.

Senator Peralta.

SENATOR PERALTA: Would the sponsor continue to yield?

ACTING PRESIDENT YOUNG: Do you yield?

SENATOR MARTINS: Of course. Thank you.

ACTING PRESIDENT YOUNG: The Senator yields.

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

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

General was correct.

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

ACTING PRESIDENT YOUNG: Thank you, Senator Peralta.

Senator Martins.

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

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

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

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

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

ACTING PRESIDENT YOUNG: Thank you, Senator Martins.

Senator Peralta.

SENATOR PERALTA: Would the Senator continue to yield?

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

ACTING PRESIDENT YOUNG: The Senator yields, Senator Peralta.

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

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

Is that the case?

ACTING PRESIDENT YOUNG: Thank you, Senator Peralta.

Senator Martins.

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

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

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

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

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

Thank you, Madam President.

ACTING PRESIDENT YOUNG: Thank you, Senator Martins.

SENATOR PERALTA: So --

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

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

ACTING PRESIDENT YOUNG: Senator Martins, do you yield?

SENATOR MARTINS: Be happy to, thank you.

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

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

SENATOR MARTINS: Madam President, through you.

ACTING PRESIDENT YOUNG: Senator Martins.

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

would be affected by this bill.

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

ACTING PRESIDENT YOUNG: Thank you, Senator Martins.

SENATOR MARTINS: Thank you.

ACTING PRESIDENT YOUNG: Senator Peralta.

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

ACTING PRESIDENT YOUNG: Do you yield, Senator Martins?

SENATOR MARTINS: Be happy to. Thank you.

ACTING PRESIDENT YOUNG: Senator Martins yields, Senator Peralta.

SENATOR PERALTA: So under this

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

ACTING PRESIDENT YOUNG: Thank you, Senator Peralta.

Senator Martins.

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

ACTING PRESIDENT YOUNG: Thank you, Senator Martins.

Senator Peralta.

SENATOR PERALTA: If the sponsor will continue to yield.

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

SENATOR MARTINS: Of course.

Thank you.

ACTING PRESIDENT YOUNG: The Senator yields.

SENATOR PERALTA: Thank you.

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

ACTING PRESIDENT YOUNG: Thank you, Senator Peralta.

Senator Martins.

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

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

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

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

ACTING PRESIDENT YOUNG: Thank you, Senator Martins.

Senator Peralta.

SENATOR PERALTA: Would the sponsor continue to yield?

ACTING PRESIDENT YOUNG: Senator, do you yield?

SENATOR MARTINS: I do.

ACTING PRESIDENT YOUNG: The Senator yields.

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

ACTING PRESIDENT YOUNG: Thank you, Senator Peralta.

Senator Martins.

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

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

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

Thank you, Madam President.

ACTING PRESIDENT YOUNG: Thank you, Senator Martins.

Senator Peralta.

SENATOR PERALTA: If the sponsor would continue to yield.

ACTING PRESIDENT YOUNG: Do you yield, Senator?

SENATOR MARTINS: I do. Thank you.

ACTING PRESIDENT YOUNG: The Senator yields.

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

ACTING PRESIDENT YOUNG: Senator Martins.

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

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

the retroactivity.

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

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

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

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

ACTING PRESIDENT YOUNG: Thank you, Senator Martins.

Senator Peralta.

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

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

SENATOR MARTINS: Absolutely. Thank you.

ACTING PRESIDENT YOUNG: Senator Peralta.

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

ACTING PRESIDENT YOUNG: Senator Martins.

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

The World Yacht decision was -- the

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

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

ACTING PRESIDENT YOUNG: Thank you, Senator Martins.

Senator Peralta.

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

ACTING PRESIDENT YOUNG: Senator Martins, do you yield?

SENATOR MARTINS: Absolutely.

ACTING PRESIDENT YOUNG: The Senator yields.

SENATOR PERALTA: So in essence

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

ACTING PRESIDENT YOUNG: Senator Martins.

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

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

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

ACTING PRESIDENT YOUNG: Thank

you, Senator Martins.

Senator Peralta.

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

ACTING PRESIDENT YOUNG: Will the Senator yield?

SENATOR MARTINS: Sure. Absolutely.

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

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

ACTING PRESIDENT YOUNG: Thank you, Senator Peralta.

Senator Martins.

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

So the extent that there is no

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

ACTING PRESIDENT YOUNG: Thank you, Senator Martins.

Senator Peralta.

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

ACTING PRESIDENT YOUNG: Does the sponsor yield?

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

ACTING PRESIDENT YOUNG: Senator Martins yields.

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

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

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

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

ACTING PRESIDENT YOUNG: Thank you, Senator Peralta.

Senator Martins.

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

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

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

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

Thank you, Madam President.

ACTING PRESIDENT YOUNG: Thank you, Senator Martins.

Senator Peralta.

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

ACTING PRESIDENT YOUNG: Do you yield?

