

1 NEW YORK STATE SENATE

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4 THE STENOGRAPHIC RECORD

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9 ALBANY, NEW YORK

10 February 22, 2021

11 3:52 p.m.

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13
14 REGULAR SESSION

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18 SENATOR ROXANNE J. PERSAUD, Acting President

19 ALEJANDRA N. PAULINO, ESQ., Secretary

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

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

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

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

8 ACTING PRESIDENT PERSAUD: Reverend
9 Heather Kirk-Davidoff, of Westminster
10 Presbyterian Church, will deliver today's
11 invocation.

12 REVEREND KIRK-DAVIDOFF: Holy God,
13 we invite Your presence and Your power into this
14 chamber this afternoon.

15 None of us are here in this room on
16 our own. Behind each of us are our families, our
17 communities, our friends and mentors who support
18 us and hold us accountable. We call them to mind
19 now.

20 Behind each of the elected officials
21 here today are millions of constituents, each
22 with their stories and dreams, their challenges
23 and their gifts. We call them to mind now.

24 In this room are the memories of the
25 people who have come before us, who have gathered

1 in this room to forge agreements, to state
2 objections, to speak and to listen. We call them
3 to mind now.

4 None of us here in this room stands
5 alone, Holy God. In these moments before our
6 work begins, we call to mind all of those who
7 stand with us, seen and unseen.

8 May the work we do today be a credit
9 to those who have raised us and shaped us.

10 May the work we do today be an
11 honest service to those who we represent,
12 especially the most vulnerable.

13 May the work we do today honor those
14 who came before us in this room and all of those
15 who have labored to create and to uphold our
16 democracy.

17 And may the work we do today give
18 glory to you, Holy God. Inspire us to speak
19 clearly, enable us to listen well, and empower us
20 to discern wisely.

21 And let the people say amen.

22 (Response of "Amen.")

23 ACTING PRESIDENT PERSAUD: Reading
24 of the Journal.

25 THE SECRETARY: In Senate, Sunday,

1 February 21, 2021, the Senate met pursuant to
2 adjournment. The Journal of Saturday,
3 February 20, 2021, was read and approved. On
4 motion, Senate adjourned.

5 ACTING PRESIDENT PERSAUD: Without
6 objection, the Journal stands approved as read.

7 Presentation of petitions.

8 Messages from the Assembly.

9 Messages from the Governor.

10 Reports of standing committees.

11 Reports of select committees.

12 Communications and reports from
13 state officers.

14 Motions and resolutions.

15 Senator Gianaris.

16 SENATOR GIANARIS: Madam President,
17 on behalf of Senator Addabbo, I wish to call up
18 Senate Print 1463, recalled from the Assembly,
19 which is now at the desk.

20 ACTING PRESIDENT PERSAUD: The
21 Secretary will read.

22 THE SECRETARY: Calendar Number 88,
23 Senate Print 1463, by Senator Addabbo, an act to
24 amend Chapter 473 of the Laws of 2010 amending
25 the Racing, Pari-Mutuel Wagering and Breeding

1 Law.

2 SENATOR GIANARIS: Move to
3 reconsider the vote by which this bill was
4 passed.

5 ACTING PRESIDENT PERSAUD: The
6 Secretary will call the roll on reconsideration.

7 (The Secretary called the roll.)

8 THE SECRETARY: Ayes, 63.

9 SENATOR GIANARIS: I now offer the
10 following amendments.

11 ACTING PRESIDENT PERSAUD: The
12 amendments are received.

13 SENATOR GIANARIS: Thank you,
14 Madam President.

15 Amendments are also offered to the
16 following Third Reading Calendar bills:

17 Sponsored by Senator Gianaris, on
18 page 12, Calendar 119, Senate Print 1034;

19 And on behalf of Senator Parker, on
20 page 17, Calendar 197, Senate Print 1579.

21 ACTING PRESIDENT PERSAUD: The
22 amendments are received, and the bills shall
23 retain their place on the Third Reading Calendar.

24 SENATOR GIANARIS: I also move to
25 commit the following calendar bills to the

1 Committee on Rules:

2 Senate Bill Numbers 598B, 612A, 553,
3 614B, 1783, 1784A, 3058, 3061A, and 3185.

4 ACTING PRESIDENT PERSAUD: So
5 ordered.

6 SENATOR GIANARIS: At this time can
7 we take up previously adopted Resolution 353, by
8 Senator Hinchey, read its title only, and
9 recognize Senator Hinchey on the resolution.

10 ACTING PRESIDENT PERSAUD: The
11 Secretary will read.

12 THE SECRETARY: Senate Resolution
13 353, by Senator Hinchey, mourning the death of
14 Frances G. Tonko, beloved friend, mother, and
15 pillar in her community.

16 ACTING PRESIDENT PERSAUD: Senator
17 Hinchey on the resolution.

18 SENATOR HINCHEY: Thank you.

19 Today I have the honor of sponsoring
20 the resolution which celebrates the life of
21 Frances G. Tonko, a beloved Amsterdam community
22 member who passed away in late January, just
23 two and a half months shy of her 100th birthday,
24 leaving behind a beautiful lifelong legacy of
25 service.

1 Frances was a beacon of light to all
2 who knew her. I've heard incredible stories
3 about Frances through her son, my friend and our
4 colleague Congressman Paul Tonko, of whom she was
5 deeply proud. These stories include those of
6 Frances buzzing around Amsterdam, collecting
7 signatures, campaigning, and beaming with pride
8 for the congressman back when he made history in
9 Montgomery County as the youngest person ever
10 elected to the county's Board of Supervisors.

11 I know that both Frances and her
12 late husband Stanley served as strong role models
13 for Congressman Tonko and were grounding pillars
14 of his campaigns throughout the years, supporting
15 him every step of the way.

16 Frances was a woman of many talents,
17 and she distinguished herself by her sincere
18 dedication to the welfare of her community, as a
19 member of St. Stanislaus Church and the Ladies
20 Rosary Society, St. Mary's Club 60, and as a past
21 member of the Montgomery County Women's
22 Democratic Club. And talk about dedication --
23 she was also recognized by former Governor Mario
24 Cuomo as New York Blood donor of the Year.

25 Above all, Frances loved her family,

1 her friends and her community. And while this
2 great loss is felt by so many, we are incredibly
3 lucky to have had her among us as a cherished
4 friend and neighbor for all of her 99 years.

5 Our thoughts and deepest condolences
6 are with Frances's son, Congressman Tonko; her
7 daughter, Patricia; and all of her family and
8 loved ones.

9 Thank you.

10 ACTING PRESIDENT PERSAUD: The
11 resolution was previously adopted on
12 February 9th.

13 Senator Gianaris.

14 SENATOR GIANARIS: Madam President,
15 a couple of weeks ago Senator Hinchey had her
16 first bill passed, and this was her first
17 resolution. So let's congratulate
18 Senator Hinchey.

19 (Standing ovation.)

20 ACTING PRESIDENT PERSAUD:
21 Congratulations, Senator Hinchey, on your first
22 resolution.

23 SENATOR GIANARIS: At the request
24 of the Senator, that resolution is open for
25 cosponsorship.

1 ACTING PRESIDENT PERSAUD: The
2 resolution is open for cosponsorship. Should you
3 choose not to be a cosponsor, please notify the
4 desk.

5 Senator Gianaris.

6 SENATOR GIANARIS: There will be an
7 immediate meeting of the Rules Committee in
8 Room 332.

9 ACTING PRESIDENT PERSAUD: There
10 is an immediate meeting of the Rules Committee in
11 Room 332.

12 SENATOR GIANARIS: The Senate will
13 stand at ease.

14 ACTING PRESIDENT PERSAUD: The
15 Senate will stand at ease.

16 (Whereupon, the Senate stood at ease
17 at 4:00 p.m.)

18 (Whereupon, the Senate reconvened at
19 4:09 p.m.)

