NEW YORK STATE SENATE

THE STENOGRAPHIC RECORD

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3:03 p.m.

REGULAR SESSION

SENATOR JOSEPH GRIFFO, Acting President

FRANCIS W. PATIENCE, Secretary

P R O C E E D I N G S

ACTING PRESIDENT GRIFFO: The Senate will come to order.

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

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

ACTING PRESIDENT GRIFFO: In the absence of clergy, I ask everyone present to please bow their heads in a moment of silent prayer and/or reflection.

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

ACTING PRESIDENT GRIFFO: The reading of the Journal.

THE SECRETARY: In Senate, Sunday, March 11th, the Senate met pursuant to adjournment. The Journal of Saturday, March 10th, was read and approved. On motion, Senate adjourned.

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

Presentation of petitions.

Messages from the Assembly.

Messages from the Governor.

Reports of standing committees.

Reports of select committees.

Communications and reports from state officers.

Motions and resolutions.

Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes, Mr. President. On page 21, I offer the following amendments to Calendar 207, Senate Print 2504, by Senator Helming, and ask that said bill retain its place on the Third Reading Calendar.

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

SENATOR DeFRANCISCO: On page 24, I offer the following amendments to Calendar 251, Senate Print 6544, by Senator Akshar, and ask that said bill retain its place on the Third Reading Calendar.

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

SENATOR DeFRANCISCO: On page 34, I

offer the following amendments to Calendar 379, Senate Print 7439, by Senator Little, and ask that said bill retain its place on the Third Reading Calendar.

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

SENATOR DeFRANCISCO: I move that the following bill be discharged from its respective committee and be recommitted with instructions to strike the enacting clause. That's Senate Bill Number 5850, by Senator Bonacic.

ACTING PRESIDENT GRIFFO: So ordered.

SENATOR DeFRANCISCO: I wish to call up Senator Little's bill, Print 2253A, recalled from the Assembly, which is now at the desk.

ACTING PRESIDENT GRIFFO: The Secretary will read.

THE SECRETARY: Calendar Number 352, by Senator Little, Senate Print 2253A, an act to amend the Private Housing Finance Law.

SENATOR DeFRANCISCO: I now move to

reconsider the vote by which the bill was passed.

ACTING PRESIDENT GRIFFO: Call the roll on reconsideration.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 40.

SENATOR DeFRANCISCO: I now offer the following amendments.

ACTING PRESIDENT GRIFFO: The amendments are received.

SENATOR DeFRANCISCO: Would you please recognize Senator Gianaris.

ACTING PRESIDENT GRIFFO: Senator Gianaris.

SENATOR GIANARIS: Mr. President, on behalf of Senator Breslin, I move the following bill be discharged from its respective committee and be recommitted with instructions to strike the enacting clause: Senate Bill 7889.

ACTING PRESIDENT GRIFFO: It is so ordered.

Senator DeFrancisco.

SENATOR DeFRANCISCO: Can we take up previously adopted Resolution 3104, by myself, read the title only, and call on me to speak briefly, please.

ACTING PRESIDENT GRIFFO: The Secretary will read.

THE SECRETARY: Legislative Resolution Number 3104, by Senator DeFrancisco, congratulating the Westhill Girls Varsity Soccer Team upon the occasion of capturing the New York State Public High School Athletic Association Class B championship.

ACTING PRESIDENT GRIFFO: Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes, thank you, Mr. President.

The Westhill Girls are here, the soccer team. I think this was your fifth state championship, is that correct? Fifth. That's not bad. And you won it again this year, which was an incredible achievement.

I guess the final game went 110 minutes and lasted almost three hours? That shows you're in pretty good condition and you're able to withstand that kind of pressure by -- the co-champion was Rochester Aquinas High School, is that basically what happened? All right, then we got this correct. So when you get the resolution, you will have everything correct in

it.

But the main thing I want to talk about, and I say this every time -- so bear with me, members of the Senate -- because I think it's important to reiterate: You've accomplished something that very few do. And when you're old like me, you'll remember this championship as if it happened yesterday. The only difference is you will remember that you scored more points and that you made more defensive stops and that your championship game was even better than it actually was.

Because with time, you'll remember things are even greater. And that's always fun, especially when your teammates know what the truth is and they can also banter with you about that championship.

But the most important thing is learning the team leadership, learning the importance of being prepared, learning the importance of how you work together. And I'm really proud of this team for everything they've done.

So congratulations on your championship. I hope the pizza was okay. And I

hope you saved me a piece, because I wasn't able to get there. And most of all, I hope you enjoy your visit here to Albany, and much success in the future, both in athletics and, more importantly, in academics.

So congratulations to the Westhill Girls Soccer Team.

ACTING PRESIDENT GRIFFO: Thank you, Senator DeFrancisco.

The resolution was adopted on January 17th of 2018.

Senator DeFrancisco has opened the resolution for cosponsorship. If a member would like to be a cosponsor, notify the desk.

At this time we'd like to ask the young ladies from Westhill to please rise and be recognized. We congratulate you on that extraordinary season and your championship. We extend the courtesies of the house and wish you the best of luck.

(Standing ovation.)

ACTING PRESIDENT GRIFFO: Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes, can we now take up the noncontroversial reading of the

calendar.

ACTING PRESIDENT GRIFFO: The Secretary will read.

THE SECRETARY: Calendar Number 107, by Senator Felder, Senate Print 2104A, an act to amend the Education Law.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 131, by Senator Serino, Senate Print 2167, an act to amend the Family Court Act.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 373, by Senator Peralta, Senate Print 6196, an act to amend the Public Health Law.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 383, by Senator Ritchie, Senate Print 3022A, an act to amend the Public Authorities Law.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the

roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 516, by Senator Croci, Senate Print 6144B, an act to amend the Public Health Law.

