

MONDAY, MARCH 5, 2018

2:38 P.M.

ACTING SPEAKER AUBRY: The House will come to order.

In the absence of clergy, let us pause for a moment of silence.

(Whereupon, a moment of silence was observed.)

Visitors are invited to join the members in the Pledge of Allegiance.

(Whereupon, Acting Speaker Aubry led visitors and members in the Pledge of Allegiance.)

A quorum being present, the Clerk will read the Journal of Saturday, March 3rd.

Mr. - shh - Mr. Morelle.

MR. MORELLE: Thank you, Mr. Speaker. I move to dispense with the further reading of the Journal of Saturday, March 3rd and ask that the same stand approved.

ACTING SPEAKER AUBRY: Without objection, so ordered.

Mr. Morelle.

MR. MORELLE: Yes, good afternoon, Mr. Speaker, colleagues. Let me just start by noting that on this day in 1770, a dispute between a local apprentice and a British soldier took place outside the Old State House in Boston, Massachusetts. Items such as rocks and snowballs soon began to fly back and forth amongst the crowd, and shortly thereafter the altercation reached a boiling point and soldiers fired their weapons into the crowd, killing three civilians and injuring two. This incident, a precursor to the War on Independence, would be memorialized as the Boston Massacre.

And in the vein of "Did you know," did you know that the longest consecutive running fair in the United States of America can be found in Watertown, New York? The Jefferson County Fair, located in the 116th Assembly District, represented by Ms. Jenne. The fair was first organized as the Jefferson County Agricultural Society on October 25th, 1817 and was inspired by a prior event that encouraged agricultural interests and manufacturing in the county. The fair celebrated its 200th anniversary this past July.

And with that, let me describe our work today. Obviously, Mr. Speaker and colleagues, we're getting into the final

month before adoption of the State Budget, and so our schedule will be certainly packed with Committee meetings off the floor and Party Conferences and work on the floor so, as always, we encourage and hope for patience by the members as we deal with all the work that is at hand. As for today, we have a main Calendar on members' desks with 20 new bills on it and after any introductions and housekeeping, we will take up bills on consent beginning with Calendar No. 689 through No. 708. We will also continue our consent of bills already on the Calendar, beginning with Calendar No. 198 on page 33. In addition, there will be a number of chapter amendments that we will take up today, as well. Those members of either the Insurance or Codes Committee should be aware that we will have Committee meetings off the floor and I expect we'll be calling Insurance in the next several moments, so members of those two Committees should pay attention to announcements from the desk. For Majority members, there will be the need for a Democratic Conference at the conclusion of our Session work on the floor today and, as always, I will consult with my colleagues on the Minority throughout the day to see if they have any Conference needs, as well.

I understand there is -- there are introductions and housekeeping, Mr. Speaker. This would be the appropriate time to take them up.

ACTING SPEAKER AUBRY: We will start with introductions, Mr. Morelle.

Mr. Friend for the purposes of an introduction.

MR. FRIEND: Thank you, Mr. Speaker. It is my privilege on behalf of Senator O'Mara and Assemblyman Palmesano to introduce a group from Chemung County. They're up here for the New York Farm Days and the Ag Celebration in the Capitol today. We have Ashur Terwilliger from the Chemung County Farm Bureau; Melissa Bower from the Chemung County Farm Bureau; Gina Blakemore from the Chemung County Farm Bureau; Hailey -- or Sydney Blakemore, our Chemung County Dairy Ambassador, and Hailey Piper -- Hailey Pipher, from the Town of Elmira, Town of Lowman, has reigned for the past year as the Chemung County Dairy Princess and was crowned New York State Dairy Princess on February 20th at the Holiday Inn in Liverpool. Please welcome them here to the Chamber and extend all the courtesies of the House to them.

ACTING SPEAKER AUBRY: Certainly. On behalf of Mr. Friend, Mr. Palmesano, I see Senator O'Mara in the House, former member of this House, we welcome you all to the New York State Assembly. We extend to you the privileges of the floor. We hope that your trip to Albany will be beneficial and, Your Highness, we welcome you here to the New York State Assembly and hope that your reign this year will be beneficial. Thank you so very much. We appreciate the work of agriculture in this State; very important to us. Thank you.

(Applause)

Mr. Barron for the purposes of an introduction.

MR. BARRON: Thank you, Mr. Speaker. I wanted to introduce to the Chamber a young man from Kenya. His name is Kiiru Gichuru - Kiiru Gichuru - and he is a lawyer. He's a lawyer here barred in New York State. He works for the New York City Human Rights Commission, does fine work with them. He also works with an organization called Operation Power in my beloved East New York. He helps us with legislation and community organizing and he's a real, real champion of human rights and the rights of oppressed people all over the world, but particularly of those of African ancestry. So, I ask that you grant him the cordiality of this House.

ACTING SPEAKER AUBRY: Certainly. On behalf of Mr. Barron, the Speaker and all the members, we welcome you here, sir, to the New York State Assembly, the People's House. We extend to you the privileges of the floor and we thank you for the work that you're doing in New York City for those who are oppressed and need representation. The Commission is well-known to us. Keep up that great work and always feel free to come back and visit. Thank you.

(Applause)

Ms. Melissa Miller for an introduction.

MS. M. MILLER: I'd like to reintroduce you all to my son, Oliver. He will be up here with me for March on Mondays and Tuesdays. Most of you met Oliver last year. He's the guy who inspires me every day to try, just try. It's how he lives his life and he is quite the role model. Oliver had a big milestone this year, he turned

18. Now, considering most of his doctors didn't think he'd even make it to two, 18 is quite an accomplishment that is purely a testament to his strength, joy and that determination to just try. This past year has been a little rough. Oliver's had a few setbacks, but this is not uncommon in the world of the chronically ill and the developmentally disabled population. But, he still tries every single day, and so will I to make his life and the life of his friends easier. Thank you and please welcome him to the House.