20 ACTING PRESIDENT PERSAUD: The
21 Senate will return to order.

22 Senator Gianaris.

23 SENATOR GIANARIS: Madam President,
24 is there a report of the Rules Committee at the
25 desk?

1 ACTING PRESIDENT PERSAUD: There is
2 a report of the Rules Committee at the desk.

3 The Secretary will read.

4 THE SECRETARY: Senator
5 Stewart-Cousins, from the Committee on Rules,
6 reports the following bills:

7 Senate Print 553, by
8 Senator Sanders, an act to amend the
9 Public Health Law;

10 Senate Print 598B, by Senator May,
11 an act in relation to enacting the "Reimagining
12 Long-Term Care Task Force";

13 Senate Print 612A, by Senator May,
14 an act to amend the Elder Law;

15 Senate Print 614B, by Senator May,
16 an act to amend the Public Health Law and the
17 Social Services Law;

18 Senate Print 830B, by
19 Senator Comrie, an act to amend the Election Law,
20 the Criminal Procedure Law, the Executive Law and
21 the Correction Law;

22 Senate Print 1783, by
23 Senator Skoufis, an act directing the Department
24 of Health to establish and implement an infection
25 inspection audit;

1 Senate Print 1784A, by
2 Senator Skoufis, an act to amend the
3 Social Services Law;

4 Senate Print 3058, by
5 Senator Rivera, an act to amend the Public Health
6 Law;

7 Senate Print 3061A, by
8 Senator Rivera, an act to amend the Public Health
9 Law;

10 Senate Print 3185, by Senator
11 Skoufis, an act to amend the Public Health Law;

12 Senate Print 3784A, by Senator
13 Comrie, an act to amend the Public Service Law;

14 Senate Print 4336A, by Senator
15 Rivera, an act to amend the Public Health Law;

16 Senate Print 4681, by
17 Senator Gounardes, an act to amend the Retirement
18 and Social Security Law;

19 Senate Print 4893, by Senator
20 Rivera, an act to amend the Public Health Law;

21 And Senate Print 4960, by Senator
22 Mayer, an act to amend the Public Service Law.

23 All bills reported direct to third
24 reading.

25 SENATOR GIANARIS: Move to accept

1 the report of the Rules Committee.

2 ACTING PRESIDENT PERSAUD: All in
3 favor of accepting the Committee on Rules report
4 signify by saying aye.

5 (Response of "Aye.")

6 ACTING PRESIDENT PERSAUD: Opposed,
7 nay.

8 (No response.)

9 ACTING PRESIDENT PERSAUD: The
10 report is accepted and before the house.

11 SENATOR GIANARIS: At this time,
12 Madam President, let's take up the reading of the
13 calendar.

14 ACTING PRESIDENT PERSAUD: The
15 Secretary will read.

16 THE SECRETARY: Calendar Number 83,
17 Senate Print 546, by Senator Mayer, an act to
18 amend the Education Law.

19 ACTING PRESIDENT PERSAUD: Read the
20 last section.

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

23 ACTING PRESIDENT PERSAUD: Call the
24 roll.

25 (The Secretary called the roll.)

1 ACTING PRESIDENT PERSAUD: Announce
2 the results.

3 THE SECRETARY: Ayes, 63.

4 ACTING PRESIDENT PERSAUD: The bill
5 is passed.

6 THE SECRETARY: Calendar Number 84,
7 Senate Print 912, by Senator Mayer, an act to
8 amend the Education Law.

9 ACTING PRESIDENT PERSAUD: Read the
10 last section.

11 THE SECRETARY: Section 2. This
12 act shall take effect July 1, 2021.

13 ACTING PRESIDENT PERSAUD: Call the
14 roll.

15 (The Secretary called the roll.)

16 ACTING PRESIDENT PERSAUD: Announce
17 the results.

18 THE SECRETARY: In relation to
19 Calendar 84, those Senators voting in the
20 negative are Senators Akshar, Borrello, Boyle,
21 Griffo, Helming, Jordan, Lanza, Martucci,
22 Mattera, Oberacker, O'Mara, Ortt, Palumbo, Rath,
23 Ritchie, Serino, Stec, Tedisco and Weik.

24 Ayes, 44. Nays, 19.

25 ACTING PRESIDENT PERSAUD: The bill

1 is passed.

2 THE SECRETARY: Calendar Number 86,
3 Senate Print 1379, by Senator Brooks, an act to
4 amend the General Municipal Law.

5 ACTING PRESIDENT PERSAUD: Read the
6 last section.

7 THE SECRETARY: Section 9. This
8 act shall take effect on the 180th day after it
9 shall have become a law.

10 ACTING PRESIDENT PERSAUD: Call the
11 roll.

12 (The Secretary called the roll.)

13 ACTING PRESIDENT PERSAUD: Announce
14 the results.

15 THE SECRETARY: In relation to
16 Calendar Number 86, those Senators voting in the
17 negative are Senators Krueger and Weik.

18 Ayes, 61. Nays, 2.

19 ACTING PRESIDENT PERSAUD: The bill
20 is passed.

21 THE SECRETARY: Calendar Number
22 103, Senate Print 192, by Senator Thomas, an act
23 to amend the General Municipal Law.

24 SENATOR GIANARIS: Lay it aside for
25 the day, please.

1 ACTING PRESIDENT PERSAUD: The bill
2 will be laid aside for the day.

3 THE SECRETARY: Calendar Number
4 132, Senate Print 1138, by Senator Harckham, an
5 act authorizing the Commissioner of
6 General Services to convey real property in
7 Westchester County.

8 ACTING PRESIDENT PERSAUD: There is
9 a home-rule message at the desk.

10 Read the last section.

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

13 ACTING PRESIDENT PERSAUD: Call the
14 roll.

15 (The Secretary called the roll.)

16 ACTING PRESIDENT PERSAUD: Announce
17 the results.

18 THE SECRETARY: Ayes, 63.

19 ACTING PRESIDENT PERSAUD: The bill
20 is passed.

21 THE SECRETARY: Calendar Number
22 193, Senate Print 1800, by Senator Savino, an act
23 to amend the Economic Development Law.

24 ACTING PRESIDENT PERSAUD: Read the
25 last section.

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

3 ACTING PRESIDENT PERSAUD: Call the
4 roll.

5 (The Secretary called the roll.)

6 ACTING PRESIDENT PERSAUD: Announce
7 the results.

8 THE SECRETARY: Ayes, 63.

9 ACTING PRESIDENT PERSAUD: The bill
10 is passed.

11 THE SECRETARY: Calendar Number
12 220, Senate Print 498, by Senator Breslin, an act
13 to amend the Insurance Law.

14 ACTING PRESIDENT PERSAUD: Read the
15 last section.

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

18 ACTING PRESIDENT PERSAUD: Call the
19 roll.

20 (The Secretary called the roll.)

21 ACTING PRESIDENT PERSAUD: Announce
22 the results.

23 THE SECRETARY: Ayes, 63.

24 ACTING PRESIDENT PERSAUD: The bill
25 is passed.

1 THE SECRETARY: Calendar Number
2 272, Senate Print 62, by Senator Persaud, an act
3 to amend the Vehicle and Traffic Law.

4 ACTING PRESIDENT PERSAUD: Read the
5 last section.

6 THE SECRETARY: Section 6. This
7 act shall take effect one year after it shall
8 have become a law.

9 ACTING PRESIDENT PERSAUD: Call the
10 roll.

11 (The Secretary called the roll.)

12 ACTING PRESIDENT PERSAUD: Announce
13 the results.

14 THE SECRETARY: Ayes, 63.

15 ACTING PRESIDENT PERSAUD: The bill
16 is passed.

17 THE SECRETARY: Calendar Number
18 274, Senate Print 262, by Senator Myrie, an act
19 to amend the Highway Law.

20 ACTING PRESIDENT PERSAUD: Read the
21 last section.

22 THE SECRETARY: Section 3. This
23 act shall take effect on the 60th day after it
24 shall have become a law.

25 ACTING PRESIDENT PERSAUD: Call the

1 roll.

2 (The Secretary called the roll.)

3 ACTING PRESIDENT PERSAUD: Announce
4 the results.

5 THE SECRETARY: In relation to
6 Calendar 274, those Senators voting in the
7 negative are Senators Akshar, Borrello, Boyle,
8 Gallivan, Helming, Jordan, Lanza, Martucci,
9 Mattera, Oberacker, Ortt, Palumbo, Rath, Ritchie,
10 Serino, Stec, Tedisco and Weik.

11 Ayes, 45. Nays, 18.

12 ACTING PRESIDENT PERSAUD: The bill
13 is passed.

14 THE SECRETARY: Calendar Number
15 291, Senate Print Number 3992, by Senator
16 Reichlin-Melnick, an act to amend the Real
17 Property Tax Law.

18 ACTING PRESIDENT PERSAUD: Read the
19 last section.

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

22 ACTING PRESIDENT PERSAUD: Call the
23 roll.

24 (The Secretary called the roll.)