ACTING PRESIDENT GRIFFO: Read the last section.

THE SECRETARY: Section 2. This act shall take effect January 1, 2019.

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

THE SECRETARY: Ayes, 50.

ACTING PRESIDENT GRIFFO: The bill is passed.

Senator DeFrancisco, that completes the noncontroversial reading of today's active-list calendar.

SENATOR DeFRANCISCO: It's my understanding that committee assignments have been handed up to the desk.

ACTING PRESIDENT GRIFFO: The

assignments have been handed to the desk and will be recorded in the record.

SENATOR DeFRANCISCO: All right, I'd like to now call an immediate meeting of the Rules Committee in Room 332.

ACTING PRESIDENT GRIFFO: There is an immediate meeting of the Rules Committee in Room 332.

The Senate will temporarily stand at ease.

(Whereupon, the Senate stood at ease at 3:11 p.m.)

(Whereupon, the Senate reconvened at 3:22 p.m.)

ACTING PRESIDENT GRIFFO: The Senate will come to order.

Senator DeFrancisco.

SENATOR DeFRANCISCO: Yes, is there a report of the Rules Committee at the desk?

ACTING PRESIDENT GRIFFO: There is a Committee on Rules report at the desk.

And the Secretary will read.

THE SECRETARY: Senator Flanagan, from the Committee on Rules, reports the following bills:

Senate Print 700B, by Senator Carlucci, an act to amend the Education Law;

And 7848A, by Senator Young, an act to amend the State Finance Law.

Both bills reported direct to third reading.

ACTING PRESIDENT GRIFFO: Senator DeFrancisco, I'll entertain --

SENATOR DeFRANCISCO: Did I move to accept yet?

ACTING PRESIDENT GRIFFO: A motion has now been made to accept the Committee on Rules report. All in favor of accepting the Committee on Rules report signify by saying aye.

(Response of "Aye.")

ACTING PRESIDENT GRIFFO: Opposed?

(No response.)

ACTING PRESIDENT GRIFFO: The Committee on Rules report is accepted and before the house.

Senator DeFrancisco.

SENATOR DeFRANCISCO: We all have before us Supplemental Calendar 17A, and I'd move that we do the noncontroversial reading of that supplemental calendar.

ACTING PRESIDENT GRIFFO: The Secretary will read Supplemental Calendar 17A.

THE SECRETARY: Calendar Number 632, by Senator Carlucci, Senate Print 700B, an act to amend the Education Law.

ACTING PRESIDENT GRIFFO: Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT GRIFFO: Senator Carlucci to explain his vote.

SENATOR CARLUCCI: Thank you, Mr. President.

I want to thank my colleagues for supporting this important legislation.

Unfortunately right now in New York State, kindergarten is not mandated. And we know -- as being Senators, we see the reports, read the studies that show over and over again how important early education is.

Unfortunately, right now there's a handful of districts that don't offer full-day

kindergarten. What this legislation will do is incentivize those districts to convert to full-day kindergarten programs. Right now we have a conversion rate that's 100 percent within the first year. This will stagger that over the next five years to make it enticing for districts to offer full-day kindergarten to all of their students.

You know, I've got two young boys, 4 and 2 years old. And my 4-year-old, you know, he knows how to use my cellphone better than I do. You know? And it shows me that our children do not lack capacity, they only lack opportunity.

So this legislation is going to give them that opportunity. And we know that that will create the foundation upon which all future learning takes place.

So I'm very excited that we're passing this legislation. Let's make sure we give our youngest children every opportunity they need to succeed. I'll be voting in the affirmative and want to thank my colleagues for doing the same.

Thank you, Mr. President.

ACTING PRESIDENT GRIFFO: Senator

Carlucci to be recorded in the affirmative.

Announce the results.

THE SECRETARY: Ayes, 55.

ACTING PRESIDENT GRIFFO: The bill is passed.

THE SECRETARY: Calendar Number 633, by Senator Young, Senate Print 7848A, an act to amend the State Finance Law.

ACTING PRESIDENT GRIFFO: Read the last section.

SENATOR GIANARIS: Lay it aside.

ACTING PRESIDENT GRIFFO: Lay the bill aside.

Senator DeFrancisco, that completes the noncontroversial reading of today's Senate Supplemental Calendar 17A.

SENATOR DeFRANCISCO: Would you take up the controversial reading of the calendar, please.

ACTING PRESIDENT GRIFFO: The Secretary will ring the bell.

The Secretary will read.

THE SECRETARY: Calendar Number 633, by Senator Young, Senate Print 7848A, an act to amend the State Finance Law.

ACTING PRESIDENT GRIFFO: Senator Krueger.

SENATOR KRUEGER: Through you, Mr. President, if the sponsor would please yield to some questions.

ACTING PRESIDENT GRIFFO: Senator Young, do you yield?

SENATOR YOUNG: Yes, Mr. President.

ACTING PRESIDENT GRIFFO: Senator Krueger.

SENATOR KRUEGER: Thank you.

Okay. So it's a complex bill with many different sections in it. I'd like to start with concerns I have about the definitions section. So in the bill it says: "Sexual harassment" means unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature, if such conduct is made either explicitly or implicitly a term or condition of employment, or submission to or rejection of such conduct is used as the basis for employment decisions affecting an individual's employment or such contact has the purpose or effect of unreasonably interfering with an individual's work performance.

So we're reducing the definition of sexual harassment from the Human Rights Law and federal law for behaviors. May I ask why we're putting a limit on the definitions of behavior that basically include it's sexual harassment if this is done on the basis of the sex or gender of the person?