ACTING SPEAKER AUBRY: Certainly. On behalf of your mother, Oliver, the Speaker and all the members, we welcome you back here to the New York State Assembly. You're family so you always have the privileges of the floor. We hope that you continue to be an inspiration and you have strength and give strength to your mother who we all care about so very much, as well as you. Thank you so very much.

(Applause)

Mr. Goodell for the purposes of an introduction.

MR. GOODELL: Thank you very much, Mr. Speaker.

ACTING SPEAKER AUBRY: One minute, Mr. Goodell, please. Shh. Thank you, sir. Go ahead.

MR. GOODELL: On behalf of our colleague, Assemblyman Joe Errigo, it is my great pleasure to introduce Amy Azzara. Amy is up here with the New York State School and Music Associate Jazz Concert. She is a phenomenal young woman. Her

parents report that she was singing before she was speaking and with an entire life of singing, she's a phenomenal singer. Many of us would have a hard time to carry a tune in a bucket. Not only does she sing, she also plays piano and clarinet and she is here with her parents, Lisa and Chris Azzara. Please welcome this talented and gifted individual to our Chamber. Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Certainly. On behalf of Mr. Errigo, Mr. Goodell, the Speaker and all the members, we welcome you here to the New York State Assembly. We extend to you the privileges of the floor. We are certainly pleased to have such an accomplished musician and her family here. I'm reminded of the saying that music hath charms to soothe the savage beast. In a couple of weeks, we're going to need you to sing to us. Thank you so very much. We really appreciate it.

(Applause)

Ms. Woerner.

MS. WOERNER: Thank you, Mr. Speaker, for allowing me to interrupt for purposes of an introduction. We're joined in the Chamber today by Kevin Jablonski and Karen Christensen. They are the owners of Mack Brook Farm, a grassfed beef farm in Argyle, New York. Grassfed beef, for those of you who are perhaps not aware of it, is a very, very healthy alternative for those of you who like a good steak; it has the same Omega-3 content as a piece of salmon. And they are here today for the Taste of New York Reception and I hope that you all will find a time later today to go

down and sample their -- their wares at the reception. So, Mr. Speaker, if you'd offer them the cordialities of the House, I'd appreciate it.

ACTING SPEAKER AUBRY: Certainly. On behalf of Ms. Woerner, the Speaker and all the members, we welcome you here to the New York State Assembly. We extend to you the privileges of the floor. We look forward later on today to maybe having a taste of that fine product that you produce. We hope you continue to be successful. Obviously, we know how important agriculture is to not only Ms. Woerner's district, but the entire State. Thank you so very much.

(Applause)

Mr. Morelle.

MR. MORELLE: Thank you, Mr. Speaker. I wanted to take a moment to introduce a family member of our extended family, but equally important, former member of this House who served with great distinction, nearly 25 years in this House, and now is doing great work as the Clerk of your county, Queens County, our very, very dear friend, just a giant in this Chamber and in the City of New York and we're delighted to see our good friend, Audrey Pheffer. Please, if you'd extend all the cordialities and the greetings from the Speaker and all I know all the members on our dear friend.

ACTING SPEAKER AUBRY: Certainly. On behalf of Mr. Morelle, the Speaker, the entire Queens delegation and the House, Ms. Pheffer, it is such a pleasure to see you. Thank you.

Welcome. You are family, so the floor is always available to you. We hope you're enjoying your other career, though we miss you greatly. Thank you very much and keep us (inaudible).

(Applause)

A little housekeeping will be in order now.

On a motion by Ms. Nolan, page 5, Calendar No. 696, Bill No. A08485-A, amendments are received and adopted.

On a motion by Mr. Dinowitz, page 95, Calendar No. 510, Bill No. A07293, amendments are received and adopted.

Mr. Morelle.

MR. MORELLE: Thank you, Mr. Speaker. I'd like to ask members of the Insurance Committee to join Mr. Cahill in the Speaker's Conference Room. Insurance in the Speaker's Conference Room.

ACTING SPEAKER AUBRY: Insurance, Speaker's Conference Room; follow Mr. Cahill, please, immediately.

Mr. Morelle.

MR. MORELLE: Yes, thank you, Mr. Speaker. If we go to page 3 of the main Calendar, I'd like to begin with Assembly Resolutions, beginning with Assembly Resolution No. 796 by Ms. Pheffer Amato.

ACTING SPEAKER AUBRY: How appropriate.

The Clerk will read.

THE CLERK: Assembly Resolution No. 796, Ms. Pheffer Amato. Legislative Resolution urging the New York State

Congressional Delegation to pass the Blue Water Navy Vietnam Veterans Act of 2017, S.422/H.R.299.

ACTING SPEAKER AUBRY: On the resolution, all those in favor signify by saying aye; opposed, no. The resolution is adopted.

THE CLERK: Assembly Resolution No. 870, Ms. Joyner. Legislative Resolution memorializing Governor Andrew M. Cuomo to proclaim March 2, 2018 as Read Across America Day in the State of New York.

ACTING SPEAKER AUBRY: On the resolution all those in favor signify by saying aye; opposed, no. The resolution is adopted.

THE CLERK: Assembly Resolution No. 871, Mr. Brindisi. Legislative Resolution memorializing Governor Andrew M. Cuomo to proclaim March 2018 as Youth Art Month in the State of New York.

ACTING SPEAKER AUBRY: On the resolution, all those in favor signify by saying aye; opposed, no. The resolution is adopted.

THE CLERK: Assembly Resolution No. 872, Mr. Brian Miller. Legislative Resolution memorializing Governor Andrew M. Cuomo to proclaim March 2018 as Pure New York State Maple Month in the State of New York.