25 ACTING PRESIDENT PERSAUD: Announce

1 the results.

2 THE SECRETARY: Ayes, 63.

3 ACTING PRESIDENT PERSAUD: The bill
4 is passed.

5 Senator Gianaris, that completes the
6 reading of today's calendar.

7 SENATOR GIANARIS: Can we please
8 take up the supplemental calendar,
9 Madam President.

10 ACTING PRESIDENT PERSAUD: The
11 Secretary will read.

12 THE SECRETARY: Calendar Number
13 329, Senate Print 598B, by Senator May, an act in
14 relation to enacting the "Reimagining Long-Term
15 Care Task Force."

16 ACTING PRESIDENT PERSAUD: Read the
17 last section.

18 THE SECRETARY: Section 6. This
19 act shall take effect immediately.

20 ACTING PRESIDENT PERSAUD: Call the
21 roll.

22 (The Secretary called the roll.)

23 ACTING PRESIDENT PERSAUD: Senator
24 May to explain her vote.

25 SENATOR MAY: Thank you,

1 Madam President.

2 You'll hear a lot from me today
3 because this is a big day for those of us who
4 have been working on nursing homes.

5 I want to thank the leadership. I
6 want to thank my colleagues on both sides of the
7 aisle. I want to thank my colleagues in the
8 Assembly. And I especially want to thank all the
9 groups and individuals who have come forward and
10 told their tragic stories in order to keep the
11 tragedy from happening to people in the future.

12 This is our moment to rethink long
13 term care in New York State. The crisis in the
14 workforce and in the quality of life for our
15 seniors long predates the pandemic, but now we
16 have a moment when people are paying attention
17 and maybe we can actually make real change.

18 One thing the pandemic has done is
19 shown us what works and what doesn't. There was
20 an article in Newsday just this weekend about the
21 shape of nursing homes in the future, which may
22 be very different from what we have seen in the
23 past. And this task force that this bill puts
24 together will bring together experts from many
25 different perspectives to really chart a better

1 path forward.

2 So I vote aye. Thank you.

3 ACTING PRESIDENT PERSAUD: Senator
4 May to be recorded in the affirmative.

5 Announce the results.

6 THE SECRETARY: In relation to
7 Calendar 329, those Senators voting in the
8 negative are Senators Palumbo and Weik.

9 Ayes, 61. Nays, 2.

10 ACTING PRESIDENT PERSAUD: The bill
11 is passed.

12 THE SECRETARY: Calendar Number
13 330, Senate Print 612A, by Senator May, an act to
14 amend the Elder Law.

15 ACTING PRESIDENT PERSAUD: Read the
16 last section.

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

19 ACTING PRESIDENT PERSAUD: Call the
20 roll.

21 (The Secretary called the roll.)

22 ACTING PRESIDENT PERSAUD: Senator
23 May to explain her vote.

24 SENATOR MAY: Thank you again.

25 So it has never been more important

1 for residents and families in nursing homes to
2 have a way to report issues and get answers. The
3 Long Term Care Ombudsman Program is mandated by
4 the federal government; every state has it.

5 In New York, we have implemented it
6 in a kind of less than ideal way, and it is
7 primarily staffed by volunteers who are mostly
8 retirees. They have not been able to get into
9 nursing homes. They are vastly understaffed, and
10 they don't really have a clear way to report the
11 issues that they find.

12 So this bill addresses a number of
13 those issues. I hope in the longer term we'll be
14 able to really overhaul it and perhaps have it
15 staffed by paid staff in the future. But for
16 now, this bill makes a big difference in raising
17 the profile, giving them a hotline to the
18 Department of Health so that they can report
19 issues, and I hope making the whole program work
20 better for the residents and their families.

21 Thank you. I vote aye.

22 ACTING PRESIDENT PERSAUD: Senator
23 May to be recorded in the affirmative.

24 Announce the announce the results.

25 THE SECRETARY: In relation to

1 Calendar 330, voting in the negative:

2 Senator Akshar.

3 Ayes, 62. Nays, 1.

4 ACTING PRESIDENT PERSAUD: The bill
5 is passed.

6 There is a substitution at the desk.
7 The Secretary will read.

8 THE SECRETARY: Senator Sanders
9 moves to discharge, from the Committee on Rules,
10 Assembly Bill Number 2037 and substitute it for
11 the identical Senate Bill 553, Third Reading
12 Calendar 347.

13 ACTING PRESIDENT PERSAUD: The
14 substitution is so ordered.

15 The Secretary will read.

16 THE SECRETARY: Calendar Number
17 347, Assembly Print Number 2037, by
18 Assemblymember Dinowitz, an act to amend the
19 Public Health Law.

20 ACTING PRESIDENT PERSAUD: Read the
21 last section.

22 THE SECRETARY: Section 2. This
23 act shall take effect on the 90th day after it
24 shall have become a law.

25 ACTING PRESIDENT PERSAUD: Call the

1 roll.

2 (The Secretary called the roll.)

3 ACTING PRESIDENT PERSAUD: Announce
4 the results.

5 THE SECRETARY: Ayes, 63.

6 ACTING PRESIDENT PERSAUD: The bill
7 is passed.

8 THE SECRETARY: Calendar Number
9 348, Senate Print Number 614B, by Senator May, an
10 act to amend the Public Health Law and the
11 Social Services Law.

12 ACTING PRESIDENT PERSAUD: Read the
13 last section.

14 THE SECRETARY: Section 3. This
15 act shall take effect on the 45th day after it
16 shall have become a law.

17 ACTING PRESIDENT PERSAUD: Call the
18 roll.

19 (The Secretary called the roll.)

20 ACTING PRESIDENT PERSAUD: Senator
21 May to explain her vote.

22 SENATOR MAY: Thank you,
23 Madam President.

24 Back in June I had a letter from a
25 constituent whose mother had gone into a nursing

1 home for rehab after surgery, and a few weeks
2 later her mother died of three separate
3 infections that had set in after the surgery.

4 It wasn't a death from COVID-19, and
5 she didn't blame the staff, who were totally
6 overwhelmed and had not picked up on the
7 infections. She blamed her mother's isolation,
8 she blamed the fact that she herself had not been
9 able to get into the nursing home to see her
10 mother and recognize that there was a problem.

11 Since then, I and all my colleagues
12 have been hearing almost daily from people in our
13 districts and across the state who have tragic
14 stories about isolation in nursing homes. People
15 are dying of isolation. They're dying because
16 they are depressed, because they're refusing to
17 eat. They're dying because they have some
18 underlying condition that isn't being picked up
19 by the staff because they are so overworked.
20 They're dying because they have cognitive decline
21 that is rapidly accelerating as a result of their
22 isolation.

23 This bill would create a system
24 where they can designate one or two people to
25 come in and be personal care visitors on a

1 regular basis to see them, to pay attention to
2 what's going on with them, and to raise their
3 quality of life.

4 And I want to thank Statewide Senior
5 Action and AARP and all of the advocates who have
6 told just heartbreaking stories about this issue.
7 I also want to thank my staff and particularly
8 Carol Boll, who worked incredibly hard on this
9 bill to make it a reality.

10 I want to thank the Governor, too,
11 who in the last couple of days has changed the
12 regulations about nursing homes to make it easier
13 for people to get in -- which is a great step,
14 and I welcome it.

15 But this bill will make it a
16 permanent thing that there will be a system for
17 people to have visitors. It will recognize how
18 important it is that people have the kind of
19 personal attention that they get from family
20 members and loved ones but that the staff can't
21 necessarily give them.

22 So I welcome the Governor's changes,
23 but this bill will make a big difference for
24 people in New York for a long time to come.

25 So again, I vote aye, and thank you,

1 Madam President.

2 ACTING PRESIDENT PERSAUD: Senator
3 May to be recorded in the affirmative.

4 Senator Harckham to explain his
5 vote.

6 SENATOR HARCKHAM: I shifted over
7 one, due to social distancing. Can we switch the
8 mike over here, please?

9 SENATOR GIANARIS: They're all on.

10 SENATOR HARCKHAM: All right.

11 Thank you very much.

12 Madam President, terrific to see you
13 up there.

14 I would like to first of all thank
15 the Majority Leader and leadership for bringing
16 this essential package to the floor. It's
17 vitally important, and I'm glad that we're doing
18 it as aggressively as we are.