SENATOR YOUNG: Through you, Mr. President. Actually, I'd like to clarify Senator Krueger's question. Because when I first started out to look at this issue last fall, it was shocking to me to find out that there were no existing definitions of sexual harassment in New York State law.

So one of the first orders on the agenda is to make sure that it's clearly defined. Right now in New York State courts, up to 37 percent of sexual harassment in the workplace cases that are brought before the courts are actually dismissed because there isn't any standardized definition.

This definition -- just so you know, Senator Krueger -- actually takes the federal definition through the EEOC and adopts it into state law. By default, many of the courts are

using that now, but it's not enough. And so that's why we are working to define sexual harassment in this particular bill.

ACTING PRESIDENT GRIFFO: Senator Krueger.

SENATOR KRUEGER: Through you, Mr. President. So I'm looking at the federal EEOC language, and I agree with Senator Young that we have an absence of language in our law. She's absolutely right. But her language actually is significantly more limited than the federal Equal Opportunity -- EEOC language.

And it has been raised that any number of scenarios would not fit under this law's proposed definition of sexual harassment, because it doesn't clarify that on the basis of sex. It says "of a sexual nature." And those are actually two very different things in the law.

So I'm curious if we could not go back to the EEOC language.

SENATOR YOUNG: So through you, Mr. President. Frankly, respectfully, I don't believe that Senator Krueger is correct in her assertions that she's making.

And actually I want to clarify another point that you made earlier. This does not override any Human Rights Law that currently exists in New York State, it only enhances it. So when you put it together, we will have some very, very tough laws in relation to the definition of sexual harassment in New York State.

SENATOR KRUEGER: Through you, Mr. President --

ACTING PRESIDENT GRIFFO: Will the sponsor continue to yield?

SENATOR YOUNG: Yes.

ACTING PRESIDENT GRIFFO: The sponsor yields.

SENATOR KRUEGER: Thank you.

So I appreciate the Senator's review. I would simply ask her to check the bill I had introduced, which has definition language that I think does mirror the federal EEOC, and that is not language I find in her bill.

So some examples. If my employer required me to wear high heels and short skirts at work, under federal law it could be defined as a form of harassment because they were making

determinations of my clothes based on my gender or sex.

But it's not at all clear that that would be a violation, because demanding high heels and a short skirt or a low-cut blouse would not necessarily be interpreted as behavior of a sexual nature. So that's one example of a concern of the language in the Senator's bill.

So I guess I would --

ACTING PRESIDENT GRIFFO: Is that a question, Senator Krueger?

SENATOR KRUEGER: Am I reading that incorrectly, Senator?

SENATOR YOUNG: Through you, Mr. President, I'm not sure that I heard a question. So if the Senator could clarify.

ACTING PRESIDENT GRIFFO: Senator Krueger, could you repeat your question.

SENATOR KRUEGER: Certainly. Well, I was using an example --

ACTING PRESIDENT GRIFFO: Order in the house, please.

SENATOR KRUEGER: Thank you, Mr. President.

I was asking -- perhaps I did not

phrase it as a question -- under the Senator's definition of sexual harassment, if my employer required me to wear high heels, short skirts and low-cut blouses, where would that fall as a form of sexual harassment in the language used by the Senator in her bill? Because it talks about "of a sexual nature," as opposed to excluding activities on the basis of sex.

SENATOR YOUNG: Through you, Mr. President, the requirement would have to be of a sexual nature.

SENATOR KRUEGER: Yes. On -- in Senator Young's bill, it would have to be of a sexual nature, I think we agree.

My dilemma is -- on the bill --

ACTING PRESIDENT GRIFFO: Senator Krueger on the bill.

SENATOR KRUEGER: -- that under the EEOC law, it could actually be a demand of you by employer to employee that you dress in a certain way, which would not necessarily meet anyone's standard of a request of a sexual nature.

Another example could be a demand that a female worker massage their boss's hand, back, et cetera. And that no one's defined it as

a -- of a sexual nature, but they are saying "I have a medical need for you to massage me." So because it's only of a sexual nature, would it not fall under sexual harassment in this bill? I think it would not.

But I'm on the bill, it was not a question.

SENATOR YOUNG: So -- however, Mr. President, I'd like to respond to that.

So wearing clothing is --

ACTING PRESIDENT GRIFFO: Without objection, Senator Krueger?

SENATOR KRUEGER: No objection.

ACTING PRESIDENT GRIFFO: Senator Young.

SENATOR YOUNG: Wearing clothing is actually a demand of a sexual nature. So that would be a demand -- if you demanded an employee to wear short skirts, low-cut blouses, and that sort of thing, that would be construed as it being sexual in nature.

SENATOR KRUEGER: Through you, Mr. President.

ACTING PRESIDENT GRIFFO: Senator Krueger.

SENATOR KRUEGER: On the bill.

ACTING PRESIDENT GRIFFO: Senator Krueger on the bill.

SENATOR KRUEGER: I think the Senator and I just disagree about how a court might interpret "of a sexual nature." And I think the reason why I would urge different language is because the federal EEOC law does make explicit the categories.

And I am fearful that we would open ourselves up to confusion or not being successful in a court case under this language. Even though I agree with my colleague, the sponsor, that we don't have any definitions now. But I think our goal would be to try to get the best definitions that we could, and we have some decent ones in federal law.

Through you, Mr. President, if the Senator would continue to yield.

ACTING PRESIDENT GRIFFO: Senator Young, do you yield?

SENATOR YOUNG: Sure.

ACTING PRESIDENT GRIFFO: The Senator yields.

SENATOR KRUEGER: Okay. One

moment, please.