ACTING SPEAKER AUBRY: On the resolution all those in favor signify by saying aye; opposed, no. The resolution is

adopted.

Mr. Morelle.

MR. MORELLE: Thank you, Mr. Speaker. If we could begin consenting with Calendar No. 689 by Ms. Rozic which is on page 4 of the main Calendar.

ACTING SPEAKER AUBRY: The Clerk will read.

THE CLERK: Assembly No. A01270, Calendar No. 689, Rozic, Barron, Blake, Cook, Gottfried, Hooper, Jaffee, Mosley, O'Donnell, Otis, Perry, Pichardo, Sepulveda, Walker, Bichotte. An act to amend the Executive Law and the Education Law, in relation to prohibiting mandatory disclosure of a criminal history record in certain circumstances.

ACTING SPEAKER AUBRY: The bill is laid aside.

THE CLERK: Assembly No. A03090, Calendar No. 690, Cymbrowitz, Abinanti. An act to amend the Insurance Law, in relation to the effectiveness of flexible rating for nonbusiness automobile insurance plans.

ACTING SPEAKER AUBRY: The bill is laid aside.

THE CLERK: Assembly No. A03335, Calendar No. 691, O'Donnell, Quart, Simon, Gottfried, Peoples-Stokes, Glick. An act to amend the Civil Rights Law, in relation to personnel records of police officers, firefighters and correction officers.

ACTING SPEAKER AUBRY: The bill is laid aside.

THE CLERK: Assembly No. A03677, Calendar No. 692, Glick, Cook, Cymbrowitz, Gottfried, Jaffee, O'Donnell, L.

Rosenthal, Titone, De La Rosa. An act to amend the Alcoholic Beverage Control Law, in relation to requiring the State Liquor Authority to make available on its automated public license query website and database information pertaining to any conditions it imposes on a licensed premises.

ACTING SPEAKER AUBRY: Read the last section.

THE CLERK: This act shall take effect on the 30th day.

ACTING SPEAKER AUBRY: The Clerk will record the vote.

(The Clerk recorded the vote.)

Mr. Morelle.

MR. MORELLE: Thank you, Mr. Speaker. Ladies and gentlemen, this is our first vote of the day so I'd like to encourage people who are in the Chamber to cast your vote and those who are nearby, please make your way into the Chamber so we can record your first vote of the day.

ACTING SPEAKER AUBRY: First vote of the day, members.

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

Mr. Morelle.

MR. MORELLE: Thank you, Mr. Speaker. I'd like to ask members of the Codes Committee to make their way to the

Speaker's Conference Room. Mr. Lentol awaits members of the Codes Committee.

ACTING SPEAKER AUBRY: Codes Committee, Speaker's Conference Room immediately. Thank you.

The Clerk will read.

THE CLERK: Assembly No. A06175-A, Calendar No. 693, Schimminger. An act authorizing the Empire State Development Corporation to develop a public campaign -- awareness campaign promoting businesses located in New York State.

ACTING SPEAKER AUBRY: Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER AUBRY: The Clerk will record the vote.

(The Clerk recorded the vote.)

Mr. Palmesano to explain his vote, but wait one minute, sir, until we have the attention of the House.

MR. PALMESANO: Yes, Mr. Speaker, briefly just to explain my vote. I know there are some red votes up there, and I'm one of them, and I'd be more inclined to support this if I was assured that the Second Floor wouldn't appear in any of these promotional advertisements for our State. Therefore, I'll be voting no.

ACTING SPEAKER AUBRY: Mr. Palmesano in the negative.

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

THE CLERK: Assembly No. A06733, Calendar No. 694, Lavine, McDonald, Skoufis, Steck, Hevesi, Perry, Dinowitz, Abinanti, Giglio, McDonough, Crouch, Ra, Norris, Englebright, Titone, Zebrowski, Morinello, Montesano, Colton, Jaffee, Blake, Schimminger, Glick, Gottfried, Lawrence, Rivera, D'Urso. An act to amend the Public Health Law, in relation to audits of pharmacies.

ACTING SPEAKER AUBRY: Read the last section.

THE CLERK: This act shall take effect on the 60th day.

ACTING SPEAKER AUBRY: The Clerk will record the vote.

(The Clerk recorded the vote.)

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

THE CLERK: Assembly No. A07108, Calendar No. 695, Gottfried, Harris. An act to amend the Public Health Law and the Insurance Law, in relation to utilization review of coverage of nursing home care following an inpatient hospital admission.

ACTING SPEAKER AUBRY: Read the last section.

THE CLERK: This act shall take effect on the 90th day.

ACTING SPEAKER AUBRY: The Clerk will record the vote.

(The Clerk recorded the vote.)

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

THE CLERK: Assembly No. A08485-A, Calendar No. 696 has been amended.

Assembly No. A08931, Calendar No. 697, Bronson. An act to amend the Labor Law, in relation to reciprocity of debarments imposed under the Federal Davis-Bacon Act.

ACTING SPEAKER AUBRY: On a motion by Mr. Bronson, the Senate bill is before the House. The Senate bill is advanced. Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER AUBRY: The Clerk will record the vote.

(The Clerk recorded the vote.)

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

THE CLERK: Assembly No. A08976-B, Calendar No. 698, Simon, Mayer, Ortiz, Dickens, Pichardo, Gottfried, Mosley, Galef, Glick, Joyner, L. Rosenthal, O'Donnell, Sepulveda, Fahy, Seawright, D'Urso, Englebright, Quart, Carroll, Paulin, Titone, Magnarelli, Hunter, De La Rosa, Taylor. An act to amend the Civil Practice Law and Rules, the Criminal Procedure Law and the Penal

Law, in relation to establishing extreme risk protection orders as court-issued orders of protection prohibiting a person from purchasing, possessing or attempting to purchase or possess a firearm, rifle or shotgun.