19 I also want to thank Senator May for
20 her leadership on long-term-care issues. And
21 while some have resorted to demagoguery,
22 Senator May has provided thoughtful and
23 responsible leadership on these issues, and I
24 thank her for that and particularly for this
25 bill.

1 In her remarks she touched upon a
2 story about a patient whose family member was not
3 there to be part of the care team. And so often
4 with people in nursing homes, a vital cog in that
5 care team is a family member, someone who is
6 there on a regular basis, who knows that patient
7 and can understand how they're doing, understand
8 how they're doing physically and how they're
9 doing with their emotional and social well-being.

10 We talk a lot about our students and
11 their social/emotional well-being and how that's
12 been impacted during COVID and why we need to get
13 them back to school. It's also so vital in our
14 long-term-care settings, and particularly with
15 people with cognitive disabilities.

16 And we've heard the stories of
17 folks, whether it be in the state nursing home in
18 Montrose or private nursing homes in the
19 district, they have seen their family member
20 deteriorate throughout this isolation. And
21 that's why this bill is so important.

22 And I thank the sponsor, I thank the
23 leadership. I vote aye.

24 ACTING PRESIDENT PERSAUD: Senator
25 Harckham to be recorded in the affirmative.

1 Senator Jackson to explain his vote.

2 SENATOR JACKSON: Thank you,
3 Madam President.

4 My colleagues, I rise to explain my
5 support for this bill, which is Bill Number
6 S614B, by Senator May. It provides for the
7 authorization and regulation of compassionate
8 caregiving visitation at nursing homes and
9 residential healthcare facilities.

10 This bill moves us forward towards
11 setting guidelines for compassionate caregiving
12 visitation at nursing homes and residential
13 healthcare facilities. Every resident in a
14 nursing home or a long-term facility has the
15 right to benefit from family support -- who are
16 an integral part of their care plan -- so they
17 can live their best lives.

18 And as we have come to terms with
19 during this COVID-19 pandemic, this level of
20 family care from loved ones outside can only
21 happen if they can physically get in to visit
22 their family relatives. But since the pandemic
23 began, family members and even legal guardians of
24 residents of nursing homes and other residents of
25 healthcare facilities have not been allowed

1 visitation, even if they were an essential part
2 of their loved one's caregiving team
3 pre-pandemic.

4 The lack of physical presence of
5 these caregivers in residents' lives has taken
6 its toll. Advocates from across the state,
7 including a robust family council at a facility
8 in my district, have begun urging us to pass
9 legislation that allows these so-called
10 compassionate care visits.

11 Sadly, at least one of my
12 constituents has passed away in the meantime, due
13 to what they call, quote, failure to thrive, and
14 others remain at risk. And I memorialize him
15 today and hope this bill brings his family some
16 sort of peace.

17 The residents of these facilities
18 are our grandparents, our mothers, our fathers,
19 our family, and they deserve better. And I thank
20 Senator May and others sponsoring legislation in
21 this package for their tireless efforts on this
22 matter.

23 And as a government, we can and must
24 do better by our elders in long-term-care
25 facilities to ensure they can all lead a

1 dignified life in our state.

2 Madam President, I proudly vote yes,
3 aye.

4 ACTING PRESIDENT PERSAUD: Senator
5 Jackson to be recorded in the affirmative.

6 Announce the results.

7 THE SECRETARY: Ayes, 63.

8 ACTING PRESIDENT PERSAUD: The bill
9 is passed.

10 THE SECRETARY: Calendar Number
11 351, Senate Print 1783, by Senator Skoufis, an
12 act directing the Department of Health to
13 establish and implement an infection inspection
14 audit.

15 ACTING PRESIDENT PERSAUD: Read the
16 last section.

17 THE SECRETARY: Section 6. This
18 act shall take effect 90 days after it shall have
19 become a law.

20 ACTING PRESIDENT PERSAUD: Call the
21 roll.

22 (The Secretary called the roll.)

23 ACTING PRESIDENT PERSAUD: Announce
24 the results.

25 THE SECRETARY: Ayes, 63.

1 ACTING PRESIDENT PERSAUD: The bill
2 is passed.

3 THE SECRETARY: Calendar Number
4 352, Senate Print 1784A, by Senator Skoufis, an
5 act to amend the Social Services Law.

6 ACTING PRESIDENT PERSAUD: Read the
7 last section.

8 THE SECRETARY: Section 2. This
9 act shall take effect on the 90th day after it
10 shall have become a law.

11 ACTING PRESIDENT PERSAUD: Call the
12 roll.

13 (The Secretary called the roll.)

14 ACTING PRESIDENT PERSAUD: Announce
15 the results.

16 THE SECRETARY: Ayes, 63.

17 ACTING PRESIDENT PERSAUD: The bill
18 is passed.

19 THE SECRETARY: Calendar Number
20 354, Senate Print 3058, by Senator Rivera, an act
21 to amend the Public Health Law.

22 ACTING PRESIDENT PERSAUD: Read the
23 last section.

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

1 ACTING PRESIDENT PERSAUD: Call the
2 roll.

3 (The Secretary called the roll.)

4 ACTING PRESIDENT PERSAUD: Announce
5 the results.

6 THE SECRETARY: In relation to
7 Calendar Number 354, those Senators voting in the
8 negative are Senators Helming and Palumbo.

9 Ayes, 61. Nays, 2.

10 ACTING PRESIDENT PERSAUD: The bill
11 is passed.

12 THE SECRETARY: Calendar Number
13 356, Senate Print 3061A, by Senator Rivera, an
14 act to amend the Public Health Law.

15 SENATOR LANZA: Lay it aside.

16 ACTING PRESIDENT PERSAUD: Lay it
17 aside.

18 THE SECRETARY: Calendar Number
19 357, Senate Print 3185, by Senator Skoufis, an
20 act to amend the Public Health Law.

21 ACTING PRESIDENT PERSAUD: Read the
22 last section.

23 THE SECRETARY: Section 2. This
24 act shall take effect on the 60th day after it
25 shall have become a law.

1 ACTING PRESIDENT PERSAUD: Call the
2 roll.

3 (The Secretary called the roll.)

4 ACTING PRESIDENT PERSAUD: Announce
5 the results.

6 THE SECRETARY: Ayes, 63.

7 ACTING PRESIDENT PERSAUD: The bill
8 is passed.

9 THE SECRETARY: Calendar Number
10 370, Senate Print 4336A, by Senator Rivera, an
11 act to amend the Public Health Law.

12 SENATOR LANZA: Lay it aside.

13 ACTING PRESIDENT PERSAUD: Lay it
14 aside.

15 THE SECRETARY: Calendar Number
16 372, Senate Print 4893, by Senator Rivera, an act
17 to amend the Public Health Law.

18 ACTING PRESIDENT PERSAUD: Read the
19 last section.

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

22 ACTING PRESIDENT PERSAUD: Call the
23 roll.

24 (The Secretary called the roll.)

25 ACTING PRESIDENT PERSAUD: Announce

1 the results.

2 THE SECRETARY: In relation to
3 Calendar Number 372, voting in the negative:
4 Senator Akshar.

5 Ayes, 62. Nays, 1.

6 ACTING PRESIDENT PERSAUD: The bill
7 is passed.

8 Senator Gianaris, that completes the
9 reading of today's supplemental calendar.

10 SENATOR GIANARIS: Thank you,
11 Madam President. Can we now take up the
12 controversial calendar.

13 ACTING PRESIDENT PERSAUD: The
14 Secretary will ring the bell.

15 The Secretary will read.

16 THE SECRETARY: Calendar Number
17 356, Senate Print 3061A, by Senator Rivera, an
18 act to amend the Public Health Law.

19 ACTING PRESIDENT PERSAUD: Senator
20 Lanza, why do you rise?

21 SENATOR LANZA: Madam President, I
22 believe there's an amendment at the desk. I
23 waive the reading of that amendment and ask that
24 you recognize Senator Ortt to be heard.

25 ACTING PRESIDENT PERSAUD: Thank

1 you, Senator Lanza.

2 Upon review of the amendment, in
3 accordance with Rule 6, Section 4B, I rule it
4 nongermane and out of order at this time.

5 SENATOR LANZA: Accordingly,
6 Madam President, I appeal the ruling of the chair
7 and ask that Senator Ortt be recognized.