In the Senator's bill it includes eliminating mandatory arbitration clauses; is that correct?

SENATOR YOUNG: Through you, Mr. President, yes it does.

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

ACTING PRESIDENT GRIFFO: Senator Krueger on the bill.

SENATOR KRUEGER: My understanding is that the Federal Arbitration Act precludes us as a state from prohibiting MACs outright. So I'm wondering how we can balance a federal supersession or preclusion from passing this as law in New York State.

ACTING PRESIDENT GRIFFO: Senator Krueger, is that a question or --

SENATOR KRUEGER: Yes, it is.

ACTING PRESIDENT GRIFFO: Senator Young, do you yield to that question?

SENATOR YOUNG: Yes.

ACTING PRESIDENT GRIFFO: The Senator yields.

Can you repeat that question,

Senator Krueger?

SENATOR KRUEGER: Do you need me to repeat it?

ACTING PRESIDENT GRIFFO: Senator Young.

SENATOR YOUNG: Through you, Mr. President. Actually, under the federal statute there is leeway that's provided. So our bill that we have before us now I believe would be allowed.

SENATOR KRUEGER: I'm sorry, can the sponsor cite the leeway in the federal standard?

SENATOR YOUNG: Well, through you, Mr. President, we're talking about private arbitration here. So that's the standard and the difference.

SENATOR KRUEGER: Through you, Mr. President, if I might. So -- it's a question. So I am reading --

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

SENATOR YOUNG: Always good when we get a question.

SENATOR KRUEGER: Thank you.

ACTING PRESIDENT GRIFFO: Senator Krueger.

SENATOR KRUEGER: Okay. Contracts hereafter awarded by the state or any state agency shall not be let, granted or awarded to any contractor where the contractor requires employees or prospective employees to enter into written contracts if such contract -- and it goes -- you know, it's too long a question. Let me rephrase.

I believe that the sponsor is correct that there is some leeway in the federal law, but I think that we would be better off being very clear in our law which specific scenarios we could require exempting or eliminating mandatory arbitration clauses versus not, because I think it again opens us up to being challenged by federal law and the FAA, particularly as it applies to contractors and private entities in New York.

Because this bill, attempting to do many things in one bill, applies both to what happens in the Legislature and what happens in private business.

SENATOR YOUNG: Through you,

Mr. President, if I could --

ACTING PRESIDENT GRIFFO: Senator Young.

SENATOR YOUNG: -- if I could just respond to Senator Krueger's points that she's making.

So this provision of the bill actually gets at the serial sexual predators who have been preying on women not only in New York State but across the country. And the way they've been able to get away with it -- so it's people like Harvey Weinstein and people of that ilk -- is because they have mandatory arbitration regarding sexual harassment.

So that when an employee becomes part of a company, then they are required to sign these agreements for mandatory arbitration. And as a result of that, they've gotten away with this over and over and over again.

That's why I feel very compelled, very strong about this, that we need to do something about mandatory arbitration because too many serial sexual predators have gotten away with bad behavior over the years.

SENATOR KRUEGER: Through you,

Mr. President, on the bill.

ACTING PRESIDENT GRIFFO: Senator Krueger on the bill.

SENATOR KRUEGER: I couldn't agree more with the sponsor. We can't let serial predators continue to get away with things. And I think that would go to the nondisclosure section of the bill, not the mandatory arbitration section of the bill.

So I agree with the sponsor about coming down hard on serial predators. And I think that the section that most applies there is the ensuring that there are not nondisclosure agreements where wealthy sexual predators can buy themselves out of these activities over and over again.

Rather, I was simply trying to point out that the Federal Arbitration Act puts limits on what we can and cannot do on eliminating mandatory arbitration clauses.

If I could continue with questions, through you, Mr. President.

ACTING PRESIDENT GRIFFO: Senator Young, do you yield?

SENATOR YOUNG: Certainly.

ACTING PRESIDENT GRIFFO: The Senator yields.

SENATOR KRUEGER: If the sponsor could explain to me who would be responsible for the investigations when it came to legislative and executive employees through this bill.

SENATOR YOUNG: Okay, let me find that.

Okay, through you, Mr. President, there's several ways in which a victim can report different behavior. In the Legislature, an employee would be able to go to JCOPE, and we actually establish a unit within JCOPE to investigate these claims. And also they would be able to go to the Legislative Ethics Commission -- which they can now, but we want to make that even stronger.

SENATOR KRUEGER: Through you, Mr. President. So it's an either/or if one says yes, the other says no, can you go to both? Under what circumstances would you know where to go?

SENATOR YOUNG: So -- well, we want to make sure that employees know that they have several venues in order to have justice served.

So they could go to the Legislative Ethics Commission -- and by the way, the Legislative Ethics Commission could actually turn a case over to the investigative unit at JCOPE, but that doesn't preclude them from going to JCOPE first. So there are two avenues where employees can go. We want to make sure that it's as wide open as possible so that people can have their voices heard.

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

SENATOR YOUNG: Yes.

ACTING PRESIDENT GRIFFO: The sponsor yields.

SENATOR KRUEGER: So if the employee goes to JCOPE, is there a section of this law that expands the definitions of law that JCOPE can investigate beyond the Public Officers Law? And where is that in the bill?

SENATOR YOUNG: Through you, Mr. President, it's not necessary, because JCOPE already has the ability to investigate such complaints. So there's nothing in the law that

actually expands it, because it already exists. Other than to say that JCOPE will have a specialized unit specifically to deal with sexual harassment claims.

SENATOR KRUEGER: Through you, Mr. President, just so I make sure I understood correctly. The sponsor believes that the Public Officers Law, which is the one law JCOPE has the authority to work under, already has adequate language within it for completing investigations of sexual harassment?