ACTING SPEAKER AUBRY: The bill is laid aside.

THE CLERK: Assembly No. A08993, Calendar No. 699, Cymbrowitz, Taylor. An act to amend the Not-for-Profit Corporation Law and the Business Corporation Law, in relation to annual reports submitted by condominiums and cooperative housing corporations.

ACTING SPEAKER AUBRY: On a motion by Mr. Cymbrowitz, the Senate bill is before the House. The Senate bill is advanced. Read the last section.

THE CLERK: This act shall take effect January 1st.

ACTING SPEAKER AUBRY: The Clerk will record the vote.

(The Clerk recorded the vote.)

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

Mr. Morelle.

MR. MORELLE: Yes, thank you, Mr. Speaker. I'd like to take up two bills at this time in this order off the main Calendar: First, Calendar No. 657 which is on page 120 of the main Calendar by Mrs. Galef, and then follow that with Calendar No. 662

on page 121 by Mr. Jones.

ACTING SPEAKER AUBRY: The Clerk will read.

THE CLERK: Senate -- Senate Bill No. S07285, Calendar No. 657, Senator Golden (Galef -- A08945). An act to amend a chapter of the Laws of 2017, relating to establishing a temporary State Commission to study child abuse and neglect prevention, as proposed in Legislative Bills numbers S.00233A and A.05769A, in relation to establishing a temporary State taskforce to study child abuse and neglect prevention.

ACTING SPEAKER AUBRY: An explanation is requested, Mrs. Galef.

MRS. GALEF: Thank you very much.

ACTING SPEAKER AUBRY: Ladies and gentlemen -- one minute. Okay.

MRS. GALEF: Am I Good? Okay.

This is a just a chapter amendment. The chapter was passed unanimously by us at the very end of the Session. There are a few modest changes. It changed from being a temporary commission to a temporary task force. It changed from 13 members -- initially it was nine members. It will also examine the primary prevention program as a portion of their investigation and the task force will be in existence for two years instead of one and it repeals the task force at the end of three years versus two, so basically technical changes.

ACTING SPEAKER AUBRY: Mr. Goodell.

MR. GOODELL: Thank you, Mr. Speaker. Would

the sponsor yield?

ACTING SPEAKER AUBRY: Will you yield, Mrs. Galef?

MRS. GALEF: Certainly.

ACTING SPEAKER AUBRY: The sponsor yields.

MR. GOODELL: First, Mrs. Galef, thank you very much for your leadership on -- on this issue. Obviously, saying child abuse and prevention is very important and I was proud to support your bill last year as were all of us since it was unanimous. Now, I see that this change in terms of membership just increases the number of appointments of the Governor from three to seven and by natural extension means that the Governor now appoints the majority of the task force, right?

MRS. GALEF: Well, seven out of 13, yes.

MR. GOODELL: And before that --

MRS. GALEF: Close.

MR. GOODELL: -- he -- his appointments were a minority of the total number, correct?

MRS. GALEF: That's right.

MR. GOODELL: And am I correct that the Governor himself doesn't need legislation to establish a task force to study child abuse and neglect prevention? I mean, he can do that himself, can't he?

MRS. GALEF: Well, he -- he probably -- I'm not sure that he -- well, I suppose he could, but it wouldn't have members

from the Assembly and Senate necessarily on the task force with the numbers that we have here. And maybe he also recognized that this was a terrific idea and so we're just following through and, again, when we do chapter amendments, it's a question of whether something gets vetoed or whether we go forward with it with some changes and Senator Golden and I decided at that point that we'd rather go forward with the changes to get the job done.

MR. GOODELL: So, is it accurate to say then that the Governor thought this was a terrific idea?

MRS. GALEF: Absolutely.

MR. GOODELL: As long as he controlled the majority of the members?

MRS. GALEF: I'm sure he liked it -- maybe he has just more people that he's thinking about that would be members that we hadn't considered so -- and that's fine. I think more members with more input to talk about prevention programs so that we can do what we -- what we can to eliminate child neglect, child abuse, all of that is so important. So, actually having more people there with their expertise might be very helpful to us.

MR. GOODELL: I absolutely agree that more people with expertise is very helpful. Are there any Minority appointments?

MRS. GALEF: Not necessarily, but it doesn't mean that there cannot be. You know, it's -- it's kind of the usual format, I would say, which, I understand that you grieve about in most of these task forces, but I would say if you have any recommendations if we

can get this passed, the Governor signs it, I would send letters right away to him with some -- I don't know that it has to be us. I would hope -- I mean, my -- my idea would be to find people in the community that might be expert in this field and they would be recommended through me and, certainly, you can recommend people through you.

MR. GOODELL: And, likewise, I presume that you would support a further chapter amendment having the Minority appointing members of this?

MRS. GALEF: Well, actually, I -- I do not mind having Minority members on anything, my bills or anything else, so -- but we can get into that with future legislation. I know you have changes in the Rules that you offer periodically on this issue.

MR. GOODELL: Thank you very much, Mrs. Galef.

MRS. GALEF: Thank you.

MR. GOODELL: On the bill.

ACTING SPEAKER AUBRY: On the bill, Mr. Goodell.

MR. GOODELL: As I mentioned, I certainly appreciate Mrs. Galef's leadership on this bill. I think studying child abuse and neglect prevention is a very worthwhile endeavor, as the sponsor correctly noted; I think it is a great idea. The original bill was a great idea. I'm a little bit frustrated that the Governor thinks it's a great idea as long as he has the majority of the appointments, but would veto it otherwise. It makes you kind of wonder just what he

thinks is a great idea or not. But with that caveat in mind, again, thank you for your leadership. I will be voting against it because I -- I think if the Governor really wanted this information, he would ask his agencies to establish the task force. He would ask advice from all of us, undoubtedly from all of us and other experts and could proceed without legislation and I think the reason we have this legislation here is because we didn't think that issue was being properly addressed and studied. So thank you, again, for the opportunity, and thank you, sponsor.