8 ACTING PRESIDENT PERSAUD: The
9 appeal has been made and recognized, and
10 Senator Ortt may be heard.

11 SENATOR ORTT: Thank you,
12 Madam President.

13 I rise to appeal the ruling of the
14 chair. The proposed amendment could not be any
15 more germane to the bill at hand because the
16 sponsor notes that the bill at hand is designed
17 to bring transparency to information gathered
18 during public health emergencies, including
19 communicable disease outbreaks like COVID-19, and
20 to require that facility-specific information
21 regarding such cases and fatalities are made
22 public.

23 It is ironic because in the last
24 week the lack of transparency is how we got to
25 where we are today in the first place. It has

1 taken months to receive any type of transparent
2 information from the Department of Health or the
3 Governor's office. And when we finally did get
4 the information, we know it was incomplete and
5 that it was willfully incomplete.

6 The Governor must have his emergency
7 powers rescinded immediately, and that is what
8 this amendment does. Since May of last year, the
9 Republican Conference has been calling for the
10 Governor's emergency powers to be rescinded. Our
11 conference brought an amendment to the floor
12 14 times this year to rescind those powers, and
13 each and every time the Majority has voted it
14 down.

15 The conference brought the amendment
16 to the floor in May after it was reported
17 approximately 4500 COVID patients were sent from
18 hospitals to nursing homes. Again, the Majority
19 unanimously voted it down.

20 The conference brought the amendment
21 to the floor in July after our conference
22 demanded the Majority use subpoena power to
23 compel the Governor and Commissioner Zucker to
24 answer questions about the controversial March
25 25th order. Again, the Majority voted that down.

1 Again, this amendment has been
2 brought to the floor 14 times this year. Today
3 marks the 15th. But there's one difference.
4 Today this amendment is a bill sponsored by a
5 member of the Majority, Senator Biaggi, who has
6 had the courage to actually call out the Governor
7 and call for the ending of his emergency powers.

8 She, along with 13 other members of
9 the Majority, signed on to a letter stating that
10 it was time to rescind the Governor's emergency
11 powers. Today they have the opportunity to do
12 just that.

13 Yes, it is agreed, we need to review
14 nursing home policies and do our job. But all
15 these things we're passing today don't mean
16 anything as long as the Governor retains his
17 emergency powers, because he can simply override
18 those by executive order. And therein lies the
19 problem.

20 It is high time this body gets back
21 to a coequal branch of government. And I want to
22 be clear. The latest scandal really has nothing
23 to do with rescinding the Governor's powers. Our
24 conference has called for that for months.
25 What's needed in the current moment is a federal

1 investigation, which is ongoing.

2 But this is about restoring the
3 Legislature to a coequal branch of government.
4 It's about being able to provide oversight and
5 accountability of an Executive who has shown
6 gross disrespect for every member of this body,
7 Democrat and Republican -- and, more importantly,
8 has shown disrespect for the people that we
9 represent and the families who have lost loved
10 ones in nursing homes by willfully not reporting
11 the data, by also doing so for political reasons
12 and potentially to thwart a federal
13 investigation.

14 It is critical that we move and act
15 on this bill immediately to restore the
16 Legislature again as a coequal branch of
17 government. For these reasons, Madam President,
18 I strongly urge you to reconsider your ruling.
19 We know that there are 20 members of the
20 Republican Conference and 14 of the Majority who
21 will support this today, and that's two more than
22 is needed to pass something through this house.

23 I urge you to reconsider the ruling,
24 and I urge my colleagues across the aisle to
25 support their colleague's bill and rescind the

1 Governor's powers in this house today.

2 Thank you, Madam President.

3 ACTING PRESIDENT PERSAUD: Thank
4 you, Senator.

5 I want to remind the house that the
6 vote is on the procedures of the house and the
7 ruling of the chair.

8 Those in favor of overruling the
9 chair signify by saying aye.

10 SENATOR LANZA: Request a show of
11 hands.

12 SENATOR GIANARIS: Madam President,
13 we've agreed to waive the showing of hands and
14 record each member of the Minority in the
15 affirmative on this vote.

16 ACTING PRESIDENT PERSAUD: Without
17 objection, so ordered.

18 Announce the results.

19 THE SECRETARY: Ayes, 20.

20 ACTING PRESIDENT PERSAUD: The
21 ruling of the chair stands, and the bill-in-chief
22 is before the house.

23 Are there any other Senators wishing
24 to be heard?

25 Seeing and hearing none, debate is

1 closed. The Secretary will ring the bell.

2 Read the last section.

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

5 ACTING PRESIDENT PERSAUD: Call the
6 roll.

7 (The Secretary called the roll.)

8 ACTING PRESIDENT PERSAUD:
9 Senator Rivera to explain his vote.

10 SENATOR RIVERA: Thank you,
11 Madam President.

12 It is a great pleasure to be here,
13 back in the chamber. I have not had the
14 opportunity to be at my desk since -- well, since
15 last year. I'm glad to be back here, not only
16 because I love doing this job, but because this
17 is a perfect demonstration of how exactly to do
18 our job.

19 Madam President, today we're passing
20 a number of bills, this is the first one --
21 actually, we've already passed a few. But this
22 is one that are all in response to what many of
23 us heard not only from family members or friends
24 or fellow New Yorkers, but also from stakeholders
25 throughout the last year and particularly during

1 the series of hearings, Madam President, that we
2 did last year, in conjunction with our Assembly
3 colleagues, that were over 30 hours in which we
4 were witnesses -- we heard from witnesses who
5 told us about all of the issues that they had to
6 deal with with their family members and their
7 friends, their neighbors, all of the issues that
8 existed around nursing homes and hospitals, the
9 impact that COVID-19 had on both and that it had
10 on New Yorkers.

11 So we have put together a piece -- a
12 few pieces of legislation, Madam President, that
13 deal with some of the issues that we observed.
14 And this one today, one of the ones that we're
15 going to be considering, the one that we're
16 looking at right now, deals directly with data.

17 There has been a lot of conversation
18 about this, Madam President, and I just wanted to
19 state -- not only thank my colleagues for voting
20 for this piece of legislation, but also to tell
21 New Yorkers why it is so essential that we have
22 correct information.

23 For us to make decisions about how
24 we're going to shape policy, it is important to
25 have correct information. It is unfortunate that

1 some folks in this building feel it's necessary
2 to stall sharing such information. And we have
3 fought, both publicly and privately, to make sure
4 that this information comes to us.

5 Some of it -- I would certainly
6 thank the Attorney General on the record for
7 doing her job to make sure that some of this
8 information was released. Also folks from the
9 Empire Center, for example, as folks who we might
10 not agree on much, Madam President, but they
11 certainly know how to look at data and analyze
12 it.

13 Ultimately what this bill does is it
14 would mandate the State of New York to make sure
15 that that data is made available to the public.
16 It would make sure that the deaths of individuals
17 that occur in hospitals but are from patients or,
18 shall I say, residents of nursing homes are
19 accurately recorded. Such a thing is essential.

20 We owe it to all the individuals who
21 lost loved ones during the last year. I'm glad
22 that we are doing this today. We have much more
23 to do, we have more pieces of legislation to
24 pass, but ultimately we know that it is our
25 responsibility to make sure that we protect

1 vulnerable New Yorkers. It is what we are doing
2 today, and what we will continue to do.

3 Thank you, Madam President. My vote
4 is in the affirmative.

5 ACTING PRESIDENT PERSAUD:
6 Senator Rivera to be recorded in the affirmative.

7 Announce the results.

8 THE SECRETARY: Ayes, 63.

9 ACTING PRESIDENT PERSAUD: The bill
10 is passed.

11 THE SECRETARY: Calendar Number
12 370, Senate Print 4336A, by Senator Rivera, an
13 act to amend the Public Health Law.

14 ACTING PRESIDENT PERSAUD: Senator
15 Rath.

16 SENATOR RATH: Thank you,
17 Madam Chair. Will the sponsor yield for some
18 questions?

19 ACTING PRESIDENT PERSAUD: Will the
20 sponsor yield?

21 SENATOR RIVERA: I absolutely will,
22 Madam President.

23 ACTING PRESIDENT PERSAUD: The
24 sponsor will yield.

25 SENATOR RATH: Thank you very much.

1 It's an honor to be here today. And
2 my first question for the sponsor is if you could
3 briefly explain what this bill does and also the
4 reasoning for the percentages within the bill.

5 SENATOR RIVERA: Absolutely. Thank
6 you so much. Through you, Madam President.

7 As I stated just a minute ago, there
8 are a few pieces of legislation which we are
9 sponsoring and moving today which all correspond
10 to the issues that we saw over the last year in
11 nursing homes around the State of New York.