SENATOR YOUNG: Through you, Mr. President, yes. In a word, it's yes.

And by the way, however, there have been other investigations already conducted by JCOPE regarding sexual harassment.

SENATOR KRUEGER: Through you, Mr. President. Could, under this bill, you have parallel investigations going on by the State Ethics Commission and JCOPE at the same time, looking at issues under different statutes?

SENATOR YOUNG: Through you, Mr. President, actually the Legislative Ethics Commission and JCOPE communicate on a regular basis. So if there were such a claim that was

made, the Legislative Ethics Commission would be dealing directly with JCOPE, and vice versa.

SENATOR KRUEGER: Through you, Mr. President, there is a section of the bill -- and I'm just going to see if I can find the exact section -- that says the investigators may interview the complainant and the accused, but actually allows an option where they don't.

Was that the intention, that someone brings a complaint and they don't actually have to do an interview of the person complaining?

And I'm sorry, just to clarify, on Bill 7848, page 13 -- at least in the printout -- paragraph 3, sentence C -- or B: "An interview of the complainant, where necessary." C: "An interview of the alleged harasser, where necessary."

SENATOR YOUNG: Through you, Mr. President. I believe that this gives flexibility to the system because sometimes a victim, for example, may not want to be interviewed. And so they can put forward their complaint in a number of ways. It could be through a sworn statement, it could be through a written statement. And so there are options

available.

But if there's a complaint made, it will be investigated.

SENATOR KRUEGER: Through you, Mr. President, on the bill.

ACTING PRESIDENT GRIFFO: Senator Krueger on the bill.

SENATOR KRUEGER: Actually, this is one of the core concerns I have about this piece of legislation, that it actually gives the investigators the opportunity to say, No, we're not even taking down your information, we're not interviewing you, we're not starting the process of investigation.

I don't actually think our investigators ought to have that option if someone is bringing a complaint to them.

SENATOR YOUNG: Through you, Mr. President. I would just say that that's kind of a reach to come to that conclusion on this legislation. I think it's clear that there's an investigative unit that would be set up at JCOPE that victims would be able to report their concerns, not only to JCOPE but to the Legislative Ethics Commission.

So I don't believe that what Senator Krueger is portraying is actually fact.

SENATOR KRUEGER: Through you, Mr. President, I guess that was on the bill, that wasn't a question.

ACTING PRESIDENT GRIFFO: Correct.

SENATOR KRUEGER: Thank you. So on the bill.

ACTING PRESIDENT GRIFFO: Senator Krueger now on the bill.

SENATOR KRUEGER: Based on discussions and reviews of people who have actually brought harassment complaints through the JCOPE process and through the Legislative Ethics Committee, I have to disagree -- that there are people that have refused to be interviewed, harassers have not been interviewed.

And in fact, the pattern and record in this state is that we aren't doing it right, which is I think part of the reason why we're struggling to come up with the right answer here today between Senator Young's bill, which has excellent sections but some that I feel are mistakes; Senate Democrats, who submitted a number of bills; and the Governor's proposal,

which also I think has some flaws in it.

We want to get this right, but we want to get it right based on the experiences we've already learned from here in Albany.

So again, I will emphasize why I think it's so important that we establish formal investigative procedures that are standardized, that everybody knows, that you can't be rejected when you make a complaint, that there are actual protocols.

I don't believe the Public Officers Law is nearly strong enough in what you could look at to make a finding of sexual harassment. This bill's definitions limit further what categories could in fact be brought as sexual harassment compared to what the federal EEOC already does.

I think it's also critical that we establish, because we talk about it in this legislation, clear standards of who is doing the trainings, what the trainings are, that there is a requirement for reporting by employers who have had issues brought to them, which there are not in this legislation.

It tries to do many things. I want

to give Senator Young an enormous amount of credit for trying to put together a bill that does an enormous number of things, looking at private sector, public sector, contractors. My dilemma is when you go through the details of the bill, you find that many of the things that -- at least speaking for myself, in consultation with people who have been victims and have gone through the process here -- it leaves out too many of the critical issues that we want to make sure are addressed. I believe that Senator Young wants to make sure they're addressed. I do not question the intent but only the outcome as far as the text of sections of this bill.

I'm also concerned that there's not clarification about what happens if you're going through an internal legislative process but might also end up going into a civil or criminal court situation. I think it would be an excellent recommendation that the statute clarify that statute of limitations were tolled or held while you're going through an internal process so you don't find yourself limited in your legal rights -- because I don't think anybody does want to limit people's legal rights -- so that you

don't use up your time during an extended internal process only to learn that now you've gone past deadlines for heading down a civil or criminal path on cases of harassment.

I would also like to just bring up that people who have gone through the JCOPE process find that it is very inadequate to complete sexual harassment cases. And that yes, JCOPE has been used in a number of cases, but they only have the Public Officers Law to use as the basis. And there is perhaps two sentences in the entire Public Officers Law that might be applicable to sexual harassment law.

So sincerely, I think we can do better by having an explicit statute and more explicit detail about who's investigating and what laws they can use to find people to have violated sexual harassment law in New York State.

I'm also a bit concerned about the determination of paying out or not paying out on sexual harassment cases. I understand that the public at large does not wish its taxpayer dollars to be used to pay off people who have been sexually harassed. Particularly if they're working for the government, it would be a

government cost.

But I also think we want to make sure we come up with a plan that does not leave victims with any economic holes for themselves after they have no doubt lost their job, left their job, been retaliated against in their employment. There are good reasons why there are models for payment, as complicated as they are for the state government. And I do believe that the harasser found guilty should be held accountable for making the payments. But I also don't think that the victim should be left without any mechanism to get paid, which might be the case.