SENATOR MARTINS: I do. Thank you.

ACTING PRESIDENT YOUNG: The Senator yields.

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

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

ACTING PRESIDENT YOUNG: Thank you, Senator Peralta.

Senator Martins.

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

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

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

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

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

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

ACTING PRESIDENT YOUNG: Thank you, Senator Martins.

Senator Peralta.

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

ACTING PRESIDENT YOUNG: Senator, do you yield?

SENATOR MARTINS: Sure.

ACTING PRESIDENT YOUNG: The Senator yields.

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

ACTING PRESIDENT YOUNG: Thank you, Senator Peralta.

Senator Martins.

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

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

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

ACTING PRESIDENT YOUNG: Thank you, Senator Martins.

Senator Peralta.

SENATOR PERALTA: Yes, if the

sponsor will yield for another question.

ACTING PRESIDENT YOUNG: Senator Martins, do you yield?

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

ACTING PRESIDENT YOUNG: Senator Martins yields, Senator Peralta.

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

ACTING PRESIDENT YOUNG: Senator Peralta, thank you.

Senator Martins.

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

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

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

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

ACTING PRESIDENT YOUNG: Thank you, Senator Martins.

Senator Peralta.

SENATOR PERALTA: On the bill.

ACTING PRESIDENT YOUNG: Thank you, Senator Martins.

Senator Peralta on the bill.

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

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

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

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

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

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

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

Thank you, Madam President.

ACTING PRESIDENT YOUNG: Thank you, Senator Peralta.

Is there any other Senator wishing to be heard?

Senator Krueger.

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

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

SENATOR MARTINS: Absolutely. Thank you.

ACTING PRESIDENT YOUNG: The Senator yields, Senator Krueger.

SENATOR KRUEGER: Thank you.

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

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

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

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

ACTING PRESIDENT YOUNG: Thank you, Senator Krueger.

Senator Martins.

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

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

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

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

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

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

ACTING PRESIDENT YOUNG: Thank you, Senator Martins.

Senator Krueger.

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

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

SENATOR MARTINS: Be happy to, thank you.

ACTING PRESIDENT YOUNG: Senator Martins yields.

SENATOR KRUEGER: Thank you.

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

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

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

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

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

So thank you.

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

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

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

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

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

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

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

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

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

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

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

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

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

ACTING PRESIDENT YOUNG: Thank you, Senator Krueger.

Is there any other Senator wishing to be heard?

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

Read the last section.

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

ACTING PRESIDENT YOUNG: Call the

roll.

(The Secretary called the roll.)

ACTING PRESIDENT YOUNG: Senator Smith to explain his vote.

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

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

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

I'm voting no, Madam President.

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

Senator Smith will be recorded in the negative.

Senator Golden.

SENATOR GOLDEN: Madam President,

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

ACTING PRESIDENT YOUNG: So moved.

SENATOR GOLDEN: Abstained.

SENATOR PARKER: Objection.

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

Senator Parker.

SENATOR PARKER: I object to the abstention.

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

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

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

ACTING PRESIDENT YOUNG: Thank you, Senator Golden.

As you just explained, you do have

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

Announce the results.

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

Senator Golden abstaining.

Senator Espaillat absent.

Ayes, 38. Nays, 21.

ACTING PRESIDENT YOUNG: The bill is passed.

The Secretary will read.

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

SENATOR BRESLIN: Explanation, please.

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

SENATOR MAZIARZ: Thank you very

much, Madam President.

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

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

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

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

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

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

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

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

Thank you, Madam President.

ACTING PRESIDENT YOUNG: Thank you, Senator Maziarz.

Senator Krueger.

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

SENATOR MAZIARZ: Gladly, Madam President.

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

SENATOR KRUEGER: Thank you.

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

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

SENATOR MAZIARZ: That is correct.

ACTING PRESIDENT YOUNG: Thank you, Senator Krueger.

Senator Maziarz.

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

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

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

Senator Krueger.

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

ACTING PRESIDENT YOUNG: Senator Maziarz, do you yield?

SENATOR MAZIARZ: Certainly. Certainly, Madam President.

ACTING PRESIDENT YOUNG: Go ahead, Senator Krueger.

SENATOR KRUEGER: Thank you, Madam President.

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

ACTING PRESIDENT YOUNG: Thank you, Senator Krueger.

Senator Maziarz.

SENATOR MAZIARZ: Thank you very much, Madam President.

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

ACTING PRESIDENT YOUNG: Thank you, Senator Maziarz.

Senator Krueger.

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

ACTING PRESIDENT YOUNG: Senator Maziarz, would you yield?

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

ACTING PRESIDENT YOUNG: The Senator yields.

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

ACTING PRESIDENT YOUNG: Thank you, Senator Krueger.

Senator Maziarz.

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

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

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

Senator Krueger.

SENATOR KRUEGER: Thank you.