12 This bill in particular relates to a
13 concern that is a sincere concern that exists
14 about how much money facilities actually spend on
15 patient care. It was a concern that made it
16 clear to us that even though for the most part
17 most of the nursing homes around the state,
18 whether they be for-profit or nonprofit, obey --
19 or I should say abide by a standard of spending a
20 certain amount of money on actual patient care.

21 We know that there are bad actors
22 who use the opportunity and the nonclarity in the
23 law to be able to make some money on the backs of
24 individuals who they should be taking care of.
25 So other states have done similar things --

1 New Jersey, Massachusetts.

2 But ultimately, working along with
3 stakeholders and family members, we came up with
4 the idea that 70 percent of the total revenue on
5 a yearly basis for nursing homes should be
6 utilized for direct patient care.

7 We came up with that number after,
8 again, conversations with stakeholders. And we
9 believe that not only is it the right thing to
10 do, but it is the right approach.

11 And I will last point out,
12 Madam President, that our dear Governor has
13 obviously thought that there are some good ideas
14 here, because he took some of these ideas -- not
15 this bill, though -- and actually put it into his
16 budget proposal.

17 So I thank him for recognizing that
18 we have a good idea, but I would say that we need
19 to go farther than what the Governor does in the
20 budget, which is why we present this bill here,
21 and hopefully we will be able to vote on it.

22 Thank you, Madam President. Through
23 you.

24 SENATOR RATH: Through you,
25 Madam President. Do you as the sponsor think

1 that this is --

2 ACTING PRESIDENT PERSAUD: Will the
3 sponsor yield?

4 SENATOR RIVERA: I will.

5 SENATOR RATH: I'm sorry, does the
6 sponsor yield? Thank you.

7 ACTING PRESIDENT PERSAUD: The
8 sponsor yields.

9 SENATOR RATH: Do you think, as the
10 sponsor, that this is similar to the medical loss
11 ratio implemented on health plans?

12 SENATOR RIVERA: Through you,
13 Madam President, it is precisely where we got the
14 idea.

15 The sense here, again, is that there
16 is an obligation for folks who are actual
17 providers of care to provide care. And so what
18 we're saying -- Madam President, through you --
19 is that if you are responsible for taking care of
20 the most vulnerable of New Yorkers, that we want
21 to make sure that as much of that dollar goes to
22 the actual care of the individual.

23 So it is from that -- from the
24 medical loss ratio that we got the idea. But
25 this relates to patient care ratio,

1 Madam President, through you. And again, it is
2 about making sure that as many dollars as
3 possible go to the actual care of the patient, as
4 opposed to the pocket of an individual who wants
5 to take advantage of that individual.

6 SENATOR RATH: Through you,
7 Madam President, will the sponsor continue to
8 yield.

9 ACTING PRESIDENT PERSAUD: Will the
10 sponsor yield?

11 SENATOR RIVERA: Yes, Madam
12 President.

13 ACTING PRESIDENT PERSAUD: The
14 sponsor will yields.

15 SENATOR RATH: Thank you. I
16 perceive also that it is comparable to a medical
17 loss ratio that's implemented on health plans.

18 And can the sponsor please explain
19 how he envisions nursing homes will have the
20 ability to budget for these ratios when their
21 revenue is dependent on the number of patients in
22 the facility at a given time, which is constantly
23 and routinely changing?

24 SENATOR RIVERA: Through you,
25 Madam President. First of all, I should mention

1 that of the -- just to have some numbers on the
2 table, so the State of New York has just over
3 600 nursing homes. Four hundred of them are
4 for-profit.

5 And I should point out,
6 Madam President, that over 50 percent of nursing
7 homes in New York State currently abide by these
8 percentages. They are within the range of almost
9 70 percent or just above 70 percent of patient
10 care.

11 So I would remind you, sir, that --
12 I'm sorry. Through you, Madam President, I would
13 remind everyone in the room that what we're
14 talking about is how much money, how much revenue
15 goes into that particular institution every year.
16 If those -- if there are less patients in that
17 institution in that particular year, then the
18 revenue is going to necessarily be less.

19 What we're ultimately talking about
20 is 70 percent of whatever revenue that particular
21 institution gets in that year needs to be
22 utilized for direct patient care, if this bill
23 were signed into law.

24 SENATOR RATH: Through you,
25 Madam Chair, will the sponsor continue to yield.

1 ACTING PRESIDENT PERSAUD: Will the
2 sponsor yield?

3 SENATOR RIVERA: Yes, ma'am.

4 ACTING PRESIDENT PERSAUD: The
5 sponsor yields.

6 SENATOR RATH: Thank you.

7 This morning, in the Health
8 Committee, Senator May, the Senate chair on the
9 Aging Committee, raised a concern with this bill
10 which I actually share. This bill does not
11 exempt capital expenses from the ratio
12 calculation. Let me repeat that: This bill does
13 not exempt the capital expenses from the ratio
14 calculation.

15 However, throughout the pandemic, we
16 have seen nursing homes that have had to make
17 substantial changes and massive capital
18 improvements in their facilities in order to
19 protect the health and the well-being of their
20 residents. Some of these improvements are now
21 permanent.

22 Would you consider, as the sponsor
23 of this bill, amending this bill today -- before
24 passing it -- to exempt capital expenses?

25 SENATOR RIVERA: Through you,

1 Madam chair -- Madam President. First, it is --
2 it would be important to point out where this
3 particularly came from. The Senator is correct
4 that it does not currently include capital
5 expenses in that 70 percent.

6 The reason for that is that it was
7 pointed out to us that -- see, because remember,
8 ultimately what we're trying to do here is we're
9 trying to identify bad actors and take away from
10 them the ability to take advantage of the most
11 vulnerable.

12 So we've seen some bad actors in
13 other states, and maybe even some in this state,
14 who in this type of situation would actually set
15 up shell companies for real estate companies or
16 cleaning companies that would then actually have
17 the money go through the -- the money that would
18 ultimately go supposedly to patient care would
19 actually go to companies that are owned, are
20 subsidiaries of the same owners of the
21 facilities.

22 To be able to avert that, we want to
23 make sure that we eliminate that possibility.

24 Now, I should tell you, though, that
25 this is not a concern that is inconsequential. I

1 will point out actually my colleague -- not only
2 Senator May, but I will point out particularly to
3 Senator Gounardes.

4 Senator Gounardes came to us with a
5 very important distinction. He talked about a
6 particular nursing home in his district which was
7 struck by Sandy and, because of where it is, was
8 flooded after the storm. And they made some
9 changes that then made this facility operational
10 above sea level. Maybe that's not the correct
11 terminology, but, you know, so that it does not
12 get flooded in whatever storm happens next.

13 And now they're concerned about the
14 costs that are associated with paying back for
15 those changes which they made which ultimately
16 made the facility usable.

17 So I will tell you that we are --
18 we're certainly considering that, that it is
19 something that we are looking into. We are going
20 to move this bill today. However, that is
21 something that we are looking very closely at,
22 because it is a concern that is a real one. And
23 we ultimately do not want to create a situation
24 in which institutions that are doing everything
25 that they need to do to take care of their

1 patients -- for example, making sure that they do
2 not drown if there's a storm that is coming.
3 That is a very reasonable, reasonable
4 expectation, Madam President.

5 And so we are certainly taking it
6 into consideration. It is something that I'm
7 aware of. I thank Senator Gounardes and other of
8 my colleagues for bringing it up. And it's
9 something that we will consider as we move
10 towards potentially getting a bill that would be
11 negotiated with the Assembly and the Governor to
12 be signed into law.

13 SENATOR RATH: Thank you,
14 Madam President. Will the sponsor continue to
15 yield?

16 ACTING PRESIDENT PERSAUD: Will the
17 sponsor yield?

18 SENATOR RIVERA: Yes,
19 Madam President.

20 ACTING PRESIDENT PERSAUD: The
21 sponsor yields.

22 SENATOR RATH: First of all, thank
23 you for your consideration on that. I appreciate
24 this. This is a concern across all of New York
25 State with our nursing facilities.

1 Throughout the year we have seen
2 upstate facilities that have been facing major
3 staffing shortages when it comes to nursing
4 homes. This has been exacerbated, incredibly,
5 during the pandemic. How does this proposal
6 account for the differing circumstances between
7 urban and rural nursing facilities?