And finally, the State of New York has a responsibility for people who work for it. And they should not -- the state should not be let off the hook either, which is why it is so critical that we have quality training and protocols, that we have a clear and direct way for people who have complaints to file those complaints to get heard, to make sure that the investigations are handled appropriately and in a standard way with clear information about what people can expect are their rights, and without

fearing retribution.

Again, Senator Young, I think there are so many important things in this bill. And I know that we both want the State of New York to come out with the right answer on behalf of anyone who works for us, anyone who's an employee in the State of New York for any kind of private business, and particularly contractors using state money. But there are too many holes in this bill for me to feel comfortable with it as an outcome.

Now, the good news is this is right now a one-house bill. It stands separate and apart from the Governor's proposal in his budget, and it is stronger in certain cases than the Governor's proposal. I don't think there's an Assembly proposal as of yet -- if I'm wrong, someone can clarify it for me. So I think it was worth the time on the floor today -- not everyone may agree -- for me for lay out a number of the critical concerns I have, because I know both sides of the aisle want to get this right. I know we do. And I think there's opportunity and time to address the continuing concerns on this bill.

I can see urging people to vote yes or no on this bill. I will vote no today to just register the concerns I raised here and to hope that we can fix problems and vacuums that are still not addressed within this bill. But I look forward to being able to work with Senator Young to get us the best possible resolution we can for New York.

Thank you, Mr. President.

ACTING PRESIDENT GRIFFO: Thank you, Senator Krueger.

Senator Hoylman.

SENATOR HOYLMAN: Thank you, Mr. President. Would the sponsor yield to a couple of questions?

ACTING PRESIDENT GRIFFO: Senator Young, do you yield?

SENATOR YOUNG: Sure. Yes.

ACTING PRESIDENT GRIFFO: The Senator yields.

SENATOR HOYLMAN: Through you, Mr. President.

First let me say I appreciate the sponsor's efforts. It's a long overdue issue, and I'm grateful for the recommendations put

forward.

My question, though, regards public accountability and whether, in the bill that's before us, is there any requirement that the public be informed about the particulars of any settlements struck as a result of this legislation?

SENATOR YOUNG: Through you, Mr. President. Actually, generally, Senator Hoylman, it prohibits secret settlements, except in the cases where perhaps a victim doesn't want to have that disclosed.

SENATOR HOYLMAN: Through you, Mr. President, would the sponsor continue to yield?

ACTING PRESIDENT GRIFFO: The sponsor yields.

SENATOR YOUNG: Yes.

SENATOR HOYLMAN: So just to be clear, I understand that settlements with the victim or survivor's consent should remain confidential. But shouldn't this body and the public generally have a sense as to whether there are sexual harassment settlements being made -- perhaps not identifying any of the parties,

should they of course choose not to be identified -- but for our own accountability?

SENATOR YOUNG: Well, through you, Mr. President, as I said, this bill actually covers secret settlements. It's included as a provision in the bill. Generally it would preclude having secret settlements. And that's been in the legislation that I've sponsored since, you know, several months ago. And this actually enhances that entire concept.

So I will say the only secret settlement that would, you know, not be allowed {sic} would be if the victim feels very concerned about having his or her identity revealed.

SENATOR HOYLMAN: Will the sponsor continue to yield?

SENATOR YOUNG: Sure.

ACTING PRESIDENT GRIFFO: The sponsor yields.

SENATOR HOYLMAN: Through you, Mr. President. So again, if there are settlements, we don't want to name the parties. But are you saying that there will be no reporting mechanism to the public or to this body in terms of what settlements were made, let's

just say the amount of the settlement and the year in which they occurred, so that the public and the Legislature have a sense as to how big this problem is or if we're actually making progress, as I know is your intention with this legislation.

SENATOR YOUNG: You know, I -- through you, Mr. President, there just was a report that came out regarding settlements in state governments. I think it was about $11 million over the past several years have been given out.

So that information is public already. And it was disclosed when somebody FOILed it.

SENATOR HOYLMAN: Through you, Mr. President, would the sponsor continue to yield?

SENATOR YOUNG: Yes.

ACTING PRESIDENT GRIFFO: The sponsor yields.

SENATOR HOYLMAN: Through you, Mr. President, doesn't the sponsor think that it shouldn't require a news reporter to file a Freedom of Information Law as to whether

settlements have been made for such an issue as serious as sexual harassment in this chamber? Shouldn't the public have access to that as a matter of due course?

SENATOR YOUNG: Through you, Mr. President. I'll repeat it for the third time, Senator. But this legislation actually ends secret settlements.

SENATOR HOYLMAN: Would the sponsor continue to yield?

ACTING PRESIDENT GRIFFO: The sponsor yields.

SENATOR HOYLMAN: I don't disagree that secret settlements are addressed in this bill, and I commend the sponsor for that. I also commend the sponsor for her legislation and transferring the liability from the taxpayer to the offender.

But I will point out that there is no reporting mechanism in the bill for settlements by this chamber or any other entity of government. But does the --

SENATOR YOUNG: Through you, Mr. President, I'll address that.

So actually all expenditures by the

Legislature are reported every single year, I think quarterly. So if there is something, that information is already reported and it's already available.

SENATOR HOYLMAN: On the bill, Mr. President.

ACTING PRESIDENT GRIFFO: Senator Hoylman on the bill.

SENATOR HOYLMAN: I hear the sponsor saying that that information is already readily available, and I respectfully disagree. It took reporters hours and hours of requests of various agencies, including this chamber, Freedom of Information Law requests, a contact with the State Comptroller's office, to try to determine if there were sexual harassment settlements in this chamber or in other branches of state government. And even now, they still don't know, after the reporting, as to the exact nature of these settlements.