ACTING SPEAKER AUBRY: Thank you, Mr. Goodell.

Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER AUBRY: The Clerk will record the vote.

(The Clerk recorded the vote.)

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

THE CLERK: Senate Bill No. S07329, Calendar No. 662, Senator Hannon (Jones -- A08988). An act to amend the Public Health Law, in relation to requiring the Governor to appoint the members of the Rural Health Council and requiring the Rural Health Council to make certain recommendations to the Department of Health.

ACTING SPEAKER AUBRY: An explanation is requested, Mr. Jones.

MR. JONES: Yes. This is -- this original bill had passed this House with flying colors and I'm happy that it's getting the particular attention that it deserves, it's a very important piece of legislation. But the chapter amendments that were made -- the original bill called for 14 appointments coming from the Legislature and seven from the Governor. And now the chapter amendments state that 11 appointments will come from the Legislature and ten from the Governor.

ACTING SPEAKER AUBRY: Read the last section.

THE CLERK: This act shall take effect immediately.

ACTING SPEAKER AUBRY: The Clerk will record the vote.

(The Clerk recorded the vote.)

Mr. Ra to explain his vote.

MR. RA: Thank you, Mr. Speaker. Just quickly. Like this -- like the previous piece of legislation and a couple of the others we have done - and I -- I commend the sponsor for his leadership on this issue. It's obviously an important issue, but it's another one that the Executive is taking control of a task force and really threatening to veto if he doesn't have control of it. This one actually removes one member that'll be recommended by each of the Legislative Leaders in order to give the Governor control of this, and really, it takes out all direct appointments by the Legislative Leaders,

instead making those appointed at the recommendation of the Legislative Leader. But they are ultimately all Executive appointments and because of that and because the original bill had two direct appointments for the Minority Leader of the Assembly, this bill now has one person that will be appointed at the recommendation of the Minority Leader, but it's an Executive appointment. Because of those reasons, I'm going to be casting my vote in the negative. Thank you.

ACTING SPEAKER AUBRY: Mr. Ra in the negative.

ACTING SPEAKER DILAN: Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

Mr. Morelle.

MR. MORELLE: Thank you, Mr. Speaker. I'd like to take up the following two bills in this order if I might: I'd like to go next to Calendar No. 680 on page 122 on the main Calendar by Mr. Benedetto, and then follow that up with Calendar No. 664 which you can find on page 121, that is by Mr. Dinowitz.

ACTING SPEAKER DILAN: The Clerk will read.

THE CLERK: Assembly No. A08955, Calendar No. 680, Benedetto. An act to amend the Vehicle and Traffic Law, in relation to mandatory testing in the event of a motor vehicle collision resulting in injury or death; and to amend a chapter of the Laws of

2017, amending the Vehicle and Traffic Law relating to mandatory testing in the event of a motor vehicle collision resulting in injury or death, as proposed in Legislative Bills numbers S.05562-A and A.07572, in relation to the effectiveness thereof.

ACTING SPEAKER DILAN: On a motion by Mr. Benedetto, the Senate bill is before the House. The Senate bill is advanced.

An explanation has been requested, Mr. Benedetto.

MR. BENEDETTO: Yes. Last June, we passed a bill on the floor which would require police officers at a scene of a major accident where either a fatality has occurred or serious other accidents that they would require to ask for a field test to be given. We passed that bill. The Governor, upon looking at that bill, agreed to sign it; however, he decided to make a chapter amendment and that's what we're voting on today, which would make modifications in that particular bill and we're doing this to avoid a veto. It would make the bill that we passed in June conform to terminology in reference to field testing and it clarifies that the field test refusals are now treated as a chemical test refusals and changes the effective date from 30 days to 90 days.

ACTING SPEAKER DILAN: Mr. Curran.

MR. CURRAN: Mr. Speaker, will the sponsor yield for a couple questions?

ACTING SPEAKER DILAN: Will the sponsor yield?

MR. BENEDETTO: Absolutely.

MR. CURRAN: Thank you, Michael. Michael, so real quickly. My understanding is the chapter amendment, it really deals with what is and isn't going to be allowed within the context of license suspension as a result of a refusal at the scene to take a certain test; is -- is that correct?

MR. BENEDETTO: That is correct, yes.

MR. CURRAN: So my understanding is -- is there's three types of tests at the scene. That when a police officer arrives at the scene he can ask for, you know, a sobriety test - that's the walking and the talking - and there's also a breathalyzer test; those are the first two. And then the third is obviously the chem test that they can take at another location; is that fair?

MR. BENEDETTO: That is fair to say, yes.

MR. CURRAN: Okay. So we passed this law last June, as you said, which included all three. So, if a police officer arrives at the scene and there's a fatality and there is a person suspected of being under the influence that the police officer under the bill that we passed in June could ask that driver to submit to either a field sobriety test or a Breathalyzer and if they refused to do so, their license would be automatically suspended; is that fair?

MR. BENEDETTO: Well, I'm being told on clarification that the Breathalyzer was not included in the bill that we had passed in June because that would be looked upon as a chemical test, okay, and that is the crux of the problem, yeah.

MR. CURRAN: Okay. So what we're doing here today is we're removing those two parts of the -- of the testing, the first and the second - the field sobriety as well as the Breathalyzer - out of that automatic license revocation -- suspension if they refuse at the scene to do it.

MR. BENEDETTO: Well, yes and no. The Breathalyzer was never part.

MR. CURRAN: Okay. So, the field sobriety. We'll stick with the field sobriety.

MR. BENEDETTO: Sure.