8 SENATOR RIVERA: Well, through you,
9 Madam President. The concern about staffing is
10 an absolute real one in all parts of the state,
11 but particularly in rural parts of the state --
12 not only in your district, Senator, but also I
13 would point out Senator May, who has been
14 consistent on this issue not only through this
15 discussion, but going back for as long as she has
16 been here, talking about the need to make sure
17 that we put resources to identify staffing, to be
18 able to train new staffers for places that are
19 difficult to get to, that do not have the
20 sufficient staff at this moment.

21 So I would say that that is a
22 concern that is ongoing. This bill would
23 consider that the facility -- because ultimately
24 it has to do with what the facility spends. I
25 cannot force -- you know, if a facility doesn't

1 have access to individuals because they cannot
2 find people to employ, right, if they have to --
3 let's say if they need 10 individuals to -- I'm
4 complete making this number up.

5 But let's say that the facility
6 needs 10 individuals that are caretakers, that
7 need to be trained caretakers, and they can only
8 find eight, we will not penalize them for only
9 finding eight of the 10 that they should.

10 Ultimately this refers to how much
11 revenue they're making for that particular year.
12 So if there's a revenue -- I kind of -- to be
13 able to understand this better for me, I actually
14 just did a quick -- I said if there's a nursing
15 home, let's say a nursing home spends a million
16 dollars a year -- has a revenue -- I'm sorry, has
17 revenue of a million dollars, right. If this
18 bill passes, they would be required to have
19 \$700,000 of that million dollars be spent toward
20 direct patient care. Which could be PPE, food,
21 housekeeping, medical care, et cetera.

22 Then of that total million, 400,000,
23 which would correspond to 40 percent of the
24 total, would need to be used for staffing.

25 Now, the fact is that they might not

1 even spend that much if they do not have -- if
2 they can't find the staff. In that sort of
3 situation, there is flexibility for the
4 commissioner to make certain -- to make certain
5 dispensations, if you will. I'll read from the
6 bill. It is -- I'm reading from the bill. "The
7 commissioner may adjust the components of the
8 direct patient care ratio as appropriate based on
9 current financial information reported by nursing
10 homes and overall performance by the nursing home
11 related to patient safety, direct patient care
12 staff ratios, and quality of care."

13 So it allows for flexibility so that
14 the commissioner may make the determination that
15 this particular entity is not -- it might not
16 have met exactly the ratio but is obviously doing
17 everything that they need to to be able to
18 fulfill the requirements.

19 So it is not a very strict -- there
20 is something that is built into the bill so it
21 allows for flexibility for the commissioner to
22 make a determination in the case of a particular
23 facility.

24 SENATOR RATH: Through you,
25 Madam Chair, will the sponsor continue to yield?

1 ACTING PRESIDENT PERSAUD: Will the
2 sponsor yield?

3 SENATOR RIVERA: Yes,
4 Madam President.

5 ACTING PRESIDENT PERSAUD: The
6 sponsor yields.

7 SENATOR RATH: In the Health
8 Committee meeting this morning you said that this
9 legislation is a result of conversations with
10 stakeholders. What industry stakeholders or
11 healthcare experts did you consult with in the
12 preparation of this legislation?

13 SENATOR RIVERA: We certainly -- we
14 talked to different -- we certainly talked to
15 some proprietors of nursing homes. We talked
16 to -- we did talk to 1199 as well; they provided
17 some input. We talked to some of the experts
18 that we have in-house. We talked to patient
19 advocates.

20 The list is -- I can't tell you the
21 exact -- you know, the list of every single
22 person that we spoke to, but I do think that it
23 corresponds to a good cross-section of all the
24 folks who are interested here, whether we're
25 talking about patient advocates or folks who

1 represent the workers or folks who represent the
2 owners of facilities.

3 So I do believe that it was -- that
4 as part of this conversation we've actually
5 included as many opinions as necessary to be able
6 to make an informed bill that best fits New York
7 and actually addresses the concerns that we're
8 trying to address here. Which is ultimately,
9 again, to make certain the facilities use their
10 funding to take care of people and not to go into
11 the pockets of someone.

12 SENATOR RATH: Through you,
13 Madam Chair, will the sponsor continue to yield?

14 ACTING PRESIDENT PERSAUD: Does the
15 sponsor yield?

16 SENATOR RIVERA: Yes,
17 Madam President.

18 ACTING PRESIDENT PERSAUD: The
19 sponsor yields.

20 SENATOR RATH: This bill was
21 amended on Wednesday, February 17th. What does
22 the amendment do that was drawn up on
23 February 17th?

24 SENATOR RIVERA: There are three
25 different things that the amendment actually did.

1 One of them, it's -- it actually made the
2 40 percent as I -- the 40 percent I referred to
3 earlier, which is strictly about staffing, it
4 included that.

5 It also clarified that since there
6 are many instances in which a facility might
7 actually not hire people in-house but might hire
8 a staffing agency, that it would be done at
9 85 percent. Which means that as opposed to
10 saying if you hire somebody, it's actually
11 obviously going to cost you more on a day-to-day
12 basis as a full-time staffer, as opposed to, say,
13 hiring a staffing agency to fulfill the
14 requirements of the 10 people that I referred to
15 earlier. So we talked about that being
16 85 percent of the purchased amount would accrue
17 towards that 40 percent that we're talking about.

18 And last but not least, we talked
19 about the -- excluding real estate and capital
20 expenses. And that was based on the information
21 that we got from other states in which shell
22 companies are created by entities to actually be
23 able to kind of sidestep the main purpose of the
24 bill.

25 SENATOR RATH: Through you,

1 Madam President, will the sponsor continue to
2 yield.

3 ACTING PRESIDENT PERSAUD: Does the
4 sponsor yield?

5 SENATOR RIVERA: Yes,
6 Madam President.

7 ACTING PRESIDENT PERSAUD: The
8 sponsor yields.

9 SENATOR RATH: The Governor
10 released his 30-day amendments very late on
11 Thursday the 18th of February. Is the sponsor
12 familiar with the nursing home reforms in the
13 Governor's proposed amendments?

14 SENATOR RIVERA: Through you,
15 Madam President. I believe that the Governor is
16 actually familiar with our proposals. It's
17 actually -- it's actually -- the Governor has a
18 tendency, Madam President, to take ideas that we
19 have, call them solutions to problems, and then
20 just give us a watered-down version of something
21 that we legislatively are looking to do.

22 So I am familiar with them, Senator,
23 because they were actually our ideas to begin
24 with. What he has in his proposal are just
25 watered-down versions of some of the pieces of

1 legislation that we're passing today. So I am
2 aware of them, but I should say that he is aware
3 of ours. Through you, Madam President.

4 SENATOR RATH: Through you,
5 Madam President, will the sponsor continue to
6 yield.

7 ACTING PRESIDENT PERSAUD: Does the
8 sponsor yield?

9 SENATOR RIVERA: Yes, Madam
10 President.

11 ACTING PRESIDENT PERSAUD: The
12 sponsor yields.

13 SENATOR RATH: Thank you.

14 Is the sponsor aware that within
15 24 hours the Governor proposed identical ratios
16 on nursing home revenues as proposed in your
17 legislation?

18 SENATOR RIVERA: Through you,
19 Madam President. I -- I don't know the exact
20 timeline, but that sounds about right.

21 SENATOR RATH: Through you, Madam
22 Chair, will the sponsor continue to yield?

23 ACTING PRESIDENT PERSAUD: Will the
24 sponsor yield?

25 SENATOR RIVERA: Yes,

1 Madam President.

2 ACTING PRESIDENT PERSAUD: The
3 sponsor yields.

4 SENATOR RATH: Did the sponsor or
5 anyone on staff consult with anyone in the
6 Governor's office or the Department of Health on
7 this proposal prior to the release of the 30-day
8 amendments?

9 SENATOR RIVERA: I do not believe
10 that we did, no.

11 Again, these are ideas that we have
12 been working on, in some instances for months.
13 And some draft of bills had been -- I think we
14 might have introduced -- I'd have to look at the
15 exact timeline, to be completely honest, but what
16 I can tell you is that these are ideas that we
17 have been working on for many months. But we did
18 not talk to them -- we did not talk to the
19 Governor.