I think the public has a right to know. I think that this issue, being as serious as it is, demands that we actually set benchmarks as to how big the problem currently is and whether this bill, with all of its good

intentions, is actually making progress. You only can manage what you measure, and clearly in this instance we need better management.

I would also note that the U.S. Congress, in a bipartisan fashion, recently passed its own sexual harassment reform, which received unanimous support from the House of Representatives. One of the things they required was biennial reporting, an employee survey on employment climate, updates on prevention and training programs, an electronic reporting system for employees, and required reports on awards every six months.

So while there are good things in this bill, I think it does not go far enough in terms of transparency for the public and, frankly, transparency for members of this body.

Thank you, Mr. President.

ACTING PRESIDENT GRIFFO: Senator Young.

SENATOR YOUNG: On the bill, Mr. President.

ACTING PRESIDENT GRIFFO: Senator Young on the bill.

SENATOR YOUNG: First of all, I

want to say thank to my colleagues for your questions today. I appreciate those.

Senator Krueger, your kind words are greatly appreciated also. And I want to say to Senator Krueger, I grew up in a household where my mom is Irish, so she didn't know how to make sauce. So when we had spaghetti, we had to have Prego. And I want to say to you, just like Prego, it's in there.

(Laughter.)

SENATOR YOUNG: So I would look forward to sitting down with you to answer a lot of the questions that you had today, because I believe that the legislation before us right now actually has it in there. Okay? So that's number one.

Number two, thank you, Senator Hoylman, for your questions also. And I want to say to you, fourth time, it ends secret settlements. I have the same concerns that you have regarding secret settlements, and that's why we put that provision in the legislation. So thank you for those questions.

I also want to thank my colleagues Senator Elaine Phillips, Senator Terrence Murphy,

for your leadership. They have been co-prime sponsors on the legislation since day one. They have been fighting hard on women's issues, on issues important to New Yorkers everywhere. So thank you so much for your support on this, as to all of our colleagues.

It's great to be here today to be able to pass this legislation. I just want to talk about it for just a moment.

#MeToo. In recent months, those simple but powerful words have become a rallying cry for women and men who have been victims of sexual harassment. Their courage has awoken America to the stunning magnitude of this problem, abruptly ended the careers of many powerful men and some women, and created an overwhelming demand for change -- not only in our culture, but in our lives.

It began on October 5th of 2017 when the New York Times published a shocking expose outlining three decades -- three decades -- of disturbing sexual harassment allegations against movie mogul Harvey Weinstein. The accusers included actresses, models, and women who worked for his film production company, Miramax. Days

later, actress Rose McGowan broke her silence to accuse Harvey Weinstein of rape, a charge that subsequently was made by several other women in an investigative piece in the New Yorker.

Dozens, dozens of women have since come forward to share their stories of harassment and sexual abuse by Harvey Weinstein. But while this movement actually began with those cases, it did not end there. Emboldened by the courage of fellow victims, women and some men came forward to tell their stories of abuse and harassment. More than 50, 50 high-profile figures from the entertainment, media and business world have been accused and subsequently fired: Matt Lauer, Charlie Rose, Mario Batali, Garrison Keillor, Peter Martins, Kevin Spacey, just to name a few.

And with each new revelation, we experienced a deepening understanding of the pervasiveness of this problem. And while celebrities' stories make the headlines, the reality is that this is a problem that stretches across the board, into every occupation. In fact, a 2016 report by the EEOC Sexual Harassment Task Force estimated that the prevalence of sexual harassment of women in the workplace is

approximately 60 percent. Astounding numbers.

And when the behavior is defined as unwanted sexual attention or sexual coercion at work, with approximately 72 million women in the workforce, that means that approximately 43 million have experienced some form of harassment.

And in some industries, particularly those in lower-wage service industries and hospitality sectors, the incidence of harassment can be markedly worse. In 2015, the EEOC received more sexual harassment claims from workers in the hotel and food service industries than any other sector. And a 2014 report by a restaurant advocacy group, Restaurant Opportunities Center, reported that approximately 90 percent of female restaurant employees have experienced harassment from customers or supervisors. That, my friends, is a tragedy and a scandal.

The stakes for those in these lower-wage occupations is often particularly high, as they often lack other employment options or are living paycheck to paycheck, struggling just to survive, and cannot afford to place their

job or their livelihoods in jeopardy.

Like the Weinstein case, nearly all cases of harassment involve a harasser who has authority, status or power over a victim. That is why few victims of harassment report the behavior. The EEOC estimates that only six to 13 percent of victims ever lodge a formal complaint against their harasser. And for those who do pursue action, as I said earlier, 37 percent are dismissed pretrial.

Behind all these statistics, however, are real people, women and in some cases men whose lives have been impacted by this victimization. From depression and anxiety to feelings of guilt and shame, the emotional toll that harassment exacts on victims can be devastating.

And so that's why we have this legislation before us today. It takes on all of the problems. And I believe very strongly this is the most comprehensive, most sweeping legislation that's before any house in any particular forum, whether it's in the budget proposal or whatever. We have taken the lead, our conference has taken the lead across the

state. We actually identified a lot of the issues, and today we're taking action.

So I am just so thrilled that we are tackling this very important issue. We are impacting the lives of New Yorkers all across the state, not only the rich and famous but also the middle class and lower-wage workers who need to have these protections in place also.

So I want to say to you, all of my colleagues, I urge you to vote yes and I want to thank so many people who have come forward to have their voices heard.