MR. CURRAN: So, a police officer arrives, you know, he says, *Walk the line*, guy refuses, that police officer, his refusal does not result in an automatic license suspension if the same refusal happened with the Breathalyzer, as well as the chem test later on, right?

MR. BENEDETTO: I'm not sure what you're asking, but I think the correct answer is yes.

MR. CURRAN: Okay. So let me just ask you, this bill was signed into law by the -- by the Governor.

MR. BENEDETTO: Yes.

MR. CURRAN: And obviously we passed it last June so we thought that -- that field sobriety should be included into it. The Governor had the option of either vetoing the bill, not signing it or sending it back to us.

MR. BENEDETTO: Correct.

MR. CURRAN: He chose to sign it. So if we choose, we choose here today to not approve this bill, our bill that we passed that we all felt was a good bill back in June, would still stay as law; is that -- isn't that correct?

MR. BENEDETTO: That would be correct. We would be breaking an agreement that we made with the Governor at the time when he had the option to either veto or sign the bill and we did not want that bill vetoed.

MR. CURRAN: Okay, thank you.

MR. BENEDETTO: And so I don't think we want to break our commitment here.

MR. CURRAN: Thank you, Michael.

Just on the bill, Mr. Speaker. Just real quickly. You know, we passed this bill back in June. We thought -- every single one of us thought it was a good bill to include field sobriety tests under the license suspension automatic if a person at the scene of an accident, just caused serious injury to somebody else, and if they said no, we thought that their license should be automatically suspended and be incorporated into the same criteria that we currently have for chem tests. We all voted for that. We all believed in that. And now here we are because the Governor doesn't believe that that should be included. He signed a bill and made that law. Now, we are now taking action here today that is going to weaken the very law that we passed back in June. We have a situation where a person can actually get into an accident, cause serious injury, refuse to take a field

sobriety test and minutes, hours, however long it takes to transport that person to another facility for a chem test and risk losing that person off of a valid positive testing, we're jeopardizing that because of our vote here today. So, I would encourage all my colleagues to vote no to this chapter amendment. Keep the bill that we voted for last June intact to protect the drivers out there. Thank you very much, Mr. Speaker.

ACTING SPEAKER DILAN: Mr. Palumbo.

MR. PALUMBO: Thank you, Mr. Speaker. Would the sponsor yield just for a few quick questions, please?

ACTING SPEAKER DILAN: Will the sponsor yield?

MR. BENEDETTO: The sponsor yields.

MR. PALUMBO: Thank you, Mr. Benedetto. And just -- I think I just want to clarify a few things and clean it up, that the bill in its current state, prior to the amendment by the -- proposed by the Governor was -- really had two elements to it: Serious physical injury or death and the person was believed to have committed a serious traffic offense; is that accurate?

MR. BENEDETTO: That is correct, yes.

MR. PALUMBO: So, suspended license and all the other ones that were enumerated within the statute itself. So, you had to have both of those before there was a requirement for them to submit to the field testing; is that accurate?

MR. BENEDETTO: That is accurate, yes.

MR. PALUMBO: Okay. And as we sit here today, if someone is suspected of driving while intoxicated then, of course, all of those remedies still apply with or without a fatality or serious physical injury and the ability to obtain a blood warrant and all of that; that's still all intact, right?

MR. BENEDETTO: Yes, it is.

MR. PALUMBO: Yes. So the Governor's proposal here and his concern he said was a Constitutional concern and I believe it may have been because the statute read or currently reads, I should say, since it's currently law --

MR. BENEDETTO: Correct.

MR. PALUMBO: -- "field test," correct. I think it specifically uses the word "field testing" and I believe we can make a distinction, and please correct me if I'm wrong, that the field sobriety tests which are the battery of tests, the walk and turn, one-leg stand, horizontal gaze nystagmus; those are not field tests. The field tests we're talking about is the handheld Alco-Sensor that they call it; is that accurate?

MR. BENEDETTO: They're all field tests.

MR. PALUMBO: Well, I think under -- under the VTL as it stands now, under I think it's 1194, and I'm going to pull it up as we speak, has the specific language of a field test is a field chemical test. Not a chemical test. It's not -- an actual chemical test is the Intoxilyzer back at the police station or a blood test, that's the chemical test, right?

MR. BENEDETTO: Correct.

MR. PALUMBO: So this is a different animal. So, we need to completely disregard that and the field tests we're talking about is a chemical field test which is really -- the vernacular would be as an Alco-Sensor or an SD2; is that right?

MR. BENEDETTO: Yes, it is a field test.

MR. PALUMBO: Field test, correct. And that's where I think the Governor may have had a problem that it -- that it was considered so-called "Unconstitutional" because that particular test, not to get too far into the legal weeds, but it has not passed the Frye test, it is not admissible in court; however, now if someone refuses to take that test instead of having their license revoked, they have to write it down; isn't that the sanction?

MR. BENEDETTO: Write it down in his police report of the accident, yes.

MR. PALUMBO: Great. And there's no other sanction, we just got to let people know he said no.

MR. BENEDETTO: That is correct.

MR. PALUMBO: Got it. And that's the ultimate sanction that the Governor negotiated with the two Majorities.

MR. BENEDETTO: The -- the Governor was afraid that driver's license suspension for refusing a field test could have the effect of compelling a chemical test without a warrant and the United States Supreme Court has held that the 4th Amendment forbids unwarranted search and seizures.

MR. PALUMBO: It certainly does, but in our current law if there is a serious physical injury or death and a police officer's observations are such that he believes based on his investigation this person has been driving while intoxicated and caused that accident we, in fact, can obtain a warrant and compel that search because by driving on the streets of New York, you agree to these provisions by being licensed to drive; isn't that right?

MR. BENEDETTO: Yes, that's correct. Under current law right now if the police officer believes that someone is intoxicating -- intoxicated driving a vehicle, they could have a test administered by getting a warrant from a judge.