20 We have just -- through you,
21 Madam President. I think that folks can probably
22 tell you I'm not necessarily the type to go
23 around and be palling around with our good friend
24 the Governor. So -- not on this issue or most
25 other ones. So I did not consult with the

1 Governor. He certainly read our bills, though, I
2 can tell you that. Through you, Madam President.

3 SENATOR RATH: Through you,
4 Madam President, will the sponsor continue to
5 yield.

6 ACTING PRESIDENT PERSAUD: Will the
7 sponsor yield?

8 SENATOR RIVERA: Yes, Madam
9 President.

10 ACTING PRESIDENT PERSAUD: The
11 sponsor yields.

12 SENATOR RATH: First of all, to
13 your last comment, that makes two of us.

14 Did anyone in the Governor's office
15 consult the sponsor or anyone on staff requesting
16 or suggesting the amendments of this bill to be
17 released in the 30-day amendments.

18 SENATOR RIVERA: Through you,
19 Madam President. It is actually a known fact --
20 that sometimes makes me quite sad -- that the
21 Governor has never called me in the 11 years that
22 I've been in the State Legislature.

23 (Laughter.)

24 SENATOR RIVERA: I'm not sure why
25 you're laughing at this very, very sad, sad

1 thing, Senator Gianaris, but okay.

2 So let's just say that I have not
3 called him, he has not called me, certainly, and
4 none of my staff has been in contact with his
5 staff about this particular bill.

6 We talk to the administration on all
7 sorts of issues all the time, but on this
8 particular issue there has been, as far as I
9 know, certainly -- well, as far as me, no
10 communications whatsoever. Again, which makes me
11 sad. And as far as my staff, I can assure you
12 none of them spoke to the Governor about this
13 bill -- about these bills that we're talking
14 about today at all.

15 SENATOR RATH: Through you,
16 Madam President, on the bill.

17 ACTING PRESIDENT PERSAUD: Senator
18 Rath on the bill.

19 SENATOR RATH: Thank you,
20 Senator Rivera, for answering my questions. I
21 really appreciate it. We had a lot of questions
22 there, and I appreciate the banter and the
23 back-and-forth very much.

24 I have some serious concerns with
25 this bill. The circumstances surrounding how we

1 came to be voting on this bill today in its
2 current form to me looks like another Albany
3 insider deal. How does that old saying go? If
4 it looks like a duck, if it walks like a duck,
5 it's a duck.

6 We are in the middle of a global
7 health crisis that has taken the lives of
8 thousands of New Yorkers. Politics as usual is
9 totally unacceptable, it is sickening, and
10 frankly it's just wrong.

11 The Governor has failed our seniors
12 throughout this pandemic, and the Majority has
13 done nothing to intervene or to help those in our
14 nursing homes across New York State. First it
15 was silence and inaction for months until
16 hearings were scheduled for early August, with
17 our conference continually calling for an
18 investigation into the administration's handling
19 of these nursing home issues.

20 Then one party held a questionable
21 hearing allowing both houses of the Legislature
22 to question the DOH commissioner for two hours
23 for one day. Then they issued follow-up
24 questions from the hearing with a three-week
25 deadline -- which came and went, of course, with

1 no response. Next, they complied with the secret
2 agreement to accept the lack of this very set of
3 responses.

4 Now they have the supermajority and
5 still have repeatedly refused to launch an
6 investigation. Further, they have failed to
7 issue subpoenas to hold this Governor and the
8 Department of Health accountable, coupled with
9 continually voting against repealing the
10 Governor's emergency powers and taking back our
11 duly constituted legislative authority.

12 And now, today, February 22nd,
13 nearly one year since the Governor was granted
14 his emergency powers, now this Majority has
15 decided to pass legislation which fails to
16 address the issues that have come to light with
17 regards to our struggling nursing homes across
18 our great state.

19 In general, the bills we are voting
20 on today do nothing to address the Medicaid cuts
21 implemented on facilities over the years or the
22 staffing shortages they have been confronted
23 with. Also, they do nothing to address the fact
24 that the administration has ignored our nursing
25 homes since the onset of this pandemic and has

1 continually failed to provide the desperately
2 needed resources to our nursing homes.

3 But this bill in particular just
4 highlights, to me, the supermajority's approach
5 to governing as an independent body: Say one
6 thing and then turn around and do something else.
7 This Majority speaks out against the Governor but
8 behind closed doors, I'm afraid to say,
9 corroborates and takes their orders.

10 New Yorkers deserve more. In
11 particular, our seniors deserve more. And the
12 Senate Republican Conference will continue to
13 demand that very thing on our seniors' behalf.

14 Thank you, Madam President.

15 ACTING PRESIDENT PERSAUD: Are
16 there any other Senators wishing to be heard?

17 Seeing and hearing none, debate is
18 closed. The Secretary will ring the bell.

19 Read the last section.

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

22 ACTING PRESIDENT PERSAUD: Call the
23 roll.

24 (The Secretary called the roll.)

25 ACTING PRESIDENT PERSAUD: Senator

1 Gianaris to explain his vote.

2 SENATOR GIANARIS: Thank you,
3 Madam President.

4 I listened with amusement as Senator
5 Rath was giving his remarks. I know he's new
6 here, but for those of us who have been around a
7 little bit longer, I want to give a little bit of
8 history that the Republicans were in the majority
9 in this chamber for most of the last decade. And
10 there was no group that was more in this
11 Governor's pocket than the Republicans in the
12 State Senate over that time. Not one subpoena
13 ever issued, not one aggressive pushback against
14 his policies, as long as you were the ones
15 cutting the deals.

16 So now we're sitting here actually
17 doing something, actually making reforms to his
18 policies, and the criticism comes. It's grossly
19 political. This Majority needs to be commended
20 for the steps we are taking to create this
21 oversight. And there's more to come after today,
22 you can assure yourselves of that.

23 I proudly vote aye, Madam President.

24 ACTING PRESIDENT PERSAUD: Senator
25 Gianaris to be recorded in the affirmative.

1 Senator Rivera to explain his vote.

2 SENATOR RIVERA: Thank you,
3 Madam President.

4 I just -- I would want to actually,
5 Madam President, just thank the leader for
6 helping lead us to this point.

7 Now, there's much more to do. And I
8 would say, Madam President, that had we had
9 cooperation, had there been collaboration and
10 cooperation with our Executive, then perhaps we
11 could have done a lot of this sooner.

12 But I'm glad to say that based on
13 all the work that we've done, we have a few
14 pieces of legislation which address issues of
15 transparency, address issues of standards of
16 quality, of standards of safety, transparency
17 around ownership.

18 These are all things -- as well as
19 standards of visitation to make sure that people
20 can visit their family members and therefore keep
21 them healthy. That was Senator May's bill
22 earlier.

23 These are all -- these are all very
24 good steps, but we have much more to do,
25 Madam President. We have -- we know how serious

1 this is. We understand how much we have to keep
2 pushing on behalf of all the folks who have lost
3 their lives, of all the people who have lost
4 their lives. And we need to stand up for them.
5 We believe that we are doing that, and we will
6 continue to do that.

7 And I'm very, very, very proud to
8 vote for this piece of legislation today as well
9 as the other ones that we will do in the weeks
10 and months to come.

11 We understand how important it is
12 for New Yorkers to know that we care about each
13 and every single person who passed away. And we
14 need to change policy to protect the most fragile
15 New Yorkers. That's what we're doing today and
16 what we will continue to do.

17 I vote in the affirmative. Thank
18 you, Madam President.

19 ACTING PRESIDENT PERSAUD:
20 Senator Rivera to be recorded in the affirmative.

21 Announce the results.

22 THE SECRETARY: In relation to
23 Calendar 370, those Senators voting in the
24 negative are Senators Akshar, Borrello, Boyle,
25 Felder, Gallivan, Helming, Jordan, Lanza,

1 Martucci, Mattera, Oberacker, O'Mara, Ortt,
2 Palumbo, Rath, Serino, Stec, Tedisco and Weik.

3 Ayes, 44. Nays, 19.

4 ACTING PRESIDENT PERSAUD: The bill
5 is passed.

6 Senator Gianaris, that completes the
7 reading of the controversial calendar.

8 SENATOR GIANARIS: Thank you,
9 Madam President.

10 Is there any further business at the
11 desk?

12 ACTING PRESIDENT PERSAUD: There is
13 no further business at the desk.

14 SENATOR GIANARIS: I move to adjourn
15 until tomorrow, Tuesday, February 23rd, at
16 3:00 p.m.

17 ACTING PRESIDENT PERSAUD: On
18 motion, the Senate stands adjourned until
19 Tuesday, February 23rd, at 3:00 p.m.

20 (Whereupon, at 5:06 p.m., the Senate
21 adjourned.)

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