Thank you, Mr. President.

ACTING PRESIDENT GRIFFO: Seeing and hearing no other Senator who wishes to be heard, debate is closed and the Secretary will ring the bell.

Read the last section.

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

ACTING PRESIDENT GRIFFO: Call the roll.

(The Secretary called the roll.)

ACTING PRESIDENT GRIFFO: Senator Phillips to explain her vote.

Order, please.

SENATOR PHILLIPS: Thank you, Mr. President, to explain my vote.

The days when generations of women -- and as Senator Young mentioned, sometimes men -- in the workforce felt forced to do whatever their boss pleased are over. Our society has reached a cultural turning point. Behind the revelations of recent months are real people, victims with real scars -- personal, emotional and financial -- from staying silent for too long.

With this bill, New York is taking a leadership role in protecting women and in many cases men in the workplace. We're telling abusive bosses and coworkers, enough. And when it involves elected officials and those in positions of power and authority in the government, we're going to make sure that taxpayers aren't left paying the bill. We will hold abusers accountable.

As a first-term Senator, I am so proud to stand here today and sponsor this landmark legislation, legislation that represents the most significant sexual harassment

initiatives that our state has seen in decades. But we all owe a great debt of gratitude to the group of courageous women who started this movement, women who will be considered role models to our girls, my three daughters, for generations to come.

But this legislation doesn't just happen. It takes leadership. And that's why I need to thank Senator Young for showing the leadership.

It has truly been an honor to work with you. Your leadership, your tenacity and, most importantly, your hard work on this issue has changed New York State for all employees to come.

So, Mr. President, I will be voting aye.

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

Senator Krueger to explain her vote.

SENATOR KRUEGER: Thank you, Mr. President.

So my colleagues and I share the same frustration with what brought us here today. And the #MeToo movement is an amazing movement

that hopefully will be changing the world for young men and young women from this day forward. It is partly why I want us to get it right. And while it may seem strange that as a feminist who has been outspoken about the problems of sexual harassment in our society for many years, and my own experience talking to people who have been the victims of sexual harassment right here in this legislative body, that I urge us to go further than we have in this bill today.

Like Senator Young, I want us to get it right. I don't want this behavior to continue. I want every person to feel that they can be safe in their work environment, no matter where they work -- but that includes here, for the Legislature and for the Executive Chamber. And it's in those sections that I fear we drop the ball a bit.

Which is why, again, I stand to say I can proudly vote no on this legislation with the strong belief that we can get it better and make sure that when we finally do implement a law in the State of New York, it will apply fairly to everyone and everyone will understand what the rules of the road are, whether an employer,

whether someone who doesn't quite understand the definitions of what is appropriate behavior in the workplace or not, or whether a potential victim.

Because of course the punch line, Mr. President, the whole punch line of #MeToo is to make sure we don't have future victims, that it's not okay, it's not okay for anyone.

Thank you, Mr. President.

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

Senator Hoylman to explain his vote.

SENATOR HOYLMAN: Again, I want to thank the sponsor for her efforts and do agree with her that it is a major step forward. And also acknowledge all the courageous women and men who have come forward as part of the #MeToo and #TimesUp moment, which is a watershed one in our state and our country.

As the father of two daughters, I have to vote reluctantly no, because I think I disagree with the sponsor in that while secret settlements are ended, there will be a large number of victims, understandably who wish to remain undisclosed. And in that instance I

believe, Mr. President, the public has a right to know in the aggregate, with that personal information redacted, how big this problem is in the State Senate and the State of New York.

So without that public transparency, without that reporting mechanism that was instituted by the United States Congress, I have to reluctantly vote no.

Thank you, Mr. President.

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

Senator Murphy to explain his vote.

SENATOR MURPHY: Thank you, Mr. President.

I would really like to applaud my colleague Senator Young for bringing this comprehensive, most critically important piece of legislation to the New York State Senate floor.

We all knew we had to tackle this issue in January, when we first came up here. As the father of a 14-year-old girl, I cannot fathom the idea of her being mistreated anywhere, let alone in the workplace. Barriers in the workplace or in our society at large, based on gender, race, religion or ethnicity should and

must be destroyed. I know many of my colleagues wanted to tackle this issue as soon as we began this year.

This bill, much to Senator Young's efforts, was carefully crafted to protect all workers and taxpayers for the great State of New York. Today marks a victory for the residents of New York State, for the taxpayers of New York State, and for the future generations. The next generation of workers will be protected.

I again thank Senator Young and all my colleagues for their diligent work on this issue, and Mr. President, I will be voting yea.

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

Announce the results.

THE SECRETARY: Ayes, 56. Nays, 2. Senators Hoylman and Krueger recorded in the negative.

ACTING PRESIDENT GRIFFO: The bill is passed.

Senator DeFrancisco, that completes the controversial reading of today's Senate Supplemental Calendar 17A.

SENATOR DeFRANCISCO: I have an

announcement. Immediately following session, there will be a Republican conference in Room 332. And though it need not be said, the sooner we get there, the sooner we leave.

ACTING PRESIDENT GRIFFO: There will be an immediate meeting of the Republican Conference following session in Room 332.

Senator DeFrancisco.

SENATOR DeFRANCISCO: Is there any further business at the desk?

ACTING PRESIDENT GRIFFO: There is no further business at the desk.

SENATOR DeFRANCISCO: That being the case, I move to adjourn until Tuesday, March 13th, at 3:00 p.m.

ACTING PRESIDENT GRIFFO: On motion, the Senate will stand adjourned until Tuesday, March 13th, at 3:00 p.m.

The Senate is adjourned.

(Whereupon, at 4:18 p.m., the Senate adjourned.)