MR. PALUMBO: Right, and that certainly still exists. I just want to make that clear.

MR. BENEDETTO: Yes.

MR. PALUMBO: Okay. Very good. Mr. Benedetto, thank you.

MR. BENEDETTO: Thank you.

MR. PALUMBO: On the bill, please.

ACTING SPEAKER AUBRY: On the bill, sir.

MR. PALUMBO: Thank you, Mr. Speaker. Now, we had it, we had a real good idea that would have mandated our drivers in this State if they killed someone or seriously hurt someone other than themselves and, most importantly, and was alleged to have committed a serious traffic offense, driving with a suspended license and all those other enumerated offenses in addition to killing or badly

hurting someone, then they would've been mandated to simply take a test, a chemical test. Now, this did say "field test" and when you read the specific language in the Vehicle and Traffic Law, that means the hand-held device which is inadmissible. But I think that we have thrown the baby out with the bath water because all that should have read was "chemical test," just like 1194 reads - of the Vehicle and Traffic Law - where if you're suspected of drinking and driving and you seriously hurt or kill someone, or as has been held valid in a valid search and seizure, if you just consider -- if you run a stop sign and the police officer thinks you're drinking, you have to take a chemical test or your license is revoked for a year, that's our current law. And this doesn't effect that, which is a good thing, but I think we all need to understand, friends, that this is now virtually useless. You know what you get to do? *He didn't take a -- I asked him to take a field test and you know what they did? They said no.* That's the sanction, it gets put in the police paperwork. Big whoop.

So, I think that and with a lot of these chapter amendments here that we're not only watering down these bills, this one is virtually -- I don't want to use the word "useless" because we do get something out of it I guess, they get to write it down, but other than that there's no particular sanction whatsoever. So, someone who's driving with numerous suspensions on their license, shouldn't even be on the road, they kill someone because of their inadequate driving, we get to write it down and tell them -- and say that, *Well, they didn't want to take it, I don't know what to tell you. I couldn't*

compel them otherwise, or coerce them with a license suspension.

So I think that that is the balance that we need to strike on these types of cases that this is a good idea in its current state and, unfortunately, I'm going to have to vote no on this amendment and I urge my colleagues to do the same. Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Mr. Raia.

MR. RAIA: Thank you, Mr. Speaker. We figured we'd just keep this in an order and if any of you want to speak up, you know, that's fine, too. Will the sponsor yield for a quick question?

ACTING SPEAKER AUBRY: Will you yield, Mr. Benedetto?

MR. BENEDETTO: Of course, sir.

MR. RAIA: Thank you, Michael.

ACTING SPEAKER AUBRY: The sponsor yields.

MR. RAIA: Does this -- this law or whatever we're -- we're talking about right now apply to incidents that might occur in a boat?

MR. BENEDETTO: No. This is just -- we're amending the Traffic and Vehicle Law.

MR. RAIA: The reason I bring this up for those of you that were here last week, I -- I had a -- a constituent named Gina Lieneck up here and her boat was hit by another boat. The operator of that boat refused to take a -- a -- a sobriety test, kind of hard to walk a line on a boat. So, really, the police officers rely on that -- that portable Breathalyzer. That being said, the individual refused to do

that and it took them over four hours to get a warrant to draw blood. In that four hours, we knew the person was drunk, but was no longer drunk. So, that is a concern to me. I would also like to say that maybe in the future when we talk about --

ACTING SPEAKER AUBRY: Mr. Raia, are you on the bill?

MR. RAIA: I'm on the bill now. Thank you, Michael.

ACTING SPEAKER AUBRY: Oh, oh. Good. Sit down.

(Laughter)

Thank you.

MR. RAIA: You can stand if you want, but... No, I -- I would ask that in all seriousness when we take a look at changing the laws and making them more restrictive for individuals that are driving in a car, there really is no difference between driving in a car and driving in a boat. The only difference is we don't require a license to drive in a boat, but maybe we should also mandate if somebody gets a DUI on the water, that they lose their car license. I would like us in the future to link these things together. So, I'd be happy to work with anybody that wants to try and accomplish that. It is unfortunate that we are taking away the -- the one means that might apply to a boater by amending this -- this -- the bill that we passed last year, but I have faith that we're going to do the right thing in the future. Thank you.

ACTING SPEAKER AUBRY: Read the last section.

THE CLERK: This act shall take effect on the 90th day.

ACTING SPEAKER AUBRY: The Clerk will record the vote.

(The Clerk recorded the vote.)

Mr. Palumbo to explain his vote.

MR. PALUMBO: Thank you, Mr. Speaker, for allowing me to interrupt the proceedings for an opportunity to explain my vote and, again, I just wanted to -- I wanted to commend the sponsor for the original bill. I think he did great work. Senator Helming, as well, I think she really got this thing going in the right direction. Hopefully we can revisit this in the future because there needs to be something other than a note from the police officer in order -- as far as the sanction when you have a serious accident such as this, including other aspects of criminality or offenses that have occurred.

So, again, sometimes I get -- my litigation juices get it going and I don't want to sound like I was being aggressive towards the sponsor, because I think he did great work to get the original bill out there. I just wish we could have kept it. I, again, vote in the negative. Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Mr. Palumbo in the negative.

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

THE CLERK: Senate Bill No. S07295, Calendar No. 664, Senate Alcantara (Dinowitz, Seawright -- A08992). An act to amend the Public Health Law, in relation to enforcement action that can be taken by the Commissioner of Health to act when areas of lead poisoning are designated.

ACTING SPEAKER AUBRY: An explanation is requested, Mr. Dinowitz.

MR. DINOWITZ: The purpose of the bill is to ensure that appropriate enforcement action is being taken when someone fails to comply with a notice or demand for lead paint abatement.