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

ACTING PRESIDENT YOUNG: Senator, would you yield?

SENATOR MAZIARZ: I do. I do.

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

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

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

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

Senator Maziarz.

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

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

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

ACTING PRESIDENT YOUNG: Thank you, Senator Maziarz.

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

ACTING PRESIDENT YOUNG: Please continue, Senator Maziarz.

SENATOR MAZIARZ: I'm sorry.

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

(Laughter.)

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

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

SENATOR KRUEGER: No, that's all

right, Senator. I appreciate it.

ACTING PRESIDENT YOUNG: Thank you, Senator Maziarz.

Senator Krueger.

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

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

Senator Krueger on the bill.

SENATOR KRUEGER: Thank you.

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

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

the power to regulate --

ACTING PRESIDENT YOUNG: Excuse me.

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

Please continue.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ACTING PRESIDENT YOUNG: Thank you, Senator Krueger.

Senator Squadron.

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

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

SENATOR MAZIARZ: Certainly.

ACTING PRESIDENT YOUNG: The Senator yields.

SENATOR SQUADRON: Thank you very much.

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

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

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

Senator Maziarz.

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

ACTING PRESIDENT YOUNG: Thank you, Senator Maziarz.

Senator Squadron.

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

ACTING PRESIDENT YOUNG: Senator Maziarz, do you yield?

SENATOR MAZIARZ: Yes.

ACTING PRESIDENT YOUNG: Senator Maziarz yields.

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

ACTING PRESIDENT YOUNG: Senator Squadron, thank you.

Senator Maziarz.

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

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

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

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

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

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

ACTING PRESIDENT YOUNG: Thank you, Senator Maziarz.

Senator Squadron, would you like to continue?

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

ACTING PRESIDENT YOUNG: Senator Maziarz, do you yield?

SENATOR MAZIARZ: Yes.

ACTING PRESIDENT YOUNG: The Senator yields.

SENATOR SQUADRON: Through you.

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

ACTING PRESIDENT YOUNG: Thank you, Senator Squadron.

Senator Maziarz.

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

ACTING PRESIDENT YOUNG: Thank you, Senator Maziarz.

Senator Squadron.

SENATOR SQUADRON: If the sponsor would continue to yield.

ACTING PRESIDENT YOUNG: Do you yield, Senator Maziarz?

SENATOR MAZIARZ: Certainly.

ACTING PRESIDENT YOUNG: The Senator yields.

SENATOR SQUADRON: Thank you, Madam President.

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

ACTING PRESIDENT YOUNG: Thank you, Senator Squadron.

Senator Maziarz.

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

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

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

ACTING PRESIDENT YOUNG: Thank you, Senator Maziarz.

Senator Squadron.

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

SENATOR MAZIARZ: Yes, Madam President.

ACTING PRESIDENT YOUNG: Senator Maziarz yields, Senator Squadron.

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

ACTING PRESIDENT YOUNG: Thank you, Senator Squadron.

Senator Maziarz.

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

ACTING PRESIDENT YOUNG: Thank you, Senator Maziarz.

Senator Squadron.

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

SENATOR MAZIARZ: I do, Madam President.

ACTING PRESIDENT YOUNG: Senator Maziarz yields, Senator Squadron.

SENATOR SQUADRON: Thank you.

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

ACTING PRESIDENT YOUNG: Thank

you, Senator Squadron.

Senator Maziarz.

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

SENATOR SQUADRON: Through you --

ACTING PRESIDENT YOUNG: Thank you, Senator Maziarz.

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

SENATOR SQUADRON: Please.

ACTING PRESIDENT YOUNG: Senator Maziarz?

SENATOR MAZIARZ: Yes, Madam President.

ACTING PRESIDENT YOUNG: Proceed.

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

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

ACTING PRESIDENT YOUNG: Thank you, Senator Squadron.

Senator Maziarz.

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

ACTING PRESIDENT YOUNG: Thank you, Senator Maziarz.

Senator Squadron.

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

On the bill, Madam President.

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

Senator Squadron on the bill.

SENATOR SQUADRON: Thank you very much.

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

However, the fact is this bill

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I will vote no, Madam President.

ACTING PRESIDENT YOUNG: Thank you, Senator Squadron.

Senator Parker.

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

ACTING PRESIDENT YOUNG: Senator Parker on the bill.

SENATOR PARKER: Thank you, Madam President.

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

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

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

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

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

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

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

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

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

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

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

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

ACTING PRESIDENT YOUNG: Thank you, Senator Parker.

Any other Senator wishing to be heard?

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

Read the last section.

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

ACTING PRESIDENT YOUNG: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT YOUNG: Senator Squadron to explain his vote.

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

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

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

Announce the results.

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

Absent from voting: Senator

Espaillat.

Ayes, 42. Nays, 18.

ACTING PRESIDENT YOUNG: The bill is passed.

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

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

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

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

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

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