ACTING SPEAKER AUBRY: Mr. Goodell.

MR. GOODELL: Thank you, Mr. Speaker, would the sponsor yield?

ACTING SPEAKER AUBRY: Will you yield, Mr. Dinowitz?

MR. DINOWITZ: I will.

ACTING SPEAKER AUBRY: The sponsor yields.

MR. GOODELL: Thank you, Mr. Dinowitz. The original bill required a -- a formal hearing before any enforcement action could be taken in a case of an allegation of failure to abate lead, right?

MR. DINOWITZ: Yes.

MR. GOODELL: And this bill eliminates the requirement for a formal hearing?

MR. DINOWITZ: This bill gives a little more flexibility so a formal hearing is still one of the possibilities, or there can simply be enforcement action.

MR. GOODELL: If there's not a hearing, how is a defendant accorded due process?

MR. DINOWITZ: Well, if -- if there's -- if there's an investigation without a hearing and it indicates that action has to be taken, which is pretty much how most of our agencies operate -- very often they'll make determinations that actions have to be taken. There isn't always hearings on -- on everything. I think hearings are good things. The original bill, as I'm sure you know, did require the hearing, but in the -- when the Governor signed the bill, it was with the understanding that we would consider a chapter amendment which also gave a little more flexibility in terms of how it has to be handled.

MR. GOODELL: Well, this bill provides for a fine of up to \$2,500?

MR. DINOWITZ: Let me just check and I will tell you; yes, that correct.

MR. GOODELL: And so you're saying that an administrative agency could impose a fine of \$2,500 without any opportunity for a formal hearing by the -- by the respondent?

MR. DINOWITZ: If they fail to comply with the order.

MR. GOODELL: So what due process rights does the respondent have before he gets a \$2,500 fine?

MR. DINOWITZ: Well, one thing he can do is not commit the violation in the first place; lead paint -- lead, which, of course, can cause brain damage.

MR. GOODELL: Presumably if the respondent was challenging it, it's because he thought he was in compliance or disagreed with the determination. What procedure would exist for a respondent to be able to have a due process hearing before being fined?

MR. DINOWITZ: The -- the original bill allows the defendant to demonstrate that there is no violation.

MR. GOODELL: That's what the original bill did, and now the amended bill that you're suggesting eliminates the hearing. So, my question again is if there's no hearing, how does the respondent -- what mechanism is there to ensure due process before a fine is levied against the respondent?

MR. DINOWITZ: Well, I'm -- I'm certain that the -- the accused there would have the opportunity to -- to present information to the agency nonetheless, irrespective of whether there's a hearing.

MR. GOODELL: So instead of a -- a formal hearing, we just let the accusing agency be the judge, jury and executioner? Or, I'm sorry, judge, jury and finer?

MR. DINOWITZ: Well, I think executioner is a

pretty strong word.

MR. GOODELL: Yeah, that -- that was too strong. I apologize. It's just judge, jury and finer.

MR. DINOWITZ: The -- the hearing -- a hearing would be one way that this can be addressed, and not the only way.

MR. GOODELL: Are there other ways that meet due process requirements?

MR. DINOWITZ: Well, I think the way it's described in the bill both ways meet due process.

MR. GOODELL: I'm looking at line 9. I don't see any other ways to describe. Can you share with me what other ways?

MR. DINOWITZ: Well, it says, "Shall take enforcement action as deemed appropriate by the Commissioner or his or her rep, which may include conducting a formal hearing upon due notice." So, a hearing is certainly a possibility with -- it would be due notice.

MR. GOODELL: Okay, thank you.

On the bill.

ACTING SPEAKER AUBRY: On the bill, Mr. Goodell.

MR. GOODELL: The original bill we passed said that before somebody could be fined \$2,500, they had to have an opportunity for a formal hearing. The sole purpose of this amendment is eliminating the requirement of a formal hearing. I think we have fundamental due process issues where we authorize an administrative

agency to impose a \$2,500 fine without any hearing. And so for those reasons, while I supported the original legislation, I will not be supporting the amendment. Thank you, Mr. Speaker.

ACTING SPEAKER AUBRY: Thank you, sir.

Mr. --

Read the last section.

THE CLERK: This act shall take effect on the 120th day.

ACTING SPEAKER AUBRY: The Clerk will record the vote.

(The Clerk recorded the vote.)

Are there any other votes? Announce the results.

(The Clerk announced the results.)

The bill is passed.

Mr. Morelle.

MR. MORELLE: Thank you, Mr. Speaker. I'd like to ask you to call on Mr. Otis so he may make an announcement.

ACTING SPEAKER AUBRY: Mr. Otis for the purposes of an announcement.

MR. OTIS: Thank you. There will be an immediate Democratic Conference at the conclusion of Session today.

ACTING SPEAKER AUBRY: Democratic Conference immediately following Session.

Mr. Morelle.

MR. MORELLE: Thank you, sir. Do you have any

resolutions or housekeeping?

ACTING SPEAKER AUBRY: We have both.

On a motion by Mr. Skoufis, page 33, Calendar No. 190, Bill No. A02437, amendments are received and adopted.

Numerous resolutions, fine resolutions. We will take them up in one vote. On the resolutions, all those in favor signify by saying aye; opposed, no. The resolutions are adopted.

(Whereupon, Assembly Resolution Nos. 863-896 and 873-874 were unanimously approved.)

Mr. Morelle.

MR. MORELLE: Thank you, Mr. Speaker. I now move that the Assembly stand adjourned until Tuesday, March 6th at 11:30 am, tomorrow, sir, ladies and gentlemen, is a Session day.

ACTING SPEAKER AUBRY: The Assembly stands adjourned.

(Whereupon, at 4:45 p.m., the Assembly stood adjourned until Tuesday, March 6th at 11:30 a.m., Tuesday being a Session day.)